

4. MITIGATION

Chapter 4 presents a discussion of mitigation measures that would avoid or minimize environmental impacts resulting from the proposed Transaction. The focus of the Transaction is the east-west main line between Mechanicville, New York and Ayer, Massachusetts. Modifications to the existing lines would include improving rail lines between Mechanicville and Ayer (see Figure 2-1), redeveloping two former Boston and Maine Corporation (B&M) and Delaware and Hudson Railway (D&H) rail yards at Mechanicville that are currently vacant properties to accommodate a new intermodal yard and automotive transload facility (Mechanicville Facility, see Figure 2-2), constructing a new automotive facility on currently unused property in Ayer, Massachusetts (San Vel Automotive Facility, see Figure 2-3), and minor improvements to the existing Ayer Intermodal Facility in Ayer (see Figure 2-4).

In this chapter, mitigation measures include those actions that would satisfy, and in some instances exceed, statutory and regulatory requirements and associated permits controlled by other regulatory agencies (regulatory-related measures), as well as best management practices (BMP) for construction projects, such as those to be undertaken as part of the Transaction. Some of the permitting-related or other regulatory-related mitigation measures discussed herein would be subject to further refinement during Applicants' final design of the proposed Mechanicville Facility and San Vel Automotive Facility, as Applicants consult with various Federal, state, and local agencies concerning environmental controls related to the construction project.

4.1 Overview of SEA's Approach to Recommended Mitigation

In conducting the environmental review process for Applicants' Transaction, SEA has taken the "hard look" that the National Environmental Policy Act of 1969 (NEPA) requires for analysis of environmental consequences. Its review considers the environmental consequences of construction of the proposed new Mechanicville and San Vel Automotive Facilities, as well as minor improvements (such as pavement patching and track upgrades) to the existing Ayer Intermodal Facility; repair/superstructure replacement of two railroad bridges at Athol, Massachusetts and East Deerfield, Massachusetts; the rehabilitation of previously existing interconnections at Millers Falls, Massachusetts, and Holyoke, Massachusetts; and the rehabilitation of a siding at Pownal, Vermont. In its environmental review, SEA conducted a thorough and comprehensive review of the potential environmental effects associated with the proposed Transaction and the No Action alternative. SEA emphasizes that the recommended environmental mitigation measures for the proposed Transaction in the EA are preliminary, and it invites comments on these proposed environmental mitigation measures. In order for SEA to effectively assess the comments, it is critical that the public be specific regarding desired mitigation and the reasons why it would be appropriate. SEA will consider all public comments on the Environmental Assessment (EA), and may conduct further environmental analysis and agency consultation as appropriate based on those comments. The Board will then make its final decision regarding the Transaction and any environmental conditions it might impose. Appendix A provides information on agency consultation activities associated with the Transaction.

4.1.1 The Board's Conditioning Power

The Board has authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the Transaction

before it, must be reasonable, and must be supported by the record before the Board. The Board's practice consistently has been to mitigate only those impacts that result directly from the proposed action.

In the context of an Environmental Assessment, the Board's authority is generally focused on those activities related to the Transaction before it that might produce adverse environmental impacts warranting mitigation. Any mitigation to be imposed by the Board is directly proportional to the reasonably foreseeable environmental impacts of the Transaction.

4.1.2 Voluntary and Negotiated Mitigation Measures

It is SEA's general practice to encourage applicants to propose voluntary mitigation measures, where relevant, in a Transaction pending before the Board. In some situations, voluntary mitigation may replace or supplement mitigation measures that the Board might otherwise impose. In other instances, voluntary mitigation proposed by an applicant may address concerns of a community or agency through solutions that the Board does not itself have the authority to impose, or where the Board would not typically seek to impose mitigation, because no Transaction-related environmental impact that would warrant mitigation under the Board's analysis is likely to occur. Where an applicant before the Board gains a substantial amount of knowledge about the issues associated with a proposed project, during planning and consultation with regulatory agencies during the permitting process or with other interested parties, it is sometimes in a position to offer relevant voluntary mitigation. SEA encourages applicants to negotiate mutually acceptable agreements with affected communities and government entities, when appropriate, to address environmental impacts of concern. Such forms of mitigation proposed by or negotiated by an applicant may extend beyond the Board's expertise or authority to require; if an applicant agrees to provide voluntary or negotiated mitigation, the Board incorporates those measures as mitigation (and substitutes such measures for mitigation measures the Board would otherwise impose, as appropriate) in its decision on the Transaction pending before it. The mitigation measures incorporated in the Board's decision are then binding upon the applicant.

