

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

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PUBLIC MEETING

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IN THE MATTER OF:	
CANADIAN NATIONAL RAILWAY COMPANY	
AND GRAND TRUNK CORPORATION -	
CONTROL - EJ&E WEST COMPANY;	
ISSUANCE OF FINAL ENVIRONMENTAL	
IMPACT STATEMENT	
=====	

Tuesday,

November 18, 2008

Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

CHARLES D. NOTTINGHAM, Chairperson
FRANCIS P. MULVEY, Vice Chairperson
W. DOUGLAS BUTTREY, Commissioner

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P-R-O-C-E-E-D-I-N-G-S

10:03 a.m.

CHAIRMAN NOTTINGHAM: All right.

Good morning. The Board is meeting on our Section of Environmental Analysis, affectionately known as SEA. You will hear SEA mentioned a lot today regarding the Environmental Impact Statement they are preparing on the Canadian National Railway Company's application seeking to acquire control of the EJ&E West, a wholly owned non-carrier subsidiary of the Elgin, Joliet & Eastern Railway Company.

SEA is a company by members of HDR, Inc., the third-party contractor that has been working with SEA to prepare the environmental documents in this case. EJ&E is a Class II Railroad that currently operates 198 miles of track in Northeastern Illinois and Northwestern Indiana.

In addition to acquiring that existing line, CN is seeking to construct six new rail connections and, approximately 19 miles of

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1 new sightings and double tracking. The
2 application was filed on October 30, 2007 and on
3 November 26, 2007, the Board announced that it
4 would prepare an Environmental Impact Statement,
5 also known as the EIS.

6 SEA has provided an extensive comment
7 period to ensure that the public agencies,
8 elected officials and communities have the
9 opportunity to actively participate and comment
10 on the environmental review process.

11 SEA first prepared a draft scope of
12 study that was published in December 2007.
13 During the scoping process, the Board received
14 over 3,000 written comments and SEA held seven
15 public open house meetings held in the affected
16 areas during the scoping process.

17 The final scoping document was served
18 on April 25, 2008 and was made available on the
19 Board's website and 51 libraries located in
20 communities along the EJ&E Rail Line.

21 SEA then served the draft EIS on July
22 25, 2008. SEA hosted eight public meetings

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1 throughout the Chicago metropolitan area to
2 present the findings of the draft EIS and
3 received public comments. SEA received some
4 9,500 comments on the draft EIS by the close of
5 the comment period on September 30, 2008.

6 Since then, SEA has been analyzing
7 the comments submitted on the draft EIS and
8 working to prepare a final EIS.

9 The purpose of this meeting today is
10 to provide the Board Members an opportunity to
11 hear from SEA on their report and have SEA report
12 on the comments received from the public and also
13 an explanation of the analysis that has been
14 conducted and SEA's preliminary recommendations
15 regarding potential mitigation to be included in
16 the final EIS.

17 I look forward to exploring all these
18 issues today. We are pleased to have with us
19 members of the team working on the final EIS from
20 the Board's staff: Victoria Rutson, Chief of the
21 SEA, Phillis Johnson-Ball, who is the Deputy
22 Chief of SEA, Evelyn Kitay, who is STB's

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1 Association General Counsel and from HDR we have
2 John Morton, Senior Vice President, and Bill
3 Burgel, Vice President for Rail Operations, again
4 both of HDR, Inc.

5 I understand other members of the HDR
6 team will be making presentations today and will
7 be introduced as the meeting proceeds. I do want
8 to welcome all of the HDR staff who have made the
9 trip to be here today.

10 The team will first give a
11 presentation generally summarizing the
12 environmental review process, its results and
13 SEA's preliminary recommendations. Following
14 that presentation, my colleagues and I will have
15 an opportunity to ask questions and engage in
16 dialogue.

17 I look forward to this morning's
18 presentation and discussion. Before turning the
19 floor over to the team, I would like now to turn
20 to my colleagues for any opening remarks that
21 they may like to offer. Vice Chairman Mulvey?

22 VICE CHAIRMAN MULVEY: Thank you,

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1 Chairman Nottingham. And I want to thank the SEA
2 staff for their efforts in this area. Vicky,
3 Evelyn, Phillis, I know this has occupied a lot
4 of your time over the last few months and this
5 really shows a great deal of effort and a great
6 deal of oversight on your part. You have done an
7 outstanding job in very, very difficult
8 circumstances.

9 I also want to thank the
10 representatives from HDR. As you know, the Board
11 Members had opportunity to go out and see the
12 project at one point. And we were taken around
13 and shown some of the places that were particular
14 contentious where the environmental issues were
15 particularly important. And we did learn a lot
16 from that and we want to thank you for your
17 efforts in taking us out there.

18 This is really the first major
19 environmental review that this Board has
20 undertaken in the last five years. I know the
21 Board does these kind of environmental reviews
22 often associated with abandonments and other

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1 transactions. But the last one that was this
2 large, unless I'm mistaken, was when the DM&E
3 proposed to build into the Powder River Basin.
4 That proposal raised a lot of concern and the
5 Board undertook an extensive and environmental
6 review of that proceeding as well.

7 That proceeding took place before I
8 was on the Board. And since my tenure is co-
9 termed with Mr. Buttrey's and precedes Mr.
10 Nottingham, this is really the first one that any
11 of us have really had to address. So we're
12 looking forward to hearing what you have to say
13 and to take this into consideration in coming up
14 with our final decisions.

15 As the Chairman has mentioned, we
16 have received nearly 10,000 responses/comments on
17 the draft environmental review. They are both
18 positive and negative as to the transaction's
19 environmental impacts. And I understand it's
20 very, very difficult to sort all these out.

21 I'm looking forward to hearing the
22 results of your assessment today and with that,

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1 I'll turn it over to my colleagues.

2 CHAIRMAN NOTTINGHAM: Thank you, Vice
3 Chairman Mulvey. Commissioner Buttrey?

4 COMMISSIONER BUTTREY: Thank you, Mr.
5 Chairman, and good morning to everyone. This
6 proceeding, in my view, is the most interesting
7 and perplexing case to come before me since I
8 came to the Board. In some ways, it's a very
9 simple case. It concerns a relatively short line
10 of railroad and the purchase price is relatively
11 small in today's economy.

12 The subject transaction involves only
13 two railroads. Yet, this transaction has drawn
14 an incredible amount of attention from a wide
15 variety of stakeholders, including suburban
16 Mayors, Members of Congress, one of whom is the
17 new President-elect.

18 It has split the urban and suburban
19 Chicago community and the Congressional
20 Delegation and has fueled an emotional public
21 relations campaign rarely experienced in the
22 generally quiet, peaceful neighborhoods west of

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1 Chicago.

2 When I visited these communities
3 recently, I even saw yard signs and notices about
4 public rallies. It was grassroots democracy at
5 work.

6 The issues presented in this
7 proceeding remind me of a landmark 1971 Supreme
8 Court case, which has always been special to me,
9 because its subject matter arose in the very city
10 where I was a law student at the time of the
11 decision. That case is Citizens to Preserve
12 Overton Park v. Volpe, 401 U.S. 402.

13 In that case, the United States
14 Department of Transportation had decided to built
15 Interstate 40 right through the middle of
16 downtown Memphis and right through the middle of
17 one of the oldest and most beautiful public parks
18 in the south, which contained, among other
19 things, the city zoo, golf course and the
20 Historic Overton Park Shell built in 1936, where
21 Elvis Presley performed his first paid concert.

22 Certain civic-minded citizens of

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1 Memphis said no. The United States Supreme Court
2 agreed. The Court said that under the applicable
3 statutory provisions, the Secretary of
4 Transportation could only approve the use of
5 federal funds for construction of a highway in a
6 public park if no feasible alternative exists and
7 only after undertaking all possible planning to
8 minimize harm.

9 Justice Douglas did not participate
10 in consideration of the decision of that case.
11 Otherwise, it was a unanimous decision by the
12 United States Supreme Court.

13 Now, some of you might have had the
14 pleasure of driving through the beautiful and
15 very fertile Mississippi River Delta, which
16 includes Memphis. If so, you might have noticed
17 that I-40 splits just east of downtown Memphis
18 and continues in a circle around the city, both
19 north and south, and comes together again on the
20 eastern bank of the Mississippi River where it
21 crosses the river and enters the great State of
22 Arkansas.

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1 So it is obvious that the highway was
2 eventually built to accommodate Interstate
3 Commerce, but that it was built using an
4 alternative route so as to also accommodate the
5 environmental concerns of local citizens. In the
6 end, the Supreme Court stood between the
7 seemingly overwhelming forces of the Federal
8 Government and the concerns of a few local
9 citizens who just wanted to preserve their park.

10 In my view, this is undoubtedly one
11 of the most elegant decisions ever rendered by
12 the highest Court of the land.

13 As we go forward in the consideration
14 of this and other similar cases, I would urge all
15 concerned to be mindful of this ruling and others
16 like it, so that we do not forget the power of
17 the people to not have their rights abridged by
18 their Government.

19 I have made it abundantly clear that
20 I have serious concerns about this transaction,
21 based on environmental grounds. It is my
22 judgment that those concerns are on legal parity

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1 with the transportation issues before us and that
2 to somehow subordinate those concerns runs afoul
3 of a long line of cases that require us to make
4 sure that we have fully considered, to use the
5 language of the court, "feasible and prudent"
6 alternatives and after undertaking "all possible
7 planning to minimize harm."

8 I'm going to try to ensure that we do
9 just that. Consequently, I look forward to
10 hearing what the presenters have to say. Thank
11 you, Mr. Chairman.

12 CHAIRMAN NOTTINGHAM: Thank you,
13 Commissioner Buttrey. We will now turn it over
14 to the team. Ms. Rutson, you will take it over
15 from here. Thanks.

16 MS. RUTSON: Good morning, Chairman
17 Nottingham, Vice Chairman Mulvey and Commissioner
18 Buttrey. On behalf of the Section of
19 Environmental Analysis and our third-party
20 consultant, HDR, we appreciate the opportunity to
21 discuss with you today the Environmental Impact
22 Statement that we are currently preparing in

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1 Finance Docket 35087, Canadian National and Grand
2 Trunk Railroad control EJ&E West.

3 I would like to take a few moments to
4 introduce you to the rest of the team. Chairman
5 Nottingham, you have already introduced the
6 people at the table, but for those listening via
7 website, I will repeat some of the introductions.

8 To my right from the Surface
9 Transportation Board is Evelyn Kitay and Phillis
10 Johnson-Ball. To Phillis' right is Gail Frane
11 from HDR who will be helping us with the
12 PowerPoint presentation. To my left is John
13 Morton, the Project Manager from HDR. And to his
14 left is Bill Burgel, Rail Operations Specialist.

15 The remainder of the team is sitting
16 in the first two rows behind the speaker's table.
17 Each member of this team specializes in a certain
18 environmental discipline area. I'm going to call
19 each of their names and they will stand up. When
20 they speak, they will come forward and focus on
21 their discipline area.

22 They will tell us what we did in the

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1 draft EIS, explain the comments that we received
2 on the draft and then provide a briefing to you
3 on our preliminary findings, conclusions and
4 recommendations and final EIS.

5 These folks are all from HDR. First,
6 Stephanie White, Public Involvement; John
7 Lazzara, Vehicular Transportation; Leif Thorson,
8 Rail Safety; Fionna Goodson, Natural Resources;
9 Tim Casey, Noise and Vibration; and Kevin Keller,
10 Hazardous Materials Transport.

11 Rich Christopher from HDR is also
12 joining us, not to speak individually, but
13 prepared to respond to questions on state
14 regulatory matters. Rich is the former Deputy
15 Chief Counsel of Indiana DOT and we believe is
16 uniquely qualified to respond to questions on the
17 state regulatory process for Illinois and for
18 Indiana.

19 Each of these technical experts
20 represents large group of other scientists,
21 technicians and professionals who have worked and
22 are continuing to work on the EIS. They would

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1 have enjoyed all being with us here today and I
2 suspect there may have been enough seats in this
3 hearing room for all of them, but it would have
4 been a full house indeed.

5 A word about acronyms. The Chairman
6 kindly explained some of them. Again, for those
7 listening via webcast, I'm going to go over a few
8 more. This will help everyone realize that we
9 are actually speaking a language and not a
10 mysterious code.

11 The environmental area is full of
12 acronyms and it can get a bit confusing. EJ&E or
13 J is the Elgin, Joliet and Eastern Railroad. EIS
14 is Environmental Impact Statement, which we have
15 issued in draft form and are preparing in final
16 form. NEPA, National Environmental Policy Act.
17 SEA or S-E-A is the Section of Environmental
18 Analysis.

19 CN is Canadian National Railway. And
20 CNN isn't involved in this case at all. Yet, the
21 team and members of the public have ended up
22 talking, I think, in an abundance of enthusiasm

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1 over end about CNN. Not involved in this case.

2 The relevant background for this
3 proceeding is set forth in the Board's press
4 release of November 7th announcing this briefing
5 and Chairman Nottingham has also provided a
6 summary. Very quickly, on October 30, 2007,
7 Canadian National Railway and its U.S. affiliate,
8 Grand Trunk, filed an application with the Board
9 seeking the Board's approval to acquire the
10 Elgin, Joliet and Eastern.

11 The Elgin, Joliet and Eastern is an
12 old railroad conceived by Joliet businessmen in
13 1855 for the purpose of avoiding congestion in
14 the city of Chicago. The applicant's reasons for
15 wanting to buy the EJ&E are set forth in their
16 application. These reasons are three-fold.

17 First, applicants wish to move train
18 traffic off the CN Lines that are currently
19 running in and out of Chicago and move that rail
20 traffic to the EJ&E. Thus, avoiding congestion
21 in the City of Chicago.

22 Second, applicants wish to gain

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1 ownership of Kirk Yard in Indiana.

2 And third, applicants wish to offer
3 rail service to shippers currently served by the
4 EJ&E.

5 Immediately after the application was
6 filed with the Board, SEA began receiving a
7 steady stream of letters. These letters were
8 mostly from people who live in the communities
9 along EJ&E. These people were fearful about what
10 would happen to them if train traffic on the J
11 increased.

12 In November, the Board issued
13 Decision No. 2, which announced that the Section
14 of Environmental Analysis would prepare an EIS in
15 this proceeding. The Board's environmental rules
16 normally require an EA or Environmental
17 Assessment for rail acquisitions.

18 But here, the Board stated that the
19 more rigorous EIS was appropriate. In that EIS,
20 we would examine both the benefits and the
21 adverse impacts of CN's proposal. We would also
22 examine reasonable and feasible alternatives to

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1 that proposal, including a no action alternative.

2 SEA retained HDR to help us prepare
3 the EIS. As you know, the third-party
4 contracting process is permitted both by the
5 Board's environmental rules and by the
6 President's Council on Environmental Quality
7 Regulations.

8 The process allows us to hire
9 consultants to work for us and only us at the
10 applicant's expense. Our work is impartial. Our
11 job, my job is to ensure that the decision maker,
12 you, have a full complete disclosure of all
13 benefits and impacts that could occur as a result
14 of this proposal.

15 I can tell you, based on my
16 reputation, that our work has been and will
17 continue to be done impartially. SEA and HDR
18 experts in a broad spectrum of environmental
19 discipline areas began work on the EIS. We
20 conducted meetings, talked with federal, state
21 and local officials, performed studies and
22 gathered as much information as we could about

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1 life in the communities that could benefit and
2 could be adversely impacted by CN's proposal.

3 We also learned about the rail
4 systems in Chicago, the history of the EJ&E and
5 how it operates today and delved into every
6 detail that we could find about CN's proposal.

7 On July 25, 2008, we issued a draft
8 EIS for public review and comment. As you well
9 know, over 9,500 comments were received. And we
10 are now preparing the final EIS which will in
11 part respond to those comments.

12 We hope to issue the final EIS in the
13 next few weeks. The final EIS in addition to
14 responding to comments will also set forth some
15 additional analysis that we have done based on
16 the comments received. It will also set forth
17 SEA's preliminary conclusions and
18 recommendations, which we would like to discuss
19 with you today.

20 Briefing highlights. Next, Evelyn
21 Kitay will discuss in more detail the regulatory
22 process. Phillis Johnson-Ball will then

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1 summarize our extensive public involvement
2 process. Bill Burgel will then set the stage
3 describing the unique role of Chicago as a rail
4 transportation hub, provide a short history of
5 rail operations on the EJ&E and describe details
6 of the applicant's proposal and alternatives that
7 we examined during the environmental review
8 process.

9 Stephanie White will build on
10 Phillis' summary of public involvement and
11 describe major issues that we discovered through
12 working with the citizens of Illinois and
13 Indiana. Then the HDR technical experts will
14 lead us through what we did in the draft EIS,
15 what we heard in comments and what we are
16 thinking about doing in the final EIS.

17 So now, I would like to turn the
18 microphone over to Evelyn Kitay.

19 MS. KITAY: Thank you, Vicky. Good
20 morning, Chairman Nottingham, Vice Chairman
21 Mulvey and Commissioner Buttrey. I have been
22 working closely with SEA on the EIS in this case

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1 and am happy to discuss the regulatory process.

2 Since 1920, Congress has vested the
3 ICC and now the Board with plenary and exclusive
4 authority over rail mergers and acquisitions.
5 This proposed acquisition requires authority from
6 the Board, because under the Interstate Commerce
7 Act, a railroad may not acquire another railroad
8 without STB approval.

9 As you know, CN filed its application
10 for STB approval in October 2007. In November
11 2007, the Board accepted the application and
12 concluded that a full EIS was warranted based on
13 the information in the application on potential
14 increased traffic along the EJ&E Line increases
15 between 15 to 24 trains a day on certain segments
16 and the concerns that had already been raised by
17 potentially affected citizens and communities.

18 The dual purpose of an EIS is to
19 disclose potential environmental impacts,
20 consider reasonable and feasible alternatives,
21 including the No Action Alternative, and develop
22 reasonable mitigation that could be imposed to

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1 eliminate or reduce potential environmental
2 impacts of the proposed action discovered during
3 the course of the environmental review.

4 The Board's practice is not to impose
5 mitigation for pre-existing conditions.
6 Conditions that exist when the Board's process
7 begins. Mitigation can, as here, include
8 voluntary mitigation proposed by applicants. SEA
9 also encourages applicants to enter into mutually
10 acceptable negotiated agreements with communities
11 or other entities. These negotiated agreements
12 can result in mitigation that is more far
13 reaching than the mitigation the Board could
14 unilaterally impose.

15 Ample opportunities for public input
16 are provided during the EIS process. The EIS
17 addresses not only issues that arise under NEPA,
18 which requires agencies to take a hard look at
19 the environmental consequences of their licensing
20 decisions, but also takes into account the
21 requirements of other federal environmental laws,
22 such as the Endangered Species Act and the

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1 National Historic Preservation Act.

2 Consultations with other agencies is
3 a very important part of the EIS process. And in
4 this case, SEA has consulted extensively with
5 agencies, including the Environmental Protection
6 Agency and the U.S. Fish and Wildlife Service
7 during the EIS review.

8 Steps for an EIS are set out in the
9 Board's environmental rules at 49 CFR Part 1105
10 and the rules of the Council on Environmental
11 Quality implementing NEPA. First, SEA issues a
12 Notice of Intent to prepare an EIS and initiates
13 scoping to determine the issues to be addressed
14 in the EIS.

15 Then SEA issues a draft EIS for
16 public review and comment containing
17 environmental analysis of the potential
18 environmental effects, both beneficial and
19 adverse, and preliminary mitigation
20 recommendations and recommendations on
21 environmentally preferable alternatives.

22 After a public comment period, a

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1 final EIS is prepared responding to comments
2 containing further analysis, if appropriate, and
3 presenting SEA's final recommendations including
4 recommendations for environmental mitigation.

5 The conclusions of the EIS are staff
6 recommendations that the Board considers in
7 deciding what action to take on a proposed
8 acquisition. In essence, the EIS process is what
9 builds the record before the Board on the effects
10 of the proposed acquisition on any issues other
11 than those involving the transportation merits.

12 Just to briefly summarize the EIS
13 process here, within days of the Board's November
14 2007 decision accepting the application, SEA
15 began work on the EIS. In December 2007, a
16 Notice of Intent and a draft scope study were
17 issued. Open house meetings were held at seven
18 locations in the Chicago area and over 3,000
19 scoping comments were received.

20 In April 2008, a final scope of study
21 was issued. Less than three months later in July
22 2008, a comprehensive five volume draft EIS was

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1 served. SEA then held eight public meetings in
2 the Chicago area as well as stakeholder meetings
3 during the 60 day comment period on the draft
4 EIS, which ended September 30, 2008.

5 9,500 comments both pro and con were
6 received on the draft EIS addressing a wide range
7 of environmental issues. In May 2008, CN asked
8 the Board to establish time limits for the
9 completion of the EIS. In July 2008, the Board
10 set a target date of December 2008 to the end of
11 January 2009 for completion of the final EIS and
12 stated that a final decision would be issued as
13 soon as possible thereafter.

14 No specific date was set for the
15 issuance of the final EIS, because the Board
16 could not predict in advance the extent and type
17 of comment that might be made on the draft.

18 In September 2008, the Board denied
19 CN's subsequent petition to modify the procedural
20 schedule. SEA is well along with completing the
21 EIS. A final EIS responding to comments
22 containing additional analysis as appropriate and

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1 setting forth SEA's final mitigation
2 recommendations should be issued in the next few
3 weeks.

4 The issuance of the final EIS will
5 conclude the environmental review process and the
6 Board will then issue a final decision in this
7 case addressing both the transportation related
8 and environmental issues.

9 In doing so, it will consider the
10 draft and final EIS and all of the environmental
11 comments received as well as the information
12 filed on the transportation merits.

13 In short, a thorough environmental
14 review that encompasses both the EJ&E Rail Line
15 where rail traffic will increase and the CN Lines
16 in the Chicago area, which will generally benefit
17 from an expected decrease in traffic, has taken
18 place in this case.

19 I now turn it over to Phillis.

20 MS. JOHNSON-BALL: Thank you, Evelyn.
21 Good morning, Chairman Nottingham, Vice Chairman
22 Mulvey, Commission Buttrey. I will be talking

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1 about SEA's public outreach and coordination
2 activities for the proposed transaction.

3 The public has an important role in
4 the NEPA process, particularly doing scoping and
5 providing input on what issues should be
6 addressed in the EIS and commenting on the
7 findings of the EIS. SEA's purpose in conducting
8 public involvement in Agency consultation
9 activities is to comply with NEPA to raise public
10 awareness, inform interested or affected
11 individuals about the proposed action and to gain
12 public and Agency input on the development and
13 review of the EIS.

14 For this transaction, SEA conducted
15 extensive and proactive public outreach to
16 encourage board participation in the
17 environmental review process. Public
18 participation throughout the environmental review
19 process was unprecedented. The public, federal,
20 state and local agencies, stakeholders,
21 communities and organizations actively
22 participated in the environmental process by

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1 providing information, reviewing and commenting
2 on all aspects on the development of EIS.

3 To ensure that parties typically
4 under-represented in the environmental review
5 process received all available information, SEA
6 conducted targeted outreach to minority and low-
7 income populations, environmental justice
8 populations and federally recognized tribes.

9 On December 21, 2007, the Board issue
10 the Notice of Intent to prepare the EIS. This
11 also announced the start of the scoping process
12 and included the times and dates of public
13 meetings. The publishing of the Notice of Intent
14 began the flow of comments into the Board. SEA
15 received, approximately, 350 comments prior to
16 the issuance of the draft scope of work.

17 By comparison, no comments are
18 typically received during this period. During
19 the scoping process, SEA informed the public
20 about the proposed action, described the
21 environmental review purpose and process and
22 gathered public comments on the draft scope of

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1 the EIS.

2 Also to inform the public about the
3 proposed transaction, SEA prepared public
4 notices, media outreach, announcement posters,
5 develop a project website and maintained a toll
6 free project information line and project update
7 mailings.

8 SEA developed and maintained an
9 environmental distribution list which included
10 individuals, locally elected officials, agencies
11 and agencies that have interests that would
12 normally be contacted during the EIS process.

13 In November 2007 and January 2008 to
14 advertise and prepare for public scoping
15 meetings, SEA distributed media releases and
16 placed public notices and advertisements in 24
17 Chicago area newspapers. SEA also placed posters
18 in public libraries and other public locations
19 that served the communities along the EJ&E Rail
20 Line.

21 SEA held 14 public scoping meetings
22 at seven locations throughout the Chicago

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1 metropolitan area in January 2008. Meetings were
2 held in Mundelein, Illinois; Barrington,
3 Illinois; Joliet, Illinois; Madison, Illinois;
4 Chicago, Illinois; West Chicago, Illinois and
5 Gary, Indiana.

6 The meetings were held in an open
7 house format. Two meetings per location were
8 conducted, one in the afternoon and one in the
9 evening. The public was able to provide scoping
10 comments in a variety of ways. Written comments,
11 verbal comments, e-filings and via a toll free
12 project information line. The information line
13 also had a Spanish option.

14 At the public meetings, commenters
15 were also able to provide verbal comments to
16 transcribers. Approximately, 4,000 scoping
17 comments were filed by the end of scoping. And
18 approximately, 2,600 people attended the public
19 scoping meetings.

20 In addition to public scoping
21 meetings, SEA invited 38 federal, state and local
22 agencies to participate in stakeholder focus

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1 groups and to provide feedback on their areas of
2 expertise. On April 28, 2008, the Board
3 published the Notice of Availability of the
4 proposed scope of study in the Federal Register.

5 On July 28, 2008, SEA issued the
6 draft EIS and made it available for public review
7 and comment with a 60 day comment period. On the
8 same day, the Board released a press release
9 announcing the availability of the draft EIS.

10 In August and September 2008, SEA
11 held eight public scoping meetings to provide the
12 public with information on the draft EIS and to
13 receive comments. Meetings were held in Madison,
14 Illinois; Mundelein, Illinois; Barrington,
15 Illinois; Bartlett, Illinois; Chicago, Illinois;
16 Aurora, Illinois; Joliet, Illinois; and Gary,
17 Indiana.

18 Again, as with scoping, the meetings
19 included an open house format and a more formal
20 public meeting in which attendees could make
21 formal comments. As during scoping, comment
22 forms were provided in several languages,

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1 including Spanish, Polish and Chinese. Chinese
2 and Polish languages were added as a result of
3 our outreach activities.

4 Comments at the public meetings were
5 accepted either on-site or by mail. The project
6 toll-free telephone line remained open and
7 updated for the duration of the comment period to
8 record comments over phone lines. Commenters
9 could also submit electronic comments through the
10 Board's e-filing system.

11 SEA distributed the draft EIS using
12 the same outreach methods used in scoping, that
13 is distributing copies of the draft EIS to all
14 parties of record and parties on the
15 environmental distribution list placing copies in
16 libraries, placing the entire EIS on the project
17 website and notification through the media of the
18 availability of the draft EIS.

19 As part of SEA's outreach to agencies
20 and public officials, SEA notified 20
21 Congressional Members, 31 State of Illinois
22 elected officials and 10 State of Indiana elected

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1 officials of the public meeting.

2 On June 25, 2008, SEA attended a
3 metropolitan Mayor's conference meeting with 27
4 officials from the Chicago area. On September
5 30, 2008, SEA attended a meeting of the South
6 Suburban Mayor's and Manager's Association, a
7 group of stakeholders representing the cities
8 from the south side of Chicago. Information
9 gathered at as a result of that meeting, was
10 vital to the analysis of the EIS.

11 SEA continued to conduct outreach to
12 under-represented groups, including minority and
13 low-income populations and environmental justice
14 populations. More than 30,000 individuals are
15 currently on our environmental distribution list.

16 SEA believed that our proactive
17 outreach efforts played a large part in the large
18 participation rate for this transaction. SEA
19 received over 9,500 comment documents containing
20 over 43,000 issues and concerns on the draft EIS.
21 All 30,000 individuals on our environmental
22 distribution list will receive either a

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1 notification of the availability of the final
2 EIS, a copy of the executive summary, a CD copy
3 of the entire document or a printed copy of the
4 document. Thank you.

5 MS. RUTSON: I would now like to turn
6 the microphone over to Bill Burgel, who will be
7 discussing historic and existing conditions in
8 the project area, the proposed action and
9 alternatives and anticipated changes.

10 MR. BURGEL: Mr. Chairman, Vice
11 Chairman and Commissioner, I'm here today to
12 describe the -- how Chicago and the rail industry
13 interact with each other, both at a local,
14 regional, national and perhaps global level. If
15 I may, I'll stand and use the podium here.

16 6 out of the 7 Class Is, the large
17 railroads that operate in the U.S., all converge
18 in Chicago. The -- you've got the Norfolk
19 Southern and the CSX both originate or Eastern
20 Railroad either originate or terminate here in
21 the eastern part of the Chicago area. Western
22 Railroads, Union Pacific and BNSF, be in or end

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1 here in Chicago as well.

2 Two other railroads, Canadian Pacific
3 and CN both operate through Chicago. The -- with
4 -- CN is the only railroad that operates through
5 on its own track. It's got five quarters in red
6 here, three of them are primary quarters and CN
7 operates north to south and then east through
8 Chicago.

9 To facilitate the interchange of all
10 these different railroad systems, we have several
11 smaller railroads that serve at the discretion of
12 the Class Is. They are owned and operated by the
13 Class Is. Those include the Indiana Harbor Belt
14 and the Belt Railway of Chicago and they perform
15 the switching assignments for these Class Is.

16 The various trackage rights and
17 haulage rights that are negotiated by all the
18 Class Is are performed by the smaller railroads.
19 Interlaced with all these freight railroads are
20 the extensive passenger service of Amtrak, Metra
21 and also the Northern Indiana Commuter
22 Transportation District or NICTD who operates

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1 through the south shore.

2 Currently over 1,200 trains a day
3 operate in Chicago. Roughly half freight and the
4 other half passenger. On top of this fabric is a
5 network of highway systems, lots of great
6 separations in the urban core of Chicago, less
7 though on the outer core. It is the changing
8 volumes of the highway system and the rail system
9 that were not quite in sync with each other and
10 that's one of the reasons we are here today.

11 One of the adjustments that -- as
12 described previously, the EJ&E is this outer
13 railroad that serves to the boundary of this CORA
14 map which is produced by the Chicago Area
15 Railroad Operators and it's no accident that it
16 forms the boundary of this map.

17 As Vicky described earlier, it was
18 envisioned by a group of businessmen in the mid-
19 1800s and came to fruition in the 1890s or so of
20 several predecessor railroads that link together
21 to form this circumference or route around
22 Chicago. It has seen 50 trains per day that

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1 operated roughly in the World War II area and had
2 passenger service that linked several communities
3 as well.

4 The Griffith Historical site talks
5 about 180 trains per day operating through
6 Griffith at one time. The EJ&E performs several
7 functions. It is owned by U.S. Steel and then
8 forms the switching functions for U.S. Steel,
9 that's one of its primary roles. It is an
10 industrial railroad that has and supports many
11 on-line customers that depend heavily on the
12 service, one of which is certainly Midwest Energy
13 that depends on it, the coal delivery on a timely
14 basis that is provided by the EJ&E. That
15 supplies have the electrical energy for the
16 Chicago area. So a very vital service that the
17 EJ&E performs.

18 Because all these railroads
19 intersect, again, it performs a perimeter around
20 Chicago. All the Class Is at one location or
21 another intersect with the EJ&E and as it --
22 where these intersections occur, the J is used to

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1 shuttle cars back and forth between these Class
2 Is, so it performs that service.

3 And one trend that is increasing is
4 BNSF, Norfolk Southern and Union Pacific
5 primarily are using the EJ&E to bypass routes
6 that they used to come into Chicago and back out.
7 They are now using the EJ&E as a bypass, mostly
8 in this southwest quadrant. It's primarily how
9 the Class Is are used and the J is a bypass.

10 As described earlier, the CN operates
11 on the former Wisconsin Central to the north and
12 then from the east they entered Chicago initially
13 back in 1923, the Grand Trunk has been in
14 Canadian ownership since then. And then the CN
15 acquired the Illinois Central in the early -- a
16 few years ago. And that performs, along with the
17 other two, routes that is their primary service.

18 They have a couple of yards that they
19 service here in -- along Glenn Yard along the
20 Joliet, and their primary yard is Marcum Yard
21 which is down by Homewood. You notice gaps in
22 the flow of the red lines through here. The only

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1 continuous route is along the St. Charles
2 Airline, which is one that Air Daily has asked CN
3 to relinquish in terms of train flow through
4 Chicago.

5 Every other -- these gaps are places
6 where CN doesn't operate on their own railroad.
7 They have to basically run on other railroads and
8 by that very nature, they are controlled by
9 others and that's one of the things they are
10 trying to rectify by the acquisition of the EJ&E.

11 The heart of this -- what -- most of
12 their trains come in and are classified, switched
13 around at a major classification yard that is
14 owned by the Belt Railway of Chicago. That is a
15 clearing yard. And the process right now,
16 because they will bring trains in along the --
17 say from the north and they will have trains that
18 will stay all along here waiting for their slot
19 to come into the clearing yard.

20 Again, it is owned by others. And as
21 these trains are brought in, they will -- as that
22 slot opens up, each one of these trains will move

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1 forward into that slot. That's extremely, you
2 know, wasteful in terms of locomotive efficiency
3 for CN utilization and these idling locomotives
4 produce unwanted air emissions as they wait their
5 turn.

6 It will take somewhere 12 to 15 hours
7 to make that move inside the arc from Leithton
8 down into the clearing yard and another 12 to 15
9 hours as they get classified there at clearing.
10 So it's quite a process just to get into a yard
11 they don't own. That's the very heart of their
12 system and yet they don't control that.

13 For many reasons, this and many
14 reasons, CN has asked the Board for permission to
15 acquire the EJ&E and that's to divert roughly 15
16 to 24 trains that now operate on these lines
17 inside the Chicago arc, so that train traffic is
18 proposed to move over on the EJ&E to bypass
19 Chicago and into Kirk Yard or East Joliet.

20 To accomplish this and then again
21 where they interact with these different
22 railroads, they propose six connections that they

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1 would like to construct as well as double track
2 up in this area and along through between Eola
3 down to just north of Plainfield along here and
4 that's roughly 19 miles of double track. About
5 half of that trackage is on road bed that was --
6 formerly supported a second track.

7 They also are talking in terms of CN
8 is proposing increases in the switching activity
9 at both East Joliet Yard and at Kirk Yard as
10 well.

11 In response to comments received
12 during scoping, SEA considered four alternatives
13 to the proposed action, one of which was expanded
14 trackage rights along the EJ&E to where CN could
15 -- would operate without the Board's permission
16 on an expanded trackage rights basis.

17 A second alternative was the full
18 implementation of the Chicago CREATE Project,
19 which might have the benefit of increasing the
20 throughput through Chicago.

21 The third alternative was perhaps CN
22 could invest on a line interior of the arc and

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1 create a faster throughput in that fashion.

2 And a fourth that we heard was to
3 construct an alternative bypass outside the arc
4 in some -- in an area or locale yet to be
5 determined for -- because a lot of these reasons
6 didn't meet the purpose need that's before us.
7 So we didn't explore these options.

