

CN Specific Comments
Draft Guide for Applying for Approval to Construct a Railway Line

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1. Overview > Additional approvals or requirements			
Throughout	General	Use the same terminology as in CEAA.	It should be specified that an Environmental Assessment (EA) triggered by <i>CEAA, 2012</i> will be under the jurisdiction of Canadian Environmental Assessment Agency.
Throughout	General	Clearly describe how CTA and CEAA will coordinate efforts to avoid duplication of data gathered and consultations completed and documented.	Even in cases where an EA is required for a project, the Agency’s role is limited to a review of the interests of the localities. The Agency should be mindful of duplication of obligations. Given its mandate, environment-related requirements should not be required for every application and should instead only be required if raised by the relevant localities.
1	Key Terms:	Suggest adding: “For the purposes of this Guide” Suggest revising “federally-regulated railway” to those “railways holding a certificate of fitness” as found in the list on the Agency’s website.	These terms are not found in existing legislation and therefore the definitions are developed for the guide only and are not legally binding.
2	“Railway companies may file an application for a new certificate of fitness or variance of an existing certificate of fitness together with an application for approval to construct a railway line”	“Railway companies may file an application for a new certificate of fitness or variance of an existing certificate of fitness together with an application for approval to construct a railway line, if required ”	New or revised certificates of fitness are required only in certain cases.

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2	Section: "Environmental assessment or review"	Suggest deleting in its entirety and moving to the section "Other federal or territorial approvals"	<p>The discussion of the CEEA, 2012 process should be kept to a minimum as it is directed by the Canadian Environmental Assessment Agency (CEA Agency).</p> <p>The CEEA, 2012 process should be treated no differently than other federal regulatory process and should therefore be included in the "Other federal or territorial approvals" section in the same manner in which approvals under Transport Canada and Fisheries and Oceans Canada etc. have been. Proponents should be directed to contact the CEA Agency for additional information regarding that process. The manner in which it has been set apart, especially in light of the fact that CEEA, 2012 does not generally require approvals for s. 98 applications, creates confusion.</p>
	Section "Other federal or territorial approvals"	Should also include permits under the <i>Navigation Protection Act</i> and the <i>Species at Risk Act</i> .	The list does not include all permits or approvals that may be required and should be revised accordingly.
If the Section: "Environmental assessment or review" is retained, CN makes these additional comments:			
2	<p>"Environmental assessments are required for projects described in the <i>Regulations Designating Physical Activities</i> and include, but are not limited to..."</p>	<p>Suggest including the text from the Regulations.</p> <p>At a minimum, the following is incorrect and must be revised:</p> <p>"a new railway yard with seven or more yard tracks or a total track length of 20 km or more;"</p>	Rather than summarizing, the text of legislation should be included as summaries can lead to confusion or misinformation.

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2	The Minister of the Environment and Climate Change may also designate a project as requiring an environmental assessment if there is the potential for environmental effects in areas of federal jurisdiction or public concerns about such environmental effects.	Suggest including the text from the Regulations	As above, this is a summary of the legislation which can lead to confusion or misinformation. For example: The Minister may designate projects which, “in the Minister’s opinion, may cause adverse environmental effects...”
3	“An environmental review , by the Agency, is required if the railway line is to be constructed on federal lands”	Suggest deleting this sentence or making clear reference to the section of <i>CEAA, 2012</i> that is being referenced.	“Environmental Review” as a standalone concept does not exist in the legislation. This sentence should therefore be deleted or tied to the specific section of <i>CEAA, 2012</i> that contains this language. The Guide should not impose environmental assessment requirements beyond what is required under <i>CEAA, 2012</i> .
3	“If an environmental assessment or review is required, the Agency can only proceed with the approval of an application once it has been determined that the project is not likely to cause significant adverse environmental effects after taking into account the implementation of any mitigation measures or the Governor in Council finds that those significant adverse environmental effects are justified in the circumstances.”	“If an environmental assessment or review is required, the Agency can only proceed with the approval of approve an application once it has been determined that the project is not likely to cause significant adverse environmental effects after taking into account the implementation of any mitigation measures or the Governor in Council finds that those significant adverse environmental effects are justified in the circumstances.”	The processes can proceed in parallel though the s. 98 approval may only be issued by the Agency after the determination under <i>CEAA, 2012</i> is made.
2. Consultation with localities			
3	“The Agency considers the interests of the		As a result of constitutional, statutory, and common law legal

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	localities – including the interests of Indigenous communities – that will be affected by the railway line”		<p>principles, Aboriginal peoples enjoy special and unique legal rights, the result of which imposes upon Crown certain legal duties including that of consultation in relation to Crown decisions that may potentially impact Aboriginal interests. Given the unique and special status of legal rights held by Aboriginal peoples, any differential treatment and proposed engagement process must be reflective of such legal rights and CTA’s duties related thereto. For further details please see enclosed memorandum from Dentons Canada LLP, especially s. 2.1</p> <p>It is unclear whether CTA considers these unique legal rights in including Indigenous communities as a category of localities.</p>
	Key Terms:	Suggest adding: “For the purposes of this Guide”	These terms are not found in existing legislation and therefore the definitions are developed for the Guide only and are not legally binding.
3	“A locality includes neighbourhoods, communities, townships, and municipalities and encompasses its residents, land owners, business owners, and Indigenous peoples.”	“A locality includes neighbourhoods, communities, townships, and municipalities and encompasses its residents, land owners business owners , and Indigenous peoples that are within a radius of X km of the line.”	If the business owner is neither a resident or landowner in the area, then how can such a person fall within the definition of “locality” and, more importantly, in the context of CTA, why should that interest be considered in the context of the location of the railway? What if such a business owner is a competitor? Absent falling within another group covered by the proposed definition, it is not clear that a business owner’s concern is legitimate in the context of section 98.

