

PRPA (PRPA) is an agent of the Government of Canada.<sup>1</sup>

PRPA has not been held by the Government of Canada to the completion of mitigation measures and follow-up program obligations for Fairview II Container Port Expansion.<sup>2</sup>

5 The federal environmental assessment of the Fairview Terminal Phase II Expansion Project (the Project) proposed by PRPA and Canadian National Railway Ltd. was made pursuant to section 125 of the Canadian Environmental Assessment Act, 2012, the comprehensive study of this project was continued under the former Canadian Environmental Assessment Act (the former Act). Having taken into consideration the Comprehensive Study Report and the public comments filed pursuant to subsection 22(2) of the former Act, the Minister was  
10 of the opinion that:

- the Project, taking into account the mitigation measures described in the Comprehensive Study Report, is not likely to cause significant adverse environmental effects; and
- the mitigation measures and follow-up program described in the Comprehensive  
15 Study Report were appropriate for the proposed project.

PRPA's obligations are set out in the Comprehensive Study Report (CSR)<sup>3</sup> and the associated Decision Statement<sup>4</sup> which outline the mitigation measures and follow-up program.

20 The CSR and associated documents detail specific duties and obligations for PRPA as co-proponent. These documents lay out reasonable standards in order to safeguard human health and liveability of an area impacted by noise, vibration, and other negative externalities

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<sup>1</sup> <https://federal-organizations.canada.ca/profil.php?OrgID=PNR&t=&lang=en>

<sup>2</sup> <https://www.ceaa-acee.gc.ca/050/evaluations/document/exploration/37956>

<sup>3</sup> The Comprehensive Study Report Pursuant to the Canadian Environmental Assessment Act for the Proposed: Fairview Terminal Phase II Expansion Project in Prince Rupert, British Columbia Proposed by: Prince Rupert Port Authority and Canadian National Railway Company Prepared by: Fisheries and Oceans Canada Environment Canada and Canadian Transportation Agency September 2012 Canadian Environmental Assessment Registry Reference Number 08-03-37956

<sup>4</sup> <https://www.ceaa-acee.gc.ca/050/evaluations/document/85082?culture=en-CA>

of PRPA's and their co-proponent's economic operations. Air quality monitoring was done on the assumption that mitigation measures and follow-up program would be carried out.

PRPA, nor other branches of the Canadian government, have not seen to the reasonable fulfilment of the mitigation measures described in the Comprehensive Study Report, as specifically requested in the Minister's Environmental Assessment Decision Statement for the facility dated 25 January 2013, and as echoed in the news release announcing the Decision on the Environmental Assessment of the Fairview Terminal Phase II Expansion Project: "This project was assessed using a science-based approach. If the project is permitted to proceed to the next phase, it will continue to be subject to Canada's strong environmental laws, rigorous enforcement and follow-up and increased fines."<sup>5</sup>

PRPA's own CSR proposal recognizes threats to human health posed by "exceedances of the Health Canada (2005) day-night sound level limits during operations (at receptors close to the affected rail line)" (CSR, p 80) and yet claims that "construction and installation of on-shore components (drainage system, landslide containment, intermodal yard, container yard, buildings, ancillary facilities, lighting, roads, sidings and wye)" (CSR, p. A-16) will mitigate these threats to human health that PRPA recognized and recorded in their proposal.

These 'roads, sidings and wye' which were to serve in part to mitigate noise, vibration and air emissions at receptors close to the affected rail line have not been built by PRPA or their co-proponents, as may be verified by an examination of the figures below. Figure 1 shows PRPA's proposed mitigation, on the basis of which PRPA's expanded railway operations were approved. Figure 2 shows a recent (14 September 2020) satellite view of the area where the mitigation was to be built. A quick comparison between PRPA's 2011 proposed Project Footprint (CSR, p. 4) and the recent satellite imagery dated 14 September 2020 shows that PRPA has not carried out mitigation as the Minister requested. No wye is visible in the satellite imagery. Nor is the proposed road. Similarly for PRPA's siding component

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<sup>5</sup> <https://www.ceaa-acee.gc.ca/050/evaluations/document/91456>

(CSR, p. 4): The wye, road, and siding mitigation components are not visible in recent satellite imagery because they were never built.