8 I'll turn it back to John here now.

9 MR. MORTON: Thank you, Bill. We
10 would like to start discussing some of the
11 technical issues. And what I would like to do
12 first is ask Stephanie White to elaborate a
13 little bit on the discussion that Phillis had in
14 terms of the outreach and cover some of, in more
15 detail, you know, where the outreach was and, you
16 know, the comments that came in. Stephanie?

17 MS. WHITE: Thank you, John.
18 Chairman Nottingham, Vice Chairman Mulvey and
19 Commissioner Buttrey, again, my name is Stephanie
20 White. And I'm the public involvement lead for
21 this project.

22 I would like to call your attention

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1 to a series of slides that I will use to
2 illustrate both how we chose the meetings or the
3 locations for all the public meetings as well as
4 to show you some of the distribution of comments
5 that we received during both formal comments
6 periods on this project.

7 The first slide you are looking at
8 showcases some of the environmental justice
9 communities and particularly those in close
10 proximity to the J. We discovered 28
11 environmental justice communities. These
12 represent a few of those.

13 When we were selecting meeting
14 locations -- if you will move to the next slide,
15 please?

16 COMMISSIONER BUTTREY: Ms. White,
17 excuse me, would you point that mike right at
18 you, please?

19 MS. WHITE: Yes, sir.

20 COMMISSIONER BUTTREY: Thank you.

21 MS. WHITE: Is that better?

22 COMMISSIONER BUTTREY: I think so.

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1 MS. WHITE: Okay.

2 COMMISSIONER BUTTREY: Thank you.

3 MS. WHITE: You will see that the
4 seven locations for the public meetings during
5 the scoping period are represented on this slide.
6 At that time, we endeavored to choose locations
7 that gave our environmental justice communities
8 as equal opportunity to participate as possible.
9 We also were looking for a good geographic
10 distribution, both along the J and then
11 representation in both states as well as
12 representation inside the yard created by the
13 EJ&E.

14 The next slide will show you the
15 distribution of comments as they were submitted
16 during the scoping period, the public scoping
17 period. You will see that Barrington represented
18 the majority of those comments. We had a total
19 of 3,958 comments submitted during the scoping
20 period.

21 2,289 of them came from Barrington.
22 Second in rank would be Frankford, Illinois with

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1 300, 500 -- I'm sorry, 353 comments. And then
2 close behind Frankfort were Bartlett with 324
3 comments, Aurora with 305 and Naperville with
4 263.

5 As we looked for locations for the
6 public meetings to solicit comments on the draft
7 EIS, we chose to replace the west Chicago meeting
8 with meeting locations in Bartlett and Aurora,
9 because of their substantial contribution or
10 commenting activity on the scope of service.

11 If we move then to the next slide, I
12 would like to talk you through some of the
13 comments that were submitted by members of this
14 area, particularly by the method by which they
15 were submitted. We endeavored to provide as many
16 opportunities as possible for members of the
17 community, agencies, elected officials to comment
18 on this.

19 On the left side of that graphic, you
20 will see the methods for submission, certainly
21 the e-filing or the electronic filing on the
22 Board's website, the toll free project hot line

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1 that Phillis mentioned, the opportunity to speak
2 your comments formally at a public meeting and we
3 offered that at the draft EIS meetings, those
4 transcribed by a Court Reporter at public
5 meetings, letters, comment forms or petitions
6 submitted during either of the comment periods.

7 You will see -- you can see the
8 difference between the scoping comment periods,
9 which totaled 3,958 comments and those submitted
10 during the draft, 9,530, for a total comment
11 submitted on this -- in this action 13,488.

12 The next slide is a distribution of
13 comments submitted during the draft EIS comment
14 period. Because of the volume of comments, we
15 changed the scale a little bit on this one.
16 Letters again, 9,530. To be precise, comments
17 were submitted on the draft Environmental Impact
18 Statement.

19 The community submitting most of
20 those comments was Barrington with 2,155 followed
21 closely by Crown Point, Indiana; Chicago,
22 Illinois; Bartlett and Frankfort.

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1 Now, also during the draft EIS
2 period, we had 12 petitions submitted
3 representing roughly 18,000 signatories, two-
4 thirds of which were in support -- were in
5 opposition to the proposed action. One-third was
6 in support of the proposed action. You will see
7 a significant move towards the south and the east
8 of the project area. There is a significant
9 concentration of petition signatories.

10 Those come from Griffith, Dyer,
11 Schereville and Frankfort communities that all
12 submitted their own petitions. There are several
13 petitions submitted by the applicant and an
14 organization in the area known as START.

15 The final slide that I would like to
16 show you represents the 10 major issues of public
17 concern. Now, you have heard a couple of numbers
18 today, comments submitted during the draft EIS.
19 You will hear the number of 9,500. Phillis also
20 mentioned the presence of 43,000 comments -- I'm
21 sorry, issues.

22 Inside of every comment, there might

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1 be five to seven issues. Those specific
2 references to environmental impacts in an area
3 and that's what constitutes the number of 43,000
4 issues. That's what you see here on this screen
5 from left to right in ranking order, this graphic
6 represents the most common issues that we heard
7 about in those 9,500 letters or comments.

8 So they are traffic delays and
9 congestion on the far left, emergency response
10 directly to its right in ranking order No. 2,
11 mitigation funding, communities and community
12 cohesion, hazardous material transport, vehicle
13 safety, noise, economics and employment, the
14 number, the frequency and the length of trains
15 and then finally property values.

16 I will now turn it back over to John
17 Morton, who will lead a discussion with our
18 Project Team touching all of these issues in one
19 fashion or another. Thank you.

20 MR. MORTON: Thank you, Stephanie.
21 Mr. Chairman, Mr. Vice Chairman, Mr.
22 Commissioner, we have a number of issues that we

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1 would like to talk in detail and I'm going to
2 call upon various members of my technical team to
3 help me do that.

4 The issues that we would like to
5 cover this morning are listed on the board in
6 front of you. Those are certainly not all the
7 issues, but those represent the -- kind of the
8 main concerns that the public had and where a lot
9 of the energy and the draft EIS focused its
10 analysis and the final EIS is focusing its
11 analysis.

12 I would like to start off with a
13 discussion of train traffic. I would like to
14 turn it back over to Mr. Burgel to talk about
15 that.

16 CHAIRMAN NOTTINGHAM: Thank you.

17 MR. BURGEL: Howdy. The train
18 traffic numbers or the input in which we use,
19 basically all the analysis in the EIS is based on
20 these numbers, so we work to get these numbers
21 correct. The CN, the applicant, as part of their
22 operating plan in the application that they gave

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1 us, proposed a certain number of -- diversion of
2 a certain number of trains onto the -- from the
3 routes through Chicago onto the EJ&E, based on
4 their operating plan, which is the method and
5 manner in which they propose to operate their
6 trains along the existing traffic along the EJ&E.

7 The facts as we understand them, the
8 train numbers were given to us, the amount of
9 tonnage associated with the diversion, the number
10 of hazardous material of cars that operate before
11 and after the transaction, the speed, the average
12 speed of these trains through the crossings was
13 provided as well as the length of trains beyond
14 the average length was used in the analysis.

15 We certainly worked on that average
16 in a couple of aspects and I'll describe those
17 later. The criteria again, as Vicky described,
18 is where we have met or exceeded the Board's
19 threshold for environmental review is what
20 triggered -- a lot of these lines didn't see any
21 change and so we didn't spend much time, if any,
22 on some of these branch mains.

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1 But primarily, the 15 to 24 trains
2 that were diverted certainly exceeded the
3 threshold and so we looked at that. We also
4 looked at the proposed changes in yard activity.
5 Again, the two major yards on EJ&E were the Kirk
6 Yard in Gary, which now handles roughly about 680
7 cars per day and CN envisions going to roughly
8 2,000 cars per day on the yard there. And then
9 the yard at East Joliet, they would plan to go
10 from 680 -- or excuse me, from 500 cars today to
11 about 1,200.

12 Then we also analyzed and looked at
13 each of the connections as well as the double
14 track sections and were there alternatives that
15 we could look at to that? We also looked -- took
16 -- we heard from many folks in the scoping
17 comments about CN's proposed planning horizon of
18 2012 and was that realistic from a lot of
19 respects?

20 A lot of people thought that was too
21 short. A lot of planning agencies typically
22 analyze growth patterns into the 2025, 2035 era.

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1 And 2012 seems way too short from their point of
2 view. And you know, the comment was also held
3 closely by the public that, you know, CN wouldn't
4 embark on a transaction if these were indeed the
5 numbers.

6 So they might -- right after the end
7 of the 2012 period, they might suddenly spring a
8 lot of trains onto the public. So the concern
9 was that the time horizon was too short. We also
10 got comments back from CN that going further out
11 into the time period was too long. It would be
12 speculative.

13 Again, there were service
14 organizations that meets the needs of customers
15 and customer patterns change capriciously and so
16 they have to change the traffic patterns to meet
17 that as well.

18 If somebody were to site a major
19 distribution facility somewhere on the line,
20 suddenly there would be a couple more trains per
21 day and then that changes as business needs also
22 change.

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1 Our response, SEA's response to that
2 was we couldn't go too far out, say 2025, 2035,
3 and that you wouldn't be producing reliable
4 information. And traditionally, the STB, the
5 time horizons are much shorter than that. And so
6 we compromised and extended the time to about
7 2015, three years longer than the railroad had
8 asked for.

9 The idea of being -- that was CN's
10 plans to ramp up the traffic was going to take
11 roughly three years and this would give us a few
12 years to see how that traffic balanced out on the
13 revised alignment.

14 We also took a look at the concern
15 about could 100 trains suddenly appear out of
16 nowhere and suddenly be operating by CN along
17 this route. Again, if there is some time
18 advantages to operating through Chicago, wouldn't
19 the -- any shippers out there suddenly fought to
20 CN in terms of this more expedited route through
21 Chicago?

22 We looked at that from five different

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1 ways in terms of an economic analysis of, you
2 know, what type of business is out there?
3 Certainly, we saw a shift. Fuel prices were high
4 over the summer. We did see a shift towards the
5 general railroad industry. But now that prices
6 are low again, that shift has gone away.

7 So it's a, again, somewhat steady
8 business, but does see changes on that. We also
9 saw historical trends for flow in the Chicago
10 area. The general -- while Chicago is still very
11 important from the rail industry point of view,
12 the general trends of Class I is to go south
13 through the southern tier and bypass Chicago,
14 because of the time penalty of coming through
15 Chicago. So we did see that and just, you know,
16 how that national flow would affect CN traffic
17 levels here.

18 We then took a hard look at what we
19 called a bottleneck analysis. Again, the concern
20 was, you know, if certain segments along EJ&E
21 were experiencing a certain level of traffic,
22 would that traffic grow if suddenly all the, you

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1 know, approvals were met and all of a sudden here
2 comes 100 trains through Barrington, for
3 instance.

4 That -- from the bottleneck analysis,
5 we felt that the number of trains through the
6 Joliet area would be the constraint and not in
7 other sections through the EJ&E system. That was
8 based on several factors. It was a qualitative
9 analysis in terms of this bottleneck analysis.

10 It looked at things like the river
11 crossing over the Des Plains River Bridge, a lift
12 bridge, that operates at the discretion of the
13 navigation vessels. 17 times a day up and 17
14 times a day down, single track bridge. Although
15 it was constructed for two tracks, it has only
16 got one track across it.

17 The approach spans are missing.
18 There would be quite a bit of work needed to
19 rehabilitate this bridge to any greater standard
20 than it is now. So that was certainly a
21 bottleneck that we looked at in terms of train
22 flow over 10 miles an hour through that area,

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1 through the east Joliet Yard.

2 The switching operations, again, that
3 yard is built to switch cars and EJ&E typically
4 originates and terminates trains there. It
5 doesn't operate through, so there is going to
6 have to be some revamping there in terms of the
7 ability to get the train flow through that east
8 Joliet area.

9 So the bottleneck analysis tended to
10 focus on this, what I call, southwest corner of
11 the yard. We then put numbers around that into
12 kind of a quantitative analysis we call the why
13 not, it's the index, which is kind of a
14 spreadsheet analysis that determines the number
15 of minutes in a day and how long it takes a train
16 to actually operate through that particular
17 segment.

18 It also incorporates things like the
19 lift bridge outage, the type of track, management
20 system whether it is track warrant control or
21 centralized traffic control, whether the industry
22 is now on-line. Over there by Plainfield there

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1 is a lot of industry there that EJ&E works three
2 to four hours a day spotting up and pulling cars
3 from those industry.

4 So the idea that, you know, you would
5 be able to run the volume of trains that CN is
6 contemplating would be right at its maximum
7 through that Joliet area. The numbers that
8 flowed through the rest of the yard were pretty
9 much, we felt, going to be at the maximum based
10 on this constraint in the Joliet area.

11 The last analysis we did was kind of
12 a computer simulation of the whole system using
13 software, dispatch software called RGC. It is
14 the same software that the Chicago CREATE people
15 use to funnel all the traffic improvements in the
16 Chicago area for the infrastructure plans that
17 they put together for that program as well.

18 The rail traffic control model took
19 into account the proposed changes of where the
20 Metra plans to increase frequency there say
21 through Barrington, through West Chicago. We
22 looked at how the Star Line would interact, you

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1 know, between Joliet and Hoffman Estates. John
2 will talk about that a little bit later.

3 And then we also looked at the
4 proposed service in the southeast service through
5 Chicago Heights. While we looked at the average
6 number of train lengths in terms of what CN
7 proposes to run, but we also anticipated that CN
8 may run trains much longer than the average
9 length. So we threw in, you know, several 10,000
10 foot trains to see how they would operate through
11 there.

12 And the RGC software has a mechanism
13 inherent with it that it won't advance a train
14 that we also put the road crossing locations in
15 there and if the train exceeds the space between
16 the road crossings, it will hold the train back.
17 So I mean, it did show that the CN could operate
18 on the proposed number of trains by the
19 infrastructure as they offered in the
20 application.

21 I'll turn it back to John now.

22 MR. MORTON: Thank you, Bill. Next,

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1 I would like to talk a little bit about safety
2 and I would like to have Leif Thorson talk about
3 that. For each one of these technical areas, we
4 are going to try to describe what the issue is,
5 what we -- the scoping process concerns were,
6 what methodology we used, we employed, the
7 analysis that we did in the draft EIS,
8 conclusions from the draft EIS, the comments that
9 were -- that SEA received on the draft EIS and
10 concluded with, you know, the preliminary
11 conclusions and the work that we are doing on the
12 final EIS. And with that, Leif?

13 MR. THORSON: Thank you, John. And
14 good morning, Chairman, Vice Chairman and
15 Commissioner. My name is Leif Thorson. I'm the
16 technical area lead for rail safety. And our
17 group looked at the effects of the proposed
18 action upon rail safety.

19 During our scoping process, seven
20 major areas of concern were identified that we
21 needed to include within the EIS. And these were
22 infrastructure, the infrastructure of the EJ&E,

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1 accidents or train-related accidents, hazardous
2 material transport, which will be covered by Mr.
3 Keller later on, passenger commuter rail safety,
4 vehicular safety, pedestrian and bicycle safety
5 and lastly, quiet zones.

6 I'll briefly touch upon each of
7 these. Some of them more so than others and talk
8 about what we did in the draft analysis and the
9 comments that we received and an additional
10 analysis that we did.

11 The first area which was
12 infrastructure, you know, was the condition of
13 the EJ&E capable to handle the traffic that the
14 applicants are proposing to do?

15 And in short, we reviewed existing --
16 the existing infrastructure and found that the
17 EJ&E, its track, its bridges and its right-of-way
18 were fully adequate and maintained to a standard
19 that would allow for the traffic that the
20 applicants proposed. And that that track
21 complied with the Federal Railroad Administration
22 or FRA's track safety standards for Class IV

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1 Track.

2 The second area we looked at was
3 train accidents. And the accidents that we
4 looked at were the same definition of an accident
5 that the FRA uses when they define accidents.
6 And that is any accident involving rail equipment
7 that results in greater than \$8,400 in property
8 damage, results in personal injury or release of
9 a hazardous commodity.

10 SEA staff reviewed the FRA's database
11 and used a 5 year -- the most current 5 year
12 window that we have, which would be years 2003
13 through 2007. So we looked at that database and
14 the accident statistics that both CN and EJ&E had
15 for train accidents and how those accidents
16 compared with peers in that group, peers being
17 Class I railroads for the CN or Class II or Group
18 II railroads for the EJ&E.

19 Our findings were that CN had an
20 accident safety record of 4.2 accidents per
21 million train miles operated, which compared with
22 3.9 for the average of the Class Is. We thought

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1 it was slightly higher, it was fairly comparable.

2 The EJ&E on the other hand had a
3 safety record that was 18.2 accidents per million
4 train miles operated, which compared with 4.9
5 accidents for the other Class II peers.

6 Our results or our analysis going
7 forward, we looked at using Canadian National's
8 safety record along with the 2015 planning
9 horizon for trains. Our rationale for doing that
10 was that the additional train traffic that the
11 applicants were proposing was going to be more
12 similar to the CN traffic that they operate now.
13 And also, safety is more reflective of a
14 corporate policy and cultures than the
15 predecessor properties.

16 What we found in our analysis was
17 that there would be an additional one expected
18 accident per year on the combined system. That
19 is to say that the EJ&E -- along the EJ&E, we
20 would expect there to be -- go from 1.5 accidents
21 per year to as many as 3. And on the CN Lines we
22 would go down correspondingly with a net result

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1 of an increase of 1 accident per year.

2 We received numerous comments from
3 public and from agencies that we consider CN's
4 Canadian safety record as well as its U.S. safety
5 record. There is a different method looking at
6 rail safety in Canada than there is in the U.S.
7 Whereas, in the U.S., the Federal Railroad
8 Administration has jurisdiction over that. In
9 Canada, it is Transport Canada.

10 They have similar roles, similar
11 functions, but entirely different reporting
12 systems as it relates to accidents. So a direct
13 comparison between the two was not allowed. But
14 what we did find and we have a rather detailed
15 breakout in the proposed final -- or the final
16 EIS is that CN's Canadian safety record is
17 comparable to the U.S. safety record. And we did
18 not think that inclusion of the Canadian safety
19 record was necessary or required for our
20 analysis.

21 The third item that we looked at was
22 passenger and commuter rail safety. We want to

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1 be able to show what the implications of the
2 proposed action would be on passenger and
3 commuter trains. The difference being primarily
4 is that the commuters or the Metra trains, people
5 going to and from work, and the passenger trains
6 are primarily the Amtrak trains which is more a
7 long distance haul.

8 What we -- what our analysis showed
9 is that currently on the CN Lines there are a
10 number of corridors that passenger trains and
11 freight trains commingle either on the same track
12 or on the same corridor. We did not have that
13 situation along the EJ&E. Along the yard there
14 are no shared corridors between passenger and
15 commuter.

16 As a result of the proposed action,
17 there would be significant reduction in the
18 number of freight trains on those shared
19 corridors, on the CN Lines, so we found no
20 adverse effects. And in fact, we thought there
21 would be a positive result to commuter and
22 passenger safety by removing those freight

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1 trains.

2 The next area that we looked at was
3 vehicle safety and what was the effect upon the
4 proposed action for cars, trucks, buses and other
5 motorized vehicles at highway rail crossings?
6 There are 178 public at-grade crossings along the
7 EJ&E Lines. And 155 along the CN Line segments
8 that we looked at.

9 This included all crossings on all of
10 the EJ&E western properties that would be
11 acquired by CN, as well as the CN Line segments
12 inside of the arc and a distance of 5 miles
13 outside of the arc. We thought in our study area
14 that we wanted to include a buffer zone outside
15 of the yard for trains that might be negotiating
16 those connections.

17 We used the existing FRA's database,
18 the FRA maintains the definitive grade crossing
19 database that the states also use for their
20 analysis. We started with that and then we field
21 verified those crossing locations as to types of
22 warning devices, number of tracks through there

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1 and number of roadway lanes, so that we could
2 update the accident prediction again using year
3 2015 numbers.

4 Using -- our preliminary conclusions
5 running those accidents is that there will be a
6 decrease from 11 accidents per year to 10
7 accidents per year on the combined system. It --
8 the numbers went from 4.5 to 6.0 along the EJ&E
9 for an increase of 1.5 accidents per year and a
10 decrease of 2.5 accidents per year inside the
11 yard from 6.5 to 4.0 along the CN Lines.

12 This reduction is due primarily to
13 the decrease in the number of trains on the CN
14 Lines where we had higher ADTs or Average Daily
15 Traffic.

16 The next thing we did with the
17 vehicle safety is we looked at the high predicted
18 accident frequency locations. Using past EISes
19 before the Board, there is a -- there was a
20 threshold or a target to look at accident rates
21 of .15 per year or greater. What that equates to
22 is one accident per 7 years.

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1 A crossing that had a predicted
2 accident of that rate was considered to be a high
3 accident frequency location. Under the No Action
4 scenario, we -- there were five locations, three
5 of which were on CN Lines, two of which were on
6 the EJ&E Lines.

7 Under the proposed action, there were
8 four and they were all on the EJ&E Lines. Those
9 four were Lake Street and Miller Street in
10 Griffith, Indiana; Renwick Road in Plainfield;
11 and Woodruff Road in Joliet. We have recommended
12 mitigation measures that would address the Lake
13 Street and Miller Street in Griffith, Indiana.

14 Renwick Road at the time we did our
15 analysis had simply flashers. It has since been
16 upgraded through normal processes to include
17 gates, so that would -- that mitigation there is
18 not required. And Woodruff Road is addressed
19 within the community agreement between CN and
20 Joliet.

21 The next area that we looked at was
22 pedestrian safety. Pedestrian crossings, we

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1 looked at pedestrian safety at pedestrian
2 crossings. And those occur at legitimate and
3 authorized locations along the line and they
4 occur at one of two locations.

5 Predominantly, they are where the --
6 similar to a sidewalk, where it shares the same
7 corridor as the roadway. And as such, when the
8 state DOTs or the Illinois Commerce Commission,
9 as stated in the case of Illinois, looks at those
10 and determines the adequacy of the warning
11 devices and the appropriateness of those devices,
12 they take into account the pedestrian uses at
13 that location as well.

14 The second type is those where we
15 have trails or pedestrian only uses, where they
16 are not sharing the same corridor. Those are
17 under a slightly jurisdiction. Those are
18 primarily considered private crossings that exist
19 between agreement between the railroad and the
20 agency having authority over the trail.

21 There are -- along the lines that we
22 looked at, there are 16 -- I'm sorry, I'm going

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1 to back up. We also identified what we
2 considered trails. We tried to identify
3 designated trails. And what we use was the
4 Department of Natural Resources of both Illinois
5 and Indiana maintain a GIS database and a listing
6 of trails.

7 We overlaid those onto the system.
8 There are 16 on the EJ&E and 19 on the Canadian
9 National Lines that are pedestrian access along
10 side of highway rail crossings. And there are
11 three on the EJ&E and two on the CN Lines that
12 are pedestrian only at-grade crossings.

13 SEA staff solicited input from the
14 Federal Railroad Administration, the Illinois
15 Commerce Commission and the DOTs of both Illinois
16 and Indiana for guidance in policy on adequacy of
17 the warning devices, the appropriateness of those
18 for pedestrian safety.

19 And what we discovered was that none
20 of those agencies had standards or policies that
21 addressed pedestrian issues, similar to what they
22 did for highway vehicles. Our recommendation for

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1 mitigation was that a diagnostic review be done
2 at these locations. And a diagnostic review is
3 an on-site meeting between railroad, the agencies
4 that have responsibility over those warning
5 devices, the trail authority and other local
6 users that may have, you know, special knowledge
7 to provide input to that. And that those
8 diagnostic reviews would identify and look at the
9 appropriateness of the warning devices and if any
10 modifications should be done.

11 Following release of the draft EIS,
12 we received hundreds of comments regarding
13 pedestrian issues as it relates specifically to
14 school age children. Concerns were also given
15 for student drivers, proximity of schools to the
16 tracks and school bus safety. This is something
17 that was covered in more general terms under the
18 draft, but in the final EIS, we have expanded and
19 added considerable language and some additional
20 analysis to approach the school issue.

21 What we have -- what we did was using
22 U.S. Census Bureau data, local GIS data, Illinois

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1 and Indiana School Board of Education and
2 National Catholic Education Association and local
3 school boards and use of aerial photography, we
4 identified the number of schools K through 12
5 that were located 2 miles from the line segments,
6 1/4 of a mile from the line segments and that
7 were immediately adjacent to the line segments.

8 What our analysis showed was that
9 there are 12 schools immediately adjacent to the
10 tracks along the EJ&E, 14 along the CN Lines.
11 Within a 1/4 of a mile of the track, there are 44
12 schools along the EJ&E Line segments and there
13 are 118 along the CN Line segments. And within
14 the 2 mile buffer, there are 344 schools along
15 side the EJ&E Lines and 983 along the CN Lines.

16 So our preliminary findings were that
17 although those problems and concerns may be
18 exacerbated along the EJ&E Lines, they are offset
19 by improvements along the CN Lines for those
20 conditions as well.

21 Now, the applicants have offered
22 voluntary mitigation that would specifically

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1 address these issues of schools or at least some
2 of these issues of schools and that would include
3 Operation Lifesaver training, educational
4 materials. And in the case of those schools and
5 parks that are adjacent to the tracks, fencing.

6 The last item that I'm going to
7 discuss here is that of quiet zones and the
8 implication that the proposed action would have
9 on those existing locomotive on quiet zones. The
10 quiet zones are established by the communities
11 using Federal Railroad Administration Rules and
12 look at a safety risk analysis on the corridor.

13 There are seven existing -- there are
14 six existing and one that was proposed at the
15 time of the applicant's application and five of
16 those were along EJ&E Lines. Two of those were
17 along CN Lines. Our analysis looked at again the
18 year 2015 and using the FRA's risk calculator, we
19 looked at the proposed action and what affect it
20 would have, if any, on those communities ability
21 to maintain the quiet zone.

22 What we found is that only one quiet

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1 zone, that in the City of Barrington, was likely
2 to fall out of compliance as the proposed action.
3 And we have proposed mitigation that would
4 require the applicants to maintain the
5 Barrington's quiet zone as part of that.

6 And I think that concludes mine.

7 MR. MORTON: Thank you, Leif.

8 MR. THORSON: Um-hum.

9 MR. MORTON: The next issue that we
10 would like to talk about is traffic delay in
11 emergency response. If you remember, the graphic
12 that Stephanie showed you, those are the two
13 issues that received the greatest number of
14 comments. To talk about the analysis that we did
15 is Mr. John Lazzara.

16 MR. LAZZARA: Thank you, John. Good
17 morning, Mr. Chairman, Mr. Vice Chairman and Mr.
18 Commissioner. As John mentioned, my name is John
19 Lazzara and I'm a transportation planning
20 engineer. And I am the technical lead for the
21 transportation analysis as well as the emergency
22 services analysis that we will talk about in a

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1 minute.

2 I would like to start off with the
3 transportation analysis. Many roadways within
4 the study area currently experience vehicular
5 traffic congestion without the influence of train
6 operations. This trend continues to grow each
7 year. Transportation effects at highway rail and
8 crossings is a primary concern and is directly
9 related to train operations.

10 The proposed actions effects to the
11 transportation system involve delay and mobility
12 issues, both on the local and regional level.
13 The objective of this EIS is to identify the
14 effects related to the change in train operations
15 for the proposed action.

16 During the scoping process, comments
17 noted concerns that have been consistently
18 expressed throughout the EIS process. These
19 issues included average daily traffic, also
20 referred to as ADTs, that will be used during the
21 analysis, the growth rates to be applied to
22 project future traffic volumes and a planning

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1 horizon to be considered as Mr. Burgel mentioned
2 earlier.

3 The analysis started with data
4 collection, which was initiated in December of
5 2007. SEA used the Federal Railroad
6 Administration database to develop an inventory
7 of crossings. This information was supplemented
8 by data sources such as state and county DOTs and
9 various municipalities to develop existing
10 traffic volumes.

11 We also did field verifications of
12 all the at-grade and grade separated crossings
13 along the EJ&E and CN Lines. Crossings in line
14 with the change in trains were initially examined
15 which included 112 at-grade -- public at-grade
16 crossings along the EJ&E Rail Line and 134
17 crossings along the CN Lines.

18 When we started to establish our
19 existing base condition for traffic data, we
20 obtained any available traffic data on a daily
21 basis. The daily information was available for
22 years ranging from 1980 through 2007. SEA

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1 developed growth rates that we applied to this
2 traffic information to grow those existing
3 numbers up to a base condition for 2007.

4 In growing the traffic volumes, SEA
5 looked at historical traffic data, population
6 statistics and contacts with local agencies to
7 develop county level growth rates to use for the
8 projections. SEA then applied these same county
9 level growth rates to project traffic through our
10 planning horizon which was 2015.

11 Next, SEA looked at the ADT threshold
12 for analysis for a grade crossing. SEA
13 considered initially 5,000 vehicles per day at a
14 crossing if the at-grade crossing had at least
15 5,000 vehicles per day, it would be considered in
16 the analysis.

17 Through the scoping process, there
18 were many comments on this threshold and SEA
19 reconsidered this and the threshold was lowered
20 to 2,500 vehicles per day. This provided a
21 conservative approach incorporating more
22 crossings into the analysis.

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1 VICE CHAIRMAN MULVEY: 2,500 vehicles
2 a day in both directions?

3 MR. LAZZARA: Correct.

4 VICE CHAIRMAN MULVEY: Thanks.

5 MR. LAZZARA: Total, in total. The
6 crossings that were based on this ADT threshold,
7 the crossings for the EJ&E resulted in 87
8 crossings meeting that threshold and 134
9 crossings along the CN Line.

10 Delay mobility issues were then
11 considered. The existing roadway network is
12 congested today and SEA needed to consider local
13 and regional effects to account for travel
14 between municipalities as well as within the
15 communities themselves. SEA considered several
16 factors in its calculations.

17 SEA used the average number of
18 trains, average train speed, average train length
19 and the average daily vehicular traffic on the
20 roadways. To determine if crossings were
21 substantially affected, SEA established three
22 threshold criterias of significance for the

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1 analysis.

2 The first criteria was level of
3 service at the crossing. If the level of service
4 at a highway rail at-grade crossing was a Level
5 of Service D or better in the No Action Condition
6 and it dropped to below Level of Service D in the
7 Proposed Action Condition, the crossing was
8 determined to be substantially affected.

9 The second criteria was used -- that
10 was used was from the Federal Highway
11 Administration and that's the total delay in a 24
12 hour period. If this total delay, total
13 vehicular delay, exceeds 40 hours or 2,400
14 minutes when collected over a 24 hour period,
15 then that crossing was determined to be
16 substantially affected.

17 The third and final criteria used was
18 queue length changes. A queue length is where
19 traffic backs up from an at-grade crossing and
20 stacks up towards another intersection. It was
21 decided that if a queue length backed up in the
22 Proposed Action Condition and blocked a major

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1 thoroughfare, which did not get blocked under the
2 No Action Condition, then this also would be
3 considered a substantial affect to that crossing.

4 SEA performed calculations for
5 average delay per delayed vehicle, average delay
6 for all vehicles, total delay for all vehicles,
7 total blocked crossing time and the change in
8 queue lengths. In general, the draft EIS
9 concluded that there would be negative effects
10 from increases in vehicular delays at highway
11 rail at-grade crossings along the EJ&E Rail Line
12 and positive benefits from decreases in vehicular
13 delay at crossings along the CN Rail Lines.

14 In the draft EIS, SEA concluded that
15 there were 16 crossings substantially affected.
16 Two of these crossings were due to level of
17 service criteria and they were located in Joliet,
18 Illinois. The other 14 crossings were spread
19 throughout the study area and they were due to
20 total delay, increased queue length or a
21 combination of both conditions.

22 One of these 16 crossings did not

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1 warrant consideration for mitigation. It was
2 Diamond Lake Road in Mundelein, Illinois. This
3 crossing was considered substantially affected in
4 the draft EIS due to queue length increases, but
5 a dedicated right turn lane allows the blocked
6 movement to still occur. So this, SEA
7 determined, mitigation would not be warranted.

8 Mitigation presented in the draft EIS
9 was a range of options for the public to
10 consider. These options ranged from voluntary
11 mitigation to roadway modifications to grade
12 separations as well as other options. SEA
13 requested input from the public on these
14 strategies.

15 During the draft EIS comment period,
16 many people commented on issues such as average
17 daily traffic volumes that were used in our
18 calculations, the growth rate factors that were
19 used to develop our traffic projections, both
20 comments were indicating that the growth rates
21 were too high and too low.

22 Commenters noted that the threshold

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1 criteria for determining substantial effects was
2 greater than used in past cases. Commenters
3 noted that there was concern about proximity of
4 signalized intersections to at-grade crossings
5 and that there were not enough substantial
6 effects noted in the draft EIS.

7 Comments relative to the mitigation
8 really focused on grade separations. The public
9 felt that there was not enough grade separations
10 proposed and there was not enough mitigation in
11 general for transportation effects.

12 In the final EIS analysis, several
13 factors were updated. There was a change in
14 average daily traffic relative to new information
15 becoming available. SEA researched information
16 on Illinois DOT website, contacted the Illinois
17 and Indiana DOTs, contacted counties and
18 municipalities and received information through
19 the draft EIS comment period on new daily traffic
20 information.

21 SEA verified this information and,
22 where appropriate, used it in the updated

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1 analysis. Train operations also were updated.
2 The applicant modified a connection configuration
3 at Madison, Illinois and they also improved the
4 double tracking at least in Mundelein, Illinois.
5 With these improvements, they increased the train
6 speeds which affected the operating speeds and
7 the delay associated with those -- with several
8 crossings in those areas.

9 One new highway crossing along the
10 EJ&E Rail Line was also added to the analysis,
11 because with updated 2015 traffic volumes, this
12 roadway Keating Drive, 87th Street near Aurora,
13 Illinois now met the 2,500 vehicles per day
14 threshold.

15 Now, I would like to talk briefly
16 about the preliminary conclusions found in the
17 final EIS. SEA's preliminary analysis shows that
18 13 highway rail at-grade crossings are currently
19 considered substantially affected. Starting with
20 the 16 substantially affected crossings in the
21 EIS, two were eliminated due to train operation
22 changes. This was at Allison Road and Cicero

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1 Avenue in Madison, Illinois. Both of these
2 locations, the train speeds increased, the total
3 delay decreased below the substantial affected
4 criteria level.

5 Next, there were three crossings that
6 were eliminated from being potentially
7 substantially affected due to the ADTs being
8 updated. In this case, the ADTs were reduced and
9 this reduced delays and queue lengths and some of
10 the queue length conditions are still
11 substantially affected, but they are also -- they
12 happen in the No Action Condition, which would
13 indicate that there were preexisting conditions.

14 And finally, there were two crossings
15 that were added to the potentially substantial
16 affected list, because the ADTs were updated and
17 increased. This affected the queue lengths at
18 those crossings.

