

## **CHAPTER 1.0**

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### **INTRODUCTION**

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CSX Transportation, Inc. (CSXT) and Louisville & Indiana Railroad Company, Inc. (L&I) (jointly, Applicants) submitted an application to the Surface Transportation Board (Board or STB) in 2013 seeking approval for joint use by CSXT and L&I of L&I's 106.5-mile-long rail line between Indianapolis, Indiana, and Louisville, Kentucky (L&I Line). The proposed joint use would result in an increase in train traffic on the L&I Line and changes in train movements on CSXT's own rail line network. Before deciding whether to approve the application, the Board must consider the potential environmental effects of its decision.

The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (EA) in August 2013. Some of the comments received on the document raised environmental concerns not assessed in the Draft EA. Consequently, OEA decided to prepare a Supplemental EA to present the additional environmental analyses and provide an opportunity for public review and comment. Discussions of the proposed project's background, purpose and need, environmental review process, and next steps are provided below.

### 1.1 BACKGROUND

On July 2, 2013, Applicants filed an application with the Board pursuant to 49 United States Code (U.S.C.) § 11323 and 49 Code of Federal Regulations (C.F.R.) Part 1180. Applicants seek Board authority for CSXT to acquire from and jointly use with the L&I a perpetual, non-exclusive railroad operating easement<sup>1</sup> (Easement) over the L&I Line. The L&I Line extends from a connection with CSXT in Indianapolis at milepost (MP) 4.0, and a connection with CSXT in Louisville at MP 110.5 (see Figure 1.1-1). The joint use and easement acquisition are referred to as the Proposed Transaction. Both CSXT and L&I would continue to use the L&I Line.

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<sup>1</sup> A railroad operating easement is an agreement between railroad companies that grants one railroad the right to operate over a rail line while the granting railroad continues to own the underlying land.

