

23324 Township Road 515
Sherwood Park, AB
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23337 Township Road 515
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T8B 1L1
July 21, 2010

Honourable John Baird
Minister of Transport, Infrastructure & Communities
Tower C – 330 Sparks Street
Ottawa, Ontario K1A 0N5

Honourable Rob Merrifield
Minister of State, Transport
Room 304, Justice Building
House of Commons
Ottawa, Ontario K1A 0A6

Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec K1A 0H3

Without Prejudice

Dear Sirs:

Re: Notice of Objection - Rail Yard Construction at Old Bretona Station Site

This is our formal objection to construction of an industrial rail yard to store up to 225 petroleum tanker cars at the old Bretona Station site in the County of Strathcona, Alberta (see attached maps). Based on information we have been able to piece together, Cando Contracting Ltd. is building the rail yard on land leased from CN, and the petroleum tanker cars to be stored are owned by Imperial Oil Ltd. As such, we consider this to be a joint project by Cando Contracting Ltd., CN and Imperial Oil Ltd., and for purposes of this letter are considered the proponents of the project.

In summary, the old Bretona Station site is the most inappropriate site that could possibly have been selected for an industrial rail yard. It is very close to two occupied homes, is very close to two designated natural areas, and will completely change this agricultural community and natural environment into an industrial area.

We ask that you carefully read our letter, and immediately issue an order to stop construction of this rail yard based on what we contend to be breaches by the proponents of the: *Canada Transportation Act*, *Railway Safety Act*, *Notice of Railway Works Regulations*, *Railway Safety Management System Regulations*, *Canadian Environmental Assessment Act*, *Canadian Environmental Protection Act*, Canadian Rail Operating Rules, RAC/FCM Proximity Guidelines and Best Practices, and CN's own environmental policy and proximity policy.

As well, based on information in this letter, we request that inquiries be conducted under the *Canada Transportation Act* and *Railway Safety Act*, and that the Canadian Transportation Agency conduct an investigation or hearing pursuant to the *Canada Transportation Act* in response to our complaint regarding noise and vibration violations.

Our formal objection is in follow up to our earlier objections raised with Cando Contracting Ltd. and CN starting May 12, 2010; with MP Mr. Leon Benoit, Transport Canada, and the Canadian Transportation Agency starting May 14, 2010; with Imperial Oil Ltd. starting May 18, 2010; with Environment Canada Minister Honourable Jim Prentice starting June 15, 2010; with Transport, Infrastructure and Communities Minister Honourable John Baird starting July 5, 2010; and, with Minister of State for Transport Minister Honourable Rob Merrifield starting July 6, 2010. As well, we have raised our concerns and objections with Alberta Environment, Alberta Culture and Community Spirit, and the County of Strathcona.

Objections - General:

Our general objections are as follows:

- The rail yard is very close to Mill Creek, Bretona Pond and numerous other connected ponds and marshes. Possible contamination of these waterbodies and connected wetlands by petroleum products leaking or dripping from locomotives and up to 225 stored tanker cars is a major concern. There are many species of waterfowl and shorebirds that breed, stage (spring and fall), moult and feed at Bretona Pond, other connected waterbodies, and the surrounding lowlands. All of these waterbirds and many other bird species that breed, feed and stage here are protected under the federal *Migratory Birds Convention Act*.
- The rail yard property is less than 30m from two designated natural areas, Bretona Pond Buck-for-Wildlife Area (a public 125-acre conservation project) and Bretona ConservAction Area (a private 100-acre conservation initiative). For details, see attached Fact Sheet No. 1.

- The additional noise, vibration and visual disturbances of the rail yard will negatively affect the adjacent protected natural areas, including the many bird and mammal species. Already, the rail yard construction activities, which commenced June 21, 2010, have affected many bird species which were in the middle of nesting season. The rail yard and associated activities will compromise the natural heritage resources and may well compromise the historical heritage resources of the Bretona community. For details of the historical heritage resources of the Bretona community, see attached Fact Sheet No. 2.
- The massive rail yard property (5.2 acres) is only 68m from one home, 163m from a second home, and would impact several other homes in the Bretona community. The quality of life of residents living that close to an industrial rail yard would be totally compromised (increased noise, vibration, visual and aesthetic impacts, health impacts of carcinogenic diesel exhaust from idling and slow-moving locomotives, many other rail yard activities).
- Property values of adjacent and nearby homes and properties will be significantly reduced.
- Health and property value impacts associated with rail yards have been documented elsewhere (Cahill et al. 2007, Donato-Weinstein 2008, Edwards 2009, Lydersen 2010, Natural Resources Defense Council 2010, Oregon Toxics Alliance 2010, Roosevelt 2009). A key study finding (Cahill et al. 2007) revealed that locomotive diesel exhaust is about 5.5 times richer in the most carcinogenic components of diesel exhaust than is the exhaust from diesel trucks.
- Nearby homes and properties would be subjected to the additional risks of fire associated with idling and slow-moving locomotives, switching operations, the flammable liquids within the petroleum tanker cars and any flammable liquids that leaked or dripped onto the ground. There have been several previous CN-caused fires in the Bretona area.
- Nearby farming activities would be impacted and interrupted by the increased noise, vibration and associated activities of a rail yard.
- Significant borrow material will be required to fill in the rail yard property because it is presently quite low. This will affect and/or alter some drainage patterns in the area. Depending on how the property is filled in, there will be drainage from the property into at least one private dugout, into two private properties, into two designated natural areas, and into two major waterbodies (Bretona Pond and Mill Creek) which both drain into the North Saskatchewan River. The south half of the rail yard property drains south into a private farm dugout and two natural areas, while the north half drains into Mill Creek.