19 In the draft EIS, the EJ&E Rail Line
20 crossing at Illinois 6083 in Mundelein, Illinois
21 showed a total delay above the 40 hour total
22 vehicular delay threshold. However, it was not

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1 identified as a substantially affected crossing,
2 at that time.

3 The applicant modified their double
4 track connection at least and updated ADT
5 information was used. At this crossing, this
6 increase -- the train speed, the train operating
7 speed at several crossings, including the
8 Illinois 6083 crossing. The updated analysis
9 shows that the total delay for the Illinois 6083
10 crossing now falls below the 40 hour total delay
11 threshold is not considered substantially
12 affected.

13 The preliminary analysis in the final
14 EIS indicates that mitigation is proposed for
15 eight crossings. SEA is considering, at this
16 time, two crossings that are considered under the
17 applicant's agreement with Joliet, it's Woodruff
18 Road and Washington Street in Joliet, Illinois,
19 two grade separations proposed at Ogden Avenue
20 and Aurora, Illinois and Lincoln Highway in
21 Lynnwood, Illinois and four crossings that SEA
22 considers potentially warranting traffic advisory

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1 signs indicating do not block intersections to
2 address queue length issues.

3 These warning signs would be posted
4 at Old McHenry Road in Hawthorne Woods, Illinois,
5 Main Street in Lake Zurich, Illinois, Huff Street
6 in Barrington, Illinois and finally Plainfield-
7 Naperville Road in Plainfield, Illinois.

8 Of the 13 crossings -- 13 crossings
9 substantially affected, the remaining 5 are
10 related to total vehicle delay issues and in one
11 case an increased queue lane where a blocked
12 movement can still occur with the existing
13 dedicated right turn lane.

14 Traffic advisory signs were not
15 deemed to be effective mitigation for total delay
16 effects. Also, grade separations were not
17 determined to be appropriately based on specific
18 level of effects at these highway rail at-grade
19 crossings.

20 Thus, in SEA's preliminary analysis,
21 mitigation is not proposed for the 5 remaining
22 crossings, which include Diamond Lake Road in

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1 Mundelein, Illinois, Montgomery Road in Aurora,
2 Illinois, Western Avenue in Park Forest,
3 Illinois, Chicago Road in Chicago Heights,
4 Illinois and Broad Street in Griffith, Indiana.

5 As mentioned before, Allison Road in
6 Mundelein, Illinois and Cicero Avenue in Madison,
7 Illinois are no longer considered substantially
8 affected due to increased train speeds associated
9 with the applicant's improved double track and
10 connection configurations.

11 As an additional recommendation
12 condition, SEA, in a preliminary analysis,
13 believes it is important for the applicant to
14 follow through with the revised double track in
15 Mundelein and the connection at Madison in order
16 to decrease -- increase train operating speeds
17 and decrease the delay.

18 As a final preliminary condition, SEA
19 also recommends that the applicant consult with
20 the Illinois Commerce Commission and the Indiana
21 DOT to identify signalized intersections in close
22 proximity, approximately, 1,000 feet to at-grade

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1 crossings.

2 That concludes the transportation
3 analysis. I would like to move on to the
4 emergency service analysis. Key issues within
5 this category were the impacts of the additional
6 train traffic and the response times of emergency
7 service providers, such as ambulance, fire and
8 police personnel.

9 The commenters' concerns were
10 consistent with these key issues that I just
11 mentioned about the effect of congestion and
12 delays at highway rail at-grade crossings on
13 emergency service response times.

14 This evaluation considered the
15 proximity of each facility to the rail line,
16 locations of all the crossings and the number of
17 highway rail at-grade crossings. SEA located all
18 emergency service providers along the EJ&E and CN
19 Rail Lines and evaluated those that were located
20 within 2 miles of the EJ&E Rail Line or CN Rail
21 Line of a zone where emergency service providers
22 have a higher probability of interacting with

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1 rail operations because of the impact of traffic
2 delays and the limited number of available routes
3 or they were located within 2 miles of at least
4 one public highway rail at-grade crossing and 1
5 mile away from a public grade separated crossing.
6 Again, limiting their access to get to the other
7 side of the tracks.

8 And the final criteria was they were
9 located outside a reasonable distance of a
10 similar facility on the opposite side of the rail
11 line. Interviews were conducted with various
12 service providers about their dispatch procedures
13 emergency service routes, communication
14 technology, the number of emergency vehicles
15 crossing per day and finally the procedures
16 currently followed when an emergency vehicle
17 arrives at a blocked crossing.

18 SEA assumed a response time for many
19 emergency service providers is within the 4 to 6
20 minute limitation time window set forth by the
21 National Fire Protection Association. So an
22 increased delay of 30 seconds or more could be a

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1 serious effect.

2 As additional screening criteria to
3 identify which facilities may experience
4 potentially substantially affected crossings as a
5 result of the proposed action, SEA analyzed the
6 highway rail at-grade crossings and used two
7 criteria: An increase of 30 seconds for the
8 average delay per delayed vehicle or an average
9 or an increase of 30 minutes in total blocked
10 crossing time.

11 This took into consideration the
12 effect an emergency vehicle might have to wait in
13 the average delay and also the frequency that it
14 might occur at a blocked crossing.

15 In SEA's draft EIS analysis, SEA
16 analyzed 104 police stations, 239 fire stations
17 and 41 hospitals for potential impacts. SEA
18 determined that impacts on police response would
19 not be based on the location of facilities,
20 because police are typically deployed throughout
21 the community.

22 11 fire and emergency medical service

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1 providers near the EJ&E Rail Line would
2 experience potentially substantial effects as a
3 result of the proposed action. Of these 11, 9
4 were fire stations and 2 were emergency medical
5 facilities.

6 Mitigation was presented in the draft
7 EIS as a range of options that SEA was
8 considering for effects to emergency services.
9 Similar to the transportation mitigation, SEA
10 requested public input on these options. These
11 options ranged from applicant's voluntary
12 mitigation to enhanced communications in
13 relocating emergency service facilities.

14 During the draft EIS comment period,
15 emergency services was the No. 2 issue that was
16 identified through comments. Many people cited
17 specific personal examples of trains historically
18 blocking crossings and affecting the fire
19 protection and ambulance service. Even more
20 people were -- expressed concern of future
21 potential delays.

22 During the comment period of the

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1 draft EIS, SEA received comments from the public
2 identifying several other emergency service
3 facilities as having the potential to be
4 substantially affected. In response to the
5 comments, SEA screened all of the facilities
6 suggested in the communities and identified 10
7 other emergency service facilities that warranted
8 additional analysis.

9 In SEA's final EIS analysis, SEA
10 conducted additional analysis to determine if
11 these facilities would be potentially
12 substantially affected by their proposed action.
13 In the preliminary findings, SEA determined that
14 3 of these 10 facilities would be potentially
15 substantially affected and they include Advocate
16 Good Shepherd Hospital in Barrington, Illinois,
17 West Chicago Fire Protection District Station 1
18 and West Chicago Fire Protection District Station
19 3, both in West Chicago, Illinois.

20 Now, I would like to talk about the
21 preliminary conclusions of the EIS. The
22 preliminary findings indicate that 14 potentially

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1 substantially affected emergency services would
2 result from the proposed action. This includes
3 the 11 facilities identified in the draft EIS
4 analysis, plus the 3 additional facilities that I
5 just mentioned through the updated FEIS analysis.

6 SEA's preliminary mitigation
7 considerations include one potentially
8 substantially affected emergency service facility
9 that was found to not warrant mitigation. St.
10 James Hospital in Olympia Fields has three grade
11 separations located within a 3 mile radius and
12 thus the access is less affected by increased
13 train operations and does not warrant mitigation.

14 This leaves 13 potentially
15 substantially affected emergency service
16 facilities that were found to warrant mitigation.

17 In determining appropriate mitigation for the
18 affected facilities, SEA considered several
19 factors, including the following: Access to and
20 from the emergency service providers, the
21 existing service areas and emergency response
22 operations, the applicant's voluntary mitigation

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1 and public input.

2 The -- in the applicant's voluntary
3 mitigation, one of the mitigations, voluntary
4 mitigations, the applicant -- includes the
5 applicant notifying emergency service dispatching
6 centers when an at-grade crossing would be
7 blocked by a stopped train and may be unable to
8 move for a significant period of time.

9 This voluntary mitigation also
10 commits the applicants to work with communities
11 towards improving communication by providing
12 items such as dispatching monitors for real time
13 train locations when requested.

14 In the preliminary review of
15 mitigation, as an additional analysis --
16 additional mitigation condition, SEA proposed
17 closed captioned TV cameras to provide real time
18 video monitoring, information on train
19 operations, for 12 of the 13 substantially
20 affected emergency service facilities.

21 The cameras would be positioned at
22 strategic highway rail at-grade crossings, which

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1 would provide train operational information to
2 emergency service dispatchers for each of the
3 affected facilities.

4 The 13th emergency service facility is
5 in the Joliet -- is the Joliet Fire Department
6 Station No. 8 in Joliet, Illinois. Mitigation
7 for this facility is covered by the applicant's
8 agreement with the City of Joliet that no further
9 mitigation is proposed in the preliminary
10 analysis.

11 This concludes my portion of the
12 briefing. Thank you.

13 MR. MORTON: Thank you, John. I
14 would just like to expand on one of the items
15 that John talked about. In the draft EIS, SEA
16 requested that the public comment on a number of
17 things including the appropriate percentage that
18 the applicant might commit to a grade separation
19 project.

20 SEA received a lot of comments, a lot
21 of discussion on that. I think as SEA pointed
22 out in the draft EIS, that grade separations, you

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1 know, primarily benefit the public. They are
2 also a function of preexisting conditions as well
3 as a result of the transaction. For the final
4 EIS undertook an examination of kind of the
5 regional contribution of the transaction to total
6 delay.

7 It would contribute about 15 percent
8 to total delay and SEA is proposing that the
9 applicants would contribute 15 percent to a grade
10 separation which is more than their traditional
11 share of a grade separation.

12 With that, I would like to turn over
13 to talk about the noise analysis and would like
14 to have Tim Casey step forward and discuss our
15 analysis on noise.

16 MR. CASEY: Thanks, John. Good
17 morning, Chairman Nottingham and Vice Chairman
18 Mulvey and Commissioner Buttrey. I'm Tim Casey.
19 I'm the technical lead for the noise and
20 vibration analyses and I want to thank you for
21 the opportunity to brief you on SEA's studies.

22 The basic issues that SEA addressed

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1 are -- is a potential for noise and vibration to
2 increase as a result of trains rolling down the
3 track, a potential for locomotive horn noise
4 increase at-grade crossings and any potential for
5 vibration changes.

6 During the scoping period, we
7 received comments touching upon all those
8 subjects in addition to concerns about potential
9 vibration at Fermi Lab and potential changes to
10 vibration at Fermi Lab.

11 SEA used standard noise and vibration
12 analysis methods that are consistent with the
13 methods that have been used on prior Board
14 decisions and they are also consistent with the
15 methods used to assess freight train noise and
16 vibration nationwide under current practices.

17 Using the Board's thresholds for
18 noise analysis that exist in the regulations, the
19 Environmental Regulations, SEA determined that
20 almost every segment on the EJ&E arc is-- was
21 predicted to experience a traffic increase that
22 required a noise analysis. Almost every segment

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1 on -- was analyzed by SEA.

2 In addition, both the Kirk and East
3 Joliet Rail Yards were projected to experience
4 activity increases that trip the thresholds for
5 noise analyses, therefore, they were also
6 included in the work we did.

7 SEA expressed a desire to evaluate
8 both the effects and also the benefits of the
9 proposed action, so we performed noise analyses
10 on the 5 CN Lines that radiate inside the arc as
11 well.

12 The Board's environmental rules
13 require that the noise analysis express the
14 results using the day/night noise level, that's
15 abbreviated LDN. The day/night noise level, the
16 LDN, is a descriptor that is actually calculated.
17 It is not instantaneously measured. It doesn't
18 represent noise levels that are experienced on a
19 24 hour basis continuously.

20 Rather, the LDN takes average hourly
21 noise levels for 24 continuous hours and it
22 applies a 10 decibel penalty to the nighttime

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1 noise levels. The LDS is a calculated noise
2 parameter that has a penalty assessed to
3 nighttime noise periods. And in that matter, it
4 is useful for evaluating community response to
5 noise, because people generally don't like noise
6 at night, whereas they have a higher tolerance
7 for it during the daytime.

8 It is important that you understand
9 that the LDN does not represent continuous noise
10 levels for an entire 24 hour duration nor does it
11 represent instantaneous noise levels during the
12 train pass-by.

13 From a practical perspective, it is
14 also important to recognize that train noise
15 levels rise and fall as a train pass-by event
16 occurs. And after the pass-by ends and the train
17 is gone, noise levels drop down to existing kind
18 of background noise levels that presumably are
19 acceptable in the project area. And really all
20 the proposed action has the potential to do is
21 to increase the frequency of train pass-by
22 events.

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1 Let's see, I'm going to skip over
2 that concept. SEA measured noise levels and
3 vibration levels throughout the project area.
4 SEA performed 24 hour noise measurements at 41
5 locations. The sound level meters continuously
6 process data, stored it every hour for continuous
7 24 hours. That information allowed SEA to
8 determine the LDN, the day/night noise level at
9 these 41 locations spread roughly equally
10 throughout the project area.

11 SEA also measured noise from train
12 pass-by events. Those measurements were --
13 served a different purpose. That allowed SEA to
14 identify a noise emissions term for a locomotive
15 and a rail car and for locomotives and rail cars
16 operated by CN, operated by the EJ&E and operated
17 by any other freight carrier active in the
18 overall project area.

19 These pass-by measurements, that data
20 was used in the model, the mathematical model
21 that we constructed to assess future noise
22 levels. So in that way, we kind of custom

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1 tailored our model to the project area by using
2 these project specific noise emission terms that
3 SEA measured.

4 SEA also measured vibration
5 continuously for 24 hours at a number of
6 locations in the project area. And similar to
7 the work that we did in the noise analysis, SEA
8 measured vibration specifically from train pass-
9 bys and also created vibration events and
10 measured the propagation of that controlled
11 vibration event through the soil.

12 And the combination of those
13 propagation test measurement data, the -- and the
14 pass-by data, vibration data, it allowed SEA to
15 assess future vibration levels associated with
16 the proposed action. SEA also performed a very
17 detailed ground vibration analysis at Fermi Lab.

18 The noise model that SEA constructed
19 used equations that were published by FTA and FRA
20 as recently as 2005 and 2006. Additionally, SEA
21 implemented the FRA locomotive horn noise model
22 to assess horn noise at public grade crossings.

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1 We performed a remarkably detailed analysis of
2 locomotive horn noise at every public grade
3 crossing. The results of that led to the
4 creation of site specific unique locomotive horn
5 noise contours at every over 100 public grade
6 crossing in the project area. And that is a
7 level detailed and I don't think many people
8 expect it.

9 Similarly, SEA assessed vibration,
10 the vibration assessment used in current FTA
11 methods and at Fermi Lab in addition to the FTA
12 methods, we used site specific geologic data that
13 was provided by Fermi Lab and also a finite
14 element analysis model that had over 1,000,000
15 element points in it. It was a very rigorous and
16 detailed analysis.

17 Results of all those analyses were
18 plotted using GIS technologies and digital area
19 photos. And communicated to the team and also in
20 figures in the appendix of the draft EIS as noise
21 and vibration contours. And you can see where
22 noise and vibration levels were projected to

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1 reach threshold levels by identifying -- by
2 visual inspection of those contours.

3 So the draft EIS includes SEA's noise
4 and vibration results. Based on train pass-by
5 measurements, SEA determined that CN trains
6 actually are quieter than other trains that
7 operate in the project area. However, the
8 projected increase in train traffic results in an
9 overall increase in average hourly levels and
10 therefore the LDN, the day/night noise level is
11 projected to increase also.

12 Under existing conditions, SEA's
13 analysis identified roughly 4,800 noise effects,
14 2,800 of them were on the existing CN Lines and
15 about 2,000 of them are on the EJ&E, that's under
16 existing conditions. Under the proposed action,
17 SEA's analysis determined that, approximately,
18 3,000 noise effects are predicted to occur and
19 those are largely on the EJ&E and areas adjacent
20 to the EJ&E.

21 Under the proposed action, SEA also
22 determined that there is a potential net benefit,

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1 a net reduction of about 2,700 noise effects on
2 the CN Lines. And in the draft EIS, SEA provided
3 a simple comparison of the projected effects
4 under the proposed action and the projected
5 benefits and that results of that simple
6 comparison showed a net increase of about 300
7 noise effects under the proposed action.

8 In this simple comparison, we
9 received some comments during the comment
10 response period. It is important to note that
11 this simple comparison is a convenient way to
12 assess both the benefits and the effects that
13 neither diminishes the merit nor the consequences
14 of a proposed action. And it also provides an
15 opportunity to look at things on both a local and
16 a regional scale, which fulfills the full
17 disclosure requirements of NEPA.

18 SEA also identified, approximately,
19 1,600 noise effects inside a noise contour that,
20 for lack of a better term, will call up the noise
21 mitigation contour. It was the 70 DBA LDN
22 contour and we will talk a little bit about that

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1 in just a few minutes here.

2 SEA's vibration analysis determined
3 that vibration -- ground borne vibration levels
4 associated with CN trains, EJ&E trains and other
5 trains that operate in the greater project area,
6 do not differ materially. So that the analysis
7 results in the draft EIS suggested that we don't
8 expect vibration levels to change if more CN
9 trains operate on the EJ&E, because vibration
10 levels right now are comparable.

11 Vibration levels from CN trains, EJ&E
12 trains and other trains that operate in the
13 project area are comparable. So under the
14 proposed action, we don't expect there to be a
15 net increase in vibration associated with train
16 pass-bys.

17 And that's kind of an important
18 concept to embrace. Unlike noise which for the
19 purposes of our work here on the project, which
20 is assessed on a cumulative basis, vibration is
21 only assessed on a per pass-by basis. It is not
22 a cumulative assessment.

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1 In response to the work that we
2 published in the draft EIS, we received a number
3 of comments that addressed concerns over the
4 assessment of wheel squeal and whether or not it
5 was adequately addressed. There was some
6 feedback, some comments that suggested that the
7 LDN descriptor itself is not fully understood,
8 which is why I took a minute to try to explain
9 what the LDN is.

10 There was some concerns that the--
11 some comments that are model and methodology are
12 outdated, you know, recognizing that they are
13 based on 2005 and 2006 FRA and FTA methodologies,
14 clearly they are not outdated. And that the
15 mitigation threshold is too high. The mitigation
16 threshold is based on prior Board decisions. And
17 the Board is the only agency that has
18 jurisdiction for the proposed action.

19 We disagreed with the comments --
20 with comments that suggest that that threshold is
21 too high.

22 But in response to the comments on

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1 the draft EIS, SEA refined the noise and
2 vibration analyses. SEA performed a very
3 conservative assessment of wheel squeal. Wheel
4 squeal is somewhat of a moving target in that it
5 has potential to occur on sections of curved
6 track where you may not have expected it to occur
7 and it may not occur in areas where you probably
8 would have expected it to occur.

9 To address that well of uncertainty,
10 SEA chose a very conservative criteria for when
11 to assume wheel squeal was going to occur. Very
12 conservative criteria for assessing the effects
13 of wheel squeal. We had a conservative over-
14 assessment of the number of effects due to wheel
15 squeal. But in this manner, we ensure that we
16 didn't under-predict it and there is no potential
17 that we under-predicted it in the project area.

18 Although it is kind of a moving
19 target, it can be controlled using very simple
20 track lubrication techniques, which balance the
21 over-conservative assessment, because it is very
22 easily controlled.

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1 SEA also modified the noise and
2 vibration analysis to more complete assess noise
3 and vibration effects at crossover gaps in the
4 track where the wheel flange has to cross over a
5 track to allow the train to move on in a
6 different direction. At that gap, when the wheel
7 rolls over the gap and contacts the track on the
8 other side of the gap, it creates additional
9 noise and additional vibration.

10 We refined our assessment of those
11 effects for the draft environmental -- for the
12 draft EIS. We also enhanced the noise and
13 vibration analysis that was performed for the
14 connections to more thoroughly assess noise and
15 vibration at those locations. We revised our
16 assessment of noise from idling trains and SEA
17 also provided an assessment of cost-effectiveness
18 of potential noise mitigation measures and that
19 was based on criteria used by the Illinois and
20 Indiana DOT to assess and abate highway noise.

21 Now, the preliminary analysis
22 results, preliminary conclusions in the current

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1 version, the working version of the final EIS,
2 SEA's noise analysis identifies a total of 5,100
3 effects under existing conditions and that's a
4 combination of effects on the CN and effects on
5 the EJ&E under existing conditions.

6 Under the proposed action SEA's noise
7 analysis results indicate, approximately, 5,800
8 noise effects. So we are seeing an increase of,
9 approximately, 700. That is a shift largely from
10 the 5 CN Lines to the EJ&E corridor. It is also
11 dominated by a very conservative wheel squeal
12 analysis. Again, that's a phenomenon that's very
13 easily controlled.

14 The increase is also dominated or I
15 should say a large portion of the increase in
16 noise effects is also due to the assessment of
17 noise at crossovers and also from idling
18 locomotives. The idling locomotive analysis is
19 also very conservative in that we, essentially,
20 assume that all the locomotives that could idle
21 in the entire duration, that they could be idling
22 at any given day, could occur in any where that

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1 there is space for them to be.

2 Where in reality, they won't be
3 everywhere at the same time throughout the day.
4 They will just idle in one location and then move
5 on. So we have conservatively over-predicted the
6 noise effects of idling locomotives as well.

7 Similarly, SEA's estimate of the
8 number of effects inside that mitigation contour
9 has increased up to about 900.

10 So in summary, the increase in the
11 noise analysis results are largely attributable
12 to these conservative over-assessments of noise
13 from wheel squeal and idling locomotives and also
14 from our revised assessment crossovers. As a
15 result of that refinement in the analysis of
16 crossovers, the vibration results actually show a
17 decrease in the number of vibration effects.

18 This is not intuitive, it is
19 explained, I think, clearly in the preliminary
20 working version of the draft of the final EIS.
21 I'll explain it to you very briefly. SEA did not
22 have very accurate locational information for

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1 crossover at the time the analyses were performed
2 in support of the draft EIS.

3 To reflect the uncertainty in the
4 actual location of those, SEA used a rectangular-
5 shaped contour. Now, the crossover themselves
6 were the -- the vibration from the crossover
7 themselves were modeled as point sources, where
8 the energy radiates equally in all directions, so
9 that would have been a circular contour.

10 Because of the uncertainty in the
11 actual location, we drew a rectangle around the
12 area that we knew contours were in or that we
13 thought contours were proposed to be in. For the
14 final EIS, we took great pains to refine and
15 locate the precise location, identify the precise
16 location of existing and proposed crossovers.
17 That allowed us to remove the rectangular contour
18 and present in our analysis only the circular
19 point source contours. Thus, we cover a much
20 smaller area with the vibration contour at
21 crossover and correspondingly the number of
22 effects decrease.

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1 Now, additional preliminary
2 conclusions also identified opportunities to
3 reduce noise. In fact, the applicant proposed
4 voluntary noise mitigation measures to work with
5 affected communities and reduce train noise
6 levels to as low as an LDN of 70 DBA. SEA also
7 recommended or we have preliminary
8 recommendations to implement track lubrication
9 measures in areas where communities identify
10 wheel squeal has been occurring and we are also
11 kind of -- a preliminary recommendation also
12 addresses working together with Fermi Lab and
13 notifying Fermi Lab when operational changes have
14 potential to occur and effect ground borne
15 vibration levels.

16 And that concludes my briefing.

17 MR. MORTON: Thank you, Tim. I would
18 briefly like to talk about passenger and commuter
19 rail activities. Mr. Thorson talked some about
20 safety-related issues associated with passenger
21 rail. I would like to talk about three other
22 issues that came up during the scoping process

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1 that were addressed in the draft EIS.

2 And, you know, we were addressing in
3 the final analysis. And that is Amtrak and
4 Amtrak's use of the St. Charles Airline. The
5 Metra and Metra's proposed new Star Line Service
6 and the Northern Indiana Commuter Transportation
7 District or NICTD's future West Lake corridor --
8 the Amtrak issue came up first during scoping.

9 CN's proposed operating plan would
10 take all its traffic off of the St. Charles
11 Airline leaving Amtrak as the sole occupant. And
12 Amtrak expressed concern that because they would
13 be the sole occupant, they would be expected to
14 shoulder the maintenance and the operations cost
15 or that, at some point in time, CN would come to
16 the Board seeking to abandon the St. Charles
17 Airline.

18 Prior to the publication of the draft
19 EIS, CN committee to Amtrak to allow to remain on
20 the St. Charles Airline and capped its costs at
21 the current day costs just subject to inflation.
22 That was discussed in the draft EIS. I think the

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1 final EIS preliminarily, you know, concludes that
2 that condition should address Amtrak's concerns
3 with the St. Charles Airline.

4 The Star Line is a proposal by the --
5 by Metra to introduce a new commuter rail
6 service. The service would start at O'Hare
7 Airport and run, you know, the I-90 corridor out
8 to about Hoffman's Estate at which point it would
9 turn to the south and travel on the EJ&E corridor
10 down to about the Joliet area.

11 The -- in the draft EIS, you know,
12 for the draft EIS CN took a lot of discussions
13 with Metra, reviewed the current concepts for the
14 Star Line, evaluated SEA's -- CN's operating plan
15 and concluded that the proposed transaction would
16 not preclude the implementation of the Star Line
17 on that corridor.

18 We received a lot of comments on the
19 draft EIS and specifically on that conclusion
20 that indicated that they disagreed with the
21 conclusion, that they felt that the proposed
22 transaction would kill the Star Line or make it -

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1 - add cost to it such that it would no longer be
2 reasonable or would make the Star Line feasible.

3 For the final EIS, we have gone back
4 and looked at all the data, the preliminary
5 information that Metra has developed for the Star
6 Line. They are currently in their preliminary
7 engineering phase. They don't really have a
8 defined concept, so we identified four different
9 scenarios under which you could implement a Star
10 Line service on the EJ&E Rail Line.

11 We examined all the proposed
12 infrastructure improvements that would be
13 required to implement the Star Line on the EJ&E
14 and all the things that Metra has indicated that
15 they were looking at in terms of infrastructure
16 upgrades on the EJ&E. We evaluated CN's
17 operating plan and all of CN's proposed
18 improvement to that section of track between
19 Hoffman Estates and Joliet that they are
20 proposing.

21 We ran the RTC model that Mr. Burgel
22 talked about earlier looking at the various

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1 operations with various train levels on it. And
2 our preliminary conclusions are that, you know,
3 the Star Line certainly doesn't preclude the
4 implementation of the Star Line. In some cases
5 it could add as much as 2 to 8 percent to the
6 cost of that section of the Star Line for the
7 additional infrastructure that would be needed to
8 run both the passenger rail and the freight
9 traffic on that.

10 The third issue is the Northern
11 Indiana Commuter Transportation District's
12 proposed West Lake corridor. For the draft EIS,
13 SEA looked at the planning that had gone on to
14 the West Lake corridor and what NICTD, you know,
15 efforts were today and concluded that that
16 potential new start was far enough out that SEA
17 didn't need to consider it in the draft EIS.

18 We received a lot of comments from
19 the public and from various agencies on that
20 conclusion for the final EIS. We have gone back
21 and reassessed that, have looked at all of
22 NICTD's plans, have looked at the potential

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1 effect that the transaction might have on NICTD's
2 West Lake corridor. And the preliminary
3 conclusions is that there would be no adverse
4 effect and there could potentially be a
5 beneficial effect by taking some traffic off CN
6 Rail Line segments that NICTD would plan to use.

7 And with that, I would like to invite
8 Kevin Keller up to talk a little bit about
9 hazardous material transportation analysis and
10 our water resource analysis.

11 MR. KELLER: Thank you, John. Mr.
12 Chairman, Mr. Vice Chairman, Mr. Commissioner,
13 I'm the technical lead for the hazardous
14 materials transportation, hazardous waste sites
15 areas of the EIS. And I would like to brief you
16 on what we have done in our preliminary
17 conclusions that we have reached so far.

18 The EIS discusses the potential
19 environmental impacts of the proposed transaction
20 on public health and safety with respect to the
21 transportation hazardous materials, including
22 changes in the types of hazardous materials and

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1 quantities transported or rerouted, the nature of
2 the hazardous materials that are currently being
3 transported or are proposed to be transported,
4 the applicant's safety practices and protocols
5 based on a review of our Safety Integration Plan,
6 which by the way just recently did get FRA
7 approval, the applicant's U.S. safety data on
8 derailments, accidents and hazardous material
9 spills, the applicant's emergency response plans
10 and resources to address accidental spills and a
11 probability of increased spills and releases for
12 the proposed action given railroad safety
13 statistics and applicable FRA requirements.

14 In order to evaluate the hazardous
15 materials transportation changes due to the
16 proposed action, SEA performed the following
17 assessments: We verified the historical data
18 provided by CN and EJ&E on hazardous material
19 shipments. In addition, we analyzed potential
20 safety impacts of the proposed rail operations
21 related to hazmat transport within the study
22 area.

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1 We evaluated all rail lines
2 potentially controlled by the EJ&E and CN in the
3 area to identify those rail line segments and
4 rail yards that would experience an increase in
5 the volume of hazardous materials transported as
6 a result of the proposed action.

7 We evaluated the safety effects of
8 transporting hazardous waste and materials by
9 rail along the proposed routes associated with
10 the proposed action using the applicant's and
11 industry's data sources. We evaluated historical
12 releases of hazardous materials by CN and EJ&E,
13 system-wide and locally, and other rail shippers
14 in the study area.

15 We also reviewed the FRA's safety
16 database and the pipeline of hazardous materials
17 and substances agencies, hazardous materials
18 incident reporting system for entries involving
19 CN and EJ&E within the study area for the most
20 recent 5 year period. We made a preliminary
21 determination of routes that would be designated
22 as key routes as defined by the Association of

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1 American Railroads.

2 We assessed local communities
3 emergency response capabilities to address the
4 hazmat spill or release, including an evaluation
5 of local emergency response plans and local
6 emergency planning communities. We calculated
7 such parameters of annual hazardous materials car
8 miles, both total and per rail segments, system-
9 wide averages for derailments, release rates per
10 mile and other statistics.

11 And finally, we calculated the
12 probability of a release of hazardous materials
13 per rail segments, including the frequency of
14 release and the consequence of release.

15 In the draft EIS, we presented the
16 following findings. Hazardous material releases
17 had historically been and should continue to be
18 remote due to existing regulatory requirements
19 and best management practices that prevent
20 circumstances that might otherwise result in a
21 release and regulations and procedures that
22 typically lead to prompt responses by the

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1 appropriate authorities.

2 There would be a potential increase
3 in the possibility of a release due to the
4 increased train miles resulting from the longer
5 route and more car loads of hazardous materials
6 transported on the EJ&E Rail Line.

7 However, the possibility of a
8 hazardous materials release would remain remote
9 due to regulatory and other safeguards already in
10 place. There would be a substantial reduction in
11 the risk of a release on the CN Rail Lines as a
12 result of the proposed action due to the downward
13 redistribution of rail traffic.

14 In addition, the CN Rail Lines were
15 located in more densely populated areas than the
16 areas along the EJ&E Rail Lines, thus presenting
17 a positive impact for overall exposure to
18 hazardous materials.

19 Other considerations to take into
20 account include the no action alternative, in
21 which hazardous materials take more time to move
22 through Chicago on CN Rail Lines than they would

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1 under the proposed action, thus continuing to
2 potentially expose people in the vicinity of the
3 CN Rail Lines to risk for a longer period of
4 time.

5 And also, the same hazardous material
6 classes would be proposed to be carried on EJ&E
7 Line are the same as those currently being
8 transported on the EJ&E Rail Line. Local
9 emergency responders are already trained and
10 equipped to respond to such incidents with these
11 materials.

12 The following request and suggestions
13 were received after publication of the draft EIS.
14 Commenters requested that EIS address the
15 potential environmental impacts to the proposed
16 acquisition in further detail, including a
17 discussion of possible accidental release, spill
18 management capabilities and the presence of
19 contaminated sites along the EJ&E Rail Line.

20 Commenters also suggested to include
21 CN's safety record in Canada as well as the
22 United States.

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1 Commenters suggested assessing
2 alternative routes for hazardous material
3 shipments.

4 In order to respond to these comments
5 in the final EIS, we will provide a table listing
6 hazardous commodities proposed to be transported
7 as a result of the proposed transaction based on
8 AAR classifications. CN did provide us, in the
9 application, a very detailed analysis of the
10 hazardous materials that they will be
11 transporting on the proposed action.

12 However, that information is deemed
13 to be secure information, cannot be disclosed in
14 its present form. What we did to mitigate that
15 in the final EIS is we will prepare a summary
16 table that breaks down those commodities per AAR
17 Hazard Classification groupings. So that data
18 will be summarized and presented.

19 We will also provide a further
20 description of potential and response procedure
21 releases of hazardous materials in different
22 environments and in different situations in the

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1 final EIS. We will provide a description of CN
2 safety record in Canada. You heard Mr. Thorson
3 earlier talk a little bit about it. We will also
4 include in the final EIS some discussion on the
5 hazardous materials records in Canada for CN.

6 We will also provide a description of
7 the proposed final FRA and Department of Homeland
8 Security rule makings on transportation security
9 of hazardous materials. As you may know, those
10 newly released regulations will require all rail
11 carriers of hazardous materials to perform an
12 analysis of alternative routes of which a
13 hazardous material could be transported and to do
14 a comparison of those routes and to select the
15 most appropriate route for transportation.

16 The preliminary conclusion of the
17 hazmat transport evaluation is that although
18 train accidents resulting in the release of
19 hazardous materials are remote, increases in
20 freight rail traffic along the EJ&E Rail Line
21 would have a corresponding increase in the risk
22 of hazardous material spills.

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1 The freight currently being
2 transported by EJ&E, as I told you earlier,
3 includes hazardous materials and the same classes
4 of hazardous materials will be transported if the
5 proposed action is approved. Therefore, SEA has
6 reached a preliminary conclusion that proposed
7 action does not create any new threats.

8 Adverse impacts on the proposed
9 action take the form of increased probabilities
10 for spills and releases, although those
11 probabilities are still remote. As explained in
12 the draft EIS, if a spill of a hazardous material
13 were to occur, CN is required by federal and
14 state regulations to report and respond
15 immediately to that incident.

16 SEA has also determined that CN has
17 appropriately trained and equipped the responders
18 to provide effective and timely response in the
19 event of a release. As mitigation for the
20 possibility of a spill or release of hazardous
21 materials, the applicant has proposed 13
22 voluntary mitigation measures, including the

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1 training of local emergency providers and
2 committing to integrate the EJ&E system into
3 their hazardous materials management and spill
4 response policies and procedures.

5 SEA has recommended an additional two
6 mitigation measures to ensure that local
7 communities are receiving the appropriate support
8 and communications from the applicant.

