

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35523

CSX TRANSPORTATION, INC.—JOINT USE—LOUISVILLE & INDIANA RAILROAD  
COMPANY, INC.

Decision No. 7

Digest:<sup>1</sup> This decision allows CSX Transportation, Inc. (CSXT), and Louisville & Indiana Railroad Company, Inc. (L&I), to jointly use a 106.5-mile railroad line pursuant to a perpetual, non-exclusive freight railroad operating easement granted to CSXT by L&I, subject to environmental conditions and standard employee protective conditions.

Decided: April 8, 2015

By application filed on June 14, 2013, and supplemented on July 2, 2013, CSX Transportation, Inc. (CSXT), and Louisville & Indiana Railroad Company, Inc. (L&I), (collectively, Applicants) are seeking Board approval under 49 U.S.C. § 11323 et seq. for their joint use of L&I's 106.5-mile railroad line between its connection with CSXT in Indianapolis, Ind., at milepost 4.0±, and its connection with CSXT in Louisville, Ky., at milepost 110.5± (the Line).<sup>2</sup> In order to jointly use the Line, CSXT seeks to acquire and use a perpetual, non-exclusive freight railroad operating easement.

In Decision No. 3, served August 1, 2013, the Board found that the application, as supplemented, was complete.<sup>3</sup> The Board also determined that the proposed transaction qualifies as a “minor transaction” under 49 C.F.R. § 1180.2(c). The Board adopted a procedural schedule for consideration of the application, under which a final decision would be issued by December 6, 2013, and would become effective by December 26, 2013, provided that the

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> A map including the project area is attached to this decision as Appendix A.

<sup>3</sup> On July 2, 2013, Applicants filed public and confidential versions of section 4 of Attachment C to the joint use operating agreement. For more information, see Decision No. 2 in this docket.

environmental review process was complete. The Board reserved the right to adjust the schedule if the circumstances warranted.

Norfolk Southern Railway Company, Consolidated Grain and Barge Co. (CGB), and the Port of Indiana filed notices of intent to participate in the proceeding. CGB filed comments on the proposed transaction on September 30, 2013. Applicants replied on October 21, 2013.

The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (EA) on August 30, 2013. OEA received 18 comments on the Draft EA. Some of those comments raised concerns not addressed in the Draft EA. Therefore, by notice served November 22, 2013, OEA announced that the preparation of a Supplemental EA would be necessary. Accordingly, in Decision No. 6, served November 25, 2013, the procedural schedule was held in abeyance to allow OEA to complete the Supplemental EA. OEA issued the Supplemental EA on October 31, 2014, and received 16 comments. On December 31, 2014, OEA issued the Final EA, which responded to the comments received on both the Draft EA and the Supplemental EA. In response to concerns raised by four mayors after the issuance of the Final EA, OEA prepared a memorandum to the Board, dated February 10, 2015 (the Environmental Memorandum),<sup>4</sup> to inform the Board about the mayors' concerns and OEA's response and to recommend revised mitigation, including conditions to mandate additional community outreach by Applicants.

In this decision, we are approving the application, subject to the environmental conditions set forth in Appendix C<sup>5</sup> and standard employee protective conditions.

## BACKGROUND

L&I, a wholly owned subsidiary of Anacostia Rail Holdings, is a Class III railroad.<sup>6</sup> L&I owns and operates 106 miles of railroad line in Kentucky and Indiana. Prior to L&I's acquisition of the Line, the Line was owned by Consolidated Rail Corporation.

CSXT, a wholly owned subsidiary of CSX Corporation, is a Class I railroad that owns and operates approximately 21,000 miles of railroad line in the United States and Canada. As

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<sup>4</sup> The Environmental Memorandum is attached to this decision as Appendix B.

<sup>5</sup> Appendix C contains the mitigation measures recommended by OEA in the Final EA, as revised by the Environmental Memorandum.

<sup>6</sup> Railroads are classified by annual operating revenues (measured in 1991 dollars) as follows: Class I (\$250 million or more), Class II (below \$250 million but above \$20 million), or Class III (\$20 million or less). 49 C.F.R. pt. 1201, General Instructions § 1-1. Adjusted for inflation using 2013 data, the revenue thresholds are as follows: Class I (\$467,063,129 or more), Class II (below \$467,063,129 but above \$37,365,050), and Class III (\$37,365,050 or less).

relevant here, CSXT currently operates over the Line between Louisville, Ky., and Seymour, Ind., pursuant to trackage rights.<sup>7</sup>

Under the proposed transaction, CSXT would acquire a perpetual, non-exclusive freight railroad operating easement over the Line from L&I. Applicants state that they have entered into a transaction agreement, dated May 30, 2013, and upon closing, would enter into an easement agreement and a joint use operating agreement, as well as other agreements. Pursuant to the joint use operating agreement, CSXT would fund and own capital improvements to the Line that remove weight restrictions, increase track speed, and add capacity (the Upgrade). More specifically, CSXT would: (1) install continuously welded rail and necessary ties to improve the track from Federal Railroad Administration (FRA) Class 2 (up to 25 miles per hour) to FRA Class 4 (up to 60 miles per hour), where signaling and track geometry permit;<sup>8</sup> (2) replace Bridge No. 40.19 at Columbus, Ind.; (3) modernize the current train dispatching system; and (4) remove weight restrictions to increase the maximum gross weight on rail (GWOR) from 263,000 pounds to 286,000 pounds. Applicants estimate that the Upgrade would cost CSXT between \$70 million and \$90 million and would be completed within seven years. Applicants state that the fundamental purpose of the proposed transaction is to increase the efficiency and performance of both CSXT's and L&I's operations.

According to Applicants, both CSXT and L&I would continue to operate over the Line following the Upgrade. Under the joint use operating agreement, CSXT would have the right to use the Line for overhead traffic, with the ability to enter and exit the track at the Line's endpoints, at Seymour, and at the interchange with Paducah & Louisville Railway, Inc.

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<sup>7</sup> In 2001, L&I granted CSXT trackage rights over the Line. CSX Transp.—Trackage Rights Exemption—Louisville & Ind. R.R., FD 33744 (STB served June 21, 2001). In 2014, the parties filed a verified notice of exemption with the Board stating that CSXT and L&I had agreed to modify the compensation that CSXT was required to pay L&I for the overhead trackage rights. CSX Transp.—Trackage Rights Exemption—Louisville & Ind. R.R., FD 33744 (Sub-No. 1) (STB served May 7, 2014). The trackage rights contained in the 2014 notice replaced the trackage rights provided in the 2001 notice. Under the terms of the joint use operating agreement, which was provided to the Board as part of this proceeding, CSXT's current trackage rights over the Line would become dormant upon the Board's approval of the joint use application, but would automatically reactivate should the easement agreement terminate.

<sup>8</sup> FRA regulations permit freight trains to operate at up to 60 mph on Class 4 tracks if an automated signaling system is used to control train traffic on a main line. However, train speeds are limited to 49 mph when train traffic is controlled through a track warrant control system (that is, a verbal authorization system using radio, phone, or other electronic transmission from a dispatcher). Applicants currently use a track warrant control system on the Line and intend to retain that system under the proposed transaction. Thus, train speeds on the Line would be limited to 49 mph despite the higher speed limit generally available under FRA Class 4 standards.

Applicants state that L&I would continue to provide overhead and exclusive local service on the Line. At the time of the Application, the Line handled two trains per day between Indianapolis and Seymour (both L&I); four trains per day between Seymour and Jeffersonville Yard, Ind. (two for L&I and two for CSXT); and seven trains per day between Jeffersonville Yard and Louisville, Ky. (five for L&I and two for CSXT).<sup>9</sup> Upon completion of the Upgrade, Applicants state that there would be a total of 17 trains per day operating between Indianapolis and Jeffersonville Yard (two for L&I and 15 for CSXT), and 20 trains per day operating between Jeffersonville Yard and Louisville, (five for L&I and 15 for CSXT).<sup>10</sup>

Under section 4 of Attachment C to the joint use operating agreement, L&I would be required to compensate CSXT whenever L&I moves cars that are taller than 18'6" above the top rail or weigh more than 263,000 pounds GWOR (the Subject Cars) over the upgraded Line without CSXT involvement<sup>11</sup> (the Per Car Fee).<sup>12</sup> L&I would also compensate CSXT when it originates or terminates, without CSXT involvement, a certain yearly number of Subject Cars at customers that are served by CSXT or accessible to CSXT by reciprocal switch, unless that traffic is interchanged by L&I with a third-party carrier at Louisville or Jefferson (the Volume Fee). Additionally, L&I would be precluded from granting operating rights to other Class I railroads without CSXT's permission (the Use Consent Provision).

## DISCUSSION AND CONCLUSIONS

### Statutory Criteria

Under 49 U.S.C. § 11323(a)(6), the joint use of a railroad line owned or operated by another rail carrier may be carried out only with Board approval under 49 U.S.C. § 11324. Because the proposed transaction does not involve the merger or control of two or more Class I railroads, this transaction is governed by § 11324(d), which directs the Board to approve the application unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the

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<sup>9</sup> In a letter dated December 1, 2014, Applicants state that the number of CSXT trains operating on the Line has increased from two a day (as identified in the Application) to four a day. Applicants note that this increase in CSXT trains occurred under an existing trackage rights agreement between CSXT and L&I.

<sup>10</sup> These projections reflect increases in the number of CSXT's trains. The number of L&I's trains is not projected to change as a result of the transaction.

<sup>11</sup> Traffic not involving CSXT includes traffic that is neither interchanged with CSXT (or a CSXT affiliate) nor carried in CSXT trains.

<sup>12</sup> Under the joint use operating agreement, L&I would have the option to opt out of the payment for cars taller than 18'6" above the top rail with a one-time payment to CSXT.

transaction outweigh the public interest in meeting significant transportation needs. In assessing transactions subject to § 11324(d), the Board's primary focus is on whether there would be adverse competitive impacts that are both likely and substantial, and if so, whether the anticompetitive impacts would outweigh the transportation benefits or could be mitigated through conditions.

The Board also considers the potential environmental effects of the transaction and imposes appropriate conditions to mitigate adverse environmental effects. The Board's review of environmental effects is governed by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347, and related regulations.

### Rail Transportation Analysis

Based on the evidence before the Board, we conclude that the transaction is not likely to cause a substantial lessening of competition or to create a monopoly or restraint of trade. Nothing in the record indicates that the existing transportation options for shippers and carriers would be reduced or that any shipper would lose a competitive rail option. According to the Applicants, neither L&I nor CSXT would close any routes as a result of the proposed transaction, L&I and CSXT would remain unaffiliated, and the Applicants would not become commonly controlled as a result of the proposed transaction.

Moreover, the record shows that the proposed transaction would benefit the shipping public and enhance competition by facilitating more efficient, cost-saving operations. Following the Upgrade, Applicants would be able to provide shippers with more efficient, competitive service. The proposed transaction would enhance Applicants' ability to compete not only with other railroads, but also with freight that currently moves via other modes of transportation, such as long and short haul trucking companies.

In particular, joint use of the Line would create routing flexibility and performance improvements for CSXT in the Midwest. As Applicants state, following the implementation of the proposed transaction, CSXT would be able to avoid routing traffic through Queensgate Yard in Cincinnati, a major classification terminal, and eliminate the use of circuitous routes, which are currently necessary to cross the Ohio River.<sup>13</sup> Additionally, CSXT could use the Line to reduce congestion on other CSXT lines, such as the Louisville Cincinnati Subdivision (LCL Subdivision). The upgraded Line would enable CSXT to operate longer intermodal trains to intermodal terminals, providing operating economies for CSXT. Applicants anticipate that the system-wide efficiency increases for CSXT would reduce service time by approximately 130.5 hours per day, resulting in annual savings of approximately \$11.8 million.

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<sup>13</sup> CSXT has two Ohio River crossings on its primary north-south corridors, one at Henderson, Ky./Evansville, Ind. and one at Cincinnati, Ohio/Covington, Ky. The Proposed Transaction would give CSXT an additional crossing at Louisville, Ky.