- It is important to note that most local residents moved into or have resided in the Bretona community knowing full well that a railway line already existed. One CN mainline track with an occasional train running along it is one thing; an industrial rail yard with an extra siding and 10 storage tracks side-by-side for up to 225 petroleum tanker cars is a totally different matter.
- Historically, the Bretona site included the Bretona Railway Station and the P and H Grain Elevator, both of which were important and necessary services to the local farmers and residents. These stations and grain elevators were situated every 12km to 16km along the rail lines in the Prairie Provinces to ensure that passengers and farmers hauling grain by wagon to the elevators did not have to travel too far by foot or horse. On the other hand, the Cando rail yard is a service only to Imperial Oil Ltd. and is a for-profit business for Cando Contracting Ltd. It is not a service for local residents, in fact local residents would end up with the noise, air and ground pollution, the health problems, property devaluation, additional risks of fire, and negative impacts on the local protected natural environment.
- Country Side Golf Course is a thriving 27-hole golf course located only about 0.7km from the Cando rail yard. The golf course owners and patrons would be negatively affected by all of the impacts referenced above. The construction and operation of this rail yard will likely impact the success of the golf course as a business.
- Construction and operation of an industrial rail yard in the Bretona community would change the entire complexion of the area from an agricultural, natural environmental and recreational community to an industrial community. This is totally unacceptable.

Challenge of Obtaining Accurate Information:

It has been most difficult to get accurate information on this project from Cando Contracting Ltd., CN or Imperial Oil Ltd. There has been significant information withheld, and misinformation provided, by Cando Contracting Ltd. and CN:

- Landowners (Trelenbergs and Kristensens) who live right next to the rail yard development property were not notified by Cando Contracting Ltd., CN or Imperial Oil Ltd. about the (at that time) proposed rail yard to store 225 petroleum tanker cars owned by Imperial Oil Ltd. We found out only by accident on May 12, 2010 about the project when one of the contractors bidding on the earthworks construction asked if we would consider selling borrow (fill) material to fill in the rail yard property which was essentially a small wetland before construction commenced on June 21, 2010. The contractor indicated they had been told by Cando not to notify adjacent landowners so as not to alert us about the (at that time) proposed rail yard.

- The early afternoon of May 14, 2010, Cando indicated to us that they already owned the 5.2-acre parcel of land in question. Later the same afternoon, Cando indicated to us that they were in the process of purchasing the land from CN. On June 21, 2010 Cando indicated to us that they had a 15-year lease with CN for the property. (We're still not certain what the truth is.)
- On May 14, 2010, Cando indicated to us that they had development permit approval from Strathcona County for the project. On May 28, 2010, Strathcona County administration indicated to us that the development permit was only a "tracking tool" and was not approval for the project. The County stated they had no jurisdictional authority because the CN-owned land is regulated by federal legislation.
- Cando has indicated they have nowhere else to build such a rail yard to store Imperial Oil's petroleum tanker cars. In fact, several other options exist.
- On June 28, 2010, Cando indicated the 5.2-acre property sloped north and therefore there would be no drainage south into a nearby farm dugout and adjacent natural areas. Alberta Environment had to point out that, based on Cando's own line drawing plans, the south half of the rail yard property drains south into the farm dugout and two designated natural areas, while the north half drains north into Mill Creek and into the North Saskatchewan River.
- Cando has indicated there will be little extra noise at the rail yard. In fact, there is ample literature that describes the increased noise generated by locomotives, shunting, coupling and decoupling activities at rail yards.
- Cando has indicated the rail yard is not very close to any homes or natural areas. In fact, the rail yard property is only 68m from one occupied home and only 163m from another occupied home; and, less than 30m from two designated natural areas.
- Cando has indicated there will be no devaluation of neighbouring property values. In fact, information exists indicating that neighbouring property values are significantly decreased.
- Cando downplays the fire hazard. In fact, the fire hazard is significantly increased when locomotives idle and move slowly and rail cars are switched from one track to the next, all of which will occur at the rail yard. The normal dripping and leakage of oil and grease products and solvents from locomotives and 225 tanker cars pose a fire hazard. As well, there is a heightened fire hazard with up to 225 petroleum tanker cars potentially leaking and dripping flammable petroleum products from the tanks.