9 That concludes my briefing on the
10 hazardous materials transport area. I would also
11 like to brief you on the water resources area, if
12 I may.

13 Railroad operations and construction
14 activities can have adverse impacts to water
15 resources and water quality. For the water
16 resources area, we evaluated the potential
17 effects of the proposed transaction on surface
18 and ground water quality as well as on flood
19 plains, local drainage systems and wetlands.

20 For this evaluation, we identified
21 and assessed existing surface and ground water
22 resources in the vicinity of the EJ&E Rail Line,

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1 particularly in areas where the applicant has
2 proposed construction activity. We assessed
3 whether potential impacts from the construction
4 of proposed rail connections, sighting extensions
5 and installation of double tracks would be
6 consistent with applicable federal and state
7 water quality standards.

8 We assessed whether permits may be
9 required under the Clean Water Act for any
10 construction of proposed rail connections,
11 sighting extensions and installation of double
12 track and whether any such projects have the
13 potential to encroach upon any designated
14 wetlands or 100 year flood plains.

15 We also assessed the hydrogeology in
16 the study area and the possible presence of any
17 designated sensitive ground water areas. In
18 performing this evaluation, we reviewed
19 information from the Illinois EPA, from the
20 Illinois Department of Natural Resources,
21 Illinois State Geological Survey, the Illinois
22 State Water Survey, the Indiana Department of

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1 Natural Resources, the U.S. Army Corps of
2 Engineers and also the U.S. EPA.

3 Based on our assessments in the draft
4 EIS, we reached the following preliminary
5 conclusions: Potential effects on surface water
6 identified include a short-term effect due to
7 sediment, erosion from a construction phase of
8 the new connections and double tracks.

9 It also may have a long-term screen
10 bed degradation downstream of culvert extensions
11 based on soil surveys and culvert velocities.
12 Under the proposed action, ground water and
13 surface water quality could be impacted by
14 construction activities. However, implementation
15 of erosion and saltation control measures neither
16 required U.S. Army Corps of Engineers and MPDES
17 permits would limit impact to water bodies.

18 Potential impacts to water body
19 elevations would also be reduced in design of
20 bridges and culverts. Changes in rail operation
21 would not alter existing culverts and would not
22 affect flood plains or streams.

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1 The proposed construction of rail
2 connections and double track, however, could
3 affect water surface elevations and flood plains
4 and streams unless appropriate measures are taken
5 during design to avoid or minimize potential
6 effects.

7 CN has proposed mitigation which will
8 minimize these potential effects to flood plains.
9 Operation of maintenance activities to the
10 proposed action such as mowing and weed spraying
11 also have the potential to affect surface water
12 quality, although these activities are currently
13 being performed by the EJ&E. CN's proposed
14 right-of-way Maintenance for Vegetation Control
15 Program would not involve changes to those
16 current practices. So the situation should
17 remain the same.

18 Near surface groundwater flow
19 direction in the vicinity of the EJ&E Rail Line
20 were estimated by interpreting USGS digital
21 topographic data of the elevations of nearby
22 surface water features. We also utilized

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1 information from the Illinois EPA and from the
2 U.S. EPA, where applicable.

3 The groundwater flow direction was
4 estimated at approximate distances of 1.5 to 2
5 miles from the vicinity of well head protection
6 areas, preserves, documented locations of fins
7 and county -- other county natural resource
8 areas.

9 Designation of a well head protection
10 area is required by the Illinois Groundwater
11 Protection Act of 1987. The well head protection
12 area, basically, provides a setback that will
13 protect any public water supply sources coming
14 from groundwater in that area.

15 In the course of the public meetings
16 on the draft EIS, several additional comments
17 were received. Some commenters wanted more
18 information on wetlands mitigation and what the
19 applicant would do in case wetlands were
20 encroached. Some commenters were concerned about
21 potential impact from releases of hazardous
22 materials on water resources, such as surface

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1 water streams and groundwater.

2 Based on our review and analysis of
3 the data and taking the public comments into
4 consideration, we have reached the following
5 preliminary conclusions: Although the change in
6 rail operations would not affect wetlands, the
7 construction of the proposed rail connections and
8 double track could result in the loss of some
9 wetlands.

10 Unless existing drainage patterns are
11 maintained, degradation of additional wetlands by
12 the loss of hydrology could also result when
13 proposed connections are constructed. The
14 largest wetland impacts would occur at the Munger
15 connection and alternate configurations of
16 proposed Madison connection.

17 The construction activities, the
18 double track segments could also affect wetlands.
19 SEA has proposed mitigation to address these
20 wetland impacts. The draft EIS provided the
21 results of an examination of susceptibility of
22 local groundwater supplies to a hazardous

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1 material spill.

2 The study considered the proximity of
3 drinking water wells to the right-of-way,
4 direction of groundwater flow and the potential
5 for contamination as determined by the thickness,
6 permeability and other properties of the geologic
7 materials.

8 Additional analysis have identified
9 one location in Plainfield, Illinois where an
10 existing public water supply well could be
11 affected by a hazardous material spill and also
12 identified several rail segments with greater
13 potential for a spill that could impact private
14 wells or natural areas.

15 SEA undertook additional
16 investigation since the draft EIS and identified
17 areas primarily on Des Plains River in Will, Cook
18 and DuPage Counties in Illinois where the
19 geologic materials overlying the bedrock are
20 thinner and are more permeable than along most of
21 the other right-of-ways.

22 The shallow bedrock offered in this

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1 area is more susceptible, therefore, to
2 contamination from the surface. It must be
3 noted, however, that the EJ&E Railroad currently
4 runs through these susceptible areas, so that
5 wells and water supplies are already at risk from
6 a potential spill.

7 The freight currently being hauled
8 includes hazardous materials, as I have presented
9 earlier, representing the same classes of
10 hazardous materials that would be transported if
11 the proposed action is approved. Therefore,
12 effects from the proposed action on groundwater
13 would take the form of increased probability for
14 a spill, which increases the likelihood that a
15 given well or resource may potentially be
16 impacted, but there is no difference in the types
17 of hazardous commodities that would have to be
18 responded to and remediated.

19 Statistics on the current proposed
20 action release intervals will be also included in
21 the EIS. As explained in the draft, if a spill
22 were to occur, the applicant would be required by

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1 federal and state laws to mitigate the impacts by
2 remediating the groundwater resource immediately
3 and/or providing an alternate supply of water to
4 the property owner.

5 The applicant's have proposed 12
6 voluntary mitigation measures in the water
7 resources area, including compensation for what
8 land impacts in accordance with U.S. Army Corps
9 of Engineer Regulations and one regarding best
10 management practices for management and
11 preservation of aquatic biota.

12 The applicant's remaining voluntary
13 mitigation measures address a variety of
14 potential storm water, groundwater and surface
15 water protection issues. In addition to these
16 voluntary mitigation measures, SEA is
17 recommending three additional mitigation measures
18 to ensure that the applicant complies with all
19 applicable federal, state and local water
20 regulations.

21 And that concludes my briefing.

22 MR. MORTON: Thank you, Kevin. The

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1 next to the last resource area that we would like
2 to discuss with you is natural resources and
3 specifically some endangered species issues. And
4 Fiona Goodson from the team will brief you on
5 that.

6 MS. GOODSON: Mr. Chairman, Mr. Vice
7 Chairman, Mr. Commissioner, my name is Fiona
8 Goodson. I was the biological resources
9 technical lead.

10 Effects due to construction and
11 changes in operation can have an impact on
12 natural communities and the species that live in
13 these communities. In order to evaluate the
14 effects of the proposed action and transaction-
15 related constructions on natural resources, we
16 defined the study area as a 1 mile corridor
17 centered on rail lines where there was an
18 increase in train numbers of at least one train
19 per day.

20 As a result, we were limited to areas
21 adjacent to the EJ&E Rail Line. We used data
22 from published reports, feasibility studies,

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1 regulatory agency documents, guidance manuals,
2 discussions with resource personnel, aerial
3 photography, topographic maps, analysis of GIS
4 databases and field visits.

5 Field visits were conducted in
6 February and April for the draft EIS and
7 subsequently in October and November in
8 preparation for the final EIS. Since publication
9 of the draft EIS, SEA met with natural resource
10 stakeholders and reviewed their comments and
11 conducted additional analysis to better detail
12 preliminary conclusions in the final EIS.

13 A biological report is being prepared
14 to submit to the U.S. Fish and Wildlife Service
15 for their review and concurrence. The biological
16 report evaluates five species: The endangered
17 Indiana Bat, Hine's Emerald Dragonfly, Karner
18 Blue Butterfly and the Leafy Prairie Clover and
19 the threatened Eastern Prairie Fringed Orchid.

20 These species were evaluated because
21 preliminary information indicated that they occur
22 or may occur in or near the EJ&E Railway. An

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1 additional four plant species were eliminated
2 from further consideration, because they do not
3 presently occur in proximity to the EJ&E or
4 because they occur only in areas where no
5 construction or operational impacts were
6 reasonable anticipated.

7 For the previously mentioned species,
8 critical habitat exists for the Hine's Emerald
9 Dragonfly and the Indiana Bat. After a detailed
10 review of the best scientific and commercial
11 information available and habitat level surveys,
12 SEA preliminarily concludes the following: The
13 proposed action and transaction related
14 construction may affect, but is not likely to
15 adversely affect, the Indiana Bat, the Karner
16 Blue Butterfly, the Eastern Prairie Fringed
17 Orchid, the Leafy Prairie Clover and the Hine's
18 Emerald Dragonfly.

19 Additional analysis based on comments
20 from the Department of Interior letter was
21 conducted for the Hine's Emerald Dragonfly. And
22 therefore, I will provide you with details of

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1 what was found. The U.S. Fish and Wildlife
2 Service disagreed with the may affect, not likely
3 to adversely affect determination in the draft
4 EIS and determined the proposed transaction could
5 adversely affect the dragonfly in one of four
6 areas.

7 The first area along the Paul Ales
8 Branch, there is potential for adult mortality
9 and effects to larval habitat. Since there are
10 no increases in operations or construction
11 activity proposed on the Paul Ales Branch, there
12 is no effect as a result of the proposed action.

13 Additionally, there are speed
14 restrictions in this area under a special
15 condition of a 1996 core permit and will remain a
16 requirement if the transaction is approved.

17 The second area at the Joliet
18 connection, there is no breeding, forging or
19 larval habitat occurring in the area. The area
20 where the connection is proposed is vegetated by
21 dense buckthorn and other invasive shrubs and
22 saplings.

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1 No Hine's Emerald Dragonfly
2 observations have been made in this type of
3 vegetation community in 14 years of monitoring it
4 and other Illinois sites. There is a stream
5 located on the site, but it is larger than normal
6 Hine's Emerald Dragonfly sites. Fish, many of
7 which are insectivores, were observed during an
8 October site visit providing additional support
9 to the non-habitat determination. Construction
10 of the Joliet connection would not affect the
11 Hine's Emerald Dragonfly.

12 The third area increased traffic
13 along segment 9B. Concern was raised by the Fish
14 and Wildlife Service about increased traffic on
15 segment 9B where the EJ&E crosses the Des Plains
16 River. Traffic is projected to increase from
17 18.5 to 42.3 trains per day. However, train
18 speeds would not exceed 10 mph in this area,
19 because of track and bridge constraints.

20 Observations on the nearby Paul Ales
21 Branch have indicated that Hine's Emerald
22 Dragonflies have no difficulty evading slow

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1 moving trains.

2 The final area of concern was along
3 the Joliet subdivision where the draft EIS
4 indicated a proposed increase from 1.8 to 2
5 trains per day. Discussions with the applicant
6 indicate that contrary to information included in
7 the draft EIS, there will be no increase in train
8 traffic on CN's Joliet subdivision.

9 Operations are currently 2 trains per
10 day, plus 10 Amtrak trains and 4.3 Metra trains
11 all using the same lines and will remain
12 identical if the transaction is approved.

13 CN has conducted preliminary studies
14 on the interactions of dragonflies and the
15 relatively fast moving trains on the Joliet
16 subdivision and plans to continue these studies
17 in coordination with U.S. Fish and Wildlife
18 Service. Because there is no proposed change in
19 operations at this location, there will be new --
20 no new adverse impacts to adults or larvae
21 dragonfly.

22 In terms of indirect effects, on

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1 October 23, 2008, Midwest Generation informed the
2 U.S. Fish and Wildlife Service that the proposed
3 acquisition of the EJ&E would result in loss of
4 coal train storage areas serving their Will
5 County Generation Facility. And would have
6 required Midwest to increase the number of rail
7 sightings, lines within the River South area, a
8 highly environmentally sensitive area along the
9 Paul Ales Branch. This would result in adverse
10 impacts to the Hine's Emerald Dragonfly.

11 After a detailed review of Midwest's
12 proposal and discussions with Midwest Generation,
13 U.S Fish and Wildlife Service, SEA and CN, it has
14 been determined that there is no cause and effect
15 relationship between the CN acquisition of the
16 EJ&E and construction of additional rail
17 sightings at River South.

18 Midwest has indicated that the
19 construction of the additional rail sightings is
20 not its preferred alternative to solve its coal
21 storage capacity issues. CN has committed to a
22 voluntary mitigation measure which would result

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1 in discussions with Midwest Generation to
2 identify reasonable alternative locations for
3 coal train storage.

4 Since publication of the draft EIS,
5 the applicant has committed to seven additional
6 voluntary mitigation measures, including, as
7 previously mentioned: Cooperating with Midwest
8 Generation to identify locations for staging of
9 coal trains.

10 Two, participating in the development
11 of a habitat conservation plan for the Hine's
12 Emerald Dragonfly.

13 Working with relevant natural
14 resource stakeholder groups to support creation
15 or enhancement of migratory bird habitat away
16 from the rail line to offset proximity impacts.

17 Construction and maintaining turtle
18 crossings where habitat occurs on both sides of
19 the rail line.

20 Investigating participation in the
21 Safe Harbor Agreement for the Karner Blue
22 Butterfly.

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1 Designating areas of prime prairie
2 and dune and swale habitat for potential land
3 management agreement and/or conservation
4 agreement within Kirk Yard.

5 And finally, serving suitable habitat
6 for the Eastern Prairie Fringed Orchid. If
7 orchids are found, the applicant shall not
8 conduct any construction activities in that area,
9 shall notify the U.S. Fish and Wildlife Service
10 and the Board immediately and the Board shall
11 reinitiate consultation with the U.S. Fish and
12 Wildlife Service.

13 As previously described, the
14 methodology for biological resources in the draft
15 EIS focused on areas where effects were presumed
16 to have a potentially detrimental effect. The
17 methodology presumed that areas with a reduction
18 in train traffic would lightly experience
19 positive effects due to a decrease in rail
20 operations.

21 The biological resources analysis
22 does not state that these potential positive

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1 impacts inside the EJ&E arc negate negative
2 impacts along the arc. SEA acknowledges that the
3 EJ&E arc where rail traffic is proposed to
4 increase contains more and generally higher
5 quality habitat areas than areas where CN trains
6 are likely to decrease or remain the same along
7 CN lines within the arc.

8 Forest preserves, INAI sites, state
9 nature preserves and national park service lands
10 occur in areas inside the EJ&E arc, including
11 Lockport Prairie, Wampum Lake, Thatcher Woods
12 Prairie, Hoosier Prairie and portions of Pratt's
13 Wayne Woods where CN trains are likely to
14 decrease.

15 It is acknowledged that there are
16 fewer higher -- that there are fewer high quality
17 biological resources inside the arc rather than
18 along the arc. However, significant resources
19 exist along routes where train traffic is likely
20 to be reduced.

21 The decrease in CN trains near these
22 areas is likely to result in fewer species

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1 collisions and decreased noise effects. Although
2 natural areas occur all throughout the city area,
3 only Pratt's Wayne Woods Forest Preserve is
4 potentially impacted by both operations and
5 construction.

6 Many commenters, public and agencies,
7 expressed concern for Pratt's Wayne Woods. SEA
8 concurs that Pratt's Wayne Woods Forest Preserve
9 is an important natural area with habitat that
10 supports numerous listed and protected species.
11 As such, effects to Pratt's Wayne Woods were
12 included in the draft EIS.

13 The applicant proposed modifications
14 to the proposed Munger connection alternative
15 involving the construction of two retaining walls
16 to remain within the right-of-way and to minimize
17 direct impacts to the forest preserve.

18 Additionally, numerous mitigation
19 measures are proposed, such as avoiding
20 construction to minimize disturbances to breeding
21 birds and development of a local liaison that
22 will allow natural resource stakeholders to

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1 interact with CN to complete various adaptive
2 management measures and monitoring in natural
3 areas along the EJ&E right-of-way.

4 In addition, CN will either conduct
5 or will supply financial support for pre- and
6 post-construction monitoring to evaluate and
7 document potential affects and subsequent impacts
8 by the proposed action.

9 Once monitoring is completed, the CN
10 local liaison and natural resource stakeholders
11 can develop and implement appropriate site-
12 specific mitigation measures once potential
13 effects from the proposed action are realized,
14 including identifying and improving habitat away
15 from the rail line to offset increased train
16 noise level impacts.

17 That concludes my briefing.

18 MR. MORTON: Thank you, Fiona. The
19 last area that we would like to talk about is an
20 area that is -- we call quality of life and it is
21 actually composed of a number of specific
22 concerns including safety, noise, schools,

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1 traffic, all of which we have already talked
2 about. One issue that has generated a lot of
3 comments is -- that is related to quality of life
4 is property values.

5 For -- the concerns on property
6 values is that the increase in rail activity
7 would result in a reduction of property values
8 for those homes, residences, near the EJ&E rail
9 line. We did -- for the draft EIS, we did
10 literature survey to see if there were studies
11 that we could, you know, turn to to help us.

12 There is very limited information
13 about the effects of increased traffic. There
14 was a study that was done as a result of Conrail
15 in the Cleveland area that provided the best
16 information that we could find for the draft EIS.
17 And the general conclusion was that there would
18 be a nominal reduction of property values for
19 some ranges of homes, lower and moderate priced
20 homes.

21 The more expensive homes would not
22 see the same level of reduction in property

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1 values. We received a lot of comments on the
2 draft EIS, you know, where people were concerned
3 about those conclusions. For the final EIS, we
4 have gone back and we have done more extensive
5 analysis of actual property values, home prices,
6 both along the EJ&E Rail Line and adjacent to it
7 and away from it, compared those in several
8 sections, you know, both in more affluent areas
9 and also in more modest areas along the EJ&E Rail
10 Line.

11 We have also went back and did a lot
12 of literature survey. The commenters pointed us
13 to some studies that they felt were appropriate.
14 And I think, as a result of that, essentially, we
15 think that the conclusions in the draft EIS, you
16 know, were correct.

17 We did go in and then look at the
18 effects that the property value -- a change in
19 the property value, a nominal change might have,
20 assuming a reduction along the EJ&E Rail Line and
21 properties adjacent to it of about 5.56 percent,
22 which is kind of what the study thought would be

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1 the maximum reductions and looked at what that
2 would do for the residential property values
3 within communities and also what that would do
4 for property tax revenues within those
5 communities.

6 The preliminary conclusion is that
7 the property tax revenues, you know, the greatest
8 impact might be in the neighborhood of \$10,000 in
9 a reduction of property tax revenues for some
10 communities.

11 And with that, that completes our
12 discussion of the major resource issues on the
13 EIS. I would like to turn it back over to Vicky
14 Rutson. Vicky?

15 MS. RUTSON: Only 30 more seconds and
16 we will be quite and respond to your questions.
17 So what would happen if, to the environment, you
18 were to approve this proposal? Well, the team
19 has assessed and preliminarily concluded that
20 there would be benefits. There would be adverse
21 impacts.

22 Some of these adverse impacts could

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1 be mitigated, but some of them exacerbate an
2 existing condition. In other words, make a bad
3 situation worse. The applicant has volunteered
4 over 100 mitigation measures, which they have
5 priced at, approximately, \$16 million.

6 We have looked at each of these
7 measures and believe that they will help.
8 Additionally, SEA has developed and is continuing
9 to develop and is eager to discuss with you 69
10 additional measures that we hope will minimize
11 impacts to the absolute extent that we are able
12 to do so.

13 With that, we await your questions.

14 VICE CHAIRMAN MULVEY: This should
15 not be interpreted as not having any questions.

16 CHAIRMAN NOTTINGHAM: We weren't
17 taking a straw vote on the merits of the -- we
18 were talking about breaking logistics. I'm
19 cognizant that staff and consultant staff have
20 been largely stuck here for three hours now and
21 we have the luxury of being able to sneak about
22 10 yards down the hall with the sound system on

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1 to occasionally stretch our legs and not miss
2 anything.

3 But without further delay, we will
4 break now for 45 minutes. We will -- we do
5 expect significant questions, so gear up. It
6 could be a full afternoon and we will come back.
7 I have it is about 12:50 now. So we will come
8 back in 45 minutes, which I believe would be
9 1:35. Thanks. We are temporarily adjourned.

10 (Whereupon, the meeting was recessed
11 at 12:48 p.m. to reconvene at 1:39 p.m. this same
12 day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:39 p.m.

3 CHAIRMAN NOTTINGHAM: Good afternoon.

4 We will resume this morning's meeting with some
5 questions. I'll start it off and I think we will
6 -- just to mix it up a little bit, I'll let
7 Commissioner Buttrey have the opportunity right
8 after I finish the first round. And then we will
9 switch it up, accordingly everybody kind of gets
10 a chance to ask all the questions that we have.

11 Let's see, thank you, first of all,
12 that was a very comprehensive presentation,
13 clearly, a lot of work has gone into this. And
14 I'm, you know, familiar with HDR's work in
15 general having worked on some highway projects
16 where I have had the chance to observe and I
17 definitely want to commend HDR for a very
18 comprehensive and professional job on this. It's
19 a reminder of how your firm has earned the very
20 strong reputation that you do have. So I
21 appreciate that.

22 MR. MORTON: Thank you, Mr. Chairman.

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1 CHAIRMAN NOTTINGHAM: Let me ask
2 though, you guys do this not for charity. You
3 have homes and bills and families that need to be
4 taken care of. What does all this kind of work
5 cost, ballpark? I mean, I don't want to meddle
6 in, you know, any business sense. I mean, we're
7 talking about a couple hundred thousand dollars,
8 a couple million dollars, ten plus million? I
9 mean, just ballpark.

10 MR. MORTON: In ballpark, this has
11 been about a \$20 million effort. It is a very
12 accelerated effort. We have done a lot of things
13 on parallel, you know, with a lot of very senior
14 staff and that's one reason why, you know, it's
15 actually certainly more expensive than one would
16 have, you know, typically expected.

17 CHAIRMAN NOTTINGHAM: Our Agency's
18 entire budget for a year, the last time I
19 checked, is something around \$27 million. Does
20 that sound right, colleagues? \$26-ish. So
21 clearly, we are not paying for that nor do we
22 customarily pay for applicant's environmental

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1 work.

2 Just for the record, so everyone has
3 the same understanding how this works, who pays
4 those bills in this situation?

5 MR. MORTON: We are concerted as Ms.
6 Rutson mentioned at the beginning, we are a
7 third-party contractor, that is there is a
8 Memorandum of Agreement between SEA, HDR and
9 Canadian National that specifies that SEA is
10 responsible for directing and that we report to
11 SEA and that Canadian National is responsible for
12 the cost for the analysis.

13 We then have a separate commercial
14 terms contract with Canadian National that
15 specifies, you know, the billing rates and, you
16 know, invoice procedures and the mechanisms for
17 compensation.

18 CHAIRMAN NOTTINGHAM: Now, do you get
19 paid whether or not CN likes your work or doesn't
20 like your work?

21 MR. MORTON: I certainly hope so, Mr.
22 Chairman.

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1 CHAIRMAN NOTTINGHAM: That's your
2 expectation?

3 MR. MORTON: That's my expectation,
4 yes. Our clients are the Surface Transportation
5 Board and specifically, Vicky and Phillis and
6 Evelyn.

7 CHAIRMAN NOTTINGHAM: Okay. Do you -
8 - I think I know the answer to this, but I want
9 to make sure to get it on the record. Do you
10 receive oversight and direction from CN on what
11 you should report or not report in your work?

12 MR. MORTON: Absolutely not. CN had
13 an opportunity to review the draft EIS when it
14 was made public on July 25th. To the best of my
15 knowledge, that's the first time they saw any of
16 the analysis or the results of those analysis.
17 We do ask CN for information when we need it.

18 There is a very formal and very
19 transparent process and that is our team, my team
20 generates the information request. We pass that
21 on to Vicky and SEA and Phillis and they review
22 that information request. They then submit that

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1 formally in writing to the applicants. We post
2 that request out on the project website, so
3 everybody can see what we are asking for.

4 And then when we get their response
5 to those information requests, you know, once
6 again it comes back through SEA to our team. And
7 once again, we post all those responses on the
8 project website, so everybody can see the
9 correspondence trail. And in the draft EIS, we
10 published all that correspondence and we propose
11 in the final EIS to publish all the
12 correspondence that has taken place since the
13 draft EIS.

14 CHAIRMAN NOTTINGHAM: Thank you. I
15 guess I should probably -- something tells me we
16 have all kinds of stakeholders following this, I
17 hope, on the -- on our webcast. I also see some
18 stakeholders in the room today, too.

19 I should probably just express some
20 recognition and gratitude to the CN for
21 supporting the EIS process to the tune of \$20
22 plus million, that there has been a lot of mixed

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1 signals sent in the media and through legal
2 channels, but, clearly, financially they are
3 supporting the EIS process just as they told us
4 they would at the -- near the outset of this
5 project. So we appreciate that. It helps us
6 make an informed decision, which we need to make
7 consistent with the law.

8 I was interested a little bit, I
9 guess, as a very amateur historian in a little
10 bit of the history that came up in your
11 presentation that the concept for a EJ&E type
12 western loop around Chicago dates back to 1855
13 and that the project was cut -- sort of cobbled
14 together in pieces, it sounded like, and it was
15 pretty much in tact as of 1890, according to my
16 notes, following the presentation.

17 So since 1890, there has been some
18 type of western loop bypass rail traffic going on
19 at different levels over all those years?

20 MR. MORTON: That's correct. I think
21 you recorded those dates correctly. I would like
22 Mr. Burgel to maybe clarify or expand upon kind

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1 of the history of the EJ&E and then maybe, you
2 know -- so that, you know, we can get some more
3 of that into the record.

4 I know we kind of briefly covered it
5 this morning, but, Bill?

6 MR. BURGEL: Mr. Chairman, the --
7 yeah, that's correct. The routes were pretty
8 much contiguous as of 1892, I believe. And then
9 it was primarily owned by predecessors, the U.S.
10 Steel, and they used to run trains back and forth
11 between Waukegan and then down to the Gary Mill.
12 And very much shuttle trains back and forth
13 between the two facilities.

14 And then along the line came, you
15 know, lots of industry along there as a result.
16 Primarily an industrial railroad that in some
17 place more, more than others, industrial and
18 rural in others. U.S. Steel had a transaction
19 with TranStar, which was a holding company, and
20 then they acquired it back. So it has been back
21 and forth in terms of ownership since 1980 or so.
22 So that's more recent.

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1 And now several other Class Is have
2 certainly been interested in the property, but
3 never to the extent that CN has, you know,
4 expressed interest here.

5 CHAIRMAN NOTTINGHAM: And if I
6 followed your presentation, according to my
7 notes, probably the high water mark for train
8 traffic would have been during World War II,
9 which I guess makes sense. There was those high
10 water marks for a lot of communities situated
11 along rail lines. And that was 50 some trains a
12 day?

13 MR. BURGEL: That's correct, yeah.
14 And pretty much as an average throughout the arc.
15 More in some places and less in others, but
16 that's pretty much anecdotal information, you
17 know, as far as a lot of folks at the public
18 meetings, as you will all imagine, a lot of folks
19 were ex-EJ&E employees. And they supplied us
20 with that type of information.

21 CHAIRMAN NOTTINGHAM: So your
22 historical information is somewhat anecdotal, but

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1 it's based on, in part, information conveyed by
2 sort of first-hand knowledgeable sources. What
3 about written resources? Any historical tracks
4 that reference the history of the railroad or
5 anything else?

6 MR. BURGEL: That's correct. Yeah,
7 that was a supplemental. There are books on the
8 EJ&E that we sourced as part of our information
9 as well. Passenger schedules there at
10 Barrington, that sort of thing.

11 CHAIRMAN NOTTINGHAM: Were you able
12 to come up with any indication that EJ&E or any
13 predecessor owner of that line held itself out as
14 planning to get out of the rail business, close
15 the line, abandon the line? I'm trying to get a
16 sense of this is a situation where people who
17 live along the line have a right to be completely
18 shocked that they are living next to an active
19 line railroad that could --

20 MR. BURGEL: Well, actually --

21 CHAIRMAN NOTTINGHAM: -- actually see
22 a growth in traffic.

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1 MR. BURGEL: Yeah.

2 CHAIRMAN NOTTINGHAM: Some of the
3 correspondence we have gotten almost indicates
4 that, but I just was trying to, not being
5 intimately familiar with the history of the
6 region, get a sense of is there anything in the
7 record that we know about that would lead people
8 to think that the line was scheduled to be
9 abandoned at a certain date or that traffic
10 generally in the Chicago area was on the decline
11 and it would be a safe bet to move next to a rail
12 line under the assumption that it would just be a
13 matter of time before it faded out of existence?
14 I'm just trying to understand the situation.

15 MR. MORTON: The historian that
16 worked on the entire line isn't with us today and
17 we would be more than happy to get you an answer
18 to that question. I don't think the team, as
19 such, really researched that specific question.
20 From an anecdotal standpoint, you know, we
21 certainly know that it has been an active rail
22 line and, you know, continues to be an active

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1 rail line.

2 We have got a lot of, like Mr. Burgel
3 mentioned, former and current EJ&E employees that
4 came to the various public meetings, both the
5 scoping meetings and the draft EIS meetings, and
6 took that time to, you know, kind of give us the
7 back brief on their first-hand knowledge and, you
8 know, were more than happy to sort of talk about
9 their history and experience with the line.

10 MR. BURGEL: My personal history, I
11 was -- started my railroad career in the Detroit,
12 Michigan area and one of my first assignments was
13 to -- on the Penn Central that came in to
14 Chicago. So part of my territory was the Chicago
15 area, but from then on, I switched to a western
16 road. But pretty much the entire 38 years I have
17 been working in the rail industry, I have always
18 heard that EJ&E has been considered an asset by
19 those in the Chicago area.

20 And not once have I heard that, you
21 know, there was a consideration that it would be,
22 you know, abandoned or rendered mothballed or

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1 anything like that.

2 CHAIRMAN NOTTINGHAM: Okay. Anything
3 in your research or in the record that would help
4 us get a picture of what the outer -- the
5 western, what we now view as the western, suburbs
6 of Chicago would have kind of looked like in the
7 1890s when this line actively, you know, came
8 into existence as far as the situation where most
9 of the growth and development had actually come
10 to the area adjacent to the line after the lines
11 existence or was it there prior to?

12 MR. MORTON: I think it's a
13 combination. There are certainly several
14 communities that have indicated that they
15 preceded the line. There is information that
16 some communities grew up along the line. I
17 think, you know, that we did a lot of work on
18 kind of the history and the historical areas.
19 Many of the communities, you know, along the line
20 include the line as part of the context in which
21 the, you know, boundaries of their historical
22 districts are set.

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1 And so it is included in discussions,
2 you know, that -- and nomination forums for, you
3 know, things like, you know, nomination for a
4 historic district, you know, with the Keeper of
5 the National Register and those sort of things.

6 And once again, I apologize we did
7 not bring the historian who did all that work.
8 We do have information in the record, you know, a
9 series of -- you know, a book of photographs of
10 their early EJ&E and some history of the EJ&E and
11 that's certainly all the -- currently in the
12 record.

13 And we would be more than happy to
14 drill in and, you know, get a better answer for
15 you, if you would like.

16 MR. BURGEL: As late as the EJ&E is
17 pretty early, 1890, but even at that time, they
18 were late coming to the party, so to speak, in
19 terms of the railroad scene in the Chicago area.
20 Most of the lines that radiate out from the hub
21 and spoke, so to speak, were there much before
22 the EJ&E. You can see that in the agreements

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1 that, you know, Union Pacific, which acquired
2 CN&W, which is one of the predecessor railroads
3 here, that was pretty strong, especially through
4 Barrington and through West Chicago.

5 Their agreements are pretty clear.
6 And if you look at some of the sketches, some of
7 the platting maps that are included with this
8 agreement, it's very rural, very rustic
9 communities that -- you know, while EJ&E was
10 second. You know, I would guess to answer your
11 question, I think mostly on the railroads that
12 radiate from the city is where these towns were
13 originated along those. And then the J came
14 later.

15 You can see that pretty clearly in
16 these written agreements that are roughly about
17 1909/1910. You know, and they basically govern
18 how each railroad is going to behave at these
19 crossing diamonds.

20 CHAIRMAN NOTTINGHAM: In the --
21 listening to the history and looking at the
22 current day situation within Chicago, the

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1 enormous presence of freight rail and passenger
2 rail operations, it just leads me to -- I can't
3 help but conclude that people within the core of
4 Chicago are -- have experienced and continued to
5 experience kind of a, what I'll call,
6 disproportional share of the nation's rail
7 traffic in their neighborhoods.

8 I mean, sure there are -- I know
9 there are other places that would maybe argue,
10 Houston and a few others that have folks who live
11 near the Port of LA, Long Beach, but it's an
12 enormous burden on the people in that area. And
13 it seems like it has been for decades and decades
14 and decades.

15 This might be a little bit of a
16 intellectual question that can't -- might be of
17 limited use to us, but I'll ask it anyway,
18 because we think it's just important.

19 If we were -- if we had no railroad
20 lines in this area today, but we had the
21 communities and the people that currently live in
22 Chicago, close in metropolitan Chicago, and there

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1 were proposals to drop this rail system, so to
2 speak, within the community, to weave it into the
3 community, as it exists today, and applications
4 came and we had new construction applications and
5 we were working that through as a Board following
6 NEPA, of course, and today's law, what are the
7 odds that we could ever get, you know, this kind
8 of system built, permitted, built and through the
9 judicial review process in Chicago as it
10 currently exists today under current law?

11 Maybe, Ms. Kitay, you might be well
12 positioned. I know it's a little bit of a
13 speculative question.

14 MS. KITAY: I think it would be
15 really difficult to assemble the rail corridor
16 today, just because of the proximity and the rail
17 line to schools and homes and businesses that
18 have built up around the rail line.

19 CHAIRMAN NOTTINGHAM: And it is
20 lines, right, I mean?

21 MS. KITAY: Lines. While there are
22 many, there are five CN Lines and then EJ&E

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1 Lines.

2 CHAIRMAN NOTTINGHAM: Then you go
3 beyond CN and talk about the whole rail
4 industry's presence, I guess my question was more
5 of a macro one talking about going from--

6 MS. KITAY: It would be enormously
7 difficult. And we saw that in the DM&E Rail
8 construction case where existing communities that
9 were going to see traffic increase just were up
10 in arms.

