

CHAPTER 4.0

MITIGATION

CHAPTER 4.0 MITIGATION

Chapter 4.0 presents OEA's preliminary recommendations for mitigation measures that would avoid or minimize the potential environmental impacts resulting from the Proposed Transaction.

4.1 OVERVIEW OF OEA'S APPROACH

The analysis used in preparing this Supplemental EA has taken a hard look at the potential environmental consequences of the Proposed Transaction and No-Action Alternative, consistent with NEPA and the relevant CEQ and Board regulations. The potential environmental effects that have been identified would be both beneficial and adverse. Chapter 3.0 discusses in detail the affected environment and potential environmental benefits and effects.

Typically, OEA develops a list of preliminary mitigation measures that would avoid or minimize potential impacts of a proposed action. The list usually includes mitigation measures that may have been proposed or volunteered by an applicant and additional mitigation measures identified by OEA. The combined list of preliminary mitigation measures is then presented in OEA's draft environmental document for review and comment by agencies, individuals, and other interested parties. Considering any mitigation-related comments, OEA then develops a final list of recommended mitigation measures for publication in the final environmental document. Next, in any decision approving a proposed action, the Board determines which of the recommended mitigation measures would be imposed on an applicant, if any. An applicant would be required to comply with the mitigation measures regardless of origin (that is, whether the mitigation was volunteered by an applicant, proposed by OEA, or independently specified by the Board).

This Supplemental EA includes mitigation measures volunteered by Applicants and developed by OEA. The mitigation measures are also specific to the potential impacts of the Transaction-related activities that are the focus of this Supplemental EA; that is, the increased train traffic on certain CSXT rail lines, the potential construction of two sidings extensions on the L&I Line, and proposed replacement of the Flatrock River Bridge. Mitigation measures specific to Transaction-related activities in the Draft EA (that is, increased train traffic on the L&I Line and upgrades to the L&I Line main line track) are not repeated here. However, Draft EA mitigation measures that are relevant to the Supplemental EA are repeated in the Supplemental EA. OEA will consider all public comments received on the Supplemental EA (as well as public comments already received on the Draft EA) in making its final mitigation recommendations to the Board. OEA's final mitigation recommendations will be published in the Final EA.

4.1.1 Limits of Conditioning Power

The Board has authority to impose conditions to mitigate potential environmental impacts, but that authority is not limitless. As a government agency, the Board can impose only conditions that are consistent with its statutory authority. Any conditions the Board imposes must relate directly to a specific proposed action, must be appropriate to the scope and degree of impacts, and must be supported by the record before the Board. The Board's practice consistently has been to consider mitigation for only those potential environmental impacts that would result

directly from a proposed action (that is, Transaction-related changes in activity levels on existing rail lines and at rail facilities) and not to impose mitigation to remedy preexisting environmental conditions, such as the effects of current railroad operations.

4.1.2 Voluntary Mitigation and Negotiated Agreements

OEA encourages applicants to propose voluntary mitigation. Because applicants seeking Board authority may gain substantial knowledge about local community or other issues involved during project planning, and because they consult with other regulatory agencies and communities during project planning and at the early stages of the regulatory process, applicants can often propose relevant voluntary mitigation that is more far reaching than mitigation the Board could unilaterally impose. For the Proposed Transaction, Applicants have engaged in substantial outreach with potentially affected agencies, entities, and communities and have proposed extensive voluntary mitigation for this project, which is set forth and discussed in more detail below.

The Board also encourages applicants like CSXT and L&I to negotiate mutually acceptable agreements with affected communities and other government entities to address potential environmental impacts, if appropriate. Negotiated agreements can be with neighborhoods, communities, or other entities. If Applicants enter into any negotiated agreements, the Board would require compliance with the terms of any such agreements as environmental mitigation conditions in any final decision approving the Proposed Transaction. These negotiated agreements would supersede any environmental conditions for that particular community or other entity that the Board would otherwise impose.

4.1.3 Preliminary Nature of Environmental Mitigation

OEA emphasizes that all of the environmental mitigation measures proposed here are preliminary, and welcomes public and agency comment on these measures. In order for OEA to assess the public comments effectively, the public should be specific about any desired mitigation and the reasons why the suggested mitigation would be appropriate.