Objections – Specific:

Notice:

As indicated previously, we were not notified by Cando Contracting Ltd., CN, or Imperial Oil Ltd. about this project. Furthermore, we have not been notified by the proponents about opportunities to object, nor about timelines within which to object. We found out about the project by accident through a bidding contractor who indicated he had been told not to alert us as neighboring landowners about the project.

We contend that the proponents are in violation of section 3(e) of the federal *Notice of Railway Works Regulations* which reads:

“3. For the purposes of subsection 8(1) of the *Railway Safety Act*, the following are prescribed as railway works of a kind for which notice shall be given:
(e) the construction or alteration of any line works that may affect drainage on land adjoining the land on which a line of railway is situated.”

As pointed out previously, the south half of the rail yard drains south into David Trelenberg’s land and farm dugout, from there into John Kristensen’s private Bretona ConservAction Area, from there into the public Bretona Pond Buck-for-Wildlife Area, and from there into Mill Creek. (We have photographs taken July 13, 2010 of water from the rail yard site draining south into the farm dugout.) The north half of the rail yard property drains directly north into Mill Creek which empties into the North Saskatchewan River.

We have grave concerns about any leaked or dripping petroleum products draining from the rail yard property into any of the aforementioned areas or waterbodies. This becomes a particularly serious threat after years of rail yard activity and storage. Also, based on other misinformation provided by the proponents, we are not convinced that the petroleum tanker cars to be stored will be empty.

We are also concerned that, with all of the clay fill brought into the site, the rate of runoff will be significantly altered, to the detriment of our adjacent properties and adjacent public natural areas and waterbodies.

The joint Railway Association of Canada/Federation of Canadian Municipalities report on Proximity Guidelines and Best Practices also points out that proponents should ensure “that the existing drainage pattern is not negatively affected.” Such consideration has obviously not been given by the proponents of the Cando rail yard.

We contend that the proponents are in violation of section 4 of the *Notice of Railway Works Regulations* which reads:

- “4. The notice referred to in section 3 shall
- (a) be given at least 60 days before the proposed date of commencement of the proposed railway works;
 - (b) set out the period, not less than 60 days, during which objections, pursuant to subsection 8(2) of the *Railway Safety Act*, may be filed; and
 - (c) contain the following information, namely,
 - (i) a drawing showing the location of the proposed works,
 - (ii) a description of the proposed works with general plans, including elevations of proposed structures,
 - (iii) a description of any impact that the proposed works may have on the safety of persons and property, and
 - (iv) the proposed date of commencement and the projected time for completion of the proposed works.”

As indicated previously, none of the above information has been provided to us, even though construction commenced June 21, 2010.

We contend that the proponents are in violation of section 5(a) of the *Notice of Railway Works Regulations* which reads:

- “5. (1) A notice referred to in section 3 shall be given
- (a) in the case of a railway company proposing to construct or alter line works, to the municipality, or municipalities, in which the line works will be or are located and to any owner of land immediately abutting land on which the line works are situated;”

Both the Trelenbergs and the Kristensens own land that immediately abutts the CN right-of-way upon which the rail yard is being built, but neither family was notified by the proponents.

Further, and following back to the parent legislation, we contend that the proponents are in violation of section 8(1) and section 8(2) of the federal *Railway Safety Act*, which read:

- “8. (1) If a proposed railway work is of a prescribed kind, the proponent shall not undertake the work unless it has first given notice of the work in accordance with the regulations. However, it may undertake the work if all persons to whom the notice was given file with the proponent a response indicating that they do not object to the work.
- (2) A person to whom a notice is given under subsection (1) may file with the proponent an objection to the proposed railway work if the person considers that the proposed railway work would prejudice their safety or the safety of their property. The objection must include reasons and be filed before the expiry of the period specified in the notice for the filing of objections, and a copy of it must be filed without delay with the Minister.”

To reiterate, we were not notified by the proponents, nor given an opportunity to file objections with respect to the construction or operation of the industrial rail yard in the Bretona community to store up to 225 petroleum tanker cars.

We could not agree more with the following quote from the joint RAC/FCM report on Proximity Guidelines and Best Practices, “Railways need to be more proactive in engaging municipalities and landowners and sharing information on expansion of facilities or changes in operation that may have impacts for adjacent land users.”

It is ironic that Cando Contracting Ltd., owner of the Barrie-Collingwood Railway which is a member of the Railway Association of Canada, does not adhere to principles outlined by the Railway Association of Canada.

Canadian Transportation Agency Approval:

The Canadian Transportation Agency (CTA) has indicated to us that its approval is not necessary because the new construction is taking place within an existing railway right-of-way, albeit not by CN which owns the land, but by Cando Contracting Ltd. which is leasing the land from CN.