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			<p>The current version of the Agency’s Key Term “localities” does not provide predictability or certainty of the Agency’s expectations in terms of who the railway companies should consult.</p> <p>The Key Term “localities” is linked to groups that are within a certain proximity to the railway line: neighbourhoods, townships and municipalities are all which are defined by their geographical boundaries. The term specifies that within these geographical boundaries, certain groups (land owners, resident, Indigenous peoples) are included. Given the geographical nature of this Key Term as defined, it would be much more useful to provide a rough estimate of the distance within which such geographical boundaries are relevant. For example, a neighbourhood within 10km of the railway line falls within the Key Term “localities” but a neighbourhood outside 100km does not.</p>
3	Definition “Interests of the localities: Impacts on localities arising from the location of the railway line or activities related to its construction or operation”	Suggest: “Interests of the localities: Concerns of localities arising from the location of the railway line”	Rothstein in the <i>Sharp</i> decision states: ““Interests of the localities” contemplates localities bringing to the attention of the Agency their <u>concerns respecting the location of the line</u> and the Agency having regard to those concerns in determining whether the location is reasonable” [emphasis added]. Accordingly, interests of the localities should be defined as “concerns respecting the location of the line” not construction, consistent with the jurisprudence.
3. Consultation with localities > Step 1: Preparing to consult			

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4	“A locality’s proximity to the proposed railway line...”		<p>In respect of Aboriginal groups, any decision of CTA that may have the potential to impact or infringe upon claimed or asserted Aboriginal interests triggers CTA’s legal duty to consult relevant Aboriginal groups. Such a determination requires that CTA conduct its own research and analysis to determine the Aboriginal groups that may be affected by CTA’s decision and the level of engagement or consultation required relative to each Aboriginal group’s asserted or claimed rights, and potential impact to such rights. In light of this, proximity to the proposed railway line will be only one of a number of factors CTA must consider in determining which Aboriginal groups to consult. For further details please see the enclosed memorandum from Dentons Canada LLP.</p>
4	“In addition to municipalities and communities, the applicant should also identify landowners, businesses and other persons or organizations that will be affected by the railway line.”	Suggest deleting this sentence	<p>This sentence is redundant given that “Localities” has already been defined at pg. 3 of the Guide.</p> <p>As described above, the identification of “businesses” who are not within the other categories (residents, landowners) is not appropriate as businesses that are neither residents nor landowners do not have relevant interests.</p> <p>The requirement for railway companies to identify “organizations” that will be affected by the railway line (location) is unreasonable and unmanageable if they do not fall within the other categories</p>

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			provided in the Key Term "localities"
4	"Applicants can use Aboriginal and Treaty Rights Information System..."		In order for CTA to satisfy its legal duty to consult Aboriginal groups in relation to any decisions pertaining to railway line projects that may potentially infringe Aboriginal interests, CTA must first identify those Aboriginal groups who may be owed this duty. Given that it is CTA that owes the duty, it is not appropriate for the responsibility to be placed on the applicant to determine which Aboriginal groups to consult using the Aboriginal and Treaty Rights Information System (" ATRIS "). Moreover, ATRIS as a tool for making such a determination is deficient. For example, the search parameters of ATRIS do not enable the boundaries of asserted or claimed Aboriginal territories to be identified, nor does it identify the boundaries associated with asserted or claimed Aboriginal interests by each Aboriginal group. For further details please see memorandum from Dentons Canada LLP.
4	"Additional information on requirements for Indigenous engagement"		It is not appropriate to use the same consultation process for Aboriginal groups as other Localities. Given the unique and special status of legal rights held by Aboriginal peoples, any differential treatment and proposed engagement process must be reflective of such legal rights and CTA's duties related thereto. Moreover, the engagement process set out in the Framework is problematic for a number of reasons, which are set

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			out in the memorandum from Dentons Canada LLP.
4	“The applicant, prior to filing its application with the Agency, is expected to have discussed the <u>impact</u> of its railway line with municipalities and other government bodies.”	Suggest: “The applicant, prior to filing its application with the Agency, is expected to have discussed the impact of its railway line the proposed project with municipalities and other government bodies.”	The discussions between the railway company and the municipalities and other governments should regard the project or proposal. The railway cannot identify impacts, it is for the municipality to identify its interests or concerns based on the project as proposed by the railway company.
5	“The purpose of these discussions is to help the applicant identify: ... conflicts with planned development in the area”	Suggest deleting this second item.	The first item: “concerns to be taken into account and addressed” and the final item “measures to address identified concerns” cover the range of concerns that may be raised by a municipality. It is not appropriate to identify a specific concern such as planned development.
	“The applicant is expected to conduct technical studies to assess how the construction and operation of the railway line will affect the interests of the localities”	Suggest: “The applicant is expected to consider and assess how the location of the railway line will affect the interests of the localities”	<p>CN typically considers and assesses how the location of the railway line may affect the interests of the localities; however a technical study is not always appropriate. The “study” may be a more informal document, therefore the Guide should refer to assessments or evaluations.</p> <p>In addition, technical studies or assessments should relate to the location of the line, not “construction and operation” of the line and should be based on concerns raised by the localities.</p>
5	“The studies should be shared with the localities during the consultation...”	Suggest: “A summary or the results of the assessment should be shared with the localities during the consultation...”	CN typically provides a summary of results of the studies, given that the studies themselves are often complex and the conclusions can be difficult to interpret.

