

### CHAPTER 3 DEIS COMMENT SUMMARIES AND RESPONSES

This chapter summarizes and responds to all substantive comments that OEA received on the DEIS. In total, OEA received 72 written/electronic comments on the DEIS. These written/electronic comments have been included in Appendix A of this FEIS in the order in which they were received. The majority of these comments were received on or before the DEIS comment deadline of September 28, 2010. However, OEA also accepted a number of comments that were received after this deadline. Comment letters on the DEIS from the cooperating agencies, USACE and FHWA, have been included in a separate appendix (i.e., Appendix B). Additionally, OEA held a public meeting for the DEIS on September 14, 2010, at which 18 individuals provided oral comments. A complete transcript of the public meeting, including all 18 oral comments, has been included in Appendix D of this FEIS. Several commenters at the public meeting submitted prepared statements, which have subsequently been included as part of the written comments in Appendix A.

OEA carefully reviewed each comment for the purpose of considering the comment and developing an appropriate response. OEA prepared the comment responses in accordance with CEQ guidance and its own environmental regulations (found at 49 C.F.R. Part 1105). CEQ guidance states that “an agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology.”<sup>1</sup> The guidance goes on to state that “if a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous.”<sup>2</sup> OEA’s responses clarify information presented in the DEIS, explain and communicate government policy or regulations, direct commenters to certain sections and/or specific information in the DEIS, the SDEIS or this FEIS, and answer technical questions. OEA has added several mitigation measures in response to concerns raised by commenters, but has not altered any of the conclusions in the DEIS in response to the comments.

OEA has organized the comment summaries and responses into categories of like topic to assist the reader in finding specific issues or areas of interest. Further, OEA has presented the categories in the same order in which they appear in the DEIS to the greatest degree practicable. OEA notes that there were no comments submitted about the Energy Resources section of the DEIS. Therefore, discussion of this category is not included in this chapter. Commenters frequently submitted comments that addressed identical or very similar subjects. OEA grouped these comments together and for each subject, provides a summary of the comment or a series of direct quotes to illustrate the commenters’ concerns. Each summary or series of quotes is followed by OEA’s response. To further assist commenters in finding OEA’s response to their particular comments, a unique comment key code has been assigned to each comment summary. These comment key codes have been incorporated into the tables at the beginning of Appendices A and D. In many instances commenters submitted one letter that included comments relevant to a number of different categories. As a result, many of the comments are directed to multiple comment key codes to capture all issues presented in a single comment letter. As explained in Chapter 1, OEA refers to RRLLC’s development project

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<sup>1</sup> CEQ’s Forty Most Asked Questions, 29a.

<sup>2</sup> *Id.*

as RRLLC's proposed landfill or landfill/industrial development site throughout this chapter to be consistent with the way it was presented in the DEIS.

Due to the large number of comments about OEA's analysis of RRLLC's proposed landfill/industrial development site and the Snow Shoe Multi-Use Rail Trail/Rail Banking Program, OEA is providing an expanded discussion of these issues in Sections 3.1 and 3.2 of this chapter below. This expanded discussion is more technical and contains more legal citations than are generally included in an EIS, but OEA believes that this approach is necessary to appropriately respond to the comments received.

### 3.1 RRLLC'S PROPOSED LANDFILL/INDUSTRIAL DEVELOPMENT SITE

In Section 1.9 of the DEIS, OEA explained in detail that the proposed action is RJCP's proposed rail line construction, operation, and reactivation and does not include RRLLC's proposed landfill or other industrial development projects. At the same time, however, OEA noted that, because the development and operation of the landfill has the potential to affect some of the same resources as the proposed rail line at about the same time as the rail line construction, operation, and reactivation, the landfill should be (and was) assessed as part of OEA's cumulative impacts analysis.

After reviewing the comments to the DEIS on the landfill and after conducting additional analysis on this topic, OEA continues to believe that the proposed action for the purposes of OEA's environmental review here is RJCP's proposed rail line construction, operation, and reactivation, and that RRLLC's landfill should be included only as part of the analysis of cumulative effects. Below, OEA provides an in-depth discussion of why this is so.

OEA is not considering RRLLC's landfill as part of the proposed action for the following reasons:

- RJCP has sought only Board authority to construct and operate, and to reactivate the proposed rail line. Therefore, including the landfill as part of the proposed action would not inform the Board's decision on RJCP's petition to construct and operate the rail line;
- The Board has no authority or control over RRLLC's proposed landfill;
- The Board has no authority to mitigate potential harms from the landfill;
- OEA's analysis of cumulative impacts contains an appropriate assessment of the impacts from the landfill that are relevant to the Board's decision-making;
- Board and judicial precedent support OEA's conclusion that the landfill should not be viewed as part of the proposed action; and
- Commenters' arguments for including the landfill as part of the proposed action are not supported by the facts or the relevant case law.

OEA discusses each of the above reasons in turn under the headings that follow.

**RJCP has sought only Board authority to construct and operate, and to reactivate the proposed rail line. Therefore, including the landfill as part of the proposed action would not inform the Board's decision on RJCP's petition to construct and operate the rail line.**

The purpose of OEA's environmental review process is to ensure the Board's compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq. and related environmental laws and regulations, as specified in the Board's rules at 49 C.F.R. Part 1105. The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is implemented in order to minimize or avoid potential negative environmental impacts. See Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989). NEPA's EIS requirement has two purposes: "First, 'it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.' ... Second, it 'guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.'" Department of Transp. v. Public Citizen, 541 U.S. 752, 768 (2004) (Public Citizen) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989)). Thus, information that does not inform the agency's decision need not be included in an EIS. "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action." 40 C.F.R. §§ 1500.1 (b)-(c).

The Board has jurisdiction over rail transportation by rail carriers. 49 U.S.C. § 10501. In the case at hand, RJCP has petitioned the Board, under 49 U.S.C. § 10502, for authority to construct and operate, and to reactivate a rail line in Clearfield and Centre Counties, Pennsylvania. After completion of the environmental review process, the Board will decide whether to approve, deny, or approve with conditions RJCP's rail construction project. Thus, the EIS must include information that the Board needs to issue an informed decision on RJCP's proposal to construct and operate the proposed rail line. The landfill, however, is not part of RJCP's proposed action before the Board, and is subject to the approval process of other laws, not the Interstate Commerce Act.

If OEA were to expand the proposed action to include the landfill, the proposed action would essentially become a landfill development project with transportation in general, and RJCP's rail line in particular, as components of that development project. See, e.g., U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Docket No. 72-22, Private Fuel Storage, L.L.C., Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah, June 2000 (assessing the construction and operation of a proposed private fuel storage facility and a new rail line). OEA would then need to assess alternatives to the landfill, as suggested by commenters, since the CEQ's regulations for implementing NEPA at 40 C.F.R. § 1502.14 require examination of alternatives to the proposed action. Alternatives to the landfill could potentially include the development and operation of such facilities in other regions of Pennsylvania, other states in the United States, or even in other countries. These alternatives would each have transportation components, which might or might not include rail. OEA would then need to assess the impacts of each of these landfill alternatives in comparative form, as specified at 40 C.F.R. § 1502.14, and identify an environmentally preferable alternative. But this analysis of landfill alternatives would not inform the Board's decision on RJCP's proposal to construct and operate the rail line in Clearfield and Centre Counties, Pennsylvania.

For example, should OEA determine – hypothetically speaking – that the environmentally preferable landfill alternative would be to develop such a facility in New Jersey and transport the municipal solid waste to this facility via truck, this would not be relevant to the Board’s decision because the Board has no authority to instruct RRLLC, or any other entity for that matter, on where to develop such facilities. Indeed, the Board has no authority over RRLLC whatsoever in this proceeding. Rather, the Board’s authority is limited to determining whether to approve, deny, or approve with conditions RJCP’s petition to construct and operate a rail line in Clearfield and Centre Counties, Pennsylvania, from the Wallacetown/Philipsburg area to RRLLC’s proposed landfill near Gorton in Rush Township, Centre County.

Even if there were no other alternative locations for the landfill and OEA’s environmental analysis could be limited to assessment of RRLLC’s proposed landfill near Gorton in Rush Township, Centre County (as either rail or truck-served, or a No-Action Alternative consisting of no landfill, no waste-to-ethanol facility, no rail line and no trucks), an analysis of the landfill as part of the proposed action would be beyond the Board’s jurisdiction and would not inform the Board’s decision on whether to authorize RJCP’s proposal to construct and operate the proposed rail line.

RJCP has repeatedly asserted that if the rail line is not built, RRLLC would operate the landfill entirely by trucks using the existing local road system. While People Protecting Communities (PPC) and other commenters have questioned RJCP’s statements on this matter, the record indicates that RRLLC could and would operate the landfill by truck if the rail line is not built. Further, as discussed in Section 2.2.2 of the DEIS and Section 2.3.2 of the SDEIS, truck transport of municipal solid waste to RRLLC’s proposed landfill via the Local Road System Upgrade alternative and/or the Black Rock Road alternative appears to be potentially feasible.

Thus, based on the information available, it appears that RRLLC’s proposed landfill could proceed regardless of the Board’s decision on RJCP’s rail construction proposal. For that reason, and because the Board has no authority over RRLLC or the development and operation of its proposed landfill, the landfill is not part of the proposed action in this case.

**The Board has no authority or control over RRLLC’s proposed landfill.**

According to court decisions, the degree of legal or factual control over an action or project asserted by an agency is an important factor in determining whether to consider that action in the environmental review process. The courts here have stated that an agency exercises control over a project when: “(1) it exercises discretion over the project; (2) has given any direct financial aid to the project; and (3) the overall Federal involvement with the project is sufficient to turn essentially private action into Federal action.” See *Citizens Against Rails-to-Trails v. STB*, 267 F.3d 1144 (D.C. Cir, 2001); *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990); *NAACP v. Medical Center, Inc.*, 584 F.2d 619, 629 (3d Cir. 1978).

Applying these standards here, it is clear that the Board lacks sufficient control over RRLLC’s landfill to make it part of the proposed action. The only action before the Board – construction, operation, and reactivation of RJCP’s rail line – is not a condition precedent to RRLLC’s development of the landfill, and the rail line and landfill projects are not two phases of a single action. The Board has given no financial aid to the landfill and lacks authority over RRLLC. Moreover, based on the record here, RRLLC could proceed with development of the landfill

regardless of the Board's decision on the rail line construction, operation, and reactivation. Thus, the landfill and rail line projects are separate, independent projects.

**The Board has no authority to mitigate potential harms from the landfill.**

As discussed in Chapter 6 of the DEIS, the Board can only impose conditions that are consistent with its statutory authority over rail transportation by rail carrier under the Interstate Commerce Act. Accordingly, any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. In this proceeding, the Board's power to impose mitigation extends only to the railroad applicant, RJCP, and to potential impacts that could be caused by RJCP's proposed rail line construction, operation, and reactivation. The Board does not have authority to regulate RRLLC or its proposed development projects, and thus could not impose mitigation to reduce potential harms resulting from its development projects. Therefore, an environmental analysis of the potential impacts of the landfill beyond that presented in the cumulative impacts analysis is not properly part of the EIS in this rail construction case. See Public Citizen, 541 U.S. at 769.

**OEA's analysis of cumulative impacts contains an appropriate assessment of the impacts from the landfill that are relevant to the Board's decision-making.**

NEPA requires that agencies consider direct, indirect, and cumulative impacts in their environmental documents (CEQ 1997, 40 C.F.R. §§ 1508.7, 1508.8, and 1508.25). The cumulative impacts analysis provides information to the decision maker about the potential incremental effects of its actions. In other words, the analysis allows the decision maker to see how much the proposed action before its agency would contribute to the cumulative impacts on a particular resource. Cumulative impacts result when the impacts of different actions combine to cause greater impacts on a particular resource than the impacts that would be caused solely by the proposal before the agency. When an ecosystem or resource has been affected by one action and another action then affects that same ecosystem or resource before it has fully recovered from the effects of the first action, the ecosystem experiences a cumulative impact. See Considering Cumulative Effects under the National Environmental Policy Act, p. 7 (CEQ 1997). The analysis of cumulative impacts focuses on effects to specific resources. Thus, two actions that have different types of impacts, such as the construction and operation of a rail line and the development and operation of a landfill, but affect one or more of the same resources, need to be considered together in a cumulative impacts assessment. See Considering Cumulative Effects under the National Environmental Policy Act, p. 8 Table 1-2 (CEQ 1997). For example, construction of RJCP's proposed rail line, and development of RRLLC's proposed landfill would each result in certain vegetative community/wildlife habitat impacts that, when combined, could have a cumulatively greater impact on wildlife and habitat in the region. Thus, OEA has assessed the combined vegetative community/wildlife habitat impacts of RJCP's proposed rail line project with the other identified cumulative impact actions in the cumulative impacts analysis. See Section 5.2.6 of the DEIS and Chapter 5 of the SDEIS.

OEA's cumulative impacts analysis for RJCP's rail construction proposal is set forth in Chapter 5 of both the DEIS and the SDEIS. The cumulative impacts assessment sets forth information regarding the combined environmental impacts of RJCP's proposed rail line and the other identified cumulative impact actions. NEPA requires no more. OEA notes that the environmental impact assessment of the identified cumulative impact actions was based on currently available information. In most

instances, OEA was only capable of presenting cumulative environmental impacts from a qualitative perspective because most of the identified cumulative impact actions are speculative or are in the planning phase of project development. Without detailed construction plans or limits of disturbance, quantitative impact calculations were not possible.

**Board and judicial precedent support OEA’s conclusion that the landfill should not be viewed as part of the proposed action.**

As discussed in Section 1.9 of the DEIS, information that does not inform the agency’s decision need not be included in an EIS. Moreover, courts defer to agency determinations on what the appropriate scope of the environmental review should be in particular cases. See Sylvester v. U.S. Army Corps of Engineers, 884 F.2d 394, 399 (9th Cir. 1989). The Board’s environmental regulations do not set forth a specific test for determining whether and how to consider particular related actions in the environmental review process. OEA has addressed this issue in past proceedings primarily by employing a “but for” test. See Riverview Trenton Railroad Company – Petition for an Exemption from 49 U.S.C. § 10901 to Acquire and Operate a Rail Line in Wayne County, Michigan, FD 34040 (Environmental Assessment, served October 15, 2001). Under the “but for” test, the agency includes as part of its analysis, actions that would not occur “but for” the action that requires the agency’s approval. However, the Supreme Court’s decision in Public Citizen clarifies that under NEPA a “but for” causal relationship is not enough to make an agency responsible for a particular effect under NEPA and the relevant regulations. See Public Citizen; National Committee for the New River v. FERC, 373 F.3d 1373 (D.C. Cir 2004) (rejecting argument that “but for” test requires EIS on a proposed pipeline extension to consider the impacts of two non-jurisdictional generating plants). Rather, NEPA requires analysis of an effect only where there is a reasonably close causal relationship between the environmental effect and the alleged cause, analogous to the doctrine of proximate cause from tort law. See Public Citizen, 541 U.S. at 767 (citing Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774 (1983)).

Furthermore, the Supreme Court now has ruled that agencies may reasonably limit their analysis to issues within the agency’s own decision-making process. See Public Citizen, 541 U.S. at 768. The Court held that where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant “cause” of the effect, and such effects need not be studied in the agency’s environmental review document. See Public Citizen, 541 U.S. at 770.

As set forth in Section 1.9 of the DEIS, based on Public Citizen and other relevant precedent, OEA believes that, apart from analysis as a cumulative or indirect effect, the effects of related actions need only be considered in the environmental review process if:

1. The action for which agency approval is sought can reasonably be said to cause the related action(s); and
2. The agency has the authority to prevent the related actions (and thus any effects caused by the related actions) from taking place.

As discussed above, and in Section 1.9.2 of the DEIS, OEA does not believe that the construction and operation of RRLLC's proposed landfill meets this two-part test. Thus, RRLLC's proposed landfill is not part of the proposed action for this proceeding.

**Commenters' arguments for including the landfill as part of the proposed action are not supported by the facts or the relevant case law.**

Commenters contend that the proposed rail line lacks independent utility because it would not be built without the landfill (and vice versa). Thus, according to the CEQ's regulation regarding connected actions at 40 C.F.R. § 1508.25(a)(1)(iii), the landfill and rail line should be considered as a single action and should be studied as such.

However, as documented in Section 1.9 of the DEIS, according to RJCP, the proposed rail line and the landfill each have independent utility because, if the rail line were not built, RRLLC's proposed landfill would be developed and operated based on the transport of waste by trucks on local roadways. RJCP noted that the extent to which RRLLC would have to rely on truck transportation to and from its proposed development site would depend on the Board's decision in this proceeding. Thus, the landfill could exist without the rail line though it would benefit from the rail line's presence. See Sylvester v. U.S. Army Corps of Engineers, 884 F.2d 394 at 400 (9th Cir. 1989). Where the agency does not have jurisdiction over another project and the other project could proceed without the agency's approval of the project over which it does have jurisdiction, it is appropriate to limit the scope of the EIS to the project over which the agency does have jurisdiction. See Native Ecosystem Council v. Dombeck, 304 F.3d 886, 894-95 (9th Cir. 2002); Wetlands Action Network v. U.S. Army Corps of Engineers, 222 F.3d 1105, 1117 (9th Cir. 2000); Highway Citizens Group v. Mineta, 349 F.3d 938, 962-63 (7th Cir. 2003). RJCP also addressed financial viability concerns about its proposed rail line, explaining that it has never claimed that it would rely on landfill-generated revenues to support the construction and operation of the proposed rail line.

### **3.2 SNOW SHOE MULTI-USE RAIL TRAIL/RAIL BANKING PROGRAM**

Part of RJCP's proposed project would involve reactivating service over the 9.3-mile rail banked Eastern Segment from just east of Winburne to Gorton. This 9.3-mile section of former Conrail right-of-way has not been abandoned, but rather, has been rail banked pursuant to Section 8(d) of the National Trails System Act (Trails Act), and is currently operated by the Headwaters Charitable Trust (HCT) in cooperation with the Snow Shoe Rails-to-Trails Association (SSRTA) as part of the Snow Shoe Multi-Use Rail Trail. The concept of rail banking, as well as the proposed project's impact to the Snow Shoe Multi-Use Rail Trail, were the subject of numerous questions and comments on the DEIS. Therefore, this section of the FEIS is intended to provide detailed information regarding the rail banking program. In providing this detailed information, OEA hopes to clarify the purpose, intent, and legal aspects of the program in light of its applicability to RJCP's proposed project.

#### **Background**

The National Trails System Act was enacted in 1968 to establish a nationwide system of nature trails. National Trails System Act, Pub. L. No. 90-543, § 8, 82 Stat. 919 (1968) (codified, as amended, at 16 U.S.C. §§ 1241-1251). As originally enacted, it did not contain any special provisions for railroad rights-of-way. In 1983, however, Congress added a rail section, codified at 16 U.S.C. § 1247(d), to

advance two declared policies: preserving unused railroad rights-of-way for possible future rail use and promoting nature trails. See Preseault v. ICC, 494 U.S. 1, 5-7, 17-18 (1990).

The enactment of the “Rails-to-Trails” provision followed a history of Congressional concern about the loss of rail corridors as a national transportation resource. See id. at 5; Birt v. STB, 90 F.3d 580, 582-83 (D.C. Cir. 1996). Under 16 U.S.C. § 1247(d), the Board must “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment where a trail sponsor offers to assume managerial, tax, and legal responsibility for a right-of-way for use in the interim as a trail. Nat’l Wildlife Fed’n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988). The statute provides that, if such interim use is subject to restoration or reconstruction for railroad purposes, the “interim use shall not be treated for [any] purposes...as an abandonment...” 16 U.S.C. § 1247(d). Instead, the right-of-way is “rail banked,” which means that the railroad (or any other approved rail service provider) may reassert control at any time in order to restore service on the line. 49 C.F.R. §§ 1152.29(c)(2), (d)(2); Birt, 90 F.3d at 583.<sup>3</sup> If a line is rail banked and designated for interim trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are postponed. Preseault, 494 U.S. at 8; Birt, 90 F.3d at 583.