We contend that the proponents are in violation of section 98, particularly section 98(3)(a), of the federal *Canada Transportation Act*, which reads:

“(3) No approval is needed for the construction of a railway line
(a) within the right of way of an existing railway line; or”

On the basis of common sense, a railway line is not a rail yard. A railway line is a single track, whereas a rail yard consists of many tracks. In the case of the Cando rail yard, it consists of a siding plus 10 tracks side-by-side.

From a legal perspective, although “railway” is defined in the *Canada Transportation Act*, “railway line” is not defined per se for section 98. However, in section 140 of the *Canada Transportation Act*, “railway line” is defined as follows:

“140. (1) In this Division, “railway line” includes a portion of a railway line, but does not include
(a) a yard track, siding or spur; or
(b) other track auxiliary to a railway line.”

Since there is no other place in the Act where “railway line” is defined, we must default to that definition provided in section 140 of the Act. Therefore, if we go back to section 98(3), and apply the section 140 definition to “railway line”, it may be that no approval is needed from the Canadian Transportation Agency for construction of a new railway line; however, a “railway line” does not include a “yard track” or a “siding” which the project in question is, namely a siding plus 10

yard tracks side-by-side. Therefore, the construction of this project is not exempt from Canadian Transportation Agency approval. It must therefore be approved by the Canadian Transportation Agency before it can proceed. The proponents are therefore in violation of section 98 of the *Canada Transportation Act*.

Environmental Assessment and Concerns:

CN's website indicates that CN is "focused on environmental stewardship". It indicates that "CN is committed to business practices that protect the natural environment". The website also indicates that, "at CN facilities, environmental protection is an integral part of management activities. Our Environmental Policy, programs and processes aim to minimize the impact of our activities on the environment." This policy states that CN will "assess environmental impacts before starting a new activity or project and before decommissioning a facility." And, the policy states that CN will "promote the adoption of the principles of the Policy by contractors and suppliers."

These important and laudable principles have unfortunately not been followed during selection of the Bretona community for an industrial rail yard. In fact, building such a facility, or allowing one's lessee to build such a facility, right next to two designated natural areas is totally contrary to CN's environmental policy.

As well, the National Transportation Policy within the *Canada Transportation Act* (section 5) states that the national transportation system "contributes to a sustainable environment". An industrial rail yard constructed right next to two designated natural areas certainly does not help to sustain the environment.

The attached Fact Sheet No. 1 provides details of the two designated natural areas adjacent to the Cando rail yard project. The siting of this rail yard right next to these two natural areas is at best a very bad decision on the part of the proponents, and at worst a violation of processes outlined in the federal *Canadian Environmental Assessment Act*.

As discussed above, the Canadian Transportation Agency must approve this project, and hence, the Agency must ensure the protection of the environment for the construction of any new rail works that it must approve. Under the *Canadian Environmental Assessment Act*, the Agency must ensure that an environmental assessment of this rail yard project is undertaken. We understand that such has not been done. The Agency may only allow this project to proceed if it is satisfied that there will be no significant adverse environmental effects.

We can assure you that this rail yard will have very serious adverse environmental effects both on the land itself and on the wildlife, as referenced previously in this letter. Based on the above information, we contend that the proponents are in violation of the *Canadian Environmental Assessment Act*.

The Railway/Municipality Proximity Issues Information Data Base (2010) indicates, "Protection of the environment is a major concern of the rail industry, government, the public and all other stakeholders. Environmental protection has been made an integral part of all rail operations and of the management of all rail facilities." We cannot agree more about the public concern regarding environmental impacts of rail operations; however, it appears that very few or no environmental considerations have been given by the proponents of this particular rail yard, especially considering its location right next to two designated natural areas.

This railway/municipality data base goes on to indicate, "Products used in everyday rail operations (around a rail yard and on mainline track) such as engine oil, industrial solvents and other chemicals can cause environmental problems."

Based on this and other information, we are very concerned about leakage and spillage of toxic or poisonous products resulting from the regular operation of locomotives and tanker rail cars at the Cando rail yard, and from possible leakage and spillage of toxic or poisonous petroleum products from petroleum tanker cars that may not be empty. We are especially worried because we understand that the Cando rail yard will not include any spill containment facilities or measures.

As pointed out previously, the south half of the Cando rail yard drains south into David Trelenberg's land and farm dugout, from there into John Kristensen's private Bretona ConservAction Area, from there into the public Bretona Pond Buck-for-Wildlife Area, and from there into Mill Creek. (We have photographs taken July 13, 2010 of water from the rail yard site draining south into the farm dugout.) The north half of the rail yard property drains north directly into Mill Creek which empties into the North Saskatchewan River.

We are deeply concerned about any leaked or dripping petroleum products draining from the rail yard property into any of the aforementioned private or public areas or waterbodies. This becomes a particularly serious threat after years of rail yard activity and storage. Also, based on other misinformation provided by the proponents, we are not convinced that the petroleum tanker cars to be stored will be empty.