After considering all public comments on the Supplemental EA, OEA will issue a Final EA responding to any comments on the Draft EA and Supplemental EA (including any suggestions related to mitigation) and presenting any additional environmental analysis. The Final EA will contain OEA's final recommendations to the Board, including final recommended environmental mitigation. The Board will then make its final decision regarding the Proposed Transaction in accordance with 49 United States Code (U.S.C.) §§ 11324(c) and (d).

4.2 APPLICANTS' VOLUNTARY MITIGATION MEASURES

As part of their application, Applicants submitted proposed voluntary mitigation measures to OEA for the Board to consider. OEA has reviewed the voluntary mitigation measures, and should the Proposed Transaction be approved, OEA preliminarily recommends that the Board require Applicants to comply with all of the voluntary mitigation measures submitted.

Below, OEA presents for public review and comment, Applicants' current voluntary mitigation measures (identified as VM #) applicable to this Supplemental EA. Applicants divided their mitigation measures in two parts: (1) construction-related VMs (that is, those related to the proposed upgrades under the Proposed Transaction, which would take place within the existing

ROW of the L&I Line (for the Supplemental EA those upgrades include two potential siding extensions and the proposed replacement of the Flatrock River Bridge) and (2) VMs related to proposed changes in train operations on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection under the Proposed Transaction.

4.2.1 Construction-related VMs

4.2.1.1 Water Resources

VM 1. Applicants will compensate in accordance with U.S. Army Corps of Engineers (USACE) regulations in Indiana for wetland impacts that cannot be avoided and for impacts that are determined by USACE to be on waters of the United States for construction related to the Proposed Transaction.

VM 2. To minimize sedimentation into streams and waterways during construction, Applicants will use Best Management Practices (BMPs), such as silt fences and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during Transaction-related construction activities. Applicants will seek to disturb the smallest area possible around any streams and will conduct reseeding efforts to ensure proper revegetation of disturbed areas as soon as reasonably practicable following Transaction-related construction activities.

VM 3. In order to control erosion, Applicants will establish staging and lay down areas for Transaction-related construction material and equipment at least 50 feet from jurisdictional waters of the U.S. and in areas that are not environmentally sensitive. Applicants will not clear any vegetation between the staging area and the waterway or wetlands. To the extent reasonably practicable, areas with non-jurisdictional isolated waters will not be used for staging and lay down and will only be impacted when necessary for construction. When Transaction-related construction activities, such as culvert and bridgework, require work in streambeds, Applicants will conduct these activities, to the extent reasonably practicable, during low-flow conditions.

VM 4. During Transaction-related construction activities, Applicants will require all contractors to use BMPs, including daily inspections of all equipment for any fuel, lube oil, hydraulic, or antifreeze leaks. If leaks are found, Applicants will require the contractor to immediately remove the equipment from service and repair or replace it.

VM 5. Applicants will employ BMPs to control turbidity and disturbance to bottom sediments of surface waters during Transaction-related construction. Applicants will implement BMPs in wetlands or other waters of the U.S. to avoid adverse downstream impacts on fish, mussels, and other aquatic biota.

VM 6. During Transaction-related construction, Applicants will prohibit construction vehicles from driving in or crossing streams at other than established crossing points unless approved by appropriate federal or state permits.

VM 7. During Transaction-related construction activities, Applicants will, to the extent reasonably practicable and consistent with BMPs, ensure that any fill placed below the ordinary high water line of wetlands and streams is appropriate material selected to minimize impacts to the wetlands and streams. All stream crossing points will be returned to their pre-construction contours to the extent reasonably practicable and the crossing banks will be reseeded or replanted with native species immediately following project-related construction.

VM 8. Applicants will obtain a National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit from U.S. Environmental Protection Agency (USEPA) or appropriate state agencies for Transaction-related construction activities that warrant such compliance.

VM 9. Prior to any Transaction-related construction activities, Applicants will comply with any regulations required in the preparation of a construction Stormwater Pollution Prevention Plan.

4.2.1.2 Biological Resources

VM 10. Before beginning any Transaction-related construction activity, Applicants will survey all suitable habitats potentially impacted by the construction activity for state-listed threatened or endangered plant species. If any listed plant species are located, Applicants will implement a mitigation plan in consultation with the appropriate federal and state agencies.