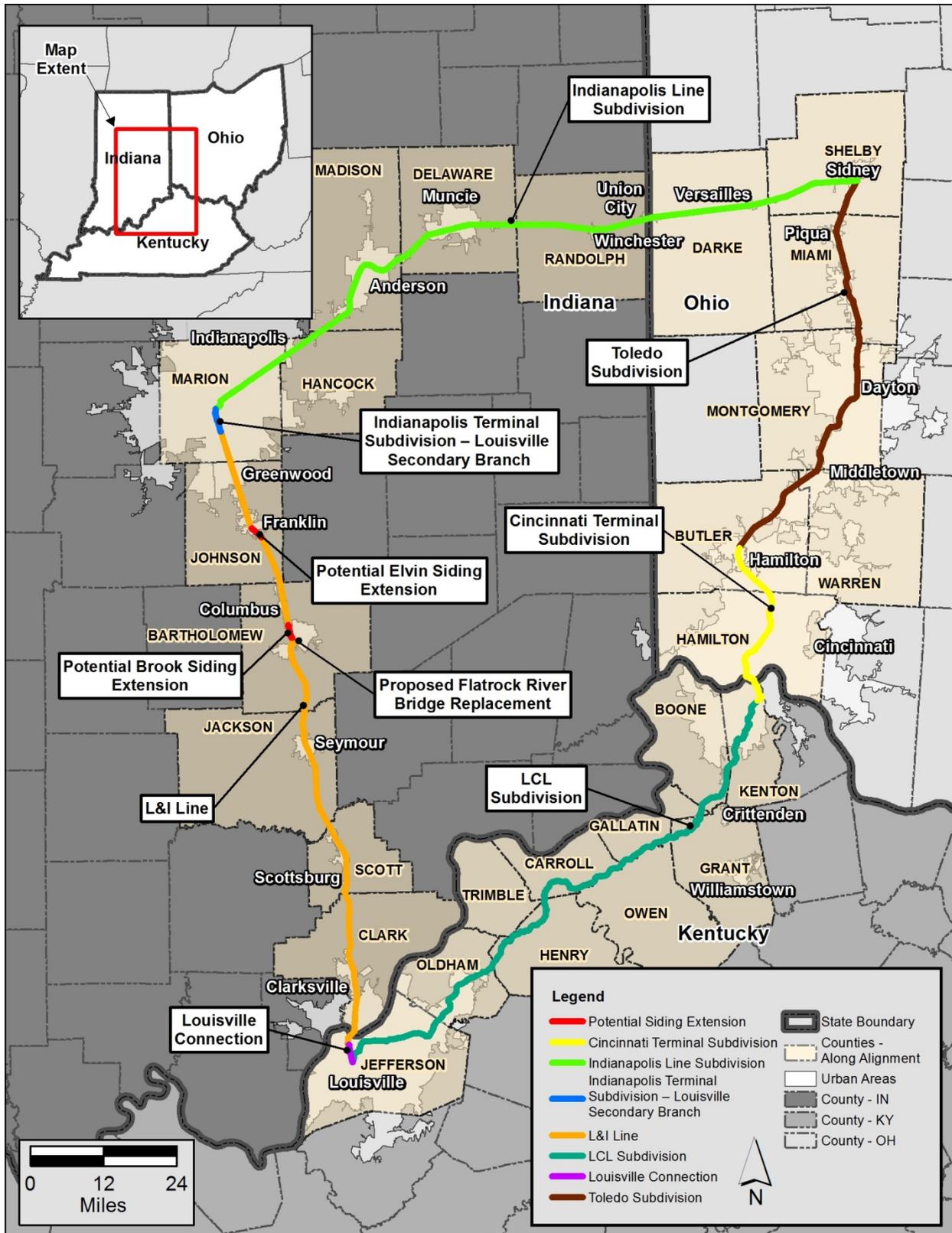


Figure 1.1-1. Project Location

Under the Proposed Transaction, CSXT would pay L&I \$10 million for the perpetual, non-exclusive easement over the L&I Line. CSXT also would pay for upgrades to the L&I Line, projected to cost between \$70 and \$90 million, which would take up to 7 years to complete. In return, L&I would compensate CSXT for any of its traffic that makes use of the heavier tonnage per car and taller rail cars that could move on the upgraded L&I Line under the Proposed Transaction.

The proposed rail infrastructure upgrades primarily include: (1) replacement of the existing 100-pound jointed rail on the L&I Line with a heavier-weighted, continuous welded rail, (2) replacement of a select number of ties, and (3) replacement of a timber and steel railroad bridge over the Flatrock River near Columbus, Indiana. Two existing sidings could also be extended if determined necessary by Applicants.<sup>2</sup> When completed, the proposed improvements would bring the L&I Line up to what is known as Class 4 standards and would enable Applicants to increase maximum train speeds from the existing 25 miles per hour (mph) to 49 mph<sup>3</sup> and move double-stacked and multi-level railcars weighing up to 286,000 pounds gross weight each. Currently, infrastructure conditions on the L&I Line limit traffic to railcars that are single stacked and weigh no more than 263,000 pounds gross weight each.

The proposed joint use would allow CSXT to operate only overhead traffic (that is, rail traffic with origins and destinations outside of the local area) on the L&I Line. It would not permit CSXT to serve local customers or industries along the L&I Line. L&I would continue to serve its local customers on the L&I Line. Under the Proposed Transaction, however, CSXT would be allowed to set out and pick up traffic for and from CSXT's Indiana Terminal Subdivision, which intersects the L&I Line at Seymour, Indiana. CSXT anticipates operation of an additional 13 to 15 trains per day over the L&I Line, including traffic rerouted from the LCL Subdivision (from Louisville to Cincinnati, Ohio) and Indiana Terminal Subdivision (from Cincinnati to Seymour). No material train frequency increase would occur until the L&I Line is upgraded.

Currently, CSXT has trackage rights<sup>4</sup> with no train frequency limits over the L&I Line. CSXT states that it uses these trackage rights to relieve some of the congestion on the LCL Subdivision. For example, CSXT operates over its own rail line from Indianapolis to Cincinnati (including the Indianapolis Line Subdivision, Toledo Subdivision, and Cincinnati Terminal Subdivision) and from Cincinnati to Seymour (the Indiana Terminal Subdivision) and then uses the L&I Line to move trains south to Louisville, specifically operating two trains per day, both in a southward direction from Seymour to Louisville. While CSXT has trackage rights authority over the entire L&I Line, it does not operate over the entire L&I Line because of clearance restrictions and lack of capacity north of Seymour. Under the Proposed Transaction, these two trains would be

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<sup>2</sup> On July 18, 2014, CSXT informed OEA that it no longer plans to construct potential new sidings at Crothersville and Underwood, Indiana, as discussed in the Draft EA. Instead, CSXT will rely on extending the existing sidings at Elvin and Brook if either or both are determined necessary for operations (see Appendix A).