Noise and Vibration:

The City of Hamilton's Transportation and Noise Policy Paper (2005) provides some good background information on noise. "Transportation noise is often perceived as a nuisance.....Nevertheless, noise is a recognized environmental impact and a type of pollution that can negatively affect public health and a community's quality of life. Some evidence suggests that noise has stress-related health impacts on humans including sleep disturbance and cardiovascular

disease. Noise can harm property values, disrupt peaceful neighbourhoods and reduce the attractiveness of cultural institutions, parks, recreation centers and natural areas.”

The Railway/Municipality Proximity Issues Information Data Base (2010) lists noises at rail yards as one of the top five proximity issues, and indicates that in yards, the noise is more frequent and of longer duration, and comes from shunting and coupling of cars, idling locomotives, load cell testing of locomotives, wheel and brake retarder squeal, compressed air releases, and many other noisy rail yard activities.

Earth Tech Canada Inc. (2007) prepared Proximity Guidelines and Best Practices for the Railway Association of Canada and the Federation of Canadian Municipalities to, “Raise awareness about railway/municipal proximity issues.” Based on the significant noise produced at rail yards, this document recommends 1,000m as the “minimum noise influence area to be considered.... when undertaking noise studies” for rail yards. As well, the document recommends a minimum distance of 300m between a rail yard and a residence, in order “to address the fundamental land use incompatibilities” between the two.

“CN has a policy of a minimum of 300m residential setback from rail yards, which is intended to address acoustic issues and ensure an acceptable living environment” (City of Hamilton 2005).

We reiterate that our homes are only 68m and 163m from the Cando rail yard property, which is 232m and 137m, respectively, closer than recommended by CN, the Railway Association of Canada and the Federation of Canadian Municipalities. CN is in violation of its own proximity policy.

The joint RAC/FCM Proximity Guidelines and Best Practices report also recommends that the minimum vibration influence area is 75m from a rail yard. David Trelenberg’s home is only 68m from the Cando rail yard property.

In light of the proximity of our two homes (68m and 163m) and two natural areas (within 30m) to the Cando rail yard property, information provided above from the Railway/Municipality Proximity Issues Information Data Base (2010), the joint RAC/FCM Proximity Guidelines and Best Practices report, CN’s own proximity policy, and common sense, we contend that the proponents are and will be in breach of section 95.1(c) of the *Canada Transportation Act* which reads:

“95.1 When constructing or operating a railway, a railway company shall cause only such noise and vibration as is reasonable, taking into account
(c) the area where the construction or operation takes place”

We contend that the construction noise has not been, and the operation noise will not be, “reasonable”, and that due consideration has not been given by the proponent to “the area where the construction or operation takes place”.

Construction of the Cando rail yard, which commenced June 21, 2010, has resulted in noise from tree fellers, bulldozers, backhoes, front-end loaders, packers and dump trucks. Construction starts anytime from 07:15 and continues to as late as 19:00. Construction generally takes place throughout the work week, and included all day July 1, 2010, Canada Day, and all day Sunday July 11, 2010. Our houses are located 68m and 163m from the rail yard property, and we can hear the construction noise day in and day out, even with all of our windows closed tight. The dump trucks rumble past our driveways, vibrating the ground at our homes. We have counted a minimum of 12 different dump trucks traveling in a continuous procession by our driveways. For example, up to one truck per minute over a 30-minute time period rumbled by our driveways during the noon hour period on July 7, 2010.

As well, this excessive noise has already impacted wildlife in the adjacent natural areas, including many bird species which were in the middle of nesting season when construction of the rail yard commenced June 21, 2010.

On June 21, 2010, when a Cando Contracting Ltd. representative was approached about the noise that would be created by the construction activities, his response was the same as for other issues we have attempted to discuss and communicate with Cando, namely, “We have all the approvals we need. You can’t stop us.”

As a result, we are lodging a formal complaint pursuant to section 95.3(1) of the *Canada Transportation Act*, and request that the Canadian Transportation Agency conduct an investigation or hearing under section 95.3(2) of the same Act because collaborative measures referred to in section 95.3(2) to resolve this matter have been exhausted.

Threat, Safety and Damage:

Threats to person or property are well understood principles of law. Section 3(a) of the *Railway Safety Act* reads:

“3. The objectives of this Act are to
(a) promote and provide for the safety of the public and personnel, and the protection of property and the environment, in the operation of railways;”

In our specific case, we equate “property” in this statute with property owned by us, and we equate “environment” with the natural environment on our properties (including the Bretona ConservAction Area) and on the public Bretona Pond Buck-for-Wildlife Area.

Section 4(4.1) of the *Railway Safety Act* reads:

“4(4.1) For the purpose of this Act, a threat is a hazard or condition that could reasonably be expected to develop into a situation in which a person could be injured or made to be ill or damage could be caused to the environment or property, and a threat is immediate if such a situation already exists.”