VM 11. In order to avoid a take of the federally endangered Indiana bat, Applicants will not clear trees during its roosting period (April 1 – September 30).

VM 12. During Transaction-related construction, temporary barricades, fencing, and/or flagging will be used in sensitive habitats to contain construction-related impacts to the area within the existing right-of-way (ROW).

VM 13. Applicants will employ BMPs to implement their current noxious weed control program during construction and operation of Transaction-related potential siding extensions. All herbicides used by Applicants will be approved by USEPA.

4.2.1.3 Air Quality

VM 14. To minimize fugitive dust emissions created during Transaction-related construction activities, Applicants will implement appropriate fugitive dust suppression controls, such as spraying water or other approved measures. Applicants will also regularly operate water trucks on haul roads to reduce dust.

VM 15. Applicants will work with their contractors to make sure that Transaction-related construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air emissions.

4.2.1.4 Noise and Vibration

VM 16. Applicants will consult with affected communities and work with the construction contractors to minimize, to the extent reasonably practicable, Transaction-related construction noise disturbances near any residential areas.

4.2.1.5 Topography, Geology, and Soils

VM 17. Applicants will commence reclamation of disturbed areas as soon as reasonably practicable after Transaction-related construction ends along a particular stretch of rail line. The goal of reclamation will be the rapid and permanent reestablishment of native ground cover on disturbed areas. If weather or season precludes the prompt reestablishment of vegetation, Applicants will use measures such as mulching or erosion control blankets to prevent erosion until reseeding can be completed.

VM 18. Applicants will limit ground disturbance to only the areas necessary for Transaction-related construction activities.

VM 19. Applicants will review the limits of land disturbance prior to Transaction-related construction to determine whether any U.S. Department of Commerce, National Geodetic Survey monuments (that is, a government-owned permanent survey marker) would be disturbed. If any survey monuments would be disturbed, Applicants will give a 90-day notification to the National Geodetic Survey.

VM 20. Applicants will require contractors to dispose of waste generated during Transaction-related construction activities in accordance with all applicable federal, state, and local regulations.

VM 21. Applicants will make reasonable efforts to identify all utilities that are reasonably expected to be materially affected by Transaction-related construction within their existing ROW or that cross their existing ROW. Applicants will notify the owner of each such utility identified prior to commencing Transaction-related construction activities and will coordinate with the owner to minimize damage to utilities. Applicants will also consult with utility owners to ensure that utilities are reasonably protected during Transaction-related construction activities.

VM 22. During Transaction-related construction activity, Applicants will take reasonable steps to ensure contractors use fill material appropriate and in accordance with applicable regulations for the project area.

4.2.2 Operations-related VMs

4.2.2.1 Rail Operations

VM 23. Applicants will install power switches along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection where they determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of rail traffic and reduce the likelihood of such blockages.

4.2.2.2 Transportation

VM 24. Applicants will examine train operations to identify reasonable ways to reduce highway/rail at-grade crossing blockages.

VM 25. Applicants will cooperate with the appropriate state and local agencies and municipalities to:

- Evaluate the possibility that roadways listed in the Supplemental EA, Appendix B, Attachment B-3 could be closed at the point where they cross the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, or Louisville Connection to eliminate the at-grade crossings;
- Improve or identify modifications to roadways that would reduce vehicle delays by improving roadway capacity over the crossing by construction of additional lanes;
- Assist in a survey of highway/rail at-grade crossings for a determination of the adequacy of existing grade crossing signal systems, signage, roadway striping, traffic signaling inter-ties, and curbs and medians; and

- Identify conditions and roadway, signal, and warning device configurations that may trap vehicles between warning device gates on or near the highway/rail at-grade crossing.

4.2.2.3 Grade Crossing Safety

VM 26. Applicants will coordinate with the Indiana Department of Transportation (INDOT), Ohio Department of Transportation (ODOT), or Kentucky Transportation Cabinet (KYTC), as appropriate and, counties and affected communities along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection to install temporary notification signs or message boards, where warranted, in railroad ROW at highway/rail at-grade crossings, clearly advising motorists of the increase in train traffic on affected rail line segments. The format and lettering of these signs will comply with the Federal Highway Administration’s (FHWA’s) *Manual on Uniform Traffic Control Devices* (FHWA 2012) and will be in place no less than 30 days before and 6 months after Applicants’ initiate operational changes associated with the Proposed Transaction.