The record demonstrates that L&I also would be able to improve its operational efficiency and provide more competitive service to shippers as a result of the proposed transaction. As the Applicants state, the Upgrade would allow L&I to operate at higher speeds and handle heavier cars over the Line. L&I would benefit from the upgraded Line without incurring the capital cost of the Upgrade and would share with CSXT the cost of maintaining the Line based on usage.<sup>14</sup>

Moreover, while the Per Car Fee, the Volume Fee, and the Use Consent Provision impose conditions on L&I's handling of non-CSXT traffic, nothing in the record leads us to conclude that these provisions would cause competitive harm. No shipper or other railroad has filed a comment claiming that these provisions would be anticompetitive.<sup>15</sup> As noted in Decision No. 3, the Board previously has permitted restrictions similarly aimed at protecting significant capital investments by a railroad to improve lines that it does not own or fully control.<sup>16</sup> The Board,

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<sup>14</sup> Nearly all of the comments filed in response to the Application expressed support for the proposed transaction, including: Michael R. Pence, Governor of the State of Indiana; Brown-Forman Distillery Company; Ilpea Industries, Inc.; Jackson County Industrial Development Corporation; Gregory Ballard, Mayor, Indianapolis, Indiana; Essroc Italcementi Group; Columbus, Indiana Economic Development Board; Craig Luedeman, Mayor, City of Seymour, Indiana; Dorel Juvenile Group; Johnson County Development Corporation; Buzzi Unicem USA; U.S. Congressman Todd Young (IN-9); Bridgewell Resources, LLC; Mike Moore, Mayor, City of Jeffersonville, Indiana; Jeffboat LLC; Jesse Vernon Testruth, Mayor, City of Southport, Indiana; Greg Fischer, Mayor, City of Louisville, Kentucky; and Ports of Indiana. Additionally, Applicants submitted support statements from the following entities with their reply: Steven L. Beshear, Governor of the Commonwealth of Kentucky; Kokomo Grain; Carter Lumber; the Department of the Army, Camp Atterbury; and A&R Transport, Inc. The Town of Whiteland submitted a letter of qualified support, but expressed concerns largely directed to the potential environmental impacts of the proposed transaction.

<sup>15</sup> Consolidated Grain and Barge Company (CGB) submitted comments noting that, while it initially had concerns regarding continued dual-carrier service and the potential surcharge for traffic over 263,000 pounds GWOR, it supports the proposed transaction in light of Applicants' representations that CGB's facilities will continue to be served by both CSXT and L&I and that L&I will absorb any additional charges and will not pass those charges on to any of its customers.

<sup>16</sup> See Kan. City S. Ry. and Meridian Speedway LLC—Exemption for Transactions Within a Corporate Family, FD 34822 (STB served Feb. 16, 2006) (authorizing a transaction that involved a significant investment by Norfolk Southern Railway Company (NSR) in capital improvements to a line of the Kansas City Southern Railroad but also imposed certain restrictions on other railroads from operating over it); see also Norfolk S. Ry., Pan Am Rys., et al.—Joint Control and Operating/Pooling Agreements—Pan Am S. LLC, FD 35147 (STB served

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however, must still consider the potential anticompetitive effects of the provisions at issue and determine the reasonableness of such terms on a case-by-case basis.

In this case, we find that the public benefits from the infrastructure improvements to the Line and the efficiency gains for the Applicants outweigh any potential anticompetitive effects caused by the Per Car Fee, the Volume Fee, and the Use Consent Provision. We are satisfied that the Per Car Fee, the Volume Fee, and the Use Consent Provision are reasonable provisions intended to protect CSXT's significant capital investment in the Upgrade.<sup>17</sup> As Applicants explain, these terms are assurance for CSXT that, after it funds the Upgrade, neither L&I nor any third-party railroad will benefit from use of the upgraded Line for traffic that could not move over the Line but for the Upgrade. Indeed, the Per Car Fee and the Volume Fee provisions apply only to traffic that L&I could not handle before the Upgrade; under the terms of the transaction, L&I would not be required to compensate CSXT to use the upgraded Line for traffic that it currently handles over the Line. Thus, the transaction would not affect L&I's ability to continue its current operations and serve the shippers it serves today.

Additionally, although the Per Car Fee, the Volume Fee, and the Use Consent Provision have the potential to dissuade L&I from interchanging with carriers other than CSXT, the Board has determined that, as structured here, the provisions do not fall within the scope of the current regulations governing interchange commitments. Interchange commitments are "contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad." Info. Required in Notices and Petitions Containing Interchange Commitments, EP 714, slip op. at 1 (STB served Oct. 30, 2007). Here, no provision limits the incentive or ability of CSXT, the purchaser in this case, to interchange traffic with rail carriers other than L&I. For these reasons, the Board concludes that the Per Car Fee, the Volume Fee, and the Use Consent

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Mar. 10, 2009) (authorizing a transaction that gave NSR joint control and ownership of Pan Am Southern in exchange for NSR's substantial investment in improvements to Pan Am Southern's lines and facilities); Norfolk S. Ry., Pan Am Rys., et al.—Joint Control and Operating/Pooling Agreements—Pan Am S. LLC, FD 35147, Application, at 7, 20, 25 (filed May 30, 2008).

<sup>17</sup> The existing trackage rights arrangement contains a provision very similar to the proposed Use Consent Provision. Specifically, article 4(c) of the Amended and Restated Trackage Rights Agreement, dated January 1, 2014, limits L&I's ability to grant operating rights to any other party without CSXT's prior written consent. CSX Transp.—Trackage Rights Exemption—Louisville & Ind. R.R., FD 33744 (Sub-No. 1) (filed Apr. 21, 2014). The Use Consent Provision, therefore, would not lessen the competitive options currently available to shippers but would essentially preserve the status quo. In this case, the limitation is reasonable, especially in light of CSXT's significant capital investment and ownership of the Upgrade once completed.

Provision are reasonable terms, and any potential anticompetitive effects would be outweighed by the public benefits resulting from the proposed transaction.

#### Labor Protection Conditions

Applicants request that the Board impose the labor protective conditions set forth in Norfolk & Western Railway—Trackage Rights—Burlington Northern (Norfolk & Western), 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653, 664 (1980). Applicants state that the proposed transaction would have no adverse effects on CSXT and L&I employees. According to Applicants, CSXT employees would continue to crew CSXT trains that operate over the Line following the proposed transaction. Applicants state that CSXT has no plans to discontinue service over its LCL Subdivision or the Indiana Subdivision. Likewise, Applicants state that L&I employees would continue to operate L&I trains over the upgraded Line, and that L&I would continue to maintain and dispatch the Line. We find that the standard labor protective conditions set forth in Norfolk & Western are appropriate here.

#### Environmental Analysis

The Requirements of NEPA. NEPA requires the Board to examine the environmental effects of proposed federal actions and inform the public concerning those effects. Balt. Gas & Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983). The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed action before it is implemented, in order to minimize or avoid potential negative environmental impacts. Marsh v. Or. Natural Res. Council, 490 U.S. 360, 371 (1989). While NEPA prescribes the process that must be followed, it does not mandate a particular result. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).

Under both the regulations of the President’s Council on Environmental Quality (CEQ) and the Board’s own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process depending on the likelihood of significant environmental effects. Actions that may significantly affect the environment generally require the agency to prepare a full Environmental Impact Statement (EIS). 40 C.F.R. § 1501.4(a)(1); 49 C.F.R. §§ 1105.4(f), 1105.6(a). Actions that may, or may not, have a significant impact ordinarily require the preparation of a more limited EA. 40 C.F.R. § 1501.4(c); 49 C.F.R. §§ 1105.4(d), 1105.6(b). Finally, actions that have environmental effects that are ordinarily insignificant may be “categorically excluded” from NEPA review across the board, without a case-by-case review. 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. § 1105.6(c).

In transactions under 49 U.S.C. § 11323, the Board generally prepares an EA (as it did here) where the proposal would cause rail traffic to exceed certain thresholds. 49 C.F.R.

§ 1105.6(c)(4).<sup>18</sup> There is normally no formal environmental review in transactions that do not meet these thresholds. 49 C.F.R. § 1105.6(c)(2)(i).

The Environmental Review Process Here. On August 30, 2013, OEA issued a Draft EA that evaluates the potential environmental impacts of the proposed transaction on the Line, including grade crossing delay, emergency vehicle access, and noise and vibration; as well as the potential impacts associated with the extension of two rail line sidings, if constructed, and the replacement of a structurally inadequate rail bridge (the Flatrock River Bridge) on the Line. During the public review and comment period on the Draft EA, OEA received comments that raised environmental concerns not assessed in the Draft EA. As particularly relevant here, commenters argued that the Draft EA should have addressed environmental impacts on CSXT rail lines that connect with the Line and would also be subject to transaction-related increases in train traffic that exceed the Board's thresholds. Additionally, commenters noted that the Draft EA should have quantified potential transaction-related construction impacts on wetlands, floodplains, and forested areas, and quantified potential wildlife strike impacts.

As a result, OEA issued a Supplemental EA on October 31, 2014, evaluating the potential environmental impacts of the proposed transaction on three CSXT rail lines that connect with the Line (the Indianapolis Line Subdivision, the Indianapolis Terminal Subdivision – Louisville Secondary Branch, and the Louisville Connection). The Supplemental EA assesses vehicle delays at grade crossings, emergency vehicle access, noise and vibration, air quality, and other environmental issue areas that could be affected by the proposed project-related increases in train traffic on the three CSXT rail lines. In response to comments on the Draft EA, the Supplemental EA also quantifies potential impacts to wetlands, floodplains, and forested areas that could result from extending two rail line sidings, if constructed, and from replacing the Flatrock River Bridge on the Line. Furthermore, the Supplemental EA includes a review of potential changes in

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<sup>18</sup> The thresholds differ depending on whether a rail line segment is in an area designated as “attainment” or “nonattainment” with the National Ambient Air Quality Standards (NAAQS) established under the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671. A nonattainment area is any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the ambient air quality standards for the pollutant under the CAA. For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in: (1) an increase of at least 3 trains per day; (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 20 percent. 49 C.F.R. § 1105.7(e)(5)(ii). An attainment area is an area considered to have air quality as good as, or better than, the national ambient air quality standards as defined in the CAA. For rail lines in attainment areas, environmental documentation typically is required when the proposed action would result in: (1) an increase of at least 8 trains per day; (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 100 percent. 49 C.F.R. § 1105.7(e)(5)(i).

wildlife strikes that could result from rerouting train traffic on the Line and the connecting CSXT rail lines as a result of the proposed transaction. OEA received 16 comments on the Supplemental EA. The commenters primarily raised concerns related to the effects of the proposed transaction on grade crossing delay, emergency response, and noise and vibration.

OEA issued a Final EA on December 31, 2014, which responds to public comments on both the Draft EA and Supplemental EA and recommends environmental mitigation to minimize the potential environmental effects of the proposed transaction, including the proposed upgrades to the Line, proposed replacement of the Flatrock River Bridge, potential construction of two sidings extensions on the Line, and increased train traffic on the Line and the three connecting CSXT lines. The Final EA concludes that there was no need to prepare an EIS in this case because the proposed transaction would not result in significant environmental impacts if the Board imposes, and Applicants implement, the mitigation measures recommended by OEA.

As the EAs explain, the proposed transaction could have some adverse effects on emergency service providers in Seymour, and on vehicle delays at a number of at-grade crossings on the Line.<sup>19</sup> To reduce potential adverse effects on emergency service providers, OEA developed mitigation measures that would require Applicants to: (1) notify emergency service providers when trains will not clear any at-grade crossings on the Line and the three connecting CSXT lines within 10 minutes, and (2) provide Seymour (where affected medical centers are located) with real-time video monitoring of at-grade crossing conditions. See Appendix C, MM 3 and MM 7. To reduce vehicle delays, OEA recommended eight mitigation measures (see Appendix C, VM 30 through VM 32, VM 49, MM 1, MM 2, MM 8, and MM 22). These measures include: preparation of a grade crossing mitigation plan addressing potential safety impacts prior to moving transaction-related traffic; installation of power switches to assist in minimizing blocked crossings; cooperation by Applicants with municipalities to identify options to improve or modify roadways that would experience vehicle delays; and provision of signage at each at-grade crossing to advise motorists of pending increases in train numbers under the proposed transaction.

The EAs also concluded that, due largely to locomotive horn use at public at-grade crossings, the proposed transaction would increase exposure to noise on the Line and on CSXT's Indianapolis Terminal Subdivision – Louisville Secondary Branch.<sup>20</sup> To minimize these impacts, OEA recommended 11 mitigation measures (see Appendix C, VM 54 through VM 61, MM 5, MM 6, and MM 22). These require, among other things, that Applicants maintain vehicles in good-working order with properly functioning mufflers, maintain safe and efficient operating procedures that reduce noise, and maintain rail and rail beds in accordance with the standards of the American Railway Engineering and Maintenance-of-Way Association. In

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<sup>19</sup> Draft EA at 3-4, 3-5, and 3-15; Supplemental EA at 3-7, 3-19 and 3-20; Final EA at 5-6.

<sup>20</sup> Final EA at 6.

addition, Applicants would be required to cooperate with interested communities in the establishment of quiet zones (areas where train horns do not need to be routinely sounded). See Appendix C, VM 55.

As explained in the Environmental Memorandum (see Appendix B), after the Final EA was issued, OEA received a letter, dated January 9, 2015, jointly signed by four mayors (Kristen Brown, Mayor, City of Columbus, Ind.; Joseph McGuinness, Mayor, City of Franklin, Ind.; Mark Meyers, Mayor, City of Greenwood, Ind.; and Craig Luedeman, Mayor, City of Seymour, Ind.) and a separate letter, also dated January 9, 2015, from Mayor Kristen Brown. The mayors, who represent cities on the Line, raised concerns about train traffic increases and increases in train speeds that would occur under the proposed transaction. They contended that certain additional mitigation (beyond that included in the Final EA) was warranted in their communities. The requested mitigation included at-grade crossing enhancements to ensure the safety of drivers and pedestrians, Applicant funding for the establishment of quiet zones, and grade-separated crossings in certain locations on the Line to address emergency vehicle access and vehicle delay.