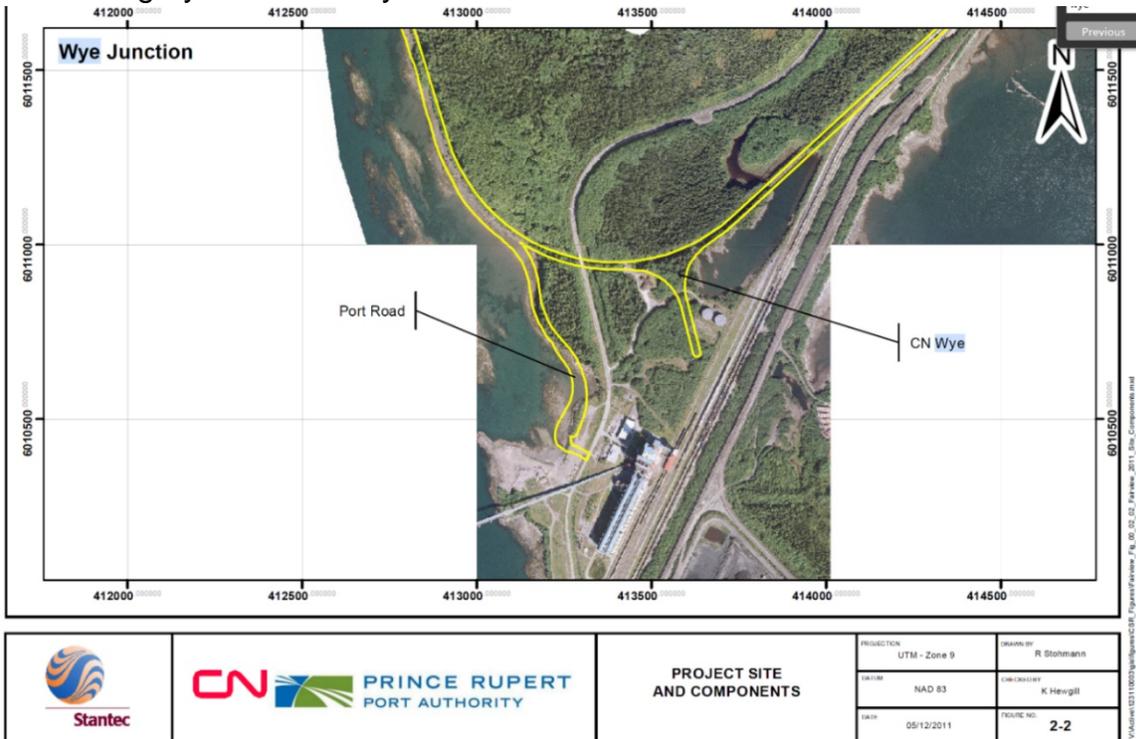


Figure 2 Recent (14 September 2020) satellite view of the area where mitigation was to be built.