<sup>3</sup> Regulations of the Federal Railroad Administration permit freight trains to operate at up to 60 mph on Class 4 tracks if an automated signaling system is used to control train traffic on a main line. However, train speeds are limited to 49 mph when train traffic is controlled through a warrant system (that is, authorization to occupy a main line is provided through a verbal authorization system by radio, phone, or other electronic transmission from a dispatcher. Applicants currently use a track warrant control system on the L&I Line and intend to retain that system under the Proposed Transaction. Thus, train speeds would be limited to 49 mph despite the proposed upgrade to Class 4 standards.

<sup>4</sup> Trackage rights are agreements that allow one rail carrier to operate trains over rail lines of another carrier.

rerouted over CSXT's LCL Subdivision as a result of available capacity being created by rerouting trains from the LCL Subdivision to the L&I Line. CSXT has no plans to discontinue service over the Indiana Terminal Subdivision.

As a result of operational changes on the L&I Line from the Proposed Transaction, CSXT also anticipates the following increases on its own rail lines:

- 11 trains per day on the Indianapolis Line Subdivision between Indianapolis and Sidney, Ohio
- 13 trains per day on the Indianapolis Terminal Subdivision – Louisville Secondary Branch, which connects the L&I Line and the Indianapolis Line Subdivision
- 12 trains per day on the Louisville Connection, which connects the L&I Line and the LCL Subdivision

## 1.2 PURPOSE AND NEED

According to Applicants, the purpose of the Proposed Transaction is to improve the efficiency, consistency, and reliability of CSXT operations in the Midwest region of its network (which includes Illinois, Indiana, Ohio, Kentucky, and Tennessee). The Proposed Transaction would also enable L&I to move heavier and taller railcars and increase the speed of its trains, thereby increasing L&I's operating efficiencies as well.

The LCL Subdivision is currently operating at or above train capacity. This affects CSXT's ability to operate a consistent, reliable, and recoverable<sup>5</sup> railroad. Although the recent recession reduced overall freight rail volumes, the LCL Subdivision experienced no significant decrease in freight train activity. CSXT expects the overall demand for freight rail transportation to increase, and expects the LCL Subdivision to continue operating at or above train capacity.

Applicants state that CSXT could not economically improve capacity on the LCL Subdivision. According to CSXT, the LCL Subdivision has operating characteristics or attributes that constrain train capacity and train operating performance. Capacity and performance constraints are a result of the LCL Subdivision's significant grade (over 1 percent) and curvature (up to 8 degrees), which result in less than optimal train lengths, tonnage restrictions, and reduced train speeds (train speeds currently average about 15 mph).

On average, CSXT states that it reaches train tonnage limitations before it reaches any train length limitations. As a result of these characteristics and to maintain fluidity on its rail line network, CSXT explains that it currently must operate smaller, less efficient trains between Louisville and Cincinnati. These smaller trains create inefficiencies throughout CSXT's network in terms of additional resource requirements, terminal congestion, and track occupancy. Operating limitations (that is, shorter trains at slower speeds) require additional resources and train starts, which results in more trains moving across an already capacity-constrained corridor and more trains moving through CSXT's Queensgate Yard, a major railcar classification facility located in Cincinnati.

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<sup>5</sup> "Recoverable" refers to the ability of a railroad to return to normal operations after an event that disrupts its operations. Such an event could be an accident or a weather-related event.

According to CSXT, the LCL Subdivision's grade and curvature make increasing velocity or adding capacity very expensive because it would require significant stabilization and grading efforts. The L&I Line, however, has a ruling grade under 1 percent and no curves greater than 5 degrees. These attributes would allow CSXT to operate longer, heavier, and faster trains.

The LCL Subdivision enters the Cincinnati terminal area at Latonia, Kentucky, and trains that use the LCL Subdivision operate through Covington, Kentucky, and cross the Ohio River on CSXT's rail bridge. CSXT's Ohio River Bridge handles trains that operate over several CSXT rail corridors in and around the Cincinnati terminal area and is heavily used. Immediately north of CSXT's Ohio River Bridge is the south end of CSXT's Queensgate Yard, a major railcar classification yard on CSXT's network. Even though many of the trains that operate over the LCL Subdivision do not originate or terminate or perform any rail operations in Cincinnati (such as serving local industries, switching cars, or delivering cars for processing), and therefore do not have to enter Queensgate Yard, these trains do have to utilize CSXT's extremely dense rail corridor that runs along the east side of Queensgate Yard. According to Applicants, this dense rail corridor through Cincinnati also hosts trains of the Norfolk Southern Railway Company (NSR).