To invoke the Trails Act, a prospective trail sponsor must first file a request with the Board accompanied by a statement of willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 C.F.R. §§ 1152.29(a), (d). If the railroad indicates its willingness to negotiate a rail banking/interim trail use agreement, the Board will issue a Certificate of Interim Trail Use (CITU) (in an abandonment application proceeding) or a Notice of Interim Trail Use (NITU) (in an abandonment exemption proceeding)<sup>4</sup> 49 C.F.R. §§ 1152.29(c)(1), (d)(1). The CITU/NITU permits parties to negotiate a rail banking agreement for a 180-day period (which can be extended by Board order). 49 C.F.R. §§ 1152.29(c)(1), (d)(1); Preseault, 494 U.S. at 7 n.5; Birt, 90 F.3d at 583.

The terms of any subsequently reached trail use agreement (including compensation issues related to the potential reactivation of rail service) are the product of private negotiations between the railroad and trail sponsor. Ga. Great S. Div.-Aban. & Discontinuance Exemption-Between Albany & Dawson, in Terrell, Lee, & Dougherty Counties, Ga., 6 S.T.B. 902, 907 (2003).

If the parties reach an agreement, the CITU/NITU automatically authorizes rail banking/interim trail use. Preseault, 494 U.S. at 7 n.5. Without further action from the Board, the trail sponsor may then assume management of the right-of-way, subject to the right of a railroad to reassert control of the property for restoration or reconstruction of rail service and the terms of the agreement. 49 C.F.R. §§ 1152.29(c)(2), (d)(2); Birt, 90 F.3d at 583. If, on the other hand, no rail banking/interim trail use arrangement is reached, then upon expiration of the CITU/NITU 180-day negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to “exercise its option to fully abandon” the line by consummating the abandonment, without further action by the agency, see Birt, 90 F.3d at 583, provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied. See Consummation of Rail Line Abans. That Are Subject to Historic Pres. &

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<sup>3</sup> The Board, and its predecessor, the Interstate Commerce Commission (ICC), has promulgated and occasionally modified or clarified its rules to implement the Trails Act. See, e.g., Rail Abans.-Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591 (1986); Rail Abans.-Use of Rights-of-Way as Trails-Supplemental Trails Act Procedures, 4 I.C.C. 2d 152 (1987); Policy Statement on Rails to Trails Conversions, EP 272 (Sub-No. 13B) (ICC Served Jan. 29, 1990); Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996).

<sup>4</sup> There is no substantive difference between rail banking authorized under a NITU or a CITU.

Other Env'tl. Conditions, EP 678, slip op. at 3-4 (STB served Apr. 23, 2008). During the negotiating period, the railroad is authorized to discontinue service and salvage track materials from the line, as such actions are fully consistent with rail banking/interim trail use. Preseault, 494 U.S. at 7 n.5; Birt, 90 F.3d at 583, 586.

A rail banking/interim trail use arrangement is subject to being cut off at any time for the reinstatement of rail service. 49 C.F.R. §§ 1152.29(c)(2), (d)(2). A rail banked line is not abandoned, but rather remains part of the national rail system, albeit temporarily unused for active railroad operations. Thus, if and when the railroad wishes to restore rail service on all or part of the property, it may request that the CITU/NITU be vacated to permit reactivation of the line for continued rail service. See, e.g., Ga. Great S., 6 S.T.B. at 906.

The Board's role under the Trails Act is limited and largely ministerial. Citizens, 267 F.3d at 1151-52; Goos, 911 F.2d at 1295 (agency has "little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use"). The Board plays no part in the negotiations between trail sponsors and railroads. Id. Nor does it analyze, approve, or set the terms of rail banking/interim trail use agreements. See Nat'l Wildlife, 850 F.2d at 700; Ga. Great S., 6 S.T.B. at 907; Use of Rights-of-way as Trails, 2 I.C.C. 2d at 608. The Board does not "regulate activities over the actual trail, and [has] no involvement in the type, level, or condition of the trail..." Ga. Great S., 6 S.T.B. at 907. Moreover, the Board has no specific fitness or qualifications test for trail sponsors; it requires only the statement of willingness from the trail sponsor and the acquiescence of the railroad in rail banking. Jost v. STB, 194 F.3d 79, 89 (D.C. Cir. 1999) (rebuttable presumption of trail sponsor's financial fitness). The Board has the authority to terminate rail banking/interim trail use if it determines that the trail sponsor does not have the ability to continue to meet the management, tax, liability conditions of interim trail use. See 49 C.F.R. § 1152.29(a)(3); Jost, 194 F.3d at 89-90.

The Board retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of rail banking/interim trail use, and any period during which rail service is restored. It is only upon a railroad's lawful consummation of abandonment authority that the Board's jurisdiction ends. See 16 U.S.C. § 1247(d); Hayfield N. R.R. v. Chi. & N. W. Transp. Co., 467 U.S. 622, 633 (1984). At that point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. Preseault, 494 U.S. at 5, 8.

### **RJCP's Proposed Project/Snow Shoe Multi-Use Rail Trail**

In this case, RJCP seeks to restore rail service over a rail bed that was originally constructed in 1883 and 1884 by the Beech Creek Railroad Company to serve coal mines located in Clearfield and Centre Counties, Pennsylvania. The line eventually became part of the New York Central Railroad Company and later part of the Penn Central Transportation Company. The rail line was transferred to Conrail on April 1, 1976. Conrail received authority to abandon a line of railroad extending between milepost 64.5 near Winburne and milepost 45.5 near Gillintown, PA, a distance of approximately 19 miles in Clearfield and Centre Counties, PA (i.e., the Snow Shoe Industrial Track),<sup>5</sup> in Conrail Abandonment of the Snow Shoe Industrial Track in Centre and Clearfield Counties, PA, Docket No. AB 167 (Sub-No. 1004N) (ICC served Feb. 15, 1990). In a decision in that docket served on November 5, 1993, the ICC issued a CITU, pursuant to which Conrail entered into an

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<sup>5</sup> The western-most 9.3 miles of this 19-mile rail banked corridor, from just east of Winburne to Gorton, comprise RJCP's Eastern Segment in its current petition before the Board.

agreement for rail banking/interim trail use with HCT. Today, the Eastern Segment is maintained and operated by HCT, in cooperation with SSRTA, as part of the 19-mile Snow Shoe Multi-Use Rail Trail, which encompasses the entire Snow Shoe Industrial Track. Figure 3-1 shows the location of the 9.3-mile rail banked Eastern Segment in relation to the entire 19-mile Snow Shoe Multi-Use Rail Trail/former Snow Shoe Industrial Track.

NS acquired Conrail's rights with respect to the Snow Shoe Industrial Track through the transactions approved by the Board in CSX Corp. et al.-Control-Conrail Inc. et al., 3 S.T.B. 196 (1998), and CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company- Control and Operating Leases/Agreements-Conrail Inc. and Consolidated Rail Corporation, Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003). Along with RJCP's petition to construct and operate in Docket No. FD 35116, RJCP seeks an exemption under 49 C.F.R. § 1150.41 from the requirements of 49 U.S.C. § 10902 to acquire the residual common carrier rights and obligations of NS on the Eastern segment in R.J. Corman R.R. Co./Pa. Lines Inc.-Acquis. And Operation Exemption-Line of Norfolk S. Ry. Co., FD 35143.<sup>6</sup> RJCP also seeks to vacate the CITU permitting rail banking/interim trail use on the Eastern Segment, while leaving intact the rail banking/interim trail use agreement over the remaining portion of the Snow Shoe Industrial Track, from milepost 55.2 to milepost 45.5 in Docket No. AB 167 (Sub-No. 1004N).<sup>7</sup>

In a decision issued on July 28, 2009 addressing jurisdiction, the Board found that RJCP needs authorization under 49 U.S.C. § 10901 to construct and operate the Western Segment,<sup>8</sup> as that property was previously abandoned and removed from the national rail system. However, the Board also determined that RJCP does not need construction authority under Section 10901 to reactivate the 9.3-mile Eastern Segment because that segment had been rail banked under the Trails Act and was still part of the national transportation system.<sup>9</sup> Specifically, the Board found that the exemption from Section 10902 (if granted) discussed above, combined with vacating the CITU under the Trails Act, would provide RJCP all the authority that it needs to acquire, restore, and reinstitute rail operations over the rail banked Eastern Segment. See R.J. Corman R.R. Co./Pa. Lines, Inc.-Constr. and Operation Exemption-In Clearfield Cnty., Pa., FD 35116 (STB served July 27, 2009). If the Board grants the Section 10902 exemption and the CITU is vacated, then RJCP will automatically have the right to restore rail service on the Eastern Segment under the Trails Act, and the trail users will have to step aside. See 49 C.F.R. §§ 1152.29(c)(2), (d)(2).

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<sup>6</sup> The acquisition of an existing line of railroad, or of an operating interest in such a line, requires Board approval in advance. The standards and procedures for obtaining Board approval, where required, depend on the entity that would acquire the line (or the operating interest). Since RJCP is a Class III railroad, it filed its petition under 49 U.S.C. § 10902.

<sup>7</sup> These requests are currently pending before the Board and will be addressed in separate decisions.

<sup>8</sup> The construction and/or operation of new rail lines requires Board authorization in advance. The Board must approve a proposal to construct and operate a rail line unless it finds that the proposal would be "inconsistent with the public convenience and necessity." 49 U.S.C. § 10901(c). Thus, Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise. See Mid States Coal. for Progress v. STB, 345 F.3d 520, 557 (8th Cir. 2003).

<sup>9</sup> Concurrent with its filings in this proceeding, RJCP also filed a motion to dismiss that part of the proceeding pertaining to the proposed reactivation of the 9.3-mile rail banked Eastern Segment. RJCP argued that reactivation of the Eastern Segment did not require construction and operation authority under Section 10901 or an associated environmental review under NEPA.

### 3.3 COMMENT SUMMARIES AND RESPONSES

#### 3.3.1 General/NEPA Process

##### Summary

**DEIS GN-1:** In accordance with its responsibilities under NEPA and Section 309 of the Clean Air Act, the USEPA Region 3 office in Philadelphia, Pennsylvania, reviewed the DEIS and sent in a comment letter. USEPA stated that it has rated the Proposed Action as Environmental Concerns (EC), Insufficient Information (2) because of its potential impacts to irretrievable environmental resources, and offered eight specific comments/questions for OEA's consideration in developing the FEIS.

##### Response

USEPA's comments and rating are noted. Each of USEPA's specific comments/questions have been evaluated and addressed individually according to their respective resource category later in this chapter.

##### Summary

**DEIS GN-2:** One commenter questioned the value of the DEIS stating that the entire area was never truly examined in detail to show what is really out in the field. The commenter referred to pages 91 and 92 of the DEIS to illustrate his concern.

##### Response

Pages 91 and 92 of the DEIS contain a map depicting RJCP's existing railroad operations in the Clinton-Centre-Clearfield County region (see Figure 2-3 of the DEIS). OEA did not conduct analysis of any potential impacts associated with RJCP's currently active rail lines because they are outside the scope of the proposed project area.

##### Summary

**DEIS GN-3:** Several commenters expressed support for RJCP's proposed rail line project. Commenters pointed to the depressed economic conditions of the Philipsburg/Rush Township area and the potential for economic growth associated with reactivation of the railroad. Commenters also suggested that the proposed rail line would potentially alleviate some of the truck traffic on local roadways.

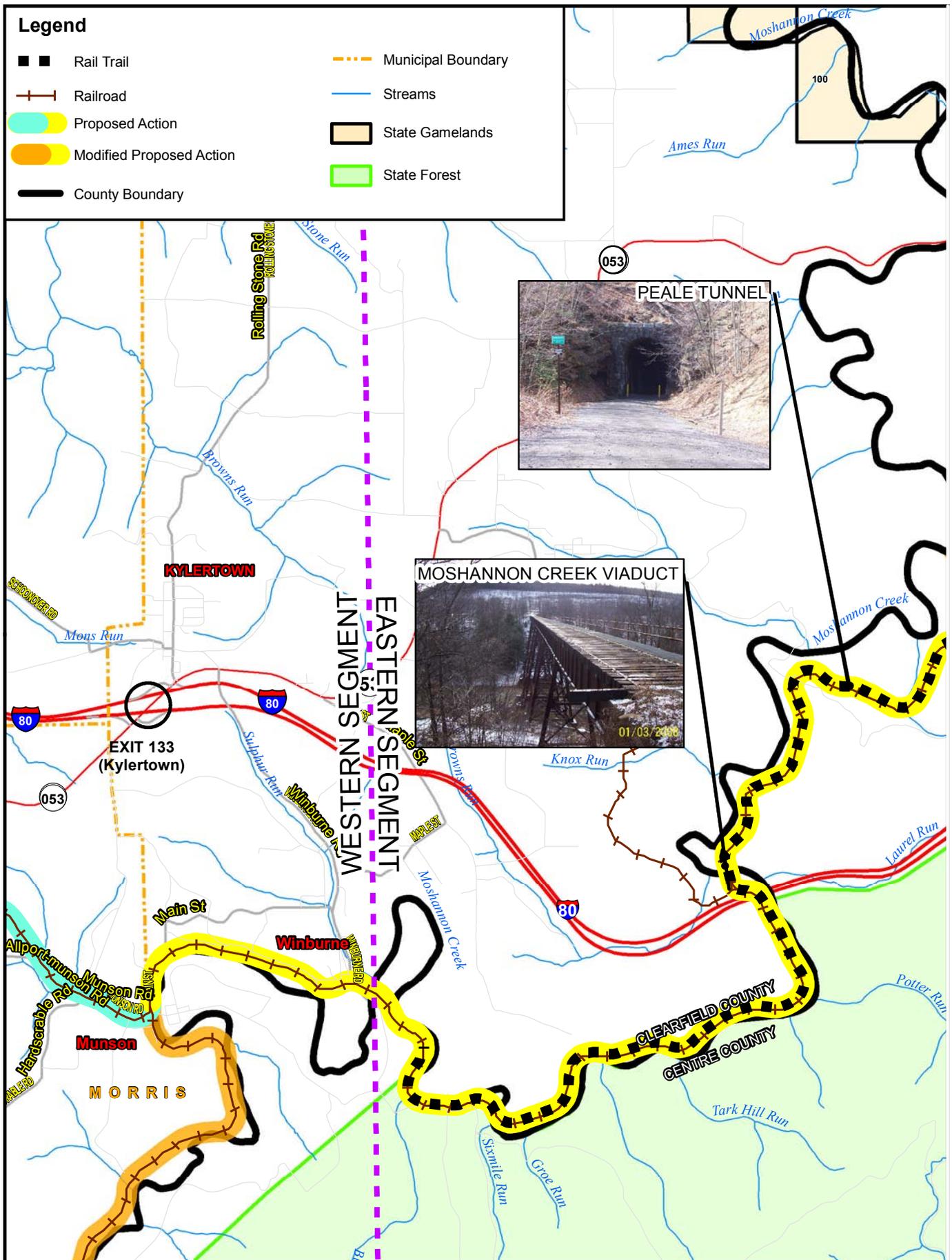
##### Response

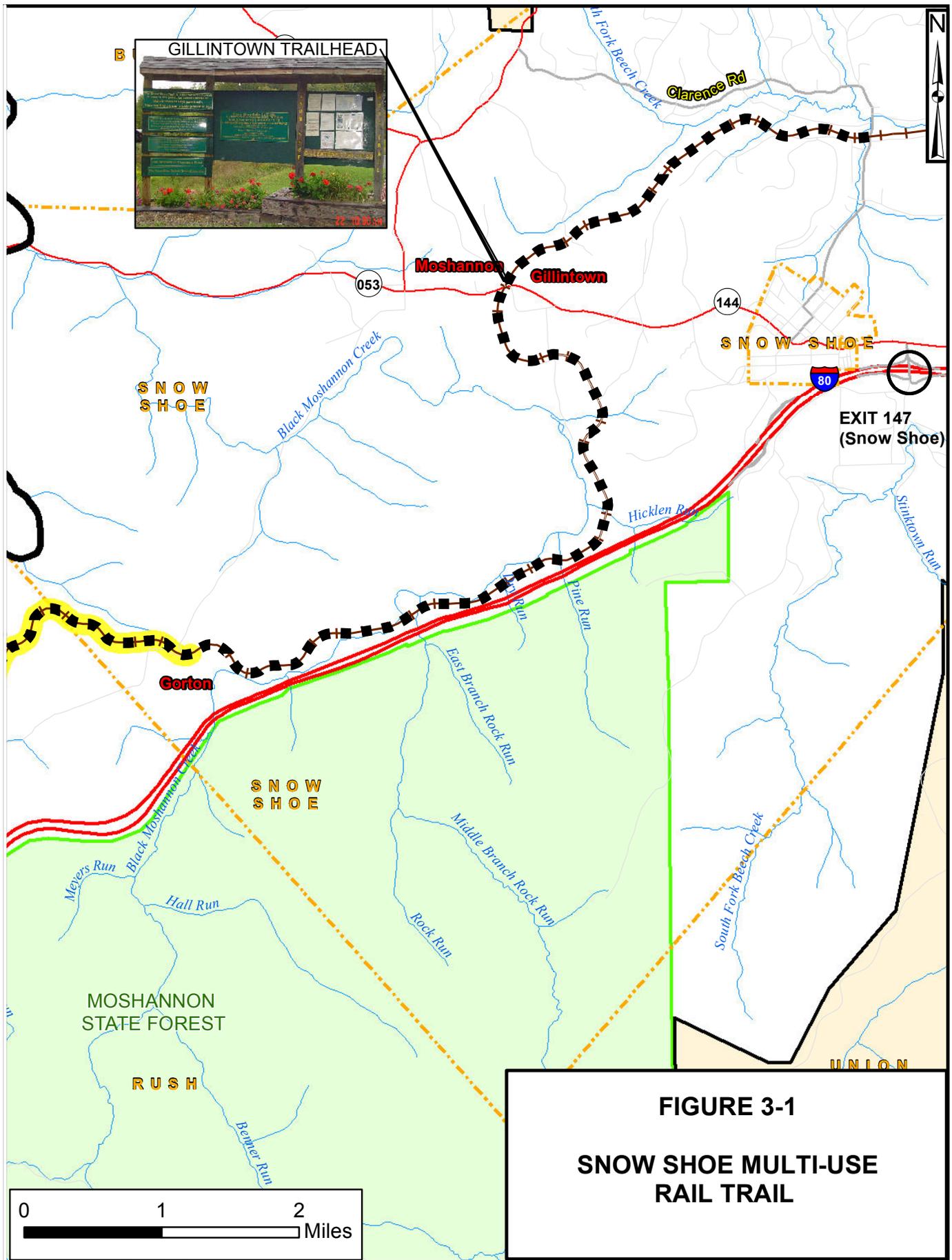
Comments noted.

#### 3.3.2 Cooperating Agencies

##### Summary

**DEIS CA-1:** Several commenters stated that they were aware of USACE's decision to discontinue its participation as a cooperating agency for this project, and that the DEIS should be revised to reflect this change. Citing this change in cooperating agency status, one commenter indicated that he was "extremely disappointed with the DEIS, most of which is based on incomplete or outdated information."





**FIGURE 3-1**  
**SNOW SHOE MULTI-USE**  
**RAIL TRAIL**

### **Response**

In its September 1, 2010 comment letter on the DEIS (see Appendix B), USACE stated that “based on the information received by this office, and in looking at the work that falls within our scope of review, it appears that the proposal within our scope of analysis may not have a significant effect on the human environment... (thus) it appears that an EIS will not be required as part of our permit review process.”

Because of this determination, USACE stated that it does not need to serve as a cooperating agency for this project and will conduct its own independent environmental review during future review of permit applications. This change in cooperating agency status is discussed in Section 1.5 of this FEIS. In response to the commenter who was disappointed that this information was not presented in the DEIS, OEA notes that USACE’s decision to terminate its participation as a cooperating agency was first presented in its DEIS comment letter and was based on the detailed environmental analysis presented in the DEIS. Therefore, OEA only learned of USACE’s decision after the DEIS was issued.