4.2 Recommended Mitigation Measures for the Transaction

SEA has determined that the mitigation measures described below would be appropriate for the Transaction.

Water Resources

- 1) Applicants shall complete delineation of all wetlands in the area of potential impact associated with the Mechanicville Facility and the San Vel Automotive Facility before final design of the respective facility, and shall negotiate compensatory mitigation to compensate for unavoidable impacts to jurisdictional wetlands, if any, as part of the Clean Water Act Section 404 permit for placement of fill in wetlands, as issued by the United States Army Corps of Engineers.
- 2) As part of the Section 404 Clean Water Act process, Applicants shall comply with requirements of a Section 401 Water Quality Certification, as necessary, issued by the New York State Department of Environmental Conservation (for the Mechanicville Facility) and the Massachusetts Department of Environmental Protection (for the San Vel Automotive Facility).

- 3) Applicants shall design the new Mechanicville Facility and the San Vel Automotive Facility, to the extent practicable, to avoid and minimize impacts to wetlands.
- 4) Applicants shall implement and comply with the terms and conditions of Storm Water Pollution Prevention Plans for the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, consistent with the National Pollutant Discharge Elimination System requirements under the Clean Water Act, as administered by the New York State Department of Environmental Conservation (for the Mechanicville Facility) and the United States Environmental Protection Agency (for the San Vel Automotive Facility).
- 5) Applicants shall use silt fences during construction of the Mechanicville Facility and the San Vel Automotive Facility to minimize or avoid the potential erosion of exposed soils/stockpiles and the delivery of fine sediments to surface waters, and to avoid impacts to waters beyond the respective project footprints.
- 6) During construction of the Mechanicville Facility and the San Vel Automotive Facility, Applicants shall use water as needed to control fugitive dust emissions.
- 7) During construction of the Mechanicville Facility and the San Vel Automotive Facility, Applicants shall conduct land clearing activities only in areas where earthwork is necessary; shall reuse topsoil wherever practicable, and stockpile topsoil for application during reclamation of disturbed areas; and shall restore disturbed areas as soon as practicable after construction ends. Applicants shall also use stabilization fabric on created earthen slopes having a slope steeper than 2:1 to control erosion.
- 8) During construction of the Mechanicville Facility and the San Vel Automotive Facility, Applicants shall preserve existing vegetation where practicable, especially near wetlands and other waters. If weather or season precludes the prompt reestablishment of vegetation, Applicants shall implement temporary erosion control measures.
- 9) During or after construction of the Mechanicville Facility and the San Vel Automotive Facility, Applicants shall revegetate the bottom and sides of drainage ditches using natural recruitment from native seed sources in the stockpiled topsoil or a seed mix free of invasive plant species. Such restoration is for the rapid and permanent reestablishment of native ground cover on disturbed areas to prevent soil erosion and minimize delivery of fine silt particles to surface waters.
- 10) Applicants shall store any hazardous substances in a secure location when not in use, and shall dispose of all construction waste at approved disposal facilities.

Biological Resources

- 11) Applicants shall consult with the Massachusetts Natural Heritage and Endangered Species Program (NHESP) to address its concerns about the state-protected threatened Blanding's Turtle, and shall abide by all reasonable terms and conditions, if any, that may result from the Massachusetts Natural Heritage and Endangered Species Program review process for construction activity within a Priority Habitat.
- 12) Applicants shall design the proposed San Vel Automotive Facility, to the extent practicable, to avoid and minimize impacts to potential habitat for the Blanding's Turtle.