OEA hosted a teleconference with the four mayors, as well as aides to U.S. Senator Dan Coats (R-Indiana) and U.S. Congressman Todd Young (R-Indiana, 9th District), on January 23, 2015, to further discuss their concerns. OEA explained during the teleconference that the analyses in the Draft, Supplement, and Final EAs had concluded that the potential impacts, though in some cases adverse, would not be significant under the Board's thresholds. OEA added that the mitigation measures in the Final EA—which included 62 measures volunteered by Applicants and 22 additional measures recommended by OEA—would help minimize these impacts. See Appendix B. Regarding the mayors' request that enhanced grade crossing protection and grade separations be paid in full or largely by Applicants, OEA explained that the Board typically does not require grade-separation mitigation. OEA also explained that grade crossing enhancements are typically paid for almost entirely by the owner of the subject roadway and any available Federal grant money. Finally, OEA discussed the Final EA's Voluntary Mitigation measures (VM 33 through 39), which address grade-crossing safety.

OEA's Environmental Memorandum recommended additional mitigation beyond that in the Final EA. Mitigation measure MM 1—which requires Applicants to prepare a Grade Crossing Mitigation Plan—was broadened to require Applicants to meet with each mayor (or mayor's designated representative) in the cities and towns along the Line, in addition to the applicable state departments of transportation. OEA also added mitigation measure MM 23, which requires Applicants to provide each mayor on the Line with semi-annual reports regarding Applicants' compliance with all Board-imposed mitigation measures for the duration of the environmental oversight period.<sup>21</sup> Finally, the historic preservation condition recommended in

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<sup>21</sup> On March 6, 2015, OEA received a new letter jointly signed by the four mayors requesting a public hearing in Indiana. There have been adequate opportunities for public review (continued. . .)

the Final EA (MM 19), regarding the replacement of a historic bridge near Columbus, was revised to reflect the execution of a Memorandum of Agreement on January 30, 2015.

Our Conclusions on the Environmental Issues. We have reviewed the environmental record, including the Draft, Supplemental, and Final EAs, the Environmental Memorandum, and all environmental comments. As the environmental record demonstrates, OEA took the requisite “hard look” at potential environmental impacts and accurately identified and independently evaluated the potential environmental effects associated with the proposed transaction. Based on the environmental record, we conclude that, with the environmental mitigation conditions set forth in the Final EA, as expanded by OEA’s Environmental Memorandum, all of which we adopt here (see Appendix C), the proposed transaction would have no significant environmental impacts. Therefore, preparation of an EIS is not required.

The Board finds that the environmental mitigation measures in Appendix C are reasonable and feasible measures to reduce or eliminate potential adverse impacts of the transaction. The Board recognizes that the transaction may have some adverse effects that cannot be fully mitigated. For example, horn noise from train operations cannot be fully mitigated without compromising safety. And even with mitigation, there may still be vehicle delays at highway/rail at-grade crossings. Nevertheless, the mitigation imposed here is intended to provide appropriate safeguards to maintain safe operations and minimize harm to the environment, to the extent practicable following implementation of the proposed transaction.

## CONCLUSION

The proposed transaction should produce substantial transportation benefits. By enhancing the existing rail infrastructure on the Line, the proposed transaction should improve rail performance and routing flexibility and allow rail traffic in the Midwest to move faster, more cost-effectively, and more safely and reliably. Moreover, we are satisfied that OEA’s final recommended mitigation conditions provide appropriate safeguards to minimize potential adverse environmental effects (including emergency response, vehicular delay, and noise). We therefore conclude, after weighing the various transportation and environmental concerns and considering the entire record, that the proposed joint use transaction should be approved, subject to compliance with the environmental mitigation measures listed in Appendix C of this decision and standard employee protective conditions.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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( . . . continued)

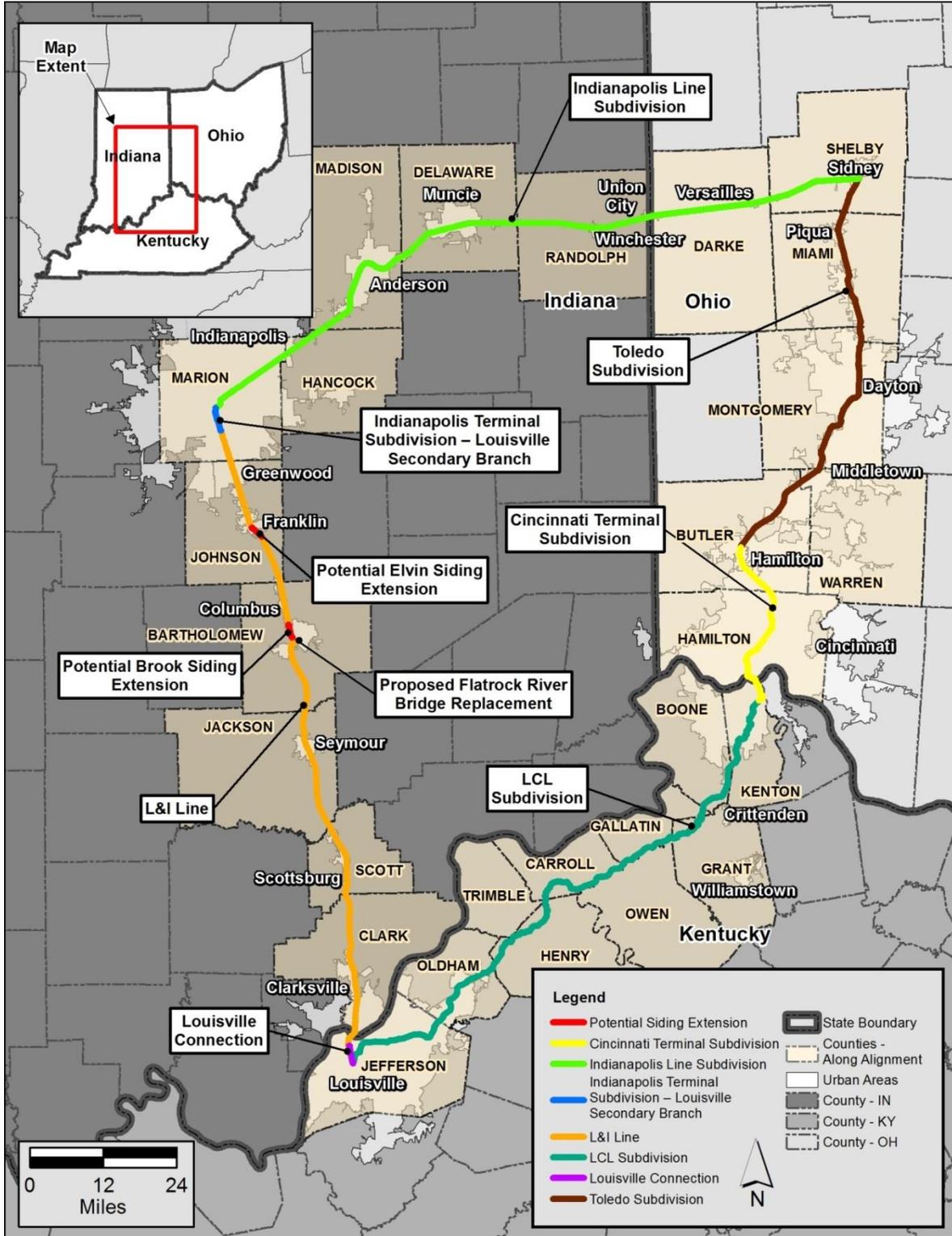
and comment in this proceeding, and the need for a public hearing has not been demonstrated here.

It is ordered:

1. The proposed joint use agreement between CSXT and L&I is approved subject to conditions imposed herein.
2. Approval of the joint use agreement is subject to the conditions for protection of railroad employees set forth in Norfolk & Western.
3. Approval of the joint use agreement is subject to the environmental conditions set forth in Appendix C.
4. Applicants must adhere to any and all of the representations made in the record during the course of this proceeding.
5. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

# APPENDIX A



1  
2  
3



## APPENDIX B

### ***SURFACE TRANSPORTATION BOARD*** *Washington, DC 20423*

*Office of Environmental Analysis*

#### **MEMORANDUM**

TO: Deb Miller, Chairman  
Ann Begeman, Vice Chairman

CC: Rachel Campbell  
Director, Office of Proceedings

FROM: Victoria Rutson  
Director, Office of Environmental Analysis

DATE: February 10, 2015

SUBJECT: STB Docket No. FD 35523, CSX Transportation, Inc. – Joint Use – Louisville & Indiana Railroad Company, Inc., Update on Environmental Matters

#### **Background**

Following the release of the Final Environmental Assessment (EA) in the subject case on December 31, 2014, the mayors of four cities along Louisville & Indiana Railroad Company's (L&I) rail line (the "L&I Line" or the rail line proposed for joint use) contacted the Office of Environmental Analysis (OEA) regarding continuing concerns they have about the proposed transaction.

As discussed in the Draft, Supplemental, and Final EAs, the proposed transaction involves CSX Transportation, Inc. (CSXT) seeking to acquire for \$10 million, a perpetual, nonexclusive easement over the 106-mile L&I Line between Indianapolis, IN and Louisville, KY (see Attachment 1, Map of L&I Line). CSXT also would pay for upgrades to the L&I Line, projected to cost between \$70 and \$90 million. These improvements would eliminate the need for speed restrictions due to current track conditions on the L&I Line and would upgrade the L&I Line to a Class 4 FRA line, allowing Applicants (CSXT and L&I) to increase train speed on the L&I Line from a current maximum of 25 mph to a proposed maximum of 49 mph.

CSXT projects that these upgrades would take up to seven years to complete. In return, L&I would compensate CSXT for any of its traffic that makes use of the heavier tonnage per car and taller rail cars that could move on the upgraded L&I Line under the proposed transaction. Both CSXT and L&I trains would continue to use the L&I Line. Once the L&I Line upgrades were completed, CSXT would move between 13 and 15 additional trains per day over the L&I Line.

In this memorandum, OEA summarizes the concerns expressed by the four mayors and recommends revisions to two mitigation measures in the Final EA to address those concerns. Additionally, under Section 106 of the National Historic Preservation Act, a Memorandum of Agreement (MOA) among Applicants, the Indiana State Historic Preservation Office and the Board was executed January 30, 2015. The execution of the MOA concluded the Section 106 process. Accordingly, this memorandum includes a revised Section 106 recommended mitigation measure imposing the terms of the executed MOA on Applicants.

### **Mayoral Concerns**

On January 20, 2015, OEA received a January 9, 2015 letter jointly signed by Kristen Brown, Mayor, City of Columbus, IN; Joseph McGuinness, Mayor, City of Franklin, IN; Mark Meyers, Mayor, City of Greenwood, IN; and Craig Luedeman, Mayor, City of Seymour, IN (see Attachments 2 and 3). OEA also received a separate January 9, 2015 letter from Mayor Kristen Brown on January 20, 2015 (see Attachment 4).

In the joint letter, the mayors primarily expressed general dissatisfaction with Applicants' response to public comments on the Draft and Supplemental EAs. The mayors cited Applicants' belief that commenters have not provided the necessary justification for additional mitigation measures. The mayors also expressed the following more specific concerns:

- Train traffic on the L&I Line had already increased in 2014, which, according to the mayors, has had major impacts on their communities even without the additional train increases that would occur under the proposed transaction.
- The more than doubling of train speeds on the L&I Line under the proposed transaction would compromise community safety. The mayors noted that the safety features at many at-grade crossings are limited to pavement markings. They added that several of these crossings are mandatory walk zones for local schools.
- Concern was expressed about the "700% increase" in train volume, the effect this increase would have on their cities and the lack of an adequate response by Applicants to address their concerns.

Mayor Brown also wrote separately in her January 9, 2015 letter about substantial traffic delays that already occur at L&I's at-grade crossing of State Road 46 in Columbus, IN. She noted that trains move through that crossing at 10 miles per hour and peak morning traffic delays result in vehicle queues that exceed 2,800 feet, and per vehicle delays of at least 15 minutes. Mayor Brown noted that OEA's EA analysis had concluded that the delays at the crossing would exceed one of eleven Federal Highway Administration criteria used to determine if grade separation should be considered; but, that OEA nevertheless concluded that the proposed transaction is not expected to reduce community mobility.

### **OEA's Response**

OEA hosted a teleconference with the four mayors on January 23, 2015 to further discuss their concerns. Joining the conference call were aides to U.S. Senator Dan Coats (R-Indiana)

and U.S. Congressman Todd Young (R-Indiana, 9th District). During the call, the mayors stated that their main concerns are safety, emergency vehicle access, vehicular delay, and horn noise associated with at-grade crossings. Collectively, they discussed the need for enhanced safety devices for at-grade crossings, the establishment of quiet zones and in certain cases, grade separations. Mayor Brown indicated that in her view a grade separation of the L&I Line and State Road 46 crossings would be the only effective mitigation. The mayors added that the mitigation necessary to address their concerns should be paid for by Applicants. Finally, the mayors expressed frustration about a lack of outreach or communication in the past two years from Applicants to communities that would be affected by the proposed transaction.