11 CHAIRMAN NOTTINGHAM: And would there
12 not be --

13 MS. KITAY: We're talking years of
14 litigation.

15 CHAIRMAN NOTTINGHAM: -- a lot of
16 environmental justice issues?

17 MS. KITAY: There would be
18 environmental justice issues and other kinds of
19 environmental issues beyond those that have
20 surfaced here, because we're dealing with
21 existing lines. So you don't have the
22 construction impacts that you would have if you

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1 were starting from scratch.

2 CHAIRMAN NOTTINGHAM: I don't know
3 exactly why I asked the question, but I just-- we
4 have to weigh benefits and dis-benefits, adverse
5 impacts and positive impacts. And I just think
6 it is worth reflecting for a moment just on the
7 sheer burden that the status quo situation
8 imposes on the people of Chicago and close in
9 Chicago.

10 It's not to say that other people's
11 concerns along the EJ&E Line aren't completely
12 valid and meritorious, but it's -- we have to
13 make a balancing assessment to a certain extent
14 and then make sure we are looking at those
15 benefits and those adverse impacts and try to
16 figure out how to sort through it.

17 I just have a couple more for the
18 first round and then I'll kick it over to
19 Commissioner Buttrey momentarily.

20 I think it might have been you, Mr.
21 Morton, who touched on the four alternatives that
22 were considered at the early stage of the

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1 environmental review process. And of course,
2 this goes back in part to Commissioner Buttrey's
3 very helpful reference to the City of Overton
4 Park case, which, of course, is black letter law
5 that is, you know, hammered home in the first
6 year of environmental law and administrative law
7 and a number of other settings.

8 It's an incredibly important case.
9 One of the big outcomes of that case was was this
10 concept of alternative analysis, and you don't
11 just jam a new interstate through a park because
12 that's the straightest line between two distances
13 and it's where some traffic engineer says it will
14 be efficient. You look at the impact of the
15 resources and look at alternatives.

16 And here though, I understood -- I
17 head you say -- you said you didn't explore these
18 options. I wrote down and I just want to make
19 sure I understand. There were alternatives.
20 They were looked at, correct? And for various
21 reasons they were put aside. If the team could
22 help me understand, because I want to make sure

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1 we have given adequate focus to the alternatives
2 analysis process.

3 MR. MORTON: Mr. Chairman, I think
4 your recollection is correct. The team first
5 identified the applicant's purpose and need, you
6 know, that -- for the transaction. And there is
7 really three elements of that purpose and need
8 and to kind of paraphrase them, it's the connect
9 -- there are five lines radiating around and give
10 them a through route without, you know, going
11 through the congestion of the Chicago area.

12 The second one, and I know Mr. Burgel
13 talked about it in detail, is really to obtain
14 control and access to Kirk Yard and to some
15 extent East Joliet Yard for their car
16 classification activities, so they can move those
17 activities out of the BRC Clearing Yard.

18 And the third purpose is to develop a
19 relationship with the shippers on the EJ&E.

20 So each of the alternatives that we
21 looked at, and there are a number of alternatives
22 that were suggested during scoping and throughout

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1 the process, the four that we talked about,
2 really were, you know, one, is to -- full
3 implementation of the Chicago CREATE Project.

4 The CREATE project is, as certainly
5 the Board knows, a project that is designed to
6 reduce rail congestion in the Chicago area. It
7 is moving forward. They perhaps haven't had the
8 level of funding, you know, that they were
9 anticipating, but they are making progress.

10 The CREATE Project would,
11 essentially, give CN a through route by
12 connecting, essentially, their, and correct me if
13 I'm wrong, Bill, but essentially, line coming in
14 on the Illinois Central to the Norfolk Southern
15 Rail Line in an area called Grand Crossing.

16 And in that -- they would make a
17 connection there, allow them to bypass the
18 cumbersome airline, St. Charles Airline route and
19 that would be kind of their through connection.
20 It still would not be a line that they own. They
21 would be on that line under trackage rights.

22 They would still do their switching

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1 at the BRC Clearing Yard. They would still, you
2 know, be one of several tenants at the BRC
3 Clearing Yard, so they wouldn't have their own
4 facility. And so we did not consider CREATE as
5 an alternative to the proposed transaction.

6 The second one, that I think Bill
7 mentioned, was expanded trackage rights. There
8 are a lot of Class Is that are currently
9 operating on the EJ&E under trackage rights
10 arrangements, including CN. And one option was
11 to just expand that. But once again, that
12 wouldn't necessarily solve their car
13 classification issues and would not give them
14 control.

15 Plus, you know, and I think CN's
16 filing sort of makes this case, there would not
17 be the incentive for EJ&E to make the investments
18 into the infrastructure that Canadian National is
19 proposing, if Canadian National -- if it was
20 still owned by the EJ&E.

21 The third alternative was,
22 essentially, an acquisition of a rail line on the

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1 inside in the interior of Chicago, presumably
2 either, you know, the Belt Railroad or the IHB,
3 but one of the railroads actually connect them.
4 The -- we didn't consider that to be an
5 alternative, because that's, essentially, how
6 they operate today.

7 It just would shift the ownership.
8 Once again, not giving them the access to Kirk
9 Yard and get them out of the internal congestion
10 that is Chicago.

11 And the fourth option, I believe that
12 we talked about earlier this morning, was there
13 was suggestions that you could build a new bypass
14 outside of the EJ&E arc, somewhere in the less
15 densely populated area. A lot of different
16 suggestions came. But in each case, it was a new
17 construction that, and I think as Ms. Kitay, you
18 know, mentioned, it would be very challenging to
19 assemble that type of right-of-way and to, you
20 know, use that option. And so we didn't believe
21 that that was a viable alternative either.

22 CHAIRMAN NOTTINGHAM: So we have

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1 received some correspondence. We have received
2 all kinds of correspondence. They are all in the
3 record on this transaction. But some of the
4 correspondence did indicate hey, why not just
5 build it further to the west?

6 Is there a corridor to the west where
7 there are no serious environmental issues? I'm
8 sensing that Greenfield's new rail line
9 construction in a semi-, even if you could find
10 a, rural part of Illinois would not be an easy
11 thing to get through the process.

12 MR. MORTON: I might, you know,
13 suggest either Vicky or Phillis, who have some
14 experience with construction projects.

15 MS. RUTSON: Mr. Chairman, I think it
16 would be very difficult to get through the NEPA
17 process for a new line construction. For
18 example, in the DM&E case, which Evelyn alluded
19 to, construction was proposed and eventually
20 permitted through Western South Dakota and
21 Eastern Wyoming.

22 To my untutored eye, those areas

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1 looked quite expansive, not heavily populated,
2 but yet there were tremendous concerns there,
3 potential habitat for the Black Footed Ferret,
4 ranchers who had land that they preferred to keep
5 in tact and not divided. So it's one thing for
6 rural people to say to urban people that perhaps
7 rail lines would less -- would impact you less,
8 because you live in such an urban area.

9 And then urban people say to rural
10 people, well, there is so little out where you
11 are that you would be impacted less. But the
12 bottom line is through 20 years of experience
13 with NEPA, everyone loves where they live and
14 wants it to stay pretty much as much as they-- in
15 the same way as when they first moved there. And
16 they don't want new rail lines to be built on top
17 of where they live, be it urban or rural.

18 MR. BURGEL: And I might add that one
19 of the purpose needs for CN is to again classify
20 railcar business that, say for instance, comes in
21 from the Grand Trunk out of say Michigan or out
22 of Toronto, and marry that up with some cars that

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1 come out of Memphis in a yard somewhere in the --
2 you know, where all the business that would
3 either go to Chicago or be picked up in Chicago
4 and then advanced on some of the other branch
5 lines or main lines, I should say, a line, a
6 bypass on the west side wouldn't, you know,
7 accomplish that unless they somehow knitted all
8 these different arteries together.

9 Again, they are looking for a yard in
10 the center and Kirk Yard is what they have
11 chosen. Their purpose of using east Joliet Yard
12 is to do what they call block swapping, which is
13 they would take blocks of cars from one train to
14 another and advance them that way.

15 CHAIRMAN NOTTINGHAM: Certainly, one
16 of the, I'm guessing, more challenging informed
17 judgment calls to make relates to the appropriate
18 level of mitigation that you preliminarily
19 reported on today. If I heard correctly, the
20 preliminary recommendation is that we adopt for
21 purposes of looking at those instances where the
22 recommendation is to see the construction of a

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1 grade separation project, that the applicant
2 railroad, CN, be held responsible for 15 percent
3 of the cost of that project, the preliminary
4 engineering, the right-of-way, the construction,
5 design construction.

6 And that if I heard correctly, that
7 15 percent was arrived at by the very extent of
8 analysis of the proportional contribution of this
9 proposed project regionally to the overall
10 degradation of traffic conditions throughout the
11 region of the project. Is that a fair
12 restatement?

13 MR. MORTON: Yes, sir, it certainly
14 is. And I would like John Lazzara to step back
15 up here just briefly and he could elaborate on
16 the analysis that we did and the discussion and
17 explain that a little bit better for you.

18 CHAIRMAN NOTTINGHAM: That would be
19 helpful, because I want to make sure -- one of
20 the questions I had when I first heard this was
21 okay, that sounds like a lot of thought went into
22 that, but conditions across a region can get kind

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1 of diffuse. Whereas, conditions at a specific
2 intersection crossing are not so diffuse. They
3 are very specific, very -- you know, much more
4 easily sort of identifiable.

5 How does that 15 percent relate to
6 these conditions at those locations? We're
7 trying to address the real hot spots where
8 certain locations would likely be sort of
9 disproportionately impacted. We talked about
10 traffic levels and going from D down to F and
11 pre-existing conditions.

12 But help me understand how we get
13 from 15 percent contribution to regional traffic
14 problems to 15 percent contribution to these
15 particular, what I'll call, hot spots.

16 MR. LAZZARA: Sure. Chairman and
17 Board Members, we looked at total vehicle delay
18 and when we calculated the total vehicular delay,
19 we looked at the level of -- or the delay caused
20 at the at-grade crossings. When we calculate
21 delay, you can either have delay from roadway
22 levels of service or from the crossing levels of

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1 service.

2 And the effects from the railroad
3 operations really focuses on that isolated
4 location at the crossings. In the analysis when
5 we looked at total vehicular delay, we calculated
6 what that would be if you added up all the delay
7 for the CN crossings that were affected and then
8 all the EJ&E crossings.

9 And we compared those systems with
10 the no action system versus the proposed action.
11 And when we looked at that, there was an increase
12 in vehicular delay along the EJ&E lines and a
13 decrease along the CN lines. When we compared
14 the totals, that's when we came up with 356 hours
15 of increased vehicular delay per day on the whole
16 system.

17 And that represents that the delay is
18 caused at those locations along the crossings.
19 It also affects other roadways, but the roadways
20 also are influenced heavily on the roadway
21 configuration of the number of lanes, the traffic
22 signalization that occurs and the spacing of

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1 different roadways.

2 Again, trying to figure out what the
3 impact of the transaction would be, we wanted to
4 isolate that impact based on their operational
5 changes. The changes at signalized intersections
6 due to lane configurations really is an existing
7 condition.

8 So when we calculated that total
9 system delay between the EJ&E and CN systems,
10 pre- and post-transaction, we came up with that
11 15 percent. And that 15 percent is 15 percent of
12 the total system delay. The 15 percent is the
13 increase related to that. Does that address your
14 concern?

15 CHAIRMAN NOTTINGHAM: Well, I guess
16 what I'm trying to understand is what -- did you
17 look at the possibility that a specific roadway
18 crossing of the rail line at which you are
19 recommending a grade separation project be built,
20 did you look at the possibility that conditions
21 at any one of those particular locations could be
22 worsened by this project as proposed above and

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1 beyond 15 percent scale?

2 It could be 15 percent region-wide,
3 but at this one spot, yikes, it's going to be 30
4 percent worse. And, you know --

5 MR. LAZZARA: Correct.

6 CHAIRMAN NOTTINGHAM: -- in that
7 scenario, you could expect that we will hear
8 from, and we have heard in the record, the towns
9 and citizens and the state that they would be
10 expecting something more akin to the actual
11 percentage impact at those locations, I would
12 guess.

13 MR. LAZZARA: Correct. And when we
14 did the analysis, we did look at each individual
15 crossing itself, calculated that -- those delay
16 figures and determined what the individual
17 effects would be. When we looked towards
18 mitigation, we considered various options, but
19 SEA settled on in the preliminary analysis with
20 the conclusion on a system-wide basis there is
21 benefits and disadvantages.

22 And if we looked at just isolated

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1 intersections and said that a particular
2 intersection raised the delay at that location by
3 more than, you know, 10 percent, more than 15
4 percent, it could be as high as 50 percent or
5 more increase in delay at a particular location,
6 but then there is no input for the benefit that
7 is caused in other locations.

8 So to calculate that percentage that
9 the applicant would be responsible for in -- for
10 the mitigation purposes of a grade separation,
11 those costs were spread out throughout the whole
12 system to determine the net effect.

13 CHAIRMAN NOTTINGHAM: I may want to
14 loop back to that issue, but let me pause and
15 turn it over to Commissioner Buttrey for
16 questions.

17 COMMISSIONER BUTTREY: Thank you, Mr.
18 Chairman. I would add my word of thanks to
19 everyone for their very fine presentations today.
20 Mr. Morton, if it's okay, I'm going to sort of
21 direct my questions to you and then you can reach
22 back and get whoever you need to get to come up

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1 and see if they can address this.

2 MR. MORTON: Yes, sir, that would be
3 fine.

4 COMMISSIONER BUTTREY: As the line of
5 railroad exists right now today, it's basically
6 one line of track going north and south. Let's
7 say from Joliet all the way north up to the end
8 of the area that we are considering here. And I
9 have heard a lot of talk about double tracking
10 somewhere around 20 or so miles of that.

11 So they are talking about double
12 tracking about 20 percent of the track that is
13 there just for the freight operations.

14 MR. MORTON: Yes, sir. The --
15 Commissioner, the plan is to do about 19 miles of
16 double tracking in about five locations,
17 including on that north/south line from Joliet
18 north, but also there would be some double
19 tracking on the -- you know, when it goes around
20 Joliet and goes east/west towards Indiana, there
21 would -- they would include -- some of the double
22 tracking includes in that area.

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1 I don't have the exact breakdown in
2 terms of the mileage, but that's correct.

3 COMMISSIONER BUTTREY: I think I
4 heard somebody say about 20, when you add it all
5 up, it would be about 20 miles.

6 MR. MORTON: That's correct.

7 COMMISSIONER BUTTREY: And as I
8 recall, when I was there, I was shown an area
9 where they are going to make a high speed turnoff
10 of this track to allow them to go onto another
11 track. And it happens to be right smack in the
12 middle of the DuPage County Nature Preserve.

13 MR. MORTON: Yes, sir. You are
14 absolutely correct. And the high speed turnout
15 that you are referring to is at a location that
16 we have identified as Munger.

17 COMMISSIONER BUTTREY: Right.

18 MR. MORTON: Munger is just a station
19 location on the EJ&E and actually doesn't really
20 exist, but it's in the middle of the DuPage
21 County Forest Preserve, the Pratt's Wayne Woods
22 Forest Preserve. The applicants did redesign the

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1 Munger connection in response to concerns raised
2 by the forest preserve to tighten up the
3 connection.

4 They put in retaining walls to keep
5 it basically on their right-of-way and on the
6 right-of-way of the utility right beside it and
7 actually reduced the speed through that
8 connection. And I believe it is now a 50 mph
9 connection. It's just a 10 mph connection
10 through there now.

11 So they did redesign it. We have
12 evaluated --

13 COMMISSIONER BUTTREY: And it will go
14 to a what mile per hour connection?

15 MR. MORTON: It will stay at a 10 mph
16 connection under the current proposed design.

17 COMMISSIONER BUTTREY: Okay.

18 MR. MORTON: They would operate 10
19 mph.

20 COMMISSIONER BUTTREY: In the
21 language that I have seen here in the reports
22 that I have seen about this location, the

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1 terminology that is used is that this is
2 "adjacent" to Pratt's Wayne Woods Preserve. Now,
3 when I was out there, it didn't look like it was
4 "adjacent" to it. It looked like to me it was
5 right in the middle of it.

6 I mean, geographically, right in the
7 middle of it. And that the track they were
8 talking about goes right through the middle of
9 Pratt's Wayne Woods. It's not adjacent to it,
10 which would lead you to believe it's like a
11 railroad track going down beside a golf course or
12 something. It goes right through the middle.

13 MR. MORTON: Yes, sir, that's
14 correct.

15 COMMISSIONER BUTTREY: Okay.

16 MR. MORTON: That's correct.

17 COMMISSIONER BUTTREY: Just for the
18 record, because there is not a lot of detail in
19 here about the information I have seen anyway,
20 about people who are commenting on this, about
21 the meets and bounds of this area that we are
22 talking about and basically what it looks like.

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1 The old saying is a picture is worth
2 a thousand words. I wish we had a picture of it.
3 The only thing we have is aerial photos, which
4 don't really tell you the story. But can you or
5 someone describe for the record what this area
6 looks like and how it came to be?

7 MR. MORTON: I think I would like to
8 ask Fiona Goodson to step up here and talk a
9 little bit about the nature of the forest
10 preserve. I don't know that Fiona would be able
11 to really describe how it came to be, but I think
12 we would ask Rich Christopher maybe to talk about
13 the forest preserve system in Illinois and how
14 they came about. But Fiona can talk about the
15 nature of the Pratt's Wayne Woods, what is there
16 and the concerns that are associated with it.

17 COMMISSIONER BUTTREY: Thank you.

18 MR. MORTON: Fiona?

19 COMMISSIONER BUTTREY: And address if
20 you could how it came to be and that sort of
21 thing.

22 MR. MORTON: Yes.

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1 MS. GOODSON: Yeah, I don't really
2 have the history on Pratt's Wayne Woods. Maybe
3 Rich Christopher does.

4 COMMISSIONER BUTTREY: Okay.

5 MS. GOODSON: As you mentioned,
6 Pratt's Wayne Woods is a pretty important area.
7 It is a large area. There is a lot of habitat
8 there for species.

9 COMMISSIONER BUTTREY: Large meaning
10 5,000 acres?

11 MS. GOODSON: I don't have the
12 specific size of it. I don't know the specific
13 size of it, sorry.

14 MR. MORTON: We'll have to get back
15 with you. I think --

16 COMMISSIONER BUTTREY: Okay.

17 MR. MORTON: -- we identified it in
18 the draft.

19 COMMISSIONER BUTTREY: Okay.

20 MS. GOODSON: But DuPage Forest
21 Preserve District has been very involved
22 throughout the process in providing a lot of

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1 information. They provided a lot of information
2 on elements and occurrence records of species
3 that occur within the area. We were able to work
4 with them a lot in terms of what a lot of their
5 concerns were.

6 A lot of their concerns involved loss
7 of habitat adjacent to the rail line, which
8 partly was addressed by, you know, tightening up
9 the design as it went through the Munger
10 connection. A lot of concerns also addressed or
11 were associated with noise impacts, loss of
12 habitat for aquatic species.

13 And as such, a lot of the mitigation
14 measures that were developed through the corridor
15 kind of came out of those discussions and some of
16 those were developing crossings for turtles,
17 because there is wetland habitat on either side
18 of the tracks. That certainly isn't an option
19 there to, you know, facilitate movement of
20 Blandings Turtles, Spotted Turtles through that
21 area.

22 Also, being able to develop this

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1 liaison, the environmental liaison with CN would
2 give the stakeholders, such as the managers of
3 Pratt's Wayne Woods, the opportunity to work with
4 CN to determine what species they should be
5 serving for to see what the impacts are of this
6 project or, you know, if this transaction, if it
7 were to be approved, also to give the opportunity
8 of identifying locations of the habitat that
9 could be improved, because what's the point of
10 necessarily going back in and reclaiming habitat
11 that is impacted immediately adjacent to the rail
12 line if there is opportunities to make -- create
13 better habitat elsewhere or else give the
14 opportunity for species that are mobile to be
15 able to move into that habitat.

16 I'm trying to think what else there
17 was.

18 COMMISSIONER BUTTREY: I think this
19 area was created by a Large Estate that was --
20 existed there at one time. And then that estate
21 was donated to DuPage County or to the regional
22 environmental groups or whatever to create

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1 something that, basically, doesn't exist anywhere
2 around there, especially in an area that is as
3 urban as it is all around it.

4 I mean, it's just like an oasis
5 basically, from where I sit anyway. It looks
6 like it's just an oasis in the middle of urban
7 sprawl, if you will, not to be critical of Cook
8 County, DuPage County and Will County, but the
9 whole area of Chicago is moving into this area.

10 And right now, my understanding is
11 there is not even so much as a soccer field on
12 this property at the moment and it won't be a
13 soccer field or anything else there until the
14 people who are managing this resource in
15 perpetuity as I understand it say so. Somebody
16 correct me if I'm wrong, but that's my
17 understanding.

18 I see a gentleman standing up back
19 here who I spent some time with when I was out in
20 the area surveying all this area and maybe he can
21 shed some light on some of my questions.

22 MR. CHRISTOPHER: Thank you,

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1 Commissioner. My name is Rich Christopher. I
2 work for HDR in Chicago. I'm a regulatory
3 specialist for HDR. And to get to your question,
4 Commissioner Buttrey, the forest preserve
5 districts of DuPage County, Will County, Cook
6 County, Kane County, generally acquire property
7 through the sale of bonds which are general
8 obligation bonds backed by property taxes.

9 So they will raise anywhere from \$20
10 to \$150 million at a time to go on acquisition
11 campaigns. My understanding is that Pratt's
12 Wayne Woods was purchased from a couple of
13 families who had large holdings in there. You
14 may be familiar with Morton Salt. The Morton
15 family had owned an awful lot of that property
16 there.

17 And since they purchased it, oh, the
18 first purchases of Pratt's Wayne Woods were about
19 40 years ago. Most of it was -- most of the
20 purchasing was done by about 30 years ago. They
21 have been gradually restoring the area. Part of
22 it they actually mined it. It had not been good

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1 farm land and they issued a permit for a fella to
2 take gravel out of it.

3 Now, that has been reclaimed. The
4 marshes and fens and things like that have just
5 been slowly restored to previous habitat quality.

6 COMMISSIONER BUTTREY: While I have
7 you up here, sir, could you address the area
8 where the bird sanctuary is where the line runs
9 right through the middle of the bird sanctuary?

10 MR. CHRISTOPHER: Well, I can tell
11 you, Commissioner, that maybe other people can
12 help. That's a single track line that goes
13 through there now. There is no proposal for any
14 construction through there. We did document in
15 the report and there are findings about what we
16 know about the impacts of noise on the herons
17 that are in there today. But at present, this
18 action has no construction proposed through
19 there.

20 COMMISSIONER BUTTREY: Okay. And
21 there are estimated to be maybe several thousand
22 nesting pairs in that preserve right now?

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1 MR. CHRISTOPHER: I believe it will
2 probably be about 500. I don't think its in the
3 thousands.

4 COMMISSIONER BUTTREY: It looked like
5 a thousand when I was there, but maybe it was
6 only 500.

7 MR. CHRISTOPHER: It's the largest
8 heron rookery in Illinois, I believe, and it has
9 been a great success.

10 COMMISSIONER BUTTREY: Right, right.
11 And was there any research done to talk about the
12 breeding and nesting and bird strike issues that
13 are presented by the fact that instead of having
14 three or four trains a day run through there,
15 there might be as many as 25 or 30 or 35 running
16 through there every day.

17 MR. CHRISTOPHER: I think I might
18 have to defer.

19 MR. MORTON: Yes, Commissioner. We
20 did do some additional work on that issue. You
21 will see some additional analysis. I would like
22 Fiona to step back up here and talk a little bit

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1 about our proposal for some adaptive management
2 activities and specifically as it relates to
3 migratory water fowl or migratory birds.

4 COMMISSIONER BUTTREY: Okay. Thank
5 you. We don't want to wear you out, but I'm glad
6 you're here. Thank you.

7 MS. GOODSON: I probably don't have
8 as clear of an answer for you as you would like
9 in terms of the number of birds that are being
10 hit by trains along the line. There wasn't a lot
11 of data available. No one has been collecting
12 that kind of data.

13 COMMISSIONER BUTTREY: Um-hum.

14 MS. GOODSON: The railroads -- we had
15 requested that in an information request from
16 both CN Rail as well as from the EJ&E. They
17 weren't collecting that kind of data either.

18 COMMISSIONER BUTTREY: Um-hum.

19 MS. GOODSON: SEA made the assumption
20 that with increases in rail traffic that there
21 would likely be an increase in collisions with
22 species.

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1 COMMISSIONER BUTTREY: Um-um.

2 Assuming the birds decide to stay there.

3 MS. GOODSON: Yeah, and, you know,
4 because there is not a lot of data out there, we
5 are trying to do as much research as we could to
6 be able to determine what the impacts were. And
7 one of the main studies that was available to us
8 was conducted by DeMario in 1993 out at Lake
9 Renwick at the Heron Preserve there.

10 And it was a really small sample
11 size, so it's not necessarily completely
12 representative, but just took a look at the
13 response of herons in reaction to trains as they
14 went by. And in -- with four trains going by,
15 the birds only flushed one out of the four times,
16 left their nest.

17 And even at that point, the birds
18 still returned to their nests after the trains
19 had gone by. So they weren't abandoning their
20 nests. They were certainly leaving, but they
21 were coming back afterwards.

22 MR. MORTON: We do propose a

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1 condition by which the Canadian National would be
2 working with and appoint specifically a liaison
3 to work with the Natural Resource Agencies,
4 including the DuPage County Forest Preserve and
5 others, to identify those issues related to train
6 operation activities and those opportunities for
7 adaptive management.

8 That is, you know, looking at, you
9 know, trying some sort of management technique
10 and it may be developing some habitat away from
11 the rail lines, so if they do flush, they have
12 some place to go, you know, in working with those
13 agencies to better adapt those techniques to the
14 issues that they are identifying out there.

15 COMMISSIONER BUTTREY: Does anybody
16 know if that's 10 mile an hour track through
17 there and proposed to be 10 mile an hour track in
18 the future or is it going to be 35 mile an hour
19 track or do we know?

20 MR. MORTON: Through Lake Renwick,
21 through Lake Renwick.

22 MR. BURGEL: Through Lake Renwick,

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1 there is supposed to be no change and it's right
2 now 45 miles an hour.

3 COMMISSIONER BUTTREY: 45 miles an
4 hour. Okay.

5 MR. BURGEL: On the EJ&E main line.

6 COMMISSIONER BUTTREY: Okay.

7 MR. BURGEL: There are Munger, CN had
8 initially given us a 25 mile an hour design and
9 they cut that back to 10 miles an hour to stay on
10 their right-of-way.

11 COMMISSIONER BUTTREY: Okay. Thank
12 you. Could we talk about train accidents for a
13 moment? That's someone else, I'm sure.

14 MR. MORTON: Yes, sir. Depending
15 upon your question, we've got a couple of
16 different specialists.

17 COMMISSIONER BUTTREY: Okay.

18 MR. MORTON: But I would ask Leif to
19 step up.

20 COMMISSIONER BUTTREY: I'm sure if
21 you ask everybody in this room what they thought
22 a train accident was, everybody would give you a

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1 different answer. I'm just curious what is your
2 definition of a train accident? And I'm talking
3 primarily about the difference between a
4 train/automobile type occurrence and a
5 train/pedestrian type occurrence. If you can
6 enlighten us a little bit about what your
7 definition is and how that was used for the
8 calculations?

9 MR. THORSON: Okay. We talked about
10 two different types of train accidents. One is
11 the trains which involve moving equipment, that
12 was a separate category. We also looked at and
13 talked about crossing accidents. And a crossing
14 accident is defined by the FRA. It's really any
15 incident that happens at a crossing that results
16 in any injury or property damage.

17 So those crossing accidents include,
18 you know, minor collisions. They include, you
19 know, abandoned vehicles on the crossing. They
20 also include pedestrian injuries or incidents
21 that happen at those crossings, if they happen
22 within the crossing zone.

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1 So the numbers that we looked at and
2 estimated for crossing accidents included any
3 pedestrian incidents that might happen at that
4 crossing.

5 COMMISSIONER BUTTREY: And I didn't
6 see any breakout anywhere, maybe I just missed
7 it, of how many pedestrian accidents there were
8 within the study period.

9 MR. THORSON: I don't have those
10 numbers with me. We do have them.

11 COMMISSIONER BUTTREY: Did you supply
12 those for the record?

13 MR. THORSON: We do supply those for
14 the record.

15 COMMISSIONER BUTTREY: Just breakout
16 for the pedestrian numbers?

17 MR. THORSON: Yeah. And I want to
18 say that -- somewhere that the -- of those
19 accidents that we saw within the last five years,
20 somewhere in the neighborhood of 10 percent of
21 them were probably pedestrians.

22 COMMISSIONER BUTTREY: Around 10

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1 percent?

2 MR. THORSON: Yes.

3 COMMISSIONER BUTTREY: And those
4 wouldn't necessarily be pedestrian accidents at
5 crossings, that might be pedestrian accidents
6 anywhere?

7 MR. THORSON: A pedestrian accident
8 that does not happen at a crossing is not
9 considered as part of that crossing accident.
10 FRA has classifications for those, looks at those
11 as trespasser accidents.

12 COMMISSIONER BUTTREY: Accidents,
13 okay.

14 MR. THORSON: Um-hum.

15 COMMISSIONER BUTTREY: Okay. Could
16 we talk about public parks and schools? Who
17 could address that?

18 MR. MORTON: I think Mr. Thorson
19 probably has as good a handle on that as anybody
20 right now.

21 COMMISSIONER BUTTREY: Okay. You had
22 a huge number, as I recall, of parks that were

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1 pretty close to the railroad tracks. You had it
2 broken out in three different categories, as I
3 recall.

4 MR. THORSON: Um-hum.

5 COMMISSIONER BUTTREY: I visited some
6 parks where you step off the railroad tracks and
7 you step onto the park property. There is no
8 separation, there is no fence, there's no
9 nothing. You're just on the park one minute and
10 you're on the railroad right-of-way next. You
11 really can't tell where the railroad right-of-way
12 stops or ends or the park stops or ends. You are
13 just sort of wondering around.

14 In fact, somebody said don't go over
15 there. So I was already over there at that point
16 in a place where I wasn't supposed to be,
17 according to this person who was with me, and
18 indicated that I was probably a trespasser at
19 that point. So I came back. And I started
20 showing my credentials, but I decided not to do
21 that.

22 But anyway, there were a large number

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1 of parks that were -- I think one of the measures
2 you used were within 50 feet of the tracks.

3 MR. THORSON: Um-hum.

4 COMMISSIONER BUTTREY: And you came
5 up with a number of how many parks are within 50
6 feet of the tracks.

7 MR. THORSON: I'm sorry,
8 Commissioner, I don't have that number, but would
9 be more than happy to provide it for the record.
10 But there, as you mentioned, are a large number
11 of parks and natural areas adjacent to the rail
12 line. And in fact, many of the comments that we
13 received on the draft EIS identified even other
14 ones for us that either weren't part of the
15 database that we, you know, assembled from
16 Indiana or Illinois DNR or other databases.

17 So we have added to those numbers
18 since the draft EIS.

19 COMMISSIONER BUTTREY: Right. The
20 ones that I personally observed, you could almost
21 putt a golf ball from the swing sets and the
22 teeter totters over to the railroad right-of-way

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1 from where I was. And that was-- I don't like 50
2 foot putts, but you could pretty much do that if
3 you wanted to, if you were so inclined to do so.

4 That's how close they were. And then
5 we went by some schools that were literally,
6 looked like to me, just backed up to the railroad
7 right-of-way. See, I don't -- I can't understand
8 why anybody would allow construction of a school
9 that close to a railroad.

10 But just to give you an idea -- this
11 room is 75 feet long, from that wall to that wall
12 back there. From about the front of this desk
13 right here where you are sitting to that back
14 wall is about 50 feet. That's the distance we
15 are talking about, from the front of this desk to
16 that wall back there. Okay, just so we have a
17 frame of reference here when we're talking about
18 50 feet.

19 MS. KITAY: There is fencing
20 mitigation recommended in the final EIS, both
21 voluntary mitigation and some additional
22 mitigation that SEA has developed. There is also

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1 mitigation for schools and there is a lot of
2 analysis in the final EIS about steps that
3 communities can take to encourage safety in, you
4 know, school buses and in pedestrians getting to
5 the school.

6 So I think that this issue, as was
7 mentioned this morning, was a major issue in the
8 comments on the EIS and there has been an awful
9 lot of analysis of that issue and the development
10 of appropriate mitigation to minimize those
11 effects.

12 COMMISSIONER BUTTREY: Right. I
13 remember when I was there, there was one school
14 we went to where there was -- it was a double
15 track railroad crossing 25 feet from the corner
16 of the school building. And there were school
17 crossings on both sides for kids to walk through
18 with crossing guards, if you would. The sign
19 said that there were crossing guards. Should be
20 a crossing guard anyway.

21 But down where the railroad was,
22 there was no sign about any kind of crossing

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1 guard or assistance getting across the railroad
2 tracks or anything. There were lights and there
3 were crossing arms and so forth, so they were
4 there.

5 There was a good bit of discussion
6 about the Star Line and what the plans are for
7 the Star Line, which interested me tremendously,
8 and especially the conclusion that the Star Line
9 and the railroad, the freight railroad are going
10 to be able to use a single line of track without
11 any kind of degradation of service on either
12 party.

13 I found that to be very interesting,
14 because presumably there are going to be trains
15 going northbound. There are going to be trains
16 going southbound. There are going to be freight
17 trains. There may be passenger trains. And they
18 are all going north and south on one railroad.

19 That sounds like a very interesting
20 situation to me. You know, having watched Nascar
21 a little bit, you know, when you get that much
22 activity on a limited infrastructure, sometimes

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1 bad things happen, people start swapping paint
2 and all that sort of thing.

3 I'm just curious. I'm having trouble
4 kind of understanding how that is going to
5 happen, how you are going to have freight trains
6 going north and south and passenger trains going
7 north and south on one railroad track, on one
8 line of track, and you are saying you're only
9 going to double track 19 miles.

10 And presumably CN is not double
11 tracking this line for the benefit of the
12 passenger carrier.

13 MR. MORTON: Right.

14 COMMISSIONER BUTTREY: CN is double
15 tracking this line for its own benefit, which I
16 would certainly expect them to do. And I'm just
17 curious about how you could come to that
18 conclusion that you are going to be able to get
19 all that traffic on that line especially if you
20 have got 30 or 35 trains a day, presumably day
21 and night going up and down that railroad track.

22 I just can't -- I don't understand

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1 that. Help me.

2 MR. MORTON: Absolutely. I
3 appreciate the opportunity to clarify. I'm sorry
4 that -- we probably went through that a little
5 too fast earlier this morning and we could have
6 done a better job.