VM 27. Within 6 months of acquisition of a freight easement over the L&I Line, Applicants will cooperate with INDOT, ODOT, and KYTC as well as appropriate local agencies to coordinate a review of corridors surrounding highway/rail at-grade crossings to examine safety and adequacy of the existing warning devices, and identify remedies to improve safety for highway vehicles.

VM 28. Within 6 months of Applicants’ initiating operational changes associated with the Proposed Transaction, Applicants will cooperate with school and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

VM 29. For up to 3 years from the date that Applicants’ initiate operational changes associated with the Proposed Transaction, CSXT will make Operation Lifesaver programs available to communities, schools, and other appropriate organizations located along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

VM 30. For each of the public grade crossings on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, CSXT will provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration regulations (23 Code of Federal Regulations [C.F.R.] Part 655). The toll-free number will enable drivers to report accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions and will be answered 24 hours per day by Applicants’ personnel.

VM 31. Applicants will continue ongoing efforts with community officials to identify elementary, middle, and high schools within 0.5 mile of the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection ROW and provide, upon request, informational materials concerning railroad safety to such identified schools.

VM 32. Applicants will consult with state departments of transportation and other appropriate agencies and will abide by the reasonable requirements of INDOT, ODOT, and KYTC prior to constructing, relocating, upgrading, or modifying highway/rail at-grade crossing warning devices

on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

4.2.2.4 Hazardous Materials Transportation

VM 33. Applicants will assist in the hazardous materials training of emergency responders for affected communities that express an interest in such training. Applicants will support through funding or other means the training of one representative from each of the communities located along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection where the transportation of hazardous materials would increase. Applicants will complete the training within 3 years from the date that they initiate operational changes associated with the Proposed Transaction.

VM 34. Applicants will comply with the current Association of American Railroads (AAR) “key train” guidelines, found in AAR Circular No. OT-55-N (2013), and any subsequent revisions.

VM 35. Applicants will comply with all hazardous materials regulations of the U.S. Department of Transportation (including Federal Railroad Administration [FRA] and the U.S. Pipeline and Hazardous Materials Safety Administration) and Department of Homeland Security (including the Transportation Security Administration). Applicants will dispose of all hazardous materials that cannot be reused in accordance with applicable law.

VM 36. Upon request from local emergency response organizations, Applicants will implement real-time or desktop simulation emergency response drills with the voluntary participation of local emergency response organizations.

VM 37. Applicants will continue their ongoing efforts with community officials to identify the public emergency response teams located along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, and will provide, upon request, hazardous material training.

VM 38. Applicants will, upon request, conduct Transportation Community Awareness and Emergency Response Program workshops (training for communities through which hazardous materials are transported) in communities along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

VM 39. Applicants will develop internal emergency response plans to allow for agencies to be notified in an emergency, and to locate and inventory the appropriate emergency equipment. Applicants will provide the emergency response plans to the relevant state and local authorities within 6 months of acquisition of a freight easement over the L&I Line.

VM 40. In accordance with their Transportation Emergency Response Plan, Applicants will make the required notifications to the appropriate federal and state environmental agencies in the event of a reportable hazardous materials release. Applicants will work with appropriate agencies such as U.S. Fish and Wildlife Service, Indiana Department of Environmental Management, Ohio Environmental Protection Agency, and Kentucky Department for Environmental Protection to respond to and remediate hazardous materials releases with the potential to affect wetlands or wildlife habitat(s), particularly those of federally threatened or endangered species. Applicants will adhere to all USEPA regulations described in 40 C.F.R. Part 263 and will coordinate with USEPA, state agencies, and local agencies on spill responses.

4.2.2.5 Emergency Response

VM 41. Applicants will notify appropriate Emergency Services Dispatching Centers on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time. Applicants will work with affected communities to minimize emergency vehicle delay by maintaining facilities for emergency communication with local Emergency Response Centers through a dedicated toll-free telephone number.

