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Ms. Colleen Goodchild
Manager of Policy Planning and Special Studies
Region of Durham
605 Rossland Road East
Whitby, Ontario
L1N 6A3

Dear Ms. Goodchild:

**Re: Preliminary Comment Letter
Durham Region Draft Amendment No. 2021-003 to the Regional Official Plan, Proposed
MTSAs and Housing Intensification Study**

We are counsel for Canadian National Railway Company (“CN”), with respect to the above noted matter. We are writing to you further to the letter from WSP Canada Inc. dated September 30, 2021. Thank you for this opportunity to provide feedback concerning this matter.

As you are aware, there is a growing provincial emphasis on promoting the movement of people and goods by rail and integrating multimodal goods movement into land use and transportation system planning. The economic function and long-term operation of rail systems must be protected, where development is to occur within the vicinity of rail facilities, as stated by Provincial Policies. Additionally, sensitive land uses must be appropriately designed, buffered, and/or separated from rail facilities. The 2020 Provincial Policy Statement (the “PPS”) requires that sensitive land uses be planned and developed to avoid major facilities, which by definition includes rail facilities. Where avoidance is not possible, the PPS requires that the development minimize and mitigate potential adverse effects from odour, noise and other contaminants.

The Ministry of the Environment, Conservation and Parks’ D-6 Series Guidelines (the “D-Series Guidelines”) provides guidance on ensuring land use compatibility between industrial and sensitive land uses. In the D-Series Guidelines, rail yards are classified as a Class III Industrial Facility, due to their scale, sound profile and continuous operations. As such, it is recommended by the D-Series Guidelines that no incompatible development should occur within 300 metres of a Class III Facility. As you may be aware, it is important to note that CN is federally regulated and is not subject to any provincial Environmental Compliance Approval requirements.

The Oshawa Rail Yard operates on a 24/7 basis, and is located within the Region of Durham (“Durham Region” or “Region”). Operations at the Oshawa Rail Yard, include but are not limited to:

Fernanda Lopes & Associados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► For more information on the firms that have come together to form Dentons, go to dentons.com/legacyfirms

- Operation and idling of diesel locomotives and trucks;
- 24 hour per day artificial lighting;
- Loading, unloading, and switching of rail cars;
- Bulk transfer of cargo, including dangerous goods; and,
- Various activities related to the maintenance and repair of rail and other equipment.

The Oshawa Rail Yard is the only freight rail yard/CN facility located within Durham Region. This facility supports the use and activities at the General Motors plant within proximity of the yard, as the General Motors plant has rail access to the north and west of the facility. The freight rail yard is an important component of the overall Durham Region economy and should be protected from encroachment by sensitive land uses, in line with provincial policies.

The nature of the operations at the Oshawa Rail Yard, and their associated noise and other emissions, are wholly incompatible with sensitive uses. No sensitive use should be permitted within 300 metres of the rail yard. Further, the coordination of land uses along railway corridors poses a unique set of challenges. The Federation of Canadian Municipalities and the Railway Association of Canada Guidelines for New Developments in Proximity to Railway Operations (the “**FCM-RAC Guidelines**”) recommends that Approval authorities, such as municipalities, take a proactive approach to identifying potential land use conflicts. By ensuring that the Oshawa GO Station is not considered a Major Transit Station Area (“**MTSA**”), Durham Region can mitigate conflict.

Based on the above, the below are CN’s comments regarding the delineated Protected MTSA in the draft Regional Official Plan Amendment (“**ROPA**”).

1. Support for the removal of the existing Oshawa GO Station as a Protected MTSA

Section 8A.2.8 at the draft ROPA 2021-003 does not propose that the existing Oshawa GO Station be delineated as a MTSA.

MTSAs are intended to create important transit network connections, integrate various modes of transportation, and accommodate an intensive concentration of places to live, work, shop or play.

The Oshawa GO Station is directly abutting a major facility, being the Oshawa Rail Yard, which is not compatible with sensitive land uses such as residential development. Sensitive land uses within proximity of the major facility can be impacted by potential adverse effects from odour, noise, and other contaminants, resulting from the daily operations of the facility. The presence of these potential adverse effects, diminishes the Region’s ability to achieve the intent for the MTSA, at this specific station. Additionally, the PPS provides direction that major facilities and sensitive land uses should be planned and developed in order to avoid each other, and only where avoidance is not possible, should alternatives, such as mitigation and a series of Policy tests be considered prior to the introduction of the sensitive use.

Through not delineating the Oshawa GO Station as a MTSA, the Region is demonstrating consistency with the PPS, as the Durham Region also noted that avoidance is not possible in this location and there are other, more appropriate, locations for MTSA's within the Region.

2. Support for the findings of the Durham Region's Housing Intensification Study (2021)

CN recognizes the importance of, and supports the Region's Housing Intensification Study, which found that there are multiple locations within Durham Region that are suitable for housing intensification. However, CN does not believe that development related to housing intensification around the Oshawa GO Station is appropriate for the reasons previously stated.

Additionally, CN recommends that land use compatibility considerations that reflect the policies of the PPS should be incorporated into the intensification assessment for lands within the Region, in order to be in accordance with Provincial Policies.

We look forward to continuing to work with the Region throughout this process, in order to ensure that municipal growth objectives are achieved in a way that protects the rail industry..

If you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

Dentons Canada LLP

DocuSigned by:

Mary Ellen Bench

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Mary Ellen Bench
Counsel

MB/kv

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