7 COMMISSIONER BUTTREY: That's why
8 we're going through it again now.

9 MR. MORTON: Yes. We are -- there
10 was never an intent by either Metra, you know, in
11 their Star Line proposal to operate on a single
12 track main. Metra had, you know -- proposal
13 included extensive amounts of double tracking,
14 you know, on that segment from, essentially,
15 Hoffman Estates down to just, you know, south of
16 the Plainfield area.

17 So they recognized that on a single
18 track main, you know, they would not be able to
19 implement the type of commuter service that they
20 were proposing even before the transaction. What
21 we looked at is the amount of infrastructure that
22 Metra had proposed to put in place, that is the

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1 second main line.

2 We then looked at the type of
3 infrastructure that CN was proposing to put in
4 place and that's, as you mentioned, the --
5 several sections of their double tracking where
6 they are connecting sidings and where they will
7 have a second main line.

8 In some cases, we developed -- well,
9 what we did is we developed four different
10 scenarios. Since the Star Line really isn't
11 designed yet, we had no real basis to start from,
12 so we developed operating scenarios. How could
13 you operate both the Star Line service and the
14 EJ&E and the CN proposed operations on that rail
15 line track? What type of infrastructure would
16 you need to put in place?

17 The first scenario is essentially --
18 well, actually, it might be easier for me to let
19 Mr. Burgel explain each one of those scenarios,
20 so that I don't get them wrong. Bill, would you?

21 MR. BURGEL: We dug into them pretty
22 deep, Commissioner, and to answer your first

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1 question about if we were to superimpose all the
2 CN traffic onto what we understood would be
3 Metra's design, we put it into this RTC, this
4 dispatch simulation model, and lo and behold it
5 didn't work.

6 So your point is well-taken about
7 what could and would and should happen in terms
8 of the volume of CN traffic. Plus, Metra plans
9 to run 30 minute service. It roughly works out
10 to about 52 trains between Hoffman Estates and
11 down to Joliet. Prior to that, that was Scenario
12 1B.

13 Scenario 1A, we actually tried to do
14 it without the CN traffic and based on what Metra
15 had in mind, it actually worked quite well. So,
16 you know, that part is true. We added the CN
17 traffic and it didn't work.

18 COMMISSIONER BUTTREY: And that
19 traffic, that north and south bound traffic --

20 MR. BURGEL: Um-hum.

21 COMMISSIONER BUTTREY: -- going both
22 directions, could intersect along the way, along

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1 this arc, if you will --

2 MR. BURGEL: Um-hum.

3 COMMISSIONER BUTTREY: -- the traffic
4 going east and west in and out of the city?

5 MR. BURGEL: Correct, yeah.

6 COMMISSIONER BUTTREY: At certain
7 points along the line?

8 MR. BURGEL: We took a hard look at
9 these crossing diamonds. Metra in their report,
10 their most recent report said they didn't believe
11 that they would be able to cross the West Chicago
12 diamond at-grade, so at their suggestion, we put
13 in a fly over at West Chicago. And that's the
14 only place, that's where we had lunch. And
15 that's the only place that we put a fly over on
16 the first three scenarios.

17 So we did -- we basically avoided the
18 project -- problem with a fly over at West
19 Chicago.

20 MR. MORTON: And that would be the
21 case under any of the operating scenarios.
22 That's what Metra would more or less need to do

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1 today to operate through there is put a fly over
2 there at West Chicago and avoid that crossing
3 diamond.

4 MR. BURGEL: We like flowers.

5 COMMISSIONER BUTTREY: Well, let me
6 ask one more question and then I'll turn it over
7 to my colleague, Mr. Mulvey, Vice Chairman
8 Mulvey. Was there an analysis on how much of the
9 traffic moving along, this new traffic that we
10 are talking about, this line is actually O&D
11 traffic Chicago or is it -- or my impression is
12 very little of this traffic is supposed to be
13 moving over this line. It's going to be O&D
14 Chicago traffic -- O or D traffic -- Chicago
15 traffic.

16 A lot of this traffic or maybe the
17 vast majority of this traffic is going to be pass
18 through traffic going from a place not in Chicago
19 to a place not in Chicago.

20 MR. BURGEL: Well, this goes back to
21 when this team worked on the Conrail, as my
22 information was based on that. But CN and CP,

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1 both have transcontinental routes that go across
2 Canada. And for the Chicago market, they divert
3 a number of their trains to Chicago, because of
4 the O&D pairs they pick up here.

5 So I didn't get a percentage of that
6 number, Mr. Commissioner, but there is a fair
7 amount or they could continue across the
8 transcontinental routes through Canada.

9 COMMISSIONER BUTTREY: Um-hum.

10 MR. BURGEL: But if they do it for
11 the Chicago market, then certainly the Detroit
12 market as well.

13 COMMISSIONER BUTTREY: Some of the
14 comments seem to indicate that this proposed
15 action would benefit traffic coming in through
16 Prince Rupert going to places in the southeastern
17 United States, which would be basically remote
18 traffic coming in from some place down through
19 across Canada down through Chicago across this
20 line and down into the old -- what used to be the
21 old Illinois Central territory. Is that your
22 understanding as well?

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1 MR. BURGEL: That's my understanding,
2 yes.

3 MR. MORTON: Yes, that's correct.
4 And we did have a number of comments, as I'm sure
5 you are aware, on Prince Rupert and expressing
6 concern about the traffic levels from Prince
7 Rupert. Prince Rupert, for the benefit of those
8 listening, is a, you know, port on the Canadian
9 West Coast.

10 It currently is developed for about
11 500 TEUs or 20 foot equivalent units. There is a
12 proposal to expand the Prince Rupert to about 2
13 million TEUs, that's under environmental review
14 and the permitting process right now in Canada.

15 COMMISSIONER BUTTREY: And I don't
16 know how many days it takes the traffic to get to
17 Prince Rupert from where it is originating from,
18 but I'm thinking somewhere between probably 18
19 and 25 days. I don't know for sure, so don't
20 quote me on that. But the -- some of the
21 information I saw said that -- indicated that if
22 you were in the mid-south, for instance, and the

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1 traffic was coming through from Asia over this
2 route, that it would cut a whole day off the
3 transit time. Is that the information you have?

4 MR. MORTON: Yes, sir. Prince Rupert
5 is closer to the Asian markets than like the Port
6 of LA and Long Beach would be, that's correct.

7 COMMISSIONER BUTTREY: So instead of
8 getting to its destination in 28 days or 29 days
9 or 30 days, it would get there one day sooner?

10 MR. MORTON: Yes, sir, I believe that
11 is correct. We can verify that.

12 COMMISSIONER BUTTREY: I have some
13 more questions, Mr. Chairman.

14 CHAIRMAN NOTTINGHAM: Certainly.
15 Thank you, Commissioner Buttrey. I expect we
16 will have multiple rounds and it's now my
17 pleasure to turn it over to Vice Chairman Mulvey.

18 VICE CHAIRMAN MULVEY: Thank you very
19 much, Mr. Chairman. I agree with Doug, it's
20 going to cut a day off, but I think it maybe be
21 less of a total. I think it's about 8 days from
22 China to Prince Rupert and one day off and the

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1 four days on the east coast. So percentage wise,
2 it's probably a larger impact.

3 I would like to ask about in terms of
4 safety, and that is people who are killed,
5 pedestrians who are killed. The majority of
6 people who are killed by railroads today are not
7 in highway grade crossing accidents or are they
8 pedestrians crossing at crossings. But rather
9 they are the category called trespassers.

10 About four or five years ago,
11 trespassers overtook people killed at highway
12 grade crossing accidents. Did you look at the
13 impact on trespassers, because like it or not,
14 trespassing will happen?

15 MR. THORSON: In our analysis, we did
16 not look at and attempt to quantify the
17 trespasser implications. You are correct in that
18 a few years back the number of trespasser
19 fatalities overtook the number of grade crossing
20 fatalities. Another alarming statistic that the
21 FRA is seeing is that there is an inordinate
22 increase in the number of what appear to be

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1 suicides as well at those trespasser locations.

2 VICE CHAIRMAN MULVEY: Those are not
3 included in the trespasser statistics. The
4 suicides are exempt from those numbers, but
5 anyway.

6 MR. THORSON: Our analysis when we
7 looked at it, we were looking at legitimate
8 crossings of the track. We zeroed in on the
9 sidewalks, the trail crossings.

10 VICE CHAIRMAN MULVEY: Then that's
11 true, but illegitimate crossing still happens and
12 the people who are killed trespassing are still
13 dead, even if they are illegitimately crossing
14 the track. Was it possible simply to extrapolate
15 from some of the other estimates as to what the
16 likelihood of accidents would be, therefore,
17 extrapolating what the trespassing rate would be?

18 Because you can correlate the density
19 of traffic and density of population with
20 trespassing fatalities. I was wondering if you
21 have been able to do that?

22 MR. THORSON: As I said, we did not.

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1 VICE CHAIRMAN MULVEY: Okay.

2 MR. THORSON: We did not do that. If
3 I could interject though, we do have in our
4 analysis, however, a number of issues and
5 discussions that address people, primarily
6 children, on railroad properties not at
7 designated or appropriate locations and
8 mitigation that the applicants have provided for
9 some of those.

10 MR. MORTON: I think that's an
11 important point and if I could, Vice Chairman,
12 just -- we did not, as Mr. Thorson identified,
13 evaluate that and try to quantify it, but it
14 doesn't mean that the mitigation isn't sensitive
15 to that. There is voluntary mitigation that the
16 Canadian National has proposed where they would
17 work with the communities to provide fencing in
18 appropriate areas near schools and near parks and
19 those areas where trespassing occurs.

20 And there is also a real commitment
21 in the mitigation to expand the operation
22 lifesaver training and the education and the

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1 awareness to reduce, you know, those trespasser
2 events.

3 VICE CHAIRMAN MULVEY: Just speaking
4 to an observation about the mitigation, about the
5 voluntary mitigation and as well as the Board
6 mitigation, there is, approximately, 170
7 mitigations that are called for. And yet, if I
8 look at it very, very carefully, I find less than
9 half a dozen that I would actually call
10 mitigation in the sense that you are requiring
11 the railroad to do something that otherwise it
12 would not do.

13 All the railroads work with Operation
14 Lifesaver. All the railroads work with
15 communities, because they have to. And many of
16 the mitigations that I read about here simply say
17 you will obey the law. You will obey existing
18 regulations. You will live up to the commitments
19 that you have already made.

20 The mitigations that I see are the
21 ones that relate to what the railroads have to
22 spend on the grade crossings, the 15 percent to

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1 install grade separations. The installation of
2 cameras at certain crossings, so that emergency
3 response vehicles can see what is happening and
4 respond more quickly is another true mitigation.

5 I was happy to see the turtles are
6 being protected. I considered that to be a
7 mitigation. They would not have done that on
8 their own. But it strikes me that virtually
9 everything else that we call mitigation are
10 things that the railroads would likely have done
11 anyway.

12 I'm not being especially critical. I
13 understand that these are things that need to be
14 looked at and then perhaps put in writing, but do
15 you want to comment on that, that these
16 mitigations are kind of soft, if you like? I'm
17 trying to just get your response to what the
18 communities are going to say about some of these.

19 MS. RUTSON: Some of them may appear
20 soft, for example, the liaison, the CN required
21 liaison to work with Illinois Natural Resource
22 and Water Resource Stakeholder Group. Now, that

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1 condition may, on its face, not say much, but
2 that condition, the team feels strongly, is going
3 to be very powerful.

4 CN is required to work with Pratt's
5 Wayne Woods and a number of other natural and
6 resource stakeholders, interested agencies with
7 special expertise in the areas of natural
8 resource and water resource. They are going to
9 work with CN when CN needs to spray pesticides to
10 maintain the right-of-way.

11 But rather than having to say to CN,
12 you will comply with EPA regulations on spraying
13 pesticides, CN will work with the Natural and
14 Water Resource Groups to figure out what is going
15 on in the environment at the time when CN needs
16 to spray. Perhaps spraying doesn't -- isn't
17 necessary at a certain time. Perhaps it can be
18 limited to a certain area.

19 Well, we can't put that out in a
20 final EIS now. We're not the Natural and Water
21 Resource experts. The people who manage those
22 lands are. So they need to work with CN and CN

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1 needs to work with them, more importantly, to
2 know exactly what needs to be done to maintain
3 those properties.

4 It is simply not effective for us to
5 say CN you shall not spray on February 15th
6 through March. I mean, that's meaningless. So
7 it needs to be tailored.

8 VICE CHAIRMAN MULVEY: I suppose my
9 view is that when I was writing it I would say
10 you shall consult with and you shall follow the
11 directions of that particular group about the
12 spraying as opposed to simply saying consult,
13 because I'm not sure how we can enforce them
14 doing anything beyond consulting.

15 You have a consultation where you
16 have the "coordination," but if they elect not to
17 follow-up, what is our response to make sure that
18 they do, in fact, do what we are hoping that they
19 would do?

20 MS. RUTSON: Well, we are
21 recommending reporting requirements, quarterly
22 reporting requirements that would continue for

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1 several years. And the Board therefore, if
2 circumstances warranted, could take appropriate
3 action and that would be true if there were
4 significantly changed circumstances from what
5 existed at the time the proposed action were
6 approved, assuming that it is approved.

7 VICE CHAIRMAN MULVEY: And that
8 appropriate action could include fines, for
9 example?

10 MS. RUTSON: For additional
11 mitigation or modifying the mitigation that the
12 Board imposes.

13 VICE CHAIRMAN MULVEY: Well, let me
14 get to another one of my concerns or questions.
15 And that is that we have mitigations based upon
16 what we assume to be going to be true up to 2015
17 and projecting to 2015 is not so easy. I just
18 read a study the other day about waterways and
19 the traffic shifts between modes of
20 transportation, given higher fuel costs, and this
21 was very good study. However, it is a little bit
22 dated now, though it came out in October of this

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1 year, and I had three levels of possible fuel
2 costs: high \$150 a barrel, medium expected \$90 a
3 barrel and low, \$60 a barrel, all in 2008
4 dollars. A week after the report is out, it is
5 at \$56 a barrel. So it's very, very difficult to
6 predict the future.

7 My question is what if we are not
8 correct on, say for example, these ADTs? And in
9 fact, that fuel prices fall down to \$30 or \$40 a
10 barrel, \$20 a barrel, what have you, and traffic
11 in these areas continue to grow and traffic
12 problems are much worse. There are many, many
13 more EMS delays and people suffering negative
14 consequences, that euphemism for deaths, because
15 EMS vehicles could not get through, et cetera.

16 Is there any way that we can have
17 tranches of mitigation that we can monitor things
18 and say that well, if delays reach a certain
19 level, they will trigger us to go back and look
20 at further mitigation, so we can require it? Is
21 that a possibility? Because it seems to me -- I
22 know we're monitoring for five years, that over

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1 that five year period, things could be worse then
2 expected. Can we have tranches of mitigations
3 depending upon what actually happens?

4 MS. KITAY: Well, there is a
5 condition now that says that if a party comes in
6 and argues that there are significantly changed
7 circumstances, that the Board could review the
8 continuing applicability of the final mitigation.
9 So I think that is the reason for this
10 remonitoring and enforcement conditions that were
11 in the draft EIS and are also in the proposed
12 final EIS.

13 And that happened after the Conrail
14 transaction. We had similar provisions and there
15 were some adjustments to the mitigation, I
16 believe, as that case went forward. So I think
17 the same thing could be true here.

18 MS. RUTSON: And to add, NEPA
19 requires us to take a snapshot of what is
20 reasonably foreseeable. They don't expect us to
21 be Gods. In Conrail, Evelyn, of course, is
22 correct. We looked at a number of segments. NS,

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1 in particular, had proposed rather dramatic
2 increases in rail traffic in southern Virginia.

3 Those rail increases never
4 materialized for whatever reason. But did we go
5 back in and say well, all this mitigation we are
6 requiring of you, NS, is no longer applicable?
7 No, we did not. NS still had to meet that rather
8 expensive mitigation requirements.

9 But your question is, of course, an
10 excellent one. And EPA made the point to us
11 during the commenting period, EPA suggested to us
12 why don't you have tiered mitigation, so that if
13 the train traffic, and that's what everyone was
14 really wondering about, the numbers of trains
15 that CN was forecasting, being people who were
16 concerned about their homes and families and
17 lives, they were very worried that there would be
18 more trains than anybody projected.

19 So that's why we, as my consultants
20 so aptly say, drilled into the numbers. And
21 that's why we did all of that modeling and
22 checking and probing and pushing and asking and

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1 demanding to figure out if those numbers were
2 right. And we are pretty damn confident that we
3 are right with those train numbers. And that's
4 why we think that our mitigation with the train
5 numbers is right.

6 But you are raising a very good
7 point. What is the vehicular traffic should
8 change? Life as we know now more than ever can
9 be so uncertain and things happen that no one can
10 predict, even very, very smart people. So NEPA
11 is requiring us to look to the best extent that
12 we can at what is reasonably foreseeable, so
13 that's what we are doing.

14 VICE CHAIRMAN MULVEY: Well, that
15 leads me to these train numbers, for example. I
16 look at the map and it shows parts of the route
17 where trains increase and other parts where
18 trains decrease. And I notice that there are
19 really only five places where you have a
20 significant reduction in the number of trains.
21 Where it's a large number, like from 15 to 2.

22 Yet, I find, I think there are 19

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1 places where the increases are very, very large,
2 much larger than the reductions in any place.
3 There are places where you go from 2 trains a day
4 to 25, 30 to 40. There has been 43.5 trains per
5 day. These are enormous increases.

6 It does seem that the way the
7 analysis has been done, it's sort of well, there
8 is benefit here, but there are setting off losses
9 here, losses there, benefits there. And we sort
10 of trade these things on an even basis.

11 It's kind of like the old economics
12 argument about the constant marginal utility of
13 money. Is the utility of another dollar the
14 same for a rich person-- is an extra dollar the
15 same for a rich person and a poor person? With
16 respect to the environment, there is a difference
17 between reducing a negative externality in a
18 place that already experiences a lot of it and
19 benefit to that community and the cost of
20 introducing the same externality to a place that
21 has relatively few of them and now all of a
22 sudden, we have a lot of it.

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1 I think that is generally perceived
2 as not the same thing. That it is actually worse
3 to introduce a negative externality into a place
4 that was previously relatively pristine, than
5 reducing it when there is this overall
6 background. Can you comment on that? Is it a
7 fair tradeoff to say well, we're reducing
8 pollution here, and we're increasing it there and
9 so it's an offset? Even if it's the same kinds
10 of pollutants or even if it's the same LDN
11 numbers, because of the places and because of the
12 history and the background, they really can't be
13 treated the same.

14 MS. RUTSON: I think some of the
15 areas, you are exactly right, are not the same.
16 Fiona Goodson explained to us that the
17 environmental quality of the lands along,
18 adjacent to or through which the railroad does
19 run, on the EJ&E are of a very high quality. And
20 the environmental areas, natural areas, within
21 the arc less so.

22 So if you looked at an acre to acre

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1 comparison of impacts, it seems that a scientific
2 and rational person would conclude that the
3 impacts would be greater to the high quality
4 natural areas rather than the less high quality
5 natural areas.

6 But then you come to the numbers that
7 really do speak volumes. When Leif Thorson was
8 talking about the numbers of schools in the
9 additional analysis that we did, 900-some within
10 50 feet, I believe? We'll have to get Leif back.

11 VICE CHAIRMAN MULVEY: 2 miles.

12 MS. RUTSON: 2 miles. 2 miles along
13 the CN five lines feeding into Chicago, 900-
14 some, and yet 300-some on the EJ&E Line. To my
15 mind, those numbers, those discrete numbers are
16 quite comparable.

17 Now, would you ask are the children
18 who live with trains perhaps on a more daily
19 basis inside the arc, are they more savvy than
20 children who live on the EJ&E? I don't know.

21 What I do know is that even today
22 along the J, even during the time that we were

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1 working on this EIS, two children met their
2 deaths on the J. One a tragic trespassing
3 incident in which the child was playing with her
4 brother and her sister and the other two children
5 made it across the line, but the young child did
6 not. And another incident in which a young man
7 passed away, again hit by a train.

8 It's very difficult, I think, to
9 compare those situations. And I certainly don't
10 have the wisdom to be able to comment on the
11 degree of impact to children inside the arc and
12 on the arc. But we have looked at the hard
13 numbers to make that comparison.

14 MR. MORTON: If I could just briefly,
15 I think you are absolutely correct that in a lot
16 of cases we tried to quantify both the impacts on
17 the EJ&E where, you know, traffic would increase,
18 as well as the impacts on the CN Rail Line. In
19 some cases, and Mr. Lazzara mentioned it, we did
20 a regional analysis and compared those two.

21 You know, there is a total of 356
22 hours of delay increase when you look at all the

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1 increases and all the decreases. Some resources
2 like air quality where you really are dealing
3 with a regional sort of phenomena, it does make
4 sense to quantify it and add it all up and net it
5 out and say, you know, are we -- you know, we are
6 adding some pollution, you know, some missions
7 over here. We are taking them off here. What
8 are we doing to the region?

9 And that's a good approach. I think
10 what we tried to do, and I hope you find it this
11 way, is we tried to present the facts as, you
12 know, we identified them and quantified them.

13 The real offset, does this balance
14 this versus this? It is actually -- you know,
15 and I know I'm speaking out of turn, it's sort of
16 the role of the decision maker and it's really
17 your -- I mean, that's why hopefully we are
18 giving you the information that you can look at
19 and try to make that decision in that balance.

20 MS. KITAY: And even when you did
21 look at things on a regional basis, you also went
22 and looked at every school within --

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1 MR. MORTON: Yes.

2 MS. KITAY: -- 2 miles of the line or
3 whatever, 50 feet, every emergency service
4 response --

5 MR. MORTON: Right.

6 MS. KITAY: -- person along in every
7 single community. So even though there are some
8 balancing, it's not as if SEA and HDR have not
9 done a real individualized environmental
10 analysis.

11 VICE CHAIRMAN MULVEY: One more
12 question and I'll move on to the next round.
13 There are also issues of environmental justice,
14 and I notice that it's addressed in the report,
15 but it's not really delved into all that much.
16 But isn't it the case that -- I recall I asked
17 Ms. Rutson when we first saw an early draft about
18 the numbers of people who are affected, we didn't
19 have information on the total numbers who were
20 affected.

21 As I recall, there are far more
22 people benefitting in the city of Chicago than

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1 who are dis-benefitted in the suburbs. And isn't
2 there some question about the relative economic
3 well-being of the people who are benefitting and
4 the people who are dis-benefiting?

5 MR. MORTON: Yes, sir.

6 VICE CHAIRMAN MULVEY: In other words
7 -- yeah.

8 MR. MORTON: Yeah. I would like to
9 perhaps ask Rich Christopher to just step back up
10 here real quick. He did the details and I think
11 the Vice Chairman's question really is related
12 to, you know, the number of people on the
13 interior versus the number and the demographics
14 of those two populations.

15 MR. CHRISTOPHER: Well, first of all,
16 when we did our environmental justice analysis
17 just to compare the effects on people along the
18 EJ&E, we didn't do it based on total numbers of
19 people. We did it based on census block groups.
20 And some census block groups are quite a bit
21 larger than other ones.

22 We selected that unit of measurement,

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1 because that's the lowest unit of measurement for
2 income distribution. The census block level
3 probably would have been a more accurate level
4 for effects, but you can't get income data at
5 that level.

6 So we compared numbers of census
7 block groups, low-income versus non-low-income,
8 minority versus non-minority. We also tried to
9 describe the number of census block groups that
10 would be benefitted with less delay and safety
11 problems and less noise.

12 So -- but we did not try to do a
13 total number of people analysis. Now, in other
14 parts of the document, we used census block
15 groups and total numbers of people to calculate,
16 for instance, who was going to experience a
17 slightly increased risk of exposure to hazardous
18 materials and who would get a slightly lower
19 number.

20 And when we did that analysis, we had
21 about 900,000 people with a slightly lower risk
22 and about 330,000 people with a slightly higher

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1 risk. So those were not based on income or
2 minority demographics. Those were just total
3 numbers of people.

4 VICE CHAIRMAN MULVEY: But if you
5 look at income and minority demographics, is it
6 true that income, low-income and minority
7 individuals are more likely to benefit from these
8 environmental changes?

9 MR. CHRISTOPHER: When we did our
10 analysis, Vice Chairman, that wasn't necessarily
11 true. Just from looking at the census block
12 groups and the way that they were distributed,
13 the number of census block groups of non-minority
14 or non-low-income is actually much higher inside
15 the arc than you would expect. And that's
16 because the arc is so far out.

17 VICE CHAIRMAN MULVEY: Um-hum.

18 MR. CHRISTOPHER: I mean, it's what a
19 good 30 plus miles from the center of the city.

20 VICE CHAIRMAN MULVEY: How large are
21 the census block groups, in general, in terms of
22 acres or square miles or what have you?

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1 MR. CHRISTOPHER: Well, it depends on
2 population density.

3 VICE CHAIRMAN MULVEY: Right.

4 MR. CHRISTOPHER: We had some that
5 were very small, that probably had a population
6 of less than 1,000. And then we had one that was
7 actually 13,000 people. So it was all kind of a
8 community determination made by the census. It
9 wasn't anything we had anything to do with.

10 VICE CHAIRMAN MULVEY: That's all for
11 this round from me. Thank you.

12 CHAIRMAN NOTTINGHAM: Thank you, Vice
13 Chairman. Just to follow-up on this trespassing
14 concern. Is it fair to say that there currently
15 is trespassing that happens under the system,
16 both on the EJ&E today, but also on the CN system
17 in Chicago?

18 MS. RUTSON: Absolutely, sir.

19 CHAIRMAN NOTTINGHAM: Any reason to
20 believe that there would be more trespassing
21 problems if the traffic were to largely relocate
22 from Chicago to the EJ&E Line, if this

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1 transaction were approved?

2 MS. RUTSON: No reason to believe
3 that at all.

4 CHAIRMAN NOTTINGHAM: Okay. So
5 really trespassing is one more example that
6 weighing where you may have -- certainly may have
7 a little more in some locations, but probably
8 have less in others post-transaction, if it were
9 approved?

10 MS. RUTSON: That's exactly right,
11 Mr. Chairman. And there is voluntary mitigation
12 from the applicants and SEA's preliminary
13 proposed mitigation that addresses fencing and
14 working with communities, parks to try and make
15 the rail line as safe as possible.

16 CHAIRMAN NOTTINGHAM: When we as a
17 group visited the area, we didn't spend quite as
18 much time looking at the existing CN system in
19 Chicago as we did looking at the EJ&E arc. We
20 have had some reference this afternoon to
21 proximity of the EJ&E Line to housing, schools,
22 park resources, etcetera.

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1 Can someone give us a snapshot of
2 what, on the benefit side, the picture looks like
3 on the existing CN Lines within Chicago? I
4 assume, I've seen some of it, but you're talking
5 about lines --

6 MR. MORTON: Right.

7 CHAIRMAN NOTTINGHAM: -- that are
8 near housing, lines near public housing, lines
9 near schools, lines near streets and cumulatively
10 that sheer number of people in a densely
11 populated megatropolis, such as Chicago, that
12 would, I'm guessing, be -- would far out number
13 those that are impacted, if this transaction were
14 approved in the outer suburbs.

15 MR. MORTON: That's correct, Mr.
16 Chairman. I believe and I think Rich just
17 mentioned it is that there is, approximately,
18 900,000 people that live along the five CN Rail
19 Lines that, you know, inside the EJ&E arc and
20 about 300,000 or 400,000 people that live along
21 the EJ&E Rail Line. So it is -- the CN Lines run
22 through more densely populated areas.

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1 I think that, in general, the lines
2 have been there, you know, for quite some time.
3 You know, the population has grown up around
4 them. There is a lot of housing near them in
5 some areas. There is a lot of businesses near
6 them in some areas.

7 You know, so I think it's a little
8 difficult to just characterize them, you know, in
9 whole, but they do run through more densely
10 populated areas. That's correct.

11 CHAIRMAN NOTTINGHAM: Thank you.
12 There has been a lot of discussion, as there
13 should be, about pre-existing conditions and the
14 status quo as exists today along the EJ&E Lines
15 and the communities adjacent to the EJ&E Lines.
16 It struck me, when we had a chance to recently
17 visit the area, that certainly there was
18 significant traffic congestion and some safety
19 concerns in and around the track location
20 currently.

21 I didn't notice and this is not
22 scientific whatsoever, so I'm not going to make a

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1 decision based on this at all, but I didn't
2 notice a lot of highway improvement construction
3 projects. We didn't -- we weren't delayed by --
4 we were there during summer months. We didn't
5 see a lot of cones, a lot of equipment and
6 things, as a former State Highway Department had
7 I know easily how to recognize, nor did I even
8 notice a lot of evidence of recent sort of new
9 looking turn lanes or newer looking intersection
10 improvements.

11 But help me understand someone the
12 history. I got the impression, and I want to
13 hear from folks who have spent more time and have
14 more facts on this than my, you know, impressions
15 that I was getting, that there hasn't been a
16 sustained effort to keep traffic moving freely
17 for whatever reason in much of the EJ&E corridor.

18 I just -- is that -- am I accurate
19 there? Did you pick up -- are there plans that
20 show projects? We're talking about communities
21 that have a lot of Ds and some Fs on traffic
22 flow. Are there projects in the pipeline that

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1 the metropolitan planning divisions have to
2 address that?

3 I mean, this project could disappear
4 tomorrow, I mean, with the financial situation,
5 the economy, I mean, so this is a question really
6 that goes beyond just whether this project
7 happens or not or happens with mitigation. I
8 mean, this -- you are talking about communities
9 that are facing some serious challenges. But I
10 didn't -- I was worried that not a lot of action
11 to address it.

12 MR. MORTON: I'm going to turn it
13 over to Rich in just a second, but I think that
14 issue was certainly identified during the scoping
15 process where we -- where SEA received a lot of
16 comments/concerns about existing congestion and
17 existing traffic problems and would this proposed
18 transaction exacerbate those?

19 That's one of the reasons in the
20 draft EIS that we actually identified the level
21 of service on the roadway. As you know,
22 typically SEA would look at a level of service

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1 analysis at an individual railroad crossing. And
2 certainly, they did so this time. But because of
3 the regional concerns and some of the mobility
4 issues that you see, that's one of the reasons
5 why we also looked at the -- you know, and
6 quantified the total delay and looked at those
7 at-grade crossings where you had more than 40
8 hours of delay and also the queue length, because
9 that certainly has a potential to impact other
10 regional issues.

11 And so that's one of the reasons why
12 we looked at those two factors was to try to
13 accommodate the regional issues. With that, I
14 would like to turn it over to Rich to kind of
15 give you a little bit of a feel for the history
16 of that. Rich, would you mind kind of giving a
17 little bit of your background, so they know, you
18 know, from where you are speaking?

19 MR. CHRISTOPHER: Okay. First of
20 all, my background. I was with the Illinois DOT
21 for about 26 years. I worked for the State of
22 Illinois for about 30. And for the-- during most

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1 of those 26 years, I was the counsel to the
2 planning organization as well, because it was
3 tied very closely to the Illinois DOT.

4 So some of the stuff I would like to
5 say today is what I learned, but it's also what I
6 learned from the people that had been there
7 before I got there.

8 First of all, we have two
9 metropolitan planning organizations in the
10 project area. One in northwest Indiana and one
11 in northeast Illinois. And most people in
12 Chicago that want to go back to the like how did
13 we get into this and where did all these
14 improvements come from, the benchmark we usually
15 turn to is 1962 Plan.

16 It was kind of a pioneering plan. It
17 was the first one of its kind in the United
18 States, because it was long-range. It was
19 regional. And it combined highway and transit.
20 The only long-range plan that had been done
21 before that was in Detroit and it was limited to
22 highway improvements.

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1 Now, the 1962 Plan called for
2 extending transit, finishing the radial
3 expressway system, which is pretty much the
4 interstate highway system in the Chicago area,
5 and planning for future concentric rings that
6 would move around the Chicago area, much like the
7 EJ&E does.

8 The first ring would be about 3 or 4
9 miles outside the city limits. That ring was
10 already built in 1962 and it is still there
11 today. The second ring would be about another 7
12 miles out. That ring is about half built today.
13 And the third ring would be pretty close to the
14 EJ&E. That ring that starts and stops in the
15 planning process and there currently isn't really
16 a long-range highway planned in that corridor.

17 There are individual pieces that are
18 planned, but not a long continuous route. There
19 is a fourth ring, which is another 7 or 8 miles
20 further out west where there is actually work
21 being done and construction being done to move
22 traffic north and south.

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1 Now, there is a lot of reasons why
2 that, you know, has happened at certain places
3 and hasn't happened in others. Since 1962, a lot
4 of things have changed. NEPA got passed along
5 the way. It's a lot harder to do an improvement
6 now than it used to be. The planning rules have
7 changed. And now the long-range transportation
8 plans have to be consistent with air quality
9 planning and that's a real constraint on how
10 these things get done.

11 Also, the planning agencies don't
12 just do transportation any more. They try to
13 integrate land use planning, natural resource
14 planning, air quality planning and all these
15 things into one mix. Now, that might make for a
16 plan that is responsive to an awful lot more
17 needs, but it also makes it much more difficult
18 to get significant transportation improvements.

19 Now, and of course, the biggest
20 constraint to any of this is finances. The
21 finances for highway and transit improvements are
22 actually the public finances, which are much less

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1 today than they were in 1962. The gas tax is
2 just -- as you know, it hasn't turned out to be
3 what we all thought it would be.

4 Now, that doesn't mean that there
5 isn't still progress being made, that there
6 aren't still improvements going in. As I said,
7 most of that second ring is -- about half of it
8 is built, about half toll facility, about half
9 non-toll facility.

10 The first ring around the Chicago
11 area is about 90 percent tolled. The transit
12 now, the transit system goes much further out
13 than it ever did before and ridership is much,
14 much higher on transit than it once was. And of
15 course, recently, there has been a tremendous
16 surge with the fuel prices, as you were talking
17 about, Mr. Vice Chairman.

18 There are also local projects. Now,
19 some of the projects that are local in nature go
20 through the metropolitan planning process, so
21 that they are eligible for federal funds. Some
22 of them don't have to. And we listed, to the

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1 extent we could find them, ever local
2 improvement, that we knew of, that was going
3 through the county highway departments where they
4 just come up with their own program, publish it
5 and go on their way.

6 We looked for the ones that were as
7 close to the EJ&E as possible. We found -- and
8 then even when we thought we had a good list, we
9 got into the comment period and found out we had
10 missed a bunch. So we have got just about every
11 single one we could find are listed in the final
12 EIS.

13 There are some that are -- have been
14 initiated by the communities immediately around
15 the grade crossing, other ones initiated by the
16 county highway departments, as I said. And we
17 have got them all listed in the final document.

18 MR. MORTON: Did that answer your
19 question, Mr. Chairman?

20 CHAIRMAN NOTTINGHAM: That was
21 helpful. The sense I got that I want to bounce
22 this off knowledgeable sources that we have here

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1 today, it seemed that there weren't a lot of lane
2 additions that had been undertaken in some of the
3 major arterials that were running kind of
4 east/west through some of the communities that
5 have generated a lot of correspondence to it on
6 this transaction, turn lanes, widened shoulders
7 and whatnot.

