

Final Environmental Assessment

CSX Transportation, Inc.

Joint Use

Louisville & Indiana Railroad Company, Inc.

Docket No. FD 35523



Victoria Rutson
Director, Office of Environmental
Analysis

Information Contact:
David Navecky
Environmental Project Manager
Office of Environmental Analysis
Surface Transportation Board
202-245-0294

Docket No. FD 35523

This page intentionally left blank.



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

December 31, 2014

Re: Docket No. FD 35523, CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad Company, Inc.: Issuance of the Final Environmental Assessment

Dear Reader:

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is pleased to provide you with your copy of the Final Environmental Assessment (Final EA) on the a proposal by CSX Transportation, Inc. (CSXT) and the Louisville and Indiana Railroad Company (L&I) to jointly operate over L&I's 106.5-mile rail line between Indianapolis, IN, and Louisville, KY. Issuance of this Final EA concludes the environmental review process begun in the summer of 2013.

CSXT and L&I (together known as Applicants) are seeking the Board's permission for CSXT to acquire an operating easement that would allow additional CSXT trains to operate over the L&I rail line, along with the L&I trains that are already operating over the rail line. CSXT would pay L&I \$10 million dollars for the operating easement and would spend between \$70 and \$90 million to improve the rail line to allow CSXT to move longer (up to 7,500 feet from 5,100 feet) faster (up to 49 miles per hour from the current 15 to 25 miles per hour), and heavier (from railcars that can carry 263,000 pounds of freight to ones that can carry 286,000 pounds of freight) trains. If the Board should approve the Applicants' proposal, CSXT would move between 13 and 15 trains per day mostly from its Louisville to Cincinnati rail corridor, known as the "LCL Subdivision" to the L&I rail line. In considering CSXT's request, the Board must take into account the potential environmental effects of its decision.

On August 30, 2013, OEA issued the Draft EA in this case and asked for your comments on all aspects of the environmental review. The approximately 30-day comment period ended on September 30, 2013. We received 17 comments on the Draft EA and Applicants' response to the comments. Some comments raised environmental issues that we had not addressed in the Draft EA. As a result, we prepared and issued a Supplemental EA on October 31, 2014. We received 16 comments on the Supplemental EA. OEA has carefully reviewed and considered all of the comments submitted on both the Draft and Supplemental EAs in preparing our final conclusions and recommendations to the Board.

The Final EA summarizes the comments that we received and responds to those comments. It also determines that our preliminary finding in the Draft and Supplemental EAs that the Applicants' Transaction would result in no significant environmental impact was correct.

Last, the Final EA includes OEA's final environmental mitigation recommendations to the Board.

Like the Draft and Supplemental EAs, this Final EA concludes that Applicants' Proposed Transaction would adversely affect two environmental resource areas: emergency response/vehicle delay and noise/vibration. To reduce the potential adverse effects to these areas, we developed mitigation measures in the Draft and Supplemental EAs and in the Final EA are recommending that the Board impose these (and other) mitigation measures in any decision approving the Proposed Transaction. The mitigation in the Final EA includes some new mitigation, mitigation from the Draft and Supplemental EAs, and some of that mitigation with minor changes (explained in detail in the Final EA). The Final EA does not include additional environmental analysis because, after reviewing and responding to the comments and conducting our own evaluation, OEA felt that no additional analysis was needed.

The Final EA should be read in conjunction with the Draft and Supplemental EAs. The Draft EA provides detailed information on the purpose and need for the joint use, describes the Proposed Transaction and the No-Action alternative, sets forth the affected environment and potential environmental impacts that could result from both the Proposed Transaction and the No-Action alternative, and finally, presents Applicants' voluntary mitigation and OEA's environmental mitigation recommendations. The Supplemental EA focuses on the potential impacts of the proposed operational changes on three CSXT rail lines (the Indianapolis Terminal Subdivision—Louisville Secondary Branch, the Indianapolis Line Subdivision, and the Louisville Connection) that likely would see an increase in train traffic of 4, 11, and 12 trains per day, respectively.

The Draft EA, Supplemental EA, and Final EA are available on the Board's web site at www.stb.dot.gov, by going to "E-Library," selecting "Decisions and Notices," and searching under FD 35523.

The Board will now consider the complete environmental record, including the Draft and Supplemental EAs, all comments received, and the Final EA in making its final decision and deciding what, if any, environmental mitigation to impose.

If you have questions or need clarification or guidance, please call Dave Navecky at 202-245-0294. You may also email Mr. Navecky at david.navecky@stb.dot.gov. We appreciate your participation in the environmental review process.

Sincerely,



Victoria Rutson
Director

OEA'S SUMMARY OF MAJOR CONCLUSIONS

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) has concluded its review of the potential environmental impacts that could result from a proposal by CSX Transportation (CSXT) and the Louisville & Indiana Railroad, Inc. (L&I) (jointly Applicants) to jointly operate over L&I's 106.5-mile rail line (L&I Line) between Indianapolis, IN and Louisville, KY (the Proposed Transaction). OEA has carefully reviewed and considered the comments submitted on the Draft Environmental Assessment (Draft EA) and Supplemental EA in preparing its final conclusions and recommendations to the Board, which are contained in this Final EA. The Draft EA assessed the potential Transaction-related environmental impacts on the L&I Line in Indiana and Kentucky. The Supplemental EA focused on specific issues that were raised in comments of the Draft EA. This Final EA responds to the 18 comment letters OEA received on the Draft EA and 16 comment letters OEA received on the Supplemental EA.

Background

On July 2, 2013, Applicants, CSXT and L&I, 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 over the L&I Line. The L&I Line extends from a connection with CSXT in Indianapolis at Milepost (MP) 4.0, to a connection with CSXT in Louisville at MP 110.5. 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.

As part of the Proposed Transaction, CSXT would pay L&I \$10 million dollars for the operating easement and would spend between \$70 and \$90 million to improve the rail line to allow CSXT to move longer (up to 7,500 feet from 5,100 feet) faster (up to 49 miles per hour from 15 miles per hour), and heavier (from rail cars that can carry 268,000 pounds of freight to ones that can carry 286,000 pounds of freight) trains.

Currently, the L&I Line carries two to seven trains per day on the various sections of the line. Under the Proposed Transaction, CSXT would reroute some of its trains from their current CSXT routes in the Indiana-Ohio-Kentucky region to a new route that includes the L&I Line in Indiana. The rerouting of these CSXT trains would add 13 to 15 trains per day over the various sections of the L&I Line.

In August 2013, OEA issued a Draft EA that focused on the potential impacts of the proposed operational changes on the L&I Line including grade crossing delay, emergency vehicle access, noise and vibration, and other topics. The Draft EA also considered potential construction impacts associated with the extension of several rail line sidings and replacement of a structurally inadequate rail bridge, all on the L&I Line.

During the public review and comment period on the Draft EA, OEA received comments that raised environmental issues that it had not addressed in the document. As a result, OEA decided to prepare a Supplemental EA focusing on the new environmental issues. The rerouting of CSXT trains under the Proposed Transaction would also increase daily train traffic on several

CSXT rail lines that connect with the L&I Line; however, there would be no construction on any CSXT rail lines as a result of the Proposed Transaction. Therefore, the Supplemental EA analyzed the potential operational impacts of CSXT moving additional trains on the Indianapolis Terminal Subdivision – Louisville Secondary Branch; Indianapolis Line Subdivision; and Louisville Connection.

The Supplemental EA focused on the potential impacts of the proposed operational changes on these three CSXT rail lines, including vehicle delays at grade crossings, emergency vehicle access, noise and vibration, air quality, and other topics relevant to the proposed increases in train traffic. In response to comments on the Draft EA, the Supplemental EA also quantifies potential impacts to wetlands, floodplains, and forested areas that could result from extending rail line sidings and replacing Flatrock River Bridge on the L&I Line. Additionally, the Supplemental EA includes a review of potential changes in wildlife strikes that could result from the rerouting train traffic on the L&I and CSXT rail lines under the Proposed Transaction.

The Final EA responds to comments on the Draft and Supplemental EAs and provides OEA's final recommended environmental conclusions. No additional environmental analysis was prepared for the Final EA because OEA felt that no additional environmental analysis beyond that presented in the Draft and Supplemental EAs was necessary.

Major Environmental Conclusions

Based on information to date, consultation with federal, state and local agencies; input provided by variety of interested parties; and its own independent environmental analysis, OEA has reached the following conclusions regarding the environmental consequences that could result from the Proposed Transaction:

- 1) Collectively, 9 of the 176 public at-grade crossings on the three CSXT rail lines studied would experience vehicle delay of over 40 vehicle hours per day. OEA notes that 3 of these 9 crossings would experience these delays under the No-Action Alternative as well. Additionally, the Level of Service (LOS)¹ would degrade 1 level at 36 public at-grade crossings, and the LOS would degrade 2 levels from LOS A to C at 4 public at-grade crossings and from LOS C to E at 2 public at-grade crossings.

Collectively, 2 of the 154 public at-grade crossings on the L&I Lines studied would experience vehicle delay of over 40 vehicle hours per day. Additionally, the LOS would degrade 1 level at 1 public at-grade crossings, and the LOS would degrade 2 levels from A to C at 4 public at-grade crossings.

Applicants have volunteered several mitigation measures that address potential traffic impacts (VM 30 through 32, and 49) and OEA recommends 4 additional mitigation measures (MM 1, 2, 8 and 22).

¹ LOS refers to the efficiency at which an at-grade crossing functions after a train passes. LOS ranges from A to F with LOS A indicating relatively free-flowing traffic and LOS F indicating extreme congestion.

- 2) None of the public at-grade crossings on the L&I Line or three CSXT rail lines would experience changes in predicted accident frequency that meet or exceed OEA's threshold of one accident every 20 years and thus require consideration of enhanced grade crossing safety designs for any of the public at-grade crossings. However, Applicants have proposed several measures regarding grade crossing safety (VM 1, 2, and 33 through 39), and OEA recommends three additional safety-related measures (MM 1, 4 and 8).
- 3) OEA concludes that the Proposed Transaction could have a substantial effect on emergency service providers in Seymour, Indiana, including the Schneck Medical Center, Seymour Fire Department and Jackson County Emergency Medical Service. Accordingly, OEA recommends a mitigation measure that would require Applicants to install and maintain a video monitoring system for these three parties that would provide them real-time information on crossing conditions in Seymour to allow for alternate crossings to be used when conditions warrant it.
- 4) Approximately 346 noise-sensitive receptors, primarily residences, along the Indianapolis Terminal Subdivision – Louisville Secondary Branch would experience increases in train-related noise to levels at which mitigation could be warranted.

Approximately 1,551 noise-sensitive receptors, primarily residences, along the L&I Line would experience increases in train-related noise to levels at which mitigation could be warranted.

Applicants have offered 8 mitigation measures (VMs 54 through 61) to address potential noise impacts and have also offered a mitigation measure to expand outreach to the environmental justice community (VM 61), including hosting public meetings in the subject neighborhoods to explain the proposed increase in train activity and solicit community concerns about the potential increases in train-related noise. OEA also recommends three additional measures to assist in addressing potential noise impacts (MMs 5, 6 and 22).

- 5) Regarding cultural resources, OEA has reached the following conclusions in the three states involved in the Proposed Transaction:
 - In Ohio, because potential noise and vibration impacts from proposed operational changes on the Indianapolis Line Subdivision would not be adverse, OEA concludes that the operational changes under the Proposed Transaction would have no adverse effect on historic properties in the state. There would be no Transaction-related construction activities in the state of Ohio.
 - In Kentucky, SHPO and OEA concur that the Proposed Transaction would have no adverse effect on historic properties.
 - In Indiana, SHPO and OEA concur that (1) replacement of the Flatrock River Bridge would constitute an adverse effect on a historic property considered eligible for inclusion on the National Register; (2) avoidance of the adverse effect is not feasible if the L&I Line is to safely accommodate the modern rail traffic

under the Proposed Transaction; (3) there appears to be no feasible alternative to bridge replacement and documentation prior to removal, according to DHPA's Minimum Architectural Documentation Standards, would be an appropriate mitigation measure; (4) documentation completed by Applicants meets the subject standards; and (5) a Memorandum of Agreement (MOA) would memorialize the mitigation measures (i.e., documentation) and resolve adverse effects of the undertaking. OEA prepared a draft MOA that SHPO indicates it would sign as currently drafted. At the time this Final EA was prepared, the parties had not yet come to an agreement on one of the changes requested by Applicants. Pending execution of the MOA, the Final EA retains a mitigation measure relative to the Flatrock River Bridge (Final EA, MM 19).

- 6) The Proposed Transaction would result in a decrease in rail traffic through forested areas and an increase in traffic in areas with cultivated crops and pastures. Because forested areas generally have higher diversity and abundance of wildlife, the Proposed Transaction could result in a decreased risk of wildlife being struck by operating trains in the project area. However, because of the absence of data on the rate of wildlife strikes by train traffic, and on which species of wildlife are impacted, it is not possible to predict more accurately how rates of wildlife strikes would change as a result of shifts in rail traffic or changes in the speed of operating trains under the Proposed Transaction.
- 7) Regarding other resources, the two extended rail sidings on the L&I Line, if constructed, and the proposed replacement of the Flatrock River Bridge would result in the following potential impacts:
 - The Brook siding extension, if constructed, would require an estimated 929,600 cubic feet of fill in a regulated flood zone. The Flatrock River Bridge is located in a regulated flood zone, but hydrologic and hydraulic modeling would be needed to define flood zone impacts. However, as proposed, the replacement bridge would have longer span and fewer piers, and potentially fewer flood zone impacts. In addition, the replacement bridge would be designed to accommodate 100-year flood elevations. The current bridge cannot accommodate 100-year flood elevations, which results in a backwater effect and upstream flooding. The Elvin siding extension, if constructed, would not impact a regulated flood zone.
 - The Elvin and Brook siding extensions, if constructed, and the proposed Flatrock River Bridge replacement, would potentially impact approximately 0.83 acre of wetlands and 1,996 feet of waterways.
 - The Elvin and Brook siding extensions, if constructed, would not impact any forested areas. The Flatrock River Bridge replacement could potentially impact up to a maximum of 1.79 acres of deciduous forest.

Table of Contents

Dear Reader Letter	2
OEA'S SUMMARY OF MAJOR CONCLUSIONS	4
1.0 OVERVIEW	10
2.0 FINAL RECOMMENDED MITGATION	22
3.0 SUMMARY OF COMMENTS AND OEA'S RESPONSES	38
APPENDIX A - PART 1, COMMENTS ON THE DRAFT EA	
AAPENDIX A - PART 2, COMMENTS ON THE SUPPLEMENTAL EA	
APPENDIX B – APPLICANTS' RESPONSES TO COMMENTS ON THE DRAFT EA	

This page intentionally left blank.

1.0 OVERVIEW

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)(see Figure 1). 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. Today, after giving careful consideration to all comments received on the Draft and Supplemental EAs, OEA is issuing the Final EA.

Discussions of the Proposed Transaction, purpose and need, environmental review process, and next steps are provided below.

1.1 Proposed Transaction

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 easement² (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). 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.

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 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

² 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.

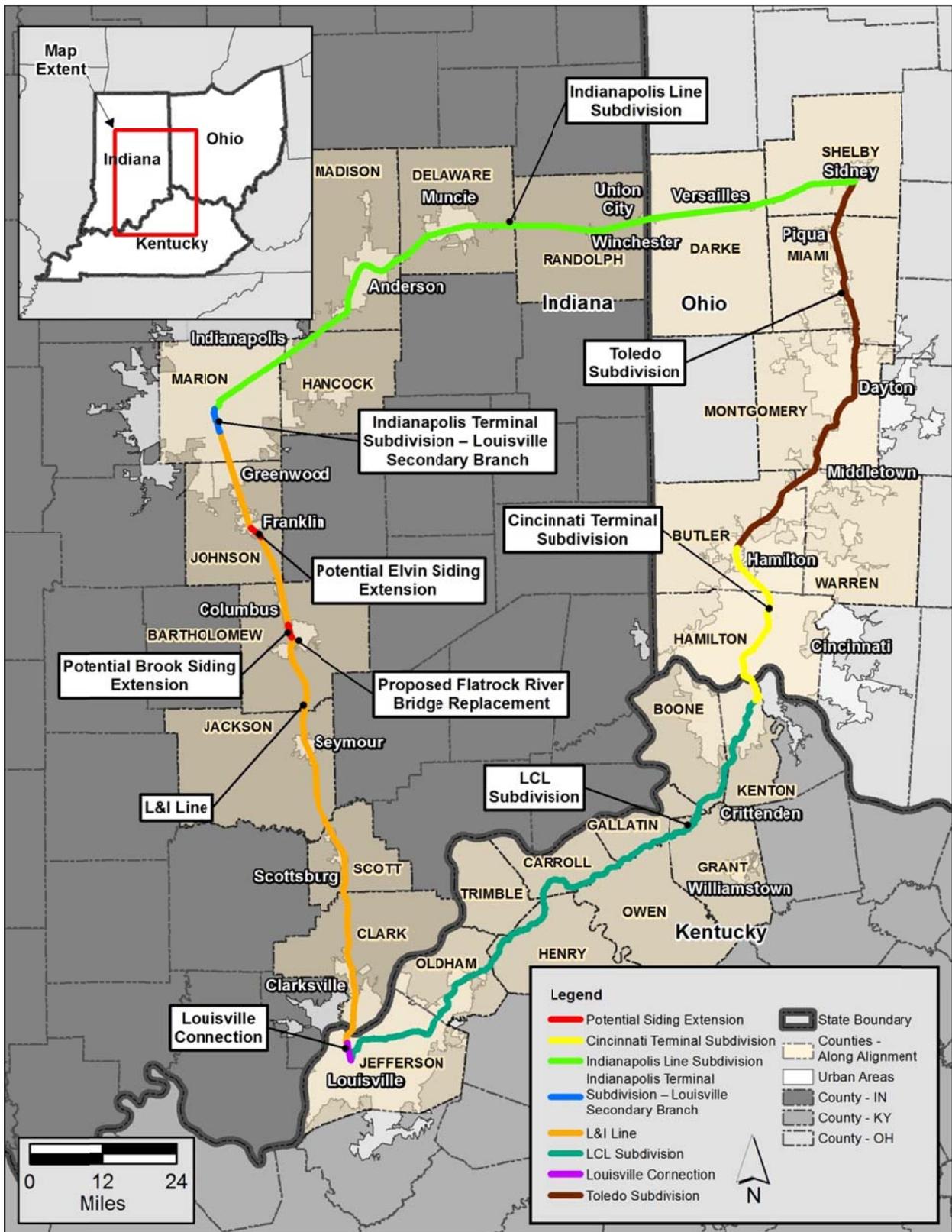


Figure 1

determined necessary by Applicants.³ 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 mph⁴ 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 rights⁵ 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 that give it authority to use 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 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:

³ 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).

⁴ 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.

⁵ Trackage rights are agreements that allow one rail carrier to operate trains over rail lines of another carrier.

- 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, and 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 recoverable⁶ 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.

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.