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			<p>CN undertakes technical studies and shares relevant information with localities based on the concerns they raise. CN is committed to ensuring that localities have the information they need to understand the project and identify their concerns.</p>
5	<p>“The technical studies should predict the significance...”</p>	<p>Suggest: ““The assessments should predict the significance...”</p>	<p>As noted above, where a potential impact is considered, it is not always done through a formal technical study.</p>
5	<p>“The requirement for technical studies will depend on the proposed construction and operational activities, including whether it is a railway line or a railway yard to be constructed and its proximity to residential, wildlife, and environmentally sensitive areas”</p>	<p>Suggest: “The requirement for assessments will depend on the proposed location and operational activities related to the railway line and should be commensurate with the concerns expressed the localities.”</p>	<p>As noted above, where a potential impact is considered, it is not always done through a formal technical study. The type of assessment will be determined based on the concerns raised by the localities.</p> <p>In addition, technical studies related to the “construction” of the railway line are beyond the scope of section 98 and should be removed. The approval relates to the location of the line. While studies related to operations on the line are relevant to the location, studies related to the short term construction of the line are beyond the scope of this provision.</p> <p>The requirement for technical studies should relate to the interest of the localities as expressed by the localities.</p>
5	<p>“Technical studies can include those assessing impacts on the localities with respect to: surface, groundwater, and other environmental concerns; safety; traffic and emergency response</p>	<p>Suggest deleting this list of specific items</p>	<p>For every potential project, CN considers and evaluates potential impacts related to: wildlife and endangered species, hydrology, fisheries and noise and vibration, where appropriate. CN is committed to continuing the practice of sharing information as</p>

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	<p>services; planned land use for the surrounding area; and, noise and vibration.</p>		<p>it supports localities in ensuring that they understand the proposed project.</p> <p>The required assessments should be limited to elements under the railway company’s control and should therefore not include studies that can only be undertaken by local governments including:</p> <ul style="list-style-type: none"> • Traffic and emergency response services • Planned land use for the surrounding area <p>Assessments that are traditionally required in a <i>CEAA, 2012</i> environmental assessment, including studies related to surface, groundwater and other environmental concerns, should only be required by the Agency if, through <i>CEAA, 2012</i>, Parliament has deemed these technical studies necessary <u>or</u> where the localities have raised concerns related to these issues. Short of these triggers, it is outside the Agency’s mandate to require these technical studies for every application or to suggest they are always required under this Guide.</p> <p>Assessments related to safety fall within the purview of Transport Canada. CN is committed to working with Transport Canada to ensure that safety of railway operations and installations is maintained.</p> <p>Alternatively, where the localities express concerns related to safety, CN will undertake such assessments. Short of this trigger,</p>

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			it is outside the Agency's mandate to require technical studies related to safety or to suggest they are required under this Guide.
5	Additional information on requirements for noise and vibration: "Receptors may include outdoor areas or indoor spaces in permanent residences, schools, hospitals, daycare centers, seniors' residences, and other buildings"	Suggest revising: "Receptors may include outdoor areas or indoor spaces in permanent residences, schools, hospitals, daycare centers, or seniors' residences., and other buildings "	"Other buildings" is a vague reference; the notable sensitive receptors have already been included in the list.
4. Consultation with localities > Step 2: Consulting with the localities			
6	"Applicants are to prepare a consultation plan outlining how they will inform the localities of their intention to construct a railway line and engage them in meaningful consultations."	Suggest: "Applicants should take into consideration the following when planning consultation activities:"	Rather than prescriptively requiring a consultation plan, these guidelines should require consultation.
6	"Timing - Plan the timing of the consultation activities to take into account holidays, summer vacations and other times when individuals and representatives of the localities may be unavailable. Indigenous communities' seasonal, cultural, hunting, fishing and gathering activities should also be taken into account."	Suggest: "Timing - Plan the timing of the consultation activities to take into account, where possible and balanced against railway service obligations , holidays, summer vacations and other times when individuals and representatives of the localities may be unavailable. Indigenous communities' seasonal, cultural, hunting, fishing and gathering activities should also be taken into account."	While consideration of timing is undertaken as a best practice, it is not always possible to time consultation activities at a time which is convenient to the many parties making up "localities" who have diverging schedules. Requiring delays (for example, the entire summer season during which summer vacations take place), creates unreasonable delay and can affect the customers' service requirements.
6	"Information - Inform the localities about the proposed railway line, its likely impacts and measures intended to	Suggest: "Information - Inform the localities about the location of the proposed railway line, its likely impacts and measures intended to	This sentence infers that all impacts are negative and need to be minimized. Often, projects result in positive impacts on localities.

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	<p>minimize those impacts. The localities should be provided with the appropriate information and resources to enable them to understand the nature and extent of the railway line construction and operation and how it may affect them.”</p>	<p>minimize these impacts related to concerns raised by the locality. The localities should be provided with the appropriate information and resources to enable them to understand the nature and extent of the railway line construction and operation and how it may affect them.”</p>	<p>The railway companies should be required to provide information on the project proposal and a summary of results of assessments undertaken – it is not reasonable to require the railway company to determine what the “likely impacts” of the project will be on localities. In contrast, the identification of these impacts is the responsibility of localities themselves, as provided for in jurisprudence.</p> <p>This language is also reflective of what is required in an environmental assessment under CEAA, 2012. As noted previously, the Agency should not introduce additional environmental assessment obligations outside of CEAA, 2012.</p>
6	<p>“Collaboration - The applicant should be ready to meet with Indigenous communities and respect their cultural and political protocols.”</p>	<p>Suggest removing this sentence.</p>	<p>Given the unique and special status of legal rights held by Aboriginal peoples, any differential treatment and proposed engagement process must be reflective of such legal rights and CTA’s duties related thereto. The legal duty to consult Aboriginal groups rests with CTA as Crown decision-maker. However, CTA can elect to delegate certain procedural aspects of this duty to the applicant, but in so doing CTA must provide direction and guidance to the applicant on the Aboriginal groups to consult and the scope of consultation and engagement activities required, given that it is relying on the applicant in part to satisfy CTA’s legal duty. In the event that CTA does delegate to the applicant,</p>