8 And I got the sense that perhaps, and
9 I have seen this, this is certainly a common
10 phenomena around the country, that perhaps
11 communities consciously decided not to seek
12 funding and push projects ahead for fear that
13 they would become more of a conduit for cut
14 through traffic so to speak from the outer
15 suburbs to the west in and effort not to become
16 that thoroughfare, that, you know, speed bump in
17 between a job center like Chicago in the western
18 suburbs.

19 The consciously said no, we don't
20 have any plans. But is that a situation -- I've
21 seen that situation many other places. I don't
22 want to assume that's the situation along the

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1 EJ&E Line. But do you have any information that
2 would speak to that one way or the other?

3 MR. CHRISTOPHER: Well --

4 CHAIRMAN NOTTINGHAM: And if so, has
5 that been a successful strategy? Has it actually
6 resulted in less traffic problems?

7 MR. CHRISTOPHER: Well, first of all,
8 because of the modern planning process, which
9 includes the NEPA process and context sensitive
10 solutions to transportation problems, things like
11 add lanes projects don't get built unless
12 communities want them.

13 I mean, there has to be a community
14 consensus find, a major investment with
15 disruptions and right-of-way takes and everything
16 else, otherwise, you're not going to do it. And
17 we found a couple of examples, when I was working
18 at that, where communities knew that they needed
19 something, but they were having a horrible time
20 figuring out what it was, because they didn't
21 like any of the choices.

22 And in some of those cases, it does

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1 put off getting the improvement that you need,
2 because you just can't agree on what it is you
3 ought to do. There have been communities who
4 have decided that the best way for them to live
5 on the way that they want to live on is to avoid
6 any significant transportation improvement.

7 And it's tough to generalize, but
8 that usually doesn't work. If traffic is headed
9 your way, it is headed your way. And if you
10 don't do anything about it, you're probably going
11 to get it anyway. Would you get more traffic if
12 you had a bigger road going through the middle of
13 town? I don't know. That's an argument that is
14 a tough one for anybody to win, I think.

15 CHAIRMAN NOTTINGHAM: Thank you.
16 Some of the comments we have received indicate
17 that many stakeholders, many interested parties
18 are comfortable with the current levels of rail
19 traffic that exists now, very concerned about
20 increases, of course, for all the obvious reasons
21 and suggested that if we were to approve this
22 transaction, we do so with strict limits to

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1 disallow traffic increases, unless agreements are
2 reached with the local governments involved about
3 the terms and conditions under which traffic
4 increases might be able to go forward.

5 You have been, all of you have been,
6 working and spending quality time in these
7 communities. Some of your careers it sounds
8 like, Mr. Christopher, what are the chances that
9 -- I worry that if we were to go that route,
10 there may be other reasons to have problems with
11 this transaction and certainly other mitigation
12 discussion items, but if we were to focus too
13 much on that, we would basically be putting
14 localities in charge of Interstate Commerce and
15 the chance that any locality would actually allow
16 increases in traffic, I think, I mean, would be
17 pretty minimal.

18 But can you speak to that? You know,
19 how would that be -- how would that work? Just a
20 suggestion to go forward.

21 MR. MORTON: Well, there is a couple
22 of things and I think you put your finger on an

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1 issue that, you know, has been a concern for a
2 number of the stakeholders from the very start.
3 And that is, you know, what assurance do they
4 have that the number of trains that CN has
5 proposed and that were evaluated in the EIS is
6 going to remain the number?

7 And of course, you know, we certainly
8 understand that railroads, you know, respond to
9 market forces. They, you know, increase the
10 number of trains. They decrease the number of
11 trains. But what we did do, and I think Mr.
12 Burgel explained a couple of those things earlier
13 this morning, but we looked at the train numbers
14 from, basically, five different ways.

15 And I think we discussed these in the
16 draft EIS, but first, we looked at it from a
17 capacity standpoint and we did three analyses to
18 look at capacity. And one was the bottleneck
19 analysis. And we looked at the Joliet area as
20 one bottleneck, not necessarily the only
21 bottleneck, that the railroad would have to
22 approve.

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1 And our conclusion with that is that
2 there -- really their operating plan sets the
3 maximum number of trains. One of the things that
4 EPA asked and, you know, they probe very hard on
5 the bottleneck analysis and one is, you know,
6 well, is there an easy fix?

7 Let's say they add a second track to
8 the bridge, could they all of a sudden put 50
9 more trains on it? And so we started looking at
10 that and the EPA kind of used the analogy of an
11 onion. You know, if you peel back this layer,
12 you know, you get a quantum increase in capacity
13 or there is just more layers of the onion to go
14 through.

15 And so we did look at that under the
16 bottleneck analysis. And there is certainly a
17 fix that you can do here that gives incremental
18 additional, you know, improvement and then
19 another fix and another fix. But there wasn't
20 anything that looked to us that gave them just
21 this quantum leap in capacity. And so that was
22 one analysis.

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1 As Mr. Burgel explained, we also did
2 the line occupancy analysis in the RTC modeling,
3 a much more robust analysis. Then the other two
4 things we did were from the demand side. We
5 looked at -- you know, we did an economic
6 analysis that looked at general freight trains
7 with, you know, capacity unconstrained and how
8 those economic factors would influence, you know,
9 how traffic may be driven by economic factors.

10 And once again, you know, for 2015,
11 we came up that this is -- you know, that the
12 train traffic levels that we are using in the EIS
13 are within that reasonable range of what we would
14 expect to see, based upon just, you know, global
15 or national sort of economic trends.

16 CHAIRMAN NOTTINGHAM: Mr. Morton, let
17 me -- I hate to cut you off, but I want to
18 respect time for others. I think everything you
19 are saying is interesting to me, but I want to
20 maybe rephrase my question.

21 Pick your favorite or pick a
22 community that has submitted a lot of letters to

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1 the Board. I'm not going to name one, just pick
2 -- in opposition to this transaction. And then
3 play out with me just quickly a little
4 hypothetical exercise. We approve this
5 transaction under the condition that there will
6 be no increase in traffic through community X,
7 who has written a lot of letters, citizen letters
8 opposing this project, unless that community
9 approves of the terms and conditions under which
10 increased traffic were to take place.

11 What are the chances that our -- we
12 would ever see an increase in traffic? In other
13 words, is this just a matter of the parties not
14 being able to agree on a couple million dollars
15 so far in mitigation and the informal, you know,
16 private voluntary mitigation dialogue or are we
17 miles apart?

18 And so what I'm sensing the letters
19 and the intent is we are miles apart. Now, there
20 is no scenario whereby -- and for understandable
21 reasons, which I think is why we have something
22 called the Interstate Commerce Act and something

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1 called the Surface Transportation Board and we
2 don't have a system in our country where, God
3 bless them, the wonderful people who do some of
4 the hardest work in Government, and I mean this
5 in our country, which is local government work.

6 I used to work for a distinguished
7 Member of Congress who said without doubt the
8 toughest job he has ever been exposed to was
9 school board, local school board duty.

10 MR. MORTON: Right.

11 CHAIRMAN NOTTINGHAM: And everything
12 else is easy compared to that. And you know, you
13 can work it on up. But how -- help me out. I
14 mean, would such a scenario likely result in a
15 kind of real compromise where you would see some
16 increase in traffic with some additional benefits
17 flowing to the communities or would this just be
18 the end of the story, as far as traffic?

19 MR. MORTON: My sense, you know, Mr.
20 Chairman, is that it is mixed, that there are
21 communities out there that it would be very
22 difficult to negotiate with and come up with some

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1 sort of traffic increases that would be
2 palatable. There are some communities out there
3 that I think it would be much easier to work with
4 and strike some deals or, you know, identify a
5 number that they could live with, I think.

6 CHAIRMAN NOTTINGHAM: And in reality,
7 all it takes is one community, right, to stop
8 increase in traffic for the whole line.

9 MR. MORTON: Yes, that's correct.

10 CHAIRMAN NOTTINGHAM: And so I would
11 suggest if that -- if we were to support such a
12 hypothetical, it would probably be more honest
13 just to vote against the transaction than to say
14 oh, we're voting for it, but we're just going to
15 let the locals work it out with the railroad. I
16 think that would be shirking our responsibility,
17 in my personal humble opinion.

18 And so I'm going to -- you know,
19 whatever we do, I think I'm going to make sure
20 its the Board's action that we're held
21 accountable and that we don't pass it off for
22 decades of in fighting amongst other parties. So

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1 I appreciate your response.

2 We had some reference, I referenced
3 it myself, Commissioner Buttrey referenced the
4 Overton Park decision. And, Ms. Kitay, I might
5 ask you, you are our most knowledgeable
6 environmental attorney, and I'm sure you have
7 cited the Overton Park case more than once in
8 your career. It is a black letter law and a
9 really important case, as Commission Buttrey
10 referenced.

11 A beautiful park resource targeted
12 for disruption by a major interstate, a new
13 construction project during the interstate
14 construction era and the Supreme Court weighed in
15 very clearly on the type of informed judgment and
16 alternatives analysis and avoidance of
17 environmental harms type of analysis.

18 I don't see -- as important as
19 Overton Park is, I don't see this case -- Lord
20 knows this case will raise and we will see it
21 play out in the courts no matter what we do. A
22 number of interesting legal issues, I'm sure.

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1 But I don't see it as an Overton Park case where
2 we have the green fields situation where all of a
3 sudden a new massive new construction is being
4 plowed through.

5 We have an existing line of railroad.
6 We have an applicant wanting to come in and route
7 more traffic over that line could raise serious
8 issues that we have been hearing, but not -- I
9 don't see it as an Overton Park factual case,
10 what's your sense on that?

11 MS. KITAY: I would agree with you,
12 Mr. Chairman. I think that there is a big
13 difference between constructing a new line in
14 which case you might really have a number of
15 alternatives and using an existing railroad
16 right-of-way, which is what we are doing here, I
17 think that there can be environmentally
18 preferable alternatives. And certainly for some
19 of the connections that CN proposes, we are
20 recommending environmentally preferable
21 alternatives.

22 But essentially, you have an existing

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1 rail line and there really are no alternatives,
2 other than using that existing rail line. And as
3 we have discussed earlier today, the alternatives
4 that have been proposed throughout this
5 proceeding, like the CREATE Line or increased
6 trackage rights would not allow the applicants to
7 meet the purpose and the need of the project.

8 And the courts have found that if
9 you're looking at alternatives, they have to be
10 reasonable and feasible alternatives that would
11 allow the applicant to meet its purpose and need.
12 So in mergers and acquisitions, we don't do the
13 same kind of alternatives analysis that you would
14 do in a new construction.

15 CHAIRMAN NOTTINGHAM: Thank you.
16 Now, turning back to the mitigation and assuming
17 if we were to conditionally approve this
18 transaction, if we were to with mitigation, and
19 almost all the transactions I have heard about
20 that have been approved in recent years, the
21 Board came with mitigation conditions, help me
22 understand the mechanics of that.

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1 Some period, let's say we mandate 4
2 or 6 or some number of above grade, grade
3 separation project improvements and they get
4 designed and built at different stages in the
5 future. How does the -- how would the money
6 flow? You were suggesting earlier 15 percent
7 would be an appropriate number. Does there need
8 to be any kind of mechanism set up to make sure
9 that -- how do we enforce that?

10 And who, under your preliminary
11 scenario, would the State DOTs largely be in the
12 driver's seat on that process of sort of
13 marginally working with the locals and the
14 railroad, so that no one party can just sort of
15 stall or frustrate the intent of any such
16 mitigation plans?

17 MR. MORTON: The -- Mr. Chairman, I
18 think the -- clearly the -- there needs to be a
19 partnership developed and on both of those roads,
20 Ogden Avenue and Lincoln Highway, they are both
21 state routes and we would envision that the State
22 DOT would be the driver of that partnership.

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1 Both Indiana and Illinois have
2 processes in place for grade separation projects.
3 And those processes do include partnerships that
4 they developed, you know, between the locals, the
5 state and the railroad. And we would envision
6 that you would work through the existing process
7 that they have to do that. That is correct.

8 MS. KITAY: They would also be
9 reporting, as we have said earlier, so we would
10 be kept apprised of the railroad's progress --

11 CHAIRMAN NOTTINGHAM: So if the state
12 says --

13 MS. KITAY: -- in implementing.

14 CHAIRMAN NOTTINGHAM: -- we're about
15 to let a contract for preliminary engineering, CN
16 send in your percentage contribution, that's
17 going to either happen or if it doesn't happen,
18 we hear about it or we're able to do something
19 about it?

20 MS. KITAY: Yes. We would hear about
21 it in the quarterly reports that the railroads
22 would be required to file.

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1 CHAIRMAN NOTTINGHAM: But you are not
2 proposing, if I understand, that we hold on to
3 some kind of working capital fund or something
4 where we hold onto the railroad's money until the
5 state asks for it?

6 MR. MORTON: There was -- one of the
7 eight suggestions, you know, concepts that we
8 published in the draft EIS, one of them did
9 include a traffic impact mitigation fund. And we
10 specifically asked the public to comment on, you
11 know, who would hold the capital. You know, how
12 such a fund would work. And we did get some
13 comments on that, but you know, that is not what
14 we would be proposing on -- in this. That's
15 correct.

16 CHAIRMAN NOTTINGHAM: And whatever
17 that percentage of mitigation responsibility for
18 those new construction projects that we hold the
19 railroad accountable for, whether it is 15
20 percent or something higher, that doesn't
21 actually guarantee those projects get built,
22 right, realistically? You're still going to have

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1 to -- you're still going to need the state and
2 the localities to agree on a project, agree on
3 the need, come up with their share of the
4 resources.

5 So we could actually mandate
6 something recognizing a very serious traffic and
7 safety problem and look back 10 years later and
8 see that nothing happened, because of just lack
9 of financial or willpower or leadership or
10 whatever it is.

11 MS. KITAY: Well, that's true. And
12 it is also -- it could lead to negotiated
13 agreements that could result in more favorable
14 mitigation for a community that really doesn't
15 want a grade separation.

16 CHAIRMAN NOTTINGHAM: Okay. That's a
17 good point. In my experience, grade separations
18 may be very desirable from a safety and
19 engineering perspective and a traffic flow
20 perspective, but when you superimpose them on the
21 realities of the community and you look at the
22 distances and the spaces and the footprint of a

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1 modern day grade separation project, it can be
2 very difficult to weave that into the context of
3 an existing community in a way that is popular,
4 frankly.

5 The -- jumping around here a little
6 bit, there was some reference I saw in some of
7 the correspondence we received on some of the
8 environmental issues about the concerns about
9 possible hazmat spills and suggestions to
10 different ways to mitigate and a mitigation
11 strategy referenced as an impermeable membrane
12 surface.

13 And is this something that -- my
14 understanding is this would be some kind of
15 fabric like material that would be laid -- in-
16 laid beneath the soil surface adjacent to
17 railroad right-of-way that would hopefully almost
18 act as a sponge, in effect, in the event of a
19 hazmat spill, you would contain the runoff into
20 waterways and water resources, etcetera. Is that
21 a fair description?

22 MR. MORTON: There were certainly a

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1 number of commenters who were concerned about
2 hazardous materials spills and specifically the
3 potential for a hazardous material spill to leach
4 into the groundwater and, you know, contaminate
5 the shallow source aquifer that a number of
6 communities use as their drinking water source.

7 It was -- we didn't get a lot of
8 comments, you know, really, you know, designing
9 it or specifying it. The concept, and I'll let
10 Kevin talk about it in a second, has generally
11 been some sort of impermeable membrane or clay
12 lens or something like that that would serve as a
13 catchment basin.

14 And I don't know, Kevin, if you
15 wanted to?

16 MR. KELLER: Sure. Hazmat is a very,
17 very well-regulated area, as we all know. There
18 are state regulations. There is federal
19 regulations. Often times with storm water, there
20 is local regulations. The rail industry has
21 really, really stepped up in terms of responding
22 to hazmat incidents, in terms of spills and

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1 releases into the environment.

2 We were talking with U.S. EPA about
3 this containment, this barrier type system. And
4 in their eyes, you know, if such a barrier or
5 containment system can be installed near areas of
6 vulnerable and susceptible water areas, like a
7 groundwater, a well protection area, a surface
8 water body, a creek, a fen, a wetlands, a ditch,
9 then that would be a good idea.

10 And in fact, railroads in their
11 yards, in fixed facilities use certain things
12 like that. They have track pads, which are
13 containment structures for any kind of a fueling,
14 for example, overfill or something like that
15 situation.

16 What happens is that is extremely
17 problematic in the real environment. What
18 happens is sometimes that can cause more damage
19 than it can prevent, because if you have a catch
20 basin type situation, what if there is a big rain
21 event? There is already that contaminate, that
22 material in there and it overflows, now, you have

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1 just created a bigger problem than what you
2 originally had.

3 The best solution we think is still
4 in terms of pollution prevention an immediate
5 response to any kind of a spill or release. So
6 we are not going to recommend a barrier or
7 containment system in our mitigation measures,
8 but instead what we are making sure and that we
9 want to ensure is that the applicant supplies all
10 local emergency responders with the appropriately
11 trained people, they have the right equipment,
12 they have had the right materials to respond
13 immediately and effectively to any kind of a
14 release.

15 CHAIRMAN NOTTINGHAM: What I think
16 I'm hearing is this suggestion of an impermeable
17 membrane type strategy is not a best practice
18 that has been widely deployed along the rail
19 corridors that has worked well.

20 MR. KELLER: That's correct, Mr.
21 Chairman. It has been deemed actually to be
22 technically impractical at most places. It is

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1 not a regulatory requirement in any state or any
2 federal agency. And we just don't think it would
3 be feasible, at this point.

4 CHAIRMAN NOTTINGHAM: Okay. I want
5 to move to Commissioner Buttrey momentarily.
6 Thank you for your patience, colleagues. Two
7 quick questions, maybe not so quick, but
8 hopefully they will be quick.

9 One of the ironies of this
10 application, this project is while we -- while
11 \$20 plus million has been spent on the very, I
12 think, thorough environmental analysis and
13 thousands of hours have been spent by hundreds of
14 different -- thousands of different stakeholders
15 thinking about this project and hearing the Board
16 try to figure out how to comply with our legal
17 responsibility and to thoughtfully handle this
18 application, while we are giving this all this
19 thought, there is nothing that occurs to me,
20 there is nothing that would prevent the rail,
21 current rail owner, from running more traffic
22 over this line.

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1 They currently -- my understanding
2 is, the EJ&E already does have other railroads
3 running traffic over this line, correct?

4 MS. RUTSON: That's correct, Mr.
5 Chairman.

6 CHAIRMAN NOTTINGHAM: And if they
7 decided to add a few trains each year or every
8 other year for the next five years, would we have
9 -- would they require our permission to do that?

10 MS. RUTSON: Perhaps a trackage
11 rights application, but that, under our
12 environmental rules, requires no environmental
13 review.

14 MS. KITAY: Unless there was enough
15 potential for environmental impacts.

16 CHAIRMAN NOTTINGHAM: So if they hit
17 a certain threshold perhaps they would?

18 MS. KITAY: We could, theoretically,
19 do an environmental review of trackage rights if
20 there was enough potential for environmental
21 impacts.

22 CHAIRMAN NOTTINGHAM: Have we ever

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1 done that before?

2 MS. RUTSON: Never.

3 MS. KITAY: No.

4 MS. RUTSON: Never.

5 MS. KITAY: No.

6 CHAIRMAN NOTTINGHAM: I would have to
7 say this Board has been shown the willingness to
8 go where no Board has gone before on other
9 occasions. So that's not -- but it is worth
10 noting.

11 MS. KITAY: But I think that the
12 trackage rights clearly could happen and the
13 thing is that they would not allow the applicants
14 to totally satisfy the purpose and need of the
15 project.

16 CHAIRMAN NOTTINGHAM: Right. Now,
17 looping back to this 15 percent mitigation
18 number. I understand the data and the analysis
19 about the region-wide sort of contribution to the
20 -- or exacerbation if I should call it, let's
21 call it the exacerbation of traffic congestion
22 factor. It is 15 percent region-wide, if this

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1 transaction were approved.

2 The transaction would exacerbate or
3 worsen traffic conditions region-wide to the tune
4 of 15 percent, that's what I understand. Then we
5 look at the actual locations where there are
6 preliminary recommendations to do grade
7 separation construction and projects.

8 I want to know if we have it, what is
9 -- location by location, what is that
10 exacerbation factor? Do we have data or can we
11 get out a number there? Because whether it is 2
12 percent or 18, I'm more comfortable, frankly,
13 just being location-specific, because those are
14 the locations we are saying the situation is so
15 serious that something very dramatic needs to
16 happen.

17 We are not quite as concerned, with
18 all due respect, with the 15 percent out there
19 that don't trigger the Level of Service F,
20 etcetera. So that's why I don't want to be
21 overly hung up on that 15 percent if that's not
22 what -- the exacerbation factor, to make up a

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1 phrase there, of that location.

2 MR. MORTON: For each of the 88 grade
3 crossings, at-grade crossings on the EJ&E, we
4 calculated exactly that information and it is
5 presented in -- it will be presented in the final
6 EIS. And that is we calculated, you know, under
7 a no action scenario what the current delay would
8 be and for each one of them, we calculated under
9 the proposed action what the expected delay would
10 be and calculated the difference.

11 So that information certainly is
12 available for each one of those.

13 CHAIRMAN NOTTINGHAM: Good. Did you
14 put it in percentage terms? I know Dr. Mulvey
15 would have no problem crunching the numbers, but
16 the poor lawyers over here might still struggle
17 with that. So if you could put it in
18 percentages?

19 MR. MORTON: We would be more than
20 happy to put it in percentage.

21 CHAIRMAN NOTTINGHAM: All right.

22 MR. MORTON: Yes, absolutely.

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1 CHAIRMAN NOTTINGHAM: Thank you.
2 Now, last question, I promise. We have this at
3 two locations where we -- two seriously degraded
4 intersections where there is actually a voluntary
5 mitigation agreement already in place. If that
6 voluntary agreement, in my understanding, had not
7 been reached, the same rationale that results in
8 the preliminary recommendation for grade
9 separation projects at a couple other locations
10 would have applied at those locations.

11 Just quickly walk through that,
12 because I want to make sure I'm comfortable
13 intellectually with the consistency of mandating
14 grade separation one place but not in other
15 places when the same levels, same numbers have
16 been hit.

17 MR. MORTON: Okay.

18 CHAIRMAN NOTTINGHAM: And I say that
19 with all great respect for voluntary mitigation.
20 We applaud it. We encourage it. I will point out
21 for the record there is still time for folks who
22 are watching or here in person to undertake

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1 voluntary mitigation plans and agreements, that's
2 much better than a Government-imposed solution,
3 in my mind.

4 But at the same time, I want to be
5 sure we're being consistent in how we approach
6 it, recognizing in almost any scenario that I
7 think is realistic, if we were to approve this
8 transaction, it would be with conditions and it
9 would require significant state and local
10 contributions, so there's no actual mandate that
11 something is going to get built. It's going to
12 take a team effort.

13 MR. MORTON: Yes, sir. The -- I
14 think the -- if you go back in the discussions
15 that we had earlier this morning, both Mr.
16 Thorson and Mr. Lazzara, on the safety side we
17 evaluated the change in safety, the change in the
18 risk at all the at-grade crossings. And there
19 were four at-grade crossings that we identified
20 in the draft EIS that had a substantial risk
21 profile change.

22 Those are two in Griffith, you know,

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1 Lake Street and Miller Street, which we have
2 voluntary mitigation for. There is one that has
3 already been upgraded, so, in fact, the
4 mitigation has already taken place for that. And
5 then the fourth one was Woodruff Avenue in
6 Joliet, Illinois. And Woodruff Avenue is at sort
7 of the west end of the East Joliet Yard.

8 The analysis of -- on the traffic
9 side, when we looked at the change in the level
10 of service at the various at-grade crossings,
11 there were only -- in that -- that's historically
12 the analysis that SEA has used on most cases is
13 the change in level of service. There are only
14 two that changed from a Level of Service D or
15 better to a Level of Service D or worse after the
16 transaction and that's Washington Street, also in
17 Joliet, Illinois, and Woodruff Avenue that we
18 just talked about in Joliet.

19 So those two crossings are crossings
20 that SEA would historically call impacted under,
21 you know, any sort of analysis or the analysis
22 they did. We then did the -- you know, expanded

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1 that analysis to look at the regional
2 transportation impact and that's why we did the -
3 - both the 40 hour delay and the queue length.

4 But you are absolutely right.
5 Washington Street and Woodruff Avenue absent a
6 Joliet agreement are certainly two crossings that
7 I think we would look very seriously at the type
8 of mitigation, what might be appropriate at those
9 two crossings, because they both would warrant it
10 under SEA's, you know, analysis.

11 CHAIRMAN NOTTINGHAM: My
12 understanding is that preliminarily, the staff is
13 not inclined to mandate a percentage contribution
14 for a grade separation project there, because a
15 voluntary mitigation agreement has already been
16 entered into. But the Board, presumably, has
17 some discretion to actually look at it and say
18 well, if you apply the actual numbers and the
19 data, the metrics, these two are impacted just as
20 badly as the others.

21 And we want to require that the
22 railroad be responsible in the event that the

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1 locals and state put together a plan to actually
2 address that. Now, if some side agreement
3 prevents the localities and state from deciding
4 to go forward with the plan, so be it. We
5 respect agreements and mitigation agreements. We
6 don't want to micromanage the priority setting of
7 the community that may very well at Joliet have
8 decided that it's much more important than to
9 straighten out that yard and advance some of the
10 other goals they were able to achieve in their
11 mitigation plan.

12 But I just float that as food for
13 thought. Again, as long as it is based on the
14 data, I think we would be in strong territory
15 there. No, we can't just make this stuff up,
16 obviously, at some free flowing sense of equity.
17 I mean, but you are talking about data analysis
18 that would have led to a certain outcome, but for
19 a side agreement that was reached. That's all I
20 have. Commissioner Buttrey?

21 COMMISSIONER BUTTREY: Thank you, Mr.
22 Chairman. I don't want to let the opportunity go

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1 by to address the noise issue, but I think our
2 noise expert just left the room. So hopefully he
3 will be returning soon.

4 When we talk about hazmat, in the
5 meantime, if the hazmat expert can come back up?

6 MR. MORTON: Kevin?

7 MR. KELLER: Yes, sir?

8 COMMISSIONER BUTTREY: I would like
9 to ask you a question, which you probably will
10 not want to answer, but it seems to me that if
11 you have hazardous materials going through, a
12 line of track going, a populated area at 10 miles
13 an hour, the chances of something untoward
14 happening is probably less than if you have a
15 hazmat -- several cars of hazmat moving through a
16 populated area at 45 miles an hour. The chances
17 are that if that occurrence, God forbid that ever
18 happened, the chances are more of a catastrophic
19 spill would take place if the train was going 45
20 miles an hour, rather than going 10 miles an
21 hour. Is that within the realm of feasibility?

22 MR. KELLER: That's true. And the

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1 models can work both ways though realize. It's,
2 you know, if the train is moving slower and if
3 there is a release, the exposure time is longer,
4 therefore, the probability of any kind of harm or
5 injury to the general population could be longer
6 and worse.

7 COMMISSIONER BUTTREY: Um-hum.

8 MR. KELLER: If it is going quicker
9 and if there is some kind of a catastrophic
10 event, obviously, the release could be a lot
11 worse in magnitude, but if it's moving,
12 obviously, it would be less exposure in terms of
13 time durations. There is a balance there that
14 the FRA tries to regulate.

15 COMMISSIONER BUTTREY: Okay. Thank
16 you very much. Our noise expert is back. I had
17 asked the staff to try to set up a noise
18 demonstration in the room here. And they said
19 they would give that a shot. And I understand
20 they did give it a shot. But that the noise
21 expert said that there was really no way of doing
22 a noise demonstration inside this room, because

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1 doing a noise demonstration inside of a closed
2 room is not the same as the noise event would be
3 if you were outside standing nearby the track.

4 You presumably put noise monitoring
5 devices out near the tracks to measure the single
6 event noise, if you will, and then use that
7 calculation to extrapolate some type of value
8 that you have used to present here in the report.
9 Is that correct?

10 MR. CASEY: Yes, sir.

11 COMMISSIONER BUTTREY: So you didn't
12 take somebody else's data, if you will, about
13 what kind of noise a locomotive makes going
14 through Naperville. You actually went out and
15 measured it somehow in that location?

16 MR. CASEY: We did. We found an area
17 that was grass covered, free from -- I should say
18 not in close proximity to other noise sources, so
19 it was away from grade crossings. And we were
20 able to, using two sound level meters, measure
21 the noise associated with the locomotive pass-by.
22 You turn that meter off and you turn the other

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1 meter on when the railcars go by.

2 And you can post process that
3 monitoring data and arrive at a noise emissions
4 term for a single locomotive and a single
5 railcar. We did that for 25 train pass-bys and
6 some of them did, in fact, include the locomotive
7 horn noise. So we have three, you know, distinct
8 noise emissions terms in our data set.

9 COMMISSIONER BUTTREY: And what was
10 the average value that you came up with about the
11 single event? The LDN level.

12 MR. CASEY: Well, there are two
13 different things and your question actually kind
14 of interweaves two unrelated things. The SEL
15 values that we measured for locomotives,
16 locomotive horns and railcars are in the draft
17 EIS. And forgive me, I don't have that
18 information off the top of my head.

19 We did use a conservatively high
20 value for the locomotive horns, which I think was
21 103, instead of 100 for our locomotive horn noise
22 model and we used the FRA model. So we,

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1 essentially, over-predicted the locomotive horn
2 noise at every grade crossing in the project area
3 by just a conservative amount.

4 MR. MORTON: And when you said 103,
5 that means 103 decibels?

6 MR. CASEY: Decibels, yeah.

7 MR. MORTON: Yeah.

8 COMMISSIONER BUTTREY: Since we can't
9 do a noise demonstration here in the room that
10 makes any sense, can you compare what 103 decibel
11 level event would be that we might be more
12 familiar with than a locomotive going by? And
13 I'm thinking about maybe Redskins stadium when it
14 is 3rd and 1 or something like a rock concert on
15 Row 10 or maybe an airplane, you know, Indy-11 or
16 something. No, not an Indy-11. A 727 taking off
17 from an airport.

18 Can you compare some of those values,
19 so we sort of get an idea of what this noise
20 sounds like? Not that -- we have all heard a
21 railroad locomotive go by, but I'm just comparing
22 the numbers. Sometimes numbers turn out to be

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1 just numbers. And unless you can compare them to
2 something, you really don't -- it's kind of like
3 you really don't know what you are talking about.

4 I mean, you know what you are talking
5 about, but you can't compare it to anything.

6 MR. CASEY: There is numerous
7 examples of common noise events, indoors and
8 outdoors. I have just a few of them here in
9 front of me. A gas lawn mower at 3 feet is
10 representative of somewhere in the upper -- the
11 mid to 90s, maybe upper 90s. So a common one at
12 about 3 feet.

13 A jet flyover at 1,000 feet would be
14 maybe at 110. I do have a rock band listed on
15 this. This comes from a document that was
16 published by the Government a few decades ago. A
17 rock band is at 110 decibels. I have been told
18 that in some circumstances, the control consul,
19 the mixing board for some concerts, they like to
20 have the sound pressure level come from the
21 stage, you know, between 95 and maybe 100
22 decibels, but that varies by band and that varies

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1 by location.

2 You know, so 103 is very -- it's a
3 high noise level. We're talking about locomotive
4 horn noise, so it's just, you know, briefly used.
5 It's a very intermittent source.

6 COMMISSIONER BUTTREY: Now, you
7 talked about the -- sort of a multiplier that you
8 used to calculate the noise level, the difference
9 between daytime noise and nighttime noise. Could
10 you run through that again one more time for me?

11 MR. CASEY: When we -- when I tried
12 to explain what an LDN is, I mentioned that it
13 takes -- in a calculation of an LDN, you start
14 with 24 consecutive hourly average noise levels.
15 And to the 9 hours between 10:00 p.m. and 7:00
16 a.m., you add 10 decibels to each of those
17 average hourly noise levels.

18 And then you perform a mathematical
19 function that compresses them, all them, into a
20 single, you know, number. It's a logarithmic
21 number. And so the significance of that is that
22 events that happen in nighttime are 10 times

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1 louder than they would be if they happened during
2 the daytime.

3 COMMISSIONER BUTTREY: 10 times?

4 MR. CASEY: 10 times louder.

5 COMMISSIONER BUTTREY: The perception
6 -- the perceived noise level is 10 times more
7 irritating if it happens at night than if it
8 happens during the daytime?

9 MR. CASEY: No, no.

10 COMMISSIONER BUTTREY: Is that what
11 you're saying? It's what it sounds like you are
12 saying. But I get -- are you sure -- is that
13 what you are saying?

14 MR. CASEY: No, sir, that's not what
15 I'm saying. I'm saying in the calculation of an
16 LDN, a nighttime noise event is given 10 times
17 more the energy than it would as if it happened
18 during the daytime where it would not have
19 received that penalty.

20 Now, the purpose of the penalty is to
21 kind of recognize that people sometimes do or
22 generally do consider nighttime noise events to

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1 be more intrusive or annoying or at least that's
2 the assumption.

3 VICE CHAIRMAN MULVEY: Aren't you
4 saying that it's exponential and therefore you
5 give it 10 decibels and that's the equivalent of
6 being 10 times higher?

7 MR. CASEY: Essentially, yes.

8 VICE CHAIRMAN MULVEY: Thank you.

9 MR. CASEY: Thank you.

10 CHAIRMAN NOTTINGHAM: So it's akin to
11 dropping a pebble into a placid pond versus a
12 stormy sea, as far as the energy, noticeable
13 energy it emits or is that a terrible analogy?
14 I'm just trying to help Commissioner Buttrey
15 understand.

16 COMMISSIONER BUTTREY: I think that's
17 a terrible analogy.

18 CHAIRMAN NOTTINGHAM: Well, the
19 concert thing wasn't working for me, because Dr.
20 Mulvey and I were -- you know, it's a concert, we
21 don't know if we're talking about Commissioner
22 Mulvey's big band or Dr. Mulvey's Grateful Dead

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1 or something in between.

2 MR. CASEY: I think I can share a
3 little insight that might clarify some of the
4 concepts we are discussing. It is generally
5 recognized that 3 decibels is -- it is generally
6 considered the threshold of perception. That
7 term refers to the fact that if you increase a
8 sound level by 3 decibels or if you decrease it
9 by 3 decibels, you may or may not perceive a
10 change.

11 If you have ever gone to an
12 audiologist, that's one of the things they do.
13 They see where is your threshold of perception.
14 A 5 decibel increment, a change or a decrease, an
15 increase or a decrease is clearly perceivable. A
16 10 decibel increase is perceived as a doubling.
17 It is twice as loud.

18 Now, in reality, if you have two
19 identical noise sources and you turn them both
20 on, the resulting noise level is going to be 3
21 decibels higher. It's not actually twice as
22 loud, it's only 3 decibels louder.