In response to the concerns raised by the mayors, OEA explained that the analyses in the Draft, Supplement, and Final EAs examined in detail how the proposed transaction could impact both the environment. OEA pointed out that the EAs had concluded that the potential impacts, though in some cases adverse, would not be significant under the Board's thresholds. OEA added that the 84 mitigation measures in the Final EA—both the 62 measures volunteered by Applicants and the 22 additional measures recommended by OEA—would minimize these impacts. Furthermore, OEA stated that the proposed transaction, if implemented, itself would mitigate noise and some vehicular delay and emergency vehicle access, which were all concerns of the mayors. This is because the planned upgrade would replace the L&I Line's jointed rail, which generates noise and causes trains to move at slower speeds (a maximum of 25 mph), with continuous welded rail. Continuous welded rail enables trains to operate more quietly and with greater speed (up to 49 mph), with the latter enabling trains to clear at-grade crossings in less time, and therefore, resulting in reduced vehicle delays.

Regarding the mayors' request for enhanced grade crossing protection and grade separations paid by in full or largely by Applicants, OEA explained that the Board typically does not require grade separation mitigation, and the increase in train traffic numbers here fell far below that in Canadian National (CN)-EJE, where the Board ordered CN to pay a large portion (67% and 78.5%) of two grade separations in two communities where train traffic would increase to more than 35 trains per day.

OEA explained that grade crossing enhancements are typically paid for by the owner of the subject roadway (whether it be Federal, state, or local), and any available Federal grant money, which is administered by the State DOTs based on a state-prioritized list. Therefore, the existing procedures for grade crossing enhancements would not require Applicants to pay for upgrading the more than 150 grade crossings on the L&I Line. Finally, OEA discussed the steps taken in the Final EA, Voluntary Mitigation (VM) 33 through 39 to address Grade Crossing Safety. These measures would require Applicants to work with the affected state DOTs and other appropriate state and local agencies inform the public of forthcoming increase in train traffic, to provide Operation LifeSaver to schools, communities, and organizations along the L&I Line, and to work with the state DOTs before constructing, relocating, upgrading, or modifying at grade crossing warning devices.

On January 23, following the conference call with the four mayors, OEA spoke with Applicants' outside counsel and encouraged Applicants to renew communication with communities on the L&I Line and the four mayors specifically as soon as possible. Applicants'

outside counsel reported back the week of January 26, first, that CSXT and L&I had individual meetings scheduled that week with the four mayors, and second, that the meetings were completed later that week.

### **OEA's Recommended Mitigation Revisions**

As discussed above, the mayors contended that their communities would need at-grade crossing enhancements to ensure the safety of drivers and pedestrians and to enable the establishment of quiet zones, as well as the need for several grade-separated crossings on the L&I Line. The mayors also stated that the cost of these at-grade crossing enhancements and grade separations should be covered by Applicants. However, OEA's environmental analyses and the mitigation imposed by the Board in past decisions in similar cases do not support an OEA mitigation recommendation that would mandate crossing enhancements and grade separations to be paid for by Applicants in this case. Nevertheless, OEA believes that increased outreach to and communication with the mayors by Applicants could provide substantial benefits to both parties. In particular, increased communications could lead to the completion of one or more negotiated agreements with these communities with more far-reaching mitigation than the Board could unilaterally impose.

In addition, to ensure that the four mayors and other community leaders on the L&I Line are and continue to be consulted on the topics of at-grade crossing safety and delays, OEA recommends that two recommended mitigation measures in the Final EA be revised to mandate additional community outreach by Applicants. The first recommended revision pertains to Mitigation Measure (MM) 1 regarding the development of a Grade Crossing Mitigation Plan, which OEA recommends be revised to expand the outreach required of Applicants, as follows:

MM 1. To address potential safety impacts at public at-grade crossings, Applicants shall submit a Grade Crossing Mitigation Plan (GCMP) to OEA prior to moving Transaction-related train traffic on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection. In preparing the GCMP, Applicants shall meet with INDOT, ODOT, and KYTC, as well as each mayor (or mayor's designated representative) in the cities and towns along the L&I Line, within 90 days of the effective date of any Board approval of the proposed transaction. The purpose of these meetings will be to discuss and begin determining the need for grade crossing protection upgrades at each public at-grade crossing on the subject rail lines. The discussions shall also address grade crossing maintenance, including the clearing of vegetation to maintain lines-of-sight.

Within 90 days of meeting with INDOT, ODOT, KYTC and the mayors, Applicants shall provide OEA with a draft annotated outline of the GCMP for OEA review and concurrence. The draft annotated outline shall describe the contents of the GCMP and an implementation schedule for identified crossing upgrades. Applicants shall submit the GCMP to OEA and each mayor on the L&I Line within 90 days of receiving OEA's concurrence on the draft annotated outline. Subsequently, any updates to, and the implementation status of the GCMP shall be included in the semi-annual mitigation and

monitoring reports that Applicants will be required to provide as part of the Board's mitigation.

The second recommended mitigation revision pertains to Applicants' reporting requirements to OEA on Applicants' progress in implementing the proposed transaction. Applicants offered VM 62, which would require the submittal of semi-annual monitoring and enforcement report to OEA for a "period covering the first 3 years of operational changes." To clarify OEA's intent that these reports should be required during the course of Transaction-related upgrades to the L&I Line in addition to the first three years of Transaction-related operations, and to ensure ongoing outreach with the mayors and others during the upgrade period are documented, OEA recommends that the following new mitigation measure be imposed in any Board decision approving the proposed transaction:

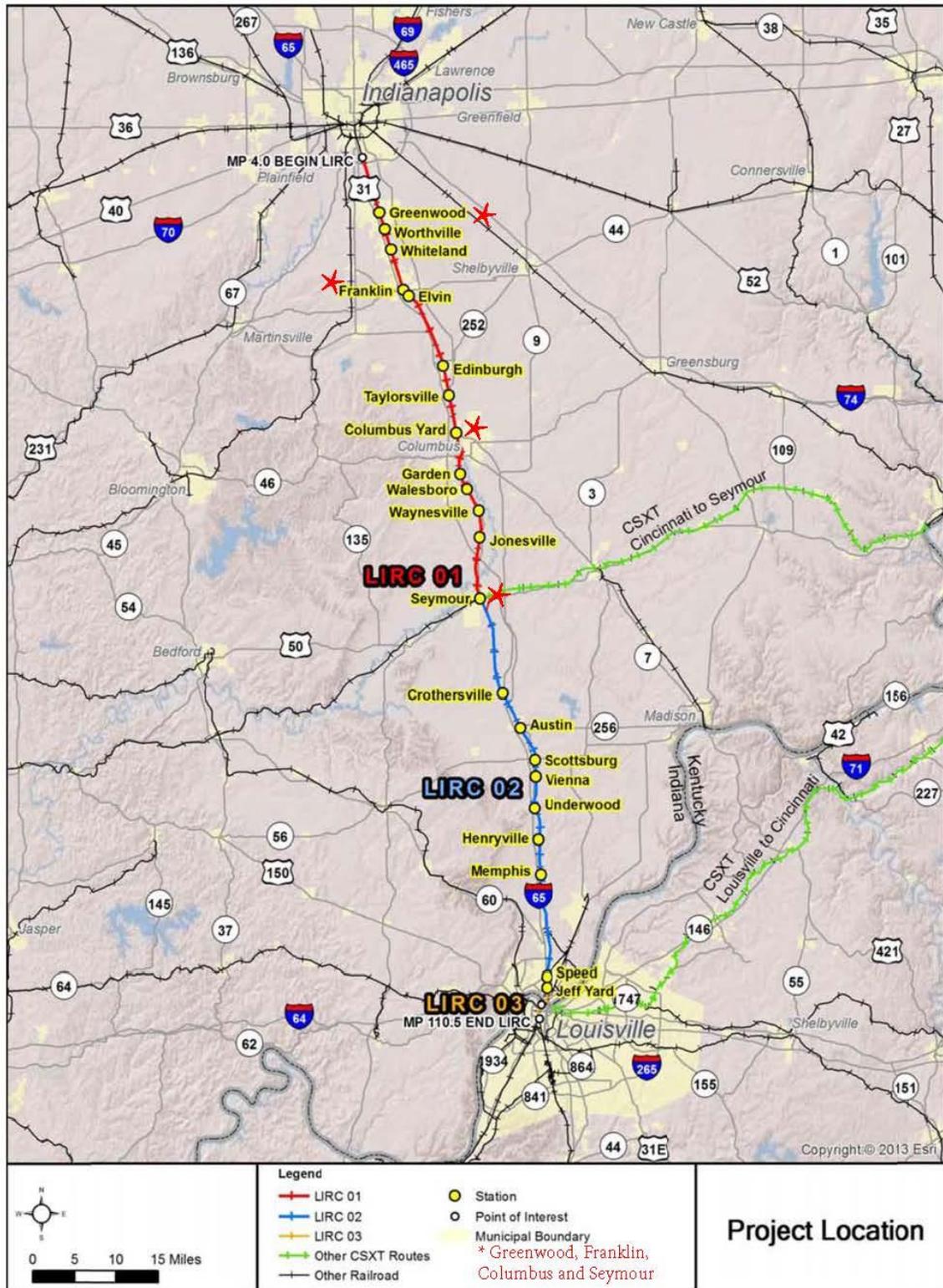
MM 23. Beginning six months after the effective date of any Board approval of the Proposed Transaction, Applicants shall prepare and submit semi-annual reports to OEA on the progress of, implementation of, and compliance with all Board-imposed mitigation measures. These semi-annual reports shall be submitted to OEA for the duration of Transaction-related upgrades to the L&I Line and for the first three years of Transaction-related train operations over the L&I Line. A copy of each semi-annual mitigation and monitoring report shall also be provided to each mayor on the L&I Line.

Finally, a final MOA under Section 106 of the National Historic Preservation Act was distributed for signature by OEA on January 9, 2015. The last signature from an outside party was received on January 29, 2015, and with my signature dated January 30, 2015, the MOA has been executed (see Attachment 5). Accordingly, OEA recommends that Mitigation Measure (MM) 19 in the Final EA be replaced with the following language to reflect the executed status of the MOA:

MM 19. Applicants shall comply with the Flatrock River Bridge Memorandum of Agreement developed through the Section 106 process of the National Historic Preservation Act.

Attachments: 1 – Map of L&I Line  
2 - January 9, 2015 Letter from Four Mayors  
3 - Maps of Greenwood, Franklin, Columbus, and Seymour with the L&I Line  
4 - January 9, 2015 Letter from Kristen Brown, Mayor of Columbus, IN  
5 - Executed Section 106 Memorandum of Agreement

Attachment 1



Attachment 2



City of Columbus  
Kristen Brown  
Mayor



City of Franklin  
Joe McGinnis  
Mayor



City of Greenwood  
Mark Myers  
Mayor



City of Seymour  
Craig Luedeman  
Mayor

January 9, 2015

Ms. Victoria Rutson  
Director, Office of Environmental Analysis  
395 E Street SW  
Washington, DC 20423-001

RE: Finance Docket No. 35523, CSX Transportation, Inc. – Joint Use – Louisville & Indiana Railroad Company, Inc.

Dear Ms. Rutson,

We have reviewed the responses provided by the applicant in regard to recent letters of concern from the Cities of Columbus, Franklin, Greenwood and Seymour, as well as other interested parties dated December 15<sup>th</sup>, 2014 and received December 31<sup>st</sup>, 2014. With respect for time, we would like to have one significant issue addressed and believe we are due an explanation.

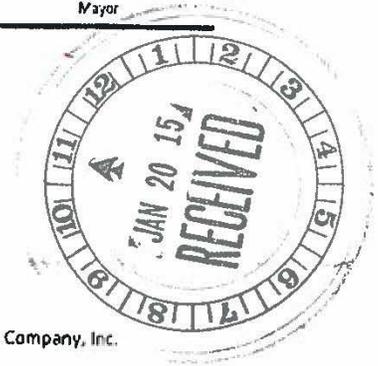
The general response provided by the applicant to several items of concern from numerous entities, the applicant indicates that, "Applicants do not believe that {concerned entity} has provided the necessary justification for any of the additional mitigation measures it has requested."

This seems to be a bit of a convenient attempt by the applicant to absolve itself of adequately responding to various concerns. It is not the municipality or the citizens who are wishing to improve the infrastructure for private enterprise and profit. We believe the burden of proof should fall on the applicant and not the municipalities that this development may negatively impact. All landowners within our communities are required to adequately address concerns of citizens and/or the municipality regarding their desires to move forward with any new development or infrastructure without burden to the citizens or the municipality.

Put more simply, the burden of proof should be on the applicant to provide adequate and acceptable evidence that their intent does not burden the concerned entity. As cities, it is difficult for us to see how the burden should fall on us as we truly have nothing to gain in the matter.