⁶ "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.

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 a result, 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 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 has conducted an environmental review of the Proposed Transaction under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. because 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 proceeding. 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.

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.⁷ Thus, once the environmental effects have been adequately identified and evaluated, the Board may conclude that other values outweigh the environmental costs.⁸ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality (CEQ)⁹ and by the Board.¹⁰ 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.¹¹ 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.¹² 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.

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.¹³ The Draft EA examined the potential impacts of

⁷ *Robert v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989).

⁸ *Id.*

⁹ 40 C.F.R. Parts 1500-1508.

¹⁰ 49 C.F.R. Part 1105.

¹¹ 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. §1105.6(c), (d).

¹² 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.

¹³ The comment period on the Draft EA closed on September 30, 2013. 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. 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."

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 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 – Part 1).¹⁴ 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.

Supplemental EA and Comments Received

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

¹⁴ Comments received on the Draft and Supplemental EAs are also available on the Board’s website at 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.

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 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.

OEA issued the Supplemental EA on October 31, 2014 for a 1-month public review and comment period.¹⁵ The Board received 16 comment letters on the analyses in the Supplemental EA (see Appendix A – Part 2). Comments addressed issues such as grade crossing delay, emergency response, noise and vibration and biological resources.

Final EA

OEA has carefully reviewed the comments submitted in preparing its final recommendations to the Board in this Final EA. A review of the public comments on the Draft and Supplemental EAs and OEA's responses can be found in Section 3.0, Summary of Public Comments and OEA's Comment Responses, of this Final EA.

Based on the comments received, OEA determined that no further environmental analysis beyond that conducted in the Draft and Supplemental EAs is required for the Final EA. Therefore, this Final EA adopts and incorporates by reference the analyses and conclusions in the Draft and Supplemental EAs. With respect to mitigation, OEA has revised several of the voluntary mitigation measures at the request of Applicants. Also, upon consideration of comments received on the Draft and Supplemental EAs, OEA has revised several of OEA's mitigation measures including those pertaining to the preparation of a Grade Crossing Mitigation Plan; consultations with communities, schools and parks on grade crossing safety; assistance to emergency service providers in Seymour, Indiana; and stream channel disturbance. OEA has also added new mitigation measures to this Final EA in response to comments on the Draft and Supplemental EAs. The new measures address the replacement of manual switches with power

¹⁵ The comment period on the Supplemental EA closed on December 1, 2014. If you would like to peruse the contents of the Supplemental EA, it is available on the Board's website at www.stb.dot.gov. From the home page, click on "Decision" in the Quick Links box, click on the "Search" button, enter "44015" in the "Search ID" box, and finally click on the date "10/31/2014."

switches; consultations with the U.S. Environmental Protection Agency on noise mitigation and non-native invasive plant species; consultations with the Indiana Department of Environmental Management on potential permitting requirements; and consultations with the U.S. Fish and Wildlife Service on federally listed threatened and endangered mussel species and with Indiana Department of Natural Resources on state listed mussel species.

Based on OEA's review of all information available to date, its independent analysis of the Proposed Transaction, comments received on the Draft and Supplemental EAs, and the mitigation measures recommended here, OEA concludes that the Proposed Transaction would not have significant impacts if the Board imposes, and Applicants implement, the mitigation measures recommended in this Final EA. Therefore, preparation of an EIS is not needed here.

1.4 Status of Section 106 Consultations

Indiana¹⁶

Flatrock River Bridge

Since publication of the Draft EA, OEA, with participation by Applicants, has continued Section 106 consultations with the Indiana SHPO. OEA (on behalf of the Board) and SHPO have concurred that (1) the Flatrock River Bridge retains sufficient integrity to be considered eligible for the National Register of Historic Places, (2) considering the proposed joint use, there are no feasible alternatives to bridge replacement including rehabilitation of the existing structure, (3) replacement of the bridge warrants a finding of adverse effect, and (4) documentation prior to removal, according to Division of Historic Preservation and Archaeology Minimum Architectural Documentation Standards (DHPA Standards), would be an appropriate mitigation measure. The subject documentation was submitted to SHPO and SHPO concludes that the material is consistent with DHPA Standards.

OEA prepared a draft Memorandum of Agreement (MOA) that memorializes the mitigation measures and resolves the adverse effects of the Undertaking, and submitted the MOA to SHPO and Applicants. In a letter dated October 7, 2014, SHPO indicates that the stipulations in the MOA are appropriate to resolve the adverse effects of replacing the Flatrock River Bridge; and therefore, SHPO would be willing to sign a final version of this agreement. On November 28, 2014, in their reply to the draft MOA, Applicants submitted two changes that would make the MOA acceptable to Applicants. At the time this Final EA was prepared, the parties had not yet come to an agreement on one of the changes requested by Applicants. OEA notes that information about the status of the Section 106 consultations and a copy of the draft MOA were included in the Supplemental EA for review and comment. No comments on the draft MOA other than Applicants' comments were received.

Pending execution of the MOA, the Final EA retains a mitigation measure relative to the Flatrock River Bridge (Final EA, MM 19).

¹⁶ Indiana State Historic Preservation Office Reference No. DHPA #11979.

Archaeological Sites and Cemeteries

Indiana SHPO concludes that no archaeological investigations appear necessary if proposed improvements to the L&I Line are limited to areas within the disturbed L&I Line right-of-way. Indiana SHPO adds that if any proposed improvements to the L&I Line are to occur within 100 feet of the six identified cemeteries, a development plan would be to be submitted to and approved by Indiana SHPO. OEA concludes that no adverse effects would occur on archaeological sites if proposed improvements to the L&I Line are limited to the disturbed ROW, and the improvements would also be located at least 100 feet from the six identified cemeteries.

The Final EA also includes two additional mitigation measures pertinent to historic preservation and cultural resources in general. MM 20 pertains to actions to be taken in the event of an unanticipated discovery during Transaction-related ground disturbance, and MM 21 pertains to any Transaction-related disturbance that would occur within 100 feet of a cemetery in Indiana.

Kentucky

During preparation of the Draft EA, Kentucky SHPO noted a potential for direct and indirect effects on cultural resources along the L&I Line. Kentucky SHPO also stated that an Area of Potential Effect (APE) for the portion of the L&I Line in Kentucky must be determined, with its concurrence, and that a survey of above-ground resources over 50 years of age needs to be submitted for its review. In November 2013, Kentucky SHPO formally accepted the limits of the APE as being the 70 dBA contour (based on noise modeling of Transaction-related train operations), which is approximately 75 feet from the centerline of the rail line, and agreed that because no ground disturbance is planned for this segment of the rail line that an archaeological investigation is not warranted at this time

On March 21, 2014, OEA sent a scoping letter to Kentucky SHPO stating its intent to prepare a Supplemental EA and to solicit scoping comments (OEA 2014a). Kentucky SHPO replied on April 18, 2014, acknowledging that it understands the undertaking, that it received the Draft EA in August 2013, and that it understands that the Proposed Transaction would not include any construction or ground-disturbing activities on any of CSXT's rail lines (Kentucky SHPO 2014a).

In June 2014, Kentucky SHPO received the survey report of above-ground resources 50 years of age or older within the defined APE. The report concludes that the Proposed Transaction would result in no adverse effect on the 5 sites currently listed on the National Register and the 16 sites recommended eligible for listing on the National Register. In August 2014, Kentucky SHPO concurred with the assessment that the Proposed Transaction would have no adverse effect on historic properties on the L&I Line. The Kentucky SHPO also acknowledges that the Proposed Transaction would not include any construction or ground-disturbing activities on any of CSXT's rail lines. Based on consultations with the Kentucky SHPO and the determinations of the Kentucky SHPO, OEA concludes that the Proposed Transaction would have no adverse effect on historic properties in Kentucky.

Ohio

The Supplemental EA addresses potential operational impacts in Ohio from the Proposed Transaction. The Supplement EA concludes that the Proposed Transaction would not have an adverse effect on historic properties in Ohio. The Supplemental EA was submitted to the Ohio SHPO. At the time this Final EA was prepared, comments had not been received from the Ohio SHPO.

The Proposed Transaction does not include any construction activities in Ohio. Therefore, any potential impacts to historic properties would be limited to indirect impacts from Transaction-related operations. Based on OEA's review of potential operational impacts in Ohio in the Supplemental EA, the principle concern would be associated with potential indirect impacts from noise and vibration from Transaction-related train operations. However, based on the analyses in the Supplemental EA, noise and vibration from Transaction-related increases in train traffic are not anticipated to adversely affect documented historic properties located within 100 feet of the centerline of the Indianapolis Line Subdivision in Ohio. Therefore, OEA concludes that the operational changes under the Proposed Transaction would have no adverse effect on historic properties in the state of Ohio.

1.5 Next Steps

Issuance of this Final EA concludes the environmental review process. The Board will now consider the transportation merits of the Proposed Transaction and impose any environmental conditions found to be appropriate to avoid and minimize potential environmental impacts. To that end, the Board will consider the entire environmental record, including the Draft EA, the Supplemental EA, the Final EA, all public comments, and OEA's final environmental recommendations, including final recommended mitigation measures.

2.0 FINAL RECOMMENDED MITIGATION

2.1 Overview of OEA's Approach

Using the analyses of the Draft and Supplemental EAs, OEA 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.

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 Final EA includes mitigation measures volunteered by Applicants and additional mitigation developed by OEA. The mitigation measures pertain to the potential impacts of all aspects of Transaction-related activities including proposed upgrades to the L&I Line, proposed replacement of the Flatrock River Bridge, potential construction of two sidings extensions on the L&I Line, and increased train traffic on the L&I Line and CSXT's Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

2.2 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.

2.3 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.

2.4 Applicants' Voluntary Mitigation

As part of their application and participation in OEA's environmental review process, Applicants submitted proposed voluntary mitigation measures (VM) to OEA. OEA has reviewed the voluntary mitigation measures, and should the Proposed Transaction be approved, OEA recommends that the Board require Applicants to comply with all of the voluntary mitigation measures listed below.

Applicants divided their mitigation measures in two parts: (1) construction-related VMs (i.e., those related to the proposed upgrades under the Proposed Transaction, all of which would take place within the existing right-of-way of the L&I Line) and (2) VMs related to Transaction-related train operations on the L&I Line and CSXT's Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

Construction-related VMs

These construction-related VMs apply to the Transaction-related upgrades to the L&I Line, replacement of the Flatrock River Bridge on the L&I Line, and if pursued by Applicants, extensions of the Elvin and Brook sidings on the L&I Line.

General Construction and Grade Crossing Safety

VM 1. Where transaction-related grade-crossing rehabilitation is mutually agreed to by Applicants and the Indiana Department of Transportation (INDOT), Applicants will assure that rehabilitated roadway approaches and rail line crossings meet or exceed INDOT's rules, guidelines, or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards, with a goal of eliminating rough or humped crossings to the extent reasonably practicable.

VM 2. Within six months of acquisition of a freight easement over the L&I Line, Applicants will consult with affected communities to improve visibility at highway rail at-grade crossings by clearing vegetation and other obstructions.

VM 3. Applicants will adhere to all applicable Federal Occupational Safety and Health Administration (OSHA), Federal Railroad Administration (FRA), and state construction and operational safety regulations to minimize the potential for accidents and incidents on the L&I Line.

VM 4. In undertaking Transaction-related construction activities, Applicants will use practices recommended by AREMA and recommended standards for track construction in the AREMA Manual for Railway Engineering.

VM 5. During Transaction-related construction concerning at-grade crossings, when reasonably practicable, Applicants will consult with INDOT and the Kentucky Transportation Cabinet (KYTC) regarding detours and associated signage, as appropriate, or maintain at least one open lane of traffic at all times to allow for the quick passage of emergency and other vehicles.

VM 6. Applicants will minimize temporary road closures during construction activities associated with the rail line upgrade and siding extension. Applicants will manage construction schedules to:

- Minimize highway/rail at-grade crossing closures; and
- Relay highway/rail at-grade crossing closure schedules to local emergency service providers.

VM 7. To the extent reasonably practicable, Applicants will confine construction traffic to a temporary access road within the construction right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or established public roads, Applicants will make necessary arrangements with landowners to gain access from private roadways. The temporary access roads will be used only during project-related construction. Any temporary access roads constructed outside the rail line right-of-way will be removed and restored upon completion of construction unless otherwise agreed to with the landowners.

Water Resources

VM 8. 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 9. 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 reseeded efforts to ensure proper revegetation of disturbed areas as soon as reasonably practicable following Transaction-related construction activities.

VM 10. In order to control erosion, with respect to jurisdictional waters of the U.S., Applicants will establish staging and lay down areas for Transaction-related construction material and equipment in accord with the requirements of permits issued by the USACE 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. Prior to any Transaction-related construction activities, Applicants will comply with any regulations required in the preparation of a construction Stormwater Pollution Prevention Plan.

Biological Resources

VM 17. 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 18. 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 19. 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.

VM 20. Applicants will employ BMPs to implement their current noxious weed control program during construction and operation of Transaction-related potential siding extensions. Applicants will only use herbicides that have been approved by USEPA.

Air Quality

VM 21. 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 22. 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.

Noise and Vibration

VM 23. 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.

Topography, Geology, and Soils

VM 24. Applicants will commence reclamation of disturbed areas as soon as reasonably practicable after Transaction-related construction ends along a particular stretch of the L&I 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 25. Applicants will limit ground disturbance to only the areas necessary for Transaction-related construction activities.

VM 26. 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 27. 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 28. Applicants will make reasonable efforts to identify all utilities that have agreements with either Applicant and that are reasonably expected to be materially affected by Transaction-related construction within their existing right-of-way or that cross their existing right-of-way. 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 29. 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.

Operations-related VMs

The following VMs apply to rail line operations. Unless otherwise specified below, L&I shall apply these VMs to rail operations on the L&I Line, and CSXT shall apply these VMs to rail operations on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

Power Switches

VM 30. Applicants will install power switches along the L&I Line, 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.

Transportation

VM 31. Applicants will examine train operations to identify reasonable ways to reduce highway/rail at-grade crossing blockages.

VM 32. 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 and Draft EA, Appendix C, Table C-1 could be closed at the point where they cross the Indianapolis Line Subdivision, Indianapolis Terminal

Subdivision – Louisville Secondary Branch, Louisville Connection or L&I Line 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.

Grade Crossing Safety

VM 33. Applicants will coordinate with INDOT, Ohio Department of Transportation (ODOT), or KYTC, as appropriate and, counties and affected communities along the L&I Line, 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 34. 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 35. Within 6 months of Applicants’ initiating operational changes associated with the Proposed Transaction, Applicants will cooperate with residential communities, schools and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

VM 36. For up to 3 years from the date that Applicants’ initiate operational changes associated with the Proposed Transaction, CSXT will make Operation Lifesaver® programs¹⁷ available to communities, schools, and other appropriate organizations located along the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

VM 37. For each of the public grade crossings on the L&I Line, 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

¹⁷ Operation Lifesaver® is rail safety education program with a goal to end collisions, deaths and injuries at highway-rail grade crossings and on railroad property through a network of volunteers who work to educate people about rail safety.

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 38. Applicants will continue ongoing efforts with community officials to identify elementary, middle, and high schools within 0.5 mile of the L&I Line, 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 39. 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 L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

Hazardous Materials Transportation

VM 40. 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 L&I Line, 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 41. 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 42. Applicants will comply with all hazardous materials regulations of the U.S. Department of Transportation (including 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 43. 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 44. Applicants will continue their ongoing efforts with community officials to identify the public emergency response teams located along the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, and will provide, upon request, hazardous material training.

VM 45. 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 L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

VM 46. Applicants will develop internal transportation 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 transportation 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 47. Applicants will incorporate the L&I Line into their existing Transportation Emergency Response Plan (TERP).

VM 48. In accordance with their TERPs, 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 (USFWS), Indiana Department of Environmental Management (INDEM), 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 U.S. Environmental Protection Agency (USEPA) regulations described in 40 C.F.R. Part 263 and will coordinate with USEPA, state agencies, and local agencies on spill responses.

Emergency Response

VM 49. Applicants will notify appropriate Emergency Services Dispatching Centers on the L&I Line, 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.

Water Resources

VM 50. Applicants will maintain drainage ditches typical of railroad drainage ditches to provide stormwater retention and treatment in accordance with NPDES requirements. Removal of accumulated sediments will be conducted only as necessary to maintain stormwater retention capacity and function.

Biological Resources

VM 51. Applicants will ensure that any herbicides used in right-of-way 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 right-of-way onto adjacent areas.

Energy Resources

VM 52. 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 53. Applicants will comply with USEPA emissions standards for diesel-electric railroad locomotives (40 C.F.R. Part 92) when purchasing and rebuilding locomotives.

Noise and Vibration

VM 54. 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 55. Applicants will cooperate with interested communities along the L&I Line, 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.¹⁸

VM 56. Applicants will work with their contractors to maintain Transaction-related maintenance vehicles in good-working order with properly functioning mufflers to control noise.

VM 57. 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.

¹⁸ Applicants' willingness to cooperate does not commit Applicants to expend funds on a physical project.

VM 58. Applicants will comply with FRA regulations establishing decibel limits for train operations.

VM 59. To minimize noise and vibration, Applicants will install and maintain rail and rail beds according to AREMA standards.

VM 60. Upon request, Applicants will consult with communities affected by wheel squeal at existing locations on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, and cooperate in determining the most appropriate methods for implementing VM 57.

VM 61. 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.

Monitoring and Enforcement

VM 62. Upon approval of the Application by the Board, Applicants will submit semi-annual reports to OEA on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first 3 years of operational changes.

2.2 OEA’s Additional Mitigation Measures

Based on available project information and comments received on the Draft EA and Supplemental EA, OEA recommends that the Board impose the following 22 additional mitigation measures (MMs) in any decision authorizing the Proposed Transaction. The MMs include mitigation from the Draft EA and Supplemental EA, mitigation from those prior documents that has been clarified or revised, as appropriate, in this Final EA, and new recommended mitigation developed to address environmental comments received by OEA. Unless otherwise specified in the conditions, L&I shall apply the MMs that pertain to rail operations on the L&I Line, and CSXT shall apply the MMs that pertain to rail operations on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

Transportation

MM 1. To address potential safety impacts at public at-grade crossings, Applicants shall submit a Grade Crossing Mitigation Plan (GCMP) to OEA prior to moving Transaction-related train traffic on the L&I Line, 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 90 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. These discussions shall also address grade crossing maintenance, including the clearing of vegetation to maintain lines-of-sight.

Within 90 days of meeting with INDOT, ODOT and KYTC, Applicants shall provide OEA with a draft annotated outline of the GCMP for OEA review and concurrence. The draft annotated outline shall describe the contents of the GCMP and an implementation schedule for identified crossing upgrades. Applicants shall submit the GCMP to OEA within 90 days of receiving OEA's concurrence on the draft annotated outline. Subsequently, any updates to, and the implementation status of the GCMP shall be included in the semi-annual mitigation and monitoring reports that Applicants will be required to provide as part of the Board's mitigation.