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1 COMMISSIONER BUTTREY: Now, how far
2 away were these instruments when you measured the
3 -- on a single event basis, how far away from the
4 noise source were they?

5 MR. CASEY: When we did our pass-by
6 measurements, the instruments ranged in distance
7 from the center line or maybe the nearest rail.
8 I want to say from about 40 at the closest to
9 maybe 60 at the farthest. The instruction and
10 the monitoring plan was to get them at 50 feet.
11 And so they were all mathematically normalized to
12 50 feet.

13 COMMISSIONER BUTTREY: Um-hum. And
14 again, 50 feet is like from the front of this
15 desk to the wall back there.

16 MR. CASEY: Yes, sir.

17 MS. KITAY: There is also a lot of
18 noise mitigation in the final EIS, including
19 pretty extensive voluntary mitigation that was
20 proposed by applicants. So we are not talking
21 about 103 decibels here. That's before
22 mitigation, right?

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1 MR. CASEY: Well, this 103 decibels
2 is the, I believe it is, sound pressure level
3 that we inserted into the FRA locomotive horn
4 noise model to represent the horn noise. And it
5 is not all that far off from what it is in
6 reality.

7 MS. KITAY: But what would it be with
8 mitigation? I mean, if the mitigation --

9 MR. CASEY: Well, mitigation for a
10 horn noise would be a quiet zone and so you
11 would, under normal circumstances, no longer have
12 that sound in a typical operating scenario. You
13 would be left with just the wayside noise, which
14 is the locomotive noise and the steel wheel/rail
15 interaction, you know, of the train rolling by.

16 MS. KITAY: And there is mitigation
17 for that also, wheel squeal?

18 MR. CASEY: Well, in sections of
19 curved track, there is mitigation for that wheel
20 flange squeal noise on sections of curved track.

21 COMMISSIONER BUTTREY: Now, right now
22 today, there is no horn noise quiet zone in

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1 Joliet, correct?

2 MR. CASEY: Mr. Thorson?

3 MR. THORSON: That's correct.

4 MR. CASEY: That's correct, sir.

5 COMMISSIONER BUTTREY: The only other
6 -- the only -- excuse me, not the only other.
7 The only quiet zone along this line of track is
8 Barrington. Is that correct?

9 MS. KITAY: No.

10 COMMISSIONER BUTTREY: That's not
11 correct? What is correct?

12 MS. KITAY: 7, 8, something?

13 MR. THORSON: There are five quiet
14 zones along the existing EJ&E Rail Lines. And I
15 apologize, I don't have the exact limits of
16 those, but there is a Lake Zurich Quiet Zone.
17 There is a Barrington Quiet Zone. There is a
18 Warrenville Quiet Zone, which includes the
19 communities of Aurora and Naperville.

20 And the reason those are combined is
21 that a quiet zone by establishment of the FRA
22 must have a single sponsoring community that

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1 establishes them. It can run, you know, miles
2 and miles and include many communities and
3 districts, but one must take the lead for it.

4 There is -- Plainfield has a quiet
5 zone as well. And I'm trying to think if there
6 are quiet zones east of Joliet. I can't think of
7 any that come to mind right now.

8 COMMISSIONER BUTTREY: And we are
9 assuming that all those will stay in effect?

10 MR. THORSON: Yeah, yeah. Oh, I'm
11 sorry, Mundelein has a quiet zone as well.

12 COMMISSIONER BUTTREY: Okay. Thank
13 you very much. Mr. Chairman, I think that
14 concludes my questions. I will have a closing
15 statement at the end.

16 CHAIRMAN NOTTINGHAM: Thank you,
17 Commissioner Buttrey and didn't mean -- hope I
18 didn't offend with my reference to the big band.
19 I know you are a man of all -- multiple and
20 varied tastes and culture, so we will --

21 COMMISSIONER BUTTREY: And my hearing
22 is bad, because I was nearby too many big band

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1 stages, I think. That and shotguns and
2 chainsaws.

3 VICE CHAIRMAN MULVEY: That was Tommy
4 and Jimmy Dorsey, but anyway.

5 CHAIRMAN NOTTINGHAM: Let me -- I do
6 have just a couple of questions, if I could. Are
7 you -- oh, it's your turn?

8 VICE CHAIRMAN MULVEY: It's my turn.

9 CHAIRMAN NOTTINGHAM: Let me turn
10 over the questions. Excuse me, Vice Chairman
11 Mulvey. I was going to ask about the quiet zone
12 situation --

13 VICE CHAIRMAN MULVEY: Well, I --

14 CHAIRMAN NOTTINGHAM: -- in
15 Barrington, but go ahead.

16 VICE CHAIRMAN MULVEY: Well, I have a
17 question, too, about quiet zone, but it's not
18 particular the Barrington situation.

19 I did a lot of work on the quiet zone
20 issue when I was on the Hill and at the IG's
21 office, as a matter of fact. And one of the
22 problems with quiet zones or with the,

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1 establishment of them, is that a lot of people do
2 get killed in these zones, unless they are
3 properly protected.

4 Theoretically, you are supposed to
5 have in place mitigation factors that give you
6 the same level of safety as blowing the train
7 horn. However, our experience has been it's
8 very, very difficult to achieve. One of the ways
9 you can achieve it, however, and from what I have
10 read from studies in North Carolina and
11 elsewhere, is that if you have barriers in the
12 center line, you have a situation where you have
13 a quiet zone and have two quadrant gates, which
14 is what is typical. Otherwise, people often
15 drive around the gates.

16 Research in North Carolina has shown
17 that if you put flexible barriers in the middle,
18 it prevents people from going around the gates
19 and driving in front of trains and getting
20 killed.

21 Have you looked into that? Is that
22 something that you have suggested as part of your

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1 mitigation to establish these center line
2 barriers to prevent people from driving around
3 two quadrant gates in quiet zones?

4 MR. THORSON: Yes, you are absolutely
5 right about quiet zones. That a quiet zone, you
6 know, must -- every crossing within a quiet zone
7 must have gates, flashers and constant warning
8 time circuitry and then a combination of what
9 they call supplemental safety measure or
10 alternative safety measures, which the FRA has
11 given credit or waiting to that says it offers an
12 additional safety measure when you add those up,
13 average them out, you show that the risks for
14 that corridor with those devices in place is less
15 than the risk with horns.

16 VICE CHAIRMAN MULVEY: But if they
17 are not physical and one of the ones the FRA
18 calls for is education.

19 MR. THORSON: Yes.

20 VICE CHAIRMAN MULVEY: Community
21 education. Well, that's a nice thing to say, but
22 I think the physical barriers are much more

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1 effective than somebody going into a classroom
2 and saying don't drive around closed gates.

3 MR. THORSON: Yeah, yeah. Education
4 is not what the FRA calls a supplemental. It's
5 what they call an alternative.

6 VICE CHAIRMAN MULVEY: Right.

7 MR. THORSON: And meeting the
8 threshold for a quiet zone with using alternative
9 safety measures is very difficult, because you
10 have to set up some sort of a monitoring system
11 and show that.

12 What the applicants have offered in
13 their voluntary mitigation is that communities
14 wishing to establish quiet zones, they will
15 identify where median barriers are required and I
16 think even fund those median barriers.

17 VICE CHAIRMAN MULVEY: The
18 communities will fund them?

19 MR. THORSON: No.

20 VICE CHAIRMAN MULVEY: CN will fund
21 them?

22 MR. THORSON: CN will fund them.

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1 VICE CHAIRMAN MULVEY: Okay. Good.
2 I want to talk about property values for a
3 moment. I read with great care the draft EIS on
4 property values. And I was taken back by the
5 estimated impact on property values. It struck
6 me as low, so I went and dug into the research
7 that lay behind it. There was the evidence from
8 Cleveland and the Conrail breakup and there were
9 was a few European studies that were done.

10 You mentioned that you have gone on
11 and done further research and gotten more data to
12 support the original finding of the roughly
13 \$5,000 maximum impact and differential impact on
14 large and low valued homes.

15 Can you expound a little bit on what
16 the additional research encompassed?

17 MR. MORTON: There were a number of
18 studies that, you know, either commenters
19 suggested or there was actually one study that
20 was done, you know, and presented to the -- to CS
21 as part of their -- you know, of the comments by
22 a couple of researchers from the University of

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1 Chicago.

2 We didn't really find anything
3 additional studies that were really on target.
4 They were, you know, studies related to train
5 noise. In some cases, they were related to
6 airport noise that we used to sort of go back and
7 look at that and see how that related to property
8 values.

9 So I think that the study that we
10 used in the draft EIS, our conclusion is that
11 that is probably the most on target, in terms of
12 what the issue is out there.

13 VICE CHAIRMAN MULVEY: Yeah. I had
14 suggested that perhaps there were other kinds of
15 activities that could be deemed as detrimental to
16 a neighborhood and how proximity to those might
17 have an impact. It doesn't have to simply be
18 trains or even transportation. It could be
19 landfills, for example, or other kinds of noisome
20 activities, which may have an impact on property
21 values.

22 And I was wondering if any of those

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1 were looked at?

2 MR. MORTON: I think a lot of those
3 suggestions were made. And, Mr. Vice Chairman, I
4 don't know off the top of my head whether we --
5 how much we looked at those sort of companion
6 type studies, no.

7 VICE CHAIRMAN MULVEY: There was some
8 discussion of the trackage rights and the EJ&E
9 could grant trackage rights. And that may or may
10 not trigger an investigation by the STB depending
11 upon the amount of track involved. But there are
12 also haulage rights agreements. And if there was
13 a haulage agreement, then the STB would have no
14 authority whatsoever, I understand.

15 If it's haulage rights, we just turn
16 it over. I noticed there is an awful lot of
17 concern about the purpose of the project for the
18 CN and this centers very much around the control
19 over the Kirk Yard.

20 Wouldn't it be possible for the CN
21 and the EJ&E to do a haulage agreement and
22 simultaneously CN and EJ&E enter into a Meridian

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1 Speedway type agreement for the joint operation
2 of the Kirk Yard? Would that be possible? And
3 could it bypass our processes entirely if they
4 were to do that?

5 MS. KITAY: I think the haulage
6 agreement would not require approval from the
7 Board and there would, therefore, not be any
8 possibility of environmental review.

9 VICE CHAIRMAN MULVEY: What about the
10 Kirk Yard? I mean, it comes back to this all the
11 time that all the proposals, all the alternatives
12 that Doug mentioned, etcetera, and that we all
13 talked about looking at. It seems to always focus
14 on the purpose of the acquisition is to get
15 control of the Kirk Yard.

16 Couldn't they get control or largely
17 run Kirk Yard under an agreement with EJ&E, which
18 again would not require approval from the Board?

19 MS. KITAY: The only time we look at
20 yards is if they are linked to proposals that do
21 require authority from the Board. So part of the
22 construction proposal or as here part of the

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1 acquisition proposal relates to --

2 VICE CHAIRMAN MULVEY: And this
3 haulage agreement --

4 MS. KITAY: -- a particular --

5 VICE CHAIRMAN MULVEY: And the
6 haulage would be neither of those, so they could,
7 in fact, do that if they wanted to?

8 MS. KITAY: I believe so.

9 VICE CHAIRMAN MULVEY: Hum. Vicky,
10 do you have a --

11 MS. RUTSON: I was only thinking how
12 different my life would be right now if that, in
13 fact, had been what had happened, haulage, but
14 that's all.

15 VICE CHAIRMAN MULVEY: You would have
16 had a lot more time with your family, I would
17 guess. One of the concerns about this project is
18 that there is going to ultimately be an impact on
19 CREATE. Now, all the six major U.S. Railroads
20 use Chicago and the largest of the railroads in
21 Chicago is the CN.

22 And for whatever you think about the

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1 distribution of cost responsibilities, amongst
2 the railroads, the CN has the largest cost
3 responsibility. We know for various reasons that
4 CN has had some question about its real need to
5 be part of CREATE for some time. With the
6 acquisition of the Wisconsin Central in the past
7 and now this, etcetera, CN has been sort of
8 looking at CREATE and saying well, maybe we don't
9 need to be as involved in CREATE.

10 Doesn't this, in fact, allow CN to
11 pretty much withdraw from the CREATE Project and
12 then wouldn't that complicate, therefore, that
13 project going forward?

14 MS. RUTSON: The only evidence that
15 we have on the record is that CN has indicated
16 that it continues to support CREATE and has no
17 short-term plans for withdrawing from CREATE. So
18 we are taking that information for face value and
19 just moving on with the environmental review
20 process.

21 VICE CHAIRMAN MULVEY: One hopes that
22 that is still true. But we have had a lot of

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1 comments both pro and con and a lot of members
2 came up there. We had 9,500 and 13,500,
3 etcetera, comments in total. And I know that in
4 terms of raw numbers, there were people opposed
5 to this project or demanding more environmental
6 mitigation than here supportive.

7 Do you have a rough percentage
8 breakdown as to the percentage for and the
9 percentage against?

10 MS. RUTSON: A very rough breakdown
11 including the form letters and the petitions puts
12 those in favor of the proposal at about 1/3 and
13 those who are opposed to the proposal at about
14 2/3.

15 VICE CHAIRMAN MULVEY: What about
16 commercial interests, businesses, etcetera? Very
17 often a business comes in and it's a single
18 business, but that single business may employ 500
19 or 1,000 employees. Did you get many responses
20 from commercial interest? And did those break
21 out similarly or were those much more in support
22 of the project?

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1 MS. RUTSON: Not so much during the
2 comment period on the draft EIS. But during
3 scoping and then in a continual, I wouldn't say a
4 flood, but it's a solid stream of commercial
5 letters coming in in support explaining how
6 important the CN proposal was to the particular
7 interest, business interest writing the letter.
8 Yes, we got many of those letters.

9 VICE CHAIRMAN MULVEY: But it's
10 difficult to weigh those. You sort of have to
11 weigh them one letter from a company employing
12 1,000 people would have the same value as a
13 single property owner who feels there might be
14 delay at the added crossing. Is that correct?

15 MS. RUTSON: Well, and I'm not sure
16 if this response of mine is responsive to your
17 question. But I have been thinking a lot about
18 this issue. And in the end, the best I can think
19 is that NEPA is important for public outreach,
20 but it is not an election. I mean, if it had
21 been, I suspect everyone here would be much
22 better rested than we are.

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1 I do think every comment is
2 important. Are some more important than others?
3 I hope not. I hope not. We try to treat them
4 all equally.

5 VICE CHAIRMAN MULVEY: Okay. The
6 EJ&E accident numbers seemed high, many, many
7 times higher than the CN accident rates. But are
8 we comparing apples and oranges there? How does
9 the EJ&E compare to similarly situated railroads?
10 In other words, other railroads operating in
11 densely populated areas of the country?

12 MS. RUTSON: Bill Burgel has an
13 explanation for this, as he has for most things.

14 VICE CHAIRMAN MULVEY: Bill?

15 MS. RUTSON: He explained, and Bill
16 will talk about this, that the type of railroad
17 that EJ&E is is part of the reason why the
18 accident rate is -- seems quite high.

19 MR. BURGEL: I'll defer to Kevin.

20 VICE CHAIRMAN MULVEY: So it's not
21 necessarily the nature of their carelessness or
22 nature of operations, but rather it's the nature

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1 of the environment in which they are operating
2 in? Is that right?

3 MR. KELLER: That's correct. It's a
4 switching railroad. There is a lot more car
5 movements, a lot more interchanges, a lot more
6 yard operations and that's generally where a lot
7 of the accidents take place. And so if you
8 compare that against other switching railroads,
9 it's right in the norm.

10 VICE CHAIRMAN MULVEY: That's what I
11 was also going to point out. A breakdown of the
12 accidents, given FRA's kind of crazy \$8400
13 number, I have a car. If I scratch the bumper,
14 I'm out almost that much money. So today almost
15 any accident that the railroad has at all is
16 going to cost \$8,400. So it's very, very
17 difficult to distinguish minor accidents from
18 serious accidents. And I think that breaking
19 those numbers out and getting a better sense of
20 serious accidents and comparing serious accidents
21 on that railroad versus other railroads
22 similarlFy situated might be more helpful and

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1 somewhat less misleading.

2 With regard to hazmat movements, are you
3 going to be distinguishing between PIH and TIH
4 movements from general hazmats? Because, I mean,
5 they are very, very different, especially with
6 health concerns. And you do plume analysis to
7 look at the impact if something happens. We all
8 heard ad nauseam, I suppose in more ways than
9 one, that if there was an accident here in
10 Washington, D.C. that the plume from an anhydrous
11 car, I guess, could kill 100,000 people. Have
12 you looked that sort of analyses in your
13 assessment?

14 MR. KELLER: We -- the first part of
15 the question is we have broken down the hazmats
16 into the various categories, i.e., if they are
17 PIH, TIH or flammable gas or a corrosive liquid,
18 those type of general categories.

19 We do have specific information from
20 CN, like I said earlier, but because of the
21 secure nature of that information, we can't
22 release that.

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1 VICE CHAIRMAN MULVEY: Okay. But you

2 --

3 MR. KELLER: And then --

4 VICE CHAIRMAN MULVEY: -- have
5 considered it, even though you can't release it?

6 MR. KELLER: Yes, sir. Yes, sir, we
7 have looked at that. The second part of the
8 question, have we done any faint and transport
9 modeling in terms of the worst case scenario?

10 NEPA tells you you do not do a worst case
11 analysis. So we have not done that. But what we
12 have done is for certain scenarios of hazardous
13 material releases, we have kind of walked through
14 what happens and how you would take care of it.

15 VICE CHAIRMAN MULVEY: Okay.
16 Applicant's construction-related equipment may
17 not cross residential properties without
18 permission, according to some of the voluntary
19 mitigations. They agree not to run their trucks
20 across somebody's front lawn.

21 How many incidents of crossings do
22 you believe will be needed and what happens if a

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1 property owner withholds permission and the
2 railroad says I need to get across your property
3 and the property owner says you're not getting --
4 you're not running your truck or your equipment
5 over my property. What can be done? Can the
6 property owner be forced to accommodate it or is
7 it some sort of eminent domain activity or what?

8 MR. MORTON: This is a voluntary
9 mitigation measure that --

10 VICE CHAIRMAN MULVEY: Okay.

11 MR. MORTON: -- the applicants have
12 proposed.

13 VICE CHAIRMAN MULVEY: Um-hum.

14 MR. MORTON: You know, in most cases,
15 they actually can and do have access along their
16 own right-of-way. I guess our supposition is
17 that if they are unable to obtain, you know,
18 private property access to get their construction
19 equipment across, that they either have
20 alternative ways to access or a backup strategy,
21 because they proposed the condition themselves.

22 VICE CHAIRMAN MULVEY: Okay. If you

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1 go out to the SEA recommendations on railroad
2 operations in regard to blocked crossings and
3 reporting of incidents of 10 minutes or greater
4 duration, what is the significance of the 10
5 minute threshold? Is that FRA Regulation?

6 MR. MORTON: It is. I think if --
7 you know, I need one of the operations guys, but
8 I believe that that threshold comes from their
9 U.S. Rule Book.

10 VICE CHAIRMAN MULVEY: Yeah.

11 MR. BURGEL: CN has their own U.S.
12 set of rules that -- it's Rule 526. They say any
13 time they anticipate blocking a crossing for 10
14 minutes, they will cut the crossing.

15 VICE CHAIRMAN MULVEY: They will cut
16 the train and let people go through?

17 MR. BURGEL: Right.

18 VICE CHAIRMAN MULVEY: Okay. Did I
19 miss cameras being mentioned? Aren't cameras one
20 of the voluntary mitigations? To put cameras at
21 all the critical crossings and CN would be paying
22 for that. And then people in the fire stations

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1 or emergency medical centers will have TV sets or
2 monitors, so they can see what's going on. Is
3 that true?

4 MS. KITAY: Yeah, but I don't think
5 it is voluntary.

6 MR. MORTON: That's correct.

7 VICE CHAIRMAN MULVEY: It's a
8 recommendation. No it's not voluntary, that's an
9 SEA mitigation.

10 MR. MORTON: That's correct.

11 VICE CHAIRMAN MULVEY: Do you know
12 how much that is going to cost? Any estimate of
13 the cost of that?

14 MR. MORTON: We did cost out those
15 mitigation items and if you give me just a
16 second, I'll be able to, you know, give you a
17 ballpark feel. Our estimate, you know, dependent
18 upon the location, would be \$25,000 to \$35,000
19 per location.

20 VICE CHAIRMAN MULVEY: And how many
21 locations would that be, approximately?

22 MR. MORTON: About 25 or 30.

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1 VICE CHAIRMAN MULVEY: About 25 or
2 30. So it's about \$625,000 to \$825,000? Is that
3 right?

4 MR. MORTON: That's correct. I'm
5 sorry, we're trying to do the mental math here
6 and you beat us to it.

7 CHAIRMAN NOTTINGHAM: Vice Chairman
8 Mulvey, I think we can --

9 VICE CHAIRMAN MULVEY: I think that's
10 all I have.

11 CHAIRMAN NOTTINGHAM: -- we might
12 want to consider retaining sort of franchise
13 rights on those -- that footage. I mean, some
14 people thought the weather channel would be a big
15 bore when it was unveiled and it's now the
16 hottest channel out there. So in case we create
17 a tidalwave of viewership of the intersections,
18 we want to retain those royalties.

19 MR. THORSON: Inside knowledge.

20 CHAIRMAN NOTTINGHAM: And work with
21 the FCC on that maybe.

22 VICE CHAIRMAN MULVEY: With that, I

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1 will end my questions for the time being and turn
2 it back over to the Chairman.

3 CHAIRMAN NOTTINGHAM: Seriously
4 though, the quiet zone issue is important. My
5 understanding is there is just only one community
6 that would actually see -- that currently has a
7 quiet zone, that if this proposal application
8 were approved would be at serious risk of losing,
9 falling out of conformity with the quiet zone
10 requirements and that's Barrington.

11 We have -- staff is, as I understand
12 it, preliminarily proposing a mandatory
13 mitigation that would reference the quiet zone in
14 Barrington and its future. Help me understand
15 how that would work, because, of course, we're
16 talking about a sister agency, the FRA over whom
17 which we don't have control. And so I want to
18 make sure I understand what we would be under
19 this scenario.

20 What would we be promising the people
21 of Barrington and what we can't promise, because
22 it is in someone else's germane.

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1 MR. MORTON: Okay. I'll ask Leif to
2 sort of expand upon that for you.

3 MR. THORSON: What the -- you know,
4 what the FRA does is they have a clear rule and a
5 risk calculator that works for the establishment
6 of quiet zones and also for the maintenance of
7 quiet zones. Now, when a quiet zone falls out of
8 compliance, there is a notification and then they
9 have, I believe it is, three years to bring it
10 back, otherwise the horns will need to be
11 sounded.

12 So when we looked at what our
13 analysis did with the Barrington Quiet Zone,
14 although we looked at all the quiet zones, we ran
15 the 2015 numbers and using the 2008 FRA
16 calculator, if you will, and those 2015 numbers,
17 the Barrington Quiet Zone no longer complied with
18 the requirements.

19 So what, in effect, the applicant
20 would be required to do is to take those trains
21 under their operating plan, put it in there and
22 see what combination of supplemental safety

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1 measures would be required within that corridor
2 that would bring it back into compliance and
3 allow for continuation of that quiet zone.

4 So we don't prescribe median barriers
5 at this location or four quadrant gates here.
6 There is clearly sort of a negotiation between
7 the parties or a best fit in that corridor for
8 those measures that will allow the quiet zone to
9 continue.

10 CHAIRMAN NOTTINGHAM: And help me
11 understand the FRA process or precedent here. If
12 we make this mandatory and if CN goes to the FRA
13 and says we have got a problem, we need your
14 help, we need you to tell us, FRA tell us, CN,
15 what we need to do to keep this quiet zone in
16 operation. And what would FRA likely say? What
17 would they look at and how much chance is the FRA
18 says you are out of luck, you know, it's a safety
19 problem and we're going to make -- you know,
20 you're obligated to sound the horns.

21 MR. THORSON: Yeah, well, right now
22 the FRA Rules clearly allow them to apply

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1 supplemental safety measures, which do have a
2 defined benefit that they apply to the risk. And
3 if they meet that FRA requirement, then the quiet
4 zone is approved.

5 Now, the FRA being the FRA does have
6 the authority at any time to change their own
7 rules, to make it -- to lower the thresholds or
8 to raise the thresholds, if you will. I think
9 the way it is working now, at least my experience
10 with quiet zones, is that there is -- the
11 communities themselves generally look at the
12 supplemental safety measures that work best.

13 Median barriers are usually the
14 preferred option, as long as they have a narrow
15 enough footprint that they don't require
16 additional right-of-way. If that's not the case,
17 then often times they jump to maybe a four
18 quadrant gate or, you know, one way pairs or
19 something like that.

20 CHAIRMAN NOTTINGHAM: I should add
21 that this Agency, the Board has a very strong and
22 longstanding working relationship with the FRA

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1 and, of course, if we were to mandate such an
2 outcome, we would have -- we would not just sit
3 back and hope that the parties work it out. We
4 would be -- I can certainly say if I had anything
5 to do with it, we would be leaning forward
6 working with FRA and urging FRA to make sure they
7 are as flexible as they can be to honor the
8 mitigation requirement that you posed.

9 And my experience with working with
10 FRA staff as well is they are extremely helpful
11 in this regard. Although, they are somewhat
12 reluctant to them specify what is a better
13 supplemental safety measure. They usually leave
14 that to the community and to the railroad. But
15 their staff is extremely helpful, yes.

16 CHAIRMAN NOTTINGHAM: I have to ask a
17 question about turtle crossings. It's not every
18 day we get a turtle crossing issue before us.
19 I'm reminded very much of a project in Virginia,
20 a much needed highway widening where there was
21 actually a documented presence of black bears and
22 threatened black bears that were known to cross

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1 the highway and not make it across. And the
2 concern was if we four lane the two lane road,
3 that -- and we put in bear crossings.

4 I'll ask the same question I asked
5 the Army Corps at the time though, how do -- I'm
6 assuming we're not talking bridges or rope
7 swings. We are talking tunnels. Is that a fair
8 assumption?

9 MS. GOODSON: Yeah, they are,
10 essentially, kind of pipes and culverts and
11 tunnels and fairly easy to install when new
12 construction is going on.

13 CHAIRMAN NOTTINGHAM: And is there
14 some research, I assume, that indicates that
15 turtles are able to make their way to these? I
16 mean, these crossings. I mean, how do
17 they --

18 MS. GOODSON: Well, they certainly
19 get installed in areas where there is existing
20 habitat and in areas where there is a reason for
21 them to be moving. So they are not just going to
22 be -- they will be going to habitat, which occurs

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1 on the other side of the rail line. And, you
2 know, there is designs that are in place. And
3 partly, you have kind of almost funnel like
4 systems that will kind of allow the turtles to
5 find those areas.

6 The mitigation for the turtle
7 crossings came out of discussions with the
8 natural resource stakeholders as well as the Fish
9 and Wildlife Service. It was something they had
10 requested in terms of being a good opportunity to
11 improve the -- what's -- you know, to improve
12 mortality, I guess, of turtles out there now.

13 CHAIRMAN NOTTINGHAM: Thank you.

14 COMMISSIONER BUTTREY: It's like
15 salmon stairs.

16 CHAIRMAN NOTTINGHAM: Right.

17 COMMISSIONER BUTTREY: Glad to hear
18 the state of the practice has improved from when
19 I was doing a highway lighting, because at that
20 time, the Resource Agency said that signage would
21 help the bears get across. And that still
22 puzzles me to this day.

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1 VICE CHAIRMAN MULVEY: That was
2 Virginia, right?

3 VICE CHAIRMAN MULVEY: That was and
4 it was a federal agency, a sister federal agency
5 I will keep nameless to protect their reputation,
6 but thank you for that explanation.

7 CHAIRMAN NOTTINGHAM: I have no
8 further questions. I do want to offer colleagues
9 one last chance.

10 VICE CHAIRMAN MULVEY: I have one
11 observation about noise and that is with the LDN,
12 the day/night noise level. You know, it's also
13 true with say an airplane. An airplane flying
14 over at 8:00 in the evening and one flying over
15 the same distance at 3:00 in the morning are two
16 very different things.

17 And one of the problems with the
18 railroads is railroads are 24/7 operations.
19 Airports very often will have curfews and so no
20 flights will be coming out especially around here
21 after 11:00 at night or they will reroute planes
22 to minimize the impact on neighborhoods, often at

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1 the behest of the neighborhoods.

2 And again, railroads can't do that.
3 So it is very, very difficult to apply the
4 typical LDN measure to railroads, because their
5 operations are so different. Do you have a
6 comment on that?

7 MR. CASEY: I try to avoid discussing
8 aviation noise in the context of a railroad noise
9 project for a couple of reasons. Not to be
10 flippant, but for a couple of reasons. No. 1,
11 that planes are over your head and their noise
12 travels, you know, great distances. It affects a
13 great number of people. Whereas trains, you
14 know, they only go one way or the other in this
15 corridor.

16 VICE CHAIRMAN MULVEY: Right. And on
17 the ground and so all the people on both sides
18 over that whole period are affected. So I'm not
19 sure the numbers are all that much different,
20 depending on population density, how high the
21 plane is and at least we know the train is on the
22 ground.

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1 The other thing is back to this
2 Pratt's Woods, which we talked about a long time
3 ago, Pratt's Wayne Woods Forest Preserve. The
4 voluntary mitigation says that "Where possible,
5 the applicant shall maintain access to any
6 construction activities involving Pratt's Woods."

7 Who determines what is possible? And
8 what is the process for resolving any dispute
9 over the decision as to whether or not it is
10 possible or whether or not construction
11 activities are going to cut off access? Is that
12 the railroad's or is that the community's
13 responsibility?

14 MR. CASEY: I believe there is a
15 voluntary mitigation measure.

16 VICE CHAIRMAN MULVEY: It is a
17 voluntary mitigation, but who discerns what --
18 who decides what is possible?

19 MR. MORTON: This was a condition
20 that actually the manager of the Oli Olafsson
21 with the DuPage Forest Preserve actually
22 specifically requested. In this particular case,

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1 the rail line, I think, you know, as Commissioner
2 Buttrey mentioned goes through the middle of the
3 forest preserve.

4 There is an underpass and the concern
5 that the forest industry had was they would close
6 that underpass, because the construction was
7 going to be close to that. I don't think CN has
8 finished their design effort and didn't exactly
9 know, but they worked with the forest preserve to
10 come up with the specific language of that
11 voluntary mitigation measure that demonstrates
12 they are going to try to keep that open.

13 But if for safety reasons, they need
14 to work above it, then they may be forced to
15 close it for short periods of time.

16 VICE CHAIRMAN MULVEY: With that, I
17 thank you. My questions are finished. It has
18 only been seven hours, so thank you.

19 CHAIRMAN NOTTINGHAM: Vice Chairman
20 Mulvey, do you care at all for any closing
21 comments?

22 VICE CHAIRMAN MULVEY: No, just to

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1 once again extend my thanks to everyone who has
2 been a part of this. I know it has been long and
3 a lot of very, very tough questions, which I
4 think you have all handled in an excellent and
5 intelligent and information manner. And I want
6 to thank you all for your very, very good work
7 and look forward to working with you all again.
8 Thank you.

9 CHAIRMAN NOTTINGHAM: Commissioner
10 Buttrey, you indicated you might have some
11 comments?

12 COMMISSIONER BUTTREY: Thank you, Mr.
13 Chairman. In closing, I would like to compliment
14 the staff and the environmental consultants for a
15 thorough and meticulous job. I know that they
16 worked hard to get ready for today's
17 presentation. And the staff and consultants have
18 arguably identified those areas of concern that
19 must be addressed.

20 But now that I have listened to the
21 presentation, my perception is that there is
22 still a huge chasm that exists between the

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1 tentative recommendations that have been
2 presented here today and what the state and local
3 interests and affected individuals are saying
4 must be done to adequately address the expected
5 environmental effects of this proposed
6 transaction.

7 It concerns me greatly that we would
8 presume to substitute our judgment for that of
9 the state and local interests. I understand that
10 applicants have so far reached a negotiated
11 agreement with Joliet. I would prefer that we
12 would find a way to keep all the stakeholders
13 focused on working out private resolutions for
14 all the environmental issues that have been
15 raised.

16 I understand that our discussions --
17 that other discussions have occurred, but have
18 not yet come to fruition. I would not want our
19 resolution of this case to remove the incentive
20 for applicants to reach mutually agreeable
21 resolution with all of the other affected
22 entities. Thank you, Mr. Chairman.

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1 CHAIRMAN NOTTINGHAM: Thank you,
2 Commissioner Buttrey. I do also want to thank
3 the STB staff and the consultant, third-party
4 consultant staff for just an enormous effort
5 here. I'm sure there will be aspects of your
6 work that one or more Board Members will not
7 completely endorse when push comes to shove, but
8 I know you won't take that personally.

9 We all have responsibilities and a
10 job to do. I do want to assure all the
11 stakeholders and interested parties who might be
12 observing here today and via the web link that
13 this Board takes its responsibilities and
14 situations, such as this and in all of our work,
15 extremely seriously.

16 We are completely impartial. If you
17 look at who is suing us and challenging us at any
18 given time, you will find every possible type and
19 stripe of stakeholder from the biggest railroads
20 to the biggest shippers to the small shippers and
21 small railroads, and that's because we don't put
22 our finger up in the air and try to guess how

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1 many people we can make happy on Wednesday or
2 Thursday and vote based on that.

3 We take our obligations seriously.
4 In many situations, this is one, there is not--
5 probably not a win-win where we are going to make
6 a decision that will leave every stakeholder
7 happy. I wish there was. And I'm the eternal
8 optimist on such things.

9 But it has always been my approach in
10 dealing with matters like this to try my best to
11 get as close as possible to leaving -- handling
12 matters such as this in a way that leaves all of
13 the impacted communities better off after our
14 work is done, than they were beforehand.

15 That's a stronger test than perhaps
16 NEPA and the law requires, but that has always
17 been my personal goal and I'll continue to try to
18 strive towards that in my efforts here. If we
19 can't reach that goal, I want to get as close to
20 it as reasonably possible.

21 And I want to assure the communities
22 who may not deal with the STB on a regular basis

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1 and for whom this might be their first experience
2 dealing with the STB, that we take the letters,
3 the comments, what we have heard at the many
4 public hearings and meetings, we take those to
5 heart. We give them serious consideration.

6 We all live in communities. Many of
7 us know what it is like to have lived near and
8 adjacent to rail tracks or to have to handle and
9 make decisions regarding major projects that
10 have, on occasion, "winners" and, you know, "non-
11 winners" in the short-term.

12 So, please, know that we expect,
13 obviously, to be challenged no matter what we do
14 on this important proceeding. And we will be
15 ready for those challenges. But we hope that
16 when folks look back in -- after an appropriate
17 time has gone by, they will look back and say
18 this was a Board that was thoughtful, that took
19 its obligations very seriously and followed the
20 law and the facts where those two important
21 considerations led us.

22 With that, we will be adjourned.

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(Whereupon, the meeting was concluded
at 4:37 p.m.)