

CHAPTER 6 MITIGATION

This chapter presents SEA's preliminary recommended environmental mitigation. Based on the information available to date, consultations with appropriate agencies, comments from interested members of the public, and extensive environmental analyses, SEA has developed preliminary environmental mitigation measures to address the potential environmental impacts of the construction, operation, and maintenance of the proposed rail line.

6.1 OVERVIEW OF SEA'S APPROACH TO RECOMMENDED ENVIRONMENTAL MITIGATION

In conducting the environmental review, SEA has taken a hard look at the environmental consequences of the Proposed Action and its alternatives. The potential environmental effects that SEA identified would be both beneficial and adverse. Chapters 3 and 4 discuss in detail the affected environment and potential environmental benefits and effects. The Final EIS will contain all of the mitigation SEA recommends the Board impose should the proposed rail line be approved. SEA's environmental analysis and its resulting preliminary environmental mitigation recommendations reflect the variety and complexity of the environmental issues and offer a reasonable and feasible way of minimizing some of the environmental impacts discovered during the course of SEA's environmental review. As discussed below, SEA also encourages negotiations between applicants and potentially affected communities, or others, to reach mutually acceptable solutions to address the parties' concerns. Sometimes negotiated solutions can be more far-reaching than mitigation the Board could unilaterally impose. The mitigation in this Draft EIS includes both mitigation developed by SEA and voluntary mitigation developed by RJCP. For purposes of this mitigation, the term "rail line" refers to the rail banked Eastern Segment and the Western Segment under either the Proposed Action or the Modified Proposed Action, unless otherwise specified.

6.1.1 Limits of the Board's Conditioning Power

The Board has limited authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. Thus, the Board's practice consistently has been to mitigate only those impacts that result directly from the proposed action. The Board typically does not require mitigation for pre-existing environmental conditions.

6.1.2 Voluntary Mitigation and Negotiated Agreements

SEA encourages applicants to propose voluntary mitigation. In some situations, voluntary mitigation may replace, supplement, or be more far-reaching than measures that the Board might otherwise impose. Because applicants gain a substantial amount of knowledge about the issues associated with a proposed right-of-way during project planning, and because they consult with regulatory agencies during the permitting process, they are often in a position to offer relevant voluntary mitigation. RJCP has proposed voluntary mitigation, which is discussed below.

SEA also encourages applicants to negotiate mutually acceptable agreements with affected entities to address potential environmental impacts, if appropriate. Negotiated agreements can be with individual property owners, groups of property owners, neighborhoods, communities, municipalities, counties, regional coalitions, states, or other entities. If an applicant submits negotiated agreements to the Board, the Board requires compliance with the terms of any such agreements as environmental conditions in any final decision approving the proposed action. These negotiated agreements supersede any environmental conditions for that particular community or other entity that the Board would otherwise impose.

6.1.3 Preliminary Nature of Environmental Mitigation

SEA emphasizes that the recommended environmental mitigation measures in this Draft EIS are preliminary and invites public and agency comments on these proposed environmental mitigation measures. In order for SEA to assess the comments effectively, it is critical that the public be specific regarding any desired mitigation and the reasons why the suggested mitigation would be appropriate.

SEA will make its final recommendations on environmental mitigation to the Board in the Final EIS after considering all public comments on the Draft EIS. The Board will then make its final decision regarding this project and any environmental conditions it might impose. In making its decision, the Board will consider the Draft EIS, the Final EIS, public comments, and SEA's final environmental mitigation recommendations.

6.2 RJCP'S VOLUNTARY MITIGATION MEASURES

On November 24, 2009, RJCP submitted to SEA proposed voluntary mitigation measures for the Board to consider. See Appendix C. SEA has reviewed the voluntary mitigation measures and should the proposed rail line be approved, SEA recommends that the Board require RJCP to comply with all of the voluntary mitigation measures submitted, with minor changes. These voluntary mitigation measures are set forth below by individual resource category.