### **Summary**

**DEIS CA-2:** FHWA submitted a comment letter dated September 20, 2010 on the DEIS (see Appendix B), stating that the DEIS incorrectly indicates on p. ES-4 that FHWA will serve as one of the primary decision-making agencies regarding the proposed approval of the rail line reactivation. FHWA further stated that as a cooperating agency with special expertise in highway-related (i.e., No-Build) activities only, it has not and will not be involved in making the decision to approve the reactivation request for the rail line.

### **Response**

Comment noted. OEA agrees that the sentence FHWA is referring to on p. ES-4 in the DEIS is confusing. OEA acknowledges that FHWA has special expertise in highway-related (No-Build) activities only and will not be involved in the decision to approve the construction, operation, and reactivation of the proposed rail line. OEA was trying to say that FHWA could use the information presented in the DEIS if the Board denies RJCP’s rail line proposal, and one of the no-build alternatives goes forward. Based on this comment, the sentence in question was specifically excluded from the executive summary in the SDEIS (see SDEIS, p. ES-4).

### **Summary**

**DEIS CA-3:** In its September 20, 2010 comment letter (see Appendix B), FHWA interpreted a sentence in Section 1.9 of the DEIS to mean that without reactivation of the rail line, RRLLC would move forward to include “improvements to the existing local road system and construction of a new I-80 interchange.” However, FHWA pointed out that it did not approve the Point of Access Study necessary to construct the I-80 interchange and requested that this section of the DEIS be revised accordingly.

### **Response**

Section 1.9 of the DEIS deals specifically with RRLLC’s proposed landfill and the numerous public comments that were submitted during project scoping about examining the landfill as a connected action to RJCP’s proposed rail line project. Specifically, this section of the DEIS discusses RRLLC’s ability to use trucks on local roadways if the Board were not to approve RJCP’s proposed rail line. The sentence in question states that RJCP has provided detailed information regarding improvements

to the existing local road system and construction of the new I-80 interchange that would be needed to accommodate the increased truck traffic if the Board were not to approve RJCP's proposed rail line project (see p. 1-14, last sentence, second full paragraph). This sentence does not state that the I-80 interchange would actually be constructed. OEA evaluated the I-80 Interchange Alternative in Section 2.3.1 of the DEIS and dismissed it from detailed analysis because of FHWA's disapproval of the Point of Access Study. Therefore, the sentence in Section 1.9 of the DEIS was just a factual statement regarding the information submitted by RJCP about the I-80 interchange and was not intended to serve as an evaluation or assessment of its validity as an alternative for this project.

### 3.3.3 Project Purpose and Need

#### Summary

**DEIS PN-1:** OEA received a number of comments questioning the purpose and need of RJCP's proposed rail line. Commenters alleged that RJCP's proposed rail line would be a "railroad to nowhere" because RRLLC's proposed landfill has not yet been permitted by the Pennsylvania Department of Environmental Protection (PA DEP), and there is no guarantee that it will be permitted. Several commenters referred to RRLLC's proposed landfill as being a "mythical" or "phantom" project. Commenters also stated that the Hawbaker quarry was only permitted for minor exploratory purposes, and that investigations did not reveal quality stone. Commenters stated that the current HRI quarry is only being used as a borrow area for other onsite activities, and that HRI would not be a potential shipper on the proposed rail line. Further, commenters noted that the proposed frac water treatment plant and coal mining operations are nonexistent to date. Commenters alleged that RJCP has no justified need to build the rail line and that the project would not be economically viable at this point in time.

#### Response

Generally, the Purpose and Need statement in an EIS does not need to demonstrate an immediate, unsatisfied demand for rail service. CEQ regulations simply require an agency to "briefly specify the underlying purpose and need to which [it] is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. In defining purpose, "the agency should take into account the needs and goals of the parties involved in the application." Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). Perhaps more importantly, "an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency's statutory authorization to act, as well as in other congressional directives." Id. Most relevant here, the Board is statutorily obligated to approve new rail construction unless the Board finds that it is inconsistent with the public convenience and necessity. See 49 U.S.C. § 10901(c). Any authority granted under Section 10901 is permissive. In other words, if the Board approves the project, it would be granting RJCP the authority to construct the proposed rail line as part of its larger common carrier railroad system of transportation. Because this authorization would be permissive, it would not require RJCP to construct the proposed rail line. As a private company using private funds, RJCP, not the Board, would determine if operation of the proposed rail line would be economically viable enough to render a financial return on its construction investment.

#### Summary

**DEIS PN-2:** USEPA noted that the entities that will be serviced by the proposed rail line are still in the early developmental stages without a realistic timeframe for completion. USEPA inquired

about the timeframe to construct the rail line and asked what the need for the rail line would be if the projects were to fall through.

**Response**

See response above. OEA does not have specific information about RJCP's proposed construction schedule for this project. Prior to construction, the Board would have to issue its decision authorizing the project, and any mitigation imposed would have to be satisfied before actual construction could take place. Final engineering also would have to occur. As explained in Section 2.2.1.1 of the DEIS, it is estimated that it would take RJCP 12 to 18 months to complete the project from start to finish.

**Summary**

**DEIS PN-3:** USEPA asked if the "frac water" from natural gas drilling activities at Rex Energy Corporation's proposed frac water treatment plant would initially be treated before being transported to the facility. USEPA also asked if the potential growth from gas drilling could result in an increased number of trains on RJCP's proposed rail line.

**Response**

At this time, it is unknown which natural gas drilling operations would potentially be shipping frac water to the proposed frac water treatment plant via RJCP's proposed rail line. However, based on consultation with a natural gas drilling operator active in Pennsylvania's Marcellus Shale region (i.e., a southwest to northeast trending region of Pennsylvania underlain by a unit of marine sedimentary rock consisting predominantly of black shale which is known to contain significant natural gas reserves), OEA has learned that it is not standard practice to pre-treat frac water. Rex Energy Corporation's (now Keystone Clearwater Solution's) proposed frac water treatment plant is permitted for a 1.252 million gallon/day treatment capacity. Given on-site frac water recycling operations used by certain natural gas drilling operations, it is not known if this treatment capacity could potentially lead to an increased number of trains using RJCP's proposed rail line.

**Summary**

**DEIS PN-4:** One commenter alleged that the DEIS does not address the need for intermodal competition. Without improvements to the local road system, RJCP's proposed rail line lacks intermodal competition.

**Response**

Unlike a local Metropolitan Planning Organization (MPO) developing a long-range transportation plan (LRTP) or local transportation improvement plan (TIP), the Board is not subject to intermodal competition requirements when evaluating a proposed project through the NEPA process. In developing an LRTP or TIP, a local MPO establishes priorities for the investment of public monies for transportation purposes. Thus, this planning process requires a multi-modal approach to ensure fairness and equity between all modes of transportation. Under NEPA, the Board must take into account in its decision-making the environmental impacts of actions proposed and, ultimately, funded by private parties. OEA is assisting in this process by conducting an environmental review and by recommending mitigation for this project. Neither the Board, nor RJCP, a private company desiring to invest private monies, is subject to the intermodal competition requirements of the LRTP/TIP public investment planning process.

### 3.3.4 RRLLC's Proposed Landfill/Industrial Development Site

#### Summary

**DEIS RR-1:** Many commenters expressed opposition to RRLLC's proposed landfill and the other industrial development activities planned on the larger RRLLC property (i.e., a quarry, natural gas drilling, coal mining, wastewater treatment plant, etc.). Commenters alleged that the land comprising the RRLLC development site is a wilderness area used for a variety of recreational activities and is not appropriate for these types of industrial development projects. Several commenters stated that they are not in favor of RJCP's proposed railroad project specifically because it would provide rail service to RRLLC's proposed landfill/industrial development site. Other commenters expressed general opposition to all proposed development activities in the area. Specific comments are summarized as follows:

"Approving this railroad plan would be dangerous to every part of the environment. The train would lead to a landfill that will pollute and destroy our part of a beautiful area. It's a bad decision all around and my desire is that you not approve it."

"My cabin is located off of Gorton Road so me personally will most likely sell because I will be close to where the proposed landfill will be located, and I don't feel I want to sit at my place and smell trash or listen to all of the noise of the landfill when I'm there to relax and enjoy nature."

"We are opposed to the construction and operation of the R.J. Corman Railroad/Pennsylvania Lines Inc. If the proposed railroad was solely for the purpose of transporting environmentally friendly items, that's one thing, but we are too concerned that a landfill and even the gas drilling in this area is going to have a negative impact on groundwater, tourism, public safety, etc."

"I highly oppose the garbage dump and the trash train. The Trash Train to Nowhere will negatively impact this area. The area is established as a place to enjoy nature and to get away from it all. Why change something that thousands of people are using to accommodate one company and their few leaders. RRLLC's request is not justified to change this area."

"Please do not permit the 20-mile railroad track to be reinstated for Resource Recovery to build an industrial park or landfill. There are two industrial parks vacant in Philipsburg and Clearfield. This beautiful mountain recreation land should not be destroyed for something that is not needed or wanted. Residents and visitors are already using this land to go fishing, hunting, camping, 4-wheel riding, horseback riding, etc."

"Not in favor of development of railroad line for waste management near watershed. Moshannon is used for white water canoeing and flows into the Bay."

"We really don't need more trash in Centre County."

"Concerning Resource Recovery's proposal to revitalize an industrial rail link to serve a proposed landfill and associated facilities: I object to this project in that it is ill-conceived and is inappropriate for the environment in which it is being considered. It will adversely impact state park land, a high quality watershed, newly acquired recreational facilities and in general mess up a real special place of Central Pennsylvania. Our country needs much more incentive to find alternative means to deal

with solid waste than to simply bury it. We need more recycling. We need more local responsibility in dealing with our waste streams. We don't need to truck, rail and otherwise haul it away from our urban areas. This is too easy and unfairly and unsustainably burdens our open areas and vanishing wilderness."

"Please move your house beside the dump."

"We don't need a trash train! Stop trashing PA!!"

"These companies have little regard for the hardworking, low income families that live in this rural area. It may not be much to all of them, but it is all they have. If you have never seen the beauty of this area, the bobcats, the deer, and the bear in the serenity of their home, the forest, you wouldn't understand. How dare these big corporate companies come in to an area where there is protest, ruining lives, ruining history, ruining places for our native wildlife to eat, live and sleep just because they see dollar signs. Keep New York and New Jersey's trash where it belongs. This is environmental racism, dump trash on people they think are white trash, just because they do not have the money to keep them out. None of the executives or board members of any of these interested companies would want this in their backyards. Do on to others as you would have them do to you? Old saying, but it applies here in the purest form. We say NO to the reactivation of this rail line."

"These landfills are a cancer. Once established the adjacent land is of value only to the landfill operators. This causes the landfill to grow and grow... PA 144 scenic drive skirts the dump site and the Black Moshannon State Park is located on the south side. This area is rapidly becoming a recreational area. The days of dumping trash on a huge pile is over. The trash contains valuable material that should be reclaimed."

"This entire region is a bountiful recreational wilderness area used by thousands of visitors every year. We ride 4-wheelers, bike, hunt, fish, camp, hike, etc. in this area. RRLLC are the only people who want to destroy our region and small towns."

"It would be a disgrace and a real slap in the face to let the Rich Man poison this beautiful area in the name of profits. If this is allowed to happen I may consider leaving the area. My children and other family and friends helped to build a cabin that we thought we would enjoy for many generations. There are thousands of us with this same situation. I'll be praying for the sake of the environment and others that feel the way I do that the Rich Man will not get his way this time. Please help us!"

"We finally have a great place to spend time with our kids and also watch other families doing the same. It would be a tremendous loss to go through with the landfill. Do not take away a good place to go and spend quality time with the family. We have to stop this in its tracks!!!"

"The Cooper Township Board of Supervisors is strongly opposed to the Rush Township landfill and the reactivation of the rail line for that purpose."

"That landfill would be a potential environmental disaster. The parcel of land that Resource Recovery LLC would develop for the rail line and the other proposed uses would be better served environmentally by leaving the land as forest with little or no development."

## Response

Comments noted. As explained in Section 1.9 of the DEIS and Section 3.1 of this FEIS, the development and operation of RRLLC's proposed landfill, as well as the other industrial development activities planned on the larger RRLLC property, are not within the Board's jurisdiction and require no approval from the Board. Because the landfill and other industrial development activities are not facilities that are part of rail transportation, the Board has no jurisdiction over them. Nor would the broad federal preemption in 49 U.S.C. § 10501(b) apply to them. Construction and operation of the landfill would, therefore, be subject to all federal, state, and local regulations that would apply to any landfill. Specifically, the proposed landfill would require a federal permit pursuant to Section 404 of the CWA, thus triggering the requirement for NEPA review by USACE. Additionally, RRLLC's proposed landfill would require a Waste Management Permit from PA DEP. Applicants for PA DEP Waste Management Permits must complete an extensive Environmental Assessment, which evaluates a wide range of potential impacts. PA DEP would not approve such a permit unless the social and economic benefits of such an operation outweighed its environmental harms (see Section 503 of the Pennsylvania Solid Waste Management Act, 1980-97 (35 P.S. §§ 6018.101-6018.1003)). Thus, there would be environmental review by the appropriate government entities before the landfill could be built and become operational.

## Summary

**DEIS RR-2:** Commenters disagreed with OEA's decision to treat RRLLC's proposed landfill and other proposed industrial development projects as cumulative impacts, and not as connected actions to the proposed rail line, in the DEIS. Commenters alleged that, in making this decision, OEA failed to recognize the interdependent relationship between these projects. Many commenters claimed that there would be no proposed railroad if not for RRLLC's proposed landfill, and that there would be no landfill if not for RJCP's proposed railroad. Further, commenters argued that the DEIS is deficient because it fails to evaluate alternatives for the landfill, and it does not treat the impacts of the landfill as direct impacts of the project. Specific comments are summarized as follows:

"The primary purpose of this rail line is to run trash trains from large New York and New Jersey cities to a giant landfill proposed by RRLLC. The funding source and co-petitioner of this rail line is RRLLC. In fact, without RRLLC's initiative and funding there would be no petition before the Surface Transportation Board... To provide a truly fair and thorough Environmental Impact Statement, alternative landfill sites should be explored."

"It appears the sole purpose of this is to bring out-of-state trash to this area, while our own trash needs are adequately met."

"Not sure but I think the whole idea behind re-doing this rail line is to enable the Resource Recovery company to justify the largest landfill east of the Mississippi. I feel neither the landfill nor the railroad re-opening is a good thing."

"Please do not approve the Trash Train to the proposed dump in Black Moshannon in Central PA. This entire dump project being located here is contingent on this railroad line of garbage being permitted."

"Without the proposed landfill, there would never have been a proposed I-80 interchange. And, just as with the interchange, if it were not for the proposed landfill, there would be no proposed rail

activation. The prepared draft EIS treats the two projects as connected the entire way through the document. Under what technicality then is the STB making a decision that the two projects are not connected and should not be evaluated as a connected action? How can our governmental agencies justify segmenting these very connected projects instead of admitting that they are truly connected and evaluating the impact from both?”

“...without rail access there is no evidence that the proposed landfill plans could be carried out. If it could proceed, the developers would have proceeded. Without the development schemes of RRLLC this rail line would never have been proposed for reactivation. Therefore the two are connected and the Draft EIS is deficient in not recognizing and addressing this.”

“As described, and as acknowledged in the DEIS statement of purpose for the project, the proposed R.J. Corman Railroad Line is directly related to the Centre County, Resource Recovery landfill, the quarry, and the industrial park. We disagree with the DEIS’s interpretation of available information and conclusion that the proposed railway and other proposed development (e.g., the RRLLC landfill, the Hawbaker quarry, the industrial park, and the local road improvement project, etc.), are not interdependent. Consequently, we recommend that these projects be considered concurrently, since there may be additional associated environmental impacts (including wetlands, streams, fish and wildlife).”

“Because the No-Build Alternative (Local Road System Upgrade) is not a legitimate alternative, the only access that could accommodate the project uses (1,100 truck trips per day) is one of the Build Alternatives. Without access, the proposed landfill cannot advance past its suspended status (effective October 2006) and cannot be approved, constructed, or operated. Approval of the proposed rail line project would provide access. Thus, the proposed landfill is dependent on the rail line project taking place. The approval sought by the Surface Transportation Board for the proposed rail line can reasonably be said to cause the related actions of landfill approval, and subsequently, construction and operation. Therefore, the rail line and landfill should be considered a connected action and alternative for the landfill must be considered to ensure a comprehensive and just environmental review.”

“The Proposed Action and proposed RRLLC landfill are connected actions, and a complete analysis of all potential impacts associated with the development and operation of the landfill should be included in the EIS. OEA’s decision to the contrary relies on an inappropriately narrow interpretation of NEPA and ignores the factual reality that the railroad and the proposed landfill are functionally and economically interdependent. Without the landfill and industrial park, the proposed project will be the “Railroad to Nowhere,” a boondoggle aimed at generating development entirely inconsistent with state and county plans that are aimed at creating a tourist oriented economy in the Pennsylvania Wilds. Either there is no need whatsoever for this rail line or it is intended to facilitate the development of a landfill and associated facilities that will not occur without the rail line.”

“We all know that a battle has been going on for a long time between Resource Recovery and the surrounding communities over the proposed Dump Site in the area. The latest approach of course, has been reactivating the RJCP line to get to the proposed Dump Site since the proposed use of local highways and Interstate met much resistance from many sides.”

## **Response**

Comments noted. See Section 3.1 of this FEIS for OEA's discussion of the appropriate scope of analysis of the landfill in the environmental review process for this project.

### **3.3.5 Proposed Action and Alternatives**

#### **Summary**

**DEIS PA-1:** Kerry A. Uhler & Associates, Inc., serving in its official capacity as the engineer for the Cooper Township Municipal Authority, commented that the DEIS did not address potential impacts associated with crossing underground water line utilities. In its comment letter, the engineer noted that many of the water mains owned and operated by the Cooper Township Municipal Authority are old lines, which in some cases may be over 100 years old and in a fragile condition. The engineer expressed concern about the reconstruction/reactivation of the rail line and the impact that this might have on these potentially fragile underground utility lines. The engineer requested that each utility line crossing be considered to determine if it is capable of withstanding an E-80 loading (i.e., a civil engineering load rating analysis representative of two Cooper steam-locomotives equaling 1,164 kips distributed over 104 feet with trailing freight cars averaging 40 feet in length and 315,000 pounds in weight). Further, the engineer provided the name and contact information for the consulting engineer that manages the authority's sewer line utilities and suggested that OEA make contact with that engineer about potential sewer line impacts.

#### **Response**

Based on this comment, OEA coordinated with Kerry A. Uhler & Associates, Inc. and developed a list of potential water line utility crossings associated with the Proposed Action, the Modified Proposed Action and the Local Road System Upgrade alternative. Of the 57 water line utility crossings on this list, only three would be associated with the Modified Proposed Action (i.e., the environmentally preferable alternative). Of these three crossings, two would be bridged by the Modified Proposed Action at the new grade-separated crossing of Casanova Road and at the existing bridge over Moshannon Creek just east of Winburne. The remaining water line utility crossing would occur at-grade at the Winburne Road crossing in Winburne. Mr. Uhler of Kerry A. Uhler & Associates, Inc. concurred with this finding and stated that an underground sewer line is also located along Winburne Road. Prior to constructing the proposed rail line, RJCP would be required to contact PA OneCall to identify the exact location and depth of this water/sewer line crossing, and any other such crossings along the corridor. RJCP would be required to take proper care to ensure that construction of the proposed rail line would not impact this or any other underground utility line. RJCP would also be required to rectify any utility impacts resulting from the proposed construction activities. OEA has included these coordination requirements in a new mitigation measure in Chapter 5 of this FEIS.

#### **Summary**

**DEIS PA-2:** USEPA requested information on where storage areas, access roads and construction pads would be located and any information on environmental impacts that may be associated with the actual construction sites along the rail corridor.