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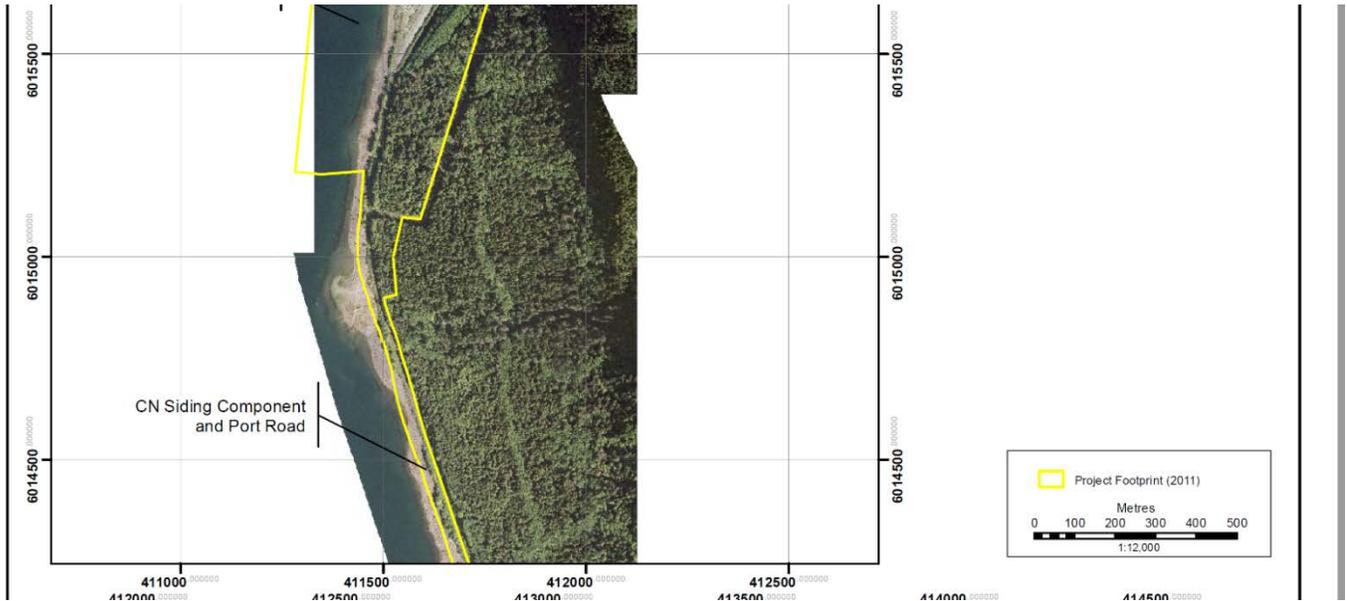


Figure 4 PRINCE RUPERT PORT AUTHORITY 's proposed mitigation from CSR. Project footprint dated 2011.