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 49, once Transaction-related train traffic begins to move on the L&I Line, 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 35, 6 months prior to Applicants initiating operational changes associated with the Proposed Transaction, Applicants shall consult with residential communities, schools and park districts to work cooperatively to identify at-grade crossings where additional pedestrian warning devices may be warranted.

MM 5. Before Transaction-related train traffic begins to move on the L&I Line, Applicants shall evaluate the need to replace manual switches with power switches in the vicinity of at-grade crossings on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection that would experience either a degradation of Level of Service by one or more levels, or a vehicle delay of over 40 vehicle hours per day as a result of the Proposed Transaction.

MM 6. Before Transaction-related train traffic begins to move on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection, Applicants shall consult with the USEPA Region 5's Office of Enforcement and Compliance Assurance, NEPA Implementation Section regarding potential reasonable mitigation measures that could reduce Transaction-related noise impacts. These measures could include, as appropriate, wheel inspections, lubrication of rail curves, frequency of rail lubrication, and the use of continuous welded rail, resilient track fasteners and tire-derived aggregate.

MM 7. To assist with the timely response of emergency service providers in Seymour, Indiana, Applicants shall consult with Schneck Medical Center, the Jackson County Emergency Medical Service and the Seymour Fire Department regarding the installation of an appropriate closed-circuit television system (CCTV) with video cameras (or other comparable system or acceptable option) so that train movements and blocked at-grade crossings within the City of Seymour can be monitored in real time by each of the above three parties. Applicants shall pay for the necessary equipment, equipment installation, and equipment training for up to two individuals from each of the three parties identified above. Applicants shall work with the three parties to determine specifications and scheduling for the installation of the system. Once installed and operational, Applicants shall be responsible for the ongoing maintenance of the system.

MM 8. Applicants shall coordinate with the appropriate state departments of transportation, counties and affected communities along the L&I Line to develop a program for installing temporary notification signs or message boards in the Line's right-of-way at each of the L&I Line's 154 public at-grade crossings, clearly advising motorists of the pending increase in the number, length and speed of trains on the L&I Line. The format and lettering of these signs shall comply with the Federal Highway Administration's 2007 Manual on Uniform Traffic Control Devices. The signs shall be installed no less than 30 days before Transaction-related train traffic begins moving on the L&I Line, and shall remain in place for at least six months after Transaction-related train traffic begins moving on the L&I Line. Applicants shall provide OEA written notice when installation of the signage has been completed at all 154 public at-grade crossings. At least 30 days before any Transaction-related train traffic begins to move on the L&I Line, Applicants shall also publish a notice in a newspaper of general circulation in each county in which the L&I Line is located to advise residents of the pending increase in the number, length and speed of trains on the L&I Line.

Water Resources

MM 9. 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.

MM 10. Prior to initiating Transaction-related construction activities, Applicants shall consult with the INDEM and comply with the reasonable requirements of any INDEM-required permits for Transaction-related activities that would affect isolated wetlands and state waters.

MM 11. During Transaction-related construction, should impacts on forested areas occur within the floodway of the Flatrock River, impacts shall be mitigated by Applicants in accordance with the Indiana Natural Resources Commission's Information Bulletin #17 addressing floodway habitat mitigation (2014).

MM 12. 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. Applicants shall make appropriate USACE-approved accommodations in waterways where transaction-related construction activities occur to allow

for the passage of expected normal and high flows, and to avoid impeding aquatic life movements.

MM 13. Prior to initiating Transaction-related construction activities within waters of the U.S. including wetlands, Applicants shall obtain a Water Quality Certification from INDEM, as applicable.

Biological Resources

MM 14. During replacement of the Flatrock River Bridge, and the extension of any other culverts and bridges associated with the extension of sidings at Elvin or Brook, if constructed, Applicants shall avoid stream channel disturbance during the primary fish spawning season (April 1 through June 15).

MM 15. Applicants shall clear vegetation in preparation for project-related construction before or after the typical migratory bird nesting season identified by the USFWS (typically May 1 to July 15), to the extent possible, in order 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.

MM 16. Prior to initiating replacement of the Flatrock River Bridge, Applicants shall consult with USFWS to assess the need to conduct field surveys of federally listed threatened or endangered mussel that may occur in the Flatrock River in the vicinity of the bridge, and identify any appropriate mitigation measures that may be warranted. Applicants shall report the results of the USFWS consultations to OEA in writing prior to commencing bridge replacement activities.

MM 17. Prior to initiating replacement of the Flatrock River Bridge, Applicants shall consult with the Indiana Department of Natural Resources on the presence of state-listed threatened or endangered mussel species that may occur in the Flatrock River in the vicinity of the subject bridge. As appropriate, Applicants shall conducted surveys for state-listed threatened or endangered mussel species and comply with reasonable mitigation requirements.

MM 18. Applicants shall consult with the USEPA Region 5's Office of Enforcement and Compliance Assurance, NEPA Implementation Section regarding appropriate BMPs to control non-native invasive plants species and noxious weeds during Transaction-related construction on the L&I Line.

Historic Preservation

MM 19. Applicants 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 sets forth a process to complete bridge documentation and resolve adverse effects of the undertaking, has been executed by the Indiana State Historic Preservation Office (SHPO), CSXT, L&I, and the Board.

MM 20. In the event that any unanticipated archaeological sites, human remains, funerary items, artifacts protected under the Native American Graves Protection and Repatriation Act, or associated artifacts are discovered during Transaction-related construction activities, Applicants shall immediately cease all work in the immediate area (which is no greater than a 100-foot radius from the discovery) of the discovery and will notify 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 21. 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.

Community Liaison

MM 22. In response to concerns related to Transaction-related noise, emergency response and other local 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 within 6 months of any Broad approval of the Proposed Transaction. The Community Liaison shall remain available to the communities until the end of the third year after the first Transaction-related trains move on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.

This page intentionally left blank.

3.0 SUMMARY OF COMMENTS AND OEA'S RESPONSES

Copies of the Draft EA were sent to approximately 108 agencies, government entities, public libraries and other interested parties for review and comment. OEA received 18 comment letters on the Draft EA (see Appendix A – Part 1) from the following parties:

- Cynthia Stacy, Peoria Tribe of Indians of Oklahoma;
- Kent Collier, Kickapoo Tribe of Oklahoma;
- Jane Hardisty, Natural Resources Conservation Service;
- Paul Rhodes, Town Council President, Town of Sellersburg, IN;
- John Drybread, Director of Utilities, Town of Edinburgh, IN;
- Dale Sedler, Franklin, IN;
- Dennis Brasher, Executive Director, Jackson County Emergency Medical Service, IN;
- David Allmon, Chief, Columbus Fire Department, Columbus, IN;
- Rodney Farrow, Seymour, IN;
- Gary Meyer, President/CEO, Schneck Medical Center;
- Robin McWilliams Munson, U.S. Fish and Wildlife Service;
- Laurence Brown, Director, Columbus Area Metropolitan Planning Organization, IN;
- Christie Stanifer, Indiana Department of Natural Resources;
- Janie Alexander, Austin, IN;
- Mitchell Zoll, Deputy State Historic Preservation Officer, IN;
- Louis E. Gitomer, Outside Council for CSX Transportation, Inc.;
- Kenneth B. McMullen, Environmental Policy Manager, Indiana Department of Transportation; and
- Kenneth Westlake, Chief, NEPA Implementation Section, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5.

Copies of the Supplemental EA were sent to approximately 285 agencies, government entities, public libraries and other interested parties for review and comment. OEA received 16 comment letters on the Supplemental EA (see Appendix A – Part 2) from the following parties:

- Debbie Fox, Louisville Jefferson County Emergency Management Agency, KY;
- Kevin P. Watts, Sr., Indianapolis, IN;
- E. Ninette Basil, Seymour, IN;
- Richard Williams, Louisville, KY;
- Joe McGuinness, Mayor, City of Franklin, IN;
- Gary A Meyer, President/CEO, Schneck Medical Center, Seymour, IN;
- James Dailey, Crothersville, IN;
- Mark W. Myers, Mayor, City of Greenwood, IN;
- Lucas Mastin, Johnson County Highway Department, IN;
- Patrick Johnson, Manager, Traffic Engineering, Department of Public Works, Louisville, KY;
- Thomas Snyder, Seymour, IN;
- Louis Gitomer, Outside Council for CSX Transportation, Inc.;

- Kenneth Westlake, Chief, NEPA Implementation Section, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5;
- Craig Luedeman, Mayor, City of Seymour, IN;
- Kenneth Dietz, University of Louisville, Louisville, KY; and
- Mitchell Zoll, Deputy State Historic Preservation Officer, IN.

In addition to commenting on the Draft and Supplemental EAs, Applicants provided responses to the comment letters on the Draft EA through its outside counsel, Louis Gitomer (see Appendix B).

OEA prepared responses to the comments in accordance with CEQ guidance. Comment summaries and OEA responses are organized and presented below by commenter and sequentially by date received.

3.1 DRAFT EA – COMMENTS AND OEA’S RESPONSES

Commenter: Cynthia Stacy, Peoria Tribe of Indians of Oklahoma

Comment

The Peoria Tribe of Indians of Oklahoma (Peoria Tribe) is unaware of any documentation directly linking Indian Religious Sites, objects of cultural significance to the Peoria Tribe or items covered under the Native American Graves Protection and Repatriation Act (NAGPRA) in the location of the Proposed Transaction. The Peoria Tribe has no objection to the Proposed Transaction; however, if any items are discovered which fall under the protection of NAGPRA, the Peoria Tribe requests immediate notification and consultation.

OEA Response

Comment noted. OEA adds that MM 20, as revised in the Final EA, requires that federally recognized tribes be notified and makes clear that its notification requirements apply to unanticipated discoveries of items that fall under the protection of NAGPRA.

Commenter: Kent Collier, Kickapoo Tribe of Oklahoma

Comment

The Kickapoo Tribe of Oklahoma states that it has no objections to the Proposed Transaction. However, in the event burial remains or artifacts are discovered during any Transaction-related construction activities, the Kickapoo Tribe of Oklahoma requests that it be notified immediately.

OEA Response

Comment noted. OEA adds that Final EA MM 20 already requires that federally recognized tribes be notified in the event burial remains or artifacts are discovered during any Transaction-related construction activities.

Commenter: Jane Hardisty, Natural Resources Conservation Service

Comment

The Natural Resources Conservation Service states that the Proposed Transaction would not result in a conversion of prime farmland to other uses.

OEA Response

Comment noted.

Commenter: Paul Rhodes, Town Council President, Town of Sellersburg

Comment

The Town of Sellersburg states that the proposed increases in train numbers and train length would have a negative impact on emergency response times and persons requiring emergency services in the community. The Town is concerned that the proposed increase in train traffic by over 400 percent would also worsen noise and vibration impacts and would represent an undue burden on the community. The Town notes that it already receives complaints related to train noise and in particular locomotive horn noise late at night. Finally, the Town notes that the majority of at-grade crossings in the town lack crossing gates (possessing only cross-buck signage) and that the proposed increase in the number, length, weight and speed of trains would increase the likelihood of crossing accidents.

OEA Response

Vehicle Delay and Emergency Response

Regarding vehicle delays, the Draft EA looked at two crossings in Sellersburg: East Utica Street and Bean Road (Draft EA, Appendix C, Table C-1). Both streets currently have a Level of Service or LOS of A (i.e., traffic is free flowing) and total vehicle delays of 27.25 minutes per day at the East Utica Street railroad crossing and 14.34 minutes per day at the Bean Road railroad crossing. The average daily traffic values (ADTs) of these two streets are 1,900 and 1,000 vehicles per day (vpd), respectively, which fall below OEA's threshold of 2,500 vpd for the analysis of potential vehicle delay impacts from proposed transactions. The Draft EA further explains that impacts on roadways with ADTs below 2,500 are expected to be minimal (see Draft EA, page 3-3). In addition, the Draft EA's analysis of nearby crossings indicates that the average delay per delayed vehicle at crossings in Sellersburg would decrease under the Proposed Transaction from approximately 1.8 minutes per vehicle to 1.5 minutes per vehicle (i.e., a decrease of approximately 18 seconds per vehicle) because trains would be moving at faster speeds under the Proposed Transaction. The number of passing trains per day, however, would increase by 13 trains per day, thereby increasing the likelihood of a vehicle being delayed by a passing train.

Although OEA does not consider any of these impacts significant, OEA and Applicants recognize that the increases in the number of trains and resulting likelihood of increased vehicle delays under the Proposed Transaction could result in a noticeable disruption to the free flow of vehicular traffic in Sellersburg and other communities on the L&I Line. Accordingly, in the Final EA, OEA recommends a number of mitigation measures (including both mitigation volunteered by Applicant and mitigation developed by OEA) to mitigate some of these impacts (VM 30 through VM 39, and MM 1 through MM 7).

These potential vehicle delays would also apply to emergency response vehicles. However, the Sellersburg crossings again fall below OEA's thresholds of analysis of potential impacts to emergency response providers, and therefore, the Sellersburg crossings were not individually evaluated in the Draft EA. OEA's thresholds for analysis are crossings at which vehicle delays would increase by 30 seconds or more per vehicle and 30 minutes or more per day for all vehicles as a result of a proposed transaction. As noted above, the crossings in Sellersburg would experience an approximately 18 second decrease per vehicle delayed. Delays for all vehicles were not calculated because of the low ADT values in Sellersburg. Therefore, OEA concludes that the potential impact to emergency response providers in Sellersburg from the Proposed Transaction would not be significant. However, recommended mitigation measures in this Final EA would minimize potential impacts by requiring Applicants to notify appropriate Emergency Services Dispatching Centers when a stopped or slowly moving train would not clear a public at-grade crossing within 10 minutes, and Applicants will maintain a dedicated toll-free telephone number for communicating directly with local Emergency Response Centers (Final EA, VM 49 and MM 3). MM 22 also requires Applicants to establish a Community Liaison to work with communities and other interested parties to develop solutions to local concerns.

Noise

OEA concurs that there would be an increase in train-related noise under the Proposed Transaction in Sellersburg. The number of noise-sensitive receptors (such as residences) within the 65 dBA contour would increase from 153 to 217 receptors under the Proposed Transaction (Draft EA, p. 3-63). A total of two receptors in Sellersburg would experience an increase in noise of at least 5 dBA and day-night average noise levels of greater than 70 dBA (Draft EA, p. 3-65).

However, a review of the noise contour figures in the Draft EA indicates that the existing and Transaction-related noise impacts in Sellersburg are largely attributable to the blowing of locomotives horns as trains approach at-grade crossings (Draft EA, Appendix G, Figures 120 to 122 of 147). Locomotive horn use is required by Federal Railroad Administration (FRA) safety regulations. In general, FRA requires use of locomotive horns or other audible warning devices where trains cross public roadways at-grade. These same FRA safety regulations also provide guidance on how communities can create quiet zones (QZ) by implementing alternative safety measures that can take the place of locomotive horns at public at-grade crossings. Applicants have agreed to cooperate with interested communities for the establishment of QZs and to assist in identifying supplemental or alternatives measures that could enable a community to establish a QZ (VM 55). Applicants have also agreed to work with communities that have noise-sensitive receptors that would experience at least a 5 dBA and reach 70 dBA because of Transaction-

related train increases and to mitigate the train noise level to low as 70 dBA by cost-effective means (VM 54), and have agreed to several other noise mitigation measures (Final EA, VM 56 through 61). These processes could be used to minimize the noise impacts that concern Sellersburg.

Accidents

The Draft EA evaluated two public at-grade crossings in Sellersburg for grade crossing safety: Utica Street and Bean Road (Draft EA, pp. 3-7 through 3-9; Draft EA, Appendix C, Table C-8 and Figures 62 and 63 of 69). At Utica Street, the predicted accident frequency would increase from one accident every 99 years to one accident every 56 years under the Proposed Transaction. At Bean Road, the predicted accident frequency would increase from one accident every 123 years to one accident every 67 years under the Proposed Transaction. These predicted change in accidents do not exceed OEA's thresholds (a) for consideration of an upgrade in crossing warning devices (i.e., one accident every seven years), or (b) to be considered a significant change (i.e., change in predicted frequency of one accident every 20 years). Thus, the changes in in predicted accident frequency from the Proposed Transaction are not considered significant. Nevertheless, Applicants have agreed to a number of mitigation measures that address grade crossing safety concerns (Final EA, VMs 1, 2, 32 through 39), including implementing an outreach effort to inform communities of planned increases in train traffic, and consulting with communities and state agencies on crossing visibility and adequacy of existing warning devices. OEA has also recommended that Applicants be required to prepare a Grade Crossing Mitigation Plan to begin determining the need for grade crossing protection upgrades at each public at-grade crossing that would be affected by the Proposed Transaction and to assure that Applicants properly maintain the crossings (Final EA, MM 1).

Commenter: John Drybread, Director of Utilities, Town of Edinburgh

Comment

The Town of Edinburgh states that the proposed increase in train traffic under the Proposed Transaction would have an adverse impact on emergency services in the town. The Town states that the Draft EA did not identify the Edinburgh Fire Station and Emergency Medical Services Rescue (located at 200 S. Walnut Street) as being within 500 feet west of the Line, or the Edinburgh Police Department (located at 200 S. Main Street) as being approximately 1,000 feet west of the Line. Citing the Draft EA, the Town states that total vehicle traffic delay at Center Cross Street would increase from 16.59 minutes per day under existing conditions to 188.55 minutes per day under the Proposed Transaction. The Town notes that because the L&I Line effectively divides its residential community in half, the traffic delays associated with the Proposed Transaction could have substantial negative impacts on the ability of emergency service providers to reach residents on the east side of the Line. The Town requests that these potential negative impacts be carefully considered and hopes to be able to work the Applicants toward a mutually satisfactory resolution to its emergency response concerns.

OEA Response

The screening process used by OEA to identify crossings at which Transaction-related increases in delay could result in a substantial effect on emergency service providers is based on two delay-related criteria; the delay had to increase by 30 seconds or more per vehicle and by 30 minutes or more per day for all vehicles (Draft EA, p 3-13). The Town correctly cites the increase per day of all vehicles (Draft EA, Appendix C, Table C-6). However, the Center Cross Street crossing did not satisfy the second criteria as the Proposed Transaction would only cause the average delay per delayed vehicle to increase from 1.26 minutes to 1.46 minutes (i.e., a 12 second increase) (Draft EA, Appendix C, Table C-6). Nevertheless, to address potential delays that can have a substantial effect on emergency service providers, OEA recommends as mitigation for the Proposed Transaction that Applicants be required to promptly notify the appropriate Emergency Service Dispatch Center(s) when a stopped or slowly moving train will not clear a public at-grade crossing within 10 minutes (Final EA, MM 3). Applicants have also volunteered an additional measure concerning communication with emergency service providers (Final EA, VM 49).

Commenter: Dale Sedler, Franklin, IN

Comment

Mr. Sedler states that the railroad bridge over Hurricane Creek in Franklin, IN is undersized and has hindered flood waters and resulted in upstream flooding. Therefore, he states that the bridge needs to be replaced.