#### **Response**

As discussed in Section 2.2.1.1 of the DEIS, the rails and ties necessary to construct the proposed rail line would be shipped to the construction site by combination of both railroad and truck and

staged along the line as construction proceeds. The roadbed itself would require only a minimal amount of grading, sub-grade, and sub-ballast as much of the abandoned/rail banked roadbed is still intact. RJCP anticipates that the ballast would be brought in by train and spread as the track is installed. Therefore, there would be no need for off-site construction staging or materials storage areas. The only location where a new access road would be needed for construction purposes would be in the area of the proposed new mainline connection along the Modified Proposed Action's Alternate Route from Philipsburg to Munson. Other areas of the proposed rail line would be either accessible via existing roadways or constructed from the existing roadbed. While the exact location of construction staging and materials storage areas along the proposed rail line have not been identified yet, OEA included a mitigation measure in Chapter 6 of the DEIS to ensure that any such areas required during construction of the line would not occur in any identified wetland or watercourse areas. OEA has incorporated this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

### **Summary**

**DEIS PA-3:** Several commenters expressed opposition to the Local Road System Upgrade alternative and the associated increase in truck traffic on Routes 144 and 53 under this alternative. One commenter stated that “the gas well industry vehicles have taken over our local roads...to add any more unnecessary traffic to these curvy mountainous roads would be a hazard to everyone driving on them.”

### **Response**

Comment noted. OEA evaluated the potential transportation and safety impacts of the Local Road System Upgrade alternative, including the estimated increase in truck traffic on Routes 144 and 53 in Section 4.1.2 of the DEIS. Despite the roadway improvements associated with this alternative, the I-80 Interchange Point of Access Study concluded that the addition of large trucks to the local roadway network would impact safety and result in potential conflicts with other local and regional traffic. This was one of many factors that OEA considered when identifying the environmentally preferable alternative for this project. The proposed Build Alternatives, including the Modified Proposed Action (i.e., the environmentally preferable alternative), would avoid or minimize an increase of truck traffic on the local roads. The proposed and on-going industrial activities in the region, including natural gas drilling, would also be served by the proposed rail line, thereby providing an alternate mode of transportation to trucks on local roadways.

### **Summary**

**DEIS PA-4:** One commenter challenged the Local Road System Upgrade alternative on grounds that the necessary roadway improvements proposed under this alternative would be inconsistent with local and regional transportation plans and would not receive the approvals necessary to implement the upgrades. Further, the commenter alleged that a Cooperation Agreement exists between RRLLC and Snow Shoe Township in which RRLLC agreed not to use Gorton Road for trash hauling.

### **Response**

As discussed in Section 4.2 of the DEIS, OEA evaluated the consistency of the Local Road System Upgrade alternative with local and regional transportation plans and determined that this alternative would be inconsistent because of the associated increase in truck traffic that would be experienced on local roadways. OEA did not find that the physical roadway improvements themselves would be inconsistent with local and regional transportation plans. The local roadway capacity and safety

improvements/upgrades (such as those proposed under the Local Road System Upgrade alternative) would be consistent with local and regional transportation plans if constructed in accordance with the applicable design standards and criteria. To support this conclusion, OEA notes that a portion of Gorton Road was recently paved to accommodate the increased vehicle usage associated with natural gas drilling activities in the region. Further, OEA notes that it factored the inconsistency of the increase in truck traffic on local roadways into its overall analysis of the Local Road System Upgrade alternative in the DEIS, but that this inconsistency is not reason to consider this alternative unworthy for analysis, as the commenter suggests.<sup>10</sup>

Regarding the commenter's allegation about the Cooperation Agreement between Snow Shoe Township and RRLLC, this is a private agreement between a private company and a municipality, and it has no bearing on OEA's analysis of alternatives for this project. Further, OEA has learned that this Cooperation Agreement has been terminated. This termination became the basis for a legal action between Snow Shoe Township and RRLLC, and the law suit has subsequently been dismissed.

### Summary

**DEIS PA-5:** Counsel for RRLLC submitted a letter to OEA about the comment above (DEIS PA-4). In its letter, Stevens & Lee Lawyers and Consultants stated that since the commenter does not identify how the roadway improvements associated with the Local Road System Upgrade alternative would be inconsistent with local and regional transportation plans, the precise basis for the claim is unclear. The letter further noted that S.R. 0053, S.R. 0144 and Gorton Road are public roads that are capable, from an engineering perspective, of being improved. The letter stated that any improvements or upgrades would be consistent with the standards set forth in Snow Shoe Township's Road Ordinance and Pennsylvania Department of Transportation regulations. It explained that the Snow Shoe Township Comprehensive Plan specifically envisions construction of transportation upgrades in areas where existing minor streets (i.e., Gorton Road) provide inadequate access to major routes (i.e., S.R. 0053 and S.R. 0144). In Pennsylvania, the right to access a property abutting a public road is recognized as an incident of ownership or occupancy of the land, and is a constitutionally protected property right. See Wolf v. Commonwealth of Pennsylvania, 422 Pa. 34, 220 A.2d 868 (1966). Therefore, the letter argued that RRLLC has a continuing constitutionally protected right to access its property using Gorton Road, an existing local road abutting its property.

### Response

Comment noted.

### Summary

**DEIS PA-6:** In its comment letter, USFWS questioned why the EIS included the I-80 Interchange alternative and the Local Road System Upgrade (Black Rock Road) alternative when FHWA and Centre County, respectively, did not approve the proposed plans for these alternatives. USFWS was concerned that, other than the No-Action Alternative, OEA only evaluated one real alternative to the Proposed Action and Modified Proposed Action. USFWS recommended that additional options be considered for analysis as alternatives, including options within the Build Alternatives such as minimizing right-of-way width (especially at stream crossings), minimizing lengths of stream

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<sup>10</sup> A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. See CEQ's Forty Most Asked Questions, 2b.

enclosures, resetting perched culverts with depressed subvert instead of merely cleaning them out (to allow for aquatic life movements), or replacing culverts with bridges (to allow aquatic life movements and to reestablish habitat connectivity).

### **Response**

NEPA requires that agencies consider a range of alternatives, including a detailed evaluation of all reasonable alternatives, as well as a brief discussion of the reasons for eliminating other alternatives from detailed study (40 C.F.R. § 1502.14(a)). Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint. An alternative that is outside the legal jurisdiction of the lead agency (in this case the Board) must still be analyzed in the EIS if it is reasonable, as is the case for the Local Road System Upgrade alternative for this project. A potential conflict with local or federal law (or decisions) does not necessarily render an alternative unreasonable, although such conflicts must be considered (40 C.F.R. § 1506.2(d)). Given this understanding of NEPA, OEA considered the I-80 Interchange alternative and the Local Road System Upgrade (Black Rock Road) alternative in the DEIS, even though FHWA and Centre County, respectively, did not approve the proposed plans for these options (As noted in the SDEIS, RLLC, through court action, has since received the preliminary approval from Centre County for the Black Rock Road alternative). Section 2.3 of the DEIS notes that these No-Build Alternatives were considered but not advanced for detailed analysis with brief discussions of the reasons for eliminating them. Given the limited number of existing rail beds in the region and the far greater impacts that would be associated with constructing a new rail line on new alignment, OEA believes the range of alternatives presented in the DEIS, including both Build and No-Build Alternatives, represents the full spectrum of reasonable alternatives that are both practical and feasible for this project.

OEA does not consider the additional options suggested by USFWS as alternatives but rather considers them efforts to minimize potential environmental impacts that could be incorporated into the final plans and specifications for construction of the proposed rail line. As noted in Section 2.2.1.1 of the DEIS, RJCP's proposed plans for construction would be within a 66-foot right-of-way, and staging activities would occur along the line during construction. This effort would minimize the extent of disturbance during temporary construction activities. In addition, RJCP would either clean out or replace all culverts during construction to improve drainage conditions along the rail line. As explained in Section 6.1.1 of the DEIS, the Board has limited authority to impose conditions to mitigate potential environmental impacts, and it typically does not require mitigation for pre-existing environmental conditions, such as those related to the existing culverts. During the Section 404/Chapter 105 permitting processes, the permit agencies, USACE and PA DEP, would consider the minimization measures suggested by USFWS. For example, USACE and PA DEP would coordinate with RJCP concerning wetland and watercourse mitigation measures, and these measures would address minimizing disturbances at stream crossings including possibly minimizing the length of stream enclosures, specifying criteria for the replacement of culverts, and replacing culverts with bridges. Thus, USFWS's concerns would be addressed during the permitting processes by other agencies, not the Board.

### 3.3.6 Identification of the Environmentally Preferable Alternative

#### Summary

**DEIS ID-1:** Several commenters questioned why the No-Action Alternative was not identified as the environmentally preferable alternative in the DEIS. The commenters pointed to the summary of environmental impacts presented in Tables 2-2 and 4-1, and stated that “the logically deduced best option is the No-Action Alternative because it causes the least adverse environmental impact.” Further, one commenter stated that “the No-Action Alternative is the most reasonable alternative that addresses the concerns about impacts to the current use of the area and its surrounding rural and public lands.”

#### Response

The purpose and need of the Proposed Action is to provide rail transportation service to a new landfill, quarry, and industrial park being developed by RRLLC near Gorton in Rush Township, Centre County, as well as to several other interested shippers along the line. The applicant, RJCP, has explained that if there is no rail service to the site, trucks on local roads and highways would be used to provide the transportation at issue (see Section 1.5 of the DEIS). OEA analyzed this potential increase in truck traffic and the accompanying upgrade of the local roads as the No-Build Alternative (Local Road System Upgrade). In Section 2.2.3 of the DEIS, the No-Action Alternative is defined as the alternative that would result in no change in access to RRLLC’s proposed landfill/development site beyond use of the existing local road system in its current physical condition. As defined, this allows the No-Action Alternative to serve as a basis of comparison for the environmental impacts associated with the other alternatives evaluated in the EIS. The No-Action Alternative was used as the basis for comparison of the environmental impacts of the alternatives studied in this EIS, but it was not selected as the environmentally preferable alternative because it fails to meet the project purpose and need.

#### Summary

**DEIS ID-2:** Referring to the Environmental Impact Summary Table presented in the DEIS, one commenter pointed out that the Proposed Action would affect approximately 155 properties, whereas the Modified Proposed Action would affect only 30 properties. The commenter then stated that “it just makes good sense to minimize the impact on the communities and homes/businesses in the community.” Further, the commenter stated that the “alternative train route” (in comparison to the “primary proposed action”) would minimize transportation and safety issues, air quality impacts, and socioeconomic factors.

#### Response

Comment noted. OEA agrees that the Modified Proposed Action (“alternative train route”) would be the environmentally preferable route based on a number of factors, when compared to the original Proposed Action (see Section 2.4 of the DEIS). The Modified Proposed Action would result in impacts to fewer adjacent residential properties (155 versus 28), substantially fewer public road and private driveway crossings (32 versus 7), less energy consumption and associated degradation of air quality, and less impact to characteristics that could affect property values (such as impacts to noise-sensitive land uses and number of residents exposed to vibration).

### Summary

**DEIS ID-3:** Two commenters (USFWS and an adjacent private property owner) questioned OEA's identification of the Modified Proposed Action as the environmentally preferable alternative. In general, both commenters pointed to the increased wetland impacts, greater floodplain involvement, and the 2,500 additional feet of new railroad construction as reasons why the Modified Proposed Action should not have been identified as the environmentally preferable alternative. To support this argument, the adjacent private property owner alleged that the area of the Modified Proposed Action's Alternate Route from Philipsburg to Munson was previously evaluated as part of the Pennsylvania Department of Transportation's S.R. 0322 Corridor 01 project and was subsequently dismissed due to concerns about extensive floodplain, floodway and wetland impacts. The commenter also noted that the former railroad corridor of the Modified Proposed Action's Alternate Route from Philipsburg to Munson (i.e., Conrail's former Philipsburg Industrial Track) has been abandoned, and that portions of the right-of-way have been sold to adjacent private property owners. The commenter noted that it could be costly and timely to negotiate with private property owners for the railroad right-of-way, which also might reduce the overall attractiveness of this alternative when compared to the Proposed Action's Wallaceton to Munson Route.

### Response

The environmentally preferable alternative is the alternative that would cause the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources while still allowing the applicant to achieve the goals of its project. The identification of the environmentally preferable alternative often involves difficult judgments when one environmental value must be balanced against another, particularly when the project area contains many natural, historic, and socioeconomic resources, such as the project area defined for the Proposed Action. The environmental review process also must consider the concerns and opinions of the public and local officials, in addition to the concerns of federal and state resource and permitting agencies when evaluating and comparing alternatives and their associated impacts. See CEQ's Forty Most Asked Questions, 6a. This requires consideration of impacts to resources protected under various statutes and regulations and the ability to mitigate for unavoidable impacts. In view of the need to consider all resources within the project area and the impacts to these resources associated with the alternatives under study, OEA has determined that the greater impacts to wetlands and floodplains associated with the Modified Proposed Action's Alternate Route from Philipsburg to Munson would be offset by the reduction in impacts to the local residents and communities located along the more developed corridor of the Proposed Action's Wallaceton to Munson Route. The Modified Proposed Action also has fewer public road and private driveway crossings, less noise-impacted sensitive land uses, greater energy savings and minimal impacts to air quality.

### Summary

**DEIS ID-4:** USFWS stated that OEA's identification of the Modified Proposed Action as the environmentally preferable alternative did not take into consideration the quality of the impacted waterways. USFWS pointed out that the Modified Proposed Action appears to cross three cold water fisheries. USFWS also stated that compared to wetland impacts, which are greater along the Modified Proposed Action, stream crossings, which are more numerous along the Proposed Action, may provide efficient and effective opportunities for aquatic resource mitigation by incorporating culvert replacement as part of the new construction.

## Response

Watercourse impacts are quantitatively presented in Table 4-15 of the DEIS and discussed in Section 4.7.2 of the DEIS. The three cold water fisheries that USFWS refers to are Laurel Run, Emigh Run, and Hawk Run. As noted in Table 4-15, two of these three streams (i.e., Emigh Run and Hawk Run) would not be impacted by the Modified Proposed Action because these streams are already bridged by the former railroad line, and RJCP intends to use these existing bridge crossings with little to no modifications. The proposed new mainline connection associated with the Modified Proposed Action's Alternate Route from Philipsburg to Munson would require the construction of a new bridge structure over Laurel Run. RJCP has included a voluntary mitigation measure (see Chapter 5 of this FEIS) involving the use of best management practices to control turbidity and minimize channel disturbance during construction of this bridge structure. Further, OEA disagrees with USFWS's comment that stream crossings, and the associated opportunity to provide aquatic resource mitigation via culvert replacements, are more numerous along the Proposed Action's Wallaceton to Munson Route. Table 4-15 indicates that the Proposed Action's Wallaceton to Munson Route would involve only three stream crossings (i.e., CHN 001, CHN 002, and WC 003), whereas the Modified Proposed Action's Alternate Route from Philipsburg to Munson would involve four stream crossings (i.e., WC 032, WC 034, WC 035, and WC 036).

## Summary

**DEIS ID-5:** PPC commented that the EIS recommends the alternative with the greatest impact to wetlands, and that this recommendation is not consistent with Section 404(b)(1) (of the Clean Water Act) and applicable federal and state regulations, which require projects to avoid wetlands before mitigating.

## Response

OEA agrees that the impacts to wetlands associated with the Modified Proposed Action (the environmentally preferable alternative) would be higher than with the other alternatives (3.36 acres compared to 1.34 acres for the Proposed Action and 1.79 acres for the Local Road System Upgrade alternative). However, impacts to streams (also protected waters under Section 404(b)(1)) associated with the Modified Proposed Action would be less than stream impacts associated with the Proposed Action (980 linear feet compared to 1,570 linear feet for the Proposed Action).

USACE's evaluation process for an individual permit is based on guidelines established under Section 404(b)(1) of the Clean Water Act and on "public interest review" procedures. The public interest review involves a broad qualitative evaluation of a project's benefits and detriments. USACE regulations identify twenty-one factors which are relevant to permit review. These factors include conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and the general needs and welfare of the people. As discussed above, OEA has determined that the greater impacts to wetlands and floodplains associated with the Modified Proposed Action's Alternate Route from Philipsburg to Munson would be offset by the reduction in impacts to the local residents and communities located along the more developed corridor of the Proposed Action's Wallaceton to Munson Route.

### Summary

**DEIS ID-6:** USEPA commented that the preferred alternative would result in an increased amount of wetland impacts and requested that the FEIS include a discussion of additional minimization techniques that could be used to further reduce these impacts.

### Response

Both the Proposed Action and the Modified Proposed Action would involve construction and operation over the previously abandoned Western Segment (via either the Wallaceton to Munson Route or the Alternate Route from Philipsburg to Munson) and reactivation of service over the rail banked Eastern Segment for a total of 19 to 20 miles of rail line. The Modified Proposed Action's Alternate Route from Philipsburg to Munson includes a new 4,000-foot connection to tie the abandoned rail line to RJCP's existing active mainline, the Wallaceton Subdivision (see Section 2.2.1 of the DEIS). Approximately 1,500 feet of this connection would be constructed on the roadbed of an abandoned rail line that is not a part of the Conrail-abandoned Philipsburg Industrial Track (the main portion of the Alternate Route from Philipsburg to Munson). Therefore, only 2,500 feet (2.5%) of the 19 miles that make up the Modified Proposed Action would be new rail line on new rail alignment. The use of existing rail bed, as opposed to constructing a new rail line on new alignment maximizes the avoidance of adverse impacts to wetlands.

Also, as described in Section 3.7.2 of the DEIS, most of the impacted wetlands along the 19- to 20-mile rail corridor are trackside features located along the abandoned rail bed. These wetlands were created by adverse drainage conditions from abandoned failing stormwater management facilities (e.g. silted-in drainage pipes, collapsed culverts, un-maintained drainage ditches) associated with the former railroad. Given the location of these wetlands immediately adjacent to the existing rail beds, the opportunities for additional avoidance and/or minimization techniques to further reduce wetland impacts are limited. In addition, these wetlands, which have negligible wetland functions and values and include areas impaired by acid mine drainage (AMD) due to past coal mining activities, would need to be disturbed to reconstruct the drainage system for the proposed rail line to comply with current stormwater management criteria and best management practices. If the railroad is reconstructed, these former trackside stormwater drainage ditches would again function for stormwater management and conveyance purposes, resulting in unavoidable wetland impacts.

In addition, the final design plans for the new 4,000-foot connector would identify wetlands within the new right-of-way that could be avoided to the maximum extent practicable. These wetlands would be fenced prior to clearing and grubbing activities using orange protective fencing to avoid incidental disturbances during construction. This requirement to use orange protective fencing to minimize wetland disturbances in the construction area of the new 4,000-foot connector has been included as a new mitigation measure in Chapter 5 of this FEIS. OEA has also included various mitigation measures for unavoidable wetlands impacts in Section 6.2.9 of the DEIS and Section 5.1 of this FEIS.

### 3.3.7 Transportation and Safety

#### Summary

**DEIS TS-1:** One commenter asked why the No-Action Alternative was not included as part of the transportation and safety analysis.

## **Response**

Under Transportation and Safety in Section 4.1 of the DEIS, OEA evaluated the following impact categories: Local Road Traffic/Grade Crossing Delay, Rail Operations, and Rail Operations Safety. As noted on p. 4-3 of the DEIS, OEA only evaluated the Rail Operations and Rail Operations Safety categories for the Proposed Action and Modified Proposed Action because neither the Local Road System Upgrade alternative nor the No-Action Alternative involve rail transportation. For Local Road Traffic/Grade Crossing Delay, OEA concluded on p. 4-10 of the DEIS that the No-Action Alternative would not have any impact on local road traffic, nor would it introduce any grade crossings into the existing local road system.

### **3.3.8 Local Road Traffic/Grade Crossing Delay**

#### **Summary**

**DEIS LR-1:** A number of commenters expressed concern about the reintroduction of the grade crossings at S.R. 0053 and Ninth Street. Commenters suggested that this high-traffic area already experiences a significant number of vehicle accidents annually, and that the re-introduction of these grade crossings into the transportation system would further exacerbate traffic problems in this area. Commenters also expressed concern about the efficient movement of emergency response vehicles through these grade crossings.