4.2.2.6 Water Resources

VM 42. Applicants will maintain drainage ditches as permanent vegetated swales to provide stormwater retention and treatment. Removal of accumulated sediments will be conducted only as necessary to maintain stormwater retention capacity and function.

4.2.2.7 Biological Resources

VM 43. Applicants will ensure that any herbicides used in ROW maintenance to control vegetation are approved by USEPA and are applied by licensed individuals. Application will be limited to the extent necessary for rail operations. Herbicides will be applied so as to prevent or minimize drift off of the ROW onto adjacent areas.

4.2.2.8 Energy Resources

VM 44. Applicants, to the extent reasonably practicable, will adopt efficient fuel saving practices that may include a range of operating practices that will help reduce locomotive emissions, such as shutting down locomotives when not in use and when temperatures are above 40 degrees.

VM 45. Applicants will comply with USEPA emissions standards for diesel-electric railroad locomotives (40 C.F.R. Part 92) when purchasing and rebuilding locomotives.

4.2.2.9 Noise and Vibration

VM 46. Applicants will work with affected communities that have noise-sensitive receptors that would experience an increase of at least 5 A-weighted decibels (dBA) and reach 70 dBA, because of Transaction-related train increases, to mitigate train noise to levels as low as 70 dBA by cost-effective means as are agreed to by an affected community and Applicants. In the absence of such an agreement, Applicants will implement cost-effective mitigation.

VM 47. Applicants will cooperate with interested communities along the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection for the establishment of quiet zones (QZs) and assist in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish QZs.¹

VM 48. Applicants will work with their contractors to maintain Transaction-related maintenance vehicles in good-working order with properly functioning mufflers to control noise.

¹ Applicants' willingness to cooperate does not commit Applicants to expend funds on a physical project.

VM 49. In addition to the development of other noise mitigation measures, Applicants will consider lubricating curves where doing so would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise-sensitive receptors. Applicants will also continue to employ safe and efficient operating procedures that, in lieu of, or as complement to, other noise mitigation measures can have the collateral benefit of effectively reducing noise from train operations. Such procedures will include:

- Inspecting rail car wheels to maintain wheels in good working order and minimize the development of wheel flats;
- Inspecting new and existing rail for rough surfaces and, where appropriate, grinding these surfaces to provide a smooth rail surface during operations; and
- Regularly maintaining locomotives and keeping mufflers in good working order.

VM 50. Applicants will comply with FRA regulations establishing decibel limits for train operations.

VM 51. To minimize noise and vibration, Applicants will install and maintain rail and rail beds according to American Railway Engineering and Maintenance-of-Way Association (AREMA) standards.

VM 52. Upon request, Applicants will consult with communities affected by wheel squeal at existing locations on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, and cooperate in determining the most appropriate methods for implementing VM 49.

VM 53. Because the residential neighborhoods adjacent to the Indianapolis Terminal Subdivision – Louisville Secondary Branch in Indianapolis, Indiana, would experience potentially adverse noise impacts from increased train activity associated with the Proposed Transaction, CSXT will host two meetings in the subject neighborhoods to explain the increased train activity and solicit community concerns about the increases in train-related noise. CSXT will schedule the meetings within 6 months of Applicants executing the Transaction agreement and will publicize the meetings in advance. Within 60 days after the meetings are held, CSXT will provide a meeting report to the Board's Office of Environmental Analysis (OEA) and any meeting attendees who request it. The report will specify CSXT's responses to the concerns raised at the meetings.

4.2.2.10 Monitoring and Enforcement

VM 54. Upon approval of the Application by the Board, Applicants will submit semi-annual reports to the Board's OEA on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first 3 years of operational changes.

4.3 OEA'S PRELIMINARY ENVIRONMENTAL MITIGATION

OEA preliminarily recommends the following additional MMs to minimize or avoid potential Transaction-related impacts.