To be clear, we understand that the railroad already exists in all of our communities, and we hope (and will continue to strive for) a continued good working relationship with the applicants. However, given their response, it doesn't seem that they are being held to the same standard that we hold ourselves, our citizens, our businesses and our landowners.

We realize the period for public comment has closed and that it appears decisions have already been made. As we wait patiently for the final determination from the board, we hope that a decision of this magnitude is made while considering all the possible outcomes. We can offer the following in addition to our concern above:



- Traffic on the rail through our cities has already increased greatly over the past year well in advance of any additional CSX traffic that is currently under review by the Board. It has had a significant negative effect on all of us even without the compounding impact of an additional rail carrier.
- We are concerned that this transaction will more than double the speed of rail traffic through our cities. It would seem that a two-fold increase in anything would merit some additional effort in response. In addition, many of our crossings are in residential areas and do not have any safety features beyond pavement markings. Several of which are within a mandatory walk zones for our school systems.
- We are concerned about a 700% increase in train volume and the effect it will have on our cities. It would seem this too would require some additional effort in response from the applicant.

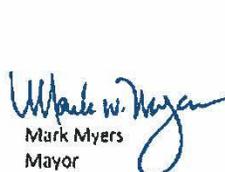
Thank you for your time and consideration. Please feel free to contact us if you have any questions or concerns.

Sincerely,




Kristen Brown  
Mayor  
City of Columbus  
(812) 376-2500

Joseph McGuinness  
Mayor  
City of Franklin  
(317) 736-3602




Mark Myers  
Mayor  
City of Greenwood  
(317) 887-5000

Craig Luedeman  
Mayor  
City of Seymour  
(812) 522-4020

CC:

Senator Dan Coats, United States Senate (via email)  
 Congressman Todd Young, United States House of Representatives  
 Congressman Luke Messer, United States House of Representatives  
 Ms. Cynthia T. Brown, Chief of the Section Administration, Office of Proceedings  
 Governor Mike Pence, State of Indiana (via email)  
 Lt. Governor Sue Ellsperman, State of Indiana (via email)  
 Mr. Thomas Dunbar, INDOT (via email)  
 Mr. Lucas Mastin, Highway Director, Johnson County (via email)  
 Mr. Ron Hoffman, Council President, Edinburgh (via email)  
 Mr. John Drycroad, Town Manager, Edinburgh (via email)  
 Ms. Anna Greming, Executive Director, Indianapolis MPO (via email)  
 Mr. Laurence Brown, Director, Columbus Area MPO (via email)

# Attachment 3 (1 of 4)

## Seymour, IN



Sources: Railroads, FRA; Imagery, ESRI

-  L&I Line
-  Other Rail



# Attachment 3 (2 of 4) Columbus, IN



Sources: Railroads, FRA; Imagery, ESRI

-  L&I Line
-  Other Rail



# Attachment 3 (3 of 4) Franklin, IN



Sources: Railroads, FRA; Imagery, ESRI

-  L&I Line
-  Other Rail

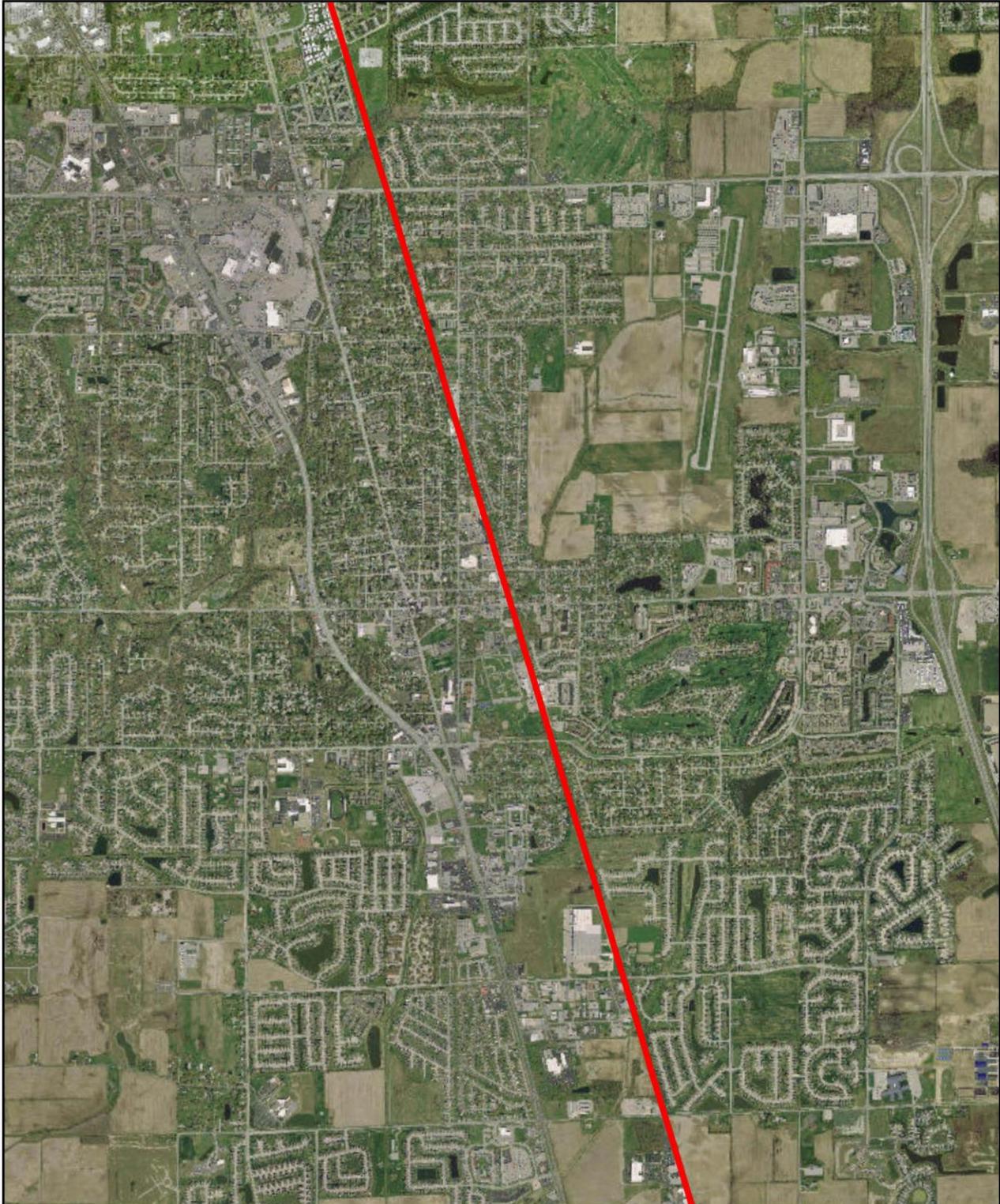


# Attachment 3 (4 of 4) Greenwood, IN



Sources: Railroads, FRA; Imagery, ESRI

-  L&I Line
-  Other Rail



Attachment 4



Kristen Brown, Mayor

January 9, 2015

Ms. Victoria Rutson  
Director, Office of Environmental Analysis  
395 E. Street, SW  
Washington, DC 20423-001

**Re: Finance Docket No. FD 35523, CSX Transportation, Inc. – Joint Use – Louisville and Indiana Railroad Company, Inc.**

Dear Ms. Rutson:

As stated in the previous joint response from the City of Columbus, City of Franklin, City of Greenwood, and City of Seymour, we felt it appropriate to once again specifically address the issues in each of our respective communities.

I want to specifically address the crossing at State Road 46 which has an average vehicle count of 37,100 which is the most highly traveled crossing and by far the most negatively impacted as measured by total vehicle traffic delay from Indianapolis to Louisville.

First of all, the data that is presented in your analysis is not representative of what we encounter in our community. The data for the current train volume is outdated as L&I has already increased traffic from two to three or four trains per day which has had a detrimental impact to our community. We have no idea what L&I's volume will be by the time the Proposed Transaction may or may not be approved and implemented. Your data also reflects an average train speed of 20 mph at that crossing. However, due to the line layout immediately before this intersection as well as the design of the Flatrock River Bridge and by L&I representatives own admission, trains are only able to cross this intersection at 10 mph. Your data representing a No Action scenario as reflected in Appendix C of the Draft Environmental Assessment reflects a Queue Length of 710 feet and an Average Delay per Delayed Vehicle of 1.49 minutes. We experience average queue lengths of easily four times the length stated and average delays of easily 10 times the amount stated. Our delays and backups during peak traffic times going east bound on SR 46 can take up to an hour to clear with the best alternate route being in excess of a 11 mile detour with a drive time of 18 minutes. We are concerned about the accuracy of your underlying data as well as not reflecting an accurate depiction of what is actually occurring at this crossing.

Secondly, assuming the data presented is valid, Total Vehicle Traffic Delay (24 hour) skyrockets from 176 minutes per day with No Action to 6,454 minutes per day with the Proposed Transaction. The anticipated total wait time per day per your calculation for this crossing is in excess of 107 hours which is almost three times the Federal Highway Administration's standard (40 vehicle hours delay per day) for consideration of grade separation. However, in the analysis, any consideration of grade separation is summarily

dismissed with a statement of, "Due to the layout of the intersection, the Proposed Transaction is not expected to reduce mobility of the community of Columbus, IN in the area of the SR #46 crossing." *Draft Environmental Assessment - August 2013, Page 3-6.* I and our community strongly disagree as a reduction in mobility has already occurred and an increase in train volume as being proposed would be debilitating.

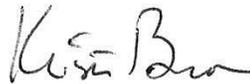
Once again, we feel that the analysis and potential impact as discussed above is understated. The data and impact for the Proposed Transaction does not take into account the already increased traffic volume of L&I and any future L&I increase that may occur. The impact could even be more staggering than reflected.

While we echo the various other concerns previously raised and being concurrently raised with this submission regarding general increase in train traffic and speeds, we felt it necessary to specifically call out the unique situation of our crossing at State Road 46 and the monumental impact such an increase in traffic would bring.

By the admission of the president of L&I and senior leaders of INDOT, the only solution to the problem is an overpass. We feel that because of the increased delays that would bring the Total Vehicle Traffic Delay figures well in excess of the Federal Highway Administration Standards for grade separation, some combination of L&I, CSX, Federal Highway, and the Federal Railroad Administration should be required to pay for the overpass at this intersection which is expected to cost approximately forty million dollars. Neither the City of Columbus nor INDOT can afford this level of investment which is required to remedy the harm which would be caused to our community.

We would very much welcome a discussion with you and any other member of Surface Transportation Board or the Office of Environmental Analysis on this topic. My office will be contacting your office with the hopes of scheduling a phone call to discuss our concerns next week.

Sincerely,



Kristen Brown, Mayor

cc: Governor Mike Pence, State of Indiana (via email)  
Lt. Governor Sue Ellspermann, State of Indiana (via email)  
Senator Dan Coats, United States Senate (via email)  
Senator Joe Donnelly, United States Senate (via email)  
Congressman Luke Messer, United States House of Representatives (via email)  
Tony McClellan, INDOT, Seymour District (via email)

**MEMORANDUM OF AGREEMENT  
AMONG THE SURFACE TRANSPORTATION BOARD,  
CSX TRANSPORTATION, INC.,  
LOUISVILLE & INDIANA RAILROAD COMPANY, INC. AND  
INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF HISTORIC  
PRESERVATION & ARCHAEOLOGY**

**REGARDING  
STB DOCKET NO. FD 35523, CSX TRANSPORTATION, INC. —JOINT USE —  
LOUISVILLE & INDIANA RAILROAD COMPANY, INC.  
(DHPA #11979)**

**WHEREAS**, on June 14, 2013, CSX Transportation, Inc. (“CSXT”) and Louisville & Indiana Railroad Company, Inc. (L&I) filed an application with the Surface Transportation Board (Board) seeking approval for joint use by CSXT and L&I of L&I’s 106.5-mile rail line between Indianapolis, Indiana and Louisville, Kentucky (“L&I Line”); and

**WHEREAS**, CSXT and L&I would like to replace the Flatrock River Bridge on the L&I Line at Milepost 40.19 because the bridge cannot accommodate the modern rail traffic including the heavier, taller and faster trains that would move on the L&I Line under the proposed joint use; and

**WHEREAS**, the Board has determined that the replacement of the Flatrock River Bridge constitutes an Undertaking, as defined in 36 C.F.R. §800.3(a); and

**WHEREAS**, the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (DHPA), acting in its designated capacity as the State of Indiana’s Historic Preservation Officer (“Indiana SHPO”), has advised in letters to CSXT dated October 11, 2011, and October 3, 2013, that the Flatrock River Bridge located at Milepost 40.19 is eligible for listing in the National Register of Historic Places (“NRHP”), and that replacement of the Flatrock River Bridge would result in an adverse effect on an historic property; and

**WHEREAS**, the Board, through its Office of Environmental Analysis (“OEA”), consulted with Indiana SHPO pursuant to regulations at 36 C.F.R. Part 800, effective August 30, 2004, implementing Section 106 of the NHPA, and determined that the proposed joint use would have an adverse effect on the Flatrock River Bridge; and