Applicants state that the trains of CSXT and NSR combine to make the route through the Cincinnati terminal one of the densest on the entire CSXT network. Because CSXT trains that would operate over the L&I Line would operate via Indianapolis, they would be able to completely avoid the Cincinnati area under the Proposed Transaction. A benefit of the Proposed Transaction would be CSXT's ability to avoid operating certain trains through the Cincinnati terminal, which would result in increased fluidity of operations in the Cincinnati terminal area.

According to Applicants, CSXT's ability to route trains around the LCL Subdivision, as well as avoid the challenges of operating trains through the Cincinnati terminal area, is currently limited. The Proposed Transaction would improve CSXT's routing flexibility and performance in the region. The Proposed Transaction would allow CSXT to utilize the L&I Line to improve train performance, to more efficiently handle future and/or expected growth of business, and to better utilize available capacity (on both the L&I Line and CSXT's network) in order to improve transportation services to its customers. CSXT expects that the majority of the trains that would use the L&I Line would be automobile trains that carry finished vehicles and auto parts between Louisville (the center of CSXT's auto network) and automobile production and distribution facilities across the eastern United States.

Applicants state that the engineering challenges that stem from the LCL Subdivision's curvature and grade make it impractical for CSXT to add capacity or to improve the segment's performance. In contrast to CSXT's LCL Subdivision, the L&I Line has much more favorable curvature and gradient attributes; specifically, a single, short grade near 1 percent and good alignment with only a few curves of 5 degrees or less. As such, after the upgrades CSXT proposes to make are completed, CSXT plans to leverage these attributes of the L&I Line to increase efficiency by operating longer, heavier, and faster trains. CSXT would also be able to economically add capacity and infrastructure improvements to the L&I Line because of its favorable curvature and gradient. The L&I Line's attributes also would result in a more favorable maintenance profile, both with respect to the cost of maintaining the track and making capital investments.

As noted above, CSXT determined that it would be cost prohibitive to improve the LCL Subdivision's capabilities, specifically with respect to increasing operating speed and adding capacity in terms of additional sidings. CSXT believes it is a more efficient and cost effective use of its capital dollars to invest in capital improvements in the L&I Line than to invest in capacity on its LCL Subdivision. This belief is driven by the operating efficiencies and routing flexibility that CSXT would be able to derive from using the L&I Line that it cannot achieve over its own rail lines.

According to Applicants, the Proposed Transaction would provide CSXT the benefit of a network routing option that would allow trains to avoid operating through the congested Cincinnati terminal area. The ability to route around Cincinnati would allow CSXT to avoid the inherent delays with operating to, from, and through a major terminal. This ability would enable CSXT to provide more consistent, reliable, and faster service to its customers.

The Proposed Transaction is not a federal government-proposed or -sponsored project. Thus, the project's purpose and need should be informed by both the Applicants' goals and the agency's enabling statute. In an acquisition proceeding such as this, which does not involve the merger or control of at least two Class I railroads, the Board, under 49 U.S.C. § 11324(d), "shall approve...an application unless it finds that— (1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetition effects of the transaction outweigh the public interest in meeting significant transportation needs." Therefore, in assessing the transportation merits, the Board focuses on evidence regarding possible anticompetitive effects.

### **1.3 NEPA AND THE ENVIRONMENTAL REVIEW PROCESS**

Because the Board's consideration of CSXT and L&I's application is a major federal action, the Board also conducts an environmental review of the Proposed Transaction under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., where, as here, the thresholds in the Board's environmental rules are met (generally an increase of three or eight trains per day depending on whether the subject rail line is located in an area of poor air quality). See 49 U.S.C. § 11324(c) and 49 C.F.R. §§ 1105.7(e)(4) and (5).

On July 29, 2013, the Board decided to accept the application from CSXT and L&I; found that the Proposed Transaction is considered "minor" under 49 C.F.R. § 1180.2(c) (a determination that does not affect the environmental review process); deemed the application complete; and set a procedural schedule for the environmental review process, consideration of the transportation merits, and issuance of a final decision. Before deciding whether the Proposed Transaction should be approved, the Board will consider the entire environmental record, all public comments, and OEA's final environmental recommendations, including final recommended mitigation measures, in deciding what, if any, environmental mitigation to impose.