Cultural Resources

- 13) Applicants shall not initiate construction in areas potentially affected by historical properties within the Mechanicville Facility footprint, or take any steps to alter the historic integrity of historic properties including sites, buildings, structures, and objects within the project Area of Potential Effect that are eligible for listing or listed in the National Register of Historic Places, until the Board's responsibilities under the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, have been satisfied.

Consent Decree

- 14) Applicants shall abide by the conditions set forth in the Consent Decree between Guilford Rail Systems and the Town of Ayer, dated July 24, 2003, with respect to construction and operation of the San Vel Automotive Facility.

A negotiated Consent Decree was previously entered into by Guilford Rail Systems ("Guilford," a prior name of Pan Am Railways Inc.'s [PARI] railroad operating group) and the Town of Ayer that resolved litigation to address potential environmental impacts. The Transaction now pending before the Board does not alter any terms of that Consent Decree or otherwise alter the relationship between those entities. PARI is the holding company for the railroad operating group formerly known as Guilford Rail Systems, and Pan Am Southern, LLC (PAS) will be a successor to PARI as to the terms of the Consent Decree. As such, Applicants do not dispute that PAS will be bound by the terms of the Consent Decree. Similarly, the Transaction now pending before the Board does not alter the Consent Decree as it applies to the Town of Ayer.

The Town of Ayer and Guilford, after lengthy litigation both before the Board and the U.S. District Court for the District of Massachusetts, entered into a Consent Decree, lodged in the U.S. District Court on July 24, 2003. By the terms of the Consent Decree, the Town of Ayer agreed not to interfere with railroad development on the site of the proposed San Vel Automotive Facility, and Guilford⁵⁶ agreed to comply with the terms agreed to in Exhibit A of the Consent Decree. After approval and consummation of the Transaction, PAS will be a successor to these entities. The conditions imposed on Guilford as set forth in the Consent Decree are as follows:⁵⁷

- CD1. In constructing an Auto Unloading Facility (hereinafter "the Facility") in Ayer, Massachusetts at what is known as the San Vel site, Guilford Transportation Industries Inc., Boston and Maine Corporation, and Springfield Terminal Railway Company (hereinafter "Guilford") will install catch basins designed for a minimum infiltration rate of 0.5 inches per hour, with oil-gas separator hoods, consistent with design drawing Sheet 6 of 7 dated 1/11/2000, titled Willow Park, Ayer, Massachusetts, Miscellaneous Details.
- CD2. Guilford will conduct test pits in the vicinity of the retention basins to confirm that the soils are consistent with test borings previously submitted to the Town

⁵⁶ The terms of the Consent Decree concern only the following entities: Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. (now known as PARI).

⁵⁷ Once the Transaction is approved and consummated, PAS will assume the obligations noted below on behalf of Guilford.

- of Ayer (see prior test results). The test pit results will be submitted to the Town of Ayer (hereinafter "Ayer") within one week of receipt by Guilford.
- CD3. Guilford will install a monitoring well network around the facility and will measure groundwater quality twice a year for as long as the facility is in operation and groundwater quantity twice a year for four years after completion of the facility. These test results will be submitted to Ayer within one week of receipt by Guilford.
- CD4. Guilford will comply with all applicable requirements of the Massachusetts Contingency Plan with regard to any releases of hazardous materials at the site.
- CD5. Guilford will develop a Stormwater Pollution Prevention Plan consistent with EPA Stormwater Regulations.
- CD6. Guilford agrees to continue to plow that portion of the emergency access road provided to Wagon Road residents that is on Guilford property.
- CD7. Guilford will continue to honor its agreements with Wagon Road residents regarding use of that private crossing and emergency access issues.
- CD8. Guilford will comply with applicable building, electrical, fire, and plumbing codes except to the extent that such codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its operations, or unreasonably burdens interstate commerce.
- CD9. In operating the Facility, Guilford will comply with applicable Federal noise control requirements.
- CD10. Guilford will comply with applicable state best management practices during construction of the Facility.
- CD11. Guilford will provide Ayer with informational copies of construction plans and precautions being taken for the construction of the Facility not less than 60 days before initiation of construction of the Facility.
- CD12. Guilford will provide Ayer with informational copies of as-built plans for the Facility not more than 60 days after completion of construction of the Facility.
- CD13. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of construction plans and precautions being taken for any additions, improvements, or changes to the San Vel site. Guilford will provide this information to Ayer no less than 60 days prior to initiation of construction and will comply with those conditions set forth herein that are material to the alternative uses. Ayer may object, however, Guilford does not agree that Ayer has the right to do so.
- CD14. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of as-built plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford will provide this information to Ayer no more than 60 days after completion of construction.