OEA Response

Under the Proposed Transaction, the Flatrock River Bridge would be replaced and the clearance under the replacement bridge would be sized to pass the current 100-year flood elevation (Supplemental EA, p. 3-47).

Commenter: Dennis Brasher, Executive Director, Jackson County Emergency Medical Service

Comment

Jackson County Emergency Medical Services (EMS) states that it is the sole provider of emergency medical services for Seymour, IN. The EMS stations and the community's hospital, Schneck Medical Center, are located west of the Line. However, the commenter states, the majority of Seymour's population and most of the community's large shopping centers and industrial parks are located east of the Line. Therefore, Jackson County EMS raises concerns that the increased train traffic that would result from the Proposed Transaction would have a major negative impact by grossly extending EMS response times to the Interstate 65 corridor located east of the Line; extending response times to all calls originating east of the Line; and extending transfer times of critical patients being taken to Schneck Medical Center and those patients being transferred from Schneck Medical Center to other regional hospitals. In addition,

the commenter states that it has established world class times for patients being transferred from Schneck Medical Center to Columbus Regional Hospital in Columbus, IN for cardiac catheterization. The commenter is concerned that increased transfer times under the Proposed Transaction would have an adverse impact on these transfer patients and their hearts.

OEA Response

The screening process used by OEA to identify crossings at which Transaction-related increases in delay could result in a substantial effect on emergency service providers is based on two delay-related criteria; the delay had to increase by 30 seconds or more per vehicle and by 30 minutes or more per day for all vehicles (Draft EA, p 3-13). It was by applying this screening process that OEA identified the Schneck Medical Center as a facility that could be experience a substantial effect on emergency service response times as a result of the Proposed Transaction (Draft EA, p. 3-15). In response, OEA recommends a mitigation measure that requires Applicants to purchase, install and maintain a CCTV or similar camera system that would enable emergency service providers to identify blocked crossings in the city and alternative routes for emergency service providers (Final EA, MM 7). In response to comments by Jackson County EMS and others, OEA revised this recommended measure in the Final EA to ensure that Jackson County EMS is among the parties consulted in this process, and to specifically require Applicants to discuss other reasonable and feasible measures to mitigate Transaction-related delays in emergency service response times. In addition, Final EA, MM 3 requires Applicants to notify the emergency services dispatchers when a stopped or slowly moving train would not clear the at-grade crossing, including the crossings within and near Seymour, within 10 minutes, thus enabling emergency service providers an opportunity to utilize an alternative route, if needed.

Commenter: David Allmon, Chief, Columbus Fire Department

Comment

The Columbus Fire Department states that it is the regional hazardous materials response team provider and its major concern with the Proposed Transaction is a hazardous materials spill or accident.

OEA Response

OEA notes that there would be no Transaction-related change in the volume of hazardous material moved over the L&I Line or the three CSXT rail lines under the Proposed Transaction because CSXT's trackage rights agreement with L&I prohibits CSXT from transporting hazardous material over the L&I Line (Supplemental EA, p. 2-11). However, Applicants have proposed a number of voluntary mitigation measures to assist in training emergency providers; ensure compliance with applicable U.S. Department of Transportation, U.S. Pipeline and Hazardous Materials Safety Administrator and Department of Homeland Security requirements; participate in drills; conduct community workshops; and develop internal emergency response plans (Final EA, VMs 40 through 48). These measures should minimize the likelihood of a hazardous materials spill or accident.

Commenter: Rodney Farrow, Seymour, IN

Comment

Mr. Farrow states that the L&I Line bisects Seymour and passes through the city's downtown business district. He adds that an existing east-west CSXT rail line also bisects the downtown area of the city. According to the commenter, the two rail lines intersect near the intersection of U.S. Route 50 (E. Tipton Street) and State Route 11 (N. Broadway Street) in downtown Seymour. Both streets are major roadways through the city.

Currently, two CSXT trains per day travel north from Louisville on the L&I rail line and at Seymour move eastbound on CSXT's rail line in the direction of Cincinnati. When switching from northbound on the L&I Line to eastbound on the CSXT rail line, Mr. Farrow states that the trains causes automobile delays on roadways and traffic in the downtown area comes to a standstill. Under the Proposed Transaction, these train movements would cease and the automobile delays from the switching trains would be eliminated. Additionally, there are two grade-separated crossings on the CSXT rail line, one on the west side of the city and one on the east side of the city, that enable automobile traffic to avoid trains on the east-west CSXT rail line.

Mr. Farrow, however, is concerned that there are no grade-separated crossings on the north-south L&I Line and that increased train traffic under the Proposed Transaction would result in vehicle delays and adversely the movement of public safety vehicles in the event of an emergency. He states that the addition of a grade-separated crossing somewhere in Seymour would mitigate these impacts, although he recognizes that substantial financial assistance from state and federal governments and the railroads would be needed to construct the new crossing.

The Draft EA identifies a Hamilton Township fire station within proximity of the L&I rail line. Mr. Farrow states that he believes that information is incorrect and that the station is actually located in the unincorporated community of Cortland, IN, approximately three miles west of Seymour.

Mr. Farrow also states that the Redding Township Fire District has a relatively new fire station situated just north of Seymour in the unincorporated community of Rockford (at the northeast corner of High and Reddington streets). This fire station is located two blocks east of the L&I rail line. According to Mr. Farrow, emergency responses to points west of the L& I rail line and north of the fire station could be delayed by the increased train traffic under the Proposed Transaction.

OEA Response

OEA acknowledges Mr. Farrow's comment on the potential reduction in traffic delays from a reduction in train movements at the intersection of CSXT's east-west rail line and the L&I Line in Seymour, and of the availability of grade-separated crossings in Seymour for north-south moving automobile traffic in Seymour. With regard to Mr. Farrow's concerns regarding

potential delays in emergency response providers traveling east and west across the L&I Line, OEA refers Mr. Farrow and other readers to our response to the Jackson County Emergency Medical Service above. Mr. Farrow's comment on the Hamilton Township fire station identified in the Draft EA is acknowledged.

Finally, with respect to the newer fire station of the Redding Township Fire Station in the community of Rockford, OEA notes that the nearest at-grade crossing to the subject fire station is Reddington Street. Reddington Street currently experiences an average delay per delayed vehicle of 1.26 minutes (Draft EA, Appendix C, Tables C-1 and C-6). Although the average delay per vehicle under the Proposed Transaction was not calculated for Reddington Street because the average daily traffic for the roadway is less than OEA's analysis ADT threshold of 2500 vehicles per day, the delay under the Proposed Transaction can be projected from the data in Appendix C, Table C-6. Based on that data, OEA projects that the delay would be 1.46 minutes under the Proposed Transaction. Therefore, the average delay per vehicle at the Reddington Street crossing would only increase by approximately two-tenths of a minute or 12 seconds as a result of the Proposed Transaction. Moreover, in the event of a slow or stopped train at the Reddington Street crossing, alternative crossings are available to vehicles, including emergency service providers. Finally, under Final EA, MM 3, Applicants would be required to notify the emergency services dispatcher for the Reddington Township Fire Station when a stopped or slowly moving train would not clear the Reddington Street crossing within 10 minutes, thus enabling emergency service providers an opportunity to utilize an alternative route, if needed.

Commenter: Gary Meyer, President/CEO, Schneck Medical Center

Comment

Schneck Medical Center states that it is the sole provider of hospital and emergency medical services in Seymour, IN. The hospital is located west of the L&I rail line, but the majority of Seymour's population and most of its large retail outlets and industrial parks are located east of the L&I rail line. The Schneck Medical Center states that the proposed increase in train traffic on the L&I rail line would have an adverse impact on emergency services response times and community safety. According to the commenter, in addition to extending response times to all calls east of the L&I rail line, the proposed increased train traffic would grossly extend emergency services response times to the I-65 corridor (located east of the city), extend transfer times of critical patients to and from the hospital, and compromise the world-class response times that Schneck Medical Center and the Jackson County Emergency Medical Services (EMS) have established for the treatment of heart attack patients.

Schneck Medical Center states that most of the railroad crossings in the community lack active warnings systems (e.g., flashing lights or flashing lights with gates) and have only passive signs (e.g., cross-bucks and stop signs). The commenter adds that many of the crossings also have poor visibility when approaching the rail line. Schneck Medical Center notes that currently, trains on the L&I rail line typically move at a slow speed. The commenter is concerned that the proposed increase in the number and speed of trains under the Proposed Transaction, coupled with poor visibility and passive signage, could result in disasters. In addition to passing trains,

Schneck Medical Center also expresses concern about a potential increase in the frequency of stopped trains that block all or many of the at-grade crossings in the community.

Schneck Medical Center requests the CSXT and L&I work with the Seymour community to educate the community of proposed changes in rail operations (i.e., both numbers and speeds of trains), and identify safety and access issues and develop remedies to these issues including the construction of a grade-separated crossing of U.S. Route 50 (E. Tipton Street) at the L&I rail line.

OEA Response

OEA acknowledges Schneck Medical Center's concerns regarding blocked at-grade crossing and potential delays in response times for emergency service providers. With regard to potential delays in emergency response providers traveling east and west across the L&I Line, and the mitigation OEA is recommending to minimize the potential impacts, OEA refers the reader to our response to the Jackson County EMS.

Commenter: *Robin McWilliams Munson, U.S. Fish and Wildlife Service*

Comment

Other than the replacement of the Flatrock River railroad bridge under the Proposed Transaction, the U.S. Fish and Wildlife Service (USFWS) states that it is unclear from the Draft EA if any other bridges or culverts would need to be constructed or replaced, including any associated with potential siding construction. According to the commenter, the Draft EA lacks a quantification of potential forest clearing or discussion of potential wetland and stream impacts from constructing two new rail line sidings. The commenter asks that these issues be addressed in the Final EA. If any additional bridges or culverts are required for perennial or large intermittent streams, USFWS recommends that OEA include mitigation that would minimize the disturbance of stream channels and avoid in-stream work during the fish spawning season (April 1 – June 15).

USFWS also has advised that since the time of Applicants' initial consultations with USFWS in 2011, changes in the status of four freshwater mussel species with occurrences in Indiana have occurred that are not reflected in the Draft EA. Specifically, the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*) was added as a federally threatened species on September 17, 2013 and was recently found in the Flatrock River approximately 15 miles upstream of L&I's Flatrock River Bridge. USFWS notes that because of limited survey data and uncertainty in the distribution of this species, a mussel survey in the vicinity of the Flatrock River railroad bridge could be necessary if any in-stream work is required during bridge replacement. USFWS states that the survey would determine if any suitable habitat for the rabbitsfoot mussel is present, and if present, a mussel survey could be warranted. Once final bridge replacement plans are developed, USFWS requests additional consultations on this species.

USFWS also points out that on March 12, 2012, the snuffbox mussel (*Epioblasma triquetra*) and rayed bean mussel (*Villosa fabalis*) became federally listed as endangered, and on April 12,

2012, the sheepnose mussel (*Plethobasus cyphus*) became federally listed as endangered. According to the commenter, the nearest snuffbox mussel record is over 15 miles northeast of where L&I's rail line crosses Sugar Creek, and the ray beaned mussel is known to occur in a section of Sugar Creek very near where the L&I rail line crosses Sugar Creek. Moreover, of the 19 Indiana counties in which the sheepnose mussel is found, Clark County on the Ohio River is the only county crossed by the L&I rail line. USFWS states that in 2007, a fresh-dead specimen of sheepnose mussel was found near 18 Mile Island in the Ohio River. However, based on information in the Draft EA, there would be no Transaction-related bridge, culvert or in-stream work in or near Sugar Creek or the Ohio River, and therefore, USFWS concludes that the Proposed Transaction would not likely adversely affect these three species.

USFWS notes that there is suitable summer habitat and several summer records for the federally endangered Indiana bat (*Myotis sodalis*) in the project corridor. USFWS states that the Proposed Transaction would not eliminate enough habitat to affect this species, but that Applicants have agreed to avoid incidental take from the removal of an occupied roost tree by avoiding Transaction-related tree-clearing activities during the period April 1 through September 30. If this measure is implemented, USFWS agrees that the Proposed Transaction would likely not adversely affect the Indiana bat.

USFWS states that the only known summer colony in Indiana of the federally endangered gray bat (*Myotis grisescens*) is located at a partially abandoned gravel quarry adjacent to the L&I Line near Sellersburg, IN. The foraging territory of this colony includes the Silver Creek/Muddy Fork watershed and nearby Ohio River tributaries. USFWS concludes that the Proposed Transaction would not have significant adverse physical impacts on the gray bat's roosting site or foraging habitat; however, it notes that increased noise levels in the vicinity of the summer colony could potentially negatively affect the colony. Based on the Draft EA and supplemental noise information provided by OEA, USFWS states that the Transaction-related 65 dBA (A-weighted decibel) contour would extend approximately 500 feet from the L&I Line across the lake at the gravel quarry. The Transaction-related 70 dBA contour would extend approximately 120 feet from the L&I Line. However, USFWS states that this colony of bats is currently exposed to train noise on a daily basis, in addition to noise from the active portion of the quarry and the nearby Clark County Airport. Therefore, although noise levels in the vicinity of the quarry and the frequency of train-related noise would increase under the Proposed Transaction, USFWS believes that the gray bats are somewhat acclimated to these types of noises and potential impacts on these bats would be insignificant.

USFWS also notes that the City of Greenwood is incorrectly listed as being located in Marion County in Draft EA Table 3.8-4 and that it is located in Johnson County.

USFWS recommends that the following mitigation measures be imposed to minimize potential adverse impacts to fish and wildlife resources from the Proposed Transaction (USFWS acknowledges that many of the measures were already recommended in the Draft EA):

1. Post DO NOT DISTURB signs at the construction zone boundaries in forested areas, and do not clear trees or understory vegetation outside the boundaries.

2. Culverts should span the active stream channel, should either be imbedded or a 3-sided or open-arch culvert, and be installed where practicable on an essentially flat slope. When an open-bottomed culvert would be used in a stream with good bottom substrate for aquatic habitat (e.g., gravel, cobbles and boulders), the existing substrate should be left undisturbed beneath the culvert.
3. Construct bridges and culvers in wildlife habitat areas with benches and/or high water shelves for wildlife crossings
4. Restrict channel work, especially low-water work, and vegetation clearing to the minimum necessary for installation of bridges and culverts.
5. Minimize the extent of artificial bank stabilization and use bioengineering methods wherever feasible. If riprap is used, extend it below the low-water elevation to provide aquatic habitat.
6. Implement temporary erosion and siltation control devices such as placement of riprap check dams in drainage ways and ditches, installation of silt fences, covering exposed areas with erosion control materials, and detention basins, in accordance with Indiana Department of Transportation specifications.
7. Revegetate all disturbed soil areas immediately upon project completion, using native species of plants in undeveloped areas
8. Avoid channel work in perennial and intermittent stream during the fish spawning season (April 1 – June 30).

Additionally, USFWS states that it is interested in continuing to work with the Board to ensure that potential project impacts to resources of concern are adequately addressed. If Transaction-related plans change such that additional fish and wildlife habitat could be affected, USFWS requests renewed coordination as soon as possible.

OEA Response

Regarding other bridges and culverts that would need to be constructed or replaced under the Proposed Action (besides the Flatrock River Bridge), the Supplemental EA notes that the potential Elvin siding extension would cross eight unnamed intermittent streams and two ephemeral streams and that the potential Brook siding extension would cross one unnamed intermittent stream (Supplemental EA, p. 3-37). Existing bridges and culverts for these surface waters on the L&I Line would need to be extended to accommodate the extended sidings, if they are constructed. Accordingly, OEA has expanded MM 14 in this Final EA to prohibit in-stream work for the potential Elvin and Brook siding extensions from April 1 – June 15.

OEA acknowledges USFWS' concern regarding freshwater mussels and notes that freshwater mussels are discussed in the Supplemental EA (p. 3-69 and 3-70). Moreover, in response to USFWS's concerns, OEA has recommended a new mitigation measure (MM 16) in this Final EA that requires consultation with, and written reporting to, the USFWS and OEA concerning threatened and endangered mussels and the potential need to conduct in-stream surveys in the vicinity of the Flatrock River Bridge replacement site. Additionally, Applicants have volunteered to implement a number of mitigation measures that would avoid or minimize erosion and sedimentation (Final EA, VMs 9, 10, 12 and 13).

OEA acknowledges the USFWS comment on the Indiana bat (*Myotis sodalis*) and points out that the Supplemental EA concludes that the Indiana bat would not be adversely affected because VM 18 prohibits the Transaction-related removal of any trees from April 1 to September 30 (Supplemental EA, p. 3-69).

OEA notes USFWS' acknowledgment that the summer colony of the gray bat (*Myotis grisescens*) near the L&I Line is likely already somewhat acclimated to train-related noise and that any Transaction-related increase in train noise would result in insignificant and discountable impacts on this species.

USFWS' comments on mitigation and its suggested mitigation measures are noted and have been carefully considered. Many of the mitigation measures are already incorporated into the mitigation measures recommended in the Draft, Supplemental, and Final EAs.

Commenter: Laurence Brown, Director, Columbus Area Metropolitan Planning Organization

Comment

The Columbus Area Metropolitan Planning Organization (CAMPO) expresses concern about the potential impacts of Transaction-related increases in train traffic on the movement of people and goods in Columbus. CAMPO states that increasing from two trains per day through Columbus under existing conditions to 17 trains per day under the proposed Transaction would have substantial impacts on the city. A key concern to CAMPO is the at-grade crossing of State Route 46 (SR 46) at the L&I Line. CAMPO notes that SR 46 is the main east-west corridor through the city, that the corridor is heavily used by commuters, students, shoppers and interstate travelers, and that there are no reasonable east-west alternatives to this corridor.

CAMPO further notes that because of the importance of the SR 46 corridor, the CAMPO Policy Board has asked the CAMPO staff to look into grade separating SR 46 and the L&I Line crossing. According to CAMPO, the crossing is located in a floodplain and a grade separation would likely require SR 46 to be routed over the L&I Line. CAMPO states that design factors make engineering the potential overpass very difficult and extremely expensive because an overpass would have to accommodate proposed double-stacked and multi-level railcars on the L&I Line and then connect with the nearby SR 46 bridges (one east bound and the other west bound) over the East Fork of the White River.

CAMPO also notes that much of the new development in Columbus has been west the L&I Line while schools, the hospital, employments centers and government facilities are located east of the rail line. According to CAMPO, the city's new transit center is located east of the river but west of the tracks and trains have caused buses to be up to 20 minutes late.

Because of the potentially substantial impacts to the city, CAMPO requests that all options be considered to mitigate the impacts, and suggests that it could be easier and cheaper to realign the rail line than to build the SR 46 grade separation over the L&I Line. CAMPO welcomes further discussions with interested parties.

