

April 4, 2024

Attn: Tony Tran,  
Senior Consultation Analyst, Prairie and Northern Region  
Impact Assessment Agency of Canada  
18104 102 Ave NW, Edmonton, AB



Dear Agency,

**Re: Friends of Michel Society Comments on Cando Sturgeon Rail Terminal West Expansion Initial Project Description**

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This letter is sent on behalf of the Friends of Michel Society (“FMS”). FMS has reviewed the Initial Project Description for the proposed Cando Sturgeon Rail Terminal West Expansion Project (the “Project”) filed with the Impact Assessment Agency of Canada (“IAAC”) by Cando Rail & Terminals Ltd. (“Cando”) on February 12, 2024. We submit these comments in response to this filing.

FMS is a representative group for descendants of Michel First Nation until such time that the Nation is re-established. Michel First Nation adhered to Treaty 6 in 1878 and held Reserve Lands located northwest of Edmonton, AB. Following signing of Treaty 6, Michel members were subject to enfranchisement efforts by the Government of Canada, culminating in 1958 when all but four members were stripped of their Indian Status under the *Indian Act* and Michel First Nation’s remaining Reserve lands were sold by the Government of Canada.

Many Michel descendants have regained their Indian Status under the *Indian Act* since the last round of enfranchisement in 1958, but the Michel Band has yet to be re-established at this time.

FMS was established in 1991 to: 1) pursue the reinstatement of Michel First Nation and return of Indian Status to Michel descendants; 2) advocate for the recognition of Michel’s Aboriginal and Treaty rights; 3) support and connect Michel descendants; and 4) revitalize and nurture Michel way of life.

It is important that Michel rights are considered in this regulatory process. The Project is proposed in Treaty 6 territory and on lands to which Michel descendants hold rights protected and affirmed under Section 35 of the *Constitution Act, 1980* (“Section 35 rights”).

Government bodies and industry proponents often overlook, and have no formal requirement to consult with, Michel descendants or their representative bodies, like they typically would with a recognized First Nation under the *Indian Act*. Because of this, lands within Michel’s Treaty territory have consistently been taken up and disturbed without identification and

accommodation for impacts to Michel's Aboriginal and Treaty rights.

This lack of recognition creates additional constraints on FMS, particularly related to capacity. FMS largely operates on a volunteer basis and has no core funding to support its efforts<sup>1</sup>. As such, FMS is often faced with limitations to its ability to gather information and develop evidence to support advocacy and consultation efforts.

Based on Cando's Project Description, FMS understands the proposed terminal expansion site will be located on both lands that are currently owned or under disposition by CN Rail<sup>2</sup> and lands owned by other private individuals or organizations. CN Rail does not currently operate on the owned lands contemplated for this Project; these lands are currently cultivated agricultural lands.<sup>3</sup> In addition, the Project proposes to create a bypass road between the existing and proposed terminal.<sup>4</sup>

If approved, the Project would be located in the Sturgeon County portion of Alberta's Industrial Heartland.<sup>5</sup> As the name suggests, this area is a designated industrial zone and, to the knowledge of FMS, the current conditions on the lands reflect this.

Industrial development creates conditions on the lands and to the resources that are not compatible with the exercise of Section 35 rights including:

1. Cutting or clearing of trees.
2. Temporary and/or permanent clearing of other vegetation through mechanical or chemical approaches.
3. Soil disturbance such as digging and grading.
4. The presence of signs, fences, and/or gates.
5. Increased presence of people and traffic.
6. Man-made noises and smells.
7. Dust and other emissions.

Presence of conditions that are not compatible with the exercise of Section 35 rights, both real or perceived<sup>6</sup>, may result in avoidance of areas and subsequent diminishment to those rights.

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<sup>1</sup> FMS does not receive the core capacity funding provided by the Government of Alberta to recognized Indigenous governments or organizations.

<sup>2</sup> the two titles under Plan 0824867

<sup>3</sup> Initial Project Description, pg.4.

<sup>4</sup> Ibid.

<sup>5</sup> Initial Project Description, pg.2.

<sup>6</sup> FMS notes that perception of a condition can have the same effect as the real presence of the same condition. For example, if a Michel descendant thinks an area has been chemically sprayed, they may avoid that area regardless of whether it actually has been sprayed or not.

Based on FMS' preliminary review of anticipated construction activities<sup>7</sup> for the Project, it is anticipated that the proposed Project would create all of the above listed conditions during construction of the Project. FMS additionally anticipates that these conditions would continue throughout the lifecycle of the proposed Project.

FMS notes that these conditions migrate beyond the footprint of the activity and result in avoidance of not just the immediate site, but also the surrounding areas. Further, these conditions contribute to the cumulative effects present in the area of the proposed Project.

FMS seeks to continue to be engaged in this regulatory process and wishes to initiate discussions with the Proponent to ensure proper consideration of Project impacts to Michel descendants' rights and interests. In order for FMS to continue to engage, consultation capacity is required.

It is important that Cando, along with the IAAC, meaningfully consider effects on Section 35 rights resulting from the Project and identify direct and proportional accommodation measures. Land use and approval of human activities must come with a fulsome understanding of both direct and cumulative Project effects.

Sincerely,

<Original signed by>

**Gil Goerz, President**

Friends of Michel Society

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<sup>7</sup> Listed on pgs. 33-35. Construction activities anticipated include: 1) vegetation clearing and demolition; 2) soil stripping; 3) cut/fill activities; 4) grading; 5) track and bypass road construction; and 6) vegetation control.