#### **Response**

As explained in Section 4.1.2 of the DEIS, OEA requires Level of Service (LOS) analysis for those grade crossings having an average daily traffic (ADT) volume of 5,000 vehicles or greater. Within the project area, only the S.R. 0053 and Ninth Street grade crossings would exceed this ADT. Therefore, OEA conducted a detailed traffic/LOS analysis for these two grade crossings. Given their close proximity (i.e., approximately 800 feet apart) and interdependent operations, OEA evaluated the LOS at these grade crossings jointly. The total vehicle delay time at these two grade crossings during any single train crossing would be approximately six minutes. This six-minute closure represents the total time it would take for a 4,800-foot train to pass entirely through both grade crossings. The analysis showed that a six-minute train crossing during the highest P.M. peak hour would not impact the S.R. 0053 intersection with U.S. Route 322 or the Ninth Street intersection with Moshannon Street. However, a train crossing during the highest P.M. peak hour (i.e., 3:15 – 4:15 P.M.) for the segment of S.R. 0053 north of Ninth Street would result in a queue of approximately 41 southbound vehicles stacked along S.R. 0053 for a distance of approximately 1,025 feet. Given the 950-foot distance between the S.R. 0053/Ninth Street intersection and the intersection with Dauphin Lane, this peak hour train crossing would likely result in approximately three vehicles blocking the southernmost intersection of Dauphin Lane. Because Dauphin Lane is a loop road, any vehicles wanting to enter or exit Dauphin Lane during a highest P.M. peak hour train crossing could do so via its more northerly intersection with S.R. 0053. Thus, the addition of the S.R. 0053 and Ninth Street grade crossings would have only a minor impact on vehicle delay and traffic over the adjacent roadway network. Appendix D of the DEIS contains additional documentation for this intersection/grade crossing analysis.

#### **Summary**

**DEIS LR-2:** One commenter stated that, in addition to the S.R. 0053 and Ninth Street grade crossings, the proposed rail line would also need to cross the private access/business drive located immediately north of the S.R. 0053 grade crossing.

## **Response**

As depicted on Sheet 70 of Volume 2 (Environmental Features Mapping) of the DEIS, the proposed rail line would not require a crossing of this private access/business drive. Rather, the proposed rail line would run parallel to the southern edge of this private access/business drive up to the S.R. 0053 grade crossing.

### **3.3.9 Rail Operations/Safety**

#### **Summary**

**DEIS RO-1:** One commenter asked if trains would sit on the track at any point along the proposed rail line.

#### **Response**

OEA continues to recommend the mitigation proposed in the DEIS that would require RJCP not to stack, stage or store trains on the rail line within Morris Township other than in emergency operating conditions. Recognizing that this mitigation measure would also be applicable to other municipalities along the Western Segment of the proposed rail line, OEA has modified this mitigation measure in Section 5.2 of this FEIS to include Decatur and Cooper Townships. This mitigation measure does not, nor is it intended to, preclude RJCP from temporarily stopping trains within these townships to service potential shippers. Rather, this mitigation measure is intended to preclude RJCP from stacking, staging, or storing trains in the vicinity of residential properties located along the Western Segment of the proposed rail line.

#### **Summary**

**DEIS RO-2:** One commenter noted that the DEIS made no mention of trains going through the communities of Woodland and Swells.

#### **Response**

These communities are located several miles outside of the EIS project study area along RJCP's active Wallaceton Subdivision Line. OEA did not conduct analysis of any potential impacts associated with RJCP's or NS's currently active rail lines because they are outside the scope of this EIS.

#### **Summary**

**DEIS RO-3:** Several commenters raised the concern that RJCP's proposed rail line would pass through or adjacent to residentially developed areas and create potential safety concerns for local residents, especially children.

#### **Response**

OEA addressed this issue in Section 4.1.4, Rail Operations Safety, of the DEIS. RJCP has indicated that it would operate one (or at most two) trains per day at a maximum operating speed of 10 mph in developed areas. Additionally, RJCP has committed to sharing costs (50%-50%) for the installation of chain link right-of-way fencing in residential areas (if requested) to further minimize potential safety concerns (see VM 12 in Chapter 5 of this FEIS). Given these safety precautions, OEA determined that the rail operations safety impact to residential areas would be negligible. Further, OEA identified the Modified Proposed Action, with its significantly fewer adjacent residential properties, as the environmentally preferable alternative for this project to minimize potential safety concerns in residential areas.

### Summary

**DEIS RO-4:** Commenters expressed concerns regarding RJCP’s planned transport of municipal solid waste, and the potential for environmental/safety-related issues as a result of transporting this commodity. These comments included the following:

“Please be advised that this proposed project will create potential environmental catastrophes to the area, impacting wetlands, water supplies, properties and personal safety to everyone involved.”

“Transporting toxic garbage from out of state to and through this pristine area via railway is a moral and ecological nightmare.”

“...to encourage this type of long distance transportation of highly questionable toxic trash is an ecological and security threat to the preservation of many species including humans”

“...trash will be everywhere due to wind and what falls off of truck and train”

“I don’t need trash or trains falling on me while I am enjoying the Red Moshannon Creek.”

“Will the train be closed or open? Basically, this boils down to, is it going to be sealed? I feel that the cars should be sealed tight?”

“Train cars do leak fluids, do jump tracks, and do cause evacuation.”

### Response

OEA addressed potential train derailment and the associated safety precautions that RJCP would be required to comply with in Section 4.1.4 of the DEIS. When the DEIS was issued, RJCP only planned to transport and dispose of municipal solid waste at RRLLC’s proposed landfill. Thus, on p. 4-11, the DEIS stated that no hazardous waste would be transported for disposal, as RRLLC is not seeking a permit for the disposal of hazardous waste at their proposed landfill. Additionally, the DEIS pointed out that, given that RJCP would be receiving carloads of waste from an NS mainline, all NS requirements for waste transport would apply. Thus, RJCP would have to comply with NS’s Tariff NS 6306 – Rules and Regulations for Handling Municipal Solid Waste, Contaminated Soil, Hazardous Materials, which establishes strict requirements for the acceptance of municipal solid waste and related articles (see Appendix E of the DEIS). Municipal solid waste would only be accepted if it consisted of airtight, watertight, double-wrapped bales transported in covered gondola cars or in watertight intermodal containers transported on flatcars.

Given these strict municipal solid waste transportation requirements, combined with the 25 mph maximum operating speed and the minimal potential for significant derailment events, OEA determined that the likelihood for environmental contamination for the proposed project as a result of train derailment would be negligible. Additionally, the DEIS noted that should a derailment event occur, R.J. Corman Railroad Group has its own Derailment Services Division stationed in Pittsburgh, PA, to handle any and all derailment and emergency management incidents on a 24/7 basis.

Following issuance of the DEIS, RJCP announced plans to transport ethanol, a regulated hazardous material, over the proposed rail line due to changes to RRLLC’s development project, including the development of a waste-to-ethanol facility. OEA determined that this was a substantial change in the information that was available when the DEIS was prepared and decided to issue an SDEIS to

address RJCP's planned transport of ethanol. In preparing the SDEIS, OEA evaluated the potential impact the transport of ethanol would have on rail operations safety in a comprehensive Hazardous Materials Risk Assessment. The Hazardous Materials Risk Assessment evaluated the quantity of ethanol anticipated to be transported, the chemical and physical properties of ethanol, the probability of a train accident (i.e., derailment) resulting in a release of ethanol, the anticipated environmental impacts associated with a release of ethanol, and the applicable hazardous materials transportation safety requirements that RJCP would be required to comply with. The results of this analysis and OEA's conclusions can be found in Chapter 3 and Appendix B of the SDEIS.

### **Summary**

**DEIS RO-5:** One commenter asked if the horn would be sounded at private crossings as well as public crossings.

### **Response**

As explained in Section 4.1.4 of the DEIS, rail operations' safety regulations administered by the Federal Railroad Administration (FRA) mandate sounding the horn at all public road grade crossings. However, this requirement to sound the horn does not apply to private driveway crossings. OEA is continuing to recommend the mitigation proposed in the DEIS that would require RJCP to meet with private land owners to discuss appropriate safety precautions associated with at-grade private driveway crossings. OEA has included this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

## **3.3.10 Land Use**

### **Summary**

**DEIS LU-1:** The Centre County Planning and Community Development Office (Development Office) and another commenter commented that OEA incorrectly concluded that RJCP's proposed railroad project is consistent with the long-range transportation goals of Centre and Clearfield Counties. The Development Office and the Centre County Metropolitan Planning Organization previously (in 2005) determined RRLLC's proposed landfill project to be inconsistent with the Centre County Comprehensive Plan, the Snow Shoe Township Comprehensive Plan, and the Snow Shoe Township Zoning Ordinance.

### **Response**

OEA's conclusion that RJCP's proposed project, to build approximately 20 miles of rail line, is consistent with local and regional planning initiatives is based on a review of the most current land use plans and zoning ordinances. OEA determined that the proposed construction, operation, and reactivation of 20 miles of rail line (most of which is on existing railroad bed) would be consistent with the Clearfield and Centre County Comprehensive Plans because the County Plans support the promotion of expanded rail services and a multi-modal regional transportation system (see Section 4.2.2, pages 4-17 and 4-19 of the DEIS). In addition, the County Plans note that rail freight services are expected to increase and serve future industry needs and economic development in the area.

The commenters believe that RRLLC's proposed landfill project is connected to the proposed rail line project. As discussed in Section 1.9.1 of the DEIS and Section 3.1 of this FEIS, however, OEA has determined that the two proposed projects are not connected actions because the two projects have independent utility and are functionally and economically independent. The landfill and the rail line projects are related to the extent that the rail line would serve the landfill, and the landfill

project has the potential to impact some of the same resources as the rail line at about the same time. Therefore, OEA included the landfill in its cumulative impacts analysis, which can be found in Chapter 5 of the DEIS.

### **Summary**

**DEIS LU-2:** Several commenters argued that reactivation of the railroad would be a detriment to adjacent residential properties. Specific concerns included noise, odors, visual aesthetics, and decreased property values for adjacent homeowners and businesses (including the Avondale Hotel in Winburne located near the proposed Winburne Road [S.R. 2037] grade crossing).

### **Response**

#### **Noise:**

A noise analysis was conducted as part of the environmental review here using Federal Transit Administration (FTA) and FRA procedures to predict wayside noise and train horn noise (see Section 4.5 of the DEIS). The results indicate that train horn noise would adversely affect noise-sensitive land uses (including residential areas and outdoor restaurants) located close to the proposed public road grade crossings. However, due to the projected low volume of train traffic (a maximum of two trains per day), the sound levels generated by the horn at the grade crossings would not appreciably affect the overall cumulative noise levels in the area. Chapter 6 of the DEIS includes the following mitigation measures to minimize noise impacts to adjacent properties:

- RJCP would be required to use rail lubricants, as appropriate on curves, on the rail line in order to minimize wayside noise.
- RJCP would be required to coordinate with Cooper Township if the township intends to petition the state to install gates or other safety measures on the rail line in order to provide the level of warning necessary to allow the township to request a waiver from the FRA requirement to sound a horn at the Sawmill Road (T-707) and Winburne Road (S.R. 2037) grade crossings.
- Subject to operational limitations, RJCP would be required to attempt to limit the operation of trains to the hours of 7 A.M. to 10 P.M. in order to minimize nighttime noise impacts to adjacent residential properties.

OEA has incorporated these mitigation measures in its final mitigation recommendations in Chapter 5 of this FEIS.

#### **Visual Aesthetics:**

The proposed rail line would primarily use an existing rail bed and therefore would require minimal reconstruction of the rail line and support facilities which would limit impacts to the landscape of the surrounding area. The existing rail bed would remain unaltered, and RJCP would only acquire and clear land necessary to re-establish the 66-foot wide railroad right-of-way. RJCP would also construct the rail line in such a manner as to leave in place, or require only minor relocation of all remaining historic concrete mileage markers. In addition, RJCP would leave in place the historic stone portals to the Peale Tunnel. Thus, the new rail line should not significantly alter the rural landscape and historic setting of the corridor. Chapter 6 of the DEIS includes a mitigation measure requiring RJCP to attempt to negotiate a mutually acceptable agreement with the Headwaters

Charitable Trust to mitigate the adverse impact to the recreational use of the rail trail on the Eastern Segment. OEA has incorporated this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

### **Odor:**

Because of the applicable NS municipal solid waste transportation requirements, OEA has determined that the proposed rail line would have a negligible impact on localized odors. RJCP's transport of municipal solid waste would be conducted in compliance with NS rules and requirements for waste transport (since the proposed RJCP rail line would be receiving carloads of waste from a NS mainline). These rules and restrictions require municipal solid waste to be in airtight, watertight, double-wrapped bales transported in covered gondola cars or in watertight intermodal containers transported on flatcars. See Section 4.1.4 of the DEIS.

### **Property Values:**

Changes in property values for residential and commercial properties adjacent to the proposed rail line are difficult to quantify given the many factors that contribute to determining the value of a given property. However, OEA believes the construction activities (that minimize right-of-way acquisition and disturbances), the proposed train operations (including the anticipated low volume of train traffic, combined with efforts to limit operations during day hours), and the requirement to follow NS rules and regulations for municipal solid waste transport would result in no or minimal change to property values for those properties located within the rail line corridor. Property values of large undeveloped parcels could potentially increase in value due to the adjacent access to an active rail line.

### **Summary**

**DEIS LU-3:** One commenter asserted that since RJCP is a private company, it will not have the authority to use eminent domain to acquire private property.

### **Response**

In Board-approved rail construction cases, the railroad is responsible for the acquisition of land necessary to implement the approved project. If condemnation (also known as eminent domain) of property is needed to complete a Board-approved line, it would occur in accordance with the state's railroad condemnation law. In Pennsylvania, condemnation of private property for public purposes occurs in accordance with the procedures and provisions set forth in the Pennsylvania Eminent Domain Code (PAEDC). See 26 Pa. C.S.A. § 101 et seq. Section 204(b)(2)(i) of the PAEDC establishes that the exercise by any condemnor of the power of eminent domain to take private property in order to use it for private enterprise is prohibited except when taken by a public utility or railroad. Further, Sections 701-703 of the PAEDC establish that a condemnee shall be entitled to just compensation and fair market value for the taking. If RJCP's proposed project is approved by the Board, any condemnation of private property necessary to reestablish the railroad right-of-way would be conducted in accordance with the procedures and provisions set forth in the PAEDC.

Chapter 6 of the DEIS includes a mitigation measure to address the acquisition of private property needed to construct the proposed rail line. This mitigation measure would require RJCP to acquire only the land necessary to re-establish the original 66-foot wide right-of-way and require RJCP to

attempt to reach an amicable sales agreement with each affected property owner in lieu of instituting a condemnation proceeding. OEA has incorporated this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

### 3.3.11 Air Quality/Odors

#### Summary

**DEIS AQ-1:** One commenter asserted that “while rail transportation is generally considered to reduce greenhouse gas emissions, the proposed project seeks to locate waste facilities remotely from their sources which would not have the effect of reducing greenhouse gas emissions.”

#### Response

Comment noted. The separate, direct impacts from the landfill are not within the scope of OEA’s environmental review for this rail line construction, operation, and reactivation project, as explained in Section 1.9 of the DEIS and Section 3.1 of this FEIS. The siting of the landfill and the subsequent environmental impacts associated with construction and operation of the landfill facility would be evaluated by PA DEP, not the Board. Consistent with NEPA, OEA addressed the potential cumulative impacts for air quality from the Proposed Action and its alternatives and the other reasonably foreseeable projects in the area, including the landfill, in Section 5.3.4 of the DEIS.

For the proposed rail line project, OEA analyzed the energy resources and air quality impacts in Sections 4.3 and 4.4 of the DEIS, respectively. These analyses indicate that the operation of trains via the Modified Proposed Action would result in an estimated annual fuel consumption of 94,349 gallons, which would equal an estimated annual greenhouse gas (i.e., carbon monoxide/hydrocarbon) emission rate of 3.8 tons/year. For comparison purposes, truck traffic operating over the Local Road System Upgrade alternative would result in an estimated annual fuel consumption of 492,492 gallons, which would equal an estimated annual greenhouse gas emission rate of 27.1 tons/year. Thus, from a greenhouse gas emission perspective, OEA’s analyses show that the operation of trains via the Modified Proposed Action would be nearly seven times more efficient than the operation of trucks via the local road system.

#### Summary

**DEIS AQ-2:** A number of commenters expressed concern about the potential for foul and/or objectionable odors emanating from rail cars as a result of RJCP’s planned transport of municipal solid waste, and the potential impact of these odors on adjacent land uses. Specifically, one commenter alleged that these odors would have an adverse impact on recreational users of the Allegheny Front Trail.

#### Response

As discussed in Section 4.4.3 of the DEIS, RJCP would be required to comply with all of the NS requirements for waste transport because the carloads of waste would come from an NS mainline. NS’s Tariff NS 6306 – Rules and Regulations for Handling Municipal Solid Waste, Contaminated Soil, Hazardous Materials, establishes strict requirements for the acceptance of municipal solid waste and Related Articles (see Appendix E of the DEIS). Municipal solid waste would only be accepted if it consisted of airtight, watertight, double-wrapped bales transported in covered gondola cars or in watertight intermodal containers transported on flatcars. More information about bale requirements and gondola requirements can be found in Section 4.1.4 of the DEIS. Because of

these applicable NS municipal solid waste transportation requirements, OEA has determined that the proposed rail line would have a negligible impact on localized odors.

### 3.3.12 Noise

#### Summary

**DEIS NO-1:** Commenters stated that RJCP's proposed rail line "would go thru small towns where people have lived quietly for many years," and disrupt an otherwise peaceful community that local residents find favorable. Other commenters stated that the proposed rail line would "ruin a lot of pleasures in the region that so many of us enjoy (including) serenity of quietness when walking, riding, and watching birds."

#### Response

As discussed in Section 4.5 of the DEIS, although not required under the Board's thresholds for noise impact analysis (49 C.F.R. § 1105.7), OEA conducted a quantitative noise analysis for both the Proposed Action and the Modified Proposed Action. In order to identify and quantify potential noise impacts, OEA used the FTA Noise Impact Assessment Spreadsheet to predict wayside train noise levels from RJCP's proposed rail operations. OEA used input parameters, such as land use category, existing noise level, type of source, speed of source, number of events, etc., to develop both severe and moderate noise impact contours (a noise contour is a line plotted on a map connecting points of equal sound). In addition to the FTA wayside noise model, OEA used the FRA train horn assessment model to calculate severe and moderate impact zones resulting from horn noise at public grade crossings. These severe and moderate horn noise impact zones were incorporated into the noise impact contours generated by the wayside train noise model. Based on this analysis, OEA identified 178 (71 moderate and 107 severe) noise-impacted sensitive land uses along the Proposed Action and 32 (23 moderate and 9 severe) noise-impacted sensitive land uses along the Modified Proposed Action. OEA identified the Modified Proposed Action as the environmentally preferable alternative for this project in part because of its substantially fewer noise-impacted sensitive land uses.

Chapter 6 of the DEIS includes mitigation measures to minimize or reduce these potential noise-related impacts. OEA has incorporated these noise mitigation measures in its final mitigation recommendations in Chapter 5 of this FEIS.

#### Summary

**DEIS NO-2:** One commenter asked if trains would be running early in the morning and/or late at night generating noise when most people are trying to sleep.

#### Response

Chapter 6 of the DEIS contains a mitigation measure that limits the operation of trains over the proposed rail line to between 7 A.M. and 10 P.M. OEA has included this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

### 3.3.13 Biological Resources

#### Summary

**DEIS BR-1:** USFWS offered several recommendations on ways to avoid and minimize impacts to migratory birds and to ensure project compliance with the Migratory Bird Treaty Act (MBTA).