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			<p>CTA and the applicant must work collaboratively to determine the consultation activities for each applicable Aboriginal group, and the manner in which such activities will be conducted to ensure that the Aboriginal groups' cultural and political protocols are observed. For further details please see memorandum from Dentons Canada LLP.</p>
7	<p>"Applicants are encouraged to use a variety of methods to promote their consultations to reach a broad range of local residents, businesses and associations"</p>	<p>Suggest: "Applicants are encouraged to use a variety of methods to promote their consultations to reach a broad range of stakeholders"</p>	<p>For the reasons stated above, businesses and organizations should not be included in the list of parties comprising a locality.</p>
7	<p>"Consultation materials, including any technical studies..."</p>	<p>Suggest: "Consultation materials, including any results of assessments..."</p>	<p>As noted above, CN typically only provides summaries or results of the studies or assessments.</p>
8	<p>"The consultation materials should include: ... a description of potential impacts (i.e., air quality, noise and vibration, local traffic, access to properties, safety and security, night lighting, etc.)"</p>	<p>Suggest: "The consultation materials should include: ... results of assessments (for example, noise and vibration)"</p>	<p>For its projects, CN considers various concerns including noise and vibration, wildlife, fisheries and hydrology and will share summaries of the results of such assessments or evaluations, not a description of "potential impacts" – this interpretation of impacts is the responsibility and expertise of the localities themselves</p> <p>CN is committed to sharing relevant information with localities to ensure that they understand the proposed project and can make determinations about the project's impact on their interests.</p> <p>The language used here is reflective of what is required in an environmental assessment under</p>

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			<p>CEAA, 2012, the Agency should not be requiring an environmental assessment through the section 98 approval process where Parliament has deemed such an assessment not to be required.</p> <p>CN always designs railway lines with safety and security in mind. It is the responsibility of the localities or Transport Canada to raise such concerns, if any.</p> <p>Local traffic concerns, if any, should be identified by the locality rather than the railway companies.</p>
8	<p>“The potential concerns will depend on the nature and scope of each railway line and may include:</p> <ul style="list-style-type: none"> ▪ traffic on municipal roads and emergency vehicle access; ▪ pedestrian, cycling and vehicle safety; ▪ noise, vibration and lighting effects on nearby residential areas; ▪ safety and security, including at rail crossings, on rail lines, in rail yards and resulting from the transportation of dangerous goods; ▪ changes to area drainage patterns and soil erosion; ▪ impacts on surface, groundwater, and the environment; 	<p>Suggest deleting these specific examples.</p>	<p>In <i>Sharp</i>, Justice Rothstein made it clear that section 98 did not include, express or implied, a “public interest” test and that all that is left in section 98 is the “location test”. In this light, and in light of the <i>National Transportation Policy</i>, the following concerns are outside the scope of what the Agency may consider in the context of a section 98 application:</p> <ul style="list-style-type: none"> ▪ traffic on municipal roads; ▪ pedestrian, cycling and vehicle safety; ▪ lighting effects on nearby residential areas; ▪ changes to area drainage patterns and soil erosion; ▪ impacts on surface, groundwater, and the environment; ▪ impacts on property values; and ▪ the protection of wildlife and the natural environment. <p>The following matters are to be considered under</p>

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	<ul style="list-style-type: none"> ▪ impacts on local utilities and road infrastructure; ▪ impacts on property values; ▪ access to and continued use of residential, business and agricultural land; and, ▪ the protection of wildlife and the natural environment. 		<p>environmental assessments, where such assessments are required under <i>CEAA, 2012</i>. Absent specific concerns raised by the localities, the Agency Guide should not suggest they are routine under section 98 approvals:</p> <ul style="list-style-type: none"> ▪ changes to area drainage patterns and soil erosion; ▪ impacts on surface, groundwater, and the environment; ▪ impacts on local utilities and road infrastructure; ▪ impacts on property values; ▪ access to and continued use of residential, business and agricultural land; and, ▪ the protection of wildlife and the natural environment. <p>In addition, the following matters are the responsibility of Transport Canada. CN is committed to working with Transport Canada to resolve any concerns, but these issues do not fall within the Agency’s power over determining the “location” of a railway line under section 98:</p> <ul style="list-style-type: none"> ▪ pedestrian, cycling and vehicle safety; ▪ emergency vehicle access ▪ safety and security, including at rail crossings, on rail lines, in rail yards and resulting from the transportation of dangerous goods; <p>In particular, the suggestion in the Guide that a relevant potential concern that the Agency will consider includes “impacts on</p>

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			property values” is completely inappropriate and <u>outside the scope of any government mandate.</u>
8	“This could include, where appropriate, translating consultation materials into the language of that community”	Suggest deleting this sentence.	Given the unique and special status of legal rights held by Aboriginal peoples, any differential treatment and proposed engagement process must be reflective of such legal rights and CTA’s duties related thereto. The legal duty to consult rests with CTA in relation to identifying the Aboriginal groups to be consulted along with an assessment of each Aboriginal group’s respective level of consultation required. In the event CTA determines that translation of consultation materials is owed to a particular Aboriginal group because of Aboriginal or treaty rights, it remains the obligation of CTA to complete such translation activities. It would impractical for the proponent to undertake translation into the language of the because of an inability to validate the accuracy translation. For further details please see memorandum from Dentons Canada LLP.