6.2.1 Grade Crossing Delay

- VM 1. RJCP shall coordinate the construction of each grade crossing along the Western Segment of the rail line, including the temporary maintenance and protection of traffic measures to be implemented at each grade crossing, with the Pennsylvania Department of Transportation via the grade crossing permit process.
- VM 2. RJCP shall coordinate the construction of each grade crossing along the Western Segment of the rail line, including the temporary maintenance and protection of traffic measures to be implemented at each grade crossing, with the respective municipality and appropriate local emergency response service providers (i.e., police, fire and ambulance).
- VM 3. RJCP shall coordinate the final design of the grade-separated crossing at Casanova Road (T-958), including any necessary temporary maintenance

and protection of traffic measures, with the Morris Township Supervisors and/or Morris Township Roadmaster/Road Department, as appropriate.

- VM 4. For each public grade crossing along the Western Segment of the rail line, RJCP shall provide and maintain a permanent sign prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration Regulations (23 C.F.R. Part 655). The toll-free number shall be answered 24 hours per day by RJCP's personnel.
- VM 5. During construction of all grade crossings along the Western Segment of the rail line, RJCP shall provide appropriate advance warning signage for detours and temporary lane restrictions. Where practicable, RJCP shall maintain at least one open lane of traffic to allow for the passage of emergency response vehicles.

6.2.2 Rail Operations

- VM 6. Regarding waste traffic, RJCP shall not engage in any waste transloading or unloading activity, but will deliver waste to customers served by the line, including RRLLC. Any unloading and disposal activities by customers must be performed in accordance with a permit issued by the appropriate authorities.
- VM 7. RJCP shall limit the speed of trains over the rail line to 25 mph with restrictions for the front of the train to be limited to 10 mph when approaching and crossing Route 53 and Ninth Street near Philipsburg.
- VM 8. Subject to operational limitations, RJCP shall attempt to limit the operation of trains over the rail line to the hours of 7 A.M. to 10 P.M. in order to minimize nighttime noise impacts to adjacent residential properties.

6.2.3 Rail Operations Safety

- VM 9. RJCP shall comply with all applicable Federal Railroad Administration rail operations safety requirements (49 C.F.R. Parts 200-299), as appropriate.
- VM 10. Prior to initiating rail operations over the rail line, RJCP shall meet with private land owners to discuss appropriate safety precautions associated with at-grade private driveway crossings.
- VM 11. RJCP shall implement the appropriate safety measures at each public road grade crossing along the Western Segment of the rail line, as identified by the Rail Safety Division of the Pennsylvania Public Utility Commission during its February 12, 2009, project area field view.

- VM 12. Upon a residential area property owner's request, and if it can be done without impairing safety on the right-of-way along the Western Segment of the rail line, RJCP shall share costs 50%-50% with the property owner to erect right-of-way fence (length and height of fencing subject to RJCP discretion). If a right-of-way fence is erected, the property owner would assume responsibility and liability for fence maintenance.
- VM 13. RJCP shall transport all municipal solid waste on the rail line in accordance with Norfolk Southern Tariff NS 6306 – Rules and Regulations for Handling Municipal Solid Waste, Contaminated Soil, Hazardous Materials, and Related Articles.

6.2.4 Land Use

- VM 14. Regarding the acquisition of private property, RJCP shall only acquire that which is necessary to re-establish the 66-foot wide railroad right-of-way and will attempt to reach an amicable sales agreement with each affected property owner in lieu of instituting a condemnation proceeding.
- VM 15. In an effort to maintain consistency with the Morris Township Comprehensive Plan, RJCP shall not stack, stage, or store trains on the rail line within Morris Township other than in emergency operating conditions. While not a complete list, examples of emergency operating conditions would include a broken air line, locomotive failure, derailment, or crew hours of service limitations.

6.2.5 Energy Resources

- VM 16. Prior to project construction, RJCP shall coordinate any required utility pole relocations or overhead utility line adjustments with the appropriate local utility company.

6.2.6 Air Quality

- VM 17. To minimize fugitive dust emissions created during project-related construction activities, RJCP shall implement appropriate fugitive dust-suppression controls such as spraying water or other approved measures. RJCP shall also operate water trucks on local haul roads, as necessary, to reduce dust.