The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for authorizing incidental take, USFWS recognizes that some birds may be killed even if all reasonable measures to avoid take are implemented. Unless the take is authorized, it is not possible to absolve individuals, companies or agencies from liability. However, the USFWS Office of Law Enforcement focuses on those individuals, companies, or agencies that take migratory birds with disregard for their actions and the law. Therefore, since construction activities associated with the proposed project have the potential for avian mortality, USFWS offered the following recommendations to avoid violating the MBTA:

1. Due to the difficulty in assessing the entire project site for all bird nests, we recommend that the clearing of natural or semi-natural habitats (e.g., forests, woodlots, reverting fields, fencerows, shrubby areas) be carried out between September 1 and March 31, which is outside the nesting season for most native bird species. Without undertaking specific analysis of breeding species and their respective nesting seasons on the project site, implementation of this seasonal restriction will avoid direct take of most breeding birds, their nests, and their young (i.e., eggs and hatchlings), and
2. Avoid permanent habitat alterations in areas where birds are highly concentrated. Examples of high concentration areas for birds are wetlands, State or Federal refuges, Audubon Important Bird Areas, private duck clubs, staging areas, rookeries, leks, roosts, and riparian areas. Avoid establishing sizable structures along known bird migration pathways or known daily movement flyways (e.g., between roosting and feeding areas), and
3. To conserve area-sensitive species, avoid fragmenting large, contiguous tracts of wildlife habitat, especially if habitat cannot be fully restored after construction. Maintain contiguous habitat corridors to facilitate dispersal. Where practical, concentrate construction activities, infrastructure, and man-made structures (e.g., buildings, cell towers, roads, parking lots) on lands already altered or cultivated, and away from areas of intact and healthy native habitats. If not practical, select fragmented or degraded habitats over relatively intact areas, and
4. To reduce habitat fragmentation, co-locate roads, fences, lay down areas, staging areas, and other infrastructure in or immediately adjacent to already disturbed areas (e.g., existing roads, pipelines, agricultural fields). Where this is not possible, minimize roads, fences, and other infrastructure. To minimize habitat loss and fragmentation, cluster development features (e.g., houses, commercial buildings, roads) rather than distributing them throughout land parcels, and
5. Develop a habitat restoration plan for the proposed site that avoids or minimizes negative impacts on vulnerable wildlife. Use only plant species that are native to the local area for revegetation of the project area.

### **Response**

OEA has reviewed USFWS's recommended MBTA avoidance and minimization measures for RJCP's proposed rail construction and rail operations activities, as discussed in Sections 2.2.1.1 and 2.2.1.2 of the DEIS, respectively. OEA determined that measure #1 has the potential to avoid or minimize avian mortality associated with RJCP's proposed project. Therefore, OEA has included the recommended brush/tree clearing timing restriction as a new mitigation measure in Chapter 5 of this FEIS.

OEA has determined that if the Board approves, and RJCP constructs, the environmentally preferable alternative for this project (i.e., the Modified Proposed Action), RJCP would already be in compliance with USFWS's recommended measures #2 through #4, which call for avoiding and minimizing unnecessary wildlife/habitat impacts. This determination is based on the limited scope of construction work proposed by RJCP combined with the use of existing railroad bed. By using the rail bed of Conrail's former Philipsburg Industrial Track and Snow Shoe Industrial Track in lieu of new railroad construction on new alignment, the Modified Proposed Action would avoid and minimize unnecessary wildlife/habitat impacts while still meeting the purpose and need of the project. As discussed in the DEIS, certain unavoidable wildlife/habitat impacts incidental to the construction and operation of the proposed rail line might occur, but these impacts are anticipated to be minimal and would be limited to clearing of brush and minor tree removal within the roadbed.

Regarding USFWS's recommended measure #5 which calls for the development of a habitat restoration plan, OEA notes that the proposed project would involve the construction of a linear transportation corridor with little to no adjacent habitat disturbance in need of restoration on a post-construction basis. Therefore, OEA has determined that USFWS's recommended measure #5 would not be applicable to this project because there would be no areas in need of habitat restoration during active use of the proposed rail line.

### **Summary**

**DEIS BR-2:** USEPA expressed concern that the installation of extensive right-of-way fencing may deter animal passage in the project area and requested that RJCP provide the locations of any planned fencing.

### **Response**

Chapter 6 of the DEIS includes a mitigation measure requiring RJCP to share the costs (50%-50%) with any property owner in a residential area that requests the installation of right-of-way fencing. Right-of-way fencing for this project would only be installed in residentially developed areas adjacent to residential properties. No right-of-way fencing would be installed in rural, undeveloped areas, including the entire Eastern Segment. Thus, OEA does not anticipate significant animal passage issues associated with the installation of right-of-way fencing.

### **Summary**

**DEIS BR-3:** USEPA requested a discussion on the control of invasive species in the area and how to prevent their spreading along the rail corridor.

### **Response**

As is typical of most mixed-use land areas in Pennsylvania, invasive plant species exist in and along both the Eastern and Western Segments of the former rail corridor. Examples of invasive plant

species encountered during OEA's field studies include: Japanese Barberry, Autumn Olive, Tartarian Honeysuckle, Multiflora Rose, Crown-vetch, Japanese Stiltgrass, Reed Canary Grass, Phragmites, and Japanese Knotweed. Management of these and all other vegetation within the immediate rail corridor would be conducted through a targeted herbicidal spraying program aimed at maintaining the roadbed itself. Chapter 6 of the DEIS includes a mitigation measure requiring RJCP to ensure that the herbicidal sprays used in track maintenance are approved by USEPA and are applied by licensed individuals who shall limit application to the extent necessary for rail operations. OEA has incorporated this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS. Additionally, based on comments issued by USFWS (see comment DEIS WR-2), OEA has included a new mitigation measure in Chapter 5 of this FEIS requiring RJCP to use the aquatic formulation of herbicidal spray around streams and wetlands.

### Summary

**DEIS BR-4:** Several commenters contend that the construction, operation, and reactivation of the proposed rail line would be detrimental to the area, especially to wildlife and nature. One commenter stated that “we need to preserve PA wild areas, streams and rivers, plants and trees, and fish and animals” and that “running loud trains through them totally disrupts nature.”

### Response

As discussed in Section 4.6.2 of the DEIS, the Proposed Action would involve the construction, operation, and reactivation of approximately 20 miles of single-track line over the existing graded roadbed of a previously abandoned/rail banked single-track line. Given this scope of work, OEA determined that the construction-related impacts of the proposed rail line on vegetation and wildlife would be limited to clearing of brush and minor tree removal within the roadbed. This impact would be further minimized in areas that receive regular all-terrain vehicle (ATV) traffic, including the entire 9.3-mile Eastern Segment and several sections of the Western Segment, because the roadbed has been kept open and is largely devoid of vegetation in these active use areas. One exception to this minor construction-based impact would be the proposed new mainline connection along the Modified Proposed Action's Alternate Route from Philipsburg to Munson. Approximately 2,500 linear feet of new railroad corridor would be constructed for the mainline connection in a reclaimed surface mine area consisting predominantly of old field and early successional forest habitats. OEA determined that operation-related impacts would consist of removal of tree and shrub vegetation located immediately adjacent to the roadbed. See Table 4-12 in the DEIS for impacts in acres by major vegetative community type. Given the 25 mph maximum operating speed, OEA also determined that the potential impact of locomotive-wildlife strikes would likely be nominal.

### Summary

**DEIS BR-5:** One commenter provided a shortlist of the flora and fauna that exists in the area of the proposed new connection of the Modified Proposed Action's Alternate Route from Philipsburg to Munson to demonstrate the vegetation and wildlife impact advantages of the Proposed Action's Wallaceton to Munson Route.

### Response

Table 4-12 in the DEIS shows the vegetative community/wildlife habitat impacts of the two alternate routes to Munson. The table indicates that the Modified Proposed Action (via the Alternate Route from Philipsburg to Munson) would result in greater acreage impacts to vegetative communities and wildlife habitats than the Proposed Action (via the Wallaceton to Munson Route). These impacts

were included in the environmental impact summary table (i.e., Table 2-2 in the DEIS) and as part of OEA's analysis of the environmentally preferable alternative in Section 2.4 of the DEIS.

Despite the higher vegetative community/wildlife habitat impacts, OEA identified the Modified Proposed Action as the environmentally preferable alternative for this project. This determination is based on a number of factors, one of the most important of which is that the Modified Proposed Action's Alternate Route from Philipsburg to Munson would involve substantially fewer public road and private driveway crossings. For comparison purposes, the Proposed Action (via the Wallaceton to Munson Route) would involve 19 public road crossings and 13 private driveway crossings, whereas the Modified Proposed Action (via the Alternate Route from Philipsburg to Munson) would involve only 5 public road crossings and 2 private driveway crossings. Further, the Modified Proposed Action would affect significantly fewer adjacent residential properties (i.e., 155 versus 28) and less noise-impacted sensitive land uses (i.e., 178 versus 32).

### Summary

**DEIS BR-6:** One commenter alleged that the EIS fails to consider the impact of the proposed rail line on habitat fragmentation. The commenter stated that the rail line will be a major fragmenting feature, which will impact passerine birds, introduce invasive species, and disrupt migration routes. The commenter argued that the EIS "summarily dismisses any impacts from reactivation of the old rail line because the graded roadbed of the former railroad already serves as an existing linear corridor between adjacent habitat types." The commenter also claimed that OEA assumes, without providing anything to substantiate the assumption, that the impacts of an active rail line will be the same as a graded roadbed. Further, the commenter stated that the EIS fails to discuss fragmenting in the context of the proposed new connection where there is no existing graded roadbed and where the impacts will undoubtedly be more severe.

### Response

Photographs 2-1, 2-2, and 2-3 in Chapter 2 of the DEIS demonstrate that the graded roadbed of the former rail corridor is already a significant landscape feature located between adjacent habitat types. On the Eastern Segment, the Snow Shoe Multi-Use Rail Trail is a regionally significant recreational feature used by thousands of ATV enthusiasts on an annual basis. Therefore, given this corridor's 100-year history of active railroad use, combined with its current heavy ATV usage, OEA has determined that the reactivation of rail service over this existing linear transportation corridor would not cause impacts by fragmenting habitat.

Regarding the 2,500 feet of new railroad construction associated with the mainline connection area along the Modified Proposed Action's Alternate Route from Philipsburg to Munson, OEA determined that the combination of old field/herbaceous and early successional forest habitats located in this reclaimed surface mining area is already indicative of a highly fragmented habitat resulting from former strip mining activities. Thus, OEA concluded that RJCP's proposed railroad construction would constitute only a minor habitat impact in this already disturbed area.

### Summary

**DEIS BR-7:** One commenter contended that RJCP's proposed rail line "would destroy our protected species, and this is against the laws of PA." A second commenter alleged that "nesting sites within the proposed alternative (Modified Proposed Action's Alternate Route from Philipsburg to Munson), include, but are not limited to, blue herons, which are endangered."

### Response

As discussed in Section 4.6.3 of the DEIS, OEA conducted project specific coordination with the PGC, PFBC, PA DCNR, and USFWS about potential project impacts to threatened and endangered species. From this coordination, the only threatened and/or endangered species identified as being potentially impacted by the construction of RJCP's proposed rail line was Branching Bur-reed (*Sparganium androcladum*), a PA Endangered Species.

As discussed in Chapter 6 of the SDEIS, OEA conducted additional field surveys during the 2010 flowering/fruitletting season to make an accurate identification of this species down to the species level which was not possible before issuance of the DEIS. Based on the results of these additional field surveys, OEA concluded that the species in question was *Sparganium americanum*, not the endangered *Sparganium androcladum*. In its November 29, 2010 correspondence, PA DCNR concurred with OEA's finding, but requested that one additional survey be conducted prior to submitting the project's Section 404/Chapter 105 waterway encroachment permit application to PA DEP because of a known population of *Sparganium androcladum* that exists upstream, to ensure that no specimens have spread to the project area. OEA has included this requested field survey as part of its final mitigation recommendations in Chapter 5 of this FEIS.

### Summary

**DEIS BR-8:** PA DCNR issued a comment letter on the DEIS stating that it had not fully cleared the railroad alternative because the survey results for *Sparganium androcladum* were still pending. It also stated that the Local Road System Upgrade alternative, if it were to be pursued, would require additional surveys for several plant species.

### Response

See response above. OEA does not plan to complete additional surveys for the Local Road System Upgrade alternative because this alternative has not been identified as the environmentally preferable alternative for this project.

### Summary

**DEIS BR-9:** In its comment letter, USFWS stated that the project is located within the range of the federally listed, endangered Indiana bat (*Myotis sodalis*), and that it had previously provided comments by letters dated February 14, 2007, May 8, 2008, June 9, 2009, October 26, 2009, and January 8, 2010. Further, USFWS stated that the proposed rail line would not likely adversely affect the Indiana bat, and that this determination would be valid for two years from the date of its DEIS comment letter. USFWS also indicated that "if the proposed project has not been fully implemented prior to this, an additional review by USFWS is recommended. Similarly, should project plans change, or if additional information on listed or proposed species becomes available, this determination may be reconsidered."

### Response

Comment noted. OEA included USFWS as part of the distribution list for the SDEIS, which addressed changes in the project that developed after issuance of the DEIS.

### 3.3.14 Water Resources

#### Summary

**DEIS WR-1:** Several commenters expressed concern regarding potential impacts to surface water resources, especially Black Bear Run and Black Moshannon Creek. Specific comments included the following:

“The most damaging impact of the entire proposed project will be to our water system. It is essential that our environment be protected. It is of great importance to our lives and livelihoods that the water not be damaged and this project not move forward.”

“The Moshannon Creek Watershed Coalition has great concerns about the impacts of this proposed activity to good quality local streams. The proposed rail alignment will traverse a large portion of the Moshannon Creek watershed, which will cross several headwater streams.... The rail alignment will be crossing over or near high quality trout streams, such as Laurel Run, Black Bear Run, Sixmile Run, and Black Moshannon Creek that are precious natural resources in our community... We ask that any decision carefully consider the impacts of a spill of just one rail car carrying frac water or other chemicals such as peroxide. A spill of this nature has the potential to create irreversible harm to these streams.”

#### Response

As discussed in Section 4.7.2 of the DEIS, OEA evaluated the potential watercourse impacts of RJCP’s proposed rail line. Specifically, Table 4-15 in the DEIS quantitatively summarizes the direct construction-related impacts to watercourses. This table indicates that the Proposed Action would result in 1,570 linear feet of watercourse impacts, whereas the Modified Proposed Action would result in 980 linear feet of watercourse impacts. Thus, OEA identified the Modified Proposed Action as the environmentally preferable alternative, in part, to the reduced watercourse impacts.

Beyond these direct construction-related impacts, OEA evaluated the potential rail operations’ impacts to watercourses. As addressed in the SDEIS, the most significant watercourse impact would be a potential train derailment resulting in a release of untreated frac water from natural gas drilling operations or ethanol into the environment (see Section 3.2.2 of the SDEIS). Specifically, OEA conducted a Hazardous Materials Risk Assessment (see Appendix B of the SDEIS) to evaluate the likelihood of such a train derailment. Based on the analysis, OEA determined that there would be a 0.0007 (0.07%) annual probability of occurrence for a mainline train accident resulting in a release of frac water and/or ethanol on the proposed rail line. This annual probability of occurrence would equal an estimated return year interval of one accident resulting in a release of frac water and/or ethanol every 1,428 years. Additionally, the planned 25 mph maximum operating speed for the proposed rail line likely would further reduce the probability of an occurrence.

Despite this extremely low annual probability of occurrence, OEA evaluated the potential environmental impacts associated with a release of ethanol, a regulated hazardous material, into the project area.<sup>11</sup> As discussed in Chapter 3 of the SDEIS, an accident involving a release of ethanol directly into surface water would likely result in the death of some aquatic organisms for a particular distance downstream. The distance of downstream impact would depend on a number of factors,

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<sup>11</sup> OEA did not conduct a similar analysis for a potential release of untreated frac water from natural gas drilling operations because it is not regulated as a hazardous material by USEPA (see Section 3.3.19 Hazardous Materials Transport later in this chapter).

including the volume of ethanol entering the watercourse, the rate at which the ethanol enters the watercourse, and the dilution potential of that watercourse (i.e., smaller streams with less dilution potential would have a greater downstream impact). Apart from the initial shock to the aquatic system (and the subsequent death of some aquatic organisms), no long-term adverse effects would be anticipated because once the spill is contained and ethanol is no longer entering the watercourse, the ethanol would quickly flush downstream and become diluted as additional tributary streams contribute to the water flow of the particular watercourse. This impact would, to some degree, be minimized if the ethanol were entering water already impacted by acid mine drainage from surface and subsurface coal mining.

In response to commenters' concerns about Black Bear Run and Black Moshannon Creek, OEA notes that the proposed rail line would cross Black Bear Run approximately 100 feet upstream from its confluence with Moshannon Creek. Because of this topographic position near the confluence with Moshannon Creek, a rail operations-based water quality event, such as a train derailment, would likely impact less than 1% of the Black Bear Run watershed. This impact assessment would also apply to the proposed bridge crossing of Laurel Run, which is not classified as an approved or naturally reproducing trout water due to the presence of acid mine drainage from its confluence with Moshannon Creek (see Table 3-5 in the DEIS). Additionally, the proposed rail line does not cross Black Moshannon Creek or even enter the Black Moshannon Creek watershed. The proposed rail line project ends at the western edge of Gorton Road, which is an area that drains directly to Moshannon Creek, not Black Moshannon Creek. Black Moshannon Creek and its drainage area are located south and east of this terminus.

### **Summary**

**DEIS WR-2:** USEPA and USFWS commented on RJCP's anticipated use of herbicidal sprays for track maintenance. Specifically, USEPA expressed concern that "the use of these agents in the sensitive areas of the Moshannon State Forest and surrounding waterways can have detrimental environmental effects." USFWS stated that "it is important to consider the effects on the aquatic community when spraying herbicides in the vicinity of a water body, especially due to the toxic nature of carriers or surfactants usually used in conjunction with herbicides" and recommended that RJCP "use the aquatic formulation of any herbicide chosen when herbicide use is anticipated around streams or wetlands."

### **Response**

OEA agrees with USEPA's and USFWS's concerns regarding the application of herbicidal sprays in the vicinity of streams and wetlands. Therefore, OEA has included a new mitigation measure in Chapter 5 of this FEIS that would require RJCP to use the aquatic formulation of any herbicidal spray anticipated to be used around streams and wetlands as part of its annual targeted herbicidal spraying program.

### **Summary**

**DEIS WR-3:** USFWS recommended that RJCP contact PA DEP and USACE to determine specific permit requirements for this project. USFWS also recommended that the entire project, including all storage and stockpile areas, access roads, laydown areas, staging areas, new trailhead facility, and utility line relocations be submitted for review, and that these areas be identified on project plans and in the DEIS. Finally, USFWS suggested that siting of these areas should avoid all aquatic resources.

### **Response**

Comments noted. OEA has included both PA DEP and USACE in agency coordination efforts for this project. If the Board approves this project, RJCP would be required to secure the necessary Section 404/Chapter 105 permit approvals from USACE and PA DEP, respectively. These permit approvals would be contingent upon the applicant submitting all relevant construction and operations information, including the locations of any and all storage and stockpile areas, access roads, laydown areas, staging areas, new trailhead facility, and utility line relocations. Chapter 6 of the DEIS includes a mitigation measure requiring RJCP to secure these necessary permit authorizations as well as a mitigation measure requiring RJCP to ensure that no construction materials or equipment will be staged within any identified wetland or watercourse.

### **Summary**

**DEIS WR-4:** USFWS commented that riparian areas are a valuable natural resource and that impacts to these areas should be avoided and minimized whenever possible. USFWS requested that measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project. Additionally, USFWS requested that impacts to streams should be assessed in terms of stream functions and values, linear feet of impact, vegetation type lost, and potential effects on wildlife, bank stability and water quality.

### **Response**

OEA concurs with USFWS's comments regarding the natural resource values of riparian areas. For this project, OEA has determined that both the Proposed Action and Modified Proposed Action would avoid and minimize impacts to riparian areas due to the planned use of existing roadbed and bridge structures. The only bridge structure that would be constructed in a riparian area would be the bridge over Laurel Run within the mainline connection area of the Modified Proposed Action's Alternate Route from Philipsburg to Munson. This bridge crossing would be permitted by PA DEP and USACE pursuant to the Section 404/Chapter 105 Waterway Encroachment Permitting Program, and compensatory mitigation would be conducted in accordance with this permit authorization.