5. Consultation with localities > Step 3: Documenting the consultation activities

9	“All comments should be sufficiently documented as part of a comprehensive summary of the consultation activities. For example, during meetings and other verbal consultations, the applicant should ensure that minutes are taken.	Suggest: “All comments should be sufficiently documented as part of a comprehensive summary of the consultation activities. For example, during meetings and other verbal consultations, the applicant should ensure that minutes are taken. Applicants should also keep copies of all	CN typically provides results of consultation, for examples summaries of discussions and actions taken rather than focusing on documentation of the consultation activities. Suggesting that applicants “should ensure minutes are taken” imposes administrative burden that in most cases is not required
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	Applicants should also keep copies of all written feedback, including comments on consultation materials or responses to questionnaires and surveys.”	written feedback, including comments on consultation materials or responses to questionnaires and surveys.”	or justified and a “process” based requirement is not provided for by the CTA. In certain circumstances, minutes are appropriate. In others, a list of comments received and how the railway has addressed those concerns is more appropriate. In creating this Guide, the Agency should not be imposing unnecessary administrative burden or prescribing detailed elements of process for which there is no basis in legislation.
6. Application requirements			
9	“The onus is on the applicant to provide the information in sufficient detail, with supporting evidence, to permit the Agency to assess the application. The applicant is also responsible for ensuring that the application is submitted sufficiently in advance of the proposed construction activity for the Agency to complete its review.”		The Agency has not provided a suggestion of the time required for the Agency’s review – while the onus may be on applicants to provide materials in a timely manner, this should be balanced against the requirement for railway operations and service. This is consistent with the National Transportation Policy which states that market forces are prime agents in determining whether a railway line should be constructed.
9	“Note: The Agency has the discretion to request information it considers necessary to its determination, including information that is not specified within this guide. The Agency applies its discretion based on the specific facts of each case.”	Suggest revising: “The Agency has the discretion to request information it considers necessary to its determination, including information that is not specified within this guide. The Agency applies its discretion based on the concerns expressed by the localities in relation to the location of the line. ”	The Agency’s mandate is to consider the “location test” in the context of the “interest of localities” which per Justice Rothstein means “the localities bringing to the attention of the Agency their concerns respecting the location of the line and the Agency having regard to those concerns in determining whether the location is reasonable”. Where the localities have not raised specific concerns, the Agency has nonetheless required

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			additional information from CN during previous application processes. This creates delay and exceeds the Agency’s mandate under this provision. While the Agency has some discretion to request information, that discretion should not be overstated or abused as there can be serious repercussions on business.
6. Application requirements > B. Location of the railway line			
10	i. Railway lines, including main lines, branch lines, yard tracks, sidings, spurs, and other track auxiliary, showing:	Suggest: “i. Railway lines, including main lines, branch lines, yard tracks, sidings, spurs, and other auxiliary track, showing:”	The existing sentence does not read properly.
	i. Railway lines, including main lines, branch lines, yard tracks, sidings, spurs, and other auxiliary track, showing: ... “Alternative locations that were considered”	Suggest deleting reference to alternative locations	Table should not require that plans of “alternative locations that were considered” be included. This is not always feasible and adds undue burden. Alternatives considered normally form part of the submission but cannot always be shown on a plan or map.
	ii. Roads, bridges, tunnels and private crossings, showing: ... “Crossing signage and signaling devices (i.e. arms, bells, lights)”	Suggest deleting reference to Crossing signs and signals.	Crossing signage and signaling devices fall under the jurisdiction of Transport Canada and are prescriptively regulated under the <i>Grade Crossing Regulations</i> . As a result, this requirement should not be included as part of a submission to the Agency for approval of location of the railway line.
11	“Infrastructure, including pipelines, utility crossings, culverts, noise walls, embankments, open drains, ditches, and watercourses, showing”	Suggest deleting reference to “blow off valves, and other safety measures”	Blow off valves and other safety measures are elements under the control of the localities or utility companies, not railway companies. It is therefore not possible to include this information on maps or plans.

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11	<p>“iv. Localities, including Indigenous communities, municipalities, residents, landowners, businesses and communities in proximity to the railway line, showing:</p> <ul style="list-style-type: none"> ○ Property lines and names of the owners of the land that the railway line will cross ○ Existing and future land-use and zoning around the site of the proposed rail infrastructure ○ Access points for adjacent landowners ○ Sensitive receptors (i.e., homes, buildings, wildlife areas)” 	<p>Suggest revising:</p> <p>iv. Localities, including Indigenous communities, municipalities, residents, landowners, businesses and communities in proximity to the railway line, showing:</p> <ul style="list-style-type: none"> ○ Property lines and names of the owners of the land that the railway line will cross ○ Existing and future land-use and zoning around the site of the proposed rail infrastructure ○ Access points for adjacent landowners ○ Sensitive receptors (i.e., homes, buildings, wildlife areas) 	<p>Land-use and zoning, are elements under the control and jurisdiction of the locality rather than the railway company; the railway should therefore not be required to provide this information on maps or plans.</p> <p>The notion of access point for landowners is unclear – landowners have no access to an active railway line. If this is intended to refer to crossings, those are included on plans.</p> <p>Identification of “sensitive receptors (i.e. homes, buildings, wildlife areas)” is typically provided for in technical studies but not on maps.</p>