**WHEREAS**, in a letter dated July 25, 2014, OEA notified the Advisory Council on Historic Preservation (Advisory Council) of the adverse effect on the bridge in accordance with 36 C.F.R. § 800.6(a)(1); and

**WHEREAS**, in a letter dated August 6, 2014, the Advisory Council declined to participate in the negotiation of this Memorandum of Agreement (“MOA”); and

**WHEREAS**, pursuant to 36 C.F.R. §800.6, OEA has consulted with Indiana SHPO, L&I and CSXT regarding ways to avoid, minimize, or mitigate potential effects to the Flatrock River

Bridge as a result of the proposed joint use, and the Board, Indiana SHPO, L&I and CSXT have all agreed upon the measures described below under “Stipulations;” and

**WHEREAS**, the Board provided opportunities for public and Tribal participation during the Board’s environmental review under the National Environmental Policy Act including distribution of and posting to its website a Draft Environmental Assessment (EA) and Supplemental EA, with the latter also containing (1) the conclusion of adverse effect on the Flatrock River Bridge, (2) documentation of the Flatrock River Bridge to DHPA Minimum Architectural Documentation Standards (“DHPA Standards”), and (3) a draft MOA; and

**WHEREAS**, the Board consulted Indiana SHPO, and reviewed data in Indiana Survey of Historic Sites and Structures reports, State Historic Architectural and Archaeological Research Database and the NRHP, and did not identify any documented archaeological resources in the L&I Line right-of-way that encompasses the Flatrock River Bridge; and

**WHEREAS**, the Board concurs with Indiana SHPO’s conclusion that no archaeological investigations are necessary if construction activities associated with replacement of the Flatrock River Bridge are limited to areas within the disturbed L&I Line right-of-way; and

**WHEREAS**, CSXT and L&I agree to limit construction activities associated with replacement of the Flatrock River Bridge to areas within the disturbed L&I Line right-of-way; and

**WHEREAS**, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

**NOW, THEREFORE**, the Board, L&I, CSXT, and Indiana SHPO agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated. Execution and submittal of the MOA, and implementation of its terms, are evidence that the Board has afforded the Advisory Council an opportunity to comment on the proposed action relating to the Flatrock River Bridge, and that the Board has taken into account the effects of the removal of the Flatrock River Bridge on historic properties and is satisfying the requirements of Section 106 of the NHPA.

## **STIPULATIONS**

The Board shall ensure that the following mitigation measures are carried out:

### **I. PREPARATION OF PRESENTATION PACKAGE**

**A. Presentation Package contents.** CSXT will prepare a presentation package for the Flatrock River Bridge in compliance with the DHPA Standards. The package will include:

- 1. Black and white photographs providing an overall view of the Flatrock Bridge in its environment and views of its significant components.** Photographic

documentation will be produced in compliance with the camera requirements set forth in the DHPA Standards. All photographs will be labeled in accordance with DHPA Standards.

2. **A written description.** A brief description of the Flatrock Bridge and its condition, including the architectural style, plan, building materials, and details.
3. **Statement of Significance.** The history and significance of the Flatrock River Bridge must be explained in compliance with the DHPA Standards format. The statement will begin with a summary paragraph that succinctly discusses the date or era of construction and why the Flatrock River Bridge is important. Enough history and background will be presented to establish the Flatrock River Bridge's importance. If the Flatrock River Bridge is architecturally significant, the statement must indicate how it is an outstanding example of an important architectural style, type, or work of a significant architect. Dates and descriptions of major alterations, if known, will be included.
4. **Drawings.** If available, architectural drawings will be submitted in the presentation. If architectural drawings are not available, a sketch plan of the site will be included in the presentation. All drawings must be submitted in accordance with DHPA Standards.

**B. Completion Schedule.** CSXT completed the aforementioned recordation package and related written documentation, and by letter dated November 13, 2013, submitted the recordation package to the Indiana SHPO and Board.

**C. Recordation Package Acceptance.** In a letter dated November 19, 2013, Indiana SHPO acknowledged receipt of the documentation, stated that it had reviewed the material, and concluded that the documentation is consistent with DHPA's Standards.

**D. Public Accessibility.** The presentation package for the Flatrock River Bridge has been placed on the Board's website ([www.stb.dot.gov](http://www.stb.dot.gov), see Environmental Matters, Key Cases) to enhance public accessibility to the documentation.

## II. UNANTICIPATED DISCOVERIES

If the Board determines after Flatrock River Bridge replacement has commenced that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the NRHP, then the Board will address the discovery in accordance with 36 C.F.R. §800.13(b)(3). The Board may assume that the discovered property is eligible for the NRHP in accordance with 36 C.F.R. §800.13(c).

In the event that one or more historic properties—other than the Flatrock River Bridge—are discovered or that unanticipated effects on historic properties are expected after commencement of the Undertaking, the Board shall ensure that the procedure specified in 36 C.F.R. §800.13, as well as IC 14-21-1-27 and IC 14-21-1-29, is followed by stopping work in the immediate area, which shall be no greater than a 100-foot radius from the discovery, and informing the Indiana SHPO of such unanticipated discoveries or effects within (2) business

days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1, 312 IAC 21, 312 IAC 22, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*. If human remains are discovered, the appropriate County Coroner and law enforcement officials must also be notified immediately. If Native American human remains and/or objects subject to the provisions of the Native American Graves Protection and Repatriation Act (“NAGPRA”), including human burials, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, are encountered, the Board shall notify and consult with the culturally affiliated Tribe(s) and lineal descendants to determine appropriate treatment measures for these human remains in agreement with NAGPRA.

### III. ADMINISTRATIVE PROVISIONS

**A. Dispute Resolution:** Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

1. Forward all documentation relevant to the dispute, including the Board’s proposed resolution, to the Advisory Council. The Advisory Council shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Advisory Council, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
2. If the Advisory Council does not provide its advice regarding the dispute within the thirty (30) day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the Advisory Council with a copy of such written response.
3. Carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

**B. Amendments:** This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council.

**C. Termination:** If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation III-B, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

**D. Duration of the MOA:** This MOA will expire if its stipulations are not carried out within 8 years from the date of its execution. At such time, and prior to work continuing on the Undertaking, the Board shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation III-B above. The Board shall notify the signatories as to the course of action it will pursue.

**E. Counterparts:** This MOA may be executed in any number of counterparts, each of which shall be an original, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

**F. Effective Date:** This MOA will take effect on the date the fourth and final signatory signs and dates the document.

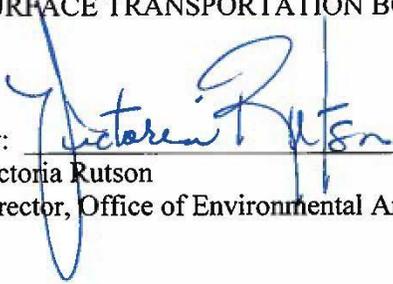
#### **IV. SCOPE OF AGREEMENT**

This MOA is limited in scope to the proposed undertaking, and, more particularly, to the Flatrock River Bridge located on the L&I Line, and it is entered into solely for purposes of historic impacts mitigation associated with the replacement of the Flatrock River Bridge.

**EXECUTION** of this MOA by the Board, L&I, CSXT, and Indiana SHPO; its transmittal to the Advisory Council; and subsequent implementation of its terms, evidences that the Board has afforded the Advisory Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that the Board has taken into account the effects of the Undertaking on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

**SIGNATORY PARTIES:**

SURFACE TRANSPORTATION BOARD

By:  \_\_\_\_\_  
Victoria Rutson  
Director, Office of Environmental Analysis

Date: Jan. 30, 2015

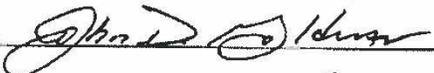
INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF HISTORIC  
PRESERVATION & ARCHAEOLOGY

By: Mitchell K. Zoll Date: 1-28-2015  
Mitchell K. Zoll  
Deputy State Historic Preservation Officer

CSX TRANSPORTATION, INC.

By:  Date: 1/28/15  
Printed Name: J. Todd Ecker  
Title: AVP ENGINEERING

LOUISVILLE & INDIANA RAILROAD COMPANY, INC.

By:  Date: 1-29-15

Printed Name: John D. GOLDMAN

Title: PRESIDENT

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## APPENDIX C

### FINAL RECOMMENDED MITIGATION

#### 2.1 Applicants' Voluntary Mitigation

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

#### Construction-related VMs

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

#### General Construction and Grade Crossing Safety

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

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

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

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

VM 5. During Transaction-related construction concerning at-grade crossings, when reasonably practicable, Applicants will consult with INDOT and the Kentucky Transportation Cabinet

1 (KYTC) regarding detours and associated signage, as appropriate, or maintain at least one open  
2 lane of traffic at all times to allow for the quick passage of emergency and other vehicles.

3  
4 VM 6. Applicants will minimize temporary road closures during construction activities  
5 associated with the rail line upgrade and siding extension. Applicants will manage construction  
6 schedules to:

- 7  
8 • Minimize highway/rail at-grade crossing closures; and  
9 • Relay highway/rail at-grade crossing closure schedules to local emergency service providers.

10  
11 VM 7. To the extent reasonably practicable, Applicants will confine construction traffic to a  
12 temporary access road within the construction right-of-way or established public roads. Where  
13 traffic cannot be confined to temporary access roads or established public roads, Applicants will  
14 make necessary arrangements with landowners to gain access from private roadways. The  
15 temporary access roads will be used only during project-related construction. Any temporary  
16 access roads constructed outside the rail line right-of-way will be removed and restored upon  
17 completion of construction unless otherwise agreed to with the landowners.

18  
19 **Water Resources**

20  
21 VM 8. Applicants will compensate in accordance with U.S. Army Corps of Engineers (USACE)  
22 regulations in Indiana for wetland impacts that cannot be avoided and for impacts that are  
23 determined by USACE to be on waters of the United States for construction related to the  
24 Proposed Transaction.

25  
26 VM 9. To minimize sedimentation into streams and waterways during construction, Applicants  
27 will use Best Management Practices (BMPs), such as silt fences and straw bale dikes, to  
28 minimize soil erosion, sedimentation, runoff, and surface instability during Transaction-related  
29 construction activities. Applicants will seek to disturb the smallest area possible around any  
30 streams and will conduct reseeding efforts to ensure proper revegetation of disturbed areas as  
31 soon as reasonably practicable following Transaction-related construction activities.

32  
33 VM 10. In order to control erosion, with respect to jurisdictional waters of the U.S., Applicants  
34 will establish staging and lay down areas for Transaction-related construction material and  
35 equipment in accord with the requirements of permits issued by the USACE and in areas that are  
36 not environmentally sensitive. Applicants will not clear any vegetation between the staging area  
37 and the waterway or wetlands. To the extent reasonably practicable, areas with non-  
38 jurisdictional isolated waters will not be used for staging and lay down and will only be impacted  
39 when necessary for construction. When Transaction-related construction activities, such as  
40 culvert and bridgework, require work in streambeds, Applicants will conduct these activities, to  
41 the extent reasonably practicable, during low-flow conditions.

1 VM 11. During Transaction-related construction activities, Applicants will require all  
2 contractors to use BMPs, including daily inspections of all equipment for any fuel, lube oil,  
3 hydraulic, or antifreeze leaks. If leaks are found, Applicants will require the contractor to  
4 immediately remove the equipment from service and repair or replace it.

5  
6 VM 12. Applicants will employ BMPs to control turbidity and disturbance to bottom sediments  
7 of surface waters during Transaction-related construction. Applicants will implement BMPs in  
8 wetlands or other waters of the U.S. to avoid adverse downstream impacts on fish, mussels, and  
9 other aquatic biota.

10  
11 VM 13. During Transaction-related construction, Applicants will prohibit construction vehicles  
12 from driving in or crossing streams at other than established crossing points unless approved by  
13 appropriate federal or state permits.

14  
15 VM 14. During Transaction-related construction activities, Applicants will, to the extent  
16 reasonably practicable and consistent with BMPs, ensure that any fill placed below the ordinary  
17 high water line of wetlands and streams is appropriate material selected to minimize impacts to  
18 the wetlands and streams. All stream crossing points will be returned to their pre-construction  
19 contours to the extent reasonably practicable and the crossing banks will be reseeded or replanted  
20 with native species immediately following project-related construction.

21  
22 VM 15. Applicants will obtain a National Pollutant Discharge Elimination System (NPDES)  
23 stormwater discharge permit from U.S. Environmental Protection Agency (USEPA) or  
24 appropriate state agencies for Transaction-related construction activities that warrant such  
25 compliance.

26  
27 VM 16. Prior to any Transaction-related construction activities, Applicants will comply with  
28 any regulations required in the preparation of a construction Stormwater Pollution Prevention  
29 Plan.

### 30 **Biological Resources**

31  
32  
33 VM 17. Before beginning any Transaction-related construction activity, Applicants will survey  
34 all suitable habitats potentially impacted by the construction activity for state-listed threatened or  
35 endangered plant species. If any listed plant species are located, Applicants will implement a  
36 mitigation plan in consultation with the appropriate federal and state agencies.