### **Summary**

**DEIS WR-5:** USFWS recommended the use of best management practices when conducting work in or near streams, including working during periods of low flow, using sedimentation and erosion control devices, adequately and continually maintaining sediment and erosion control devices to insure effectiveness, expediting all revegetation efforts to reduce sedimentation and erosion run-off, stabilizing new construction as the project progresses, conducting stream work from the stream banks or bridges to minimize sedimentation and turbidity within the stream, and locating equipment staging areas outside of streams and riparian areas. USFWS further recommended that 1) all excavated materials be stored at an upland site and precluded from re-entry into any aquatic resource, 2) a vegetated riparian buffer with a minimum width of 50 feet be maintained directly adjacent to streams (e.g., Black Moshannon Creek, Moshannon Creek, and Laurel Run), and 3) vegetation in impacted areas be re-established by using only plant species that are native to the local area.

### **Response**

Chapter 6 of the DEIS includes a number of mitigation measures that would address USFWS's suggestions. Specifically, VM 20 would require RJCP to implement appropriate erosion and sedimentation control measures to minimize potential water quality impacts during project

construction in accordance with an Erosion and Sedimentation Pollution Control Plan approved by the Centre and Clearfield County Conservation Districts, VM 24 would require RJCP to disturb the smallest area possible around wetlands and watercourses on the rail line and conduct reseeded efforts to ensure proper revegetation of disturbed areas as soon as practicable following project-related construction activities, VM 25 would require RJCP not to stage project-related construction materials or equipment within any identified wetland or watercourse areas, VM 28 would require RJCP to prohibit construction vehicles from driving in or crossing streams at other than established/ permitted crossing points, and VM 29 would require RJCP to employ best management practices to control turbidity and minimize channel disturbance during the construction of the new bridge over Laurel Run.

### **Summary**

**DEIS WR-6:** USFWS recommended that specific measures be taken to avoid and minimize impacts to wetlands, such as installing a physical barrier (like snow fencing or other visible demarcation) to protect existing wetlands from unintentional excursions by heavy equipment, using corduroy, chunkwood or rubber mats for any wetland crossings, and establishing a 50-foot vegetated buffer around all wetlands.

### **Response**

OEA agrees with USFWS's suggestion to develop mitigation to require the installation of protective fencing around wetlands and has included a new mitigation measure in Chapter 5 of this FEIS that would require RJCP to install orange protective fencing around all wetlands in the area of new railroad construction associated with the Modified Proposed Action's Alternate Route from Philipsburg to Munson mainline connection. Given the limited construction scope of work associated with this project (i.e., reconstructing a single-track line over the existing graded roadbed of a former single-track line), OEA does not anticipate crossing any wetlands along the right-of-way with heavy equipment. Further, Chapter 6 of the DEIS includes a mitigation measure that would require RJCP to disturb the smallest area possible around wetlands and watercourses on the rail line. Regarding USFWS's request for a 50-foot vegetated buffer around all wetlands, OEA has determined that, since many wetlands have formed in trackside ditches just below the graded road bed as a result of failing drainage pipes, it would not be possible to install a 50-foot vegetated buffer this close to the proposed rail line. The mitigation measure requiring RJCP to disturb the smallest area possible around wetlands and watercourses should minimize wetland disturbances, while still accomplishing the project objectives.

### **3.3.15 Socioeconomics**

#### **Summary**

**DEIS SO-1:** Several commenters posed questions regarding the number and type of jobs that would be created by RJCP's proposed rail line project. One commenter asserted that RJCP may hire 5 to 12 local people, but the rest would be from out of town and consist of people who are connected to the railroad. Another commenter stated that this area does not need employment related to garbage.

#### **Response**

Section 4.8.2 of the DEIS explains that RJCP anticipates creating a minimum of six new jobs as a result of the proposed rail line. Specifically, these new jobs would consist of four new train and engine positions and two new maintenance of way positions, all of which would be RJCP employees.

### 3.3.16 Parks and Recreation Facilities

#### Summary

**DEIS PR-1:** Two commenters indicated that RJCP's proposed rail line would have a negative impact on the Red Mo Downriver Race. This canoe race was established in 1967 on Moshannon Creek, is a nationally recognized qualifier race for the Junior Olympics, and has an annual participation of over 200 entrants. The commenters alleged that the operation of trains over the proposed rail line would degrade the remote wilderness aspects and attractiveness of this event.

#### Response

The Red Mo Downriver Race is held each spring on a remote 7.5-mile section of Moshannon Creek. The race starts at the Peale Bridge near the town of Grassflat and ends at the Route 53 Bridge near the town of Moshannon. OEA notes that the starting point for this race at the Peale Bridge is several miles downstream of the Moshannon Creek Viaduct Bridge (i.e., the railroad's last crossing of Moshannon Creek). Therefore, the proposed rail line would not cross the 7.5-mile section of Moshannon Creek used for this race and would have no impact on the Red Mo Downriver Race. Apart from periodic visual and noise encroachments associated with a passing train, canoeing and other non-motorized boating activities on Moshannon Creek in general would not be impacted by the proposed rail line. RJCP intends to use the three existing bridge crossings of Moshannon Creek, and no new bridge structures would be constructed.

#### Summary

**DEIS PR-2:** A number of commenters objected to the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail as a result of RJCP's potential reactivation of the rail banked Eastern Segment. Commenters expressed frustration about the lost recreational opportunities that could result from this impact. Specific comments are as follows:

"Why should we give up the Snow Shoe Rail Trail for Resource Recovery to build a rail line for the trash train... Save the Snow Shoe Rail Trail."

"We as a family gathering go ride ATV's, three generations, mother, daughter, & grandchildren. We hope our fun can continue?"

"Why is it whenever a community comes together and sets a future of fun and entertainment for entire families can someone come in and destroy what they worked so hard to attain."

"My family and I are members of the ATV club Snow Shoe Rails to Trails. We love riding the trail and hope it can stay intact. It is good family fun, and we have a membership of 3000."

"Headwaters Charitable Trust and the members of the Snow Shoe Rails to Trails have spent a lot of time and money on the eastern section of the trail. People from all over Pennsylvania and surrounding states enjoy this trail. I have personally met people from the Pittsburgh area, Allentown, DuBois, Reading, Port Matilda, Philipsburg and numerous other areas. We are happy and appreciative to have a place to ride our 4 wheelers inexpensively and safely. RRLLC only sees dollar signs, not the beautiful way of life that we see."

“With private property being posted more and more, riding our ATV’s on private ground is virtually impossible. With the SSRT you can come and ride a trail system for over 30 miles of beautiful country in the Snow Shoe area. This even keeps the young generation of kids occupied with something other than sitting in front of a TV, computer or even away from the drugs. I have seen so many families together with their kids enjoying themselves together being a part of this trail system. I camp weekends at the trail head, and I can see the benefit of this trail system.”

“The SSRTA is a wonderful organization; we spend an enormous amount of time on this trail.”

“I finally found a great place to ride & enjoy myself along with my family and fellow riders who respect each other and the property they have access to. Why would a Township ruin that by taking another state’s garbage is beyond me. Could it be greed?”

“The Snow Shoe Rails to Trails organization has spent many years and much money to keep up the trail system. This trail would be eliminated if the rail line is rebuilt. Many folks come to enjoy the undeveloped forest by hiking, biking, and riding this trail.”

### **Response**

Comments noted. See Section 3.2 of this FEIS for OEA’s detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

### **Summary**

**DEIS PR-3:** A number of commenters stated that reactivation of the rail banked Eastern Segment and the subsequent elimination of 9.3 miles of the Snow Shoe Multi-Use Rail Trail would have a negative impact on the local economy. Commenters indicated that thousands of people enjoy the rail trail on an annual basis, and these recreational visitors help to support local businesses via green tourism. Specific comments are as follows:

“I am president of the Central Mountains ATV Assoc. Inc. We have nearly 100 members which would result in several hundred actual riders (due to family memberships). Our club schedules ATV Rides every month and many of them are started from the Gillentown Trailhead of the SSRTA (Snow Shoe Rails to Trails Association). In fact we recommend to all our members, that they become members of SSRTA in order to participate in these rides. We, of course, are only a small piece of the thousands of ATV riders that use and enjoy the SSRTA Riding Trail. This trail is currently using a lot of the old rail road bed that RJCP is proposing to build their rail line on. Included in this is the popular Peale Tunnel and the viaduct bridge that crosses the Red Moshannon River. These are both very high attraction and important sites for this ATV Trail... I am asking as representative of my club, that serious consideration be given to what the approval of this rail line development is going to do to existing and already developed use of this property. This existing trail is already contributing a significant impact to the local economy.”

“As a member of the Snow Shoe Rails to Trails, I oppose the reactivation of the railroad line requested to be used by Resource Recovery LLC. The railroad in question is an outdoor recreational playground for thousands of visitors including me, my family and friends. Why change something that thousands of people are using to accommodate ONE company and their few leaders. RRLLC’s request is not justified to change this area. The economic benefit of these thousands of visitors is unmeasurable. They support the local stores, gas stations, taverns, restaurants, and other businesses.

Many of them own cabins in this region and their property taxes benefit the Snow Shoe Borough and Snow Shoe Township. RRLLC's business ventures support themselves and could not replace the economic support that visitors provide. Hopefully, the people who have appreciated this area for years will have a voice in this matter."

"I feel the surrounding communities will suffer because every weekend there are dozens and dozens of people coming to their cabins, riding the SSRT trail system, hunting, etc. In doing so they generate income in the businesses in the area."

"The Peale Tunnel and Viaduct Bridge are historic sites, and thousands of people visit them each year. The local economy will suffer immeasurably if we lose these visitors to our area."

"Visitors come here for a variety of reasons, but our outdoor recreation offerings are one of the primary motivators. Outdoor recreation in Centre County infuses hundreds of thousands of dollars into the local economy from visitors through their purchases of goods and services at our grocery stores, retail stores, gas stations, lodging properties, campgrounds, etc... The very popular and unique Snow Shoe Rail Trail traverses the project site, and there are plans in the works with the Department of Conservation and Natural Resources to expand and connect this trail with others in the area. The Central Pennsylvania Convention and Visitors Bureau is opposed to the conversion of this area back to a rail line or any other industrial project which would have a major negative impact on the tourism product in Centre County, one that we have invested millions of dollars promoting."

"The DEIS must adequately address the environmental and economic impacts including...Snow Shoe Rail-Trail visitor revenues and investments, especially the loss of ATV rider revenue. This well-managed and well-recognized Rail-Trail is unique in the fact that it is a multi-use trail with over 3,000 members who support and maintain the trail. ATV use is highly restricted in Pennsylvania – this is one of the rare linear park locations where registered ATVs are legal, which makes the loss of half the 19-mile trail even more detrimental. Motorized users spend more money per capita than walkers, birders, hikers and bikers. Many of our small businesses will lose a significant source of income if connectivity and mileage is sacrificed for this proposed rail line. This aspect of reactivation has yet to be considered an impact in this low-income region."

"I feel that proper consideration of the economic impact the SSRT provides for the Mountain Top Region and connectivity of the SSRT to other trail systems in our area should be carefully considered when deciding to reactivate this line. The SSRT has become a popular destination for well over 3,000 users of the trail and has the potential to multiply these numbers – the Clearfield County Recreation and Tourism Authority has just most recently contacted us and placed an ad for us for their Fall brochure because of the calls that they have been receiving concerning legal ATV riding areas and hearsay about our trail. Over 40 sponsors advertise with us and support the idea of our trail and its possible connections to even more businesses and consumers. We provide a service that is impossible to place a dollar value on – that of family recreation in the outdoors – our membership comes from all walks of life and from all over the state of PA – as well as surrounding states and as far reaching as across the country! The loss of the 9.3 miles on our western end would sever future connections, and severely negatively impact us – no longer would users of the trail be able to experience the thrill of crossing the Red Moshannon on the RR-Viaduct Bridge, or the beauty of the Peale Tunnel and its rich history."

## Response

Comments noted. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

Additionally, OEA has recently learned of a planned expansion of the Snow Shoe Multi-Use Rail Trail. This PA DCNR-sponsored expansion involves connecting the Snow Shoe Multi-Use Rail Trail to the Bloody Skillet Recreation Area in Sproul State Forest. A 6.6-mile connection on the eastern end of the Snow Shoe Multi-Use Rail Trail is currently under construction and would not be impacted by RJCP's proposed project. The expansion of the Snow Shoe Multi-Use Rail Trail, and its subsequent connection to the popular Bloody Skillet Recreation Area, may further offset the various impacts associated with the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail.

## Summary

**DEIS PR-4:** HCT and SSRTA submitted comments regarding the connectivity of the Snow Shoe Multi-Use Rail Trail to other trail systems in the area. Specifically, HCT stated that the Snow Shoe Multi-Use Rail Trail is successful because it is a vital link to approximately 95 miles of other trail systems, creating 126 miles of connected trails. HCT argued that the loss of the 9.3-mile section of rail trail as a result of RJCP's proposed reactivation of the rail banked Eastern Segment would sever this connectivity and severely diminish the overall attractiveness of the rail trail to users beyond the local area. Similarly, SSRTA commented that the loss of the western end of the rail trail would prohibit future connections to businesses in the Philipsburg area and beyond.

## Response

See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program. Many of the connections or trail connectivity segments highlighted by HCT do not currently exist. At the present time, the Snow Shoe Multi-Use Rail Trail is not part of a larger 126-mile system of connected trails. HCT supplied a map with its comment letter reflecting hypothetical recreation corridors as shown in the Centre County Recreation and Greenway Plan, which establishes park and recreational goals and identifies potential future opportunities for adding more park and recreational facilities in Centre County, including trails. Many of these recreation corridors are conceptual as possible future connections, but do not currently exist. See, for example, the proposed expansion of the Snow Shoe Multi-Use Rail Trail to Wallacetown (7.6 miles) and Philipsburg (12 miles), as well as to the Allegheny Front Trail (40 miles). OEA notes that the proposed expansion of the Snow Shoe Multi-Use Rail Trail to Wallacetown and Philipsburg would use the same abandoned railroad segments that have been evaluated by OEA as the Proposed Action's Wallacetown to Munson Route and the Modified Proposed Action's Alternate Route from Philipsburg to Munson, respectively. Furthermore, the Allegheny Front Trail and the Snow Shoe Multi-Use Rail Trail are not connected but do run parallel to each other for 3.3 miles on either side of the Moshannon Creek. See Figure 4-5 in the DEIS. ATV traffic (i.e., the primary use of the Snow Shoe Multi-Use Rail Trail) is prohibited on the Allegheny Front Trail, which is intended primarily for foot traffic.

The Snow Shoe Multi-Use Rail Trail is connected to the Bloody Skillet Recreation Area in Sproul State Forest. This 6.6-mile connection on the eastern end of the Snow Shoe Multi-Use Rail Trail is currently under construction and would not be impacted by RJCP's proposed project.

### Summary

**DEIS PR-5:** Several commenters raised concerns that RJCP's proposed reactivation of the rail banked Eastern Segment would negatively impact the wilderness experience (i.e., visual, auditory, odors, serenity, sense of remoteness, etc.) of hikers on the Allegheny Front Trail, as well as hunters, fishermen, birders, and other outdoor recreational users of Moshannon State Forest and Black Moshannon State Park. Commenters suggested that the reintroduction of train traffic to this area would drive current outdoor recreational users to more remote destinations, thereby having a negative impact on the outdoor recreation/green tourism economy that is being promoted in this region.

One commenter questioned OEA's "nonsensical conclusion that eliminating the Snow Shoe Multi-Use Trail and the noise generated by ATVs and replacing it with railroad tracks and trains will enhance the recreational experience of hikers using the Allegheny Front Trail."

### Response

See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program. As discussed above in the response to comment DEIS PR-4 and in Section 4.8.4 of the DEIS, the rail banked Eastern Segment and the Allegheny Front Trail run parallel to each other on opposite sides of Moshannon Creek for approximately 3.3 miles. OEA concluded that the aesthetic impact of the proposed rail line to the Allegheny Front Trail would be minimal because of the limited number of trains that RJCP anticipates operating over the proposed rail line (i.e., one or at most two trains daily, six days per week) and the overall length of the Allegheny Front Trail (i.e., 40 miles). OEA further concluded that the elimination of this section of the Snow Shoe Multi-Use Rail Trail and the associated noise currently being generated by thousands of ATV users could potentially enhance the recreational experience of hikers using the Allegheny Front Trail, especially on weekends when RJCP would only be running trains on Saturdays (see Section 5.1 of the DEIS). This could also apply to the hunters, fishermen, birders and other outdoor recreational users of Moshannon State Forest.

Further, the Moshannon State Forest exceeds 190,000 acres in size, and the proposed rail line would only pass through a 4,400-foot section of it. Therefore, it is difficult to envision that the operation of one (or at most two) train per day over RJCP's proposed rail line would have a substantive impact on the overall recreational use of Moshannon State Forest. As for Black Moshannon State Park, Section 3.8.4 of the DEIS explains that the park is located approximately three miles south of the project area. For that reason, OEA has determined that the proposed rail line should have no impact on the recreational use of Black Moshannon State Park. OEA did not assess potential economic impacts associated with decreased recreational use of the Allegheny Front Trail, Moshannon State Forest, or Black Moshannon State Park because OEA determined that there would likely be no substantive decrease in recreational use of any of these facilities.

### Summary

**DEIS PR-6:** One commenter objected to the railroad going through Moshannon State Forest. The commenter stated that the natural gas drilling industry is destroying vast amounts of forestland and that we need to protect whatever forestland we can, including this section of Moshannon State Forest.

## **Response**

Comment noted. In addition, OEA notes that the Board has no jurisdiction or authority over the natural gas drilling industry. The 4,400-foot section of the proposed rail line that would pass through Moshannon State Forest is part of the rail banked Eastern Segment. As discussed above, rail banking is a method by which rail lines authorized for abandonment can be preserved for future rail service through interim use as a trail. When a line is rail banked, the line is not abandoned, and the railroad retains the residual right to reinstitute active rail service at any time. In this case, RJCP has the right to restore rail service over the rail line, including the 4,400-foot section that passes through Moshannon State Forest. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

### **3.3.17 Environmental Justice**

#### **Summary**

**DEIS EJ-1:** One commenter asked what environmental justice is, and then went on to provide a detailed definition of environmental justice.

#### **Response**

Section 4.9.2 of the DEIS describes what environmental justice is and analyzes environmental justice in detail. This analysis indicates that neither the Proposed Action nor the Modified Proposed Action would result in the physical displacement of any residential structures. OEA determined that the Modified Proposed Action, with its significantly fewer adjacent residential properties, public road crossings, and private driveway crossings, would be preferable from an environmental justice perspective when compared to the Proposed Action and the Local Road System Upgrade alternative. Additionally, pursuant to Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*, OEA has conducted broad public outreach for this project to disperse project information and to provide fair and equitable opportunities for all interested persons and parties to comment.

### **3.3.18 Geology and Soils**

#### **Summary**

**DEIS GS-1:** One commenter stated that ground/soil stability and subsidence issues would be a problem along the Modified Proposed Action's Alternate Route from Philipsburg to Munson presumably due to previous underground mining activities.

#### **Response**

Any stability/subsidence issues encountered along the proposed rail line would be addressed during the construction process or as part of RJCP's track maintenance responsibilities, as necessary.

### **3.3.19 Hazardous Materials Transport**

#### **Summary**

**DEIS HM-1:** One commenter suggested that OEA's hazardous materials transport analysis in the DEIS was flawed because it failed to recognize "frac water" from natural gas drilling activities as a hazardous waste material. The commenter recommended that OEA should "document what is in frac water, and then evaluate whether it is hazardous or not."