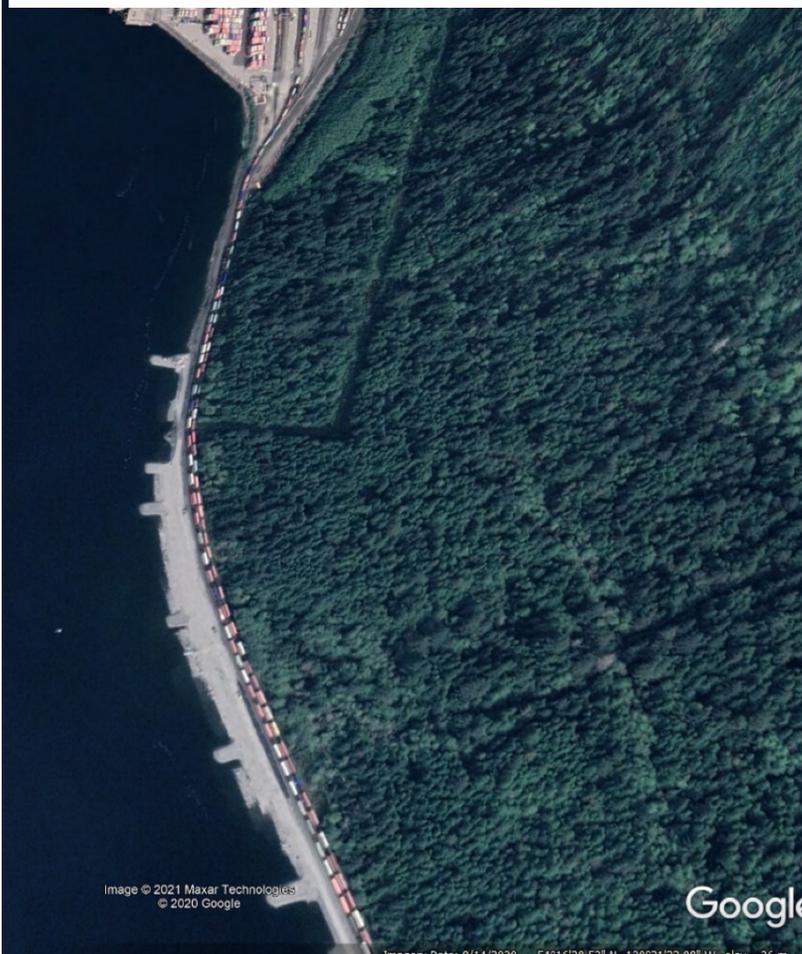


Figure 3 Recent (14 Sep 2020) satellite view of area where mitigation was to be built.

The wye was never built. Nor were the sidings. Nor was the road. In consequence, the very outcomes laid out in a decision matrix of PRPA's own CSR proposal have come to pass with expansion of PRPA's operations in this area. These outcomes include "longer distance for trains to run; higher emissions and noise to community. Results in poor efficiencies and congestion for other rail traffic." (CSR, p. 28) Because PRPA never built the wye, sidings, or road that PRPA proposed in seeking approval to increase operations in proximity to pre-existing human habitation, PRPA's inefficient and congestion traffic has had to run day and

night right past the receptors identified as at risk by Health Canada in PRPA's proposal (CSR, p. 80).

The 'higher emissions and noise to community' (CSR, p. 28) PRPA predicted in their own proposal would result if mitigation measures were not carried out – and they were not carried out - has resulted in dB(A) exceedances that are known to PRPA and are regularly shown



in data from two

Figure 5 Screen capture showing daytime dB(A) exceedances at Fairview noise monitoring station.

10 dB(A) noise monitoring stations – at Fairview Bay and Westview. These data are collected by PRPA at two dB(A) noise monitoring stations located at either end of a stretch over which PRPA's 'inefficient and congestion' (CSR, p. 28) railway traffic has had to run northward as a result of PRPA's failure to carry out required mitigation. Between these two noise monitoring stations at Fairview and Westview, close to the affected rail line, lie residential  
15 receptors referenced by Health Canada in PRPA's CSR proposal.

PRPA well knows<sup>6</sup> that C-weighted noise level monitoring at these same Fairview and Westview locations would show even more egregious railway noise and vibration

<sup>6</sup> For example, <https://www.ceaa-acee.gc.ca/050/documents/p80100/126808E.pdf> PRINCE RUPERT PORT AUTHORITY Milton Logistics Hub ("Project") CEAR File No. 80100 PRINCE RUPERT PORT AUTHORITY Response to the Review Panel's Information Request 8 Received September 25, 2018 "Therefore, in response to this IR, we have adopted the outdoor criterion for low frequency noise suggested by Broner (2011). Broner (2011) identifies a C-Weighted noise level for community annoyance from low frequency noise sources, with different thresholds applying in different

exceedances in this area of railway operation. A PRPA also well knows<sup>7</sup> that dB(C) is typically monitored along with dB(A) when safeguarding residential receptors from harm. The dB(A) values mentioned above from Fairview and Westview are collected by PRPA so PRPA is well aware of the damaging levels of noise and vibration to which residential receptors are being regularly exposed as a result of PRPA's failure to carry out the mitigation PRPA proposed in the CSR and which the Minister reasonably requested be completed. In fact, a reason PRPA proposed mitigation in their CSR proposal was to avoid exposing residential receptors to predictable harmful levels of noise and vibration.