#### **1.3.1 Environmental Review Requirements**

NEPA requires that the Board examine the potential environmental impacts of major federal actions—including regulatory approval of projects proposed by private parties—and to inform the public concerning those potential impacts.

Under NEPA, the Board must consider potential environmental impacts. While NEPA prescribes the process that must be followed, it does not mandate a particular result.<sup>6</sup> Thus, once the environmental effects have been adequately identified and evaluated, the Board may conclude that other values outweigh the environmental costs.<sup>7</sup> Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality (CEQ)<sup>8</sup> and by the Board.<sup>9</sup> OEA is responsible for conducting environmental reviews on behalf of the Board, evaluating potential environmental impacts, and when appropriate, recommending environmental mitigation conditions to the Board.

The level of environmental review depends upon the potential for significant impacts. Actions whose environmental effects are ordinarily insignificant may normally be categorically excluded from a case-specific NEPA review.<sup>10</sup> Included in this category are acquisition transactions that would not result in operational changes that exceed certain rail activity thresholds established by the Board. See 49 C.F.R. §§ 1105.7(e)(4) and (5). Acquisitions that are expected to cause increases in trains per day, rail traffic, or rail yard activity above the Board's thresholds for environmental review (generally, an increase of three trains per day in areas with poor air quality and eight trains per day in areas with good air quality) presumptively require the preparation of an EA.<sup>11</sup> An EA is appropriate to this case because train traffic is expected to increase by more than eight trains per day on the L&I Line and several CSXT rail lines.

### 1.3.2 Draft EA and Comments Received

Following pre-application discussions between CSXT, L&I, and OEA, OEA conducted a site visit of the project area on May 27, 2011, to inspect the rail lines and adjoining areas first-hand. OEA was accompanied by CSXT and L&I staff, who provided information on the Proposed Transaction and current rail operations. OEA issued a Draft EA on August 30, 2013, for a 1-month public review and comment period.<sup>12</sup> The Draft EA examined the potential impacts of the Proposed Transaction and the No-Action Alternative, and the need to mitigate potential adverse environmental impacts. The analyses in the Draft EA focused on the potential impacts of moving additional Transaction-related trains on the L&I Line, and potential impacts of

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<sup>6</sup> *Robert v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> 40 C.F.R. Parts 1500-1508.

<sup>9</sup> 49 C.F.R. Part 1105.

<sup>10</sup> 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. §1105.6(c), (d).

<sup>11</sup> 49 C.F.R. §§ 1105.6(b)(4), (c)(2)(i). Agencies must prepare a detailed Environmental Impact Statement (EIS) for proposals that would significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). Agencies may prepare a more limited EA to determine whether a full EIS is necessary or whether, with appropriate mitigation, they can make a Finding of No Significant Impact. 40 C.F.R. §§ 1501.3, 1501.4. The Board's Draft EAs are issued for public review and comment. A Final EA is then prepared, addressing the comments and containing additional environmental analysis, if warranted. Final EAs also contain OEA's final recommendations, if any, for environmental mitigation to minimize any potential environmental impacts of the proposed transaction.

<sup>12</sup> The comment period on the Draft EA closed on September 30, 2013, and OEA is not reopening that comment period. However, if you would like to peruse the contents of the Draft EA, it is available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov). From the home page, click on "Decision" in the Quick Links box, click on the "Search" button, enter "43214" in the "Search ID" box, and finally click on the date "8/30/2013."

Transaction-related construction associated with rail line sidings and replacement of the Flatrock River Bridge on the L&I Line.

The Board received comments on the analyses in the Draft EA (see Appendix A).<sup>13</sup> In addition, and as particularly relevant here, some comments on the Draft EA argued that the document should have addressed CSXT's rail lines that connect with the L&I Line and would also be subject to Transaction-related increases in train traffic that exceed the Board's thresholds. Additionally, commenters noted that the Draft EA should have quantified potential Transaction-related construction impacts on wetlands, floodplains, and forested areas, and quantified potential wildlife strike impacts. On November 20, 2013, upon consideration of these comments, OEA determined that it would be appropriate to prepare a Supplemental EA that focuses on Transaction-related operational impacts on certain CSXT rail lines and quantifies certain Transaction-related construction impacts before issuing a Final EA concluding the environmental review process.