7. Application requirements > C. Railway Operations and Services

11	<p>“Proposed railway operations and services should be described, including why the railway line is being built in that location, the types of services it will provide, customers it will serve, train frequency and required ancillary buildings and infrastructure. The Agency will consider the various construction and operational measures proposed by the applicant to assess the reasonableness of the location of the railway line.”</p>	<p>Suggest revising: “Proposed railway operations and services should be described, including why the railway line is being built in that location, the impact if the railway line is not built, the types of services it will provide, customers it will serve, train frequency and required ancillary buildings and infrastructure. The Agency will consider the various construction and requirement for railway operations and services measures proposed by the applicant to assess the reasonableness of the location of the railway line.”</p>	<p>The customers that a railway line will serve is sometimes undetermined and often confidential. Requiring disclosure under this process is inappropriate.</p> <p>This sentence should include a reference to the “impact if the railway line is not built” i.e. the positive economic impact of the line.</p> <p>The reference to “construction measures” is not a factor related to the location of the line nor is it a factor identified in the legislation, and should not be considered by the Agency or suggested as a consideration in this Guide.</p>
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11	<p>“The information should include a comprehensive description of the applicant's plans, including for: Infrastructure and ground alterations; Operational activities; Railway services; and, Construction activities.”</p>	<p>Suggest deleting the reference and section on “Construction Activities: “The information should include a comprehensive description of the applicant's plans, including for: Infrastructure and ground alterations; Operational activities; and Railway services;and, Construction activities.””</p>	<p>“Construction activities” is not a factor identified in the legislation for the Agency to consider in terms of whether the location of the railway line is reasonable. This is outside the mandate of the Agency under section 98 of the CTA.</p>
12-13	<p>“The application should provide a detailed description of the proposed infrastructure and ground alterations that will be required and include the following information: Description of proposed infrastructure”</p>	<p>Suggest removing this section</p>	<p>Includes a list of infrastructure that is usually included on plans but does not support the “operational needs and service obligations” to be considered by the Agency. This information is not required if it does not fall within the scope of “interest of the localities” or “railway operations and services”. The relevance of this list places unnecessary administrative burden on the applicant railway company considering that much of the information is already included on the plans filed with the application.</p>
13	<p>“The application should provide a detailed description of the proposed infrastructure and ground alterations that will be required and include the following information: Modification to lands, waterbodies and existing utilities, including a description of: ...”</p>	<p>Suggest removing the list of specific items; Should read as follows: “The application should provide a detailed description of proposed modification to lands, waterbodies and existing utilities.”</p>	<p>The <i>Sharp</i> decision made it clear that section 98 did not include, express or implied, a “public interest” test and that all that is left in section 98 is the “location test”. In this light, and in light of the <i>National Transportation Policy</i>, the items in this section are outside the scope of what the Agency may consider in the context of a section 98 application.</p> <p>Includes descriptions of various environmental considerations not</p>

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			<p>relevant to “railway operations and services”</p> <p>Where relevant, descriptions of road and utility crossings are included, however much of this information is not relevant for many projects.</p>
13	<p>Operational Activities: Provide a description of the railway operational activities that will be undertaken at the proposed facilities for (a) the first year of operations and (b) when operating at full capacity and include the following information</p>	<p>Suggest revising: “Provide a description of the railway operational activities that will be undertaken at the proposed facilities for (a) the first year of operations and (b) when operating at full capacity and include the following information.”</p>	<p>This type of information is only relevant for complex projects that will be constructed and operated in phases over a number of years; it should not be required as a matter of course.</p>
13	<p>“Description of proposed railway operational activity”</p> <p>1. Main/branch/spur line operations, including a description of:</p> <p>a. passenger rail service: stations, platforms, parking lots, passenger and vehicle traffic, and crossings;</p> <p>b. freight rail service: type of locomotives, cars, and whether dangerous goods are transported;</p> <p>c. spurs: location and number of trains per day that will idle and the length of idle time;</p> <p>d. daily train volumes by time of day, train lengths, and speed of operation;</p> <p>e. frequency and length of blocked public road crossings;</p>	<p>Suggest revising the list as follows:</p> <p>Main/branch/spur line operations, including a description of:</p> <p>a. passenger rail service: stations, platforms, parking lots, passenger and vehicle traffic, and crossings;</p> <p>b. freight rail service: type of locomotives, cars, and whether dangerous goods are transported;</p> <p>c. spurs: location and number of trains per day that will idle and the length of idle time;</p> <p>d. daily train volumes by time of day, train lengths, and speed of operation;</p> <p>e. frequency and length of blocked public road crossings;</p> <p>f. lighting and noise emitters, including whistling and bells,</p>	<p>Item b includes “whether dangerous goods are transported”. There are many issues with this requirement.</p> <p>First, whether dangerous good will be transported is often unknown. Second, this is a concern that is regulated by Transport Canada. Railway companies have service obligations to carry dangerous goods, and the nature of the goods should not form part of the test in relation to the “location of the line” to be considered by the Agency under section 98. There are processes in place under existing Transport Canada regulation which allow municipalities to obtain information on dangerous goods, <u>subject to signing non-disclosure agreements</u>. The requirement to provide details on dangerous goods in the context of an</p>