OEA Response

OEA notes CAMPO's concerns regarding at-grade crossings in the Columbus area, particularly related to SR 46 and CAMPO's review of potentially grade separating SR 46 and the L&I Line and the difficulty of designing an overpass to accomplish this. However, OEA evaluated traffic delays at the SR 46 crossing and concluded that the Proposed Transaction would not reduce mobility of the community of Columbus (Draft EA, pp. 3-3 through 3-7). OEA's evaluation of potential impacts to emergency response from the Proposed Transaction also concluded there would be no substantial effect in Columbus (Draft EA, pp. 3-12 through 3-15). Nevertheless, OEA has recommended several mitigation measures concerning grade crossing delay and safety and emergency response (Final EA, VMs 31 through 39 and MMs 1, and 3 through 6) that should assist in minimizing potential impacts of concern to CAMPO.

Commenter: Christie Stanifer, Indiana Department of Natural Resources

Comment

The Indiana Department of Natural Resources (INDNR) states that the proposed siding at Crothersville shares a boundary to the east with Chestnut Ridge Seep Springs, a site on the state's Registry of Significant Sites. The site is home to a high quality natural community called an acid seep, which is a rare wetland type. The INDNR Division of Nature Preserves recommends that construction activities at the Crothersville siding remain within the right-of-way, with special care taken to prevent impacts to the adjacent seep and other wetlands, including the siltation impacts from runoff. So that ballast materials for the siding cannot spread into the adjacent communities, the commenter requests that stockpiling, earthmoving, parking or equipment staging not take place outside of the right-of-way in this area.

INDNR also states that its Natural Heritage Database lists nine mussel species in Johnson County but notes that they are not likely present in the area of the existing rail crossing and does not foresee any impacts to these mussel species. The commenter adds that its database also lists the American badger (*Taxidea taxus*), a state species of special concern for Bartholomew County, but that its preferred habitat would not likely be impacted by the Proposed Transaction. INDNR points out in regard to Chestnut Ridge Seep Springs that the database lists a state endangered plant, state threatened plant, state watch-list plant, and one salamander of state special concern. The federal and state endangered gray bat near Sellersburg is also on the database and expresses concerns about potential impacts.

INDNR notes that two of the proposed sidings appear to be partly or mostly in forested or wetland habitat and would cross several streams. The end of one siding would extend into the forested riparian corridor of the Flatrock River, and, INDNR states, potential impacts to forest or wetland floodway habitat would likely require mitigation. INDNR points out that the potential impacts also include habitat loss and habitat fragmentation. INDNR states that more detailed project maps for the proposed sidings would be needed to fully assess potential impacts to streams, forests, wetlands and habitat in general.

INDNR recommends the following mitigation measures to address its concerns:

1. Avoid and minimize potential impacts to fish, wildlife and botanical resources to the greatest extent possible and compensate for impacts.
2. Maintain current train traffic/disturbance levels when the gray bat colony near Sellersburg is occupied (primarily during the summer).
3. Further coordination with the USFWS regarding potential noise vibration impacts to the gray bat near Sellersburg from increase train traffic under the Proposed Transaction as well as from Amtrak, which has expressed interest in expanding its service and speed of its trains on the L&I rail line.
4. To minimize potential impacts to the four-toed salamander (*Simpsonaias ambigua*) in Chestnut Ridge Seep Spring, no Transaction-related construction should take place during the salamander's egg laying and hatching season of April 1 through June 1.
5. Develop a mitigation plan for submittal with the INDNR floodway permit application (if required) for potential impacts to forested riparian habitat at the Flatrock River railroad bridge replacement site. Loss of less than one acre of non-wetland forest should be replaced at a 1:1 ratio, and loss of more than one acre should be replaced by a ratio of 2:1. Wetland impacts should be mitigated at the appropriate ratio(s). INDNR guidelines should be followed including guidelines pertaining to the placement and location of mitigation sites and the use of approved, locally native trees, shrubs and seed mixes.
6. Revegetate all bare and disturbed areas with a mixture of native grasses, sedges, wildflowers and native shrub and hardwood trees as soon as possible. Do not use any varieties of tall fescue or other non-native plants.
7. Minimize and contain within project limits in-channel disturbance and the clearing of trees and brush.
8. Do not work in waterways from April 1 through June 30 without the prior written approval of INDNR's Division of Fish and Wildlife.
9. Do not cut any trees suitable for Indiana bat roosting (greater than 3 inches diameters at breast height, living or dead, with loose-hanging bark) from April 1 through September 30.
10. Do not excavate in the low flow area of streams except for the placement of piers, foundations, and riprap, or removal of an old structure.
11. Use minimum average 6-inch graded riprap stone extended below the normal water level to provide habitat for aquatic organisms.
12. Plant native hardwood trees along the top of the bank and right-of-way to replace the vegetation destroyed during construction.
13. Post "Do Not Mow or Spray" signs along the right-of-way.
14. Appropriately designed measure for controlling erosion and sedimentation must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.
15. Seed and protect disturbed stream banks that are 3:1 or steeper with heavy-duty biodegradable erosion control blankets; seed and mulch all other disturbed areas.

OEA Response

Regarding INDNR's comments on the proposed Crothersville siding, OEA notes that Applicants have dropped the Crothersville siding from its Proposed Transaction (Supplemental EA, p. 1-3). Concerning INDNR's comments on mussels and bats, please see OEA's responses above to the USFWS comments on these same topics. OEA further notes that additional information on the potential impacts to wetlands and forests from constructing the two siding extensions is discussed in greater detail (including mapping) in the Supplemental EA (Section 3.6, pp 3-50 through 3-70) than the information provided in the Draft EA.

With respect to INDNR's recommended mitigation measures, OEA notes that the most of the measures listed by INDNR have already been included in the Draft, Supplemental, and Final EAs.

Regarding INDNR's gray bat mitigation recommendation, readers are referred to OEA's response to the USFWS comment on this species. Regarding the request for mitigation requiring Applicants' posting of "Do Not Mow or Spray" signs along the right-of-way, OEA believes it would be inappropriate and unnecessary to impose that sort of requirement on Applicants. It is important that Applicants properly maintain the right-of-way to ensure safe operations, including the control of vegetation in the vicinity to at-grade crossings to ensure that the drivers in approaching vehicles have a clear line of sight of any oncoming trains. Applicants have agreed that they will ensure that any herbicides used in the right-of-way are approved by the U.S. Environmental Protection Agency and are applied by licensed individuals (Final EA, VM 51). In OEA's view that mitigation is sufficient to control vegetation, and there is no need for Applicants to post signs prohibiting mowing or spraying, as INDNR suggests.

Commenter: Janie Alexander, Austin, IN

Comment

Ms. Alexander notes a safety concern about the proposed increase in the number and speed of trains through her community because the three at-grade crossings in Austin are without barriers or flashing lights. She also states that residents and business would be adversely affected by increased noise levels from more frequent locomotives horns.

OEA Response

OEA first notes that the Draft EA evaluated several public at-grade crossings in Austin with regard to grade crossing safety (Draft EA, pp. 3-7 through 3-9; Draft EA, Appendix C, Table C-8 and Figures 45 and 46 of 69). As the Draft EA explains, of the Austin crossings evaluated, W. Morgan Drive exhibits the largest number of predicted accidents under existing conditions and under the Proposed Transaction and would also experience the greatest change in predicted accidents under the Proposed Transaction. At W. Morgan Drive, the predicted accident frequency would increase from one accident every 15 years to one accident every 11 years under the Proposed Transaction. OEA determined that, on average, the change in predicted accidents per year would be one accident every 39 years. This predicted change in accidents does not

exceed OEA's thresholds (a) for consideration of an upgrade in crossing warning devices (i.e., one accident every seven years), or (b) to be considered a significant change (i.e., change in predicted frequency of one accident every 20 years). Despite these less than significant changes in predicted accident frequency as a result of the Proposed Transaction, Applicants have agreed to a number of mitigation measures that address grade crossing safety concerns (Final EA, VMs 1 through 3, 32, 35 through 37, and 38), including implementing an outreach effort to inform communities of planned increases in train traffic (Final EA, VM 33), and consulting with communities and state agencies on crossing visibility and adequacy of existing warning devices (Final EA, VMs 34 and 39). OEA has also recommended that Applicants be required to prepare a Grade Crossing Mitigation Plan to begin determining the need for grade crossing protection upgrades at each public at-grade crossing (MM 1). In OEA's view, this mitigation will adequately minimize the potential impacts raised by the commenter.

OEA concurs that there would be an increase in train-related noise under the Proposed Transaction in Austin. The number of noise-sensitive receptors (such as residences) within the 65 dBA contour would increase from 95 to 131 receptors under the Proposed Transaction (Draft EA, p. 3-63). One receptor in Austin would experience an increase in noise of at least 5 dBA and day-night average noise levels of greater than 70 dBA (Draft EA, p. 3-65). However, a review of the noise contour figures in the Draft EA indicates that the existing and Transaction-related noise impacts in Austin are largely attributable to the blowing of locomotives horns as trains approach at-grade crossings (Draft EA, Appendix G, Figures 98 to 103 of 147). OEA refers the reader to OEA's response to the Town of Sellersburg's comments for an additional response concerning horn noise and the requirement that locomotive horns must be blown as trains approach at-grade crossings unless a quiet zone is established.

Commenter: Mitchell Zoll, Deputy State Historic Preservation Officer, Indiana

Comment

In response to the Draft EA and additional information¹⁹ submitted to the Indiana State Historic Preservation Office (SHPO) about the Flatrock River railroad bridge near Columbus, SHPO understands that the subject bridge has been modified from its original design, would require substantial modification to maintain its use, and that the bridge cannot be feasibly repaired or strengthened to meet current railroad standards and the proposed train speed and load requirements under the Proposed Transaction. Despite this, SHPO believes that the bridge likely retains sufficient integrity to be considered eligible for inclusion on the National Register of Historic Places. Because rehabilitation of the existing structure does not appear to be feasible in the case, SHPO states that it agrees with CSXT's recommendation that the bridge be documented prior to its removal, according to SHPO's Minimum Architectural Standards, as mitigation for the loss of this historic resource.

¹⁹ The additional information includes a September 13, 2013 letter from Garry Shook, PE, Civilstar, Inc. to Chad Slider, Office of the Indiana SHPO, and a September 18, 2013 letter from Melanie Yasbin, Law Offices of Louis E. Gitomer, LLC to Chad Slider, Office of the Indiana SHPO. Both letters are available on the Board's web site. Click "Environmental Matters" on the home page, select "Environmental Correspondence" in the drop-down menu, select "Incoming by Docket Number," select "Next Page," toggle down to and open "FD_35523_0," and look for document numbers EI-20331 and EI-20332, respectively.

With respect to archaeological resources, SHPO notes that multiple archaeological sites and cemeteries have been recorded adjacent to the existing L&I Line. However, because proposed ground disturbance would be limited to areas within the disturbed right-of-way, SHPO states that no archaeological investigations appear necessary for the Proposed Transaction. However, SHPO further notes that if any Transaction-related impacts could occur within 100 feet of a cemetery, a development plan would need to be submitted to and approved by SHPO.

Also SHPO states that if any archaeological artifacts or human remains are uncovered during earthmoving activities, Indiana state law (Indiana Code 14-21-1-27 and 29) requires that the discovery must be reported to INDNR within two business days.

OEA Response

Since publication of the Draft EA, OEA, with participation by Applicants, has continued consultations with the SHPO under Section 106 of the National Historic Preservation Act. OEA (on behalf of the Board) and SHPO have concurred that (1) the Flatrock River Bridge retains sufficient integrity to be considered eligible for the National Register of Historic Places, (2) considering the proposed joint use, there are no feasible alternatives to bridge replacement, including rehabilitation of the existing structure, (3) replacement of the bridge warrants a finding of adverse effect, and (4) documentation prior to removal, according to Division of Historic Preservation and Archaeology Minimum Architectural Documentation Standards (DHPA Standards), would be an appropriate mitigation measure. The subject documentation has been submitted to SHPO and SHPO has concluded that the material provided is consistent with DHPA Standards. OEA then prepared a draft Memorandum of Agreement (MOA) that would memorialize the mitigation measures and resolve the adverse effects of the Undertaking, and submitted the MOA to SHPO and Applicants. In a letter dated October 7, 2014, SHPO indicated that it believes the stipulations in the MOA are appropriate to resolve the adverse effects of replacing the Flatrock River Bridge; and that, therefore, SHPO would be willing to sign a final version of this agreement. On November 28, 2014, in their reply to the draft MOA, Applicants submitted two proposed changes that would make the MOA acceptable to Applicants. At the time this Final EA was prepared, the parties had not yet come to an agreement on one of the changes requested by Applicants. OEA notes that the Supplemental EA discusses the Section 106 consultations and includes the draft MOA, and that no comments on the draft MOA, other than the suggested changes made by Applicants, were received during the comment period on the Supplemental EA. Because the MOA has not yet been executed, the Final EA retains a mitigation measure relative to the Flatrock River Bridge (Final EA, MM 19).

The Final EA also contains two additional mitigation measures pertinent to historic preservation and cultural resources in general. MM 20 pertains to actions to be taken in the event of an unanticipated discovery during Transaction-related ground disturbance and MM 21 pertains to any Transaction-related disturbance that would occur within 100 feet of a cemetery in Indiana.

Commenter: Louis Gitomer, Outside Legal Counsel Representing CSX Transportation, Inc. and Louisville & Indiana Railroad Company, Inc.

Comment

In regard to OEA's preliminary recommendations for mitigation measures (MM) and Applicants' voluntary mitigation (VM) in the Draft EA, Mr. Gitomer notes instances (summarized below) where OEA's and Applicants' measure are duplicative and offers to adopt OEA's measures as voluntary measures to remove the duplicative effects.

Draft EA, MM 1 and VM 4 and VM 35: Mr. Gitomer states that MM 1 duplicates portions of VM 4 and VM 35. VM 4 and VM 35 do not use the same wording as MM 1 (i.e., Grade Crossing Mitigation Plan) but lay out a grade crossing mitigation plan nonetheless. MM 1 does not address safety impacts at public at-grade crossings but adds a timeframe for an initial meeting between the two state transportation agencies. Applicants are willing to adopt the timeframe in MM 1 with regard to the first meeting with the state agencies.

Draft EA, MM 2 and VM 34: Applicants believe that MM 2 is a subset of VM 34 and is unnecessary. MM 2 pertains to the location and design of new sidings and siding extensions to minimize blockage of public at-grade crossings. VM 34 generally requires Applicants to identify ways to reduce highway/rail at-grade crossings.

Draft EA, MM 5 and VM 5: Applicants believe MM 5 duplicates VM 5 with regard to schools and park districts, but adds residential communities. Applicants are willing to cooperate with residential communities to identify at-grade crossings where additional pedestrian warnings may be warranted.

Draft EA, MM 6 and VM 2: Applicants believe MM 6 duplicates VM 2 regarding coordination and notification efforts about Transaction-related increases in train numbers, speed and length. MM 6 and VM 2 differ on what triggers the notice requirement. Applicants are willing to adopt the MM 6 language but believe that "Transaction-related train traffic" should be more clearly defined as when train traffic associated with the upgrade begins to move over the Line. Applicants are also willing to comply with the written notification and newspaper publication requirements of MM 6.

Draft EA, MM 14: CSXT contends that MM 14 should be limited to the Flatrock River Bridge and areas where a siding could be extended or a new siding built. The Draft EA states that the Indiana SHPO identified eight archaeological sites and six cemeteries as being adjacent to the Line, and raised concern about the potential presence of previously unknown archaeological sites. If ground-disturbing activities do occur, Applicants believe that such activities would occur within the railroad right-of-way at the siding locations.

Draft EA, MM 4: Applicants believe that MM 4 should be limited to Schneck Medical Center and the Seymour fire departments. According to the commenter, the Hamilton Fire Station is no longer located at 414 W 2nd Street in Seymour. Applicants sent the Draft EA to the address via Federal Express and Federal Express conveyed that the fire station is not located at this address.

On OEA's behalf, Applicants then sent the Draft EA to an address listed for the Hamilton Fire Station in Courtland, IN, but that package was also returned. Applicants could not find an address for Hamilton Fire Station within two miles of the L&I Line.

CSXT recommends that the Final EA clarify that the extension of the Elvin and Brook sidings and the construction of the Crothersville and Underwood sidings would only occur if necessary. If traffic volumes warrant, as determined by the Applicants, L&I or its contractor would extend the two existing sidings or construct the two new sidings. The exact siding locations would be based on operating needs and to minimize impact of highway crossings.

OEA Response

Regarding Applicants comments on the mitigation:

Draft EA MM 1 and VM 4 and VM 35: OEA made revisions to Draft EA MM 1 in response to comments received on the Supplemental EA and has elected to retain MM 1 as a separate OEA recommended measure in Final EA MM 1.

Draft EA MM 2 and VM 34: OEA has retained Draft EA MM 2 in the Final EA as MM 2 because it responds to specific concerns that have been raised by commenters.

Draft EA MM 5 and VM 5: In response to comments from INDOT, OEA has revised Draft EA MM 5 to clarify the timing of the subject consultations (Final EA, MM 4).

Draft EA MM 6 and VM 2: The Draft EA states that Transaction-related traffic would not move over the L&I Line until the proposed Transaction-related upgrades are completed. In this comment, Applicants want it clarified that "Transaction-related train traffic" means "when train traffic associated with the upgrades begin to move over the Line." OEA has decided to retain Draft EA MM 6 as Final EA MM 8 as well as 7VM 2 in its final recommended mitigation.

Draft EA MM 14: Until an MOA on the Flatrock River Bridge is executed by the signatories, Draft EA MM 14 has been retained in the Final EA as MM 19 but limited to the Flatrock River Bridge.

Draft EA MM 4: OEA has deleted Hamilton Fire Station, but in response to comments on the Supplemental EA, has made other revisions to this measure in Final EA MM 7.

The Supplemental and Final EAs reflect the most up-to-date siding information that has been provided by Applicants. That is, the Elvin and Brook sidings would be extended, if those extensions are determined necessary to achieve Applicants' operational efficiency objectives. New sidings at Crothersville and Underwood have been withdrawn by Applicants as potential components of the Proposed Transaction.

Commenter: Kenneth B. McMullen, Environmental Policy Manager, Indiana Department of Transportation

Comment

General

Indiana Department of Transportation (INDOT) notes that it would be difficult to issue the Final EA by November 6, 2013, as originally anticipated, because INDOT cannot issue its formal approval of the document until the requirements of the Section 106 of the regulations implementing the National Historic Preservation Act are satisfied. INDOT adds that it has 10 days to complete its review, which includes all documentation related to Section 106 and mitigation measures.

INDOT notes that the preliminary conclusions of the Draft EA list the potential adverse impacts of the Proposed Transaction as including emergency response/vehicle delay and noise/vibration. INDOT states that the replacement of the Flatrock River Railroad Bridge and potential Transaction-related ground disturbance in or near adjacent cemeteries would also be adverse impacts and these should also be listed.

In summarizing the environmental review process for the Proposed Transaction, the Draft EA notes that the Preliminary Draft EA (PDEA) had concluded that there would be no significant impacts from the Proposed Transaction. INDOT disagrees with that conclusion because of the proposed replacement of the Flatrock River Railroad Bridge and potential impacts to adjacent cemeteries.