37  
38 VM 18. In order to avoid a take of the federally endangered Indiana bat, Applicants will not  
39 clear trees during its roosting period (April 1 – September 30).

40  
41 VM 19. During Transaction-related construction, temporary barricades, fencing, and/or flagging  
42 will be used in sensitive habitats to contain construction-related impacts to the area within the  
43 existing right-of-way.

1  
2 VM 20. Applicants will employ BMPs to implement their current noxious weed control program  
3 during construction and operation of Transaction-related potential siding extensions. Applicants  
4 will only use herbicides that have been approved by USEPA.

5  
6 **Air Quality**  
7

8 VM 21. To minimize fugitive dust emissions created during Transaction-related construction  
9 activities, Applicants will implement appropriate fugitive dust suppression controls, such as  
10 spraying water or other approved measures. Applicants will also regularly operate water trucks  
11 on haul roads to reduce dust.

12  
13 VM 22. Applicants will work with their contractors to make sure that Transaction-related  
14 construction equipment is properly maintained and that mufflers and other required pollution-  
15 control devices are in working condition in order to limit construction-related air emissions.

16  
17 **Noise and Vibration**  
18

19 VM 23. Applicants will consult with affected communities and work with the construction  
20 contractors to minimize, to the extent reasonably practicable, Transaction-related construction  
21 noise disturbances near any residential areas.

22  
23 **Topography, Geology, and Soils**  
24

25 VM 24. Applicants will commence reclamation of disturbed areas as soon as reasonably  
26 practicable after Transaction-related construction ends along a particular stretch of the L&I Line.  
27 The goal of reclamation will be the rapid and permanent reestablishment of native ground cover  
28 on disturbed areas. If weather or season precludes the prompt reestablishment of vegetation,  
29 Applicants will use measures such as mulching or erosion control blankets to prevent erosion  
30 until reseeding can be completed.

31  
32 VM 25. Applicants will limit ground disturbance to only the areas necessary for Transaction-  
33 related construction activities.

34  
35 VM 26. Applicants will review the limits of land disturbance prior to Transaction-related  
36 construction to determine whether any U.S. Department of Commerce, National Geodetic Survey  
37 monuments (that is, a government-owned permanent survey marker) would be disturbed. If any  
38 survey monuments would be disturbed, Applicants will give a 90-day notification to the National  
39 Geodetic Survey.

40  
41 VM 27. Applicants will require contractors to dispose of waste generated during Transaction-  
42 related construction activities in accordance with all applicable federal, state, and local  
43 regulations.

1  
2 VM 28. Applicants will make reasonable efforts to identify all utilities that have agreements  
3 with either Applicant and that are reasonably expected to be materially affected by Transaction-  
4 related construction within their existing right-of-way or that cross their existing right-of-way.  
5 Applicants will notify the owner of each such utility identified prior to commencing Transaction-  
6 related construction activities and will coordinate with the owner to minimize damage to utilities.  
7 Applicants will also consult with utility owners to ensure that utilities are reasonably protected  
8 during Transaction-related construction activities.  
9

10 VM 29. During Transaction-related construction activity, Applicants will take reasonable steps  
11 to ensure contractors use fill material appropriate and in accordance with applicable regulations  
12 for the project area.  
13

#### 14 **Operations-related VMs**

15  
16 The following VMs apply to rail line operations. Unless otherwise specified below, L&I shall  
17 apply these VMs to rail operations on the L&I Line, and CSXT shall apply these VMs to rail  
18 operations on the Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville  
19 Secondary Branch, and Louisville Connection.  
20

#### 21 **Power Switches**

22  
23 VM 30. Applicants will install power switches along the L&I Line, Indianapolis Line  
24 Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville  
25 Connection where they determine that manual switches could cause stopped trains to block grade  
26 crossings for excessive periods of time and that power switches would increase the speed of rail  
27 traffic and reduce the likelihood of such blockages.  
28

#### 29 **Transportation**

30  
31 VM 31. Applicants will examine train operations to identify reasonable ways to reduce  
32 highway/rail at-grade crossing blockages.  
33

34 VM 32. Applicants will cooperate with the appropriate state and local agencies and  
35 municipalities to:  
36

- 37 • Evaluate the possibility that roadways listed in the Supplemental EA, Appendix B,  
38 Attachment B-3 and Draft EA, Appendix C, Table C-1 could be closed at the point  
39 where they cross the Indianapolis Line Subdivision, Indianapolis Terminal  
40 Subdivision – Louisville Secondary Branch, Louisville Connection or L&I Line to  
41 eliminate the at-grade crossings;
- 42 • Improve or identify modifications to roadways that would reduce vehicle delays by  
43 improving roadway capacity over the crossing by construction of additional lanes;

- 1 • Assist in a survey of highway/rail at-grade crossings for a determination of the  
2 adequacy of existing grade crossing signal systems, signage, roadway striping, traffic  
3 signaling inter-ties, and curbs and medians; and
- 4 • Identify conditions and roadway, signal, and warning device configurations that may  
5 trap vehicles between warning device gates on or near the highway/rail at-grade  
6 crossing.

### 7 8 **Grade Crossing Safety** 9

10 VM 33. Applicants will coordinate with INDOT, Ohio Department of Transportation (ODOT),  
11 or KYTC, as appropriate and, counties and affected communities along the L&I Line,  
12 Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary  
13 Branch, and Louisville Connection to install temporary notification signs or message boards,  
14 where warranted, in railroad ROW at highway/rail at-grade crossings, clearly advising motorists  
15 of the increase in train traffic on affected rail line segments. The format and lettering of these  
16 signs will comply with the Federal Highway Administration’s (FHWA’s) Manual on Uniform  
17 Traffic Control Devices (FHWA 2012) and will be in place no less than 30 days before and  
18 6 months after Applicants’ initiate operational changes associated with the Proposed Transaction.  
19

20 VM 34. Within 6 months of acquisition of a freight easement over the L&I Line, Applicants will  
21 cooperate with INDOT, ODOT, and KYTC as well as appropriate local agencies to coordinate a  
22 review of corridors surrounding highway/rail at-grade crossings to examine safety and adequacy  
23 of the existing warning devices, and identify remedies to improve safety for highway vehicles.  
24

25 VM 35. Within 6 months of Applicants’ initiating operational changes associated with the  
26 Proposed Transaction, Applicants will cooperate with residential communities, schools and park  
27 districts to identify at-grade crossings where additional pedestrian warning devices may be  
28 warranted.  
29

30 VM 36. For up to 3 years from the date that Applicants’ initiate operational changes associated  
31 with the Proposed Transaction, CSXT will make Operation Lifesaver<sup>®</sup> programs<sup>22</sup> available to  
32 communities, schools, and other appropriate organizations located along the L&I Line,  
33 Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary  
34 Branch, and Louisville Connection.  
35

36 VM 37. For each of the public grade crossings on the L&I Line, Indianapolis Line Subdivision,  
37 Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection,  
38 CSXT will provide and maintain permanent signs prominently displaying both a toll-free

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<sup>22</sup> Operation Lifesaver<sup>®</sup> is rail safety education program with a goal to end collisions, deaths and injuries at highway-rail grade crossings and on railroad property through a network of volunteers who work to educate people about rail safety.

1 telephone number and a unique grade-crossing identification number in compliance with Federal  
2 Highway Administration regulations (23 Code of Federal Regulations [C.F.R.] Part 655). The  
3 toll-free number will enable drivers to report accidents, malfunctioning warning devices, stalled  
4 vehicles, or other dangerous conditions and will be answered 24 hours per day by Applicants’  
5 personnel.  
6

7 VM 38. Applicants will continue ongoing efforts with community officials to identify  
8 elementary, middle, and high schools within 0.5 mile of the L&I Line, Indianapolis Line  
9 Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville  
10 Connection ROW and provide, upon request, informational materials concerning railroad safety  
11 to such identified schools.  
12

13 VM 39. Applicants will consult with state departments of transportation and other appropriate  
14 agencies and will abide by the reasonable requirements of INDOT, ODOT, and KYTC prior to  
15 constructing, relocating, upgrading, or modifying highway/rail at-grade crossing warning devices  
16 on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville  
17 Secondary Branch, and Louisville Connection.  
18

### 19 **Hazardous Materials Transportation**

20

21 VM 40. Applicants will assist in the hazardous materials training of emergency responders for  
22 affected communities that express an interest in such training. Applicants will support through  
23 funding or other means the training of one representative from each of the communities located  
24 along the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision –  
25 Louisville Secondary Branch, and Louisville Connection where the transportation of hazardous  
26 materials would increase. Applicants will complete the training within 3 years from the date that  
27 they initiate operational changes associated with the Proposed Transaction.  
28

29 VM 41. Applicants will comply with the current Association of American Railroads (AAR)  
30 “key train” guidelines, found in AAR Circular No. OT-55-N (2013), and any subsequent  
31 revisions.  
32

33 VM 42. Applicants will comply with all hazardous materials regulations of the U.S. Department  
34 of Transportation (including FRA and the U.S. Pipeline and Hazardous Materials Safety  
35 Administration) and Department of Homeland Security (including the Transportation Security  
36 Administration). Applicants will dispose of all hazardous materials that cannot be reused in  
37 accordance with applicable law.  
38

39 VM 43. Upon request from local emergency response organizations, Applicants will implement  
40 real-time or desktop simulation emergency response drills with the voluntary participation of  
41 local emergency response organizations.  
42

1 VM 44. Applicants will continue their ongoing efforts with community officials to identify the  
2 public emergency response teams located along the L&I Line, Indianapolis Line Subdivision,  
3 Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection,  
4 and will provide, upon request, hazardous material training.  
5

6 VM 45. Applicants will, upon request, conduct Transportation Community Awareness and  
7 Emergency Response Program workshops (training for communities through which hazardous  
8 materials are transported) in communities along the L&I Line, Indianapolis Line Subdivision,  
9 Indianapolis Terminal Subdivision – Louisville Secondary Branch, and Louisville Connection.  
10

11 VM 46. Applicants will develop internal transportation emergency response plans to allow for  
12 agencies to be notified in an emergency, and to locate and inventory the appropriate emergency  
13 equipment. Applicants will provide the transportation emergency response plans to the relevant  
14 state and local authorities within 6 months of acquisition of a freight easement over the L&I  
15 Line.  
16

17 VM 47. Applicants will incorporate the L&I Line into their existing Transportation Emergency  
18 Response Plan (TERP).  
19

20 VM 48. In accordance with their TERPs, Applicants will make the required notifications to the  
21 appropriate federal and state environmental agencies in the event of a reportable hazardous  
22 materials release. Applicants will work with appropriate agencies such as U.S. Fish and Wildlife  
23 Service (USFWS), Indiana Department of Environmental Management (INDEM), Ohio  
24 Environmental Protection Agency, and Kentucky Department for Environmental Protection to  
25 respond to and remediate hazardous materials releases with the potential to affect wetlands or  
26 wildlife habitat(s), particularly those of federally threatened or endangered species. Applicants  
27 will adhere to all U.S. Environmental Protection Agency (USEPA) regulations described in 40  
28 C.F.R. Part 263 and will coordinate with USEPA, state agencies, and local agencies on spill  
29 responses.  
30

### 31 **Emergency Response**

32

33 VM 49. Applicants will notify appropriate Emergency Services Dispatching Centers on the L&I  
34 Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary  
35 Branch, and Louisville Connection of all crossings blocked by trains that are stopped and may be  
36 unable to move for a significant period of time. Applicants will work with affected communities  
37 to minimize emergency vehicle delay by maintaining facilities for emergency communication  
38 with local Emergency Response Centers through a dedicated toll-free telephone number.  
39

### 40 **Water Resources**

41

42 VM 50. Applicants will maintain drainage ditches typical of railroad drainage ditches to provide  
43 stormwater retention and treatment in accordance with NPDES requirements. Removal of

1 accumulated sediments will be conducted only as necessary to maintain stormwater retention  
2 capacity and function.

3  
4 **Biological Resources**  
5

6 VM 51. Applicants will ensure that any herbicides used in right-of-way maintenance to control  
7 vegetation are approved by USEPA and are applied by licensed individuals. Application will be  
8 limited to the extent necessary for rail operations. Herbicides will be applied so as to prevent or  
9 minimize drift off of the right-of-way onto adjacent areas.

10  
11 **Energy Resources**  
12

13 VM 52. Applicants, to the extent reasonably practicable, will adopt efficient fuel saving  
14 practices that may include a range of operating practices that will help reduce locomotive  
15 emissions, such as shutting down locomotives when not in use and when temperatures are above  
16 40 degrees.

17  
18 VM 53. Applicants will comply with USEPA emissions standards for diesel-electric railroad  
19 locomotives (40 C.F.R. Part 92) when purchasing and rebuilding locomotives.