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	<p>f. lighting and noise emitters, including whistling and bells, and whether any retarders will be installed;</p> <p>g. access and other security measures (e.g fencing, etc); and,</p> <p>h. other relevant railway line operational activities not identified above</p>	<p>and whether any retarders will be installed;</p> <p>g. access and other security measures (e.g fencing, etc);</p> <p>and,</p> <p>h. other relevant railway line operational activities not identified above</p>	<p>application under s.98 is inappropriate.</p> <p>Item c includes number and duration of idling trains: this information is rarely, if ever, known prior to construction. If noise is raised as a concern by the locality, idling would be addressed in an acoustic assessment of the project.</p> <p>Item d includes volumes by time and day – railway operations are 24 hours per day, 7 days per week and vary based on customer demand. It is impossible to provide a schedule of operations. Similarly, train lengths vary based on customer demand.</p> <p>Item e includes “frequency and length of blocked public road crossings” – this is prohibited by the <i>Grade Crossing Regulations</i> and should not be included in the table.</p> <p>Item g includes access and security measures – unclear how this is an operational activity to be considered by the Agency.</p>
14	<p>“Description of proposed railway operational activity” 2. Railway yard operations, including a description of:</p> <p>a. yard activities to be undertaken;</p> <p>b. type and volume of containers to be loaded and unloaded daily;</p> <p>c. how goods will be handled (e.g., transfers, loading/unloading,</p>	<p>Most of this information is specific to a large, complex yard construction and would not be applicable to a typical project. suggest deleting the list in its entirety, but should the Agency elect to keep it, we suggest revising the list as follows:</p> <p>a. yard activities to be undertaken;</p>	<p>Item b requests volumes of containers – given that this varies based on customer demand, it is impossible to provide volumes. Additionally, this type of information is confidential.</p> <p>Item e includes inspections of equipment and rolling stock – this is a matter falling under the jurisdiction of Transport Canada rather than the Agency and should be removed from the list.</p>

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	<p>storage, refrigeration, etc.)</p> <p>d. equipment and rolling stock to be operated (e.g. yard locomotives, trucks, hostler trucks, etc.);</p> <p>e. inspections of equipment and rolling stock (e.g. brake testing, whistle testing, bells, etc.);</p> <p>f. idling, shunting, train building and marshalling;</p> <p>g. number of crew working at the yard and timing of crew changes;</p> <p>h. yard topography, grade and hump;</p> <p>i. noise retarders and anti-idling systems to be employed;</p> <p>j. classification of rail cars;</p> <p>k. oil and water separators;</p> <p>l. facilities such as depots, wharfs, stores, pads, loading and unloading facilities;</p> <p>m. buildings (e.g., warehousing, maintenance, office, etc.);</p> <p>n. truck traffic: type, volume, frequency, time of day, travel speeds, access and exit roads and routes to be used;</p> <p>o. lighting and noise emitters, including whistling and bells;</p> <p>p. service roads;</p> <p>q. access and other security measures (e.g. fencing, cameras, guards); and,</p>	<p>b. type and volume of containers to be loaded and unloaded daily;</p> <p>c. how goods will be handled (e.g., transfers, loading/unloading, storage, refrigeration, etc.)</p> <p>d. equipment and rolling stock to be operated (e.g. yard locomotives, trucks, hostler trucks, etc.);</p> <p>e. inspections of equipment and rolling stock (e.g. brake testing, whistle testing, bells, etc.);</p> <p>f. idling, shunting, train building and marshalling;</p> <p>g. number of crew working at the yard and timing of crew changes;</p> <p>h. yard topography, grade and hump;</p> <p>i. noise retarders and anti-idling systems to be employed;</p> <p>j. classification of rail cars;</p> <p>k. oil and water separators;</p> <p>l. facilities such as depots, wharfs, stores, pads, loading and unloading facilities;</p> <p>m. buildings (e.g., warehousing, maintenance, office, etc.);</p> <p>n. truck traffic: type, volume, frequency, time of day, travel speeds, access and exit roads and routes to be used;</p> <p>o. lighting and noise emitters, including whistling and bells;</p> <p>p. service roads;</p> <p>q. access and other security measures (e.g. fencing, cameras, guards); and,</p>	<p>Item g includes crew information – timing and number of personnel is unpredictable and will vary based on volumes; it is unreasonable to request such information.</p> <p>Item h refers to topography – it is not clear how this is related to the requirement for “railway operations and services” to be considered by the Agency.</p> <p>Item I includes noise retarders and anti-idle systems – as above, it is unclear how this is related to the requirement for “railway operations and services” to be considered by the Agency. Operations resulting in an impact to the existing acoustic environment would be handled in an acoustic assessment.</p> <p>Item K includes oil and water separators – it is unclear how this is related to the requirement for “railway operations and services” to be considered by the Agency.</p> <p>Item N requests information specific to truck traffic – this is often not under the railway’s control and should be removed.</p> <p>Item Q includes access and security measures – it is not clear how this is an operational measure to be considered by the Agency in the context of the reasonableness of the location of the line.</p>