Section 95(2) of the *Canada Transportation Act* reads:

“95(2) The railway company shall do as little damage as possible in the exercise of the powers.”

We contend that we as persons, our properties and the natural environments thereof, plus the natural environment of the public Bretona Pond Buck-for-Wildlife Area are under threat, and that damage has and will be caused to us and them by the noise referred to previously in this letter, the highly carcinogenic diesel exhaust from idling and slow-moving locomotives in the rail yard, and by spillage and leakage of toxic or poisonous products from locomotives and up to 225 petroleum tanker cars to be stored on the site.

Also, we contend that, by selecting this particular location for a rail yard so close to two homes and designated natural areas, the proponents are most certainly not doing “as little damage as possible in the exercise of the powers.”

It is important to note that construction of the rail yard will have affected drainage and runoff rates into our private properties and into the Bretona Pond Buck-for-Wildlife Area, and that any runoff of toxic or poisonous products from the rail yard into our properties or the public natural area will damage parts of these lands and accompanying wildlife.

As a result, we contend that construction and operation of this rail yard are in breach of sections 3(a) and section 4(4.1) of the *Railway Safety Act*, and section 95(2) of the *Canada Transportation Act*.

Once the extent of these damages is determined, we will be seeking compensation under section 95(4) of the *Canada Transportation Act*. Depending on construction restoration efforts by the proponents, we may also contend breach of section 95(3) of the *Canada Transportation Act*.

Further with respect to threat, we understand that the siding intersection (switch) with the CN mainline will be constructed a very short distance south of a major bend in the mainline. (The 10 yard tracks will then exit from this siding.) The limited sight line of the mainline/siding switch for trains traveling in a southerly direction on the mainline poses a threat to railway personnel, railway equipment and neighboring properties.

Rule 40.1 of the Canadian Rail Operating Rules (2008) suggests that 300 yards of clear view is required in cases where track works are conducted, and one would assume that this distance would also be a minimum clear view required of siding switches, to ensure personnel, equipment and property safety. We contend that the major bend in the mainline, coupled with all of the Anthony Henday Freeway overpass visual obstacles situated immediately adjacent to the mainline a short distance northwest of the bend in the mainline, together pose a significant threat and danger at the Cando siding switch.

Depending on the clear sight line required of siding/mainline switches, the proponents may be in breach of a number of legal requirements and operating guidelines, including section 113(1)(a) of the *Canada Transportation Act* which reads:

“113. (1) A railway company shall, according to its powers, in respect of a railway owned or operated by it,
(a) furnish, at point of origin, at the point of junction of the railway with another railway, and at all points of stopping established for that purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway;”

With respect to safety, we cannot understand why the proponents are planning to back up and store 10 rows of petroleum tanker cars to within 100 feet of a public road immediately adjacent to a railway crossing on Township Road 515 (this is based on information provided by a sub-contractor). Rule 103(e) of the Canadian Rail Operating Rules (2008) reads:

“103 (e) Equipment must not be left standing within 100 feet of the traveled portion of a public or private crossing at grade, except where it is necessary to leave such equipment for loading or unloading.”

We question why the proponents feel it is “necessary” to park and store 10 rows of tanker cars so close to a public roadway immediately adjacent to a railway crossing, when doing so would pose a danger to motorists approaching the crossing from the west, because their clear sight line to the north would be seriously compromised.

Although the proponents may well be following Rule 103(e) to within the 100-foot limit (barely), we ask why they would compromise the safety of motorists and railway personnel. We request that, if indeed this rail yard receives all of the necessary federal approvals to proceed (which we contend should not happen), Canada Transport, Infrastructure and Communities force the proponents to move the south end of the rail yard much farther to the north in order to ensure a clear sight line at the Township Road 515 railway crossing.

To summarize with respect to threats, safety and damage, in the event that Canada Transport, Infrastructure and Communities determines that a threat or danger does exist in this case, or will once the Cando rail yard is in operation, we request that the Minister issue an emergency directive under section 33(1) of the *Railway Safety Act*, ordering the proponents to cease construction and/or operations of the rail yard.

Construction Standards:

We understand that, although there will be the normal leakage and spillage of oil and grease products and solvents from locomotives and up to 225 petroleum tanker cars, and there is a high probability of leakage of petroleum products from the tanks of Imperial Oil's rail cars, the proponents are not incorporating any spill containment facilities or measures into construction of this rail yard. This is particularly alarming considering how close the rail yard is being constructed to homes, designated natural areas and waterbodies. Please refer to previous sections of this letter for information on drainage and proximity issues.

Although the proponents have suggested that the stored petroleum tanker cars will be empty, we are not convinced of this, considering numerous other examples of misinformation provided by the proponents (see information on this matter in previous sections of this letter).