Recognizing threats to human health from PRPA's proposed port expansion if mitigation and monitoring were not to be carried out, the Minister, in granting approval to PRPA's proposal sets out what is reasonable. Specifically, the Minister requested that "the responsible authorities ensure the implementation of the mitigation measures described in the Comprehensive Study Report. The Minister also requests that the responsible authorities implement the follow-up program described in the Comprehensive Study Report, in order to determine the effectiveness of the measures taken to mitigate any adverse environmental effects and to verify the accuracy of the environmental assessment of the Project."<sup>8</sup>

It is well within PRPA's capacities to swiftly carry out the reasonable mitigation that was specified in PRPA's expansion proposal first filed<sup>9</sup> a decade ago. PRPA's extraordinary capabilities in this regard are evidenced by PRPA's very recent expansion of port infrastructure during a time of global pandemic in the Skeena rail corridor which serves the 500,000 TEU Fairview container facility.

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circumstances based on the frequency (intermittent or continuous) of low frequency noise. For this situation, Broner (2011) identified a maximum allowable dBC level of 65 to 70 dBC for residential receptors subject to intermittent (1-2 hours in duration) low frequency noise to minimize low frequency noise and vibration problems."

<sup>7</sup> For example, <https://www.ceaa-acee.gc.ca/050/documents/p80100/126808E.pdf> PRINCE RUPERT PORT AUTHORITY Milton Logistics Hub ("Project") CEAR File No. 80100 PRINCE RUPERT PORT AUTHORITY Response to the Review Panel's Information Request 8 Received September 25, 2018 "Therefore, in response to this IR, we have adopted the outdoor criterion for low frequency noise suggested by Broner (2011). Broner (2011) identifies a C-Weighted noise level for community annoyance from low frequency noise sources, with different thresholds applying in different circumstances based on the frequency (intermittent or continuous) of low frequency noise. For this situation, Broner (2011) identified a maximum allowable dBC level of 65 to 70 dBC for residential receptors subject to intermittent (1-2 hours in duration) low frequency noise to minimize low frequency noise and vibration problems."

<sup>8</sup> <https://www.ceaa-acee.gc.ca/050/evaluations/document/85082?culture=en-CA>

<sup>9</sup> <https://www.ceaa-acee.gc.ca/050/documents/52726/52726E.pdf>

In order to ensure compliance it is reasonable that rigorous enforcement and follow-up be administered as the Minister reasonably lays out in the 25 January 2013 news release ‘announcing that the proposed Fairview Terminal Phase II Expansion Project is not likely to cause significant adverse environmental effects *with the implementation of the mitigation*  
5 *measures described in the Comprehensive Study Report.*<sup>10</sup> (my italics)

Unless orders to stop operations, cumulative penalties, or ‘increased fines’ of the kind that the Minister mentions in the news release announcing approval of PRPA’s operations in this are instituted immediately and retroactively, it is cheaper and easier for PRPA to obfuscate and continue procedural delays while carrying out what amounts to expropriation on the  
10 cheap and nasty by exposing residents living near the affected rail line to health and property-damaging levels of noise and vibration that PRPA itself recognized and noted nearly a decade ago in their proposals seeking approval to increase operations in this area. As it stands, carrying out the reasonable mitigation requested by the Minister is simply a cost centre for PRPA: it is cheaper and easier to wage a war of attrition against receptors  
15 identified in PRPA’s CSR submission.

The Minister in his decision places squarely on PRPA and its co-proponents a reasonable duty of care, given that PRPA’s CSR proposal involved increasing operations near receptors in an area that was already identified by Health Canada and recognized by PRPA to have day-night noise and vibration level limits exceedances during operations (CSR, p 80).

20 Canada has failed in its duty of care and continues to damage the environment by failure to ensure duties and obligations as reasonably requested by the Minister and as specified by PRPA’s own proposal are carried out. The reasonable requests of the Minister must be respected when it comes to safeguarding the environment.

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<sup>10</sup> <https://www.ceaa-acee.gc.ca/050/evaluations/document/91456>