Referring to a discussion on page v of the Draft EA, INDOT notes that the cited section of the United States Code (U.S.C.) does not contain a citation to the Board's environmental rules, which it believes should be provided.

Regarding proposed rail infrastructure upgrades under the Proposed Transaction, the Draft EA identifies potential federal permits that could be required (Draft EA, page 2-4). INDOT requests that potential state permitting requirements also be noted.

INDOT notes that the list of topics covered by mitigation should include cultural resources.

INDOT requests that the definition of voluntary mitigation and recommended mitigation be provided earlier in the document.

INDOT also provides a number of editorial and stylistic suggestions and identified several incomplete sentences in the Draft EA.

Cultural Resources

More specifically, INDOT claims that the proposed replacement of the Flatrock River Bridge would be an adverse effect to a historic structure and that the Final EA cannot be completed until

the Section 106 process is completed. INDOT adds that it cannot approve a final environmental document until the Section 106 process is completed. INDOT also requests that a cultural resources appendix be added to the Final EA that includes correspondence with the SHPO and other relevant documentation. Finally, it states that proper notification of artifacts or human remains discovered during Transaction-related construction should be identified as a requirement of Indiana state law and not just a Final EA recommendation or mitigation measure.

Socioeconomics

The Draft EA states that CSXT's proposed overhead traffic would not increase employment opportunities and that no parties on the Line identified any specific potential increases in rail shipping activity because of the Proposed Transaction. INDOT contends that these statements are confusing and requests clarification.

Soils

The Draft EA states that Transaction-related construction could require stormwater permits under the National Pollutant Discharge Elimination System. INDOT asks why IDEM, IDNR or USACE permits are not also discussed in this context.

Water Resources and Wetlands

INDOT states that the proposed replacement of the Flatrock River Bridge is a Section 106 issue that would bring include IDNR requirements for water resources. INDOT notes that IDNR would also be involved in wetlands permitting. INDOT states that OEA's recommendation that Applicants get a state Construction in Floodway Permit should be a requirement, not a recommendation.

Biological Resources

The Draft EA states that there could be short-term impacts to wildlife as a result of construction activities related to the Proposed Transaction. INDOT requests that the Final EA expound on these potential impacts. The Draft EA also states that the USFWS concludes that adverse impacts to federally listed species including the Indiana bat and several mussels would not likely occur if tree clearing does not occur during the Indiana bat roosting period and if BMPs are used to protect water quality during Transaction-related construction. INDOT observes that the period of sensitivity for mussels is not the same as for the Indiana bats.

Air Quality

INDOT requested clarification of a Draft EA statement regarding potential slight localized degradation of air quality because of increased fuel use on the Line. INDOT also notes that Clark County is a non-attainment area for fine particle standards (i.e., PM 2.5) and that Johnson and Marion counties are in an attainment area with a maintenance plan.

Section 4f/6f

INDOT notes that Pigeon Roost Memorial Park and other parks and schools adjacent to the Line might present Section 4f/6f issues.

Mitigation

1. INDOT notes that the Draft EA concludes that impacts to noise or emergency vehicle response would not be significant, but that the Draft EA includes mitigation for these impact areas. INDOT suggests that because mitigation has been proposed because the impacts would indeed be significant.
2. INDOT states that just because mitigation measures are proposed does not mean that adverse or significant impacts would be avoided.
3. INDOT notes that the Draft EA discussion of negotiated settlements on page ES-7 is confusing.
4. Mitigation should be described in terms of “Firm” and “For Consideration” according to INDOT ES CE Manual.
5. Regarding VM 5, INDOT states that “within six months of Applicants’ initiating operational changes” should be changed to “six months prior to Applicants’ initiating operational changes.”
6. INDOT states that VMs 15, 17, 20, 22 and 23 specify that coordination with INDR also be conducted in the implementation of the measures.
7. INDOT states that VM 29 should mention a check for archaeological sites indicated by the SHPO.
8. INDOT requests that VM 36 define “Operation Lifesaver.”
9. INDOT requests that IDNR be included in the list of agencies to be contacted under VM 48.
10. Under MM 1, INDOT questions whether it is possible for Applicants to meet with INDOT and KYTC within 45 days of the effective date of the Board’s final decision.
11. INDOT states that MM 5 is the same as VM 5.
12. INDOT states that consultations under MM 7 could require additional NEPA reviews.
13. Referring to MM 13, INDOT states the IDNR Division of Fish and Wildlife could require additional mitigation relevant to potential impacts to biological resources.
14. Regarding MM 14, INDOT notes that the final approval of funds cannot be granted until the requirements of Section 106 are satisfied.
15. Regarding MM 15, unanticipated requirements fall under the jurisdiction of Indiana state law.

OEA Response

General

OEA acknowledges INDOT’s comments on the Final EA schedule, Section 106 requirements, list of impacts noted as potentially adverse, conclusions in Applicant-prepared PDEA, corrections to U.S.C. citations, citations of state permitting requirements, and other editorial and stylistic

comments. OEA adds that the Final EA includes an expanded discussion of voluntary mitigation and recommended mitigation and what is meant by those terms.

Cultural Resources

The Supplemental EA contains all the Section 106 consultation correspondence at the time of publication. OEA also refers readers to its summary of the status of the Section 106 consultations in this Final EA at Section 1.4 and its reply above to comments from Mitchell Zoll, Deputy State Historic Preservation Officer, Indiana.

Socioeconomics

A revised discussion of potential employment impacts is provided in Section 3.3.2 in the Supplemental EA.

Soils

In response to INSDOT's comments, the Supplemental EA has additional discussions on various permitting requirements that could apply to the Proposed Transaction (Supplemental EA, Section 3.0).

Water Resources and Wetlands

OEA's recommended mitigation measures in the Final EA include references to INDNR, INDOT, INDEM, and others. OEA is the office within the Board responsible for ensuring the Board's compliance with NEPA and other relevant federal environmental statutes. Mitigation measures are recommended by OEA to the Board's three decision makers (the Chairman, Vice Chairman, and the Commissioner). That is, OEA recommends that in any decision approving a proposed transaction, the Board adopt and impose OEA's final recommended mitigation measures. The Board can agree, disagree, or revise OEA's final recommended conditions.

Biological Resources

The Supplemental EA contains expanded discussions of potential impacts of the Proposed Transaction. Readers are also referred to OEA's response above to comments from the USFWS.

Air Quality

OEA notes that the Supplemental EA contains an expanded and updated discussion of air quality issues.

Section 4f/6f

Section 4(f) refers to statutory requirements that were originally enacted through the Department of Transportation (DOT) Act of 1966. As part of a 1983 rewriting of the DOT Act, Section 4(f) was amended and recodified as Section 303. Tradition within the environmental field, however,

results in the continued reference to the program as Section 4(f). As stated at 49 U.S.C. § 303, the Section 4(f) program directs the Secretary of Transportation to ensure that transportation plans and programs protect publicly owned parks, recreation areas, and wildlife and waterfowl refuges, and publicly or privately owned historic sites. However, section 4(f) does not apply to the Surface Transportation Board's decision making process. Although organizationally housed within DOT, the Board is an independent regulatory agency with its own decision making capability (49 U.S.C. § 703(c)). Applications before the Board are not subject to the review or approval of the Secretary of Transportation. Therefore, the Board is not required to comply with Section 4(f).

Section 6(f) of the Land and Water Conservation Fund (16 U.S.C. §§ 4601-4) is intended to protect parks and other recreation resources from conversion to other uses. The Proposed Transaction would not require the conversion of any lands outside the Line's right-of-way, and therefore, no 6(f) properties would be affected.

Mitigation

OEA notes that the majority of INDOT's comments involving mitigation pertain to policy, procedures and preferences of INDOT. OEA is not obligated to identify, describe and present mitigation that complies with INDOT manuals or other state requirements. OEA disagrees with INDOT's inference that mitigation is only warranted when potential impacts are expected to be significant. OEA refers INDOT to 40 C.F.R. § 1508.20, Mitigation. That section of the regulations of the President's Council on Environmental Quality implementing NEPA makes clear that mitigation measures can be used to avoid, minimize, rectify, reduce or compensate for impacts. Finally, in response to INDOT's requests for clarification, OEA has made some edits to certain mitigation measures in the Final EA.

Commenter: Kenneth Westlake, Chief, NEPA Implementation Section, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5

Comment

Specific Comments

The U.S. Environmental Protection Agency (USEPA) notes that eleven additional trains per day would move between Indianapolis, IN and Sydney, OH under the Proposed Transaction. According to USEPA, these trains are a connected action and the NEPA evaluation should address the potential impacts of these trains on Indianapolis, IN, Louisville, KY and the section of rail line between Indianapolis, IN and Sydney, OH.

USEPA states that the noise analysis in the EA should address Louisville, KY and Indianapolis, IN (i.e., beyond the termini of the Proposed Transaction) and should clarify whether the noise-related mitigation in the Draft EA would decrease potential noise impacts to acceptable levels. USEPA also observes that the mitigation measures in the Draft EA do not include post-project noise monitoring to determine if noise reduction targets are achieved.

USEPA notes that any proposed construction would be confined to the existing right-of-way, but nevertheless, is concerned that some wetland, pond and floodplain areas would be impacted by the Proposed Transaction. USEPA states that the NEPA analysis here should provide an accounting of which wetlands, waters and floodplains would be impacted. Furthermore, the accounting should include a description of the resource (i.e., type and size) and the quantification of the area impacted.

USEPA states that the Flatrock River Bridge has caused extensive scouring of the banks. It indicates that the proposed replacement of this structure should repair this damage and that the new bridge should be designed to prevent future scouring.

USEPA states that the Draft EA's conclusion that any increase in animal strikes on the Line would be offset by fewer animal strikes on CSXT's connecting lines is not supported by analysis. USEPA also states that there is more "priority habitat" near the Line than there is near CSXT's rail line along the Ohio River. Therefore, USEPA states, greater impacts to threatened and endangered species, state priority species and migratory species would be expected. While animal strikes have not been recorded, USEPA recommends that some method of estimating these impacts be devised and mitigation measures developed in concert with USFWS or INDNR.

USEPA notes that the Draft EA indicates that migratory bird roosting areas would experience potential impacts. USEPA recommends mitigation to address this potential impact with nearby habitat restoration at appropriate ratios to compensate for losses.

Generic Comments

1. The Draft EA must be consistent with Section 309 of the Clean Water Act.
2. Any demolition should be done according to SHPO and NHPA requirements and should ensure that the disposal of federal property occurs according to federal regulations.
3. The Draft EA should address the proper handling, removal and disposal of hazardous materials; wastewater management; indoor air quality; energy and water conservation; pollution prevention measures; and potential impacts to resources of concern.
4. The Draft EA and draft Finding of No Significant Impact should be made available for public inspection and it would be beneficial to ensure the public is well informed at all times through frequent public meetings, flyers, etc.
5. The Draft EA should address needed and required permits, and how to obtain, implement and comply with the permits.
6. The Draft EA should quantify tree removal and the cumulative impacts of tree removal.
7. The Draft EA should make sure that decisions based on archaeological surveys done in previous years are still valid.
8. The Draft EA should address impacts to traditional American Indian resources and American Indian Tribes/organizations should be consulted.
9. The Draft EA should address the Native American Graves and Repatriation Act to identify National Register-eligible archaeological sites.
10. The Draft EA should detail environmental justice community analyses and involvement if any.
11. The Draft EA should address temporary, construction-related noise.

12. The Draft EA should establish the contractor's procedures for fill materials.
13. The Draft EA should disclose if there are any reasons that contaminated soils could be encountered during construction. Appropriate studies should be completed before work in the area is conducted.
14. The Draft EA should include the latest cumulative impacts analysis including air quality.
15. The Draft EA should address the handling of aboveground and underground storage tanks, if any.
16. The Draft EA should address potential impacts from air toxics from the project.
17. In general, construction should be limited to existing rights-of-way and BMPs utilized. Sensitive resources such as wetlands, floodplains, and prime farmland should be avoided and appropriate erosion and sediment control measures should be utilized.
18. Contractors should be encouraged to maintain and operate all construction equipment to minimize air emissions. Contractors should be offered incentives to use retrofitted diesel equipment or purchase ultra-low diesel in their bids. The Draft EA should address potential construction impacts on air quality.
19. The Final EA should include the time schedule for the proposed project.
20. The long-term and indirect impacts of the proposed action should be considered.
21. Recycling should be conducted as required by Executive Order 12780.
22. Recommendations made by Green Building should be followed whenever possible.

OEA Response

OEA prepared a Supplemental EA to address the following USEPA comments: potential impacts of additional train movements on the CSXT rail line between Indianapolis, IN and Sidney, OH under the Proposed Transaction; potential noise impacts on the CSXT rail lines that would experience an increase train numbers under the Proposed Transaction; potential changes in animal strikes on CSXT rail lines that would see a decrease in train numbers and the L&I and CSXT rail lines would see an increase in train numbers under the Proposed Transaction; and further quantification of Transaction-related construction impacts including impacts to floodplains, wetlands and forested areas. OEA disagrees with USEPA's statement that any replacement of the Flatrock River Bridge should include a requirement that past damage from extensive bank scouring, which may be attributed to the old bridge, be repaired. OEA is not aware of any regulatory authority that would enable OEA to unilaterally require such repairs.

OEA acknowledges the additional generic comments provided by USEPA on the content of Draft EAs in general. OEA believes that the Draft, Supplement and Final EAs address USEPA's concerns, as appropriate.

3.2 SUPPLEMENTAL EA – COMMENTS AND OEA'S RESPONSES

Commenter: Debbie Fox, Louisville Jefferson County Emergency Management Agency, KY

Comment

The Louisville Jefferson County Emergency Management Agency (LJCEMA) states that the proposed increase of 13 to 15 trains per day and proposed increased travel speeds that would

result from the Proposed Transaction would increase the potential for hazardous material incidents either from leaks or train derailments. LJCEMA also states that trains transporting hazardous materials should not travel more than 25 miles per hour in populated areas or 45 miles per hour in rural areas. Finally, LJCEMA states that at the end of the seven-year period needed to complete rail line upgrades before CSXT can begin moving larger, faster and heavier trains on the L&I Line under the Proposed Transaction, the economy could support more trains than what CSXT is projecting.

OEA Response

OEA clarifies that only approximately 3.3 miles of rail line in Kentucky would be subject to increases in train numbers under the Proposed Transaction (i.e., Segment No. LIRC-03 from Milepost 108.9 to Milepost 110.5, and Segment No. CSXT-01a from Milepost 0.0 to Milepost 2.7) (Supplemental EA, p. 2-11). Under the Proposed Transaction, train numbers on these two segments in Kentucky would increase in the range of 12 to 13 trains per day (Supplemental EA, p. 2-13). However, maximum train speeds would increase on the LIRC-03 portion to 20 miles per hour and would remain at 10 miles per hour on the CSXT-01a portion (Supplemental EA, p. 2-11). OEA notes that there would be no Transaction-related change in the volume of hazardous materials moved over the two segments of concern to LJCEMA because CSXT's trackage rights agreement with L&I prohibit CSXT from transporting hazardous material over the L&I Line (Supplemental EA, p. 22-11). In addition, Applicants have proposed a number of voluntary mitigation measures to assist in training emergency providers; ensure compliance with applicable U.S. Department of Transportation, U.S. Pipeline and Hazardous Materials Safety Administrator and Department of Homeland Security requirements; participate in drills; conduct community workshops; and develop internal emergency response plans (Final EA, VM 40 through 48).

Regarding any potential deviation in the number of trains from what is currently proposed by Applicants that might move on these two segments at the end of the proposed upgrade period (which could take up to seven years to complete), OEA cannot speculate on such a number. Applicants before the Board are expected to provide reasonable estimates of projected train traffic, and commenters have not demonstrated that Applicants' train estimates are unreasonable. Any projections are subject to change, depending on the economy and other issues that cannot always be predicted.

Commenter: Kevin P. Watts, Sr., Indianapolis, IN

Comment

Mr. Watts wants to know if he would be compensated if increases in noise and vibration from train traffic under the Proposed Transaction damage his home.

OEA Response

Train-induced vibration is not evaluated on a cumulative or daily exposure basis. Rather it is evaluated by looking at the highest vibration levels that are expected to occur as each train passes. Therefore, an increase in the number of trains per day does not by itself lead to an

increase in vibration and vibration levels during individual train pass-by events would not change under the Proposed Transaction. The analysis in the Supplemental EA indicates that there would no increase in the number of receptors that would be subject to vibration that could interrupt sleep as a result of the Proposed Transaction (Supplemental EA, pp. 3-100 and 3-101). The Supplemental EA also did not identify train-induced vibration levels that would contribute to structural damage. Thus, it is not likely that noise and vibration from train traffic under the Proposed Transaction would damage the commenter's home.

Commenter: *E. Ninette Basil, Seymour, IN*

Comment

Ms. Basil states that Seymour is too small of a town to accommodate the more frequent, faster and longer trains that would move on the L&I Line under the Proposed Transaction and that these proposed trains would make it difficult to cross the rail line. She also states that homes near the L&I Line would experience an increase in noise.

OEA Response

Regarding vehicle delays, the Draft EA looked at approximately 15 at-grade crossings in Seymour (Draft EA, Appendix C, Table C-1). All the at-grade crossings currently have a Level of Service or LOS of A (i.e., traffic is free flowing) and total vehicle delays per day at the crossings range from 0.48 minutes per day at S. St. Louis Avenue to 84.96 minutes per day at Tipton Street (Draft EA, Appendix C, Table C-1). Under the Proposed Transaction, all at-grade crossings would retain a LOS of A, and total vehicle delays would range from 6.61 minutes per day at S. St. Louis Avenue to 1,712.12 minutes per day at Tipton. The larger total vehicle delay at Tipton Street is attributable to the higher volume of traffic at that crossing (i.e., 25,900 vehicles per day). OEA's analysis also indicates that, under the Proposed Transaction, increases in the average delay per vehicle would range from an increase of 5 seconds per delayed vehicle at 4 crossings to 39 seconds per delayed vehicle at 1 crossing (Tipton Street), and 1 crossing would see a decrease of 22 seconds per delayed vehicle (O'Brien Street). Although OEA does not consider any of these impacts significant, OEA and Applicants acknowledge that the increases in delays under the Proposed Transaction would likely be viewed as a noticeable disruption to Seymour and other communities on the L&I Line. Accordingly, in the Final EA, OEA recommends a number of mitigation measures (both volunteered by Applicant and independently developed by OEA) to mitigate some of these impacts (Final EA, VMs 31 through 39 and MMs 1 and 3 through 6).

OEA concurs that there would be an increase in train-related noise under the Proposed Transaction in Seymour. The number of noise-sensitive receptors (such as residences) within the 65 dBA contour would increase from 363 to 647 receptors under the Proposed Transaction (Draft EA, p. 3-63). A total of 167 receptors in Seymour would experience an increase in noise of at least 5 dBA and day-night average noise levels of greater than 70 dBA (Draft EA, p. 3-64).