On the basis of the expected normal spillage and leakage of oil and grease products and solvents from locomotives and up to 225 petroleum tanker cars, and probable leakage and spillage of some products contained in the tanker cars, we would expect that sound engineering principles and standards would have dictated construction of spill containment facilities and measures at the Cando rail yard site. This apparently not being the case, we contend that the proponents are and will be in breach of section 11 of the *Railway Safety Act* which reads:

“11. All the engineering work relating to railway works, including design, construction, evaluation or alteration, shall be done in accordance with sound engineering principles. A professional engineer shall take responsibility for the engineering work.”

Specifically, because no spill containment facilities or measures have been incorporated, we contend that “sound engineering principles” have not been followed.

With “sound engineering principles” and standards not being followed in this case, we are wondering if the proponents have sought an exemption from having to follow “applicable engineering standards” by requesting Ministerial approval under section 10(a) of the *Railway Safety Act* which reads:

“10. (1) Where

- (a) a proposed railway work departs from any applicable engineering standards, or
- (b)

the proponent shall not undertake that work otherwise than in accordance with the terms of the Minister’s approval given under this section pursuant to a written request, filed with the Minister, for such approval.”

If such is not the case, we contend that the proponents are also in breach of section 10(1) of the *Railway Safety Act*. If, in the alternative, such Ministerial approval has been provided, we ask why, and on what date such approval was provided.

We also request whether the Minister has required the proponents to “formulate engineering standards governing” any aspect of spill and leakage containment under section 7 of the *Railway Safety Act*.

Questions:

Certificate of Fitness:

With respect to the requirement for a certificate of fitness from the Canadian Transportation Agency prior to construction of its rail yard, has Cando Contracting Ltd. applied for such a certificate pursuant to section 90(1) of the *Canada Transportation Act* which reads:

“90. (1) No person shall construct or operate a railway without a certificate of fitness.”

And, if such application was made, did the Agency issue such a certificate of fitness? If the Agency did issue such a certificate of fitness, what is the date of such issuance?

If a certificate of fitness has been issued to Cando Contracting Ltd. by the Canadian Transportation Agency for construction and operation of this rail yard, is the Agency satisfied that there will be adequate liability insurance to cover health damage, property devaluation damage, environmental damage, and other damage and compensation costs sought by neighboring landowners pursuant to section 92(1) of the *Canada Transportation Act* which reads:

“92 (1) The Agency shall issue a certificate of fitness for the proposed construction or operation of a railway if the Agency is satisfied that there will be adequate liability insurance coverage for the proposed construction or operation, as determined in accordance with the regulations.”

Interswitching:

Is there a requirement for Cando Contracting Ltd. to apply for an interswitching order pursuant to section 127(1) of the *Canada Transportation Act* for operation of this rail yard?

If there is such a requirement, has this application been made, and if so what is the date of issuance by the Canadian Transportation Agency of such an interswitching order?

If such an order is required, has the Agency ordered the provision of reasonable interswitching facilities pursuant to section 127(2) of the *Canada Transportation Act*? If so, what was included in this order?

Running Rights:

Has Cando Contracting Ltd. applied to the Canadian Transportation Agency for joint running rights or joint track usage for its rail yard under sections 138 and 139 of the *Canada Transportation Act*? If so, are there no threat, safety or damage considerations by the Agency or the Governor in Council in making an order approving such joint use?

Pollution:

Are there any regulations pursuant to section 47.1(2) of the *Railway Safety Act* that address protection of the environment with respect to the leakage and spillage of oil and grease products and solvents associated with the normal activities of locomotives and rail cars in a rail yard?

Are there any regulations pursuant to the same section that address protection of the environment with respect to leakage and spillage of petroleum products stored in tanker rail cars?

Considering how close the Cando rail yard will be to homes and designated natural areas, has a pollution prevention plan been requested of the proponents by the Minister of the Environment pursuant to section 56 of the *Canadian Environmental Protection Act*? If so, what are the details of the plan? If not, why not?

Threat, Safety and Danger:

We have pointed out elsewhere in this letter what we contend to be the danger and threats to the safety of motorists traveling on Township Road 515 and of railway personnel with respect to compromised clear sight lines at the Township Road 515 railway crossing and at the mainline/siding switch located very close to a major bend in the mainline.

In light of the above danger and threats, have the proponents been asked to address these risks and risk control strategies in a safety management system pursuant to section 2 of the *Railway Safety Management System Regulations*?

If these risks and risk control strategies have not been addressed in a safety management system, we contend that the proponents are in breach of this Regulation.

False Information:

On the basis of Cando Contracting Ltd. and CN providing misinformation and misleading information to us on numerous occasions with respect to numerous issues, we ask whether there have been any breaches of section 173 of the *Canada Transportation Act* or section 38 of the *Railway Safety Act* regarding the provision of any false or misleading information by these parties to any agency of the federal government.

Authorities:

We ask whether Cando Contracting Ltd., which is apparently leasing the land from CN and appears to be the primary proponent of this project, has the same authorities as CN. We ask that your departments review this matter, as such a review may determine that Cando Contracting Ltd. is in violation or breach of numerous other statutes not referenced in this letter.