4.3.1 Transportation

MM 1. To address potential safety impacts at public at-grade crossings, Applicants shall complete a Grade Crossing Mitigation Plan (GCMP) prior to moving Transaction-related train

traffic on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection. In preparing the GCMP, Applicants shall meet with INDOT, ODOT, and KYTC within 45 days of the effective date of any Board approval of the Proposed Transaction to begin determining the need for grade crossing protection upgrades at each public at-grade crossing on the subject rail lines. Applicants shall update the Board's OEA on the status of the GCMP in their semiannual mitigation and enforcement reports to OEA.

MM 2. To the extent practicable, Transaction-related potential siding extensions shall be located and designed to minimize blockages of public at-grade crossings by slow-moving trains entering and exiting the sidings.

MM 3. To supplement VM 41, once Transaction-related train traffic begins to move on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, Applicants shall promptly notify the appropriate Emergency Services Dispatching Center(s) when a stopped or slowly moving train will not clear a public at-grade crossing within 10 minutes.

MM 4. To supplement VM 28, within 6 months of Applicants initiating operational changes associated with the Proposed Transaction, Applicants shall cooperate with residential communities, schools and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

4.3.2 Water Resources

MM 5. Prior to initiating Transaction-related construction activities within floodplains, Applicants shall obtain a Construction in a Floodway Permit from the Indiana Department of Natural Resources. The Proposed Transaction shall not result in an increase in base flood elevations.

MM 6. During Transaction-related construction, should impacts on forested areas occur within the floodway of the Flatrock River, impacts will be mitigated in accordance with the Indiana Natural Resources Commission's Information Bulletin #17 regarding floodway habitat mitigation (2014).

MM 7. Prior to initiating Transaction-related construction activities within waters of the United States including wetlands, Applicants shall obtain a Section 404 permit under the Clean Water Act from USACE, as applicable. Appropriate USACE-approved accommodations would be made in waterways where construction activities occur to allow for the passage of expected normal and high flows, and to not impede aquatic life movements.

MM 8. Prior to initiating Transaction-related construction activities within waters of the United States including wetlands, Applicants shall obtain a Water Quality Certification from the Indiana Department of Environmental Management, as applicable.

4.3.3 Biological Resources

MM 9. During replacement of the Flatrock River Railroad Bridge, Applicants shall avoid stream channel disturbance during the primary fish spawning season (April 1 through June 15).

MM 10. Applicants shall clear vegetation in preparation for project-related construction before or after the typical migratory bird nesting season as identified by the U.S. Fish and Wildlife Service (USFWS) (typically May 1 to July 15), to the extent possible to comply with the

Migratory Bird Treaty Act. If clearing is required during the nesting season, Applicants shall conduct a nest survey and consult with USFWS, prior to clearing the vegetation, to identify additional appropriate compliance measures.

4.3.4 Historic Preservation

MM 11. CSXT and L&I shall retain their interest in and take no steps to alter the historic integrity of the Flatrock River Bridge until a Section 106 Memorandum of Agreement, which memorializes that completed bridge documentation resolves adverse effects of the undertaking, has been executed among the Indiana State Historic Preservation Office (SHPO), CSXT, L&I, and the Board.

In addition, CSXT and L&I shall retain their interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, bridges, and objects, within the project ROW (the Area of Potential Effect) in Ohio that are eligible for listing on or are listed on the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CSXT and L&I shall report back to the Board's OEA regarding any consultation with the Ohio SHPO and the public.

MM 12. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during Transaction-related construction activities, Applicants shall immediately cease all work and will notify the Board's OEA, interested federally recognized tribes, and the Indiana SHPO or Kentucky SHPO, as appropriate, pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federally recognized tribes, the railroads, and other consulting parties, if any, to determine whether additional mitigation measures are necessary.

MM 13. If any Transaction-related ground disturbance would occur within 100 feet of a cemetery in Indiana, Applicants shall prepare a Cemetery Development Plan (Plan) and shall submit the Plan to the Indiana SHPO for review and approval before the ground disturbance occurs.

4.3.5 Community Liaison

MM 14. In response to Transaction-related concerns regarding noise, emergency response and other issue areas, Applicants shall establish a Community Liaison to consult with affected communities, businesses, and appropriate agencies; develop cooperative solutions to local concerns; be available for public meetings; and conduct periodic public outreach. Applicants shall establish and staff the Community Liaison position prior to Transaction-related activities for a period of 3 years following the first movement of Transaction-related trains on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.