## Response

Frac water is the term typically used to describe the water, sand and other chemical additives used by natural gas drillers to stimulate well production during the hydraulic fracturing process. Once the well is drilled and prepped, the frac water is pumped into the well under high pressure to fracture the rock and initiate the release of gas. Several million gallons of frac water are used during the hydraulic fracturing process for each well. Approximately 10 to 40% of the frac water injected into the well comes back up the wellbore to the surface as frac water flowback. In addition to the chemicals initially added by the drillers, the frac water flowback is typically laden with metal ions and brine salts generated during the hydraulic fracturing process. As discussed in Section 4.11.3 of the DEIS, frac water is not considered a hazardous waste material because USEPA, the federal agency responsible for regulating hazardous waste, does not regulate frac water from natural gas drilling activities as a hazardous waste material. USEPA's October 2002 publication *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations* (EPA530-K-01-004) provides explanation and clarification for the 1980 legislative amendments to the Resource Conservation and Recovery Act (RCRA), which expanded the oil and gas exemption to include drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas. These large volume "special wastes" are lower in toxicity than other wastes being regulated as hazardous waste and are therefore exempted from the RCRA Subtitle C hazardous waste regulations. In 1988, USEPA issued a regulatory determination stating that control of oil and gas exploration and production wastes under RCRA Subtitle C regulations is not warranted. The RCRA Subtitle C exemption, however, does not preclude these wastes from control under state regulations, under the less stringent RCRA Subtitle D solid waste regulations, or under other federal regulations (i.e., the Clean Water Act, the Safe Drinking Water Act, the Oil Pollution Act, etc.). In addition, although they are relieved from regulation as hazardous wastes, the exemption does not mean that these wastes could not present a hazard to human health and the environment if improperly managed.

### 3.3.20 Cultural/Historic Resources

#### Summary

**DEIS CR-1:** A number of commenters expressed concern regarding potential impacts to the historical Peale Tunnel and Viaduct Bridge. Commenters alleged that RJCP's proposed reactivation of the former railroad along the Eastern Segment, and its subsequent use by heavily loaded trains, would result in the destruction of these historically significant features.

#### Response

As discussed in Section 4.12.2 of the DEIS, the rail bed of the Proposed Action, formerly the Beech Creek Railroad, has been identified as a linear historic district eligible for listing on the National Register. In its October 29, 2009 correspondence (see Appendix B of the DEIS), the Pennsylvania Historical and Museum Commission (PHMC) determined that the proposed project would have "no effect" on National Register-eligible historic buildings, structures, districts, or objects located in the project area. OEA notes that PHMC's finding would apply to the Peale Tunnel and the Viaduct Bridge located along the Eastern Segment. These features would be returned to their original use, and RJCP would maintain them as part of its active rail infrastructure. Additionally, Chapter 6 of the DEIS includes a mitigation measure requiring RJCP to leave in place the Peale Tunnel's historic stone portals during construction. OEA has included this mitigation measure in its final mitigation

recommendations in Chapter 5 of this FEIS. Thus, reactivation of the former railroad along the Eastern Segment would not have an adverse effect on the Peale Tunnel or the Viaduct Bridge.

### **Summary**

**DEIS CR-2:** Commenters expressed concern regarding the loss of access to the historical Peale Tunnel and Viaduct Bridge by way of the Snow Shoe Multi-Use Rail Trail.

### **Response**

As explained above and in Section 4.8.4 of the DEIS, the Snow Shoe Multi-Use Rail Trail was developed under the rail banking program of the Trails Act, 16 U.S.C. § 1247(d). Rail banking is a method by which rail lines authorized for abandonment can be preserved for future rail service through interim use as a trail. When a line is rail banked, the line is not abandoned, and the railroad retains the right to reinstitute rail service at any time. In this case, RJCP has the right to restore rail service over the rail line, and the users of the Snow Shoe Multi-Use Rail Trail must step aside. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

### **Summary**

**DEIS CR-3:** The U.S. Department of the Interior, Office of the Secretary, Office of Environmental Policy and Compliance (OEPC) reviewed the DEIS and stated that OEPC agrees with PHMC's statement in its October 29, 2009 correspondence that RJCP's proposed project would have no effect on historic resources eligible for the National Register of Historic Places. OEPC also recognized that there is no Section 4(f) Evaluation in the DEIS.

### **Response**

Comment noted.

## **3.3.21 Cumulative Impacts**

### **Summary**

**DEIS CU-1:** OEA received a number of comments regarding the cumulative impact projects identified in the DEIS, and their subsequent potential to result in cumulative recreational impacts when combined with the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail. Commenters alleged that the area is presently being used for a variety of outdoor recreational uses, including ATV riding, hunting, hiking, biking, camping, fishing, bird watching, etc., and that the proposed industrialization of RRLLC's property would negatively impact these established recreational uses. Commenters also alleged that cumulative recreational impacts would occur as a result of negative impacts to the Moshannon State Forest and Black Moshannon State Park. Further, several commenters claimed that the DEIS did not adequately address this cumulative recreational impact or the impact that these lost recreational opportunities would have on the local economy. One commenter stated that this inadequate analysis is indicative of a severe flaw and deep misunderstanding of this region's economy.

### **Response**

Section 5.2.8 of the DEIS discusses potential cumulative impacts to socioeconomic resources, including parks and recreation facilities. As noted in the DEIS, exclusive of PennDOT's proposed highway/bridge improvement projects, which would occur within or immediately adjacent to a state-

owned transportation right-of-way, the remainder of the other cumulative impact projects would take place entirely on private property. Therefore, OEA does not foresee any physical cumulative impacts to parks or recreational facilities, including the Moshannon State Forest and Black Moshannon State Park, which are located on the south side of I-80. Since RLLC's land is private property, any unauthorized or unpermitted recreational use of this property would constitute trespassing and would be unlawful.

### **Summary**

**DEIS CU-2:** Several commenters expressed concern about potential water quality impacts to Black Moshannon Creek, a High Quality-Cold Water Fishery (HQ-CWF), resulting from the proposed landfill and quarry. Commenters stated that Black Moshannon Creek is one of the only trout streams in the area not affected by acid mine drainage and that care should be taken to avoid impacts to this stream.

### **Response**

As discussed in Section 5.2.7 of the DEIS, OEA has concluded that the incremental water resource impacts of the proposed rail line, when combined with the water resource impacts of the other actions, could potentially result in cumulative impacts that exceed those of the proposed rail line alone. However, without detailed site development plans or specific limits of disturbance for each of the various cumulative impact projects, OEA was not able to quantify the cumulative water resource impacts. Water resource impacts are regulated at both the state and federal level by PA DEP and USACE, respectively. Therefore, any projects or activities anticipated to impact Black Moshannon Creek would first need to be permitted by PA DEP and USACE. As part of the waterway encroachment permitting process, these agencies would take into consideration the HQ-CWF designation of Black Moshannon Creek, and subsequently require the implementation of appropriate avoidance/minimization/mitigation measures to ensure that no long-term, significant impacts would occur.

### **Summary**

**DEIS CU-3:** One commenter alleged that OEA's "analysis of cumulative impacts to land use in the EIS is cursory, at best, and fails to acknowledge that the reasonably foreseeable landfill-incinerator-industrial park complex will incontrovertibly change the character of the surrounding area." The commenter claimed that state and county land use plans call for maintenance of these areas as natural open space areas. Additionally, the commenter stated that the EIS fails to identify how these impacts could be mitigated.

### **Response**

As discussed in Section 5.2.2 of the DEIS, OEA evaluated cumulative impacts to land use that would result from the incremental impact of the proposed action when combined with the reasonably foreseeable land use impacts of the other cumulative impact projects. OEA concluded that large-scale land clearing operations of some of the cumulative impact projects would likely cause cumulative impacts to land use. These cumulative impacts would include the loss of several hundred acres of undeveloped forestland, the conversion of abandoned/reverting strip mine areas, and other minor-acreage impacts to private properties. The majority of the cumulative impact projects are planned or proposed on private property and would have to be reviewed and approved by the local municipality pursuant to its responsibilities and authorities under the Pennsylvania Municipalities Planning Code. Within Pennsylvania, it is the responsibility of the local municipality to make

land use development decisions in accordance with its existing plans, codes and ordinances. Land development projects that do not comply with or conform to these requirements are not approved by the governing municipality. Therefore, it is reasonable to conclude that if these land development projects are permitted by the local municipality, they are in fact consistent with that municipality's plans, codes and ordinances.

Regarding mitigation of cumulative impacts, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. Thus, the Board's practice consistently has been to mitigate only those impacts that result directly from the proposed action (RJCP's proposed rail line in this case).

### **Summary**

**DEIS CU-4:** Several commenters expressed concern about potential cumulative impacts to wetlands. Their concerns were primarily related to RRLLC's proposed landfill and its potential to impact jurisdictional wetlands. Specifically, one commenter stated that the EIS fails to consider cumulative wetlands impacts by glossing over the fact that additional wetlands would be taken by the construction and operation of the landfill. The commenter found it inexcusable that OEA did not quantify these cumulative wetland impacts in the DEIS because USFWS and USEPA had both issued comments on RRLLC's Section 404 permit application for the landfill.

### **Response**

Section 5.2.7 of the DEIS discusses the reasonably foreseeable cumulative impacts to water resources from the proposed rail line and the other cumulative impact projects, including the landfill project. As noted in the DEIS, given the physical, earth-disturbing nature of the cumulative impact projects, it is reasonable to conclude that these other actions would also potentially result in impacts to wetlands and watercourses, but without detailed site development plans and specific limits of disturbance, OEA was unable to quantify an exact acreage of impact. Further, the DEIS stated that the cumulative impact to wetlands would likely consist of a combination of palustrine emergent (PEM), palustrine scrub-shrub (PSS), and palustrine forested (PFO) wetlands (see Section 3.7.2 of the DEIS for an explanation of these wetland classifications). The individual projects that impact jurisdictional wetlands and/or watercourses are regulated at both the state and federal level by PA DEP and USACE, respectively. Individual project impacts are typically mitigated in full, or in excess of full when the mitigation ratio is greater than 1:1 (e.g., one acre of wetland impact is mitigated by the creation of more than one acre of replacement wetland), as part of the applicable environmental review/permit authorization process. Therefore, other permitting agencies, not the Board, would quantify any direct impacts to wetlands and watercourses caused by the cumulative impact projects, including the landfill project, and would impose appropriate mitigation measures.

### **Summary**

**DEIS CU-5:** One commenter noted that RJCP's proposed railroad would likely remove some trucks from the local roads, but questioned how many trucks would be left still using the local roads as a result of the cumulative impact projects' combined transportation impact.

### **Response**

As discussed in Section 1.3 of the DEIS and in Section 3.1.2 of the SDEIS, RJCP's proposed rail line is anticipated to keep approximately 1,164 trucks (582 loaded and 582 empty) off the local road

system on a daily basis. These estimated truck volumes are based on RRLLC's anticipated landfill permitting operations of 5,000 tons per day, along with estimated truck volumes associated with some of the other cumulative impact projects (i.e., the quarry, the waste-to-ethanol facility, coal mining, frac water treatment plant, etc.). Beyond these reported truck volumes, it is not possible for OEA to quantify the number of trucks that would be left using the local road system from all of the cumulative impact projects identified in the DEIS. OEA has no information regarding the volume of trucks that are currently being used to facilitate some of these projects, such as the Cooper Township Marcellus Shale natural gas drilling projects, or the need for more truck traffic in the future. For these reasons, OEA cannot determine a volume of truck traffic that would be left using the local road system.

### **Summary**

**DEIS CU-6:** One commenter claimed that the DEIS made no mention of natural gas drilling on the RRLLC property, and that this activity has the potential to impact both surface and groundwater resources.

### **Response**

OEA included regional natural gas drilling in the Marcellus Shale formation as part of the cumulative impacts assessment in Chapter 5 of the DEIS. Specifically, Chapter 5 discusses various natural gas drilling projects in Cooper Township, Clearfield County, and Rex Energy Corporation's proposed natural gas drilling activities on the RRLLC property. This discussion was updated in the SDEIS to reflect the change in natural gas drilling operators on the RRLLC property from Rex Energy Corporation to Williams Production Appalachia LLC. As explained in the DEIS, given the geologically-intrusive nature of natural gas drilling operations and the large volume of water and chemicals used in the hydraulic fracturing process, OEA was unable to determine the potential impact to groundwater resources associated with natural gas drilling. While Pennsylvania law requires drillers to case and grout wells through all fresh water aquifers before drilling to deeper zones, the technologies associated with horizontal drilling and hydraulic fracturing required for extracting natural gas deposits are relatively new, and there is significant public concern and uncertainty regarding potential groundwater impacts resulting from the natural gas drilling and extraction process. Because of these new technologies and their uncertain environmental impacts, OEA was unable to determine the reasonably foreseeable cumulative impacts to groundwater resources.

### **Summary**

**DEIS CU-7:** In its comment letter, the Centre County Planning and Community Development Office (Planning Office) summarized changes to the quarry project that have occurred since the development of the DEIS. The Planning Office stated that the Glenn O. Hawbaker proposed sand/gravel quarry has ceased operations and that a new quarry has been proposed by Williams Production Appalachia for a six acre borrow area to be used for road surfacing and fill material for natural gas drilling activities on the RRLLC property.

### **Response**

Comment noted. This change was included as part of the updated project information presented in Chapter 5 of the SDEIS.

### 3.3.22 Mitigation

#### Summary

**DEIS MI-1:** One commenter noted that OEA's preliminary recommended mitigation in Chapter 6 of the DEIS only applies to RJCP's proposed rail line. The commenter stated that the recommended mitigation is deficient because it does not include mitigation for cumulative impacts.

#### Response

As discussed in Chapter 6 of the DEIS, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. In this proceeding, the Board's power to impose mitigation extends only to the railroad applicant, RJCP, and to potential impacts that could be caused by RJCP's proposed rail line construction and operation. The Board does not have authority to regulate RLLC or its proposed development projects, and thus cannot impose mitigation to reduce potential harms resulting from the development projects.

#### Summary

**DEIS MI-2:** A number of commenters requested that the Board require RJCP to mitigate for the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail. In addition, HCT requested that the Board require RJCP to repay the \$550,000 in Transportation Enhancement funding that HCT used to make improvements to the Peale Tunnel.

#### Response

As explained in Section 4.8.4 of the DEIS and in Section 3.2 of this FEIS, the Snow Shoe Multi-Use Rail Trail was developed under the rail banking program of the Trails Act, 16 U.S.C. § 1247(d). Rail banking is a method by which rail lines authorized for abandonment can be preserved for future rail service through interim use as a trail. When a line is rail banked, the line is not abandoned, and the railroad retains a right to reinstitute rail service at any time. In this case, RJCP has the right to restore rail service over the rail line, and the users of the Snow Shoe Multi-Use Rail Trail must step aside. The Board has no authority to require RJCP to mitigate for the impact to the Snow Shoe Multi-Use Rail Trail. In its proposed voluntary mitigation presented in Chapter 6 of the DEIS, however, RJCP offered to negotiate a mutually acceptable agreement with HCT to mitigate the impact to the Snow Shoe Multi-Use Rail Trail. RJCP also reserved the right to construct a new trailhead facility, consisting of a gravel parking area and covered sign structure, at the new Gorton Road trail terminus as the sole voluntary mitigation for the impact to the Snow Shoe Multi-Use Rail Trail if RJCP were to determine that a mutually acceptable mitigation agreement is unachievable. OEA has included this mitigation in its final mitigation recommendations in Chapter 5 of this FEIS.

#### Summary

**DEIS MI-3:** USFWS and USEPA issued comments regarding the mitigation measure presented in Chapter 6 of the DEIS, which requires RJCP to evaluate the potential to provide wetland and watercourse mitigation via an in lieu fee agreement with local watershed or conservation organizations and/or state or federal resource agencies. Both agencies indicated their preference to have RJCP develop a project-specific mitigation plan that includes the creation, enhancement or preservation of wetlands to replace the functions and services of the wetlands that would be impacted by this project. Further, USFWS suggested that the project-specific mitigation plan include

a planting plan for the re-vegetation of all wetland and terrestrial areas using plant species that are native to the local area. Finally, USFWS recommended that RJCP coordinate related projects, such as the landfill, quarry, industrial park and the local road improvement project, to develop a Master Mitigation Plan.

### **Response**

Section 6.2.9 of the DEIS lists mitigation measures for project impacts to regulated waters of the U.S. These measures include obtaining the appropriate USACE Section 404 and PA DEP Chapter 105 Waterway Encroachment Authorizations (i.e., permits) and complying with the wetland and watercourse mitigation requirements in accordance with these permit authorizations. One of these measures would require RJCP to evaluate the potential applicability of an in lieu fee agreement with local watershed or conservation organizations and/or state or federal resource agencies. The alternatives development and evaluation process undertaken for this project adheres to the required mitigation sequence of avoid, minimize and compensate, as established in the USACE's Clean Water Act Section 404(b)(1) Guidelines. See 40 C.F.R. § 230.91(c)(2). For the unavoidable impacts, RJCP would comply with the standards for compensatory mitigation as defined in the Wetland Compensatory Mitigation Rule jointly issued by USEPA and USACE. To reduce risk and uncertainty and to ensure that the required compensation is provided, the rule establishes a preference hierarchy for mitigation options. The most preferred option is mitigation bank credits, followed by the in lieu fee program credits option, and finally permittee-responsible mitigation is the least favored option. Since no commercial wetland/watercourse mitigation banks are available in this region, RJCP would be required to evaluate the potential applicability of the next suggested mitigation option, in lieu fee agreement. A project-specific mitigation plan would only be prepared if it is stipulated as part of the project's Section 404/Chapter 105 Waterway Encroachment Authorization by USACE and PA DEP.

Finally, the Board could not impose mitigation requiring RJCP to develop a Master Mitigation Plan for related projects such as the landfill, quarry, industrial park and the local road improvement project, as suggested by USFWS. As discussed above, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. In this proceeding, the Board's power to impose mitigation extends only to the railroad applicant, RJCP, and to potential impacts that could be caused by RJCP's proposed rail line construction and operation. The Board does not have authority to regulate RRLLC or its proposed development projects, and thus could not impose mitigation to reduce potential harms resulting from the development projects.

### **3.3.23 Short-Term Use Versus Long-Term Productivity of the Environment**

#### **Summary**

**DEIS ST-1:** One commenter indicated that the EIS offers no evidence to support the conclusion that potential economic loss from impacts to the Snow Shoe Multi-Use Rail Trail or the Pennsylvania Wilds would be offset by fiscal benefits from RRLLC's landfill or other industrial operations. The commenter argued that a recent independent study found that the waste disposal, real estate tax, and new employee salary/local wage benefits reported by RRLLC in its landfill permit application were exaggerated by a magnitude of three to four times. Further, the commenter stated that OEA cannot claim that benefits from the landfill/industrial park would offset the loss of the Snow Shoe Multi-Use

Rail Trail when OEA refuses to consider the full extent of the impacts and harms from the landfill/industrial park project in the EIS.

**Response**

As discussed in Chapter 7 of the DEIS, it is possible that elimination of 9.3 miles (or approximately 50%) of the total length of the Snow Shoe Multi-Use Rail Trail could impact the overall use of the trail, particularly by visitors and vacationers from outside the region. While difficult to estimate, this potential loss of revenue would impact the economic productivity of the area. However, OEA noted that since the proposed rail line would service new businesses and industrial operations in the area, it is also possible that the adverse economic impact associated with the loss of this section of the Snow Shoe Multi-Use Trail could be offset by the fiscal benefits that would be realized as a result of these new economic opportunities. Additionally, the economic benefits that may result from RJCP's proposed rail line could extend beyond just RRLLC. As noted in Chapter 1 of the DEIS, RRLLC is only one of several shippers potentially interested in RJCP's proposed rail line. OEA has not gone beyond presenting these general conclusions because any economic losses associated with the impact to the Snow Shoe Multi-Use Rail Trail or potential economic gains from industrial users of RJCP's proposed rail line were, and continue to be, unknown at this time and would be difficult to quantify. All of the known potential shippers/industrial development projects were evaluated as part of the cumulative impacts analysis in Chapter 5 of the DEIS.

OEA has recently learned of a planned expansion of the Snow Shoe Multi-Use Rail Trail. This PA DCNR-sponsored expansion involves connecting the Snow Shoe Multi-Use Rail Trail to the Bloody Skillet Recreation Area in Sproul State Forest. A 6.6-mile connection on the eastern end of the Snow Shoe Multi-Use Rail Trail is currently under construction and would not be impacted by RJCP's proposed project. The expansion of the Snow Shoe Multi-Use Rail Trail, and its subsequent connection to the popular Bloody Skillet Recreation Area, may further offset the economic impact that would be associated with the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail.

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