However, a review of the noise contour figures in the Draft EA indicates that the existing and Transaction-related noise impacts in Seymour are largely attributable to the blowing of

locomotives horns as trains approach at-grade crossings (Draft EA, Appendix G, Figures 76 to 79 of 147). Locomotive horn use is required by Federal Railroad Administration (FRA) safety regulations. In general, FRA requires use of locomotive horns or other audible warning devices where trains cross public roadways at-grade. These same FRA safety regulations also provide guidance on how communities can create quiet zones (QZ) by implementing alternative safety measures that can take the place of locomotive horns at public at-grade crossings. Applicants have agreed to cooperate with interested communities in the establishment of QZs and to assist in identifying supplemental or alternatives measures that could enable a community to establish a QZ (Final EA, VM 55). Applicants have also agreed to work with communities that have noise-sensitive receptors that would experience at least a 5 dBA and reach 70 dBA because of Transaction-related train increases and to mitigate the train noise level to low as 70 dBA by cost-effective means (Final EA, VM 54). OEA believes that the mitigation recommended in the Final EA is a reasonable way to minimize, to the extent practicable, the noise impacts of the Proposed Transaction in Seymour.

Commenter: Richard Williams, Louisville, KY

Comment

Mr. Williams states that he lives near the L&I Line and that the increase in train traffic under the Proposed Transaction would be significant and would adversely impact the quality of life for him and his neighbors.

OEA Response

Comments noted.

Commenter: Joe McGuinness, Mayor, City of Franklin, IN

Comment

Mr. McGuinness states that there are ten at-grade crossings of the L&I Line in the City of Franklin. He adds that some of these crossings have automated warning lights and only two have automated crossing gates. Because of the increase in train frequency, speed and length under the Proposed Transaction, he states that CSXT should be required to upgrade all ten crossings to include automated warning flashers, bells and crossing gates.

To address potential noise impacts, Mr. McGuinness states that CSXT should be required to install noise barriers along the L&I Line within residential neighborhoods or develop policies and procedures in consultation with the city to minimize noise impacts. He cites reductions in train speeds and adjustments to trains scheduling as examples of changes to policies and procedures. Additionally, Mr. McGuinness requests that a Quiet Zone be established for a large portion of the L&I Line within the city and that the upgrades necessary to establish the Quiet Zone be paid for entirely by CSXT and L&I.

To minimize unauthorized access to the L&I Line, he states that CSXT should install an access barrier, such as a chain-link fence, in residential areas where pedestrians may attempt to cross the L&I Line.

Mr. McGuinness observes that eight of the ten crossings in the city are located in the developed downtown core neighborhoods and that the increased train traffic under the Proposed Transaction would adversely impact traffic movement in the city. Accordingly, the city requests that CSXT be required to obtain approval from city officials for train schedules and any deviations from these schedules. He also expresses concern over blocked crossings from trains that are moving much slower than the existing track speeds, and the inability of the city to issue citations under state law IC 8-6-7.5-3 to the train crews because the trains are moving slowly rather than being stopped. He requests that the Board prohibit trains from “creeping” through the city at slow speeds.

Mr. McGuinness notes that the passenger rail traffic on the L&I Line between Franklin and Indianapolis is a component of a mass transit plan for the city and the region, and he requests that a provision for passenger rail on the L&I Line be included in any Board approval of the Proposed Transaction.

Mr. McGuinness expresses concern that CSXT could move hazardous materials over the L&I Line by simply amending or modifying the trackage rights agreement that currently prohibits CSXT from moving such materials on the L&I Line. He adds that the voluntary mitigation measures offered by CSXT and L&I are just window dressing and there would be no penalty or enforcement for lack of compliance. Finally, he states that the voluntary mitigation should be mandatory.

OEA Response

Regarding the commenter’s requests for upgrades in crossing safety equipment, OEA notes that the type of equipment at any given at-grade crossing (whether it’s a stop sign, crossbucks, automatic flashing lights, or automatic gates) is determined by the applicable state department of transportation, not the railroad. OEA adds that the commenter does not provide a basis for mandating that all Franklin crossings be outfitted with automatic flashers, bells and gates.

OEA concurs that there would be an increase in train-related noise under the Proposed Transaction in Franklin. The number of noise-sensitive receptors (such as residences) within the 65 dBA contour would increase from 188 to 440 receptors under the Proposed Transaction (Draft EA, p. 3-63). A total of 189 receptors in Franklin would experience an increase in noise of at least 5 dBA and day-night average noise levels of greater than 70 dBA (Draft EA, p. 3-64).

However, a review of the noise contour figures in the Draft EA indicates that the existing and Transaction-related noise impacts in Franklin are largely attributable to the blowing of locomotive horns as trains approach at-grade crossings (Draft EA, Appendix G, Figures 21 to 24 of 147). Locomotive horn use is required by Federal Railroad Administration (FRA) safety regulations. In general, FRA requires use of locomotive horns or other audible warning devices where trains cross public roadways at-grade. These same FRA safety regulations also provide

guidance on how communities can create quiet zones (QZ) by implementing alternative safety measures that can take the place of locomotive horns at public at-grade crossings. Applicants have agreed to cooperate with interest communities for the establishment of QZs and assist in identifying supplemental or alternatives measures that could enable a community to establish a QZ (Final EA, VM 55). Applicants have also agreed to work with communities that have noise-sensitive receptors that would experience at least a 5 dBA and reach 70 dBA because of Transaction-related train increases and to mitigate the train noise level to low as 70 dBA by cost-effective means (Final EA, VM 54). In OEA's view, this mitigation is a reasonable way to minimize the noise impacts on Franklin that would result from increased train traffic caused by the Proposed Transaction.

In his request that fencing be installed along the right-of-way to control unauthorized access, the commenter did not provide justification on the need for security fencing. Typically, the installation right-of-way fencing, if any, is left to the discretion of the applicable railroad. Regarding the mobility of vehicular traffic, OEA calculated queue length for existing conditions and under the Proposed Transaction for crossings (Draft EA, pp. 3-5 through 3-7; Draft EA, Appendix C, Table C-6). In Franklin, E. Jefferson Street has the longest queues under existing conditions (518 feet) and would have the longest queue under the Proposed Transaction (708 feet). A queue of 708 feet could extend to Home Avenue to the west of the L&I Line, but the average delay per vehicle would increase by just 27 seconds and the Level of Service at the crossing would remain at LOS A, and therefore, substantial impacts to community mobility are not expected. OEA adds that the regulation of train schedules by local communities is preempted under the Board's governing statute, 49 U.S.C. 10501(b), which gives the Board exclusive jurisdiction over rail transportation to assure the free flow of interstate commerce and uniform rail regulation. Accordingly, OEA cannot accommodate the commenter's request for the city to be granted authority over train scheduling on the L&I Line.

However, Applicants and OEA have developed reasonable mitigation in the Final EA to minimize the potential impacts of the Proposed Transaction on affected communities like Franklin. These measures include VMs 1 through 3, 33 through 39, and 54 through 61, and MMs 1 through 8.

Any concerns about potential changes to CSXT's trackage rights agreement regarding the movement of hazardous material on the L&I Line by CSXT, or in the potential future use of the L&I Line for passenger rail are speculative at this time. CSXT has provided information on current hazardous materials movements and that information was properly used in assessing hazardous materials transport for this EA. OEA adds that Applicants have volunteered a number of mitigation measures that address hazardous material transportation (Final EA, VMs 40 through 48). Applicants would be required to comply with this voluntary mitigation if the Proposed Transaction is approved.

Regarding the commenter's concerns about the origin of the mitigation (i.e., Applicants versus OEA), there is no difference between the obligations that would be imposed on the Applicants. In the Final EA, OEA's final recommendations for mitigation conditions encompass both Applicants' voluntary mitigation and OEA's independently developed mitigation. In any

decision approving the Proposed Transaction, all mitigation imposed by the Board, regardless of origin, would be binding on Applicants.

Commenter: Gary A Meyer, President/CEO, Schneck Medical Center, Seymour, IN

Comment

Mr. Meyer states that the Schneck Medical Center is the sole provider of hospital and emergency medical services in Seymour. The facility is located west of the L&I Line, whereas, the majority of the city's population and most of the large retail outlets and industrial parks are located east of the L&I Line. Mr. Meyer expresses concern about potential impacts to community safety and emergency response where nearly all at-grade crossings in the city could be blocked by a stopped or passing train. Mr. Meyer cites several specific concerns about impacts of the Proposed Transaction: 1) increased train traffic would grossly extend emergency response times to the I-65 corridor, which is on the east side of the city; 2) the transfer times of critical patients to or from the hospital would be extended; 3) blocked crossings would compromise the current world-class response time that the hospital and Jackson County Emergency Medical Services have established in transferring patients to the cardiac catheterization lab at Columbus Regional Hospital; 4) many of the at-grade crossing signs are guarded by cross-buck signs only and lack automated equipment such as flashing lights and gates, and many have poor visibility on approach so the increased number and speed of trains under the Proposed Transaction would pose a safety concern to the community; and 5) the frequency of blocked at-grade crossings from stopped trains could increase under the Proposed Transaction and these blockages would compromise the ability of emergency service providers of maintaining response times.

Finally, Mr. Meyer requests that CSXT and L&I work with the Seymour community to identify safety and access issues and develop remedies such as constructing a grade-separated crossing of U.S. Route 50 through Seymour and constructing a satellite facility for the Jackson County Emergency Medical Services east of the L&I Line.

OEA Response

OEA refers readers to OEA's responses above to Draft EA comments from Jackson County Emergency Medical Services and Schneck Medical Center.

Commenter: James Dailey, Crothersville, IN

Comment

Mr. Dailey notes that he lives two blocks from the L&I Line and drives a senior citizen van around the community. He supports continued use of the L&I Line through Crothersville, and if needed to facilitate continued rail service under the Proposed Transaction, replacement of the Flatrock River Bridge in Columbus.

OEA Response

Comments noted.

Commenter: Mark W. Myers, Mayor, City of Greenwood, IN

Comment

Mr. Myers states that there are seven at-grade crossings of the L&I Line in the City of Greenwood. He adds that some of these crossings have automated warning lights and bells but none of the crossings have automated crossing gates. Because of the increase in train frequency, speed and length under the Proposed Transaction, he states that CSXT should be required to upgrade all at-grade crossings in the city to include automated warning flashers, bells and crossing gates, and to reimburse the city for all costs associated with the design and construction of the upgraded crossings at Worthsville Road and Pushville Road, both currently under construction.

To address potential noise impacts, Mr. Myers states that CSXT should be required to install noise barriers along the L&I Line within residential neighborhoods or develop policies and procedures in consultation with the city to minimize noise impacts. He cites reductions in train speeds and adjustments to trains scheduling as examples of changes to policies and procedures. Additionally, Mr. Myers requests that a Quiet Zone be established for a large portion of the L&I Line within the city and that the upgrades necessary to establish the Quiet Zone be paid for entirely by CSXT and L&I.

To minimize unauthorized access to the L&I Line, Mr. Myers states that CSXT should install an access barrier, such as a chain-link fence, in residential areas where pedestrians may attempt to cross the L&I Line.

Mr. Myers states that six of the local roads and streets crossed by the L&I Line are oriented east-west. Peak hour congestion on the roads is worsened by passing trains on the L&I Line, and an increase in train traffic under the Proposed Transaction would adversely impact traffic movement in the city. Accordingly, the commenter requests that CSXT be required to obtain approval from city officials for train schedules and any deviations from these schedules. The commenter also expresses concern over blocked crossings from trains that are moving much slower than the existing track speeds, and the inability of the city to issue citations under state law IC 8-6-7.5-3 to train crews because the trains are moving slowly rather being stopped. Mr. Myers states that should CSXT block crossings, it should be required to make an investment in the community to provide more facilities and equipment and enhance public safety. He also requests that the Board prohibit trains from “creeping” through the city at slow speeds.

Mr. Myers notes that the passenger rail traffic on the L&I Line between Franklin and Indianapolis is a component of a mass transit plan for the city and the region, and he requests that a provision for passenger rail on the L&I Line be included in any Board approval of the Proposed Transaction.

Mr. Myers expressed concern that CSXT could move hazardous materials over the L&I Line by simply amending or modifying the trackage rights agreement that currently prohibits CSXT from moving such materials on the L&I Line. He added that the voluntary mitigation measures offered by CSXT and L&I are just window dressing and there would be no penalty or enforcement for lack of compliance. He states that the voluntary mitigation should be mandatory.

Lastly, Mr. Myers states that the L&I Line does not provide any direct freight service to the City, and he requests that the Board require CSXT to construct a rail spur to provide freight rail service to the industrial users in the southern part of the city, particularly between Worthsville and Pushville roads.

OEA Response

Mr. Myers' comments mirror those submitted by Mr. McGuinness for the City of Franklin. OEA refers readers to OEAs responses above to Mr. McGuinness' comments.

Commenter: Lucas Mastin, Director, Johnson County Highway Department, IN

Comment

Mr. Mastin notes concerns about traffic flow restrictions, at-grade crossing safety and train noise within Johnson County including the City of Greenwood. Mr. Mastin also resubmitted his August 22, 2011 comment letter on the scope of the preliminary draft EA for the Proposed Transaction. In those comments, Mr. Mastin notes that there are eight at-grade crossings of the L&I Line in Johnson County, and each crossing is stop-controlled for vehicular traffic through the use of stop signs. He adds that all eight crossings have sight-distance issues caused by substantial grade changes between road and rail line elevations, or by poorly maintained vegetation along the fence lines delineating the rail line right-of-way. Prior to any increase in train traffic under the Proposed Transaction, Mr. Mastin requests that CSXT review for the crossings for appropriate corrective actions including the consideration of active crossing warning devices, adjustments to road grade, providing a clear line-of-sight for vehicular traffic, or a combination of these potential solutions.

Mr. Mastin also notes that the passenger rail traffic on the L&I Line between Franklin and Indianapolis is a key component for future passenger rail service in the Long-Range Regional Transportation Plan prepared by the Indianapolis Regional Transportation Council and the Indianapolis Metropolitan Planning Organization.

OEA Response

Most of Mr. Mastin's comments mirror those submitted by Mr. McGuinness for the City of Franklin. OEA refers readers to OEAs responses above to Mr. McGuinness' comments. On the topic of sight-distance issues at crossings, OEA believes that issue is largely addressed by Final EA, MM 1, which requires consultations and the preparation of a Grade Crossing Mitigation

Plan, and Final EA, VM 2, under which Applicants would be required to consult with communities on the L&I Line regarding visibility issues.

Commenter: Patrick Johnson, Manager, Traffic Engineering, Department of Public Works, Louisville, KY

Comment

Mr. Johnson expresses traffic delay, crossing safety and train noise concerns, particularly at two, existing, at-grade crossings of the Louisville Connection at W. Kentucky Street and W. Shipp Avenue. He notes that student housing developments and a new project construction site are located directly west of the W. Shipp Avenue crossing. Under the Proposed Transaction, Mr. Johnson states vehicular delays and train horn noise impacts would worsen. Mr. Johnson adds that both at-grade crossings have notable pedestrian and bicycle use because of nearby residential and student housing populations, and that potential impacts to pedestrians and bicyclists need to be addressed. Finally, Mr. Johnson states that the CSXT overpass of 4th Street is badly deteriorated and that insufficient drainage renders the sidewalk below unsafe and impassable for pedestrians following heavy rains. He suggests that mitigation is warranted at this grade-separated crossing.

OEA Response

OEA evaluated Transaction-related impacts to W. Kentucky Street and W. Shipp Avenue in the Supplemental EA. Both at-grade crossings currently have a Level of Service or LOS of C (i.e., stable flow, at or near free flowing) and total vehicle delays per day at the crossings range from 571.59 minutes per day at W. Shipp Avenue to 816.55 minutes per day at W. Kentucky Street (Supplemental EA, Appendix B, Attachments B-1 and B-4). Under the Proposed Transaction, the LOS would dropped to E (unstable flow, operating at capacity), and total vehicle delays would range from 1,776.00 minutes per day at W. Shipp Avenue to 2,510.90 minutes per day at W. Kentucky Street. Also under the Proposed Transaction, the average delay per vehicle would increase by 49 seconds to 73 seconds at both crossings. Because Transaction-related crossing delays at W. Kentucky Street would also exceed OEA's threshold of over 40 hours (i.e., over 2,400 minutes) of total vehicle delay per day, OEA also evaluated queue lengths and the potential for queues to constrain community mobility. OEA's analysis showed that the Proposed Transaction would not impact mobility of major roadways adjacent to W. Kentucky Street (Supplemental EA, p. 3-10).

Although OEA does not consider any of these traffic impacts significant, OEA and Applicants recognize that the increases in delays under the Proposed Transaction could be viewed as a noticeable disruption to the community. Accordingly, in the Final EA, OEA recommends a number of mitigation measures to mitigate some of these impacts (Final EA, VMs 33 through VM 39 and MMs 1 through 8. Some of these mitigation measures also address pedestrian safety, which was an additional concern expressed by the commenter.

OEA concurs that there would be an increase in train-related noise under the Proposed Transaction in vicinity of CSXT's Louisville Connection. The number of noise-sensitive

receptors (such as residences) within the 65 dBA contour would increase from 21 to 478 receptors under the Proposed Transaction (Supplemental EA, p. 3-98). No receptors adjacent to the Louisville Connection would experience an increase in noise of at least 5 dBA and day-night average noise levels of greater than 70 dBA (Supplemental EA, p. 3-98).

A review of the noise contour figures in the Supplemental EA, however, indicates that the existing and Transaction-related noise impacts along the Louisville Connection are largely attributable to the blowing of locomotive horns as trains approach the at-grade crossings (Supplemental EA, Appendix H, Noise Contour Maps, Pages 6 through 8 of 9). Locomotive horn use is required by Federal Railroad Administration (FRA) safety regulations. In general, FRA requires use of locomotive horns or other audible warning devices where trains cross public roadways at-grade. These same FRA safety regulations also provide guidance on how communities can create quiet zones (QZ) by implementing alternative safety measures that can take the place of locomotive horns at public at-grade crossings. Applicants have agreed to cooperate with interested communities for the establishment of QZs and assist in identifying supplemental or alternative measures that could enable a community to establish a QZ (Final EA, VM 55). Applicants have also agreed to work with communities that have noise-sensitive receptors that would experience at least a 5 dBA and reach 70 dBA because of Transaction-related train increases and to mitigate the train noise level to low as 70 dBA by cost-effective means (Final EA, VM 54).

Finally, in Applicants' reply to comments received by OEA on the Supplemental EA, CSXT states that it would continue to maintain the 4th Street overpass as needed.

Commenter: Thomas Snyder, Seymour, IN

Comment

Mr. Snyder expresses support for the Proposed Transaction but suggests that five at-grade crossings in a one mile length of track in Seymour have inadequate safety equipment and poor visibility of approaching trains. He states that most crossings in Seymour have a visibility distance of 200 yards. Mr. Snyder also states that the new crossing lights in front of his house come on 30 seconds before a train arrives and the gates come down 25 seconds before a train arrives, and that 5 second window is inadequate to stop a loaded tractor-trailer.