### 1.3.3 Scope of the Supplemental EA

On March 21, 2014, OEA solicited comments on the scope of the Supplemental EA from interested federal, state, and local agencies. OEA considered those comments and determined that the Supplemental EA would focus on the three topics discussed below.

**Topic 1:** Potential operational impacts of moving additional trains on the following CSXT rail lines:

- 11 trains per day on the Indianapolis Line Subdivision between Indianapolis and Sidney (beyond Sidney there would no Transaction-related changes in train traffic)
- 13 trains per day on the Indianapolis Terminal Subdivision – Louisville Secondary Branch, which connects the L&I Line and the Indianapolis Line Subdivision
- 12 trains per day on the Louisville Connection, which connects the L&I Line and the LCL Subdivision

These rail lines were selected because train traffic on them would increase more than the eight-trains-per-day threshold for analysis in the Board's environmental rules. (Note: According to Applicants, no other CSXT rail lines would experience an increase in train traffic that exceeds the Board's thresholds for environmental review as a result of the Proposed Transaction.) On these CSXT rail lines, the Supplemental EA assesses potential operational impacts on transportation, including grade crossing delay, grade crossing safety, hazardous materials transportation safety, and emergency response. The Supplemental EA also addresses potential operational impacts related to water resources, biological resources, air quality and climate, noise and vibration, cultural resources, and environmental justice on the CSXT rail lines.

**Topic 2:** Potential changes in wildlife strikes from Transaction-related changes in rail traffic, including proposed increases in train traffic on the L&I Line and the Indianapolis Line Subdivision and proposed decreases in train traffic on the Toledo Subdivision, Cincinnati

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<sup>13</sup> Comments received on the Draft EA are also available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov). Place your cursor over the "Environmental Matters" button on the Board's home page, and select "Environmental Correspondence" in the drop-down menu. Next, select "Incoming By Docket Number" in the upper left-hand corner, proceed to the "Next Page," and toggle down to and select "FD\_35523\_0." All incoming correspondence for this case, including the Draft EA comment letters, will be listed and available for perusal.

Terminal Subdivision, and LCL Subdivision. Potential wildlife strikes were not analyzed along the Indianapolis Terminal Subdivision – Louisville Secondary Branch and the Louisville Connection because these rail lines are located in urban areas and do not have adequate habitat for vulnerable wildlife, including threatened and endangered species.

**Topic 3:** Potential Transaction-related construction impacts associated with the potential extension of two existing sidings and proposed replacement of the Flatrock River Bridge, all on the L&I Line, on wetlands, floodplains, and forested areas.

As noted above, the Proposed Transaction would not include construction or ground-disturbing activities on any of the CSXT rail lines. Therefore, the only alternatives considered in this Supplemental EA are approval of the Proposed Transaction and the No-Action Alternative.

## 1.4 NEXT STEPS

OEA encourages you to send us written comments on this Supplemental EA. **If you submitted comments on the Draft EA, you do not need to resubmit those comments.** OEA will consider and respond to comments received on both the Draft EA and on this Supplemental EA in the Final EA. The Final EA will include OEA's final conclusions on potential impacts that could result from the proposed joint use, and OEA's final recommendations, including final recommended mitigation measures. To be considered, comments must be submitted during the comment period, which will close on **December 1, 2014**. OEA anticipates issuing the Final EA by the end of December 2014. The Board will issue a final decision on the Proposed Transaction after the issuance of the Final EA.

When submitting comments on the Supplemental EA, please be as specific as possible. We are particularly interested in your thoughts on the recommended mitigation measures. Any suggestions you may have to improve our recommendations to the Board would be very welcome.

Comments may be submitted electronically through the Board's website or by mail, as described below:

- **Electronically:** For electronic comments, simply go to the home page of the Board's website ([www.stb.dot.gov](http://www.stb.dot.gov)), place your cursor on the "E-FILING" button, and click on E-Filing in the drop-down menu. Then click on "Environmental Comments" on the right-hand side of the web page. The next page will be formatted to allow you to fill in your information and type your comments in a text box provided, or you can provide your comments as an attachment to the comment form. If you have any difficulties with e-filing, please call 202-245-0350.
- **By Mail:** If you are sending your comments by mail, please be aware that there may be **up to a week delay** in the delivery of mail to federal agencies. Mail written comments to:

Dave Navecky  
Surface Transportation Board  
395 E Street, SW  
Room 1104  
Washington, DC 20423

Please refer to **Docket No. FD 35523** in your comments or any correspondence with the Board on this proposed joint use.