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	r. other relevant railway yard operational activities not identified above.	r. other relevant railway yard operational activities not identified above.	
14	Railway Maintenance and repair yard operations, including a description of : [elements a to r]	Suggest deleting this section	<p>The relevance of this type of information to the requirement for “railway operations and services” by the railway companies to be considered by the Agency is not clear; activities such as load testing which may result in a change to the existing acoustic environment would be handled in an acoustic assessment.</p> <p>Additionally, maintenance of rolling stock is a matter falling under the jurisdiction of Transport Canada and should not be included in the Agency’s Guide.</p>
15	<p>“Railway Services: Description of railway service requirements”</p> <p>1. Whether the requirement for the proposed railway line is to ...</p> <p>2. Whether the proposed railway line will result in existing customers or others being disadvantaged.</p> <p>3. Any letters of support or other supporting documentation from stakeholders and customers demonstrating their interest in the services to be provided.</p>	<p>Suggest deleting items 1 and 2 from the table.</p> <p>Suggest revising Item 3 as follows:</p> <p>“Any letters of support or other supporting documentation from stakeholders, including customers, demonstrating their interest in the services to be provided”</p>	<p>Seems to relate to the “need” for the line, which is specifically not within the Agency’s jurisdiction according to the decision in <i>Sharp</i>. In the context of “railway operations and services” the “services” referred to are not market services required but operational services required, for example “efficient use of existing equipment, infrastructure and rail crews, operational requirements including track grades to allow carriage of the amount of traffic offered” (see <i>Sharp</i> at paragraph 10) – it does not relate to, for example, “whether the proposed railway line will result in existing customers or others being disadvantaged”, which clearly relates to the need for the line, not the operational services.</p>
15	“The information on the requirement for railway services should be	Suggest deleting this paragraph.	“Growth projections, customer demand, and <u>market research</u> ” which “quantify and explain the

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	<p>complemented with the appropriate analytical data. Growth projections, customer demand, market research, and other studies and information would help to both quantify and explain the requirements for railway operations and services.”</p>		<p>requirements” do not relate to operations and service, but to the need for the line, which is not within the Agency’s jurisdiction, according to the decision in <i>Sharp</i>.</p>
15	<p>“Description of proposed construction activities”</p>	<p>Suggest deleting this section.</p>	<p>These elements do not relate to the “railway operations and services” in the context of the “location of the line” and are outside the scope of what the Agency is to consider under section 98.</p> <p>This language is also reflective of the type of information that would be required in an environmental assessment under CEAA, 2012; such information should not be required outside the CEAA process.</p>
<p>8. Application requirements > D. Consultation activities</p>			
16	<p>“Provide a copy of the consultation plan and a comprehensive summary of the consultation activities that also takes into account the Agency's Indigenous Engagement Framework for Railway Line Construction, including...”</p>		<p>Given that the consultation duty is owed by CTA, if CTA elects to delegate procedural aspects of the duty to the applicant then CTA must provide guidance and direction to the applicant, which is typically done by way of issuing a consultation plan to the applicant. A consultation plan sets out CTA’s consultation requirements, including engagement activities CTA expects to be undertaken by the applicant. Therefore, it is not the applicant’s responsibility to prepare a consultation plan, but rather it is CTA’s responsibility to prepare and provide such consultation plan to the applicant.</p>

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			If applicable, CTA may seek input from the applicant in drafting its consultation plan. For further details please see memorandum from Dentons Canada LLP.
17	9. Any mitigation measures...to address impacts on any traditional Indigenous practices..."		Given the unique and special status of legal rights held by Aboriginal peoples, any differential treatment and proposed engagement process must be reflective of such legal rights and CTA's duties related thereto. Given that the consultation duty is owed by CTA, if CTA elects to delegate procedural aspects of the duty to the applicant, it will be important for CTA and the applicant to work collaboratively to identify any mitigation measures that may be required to address any potential impacts to the Aboriginal interest in order to satisfy CTA's consultation and accommodation duty. For further details please see memorandum from Dentons Canada LLP.
18	"The panel will also establish the timelines for a public comment period, at minimum 30 business days, during which people can provide comments, identify their interests and express concerns they may have about the proposed location of the railway line."		Requires a clarification as to whether this 30-day comment period is part of the 120 day timeline for issuing a decision
18	"The Agency will post the application on its website. The applicant will be required to publish a notice in a local		Advance coordination will be required in order for an Applicant to arrange a publication 7 days in advance of a posting on the

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	<p>newspaper, at least 7 days in advance, in both official languages, about the upcoming public comment period indicating that the public can access the application from the Agency's website."</p>		<p>Agency's website particularly with smaller, weekly publications. Additionally, CN's applications are not typically translated into both official languages as there is typically a primary language in the area of the proposed construction. Posting the application on the Agency's website will require translation which is unduly burdensome and will potentially add delays.</p>
18	<p>"During the public comment period, the applicant must also make a paper copy of its application available for viewing in a public forum such as a Band Council or Settlement office, city hall or library"</p>	<p>Suggest removing this requirement</p>	<p>Due to lack of interest from the public, CN no longer provides copies of its application and supporting documents to local public forums. CN's standard public notice now refers interested parties to a contact where they may obtain copies of the application upon request. To date, CN has rarely, if ever, been requested to provide a copy of its application.</p>
18	<p>"The panel will consider the information before it. To ensure an informed determination, the panel may request additional information, conduct a site visit or request that the applicant undertake, at its own expense, specific studies or examinations."</p>	<p>Suggest revising: "The panel will consider the information before it. To ensure an informed determination, during the 120 day review period, the panel may request additional information, conduct a site visit or request that the applicant undertake, at its own expense, specific studies or examinations."</p>	<p>Requires a clarification that requests for additional information will not result in delays to the approval process. Presumably, by the time of these deliberations, all consultations would be complete and the localities would have raised their concerns.</p> <p>If additional information, site visits, studies or examinations are required, these would need to be justified by the interest of the localities as expressed by the localities and should be balanced against the timing for customer needs for service. If the consultations and 30 day comment period have expired, how would additional concerns of the localities come to light such</p>

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			that these visits, studies or examinations are required?
18	“The Panel may, at its discretion, proceed by way of an oral hearing.”	Suggest revising: “The Panel may, at its discretion and during the 120 days review period , proceed by way of an oral hearing.”	As above, requires a clarification that an oral hearing will not result in delays to the approval process