OEA Response

Regarding crossing safety, OEA refers Mr. Snyder to Final EA, MM 1, which requires consultations and the preparation of a Grade Crossing Mitigation Plan by Applicants. OEA believes that the development and implementation of this plan would adequately address the commenter's concerns. Final EA, VM 2 would address commenter's concerns regarding visibility.

Commenter: Louis Gitomer, Outside Legal Counsel Representing CSX Transportation, Inc. and Louisville & Indiana Railroad Company, Inc.

Comment

Mr. Gitomer provides comments on Applicants' Voluntary Mitigation (VM) and additional mitigation measures (MM) preliminarily recommended by OEA in the Supplemental EA. For VM 3, Mr. Gitomer clarifies that Applicants would comply with specific requirements of a U.S. Army Corps of Engineers' permit rather than a set distance from jurisdictional waters. For VM 13, Mr. Gitomer clarifies that Applicants would only use herbicides that have been approved by the U.S. Environmental Protection Agency. For VM 21, Mr. Gitomer clarifies that Applicants would only coordinate construction activities with utilities that have a contractual agreement with Applicants to have placed utilities on L&I property. Applicants note that they have no legal obligation to notify utilities that may be trespassing on L&I property. Regarding VMs 23 through 29, and VMs 31 through 54, Mr. Gitomer clarifies that these specific measures, apply to the three CSXT rail lines addressed in the Supplemental EA (i.e., Indianapolis Terminal Subdivision – Louisville Secondary Branch, Indianapolis Line Subdivision, and Louisville Connection). He adds that these measures pertain to rail line operations and that L&I does not have an ownership in or operation and maintenance role for these three CSXT rail lines. Mr. Gitomer also edited VM 42 to clarify CSXT's intent.

Regarding OEA's preliminarily recommended mitigation, Mr. Gitomer notes that MMs 1, 3, 4 and 14, in the Supplemental EA, pertain to operations on CSXT rail lines, and therefore, he requests that these four measures apply to only CSXT. For MM 11, Mr. Gitomer requests that the second paragraph be removed because there is no justification for this MM in the Supplemental EA. For MM 12, Mr. Gitomer requests that a cease work situation, in the context of an unanticipated discovery, be limited to a 25-foot radius of the discovery and no greater than 50 feet in diameter. Mr. Gitomer's rationale for this limitation is that an unanticipated discovery on the north bank of the Flatrock River should not stop work on the south bank of the Flatrock River.

OEA Response

In the Final EA, OEA revised Applicants' VMs, as requested, and clarified which Applicant, L&I or CSXT, to which a mitigation measure applies.

Regarding the mitigation measures developed by OEA, the historic preservation measures in the Final EA have been revised to reflect the status of Section 106 consultations at the time the Final EA was prepared. Other measures have been revised or clarified to the extent OEA believes is appropriate.

Commenter: Kenneth Westlake, Chief, NEPA Implementation Section, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Region 5

Comment

The U.S. Environmental Protection Agency (USEPA) recommends that the Board provide tree mitigation for all losses of upland trees/forest at a 1:1 ratio using native species. According to USEPA, the Board should coordinate this mitigation with the Indiana Department of Natural Resources, Indiana Department of Environmental Management and local parks departments. With this USEPA-proposed mitigation, the statement “no impact on vegetation” in Table ES.4-1 of the Supplemental EA would, in USEPA’s view, be accurate. USEPA adds that for any trees that need to be removed in any temporary construction staging areas, the root balls should be left in place.

USEPA provides comments on CSXT’s VM 25. It states that the identification and evaluation of at-grade crossings as candidates for closure should address potential impacts to adjacent roadways and that the EA should address traffic, safety and Level of Service impacts of potential at-grade crossing closures. The agency requests clarification of how potential roadway improvements, while improving capacity, would decrease vehicle delays. It states that it is unclear when and how frequently a survey of at-crossing signaling, striping, etc. would occur, and which entities would make the final decision on needed changes or upgrades.

Regarding VM 27 and MM 1, USEPA recommends that these measures be clarified and consolidated, and that the clarifications address what criteria would be used to determine whether safety enhancements are needed for at-grade crossing and what obligation CSXT would have to implement the improvements.

Regarding VM 28, USEPA states that it is unclear what criteria would be used to determine whether pedestrian safety should be improved and what obligation CSXT would have to implement any identified safety enhancements for at-grade crossings.

For VM 23, USEPA states that it is unclear what criteria would be used by Applicants to determine where to replace manual switches with power switches to minimize trains from blocking at-grade crossing including criteria used to define “excessive periods of time.” The agency also recommends that all 51 at-grade crossings that would experience a either a degradation of Level of Service by one or more levels, or vehicle delay of over 40 vehicle hours per day, be analyzed for and receive power switches.

USEPA also states that MM 1 and MM 14 are vague and noncommittal. It recommends that the Final EA include a description of a grade crossing mitigation plan, including its contents, and how successful other such plans have been in reducing delays, and specify when and how long the specified Community Liaison would need to be available to the communities and how frequently the Community Liaison would need to reach out to the communities.

Regarding water resources, USEPA states that Applicants would also need to compensate for regulated waters of the state (i.e., isolated wetlands and waters) under Indiana Code 13-18-22,

not just waters of the U.S. under the Clean Water Act under VM 1. It recommends that Applicants be required to consult with the Indiana Department of Environmental Management regarding compensation of waters of the state that cannot be avoided. The agency also requests clarification as to why Wetland S-9 (referring to Figure 2, Aquatic Resources – Sheet 6, Wetlands S-9) cannot be avoided by moving staging for bridge rebuilding elsewhere. It requests that the four unnamed tributaries listed in Appendix D be referred to as tributaries of the closest named stream on U.S. Geological Survey topographic maps. Also, USEPA requests that the term “environmentally sensitive” as used in VM 3 be defined.

Regarding noise and vibration, USEPA recommends that the EA address how often, on average, train wheels are inspected and curves lubricated, and whether the typical schedule is sufficient to reduce or eliminate wheel noise. It also requests that the Final EA address how effective proper track alignment and continuous welded rail is in reducing train noise near communities. USEPA states that VM 46 is vaguely written and requests examples of typical noise mitigation actions and an analysis of whether these typical actions are successful in reducing noise to an acceptable level, such as 65 dBA or lower. For example, USEPA suggests the Final EA discuss sound insulation and noise barriers. With respect to VM 52, USEPA recommends that CSXT should be required to proactively identify and mitigate wheel squeal problem areas rather than leaving it up to affected communities to bring the problem areas to the attention of CSXT. Finally on noise and vibration, the agency recommends that the effectiveness of using resilient track fasteners and tire-derived aggregate to reduce noise be addressed in the Final EA, and if effective, recommends that Applicants be required to implement these measures.

As for emergency response, USEPA requests that Applicants coordinate with communities potentially affected by increased train traffic at at-grade public crossings to determine which communities would benefit from and be receptive to an “early warning system” to notify emergency responders (fire and medical) when rail lines in a community are blocked. It suggests that crossings that experience an increase in average travel time (e.g., 10 percent increase or more) or where alternate routes are greater than “x” feet away be suitable benchmarks for when Applicants would coordinate with communities to determine the need for an early warning system.

Regarding threatened and endangered species, USEPA believes the Final EA should indicate that Applicants would be obligated to comply with U.S. Fish and Wildlife Service and Indiana Department of Natural Resources requirements for evaluating and mitigating impacts to listed species, most notably regarding mussels that could be present in the Flatrock River in the vicinity of the Flatrock River Bridge replacement site.

With respect to potential impacts to community resources and land use, USEPA recommends that the Final EA clarify how the study corridor of 0.50 mile (i.e., 0.25 mile either side of the track centerline) was selected.

Regarding hazardous materials, USEPA states that it is unclear why Applicant-supported training for emergency responders could be completed within three years after they initiate Transaction-related operational changes, rather than having the training completed before the subject operational changes occur. It suggests that this training should be completed within months of

the operational changes occurring and that it be offered to each community through which hazardous materials would be transported. Because emergency response personnel change over time, USEPA also requested clarification of what obligation would Applicants have to provide ongoing training.

Regarding non-native invasive plant species (NNIS) and noxious weeds, USEPA requests the VM 13 identify typically best management practices (BMPs) employed by Applicants during construction and operation activities, and specify whether those measures include equipment washing, NNIS and weed removal prior to starting construction, and post-construction monitoring to identify and remove NNIS and weeds (including number of growing seasons performed).

Finally, for the 51 at-grade crossings that would experience a vehicle delay of over 40 vehicle hours per day or where Level of Service would degrade one or more service levels, USEPA recommends the installation of signage in both directions at various distances from each of the 51 crossings. The signage would ask drivers to turn off their vehicles engines while waiting for a passing train to clear the crossing.

OEA Response

Regarding the tree mitigation recommendation, OEA notes that Final EA, MM 11 would require Applicants to mitigate any impacts on forested areas within the floodway of the Flatrock River in accordance with the Indiana Natural Resources Commission's Information Bulletin #17. Mitigation under that bulletin could include planting of native trees and shrubs. OEA concurs with USEPA that it would have been more accurate to state "Minor impact on vegetation" under "Potential Construction Impacts" in Table ES-1.

OEA notes that numerous outside parties would need to be consulted in determining which, if any, existing at-grade crossings on the three CSXT lines could be candidates for potential closure. Also, the need for and scope of any assessment of potential impacts from crossing closures would need to be determined cooperatively with the specific parties consulted for any particular crossing. Additionally, crossings that could be candidates for closure, if any, would most likely exhibit low average daily traffic (ADT) volumes because the closure of any at-grade crossings with high ADTs could result in potentially significant safety and traffic impacts. Regarding potential crossing improvements and the timing and frequency of maintenance of any crossing improvements, OEA notes that the type of improvements, scope of maintenance activities for any improvements, and the party responsible for improvement maintenance would need to be determined in consultation with numerous outside parties. Furthermore, the proposed increases in train traffic would not occur for up to seven years after any approval of the Proposed Transaction. For these reasons, OEA believes that it would be speculative to provide the crossing closure and crossing improvement information requested by USEPA in this Final EA.

Regarding VM 27 and MM 1 in the Supplemental EA, the criteria that could be used in determining whether any safety enhancements would be needed for any at-grade crossings would vary by state (i.e., Indiana, Ohio and Kentucky) and the specific parties being consulted on a particular crossing (including local municipalities). If there is a conflict between Applicants'

voluntary mitigation measures and OEA's mitigation measures, the requirements of OEA's mitigation measures would prevail. In this case, OEA's more stringent schedule in Final EA, MM 1 (i.e., within 90 days of the effective date of any Board approval) would prevail over Applicants' schedule in Final EA, VM 27 (within 6 months of CSXT acquiring the subject easement from L&I).

Regarding VM 28 in the Supplemental EA, the criteria that could be used in determining whether any pedestrian safety enhancements would be needed for any at-grade crossings would vary by state (i.e., Indiana, Ohio and Kentucky) and the specific parties being consulted on a particular crossing (including local municipalities). Implementation of at-grade crossing safety enhancements is typically a cost-sharing scenario involving federal, state and local governments and the railroad.

On the subject of power switches, OEA concurs that it is reasonable to require Applicants to evaluate the need to replace manual switches with power switches in the vicinity of at-grade crossings on the L&I Line and three CSXT lines that would experience either a degradation of Level of Service by one or more levels, or a vehicle delay of over 40 vehicle hours per day under the Proposed Transaction. OEA believes that the definition of "excessive periods of time" is best left to that provided in existing state regulations (e.g., 10 minutes in Indiana Code 8-6-7.5) (Final EA, MM 5).

Regarding MM 1 and MM 14 in the Supplemental EA, OEA has revised MM 1 to require the submittal of an annotated outline of the Grade Crossing Mitigation Plan (GCMP) for OEA review and concurrence. The annotated outline shall address the contents of the GCMP and implementation schedules as well as maintenance. Revised MM 1 also requires that the annotated outline be submitted to OEA within 90 days of completing the initial meetings INDOT, ODOT and KYTC. Regarding the Community Liaison, MM 14 in the Supplemental EA already specifies that the liaison be established prior to initiating Transaction-related activities (Note: "construction" has been added for clarification) and for a period of 3 years following the movement of the first Transaction-related trains over the L&I Line and three CSXT lines (Final EA, MM 21).

On the topic of water resources, OEA concurs that Applicants should consult with the Indiana Department of Environmental Management on potential permitting requirements for potential impacts to isolated waters and wetlands. Accordingly, OEA has recommended a new mitigation measure to address this concern (Final EA, MM 10). As noted on page 3-48 in the Supplemental EA, Applicants have not yet prepared construction plans for the bridge replacement; and therefore, specific potential impacts to wetlands could not be quantified for the Supplemental or Final EA. Accordingly, OEA selected a 100-foot radius from the centerline of the L&I Line and bridge to define a study area that would reasonably be expected to encompass any needed construction staging areas or access roads. This study area was used to identify wetlands and assess potential impacts, but should not be interpreted to mean that the entire study area would be used for construction staging areas and equipment access. OEA expects that once Applicants complete the construction plans for the bridge and begin working with the U.S. Army Corps of Engineers on Section 404 permitting, appropriate measures will be taken to avoid, minimize and mitigate any potential wetlands impacts. Regarding the additional detail requested on unnamed

streams, OEA directs the commenter to the “Description” column in Table 2 of Appendix D-2. The descriptions in that column identify the named streams to which these unnamed streams are tributaries to, except one of the unnamed streams, which discharges to a man-made impoundment.

Regarding noise and vibration, OEA concurs with USEPA’s suggestion that additional consideration should be given to the need for and effectiveness of mitigation options. Accordingly, OEA has recommended a new mitigation measure that would require Applicants to consult with USEPA on the potential mitigation measures identified by USEPA including train wheel inspections, rail curve lubrication, use of resilient track fasteners and tire-derived aggregate to reduce Transaction-related train noise. The results of Applicants’ review shall be reported to USEPA and OEA in writing.

Regarding “early warning systems,” OEA notes that both the Draft and Supplemental EAs use a screening process (previously developed and used by OEA in other cases) to identify at-grade crossings that would experience Transaction-related increases in vehicle delay and that don’t have a grade-separated alternative route within a defined distance. Delays at those at-grade crossings are the crossings that could adversely affect emergency response times in affected communities (see Draft EA, p. 3-13 and Supplemental EA, p. 3-20). OEA’s screening process resulted in the identification of one emergency service provider that could be adversely impacted. Accordingly, OEA proposed MM 4 in the Draft EA pertaining to that emergency service provider (now Final EA, MM 7). In addition, , OEA recommended MM 3 in both the Draft EA and Supplemental EA (now Final EA, MM 3), which requires Applicants to promptly notify the appropriate emergency service dispatch center(s) when a stopped or slowly moving train will not clear a public at-grade crossing in 10 minutes. OEA also encourages Applicants to open discussions with other emergency service providers and communities that submitted comments and concerns about potential Transaction-related impacts on emergency response times.

OEA concurs that clarification is needed on the issue of potential surveys for threatened and endangered mussels in the vicinity of the Flatrock River Bridge. Accordingly, OEA has added a new mitigation measures in the Final EA regarding consultations with the U.S. Fish and Wildlife Service and the Indiana Department of Natural Resources (Final EA, MMs 16 and 17).

Regarding the 0.5 mile study corridor for community resources and land use, that corridor width was selected based on OEA’s professional judgment and experience from environmental reviews it has conducted for previous projects where train numbers would increase by numbers comparable to that which would occur under the Proposed Transaction.

OEA disagrees with the suggestion that Applicant-supported hazardous material training for emergency responders should be conducted on a more expedited schedule than proposed (i.e., within three years; see Supplemental EA, VM 33). The basis for OEA’s position is that no Transaction-related change in the volume of hazardous material moved over the L&I Line or the three CSXT rail lines is expected because CSXT’s existing trackage rights agreement with L&I prohibits CSXT from transporting hazardous material over the L&I Line (see Supplemental EA, p. 2-11). Without a Transaction-related change in the volume of hazardous material moving over

the L&I or three CSXT rail lines, OEA believe there is no basis for imposing more stringent training requirements than Applicants have already voluntarily offered. Likewise, USEPA has not demonstrated the need here to impose on Applicants ongoing obligations to train new personnel as emergency response personnel turnover. Given the hazardous material prohibitions placed on CSXT by the trackage rights restrictions, OEA concludes that an ongoing training obligation borne by CSXT would not be warranted.

In response to commenters concerns, OEA has recommended a new mitigation condition (Final EA, MM 18) that requires Applicants to consult with the USEPA regarding typical best management practices that could be employed during Transaction-related construction and operation activities to control non-native invasive plant species and noxious weeds.

OEA thanks the commenter for the suggestion that signs be posted at certain at-grade crossings with the signs requesting that drivers turn off vehicle engines while waiting for a passing train to clear the crossing. However, because of the complexities of adding new road sides signs in multiple jurisdictions and lack of information on the legalities on turning off vehicles in traffic for multiple jurisdictions, OEA believe it would be inappropriate to recommend that the Board impose such a requirement in this Final EA.

Commenter: Craig Luedeman, Mayor, City of Seymour, IN

Comment

Mr. Luedeman notes that the L&I Line passes through downtown Seymour and that there are multiple at-grade crossings of the L&I Line in the city including U.S. Route 50. He also notes that Route 50 is the major east-west route through Seymour and most of Seymour's commercial and retail businesses are located on this roadway. Mr. Luedeman states that a significant increase in the number of trains on the L&I Line, which block several at-grade crossings simultaneously, would have a negative impact on vehicle delay, public safety and emergency response. According to Mr. Luedeman, increased train traffic would also hinder public safety vehicles from reaching incidents on the east side of the L&I Line or transporting patients to the Schneck Medical Center on the west side of the L&I Line. Mr. Luedeman concludes that a grade-separated crossing in Seymour would alleviate his concerns; however, the city would need substantial financial assistance from Applicants and state and federal governments to design and construct the crossing.

OEA Response

OEA refers readers to OEA's responses above to Draft EA comments by Jackson County Emergency Medical Services and Schneck Medical Center, and to OEA's response above to Supplemental EA comments by Ms. Basil.

Commenter: Kenneth Dietz, University of Louisville, Louisville, KY

Comment

Mr. Dietz states that the Supplemental EA does not appear to acknowledge the presence of a growing student housing development along the Louisville Connector. He adds that this University of Louisville's development currently houses a couple of thousand students, and that the establishment of a Quiet Zone in this student housing area would be very beneficial. Mr. Dietz also notes that the at-grade crossing at Shipp Street is used by a large number of students on a daily basis. According to the commenter, the Supplemental EA discusses the potential impacts of increased train traffic on vehicular traffic, including a reduction in the Level of Service from C to E, but the document does not address the potential impacts to pedestrians.

OEA Response

Mr. Dietz's comments are similar to the Supplemental EA comments submitted by Mr. Johnson for the City of Louisville. OEA refers readers to OEAs responses above to Mr. Johnson's comments.

Commenter: Mitchell Zoll, Deputy State Historic Preservation Officer, IN

Comment

Mr. Zoll states he has no additional comment on the Supplemental EA.

OEA Response

Comment noted.