Inquiries:

On the basis of our contention that many sections of various federal Acts and Regulations and railway operating and proximity guidelines have been breached by the proponents as outlined above, we respectfully request that an inquiry pursuant to section 37 and/or section 49 of the *Canada Transportation Act* be initiated immediately:

“37. The Agency may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under any Act of Parliament that is administered in whole or in part by the Agency.”

“49. The Minister may direct the Agency to inquire into any matter or thing concerning transportation to which the legislative authority of Parliament extends and report the findings on the inquiry to the Minister as and when the Minister may require.”

Also, based on our contention that many sections of various federal Acts and Regulations and railway operating and proximity guidelines have been breached by the proponents regarding threat, safety and damage as outlined above, we

respectfully request that an inquiry pursuant to section 40 of the *Railway Safety Act* be initiated immediately:

“40. (1) If the Minister considers that

- (a) a proposed railway work set out in a plan filed with the Minister under section 10,
- (b)
- (c)
- (d) any other matter relating to the operation or maintenance of railway works or railway equipment

raises, or may raise, issues of public interest relating to safe railway operations, the Minister may, by order, direct persons designated by the Minister for the purpose to conduct an inquiry into the matter in accordance with.....and report the findings of the inquiry to the Minister in such manner and within such period as the Minister directs.”

Summary:

Objections:

We have provided a list of objections to the construction and operation of an industrial rail yard in the Bretona community. These objections include: no notice to neighbouring landowners, negative impacts on the local protected natural environment, noise and vibration, negative visual impacts, proximity to homes, proximity to two protected natural areas, air and ground pollution, health problems, impacts on drainage, disturbance to farming activities, property devaluation, and additional risks of fire.

Specifically, with respect to landowner notice, we contend that the proponents are in breach of the *Railway Safety Act*.

We contend that the proponents are in violation of the *Canada Transportation Act* regarding approvals required by the Canadian Transportation Agency.

Regarding environmental impacts and assessment, we contend that the proponents are in breach of the *Canadian Environmental Assessment Act* and possibly the *Canadian Environmental Protection Act*. Also, numerous environmental principles included on CN’s website, within CN’s environmental policy, in the National Transportation Policy, and in the RAC/FCM report on Proximity Guidelines and Best Practices have not been followed.

Noise and vibration principles and guidelines within the RAC/FCM report on Proximity Guidelines and Best Practices and within CN’s own proximity policy have not been followed. We are lodging a formal complaint pursuant to the *Canada Transportation Act* with respect to noise and vibration, and request that

the Canadian Transportation Agency conduct an investigation or hearing under this Act.

With respect to threat, safety and damage, we contend that the construction and operation of the Cando rail yard are in breach of the *Railway Safety Act* and the *Canada Transportation Act*. Specific objections include threat and damage to the environment, threat and damage to our properties, threat to the safety of railway personnel in relation to siting of a siding switch, and threat to the safety of motorists and railway personnel in relation to proximity of stored tanker cars to a railway/road crossing.

Should the Minister of Transport, Infrastructure and Communities concur that a threat or danger exists, or will exist once rail yard operation commences, we request that an emergency directive under the *Railway Safety Act* be issued, ordering the proponents to cease construction and/or operations.

We contend that the proponents are in violation of the *Railway Safety Act* regarding engineering and construction standards associated with the Cando rail yard.

Questions:

We have raised questions about: certificate of fitness requirements; interswitching requirements; running rights; pollution prevention plan; threat, safety and danger; false/misleading information; and authorities.

Requests:

We request that the federal government immediately issue an order to stop construction of this rail yard based on what we contend to be breaches by the proponents of the: *Canada Transportation Act*, *Railway Safety Act*, *Notice of Railway Works Regulations*, *Railway Safety Management System Regulations*, *Canadian Environmental Assessment Act*, *Canadian Environmental Protection Act*, Canadian Rail Operating Rules, RAC/FCM Proximity Guidelines and Best Practices, and CN's own environmental policy and proximity policy.

As well, based on information contained in this letter, we request that inquiries be conducted under the *Canada Transportation Act* and *Railway Safety Act*, and that the Canadian Transportation Agency conduct an investigation or hearing pursuant to the *Canada Transportation Act* in response to our complaint regarding noise and vibration violations.

We respectfully request attention to these matters immediately, and we look forward to your early response. Thank you.

Sincerely yours,

Original Signed

John and Sharon Kristensen

Dave and Leann Trelenberg

cc: Mr. Leon Benoit, MP Vegreville-Wainwright
Mr. Alan Dunn, Councillor, Strathcona County

Attachments: Two maps of Cando Rail Yard
Cando Rail Yard Fact Sheet No. 1
Cando Rail Yard Fact Sheet No. 2
Cando Rail Yard Reference List