6.2.7 Noise

- VM 18. RJCP shall use rail lubricants, as appropriate on curves, on the rail line in order to minimize wayside noise.
- VM 19. RJCP shall coordinate with Cooper Township if the township wishes to petition the state to install gates or other supplementary safety measures on

the rail line in order to provide the level of warning necessary to allow the township to request a waiver from the Federal Railroad Administration of the requirement to sound the horn at both the Sawmill Road (T-707) and Winburne Road (S.R. 2037) grade crossings.

6.2.8 Threatened and Endangered Species

- VM 20. RJCP shall conduct additional field surveys during the 2010 flowering/ fruiting season in an effort to positively identify the *Sparganium* species identified within the Western Segment of the rail line. If determined to be Branching Bur-reed, RJCP shall coordinate with the Pennsylvania Department of Conservation and Natural Resources to identify appropriate minimization/mitigation measures, which could include specimen relocation during project construction.
- VM 21. RJCP shall ensure that any herbicidal sprays used in track maintenance on the rail line are approved by the U.S. Environmental Protection Agency and are applied by licensed individuals who shall limit application to the extent necessary for rail operations.

6.2.9 Wetlands and Watercourses

- VM 22. Prior to initiation of any project-related construction activities, RJCP shall obtain the necessary U.S. Army Corps of Engineers Section 404 and Pennsylvania Department of Environmental Protection Chapter 105 Waterway Encroachment Authorizations, and a National Pollutant Discharge Elimination System construction permit from the Pennsylvania Department of Environmental Protection.
- VM 23. RJCP shall implement appropriate erosion and sedimentation control measures to minimize potential water quality impacts during project construction in accordance with an Erosion and Sedimentation Pollution Control Plan approved by the Centre and Clearfield County Conservation Districts.
- VM 24. RJCP shall comply with wetland and watercourse mitigation in accordance with its authorization from the U.S. Army Corps of Engineers and the Pennsylvania Department of Environmental Protection.
- VM 25. RJCP shall evaluate the potential to provide wetland and watercourse mitigation on the rail line via an in lieu fee agreement with local watershed or conservation organizations and/or state or federal resource agencies.
- VM 26. RJCP shall disturb the smallest area possible around wetlands and watercourses on the rail line and shall conduct reseeding efforts to ensure proper revegetation of disturbed areas as soon as practicable following project-related construction activities.

- VM 27. RJCP shall not stage project-related construction materials or equipment within any identified wetland or watercourse areas.
- VM 28. During project-related construction, RJCP shall require daily inspections of all equipment for any fuel, lube oil, hydraulic, or antifreeze leaks. If leaks are found, RJCP shall require the particular piece of equipment to be removed or repaired immediately.
- VM 29. RJCP shall construct the rail line in such a way as to maintain current drainage patterns to the maximum extent practicable.
- VM 30. During project-related construction, RJCP shall prohibit construction vehicles from driving in or crossing streams at other than established/ permitted crossing points.
- VM 31. RJCP shall employ best management practices to control turbidity and minimize channel disturbance during the construction of the new bridge over Laurel Run.
- VM 32. RJCP shall design a bridge structure and approach railway grade that minimizes impacts to the 100-year floodplain of Laurel Run to the maximum extent practicable. However, should the proposed bridge structure and/or approach railway grade result in changes to the 100-year flood elevation, RJCP shall coordinate with the local municipality and the Federal Emergency Management Agency regarding implementation of the flood map revision process by way of a Conditional Letter of Map Revision.