CD15. Guilford will install a septic system at an appropriate location at the site and may connect to the Town sewer system in the future. Any septic system must comply with Title 5 regulations.

CD16. Guilford will install a geomembrane liner under the locomotive area. Testing of the integrity of the liner will be performed at Guilford's discretion. The test results will be provided to Ayer within one week of Guilford's receipt of the test results.

CD17. Guilford will not remove snow from the site except for emergency situations.

Notice of Activity and Use Limitation (AUL)

15) Applicants shall abide by the conditions set forth in the Notice of Activity and Use Limitation filed with the Middlesex County Registry of Deeds on January 27, 1999 and amended on May 24, 2002. Applicants acknowledge that they are obligated to abide by the conditions set forth in the Notice of Activity and Use Limitation if any disturbance of the Notice of Activity and Use Limitation area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

A portion of the proposed San Vel Automotive Facility property is subject to an AUL that was the result of a release of oil and/or hazardous material in January 1998 at the "B&M Property" on the east side of Willow Road (former San Vel Sand and Gravel Quarry), owned by Guilford Transportation, Inc., a prior name of PARI's railroad operating group. The area covered by the AUL is 12,439 square feet (AUL Area) and is located within the footprint of the proposed San Vel Automotive Facility. The Massachusetts Department of Environmental Protection (MADEP) has identified the disposal site as Release Tracking Number 2-12082. Applicants acknowledge that they are obligated to abide by the conditions in the AUL if any disturbance of the AUL area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

Permitted Activities and Uses Set Forth in the AUL

The AUL permits the following uses and activities to occur in the AUL Area:

- (i) Retail or commercial uses (including office space, excluding daycare);
- (ii) Industrial uses; and
- (iii) Such other activities or uses which, in the opinion of a Licensed Site Professional (LSP), shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this paragraph.

Activities and Uses Inconsistent with the AUL

The AUL identifies activities and uses that are inconsistent with the objectives of the AUL, as follows:

- (i) Residential, agricultural, recreational activities, day care or school uses;
- (ii) Activities and/or uses which are likely to involve the removal and/or disturbance of the pavement in the AUL Area and/or the disturbance of the impacted soil in the AUL Area without prior development of a Soil Management Plan and a

Health and Safety Plan in accordance with Obligations (i) and (ii) of this Opinion;
and

- (iii) Relocation of the impacted soil in the AUL Area, unless such activity is first evaluated by an LSP who renders an Opinion that states that such relocation is consistent with maintaining a condition of No Significant Risk.

Obligations and Conditions Under the AUL

In accordance with the AUL, the following obligations and/or conditions must be maintained within the AUL Area in order to maintain a condition of No Significant Risk:

- (i) A Soil Management Plan must be prepared by an LSP and implemented prior to commencement of any subsurface activity that is likely to disturb impacted soil within the AUL Area. The Soil Management Plan should describe appropriate soil excavation, handling, storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures necessary to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers must be informed of the requirements of the Soil Management Plan, and the plan must be available on-site throughout the course of the project.
- (ii) A Health and Safety Plan must be prepared by a qualified individual sufficiently trained in worker health and safety requirements and implemented prior to the commencement of any activity that is likely to disturb impacted soil within the AUL Area, rendering it more accessible. The Health and Safety Plan should clearly describe the location of the petroleum-impacted soil and specifically identify the type of personal protection (i.e. clothing, respirators), engineering controls, and environmental monitoring necessary to ensure that workers are not exposed to petroleum-contaminated soil through dermal contact, ingestion, and/or inhalation. Workers who may come in contact with impacted soil within the AUL Area must be informed of the location and depth of impacted soil and the requirements of the Health and Safety Plan, and the plan must be available on-site throughout the course of the project.