6.2.10 Parks and Recreation Facilities

- VM 33. To minimize the risk of potential railroad-caused wildfires in the Moshannon State Forest, as well as other forested areas along the rail line, RJCP shall develop and coordinate a Wildfire Suppression and Control Plan with the District Manager of Moshannon State Forest. Items to be incorporated into this Wildfire Suppression and Control Plan shall include a requirement to maintain spark arrestors on all locomotives owned/leased by RJCP; monthly inspections of all RJCP owned/leased locomotives on the rail line incorporating a “burnout” of the exhaust stack to remove excess carbon materials; maintaining communications with the appropriate wildfire suppression personnel from the Pennsylvania Department of Conservation and Natural Resources Moshannon State Forest District; and when operationally feasible, operating a fire suppression vehicle behind the train during times of high fire danger, as designated by the Pennsylvania Department of Conservation and Natural Resources Moshannon State Forest District.
- VM 34. RJCP shall attempt to negotiate a mutually acceptable agreement with the Headwaters Charitable Trust to mitigate the impacts of the reactivation of

the Eastern Segment or the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail. However, should RJCP determine that a mutually acceptable mitigation agreement is unachievable, RJCP reserves the right to construct a new trailhead facility, consisting of a gravel parking area and covered sign structure, at the new Gorton Road trail terminus as the sole voluntary mitigation for the project's impact to the Snow Shoe Multi-Use Rail Trail.

6.2.11 Geology and Soils

VM 35. RJCP shall limit earth-disturbance activities to only the area needed for project-related construction.

6.2.12 Hazardous Waste Sites

VM 36. During project-related construction, RJCP shall properly dispose of any and all waste materials encountered along the rail line.

6.2.13 Historic Resources

VM 37. RJCP shall construct the rail line in such a manner as to leave in place, or require only minor relocation of, all remaining historic concrete mileage markers associated with the original Beech Creek Railroad.

VM 38. RJCP shall construct the rail line in such a manner as to leave in place the historic stone portals to the Peale Tunnel.

6.3 SEA'S PRELIMINARY RECOMMENDED MITIGATION

6.3.1 Transportation and Safety

Because of the voluntary mitigation measures (VM1-13) proposed by RJCP, SEA does not propose additional mitigation at this time.

6.3.2 Land Use

In addition to the voluntary mitigation proposed by RJCP (VM 14-15), SEA proposes the following condition:

1. RJCP shall offer fair market value payment in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act for the acquisition/condemnation of any private property needed to construct the rail line within the Western Segment of the rail line.

6.3.3 Energy Resources

SEA has determined that the proposed rail line would have negligible effects on energy resources. Therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 16).

6.3.4 Air Quality

SEA has determined that the proposed rail line would have negligible effects on air quality. Therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 17).

6.3.5 Noise and Vibration

SEA has determined that the proposed rail line would have negligible effects on noise and vibration. Therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 18-19).

6.3.6 Biological Resources

SEA has determined that RJCP's proposed voluntary mitigation for biological resources (VM 20-21) would be adequate to address the rail line's impact on biological resources.

6.3.7 Water Resources

Because of the mitigation proposed by RJCP in its voluntary mitigation measures (VM 22-32), SEA does not believe additional mitigation is warranted at this time.

6.3.8 Socioeconomics

SEA has determined that the proposed rail line would have negligible effects on socioeconomics and, therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 33-34).

6.3.9 Environmental Justice

SEA has determined that the proposed rail line would have negligible effects on local communities or on any environmental justice populations within the communities. Therefore, SEA does not propose mitigation at this time.

6.3.10 Geology and Soils

In addition to the voluntary mitigation proposed by RJCP (VM 35), SEA proposes the following condition:

2. RJCP shall implement appropriate soil erosion and sedimentation control measures during construction of the rail line pursuant to PA Code Title 25 Chapter 102 Erosion and Sediment Control Regulations.

6.3.11 Hazardous Waste Sites/Hazardous Materials Transport

SEA has determined that the proposed rail line would have negligible effects on hazardous waste sites/hazardous materials transport. Therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 36).

6.3.12 Cultural/Historic Resources

SEA has determined, and the Pennsylvania Historical and Museum Commission has concurred, that the proposed rail line would have “no effect” on cultural resources. See Appendix B. Therefore, SEA does not propose mitigation at this time, beyond what is proposed by RJCP in its voluntary mitigation measures (VM 37-38).

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