20  
21 **Noise and Vibration**  
22

23 VM 54. Applicants will work with affected communities that have noise-sensitive receptors that  
24 would experience an increase of at least 5 A-weighted decibels (dBA) and reach 70 dBA,  
25 because of Transaction-related train increases, to mitigate train noise to levels as low as 70 dBA  
26 by cost-effective means as are agreed to by an affected community and Applicants. In the  
27 absence of such an agreement, Applicants will implement cost-effective mitigation.

28  
29 VM 55. Applicants will cooperate with interested communities along the L&I Line, Indianapolis  
30 Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary Branch, and  
31 Louisville Connection for the establishment of quiet zones (QZs) and assist in identifying  
32 supplemental or alternative safety measures, practical operational methods, or technologies that  
33 may enable the community to establish QZs.<sup>23</sup>

34  
35 VM 56. Applicants will work with their contractors to maintain Transaction-related maintenance  
36 vehicles in good-working order with properly functioning mufflers to control noise.

37  
38 VM 57. In addition to the development of other noise mitigation measures, Applicants will  
39 consider lubricating curves where doing so would both be consistent with safe and efficient

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<sup>23</sup> Applicants' willingness to cooperate does not commit Applicants to expend funds on a physical project.

1 operating practices and significantly reduce noise for residential or other noise-sensitive  
2 receptors. Applicants will also continue to employ safe and efficient operating procedures that,  
3 in lieu of, or as complement to, other noise mitigation measures can have the collateral benefit of  
4 effectively reducing noise from train operations. Such procedures will include:

- 5
- 6 • Inspecting rail car wheels to maintain wheels in good working order and minimize the  
7 development of wheel flats;
- 8 • Inspecting new and existing rail for rough surfaces and, where appropriate, grinding  
9 these surfaces to provide a smooth rail surface during operations; and
- 10 • Regularly maintaining locomotives and keeping mufflers in good working order.

11  
12 VM 58. Applicants will comply with FRA regulations establishing decibel limits for train  
13 operations.

14  
15 VM 59. To minimize noise and vibration, Applicants will install and maintain rail and rail beds  
16 according to AREMA standards.

17  
18 VM 60. Upon request, Applicants will consult with communities affected by wheel squeal at  
19 existing locations on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal  
20 Subdivision – Louisville Secondary Branch, and Louisville Connection, and cooperate in  
21 determining the most appropriate methods for implementing VM 57.

22  
23 VM 61. Because the residential neighborhoods adjacent to the Indianapolis Terminal  
24 Subdivision – Louisville Secondary Branch in Indianapolis, Indiana, would experience  
25 potentially adverse noise impacts from increased train activity associated with the Proposed  
26 Transaction, CSXT will host two meetings in the subject neighborhoods to explain the increased  
27 train activity and solicit community concerns about the increases in train-related noise. CSXT  
28 will schedule the meetings within 6 months of Applicants executing the Transaction agreement  
29 and will publicize the meetings in advance. Within 60 days after the meetings are held, CSXT  
30 will provide a meeting report to the Board’s Office of Environmental Analysis (OEA) and any  
31 meeting attendees who request it. The report will specify CSXT’s responses to the concerns  
32 raised at the meetings.

### 33 34 **Monitoring and Enforcement**

35  
36 VM 62. Upon approval of the Application by the Board, Applicants will submit semi-annual  
37 reports to OEA on the progress of, implementation of, and compliance with the mitigation  
38 measures for a period covering the first 3 years of operational changes.

## 39 40 **2.2 OEA’s Additional Mitigation Measures**

### 41 42 43 **Transportation**

1  
2 MM 1. To address potential safety impacts at public at-grade crossings, Applicants shall submit  
3 a Grade Crossing Mitigation Plan (GCMP) to OEA prior to moving Transaction-related train  
4 traffic on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision –  
5 Louisville Secondary Branch, and Louisville Connection. In preparing the GCMP, Applicants  
6 shall meet with INDOT, ODOT, and KYTC, as well as each mayor (or mayor’s designated  
7 representative) in the cities and towns along the L&I Line, within 90 days of the effective date of  
8 any Board approval of the proposed transaction. The purpose of these meetings will be to  
9 discuss and begin determining the need for grade crossing protection upgrades at each public at-  
10 grade crossing on the subject rail lines. The discussions shall also address grade crossing  
11 maintenance, including the clearing of vegetation to maintain lines-of-sight.

12  
13 Within 90 days of meeting with INDOT, ODOT, KYTC and the mayors, Applicants shall  
14 provide OEA with a draft annotated outline of the GCMP for OEA review and concurrence. The  
15 draft annotated outline shall describe the contents of the GCMP and an implementation schedule  
16 for identified crossing upgrades. Applicants shall submit the GCMP to OEA and each mayor on  
17 the L&I Line within 90 days of receiving OEA’s concurrence on the draft annotated outline.  
18 Subsequently, any updates to, and the implementation status of the GCMP shall be included in  
19 the semi-annual mitigation and monitoring reports that Applicants will be required to provide as  
20 part of the Board’s mitigation.

21  
22 MM 2. To the extent practicable, Transaction-related potential siding extensions shall be located  
23 and designed to minimize blockages of public at-grade crossings by slow-moving trains entering  
24 and exiting the sidings.

25  
26 MM 3. To supplement VM 49, once Transaction-related train traffic begins to move on the L&I  
27 Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary  
28 Branch, and Louisville Connection, Applicants shall promptly notify the appropriate Emergency  
29 Services Dispatching Center(s) when a stopped or slowly moving train will not clear a public  
30 at-grade crossing within 10 minutes.

31  
32 MM 4. To supplement VM 35, 6 months prior to Applicants initiating operational changes  
33 associated with the Proposed Transaction, Applicants shall consult with residential communities,  
34 schools and park districts to work cooperatively to identify at-grade crossings where additional  
35 pedestrian warning devices may be warranted.

36  
37 MM 5. Before Transaction-related train traffic begins to move on the L&I Line, Applicants shall  
38 evaluate the need to replace manual switches with power switches in the vicinity of at-grade  
39 crossings on the L&I Line, Indianapolis Line Subdivision, Indianapolis Terminal Subdivision –  
40 Louisville Secondary Branch, and Louisville Connection that would experience either a  
41 degradation of Level of Service by one or more levels, or a vehicle delay of over 40 vehicle  
42 hours per day as a result of the Proposed Transaction.

43

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

9  
10 MM 7. To assist with the timely response of emergency service providers in Seymour, Indiana,  
11 Applicants shall consult with Schneck Medical Center, the Jackson County Emergency Medical  
12 Service and the Seymour Fire Department regarding the installation of an appropriate closed-  
13 circuit television system (CCTV) with video cameras (or other comparable system or acceptable  
14 option) so that train movements and blocked at-grade crossings within the City of Seymour can  
15 be monitored in real time by each of the above three parties. Applicants shall pay for the  
16 necessary equipment, equipment installation, and equipment training for up two individuals from  
17 each of the three parties identified above. Applicants shall work with the three parties to  
18 determine specifications and scheduling for the installation of the system. Once installed and  
19 operational, Applicants shall be responsible for the ongoing maintenance of the system.

20  
21 MM 8. Applicants shall coordinate with the appropriate state departments of transportation,  
22 counties and affected communities along the L&I Line to develop a program for installing  
23 temporary notification signs or message boards in the Line’s right-of-way at each of the L&I  
24 Line’s 154 public at-grade crossings, clearly advising motorists of the pending increase in the  
25 number, length and speed of trains on the L&I Line. The format and lettering of these signs shall  
26 comply with the Federal Highway Administration’s 2007 Manual on Uniform Traffic Control  
27 Devices. The signs shall be installed no less than 30 days before Transaction-related train traffic  
28 begins moving on the L&I Line, and shall remain in place for at least six months after  
29 Transaction-related train traffic begins moving on the L&I Line. Applicants shall provide OEA  
30 written notice when installation of the signage has been completed at all 154 public at-grade  
31 crossings. At least 30 days before any Transaction-related train traffic begins to move on the  
32 L&I Line, Applicants shall also publish a notice in a newspaper of general circulation in each  
33 county in which the L&I Line is located to advise residents of the pending increase in the  
34 number, length and speed of trains on the L&I Line.

35  
36 **Water Resources**

37  
38 MM 9. Prior to initiating Transaction-related construction activities within floodplains,  
39 Applicants shall obtain a Construction in a Floodway Permit from the Indiana Department of  
40 Natural Resources.

1 MM 10. Prior to initiating Transaction-related construction activities, Applicants shall consult  
2 with the INDEM and comply with the reasonable requirements of any INDEM-required permits  
3 for Transaction-related activities that would affect isolated wetlands and state waters.  
4

5 MM 11. During Transaction-related construction, should impacts on forested areas occur within  
6 the floodway of the Flatrock River, impacts shall be mitigated by Applicants in accordance with  
7 the Indiana Natural Resources Commission’s Information Bulletin #17 addressing floodway  
8 habitat mitigation (2014).  
9

10 MM 12. Prior to initiating Transaction-related construction activities within waters of the United  
11 States including wetlands, Applicants shall obtain a Section 404 permit under the Clean Water  
12 Act from USACE, as applicable. Applicants shall make appropriate USACE-approved  
13 accommodations in waterways where transaction-related construction activities occur to allow  
14 for the passage of expected normal and high flows, and to avoid impeding aquatic life  
15 movements.  
16

17 MM 13. Prior to initiating Transaction-related construction activities within waters of the U.S.  
18 including wetlands, Applicants shall obtain a Water Quality Certification from INDEM, as  
19 applicable.  
20

21 **Biological Resources**  
22

23 MM 14. During replacement of the Flatrock River Bridge, and the extension of any other  
24 culverts and bridges associated with the extension of sidings at Elvin or Brook, if constructed,  
25 Applicants shall avoid stream channel disturbance during the primary fish spawning season  
26 (April 1 through June 15).  
27

28 MM 15. Applicants shall clear vegetation in preparation for project-related construction before  
29 or after the typical migratory bird nesting season identified by the USFWS (typically May 1 to  
30 July 15), to the extent possible, in order to comply with the Migratory Bird Treaty Act. If  
31 clearing is required during the nesting season, Applicants shall conduct a nest survey and consult  
32 with USFWS, prior to clearing the vegetation, to identify additional appropriate compliance  
33 measures.  
34

35 MM 16. Prior to initiating replacement of the Flatrock River Bridge, Applicants shall consult  
36 with USFWS to assess the need to conduct field surveys of federally listed threatened or  
37 endangered mussel that may occur in the Flatrock River in the vicinity of the bridge, and  
38 identify any appropriate mitigation measures that may be warranted. Applicants shall report the  
39 results of the USFWS consultations to OEA in writing prior to commencing bridge replacement  
40 activities.  
41

42 MM 17. Prior to initiating replacement of the Flatrock River Bridge, Applicants shall consult  
43 with the Indiana Department of Natural Resources on the presence of state- listed threatened or

1 endangered mussel species that may occur in the Flatrock River in the vicinity of the subject  
2 bridge. As appropriate, Applicants shall conducted surveys for state-listed threatened or  
3 endangered mussel species and comply with reasonable mitigation requirements.

4  
5 MM 18. Applicants shall consult with the USEPA Region 5’s Office of Enforcement and  
6 Compliance Assurance, NEPA Implementation Section regarding appropriate BMPs to control  
7 non-native invasive plants species and noxious weeds during Transaction-related construction on  
8 the L&I Line.

9  
10 **Historic Preservation**

11  
12 MM 19. Applicants shall comply with the Flatrock River Bridge Memorandum of Agreement  
13 developed through the Section 106 process of the National Historic Preservation Act.

14  
15 MM 20. In the event that any unanticipated archaeological sites, human remains, funerary items,  
16 artifacts protected under the Native American Graves Protection and Repatriation Act, or  
17 associated artifacts are discovered during Transaction-related construction activities, Applicants  
18 shall immediately cease all work in the immediate area (which is no greater than a 100-foot  
19 radius from the discovery) of the discovery and will notify OEA, interested federally recognized  
20 tribes, and the Indiana SHPO or Kentucky SHPO, as appropriate, pursuant to 36 C.F.R. §  
21 800.13(b). OEA will then consult with the SHPO, interested federally recognized tribes, the  
22 railroads, and other consulting parties, if any, to determine whether additional mitigation  
23 measures are necessary.

24  
25 MM 21. If any Transaction-related ground disturbance would occur within 100 feet of a  
26 cemetery in Indiana, Applicants shall prepare a Cemetery Development Plan (Plan) and shall  
27 submit the Plan to the Indiana SHPO for review and approval before the ground disturbance  
28 occurs.

29  
30 **Community Liaison**

31  
32 MM 22. In response to concerns related to Transaction-related noise, emergency response and  
33 other local issue areas, Applicants shall establish a Community Liaison to consult with affected  
34 communities, businesses, and appropriate agencies; develop cooperative solutions to local  
35 concerns; be available for public meetings; and conduct periodic public outreach. Applicants  
36 shall establish and staff the Community Liaison position within 6 months of any Broad approval  
37 of the Proposed Transaction. The Community Liaison shall remain available to the communities  
38 until the end of the third year after the first Transaction-related trains move on the L&I Line,  
39 Indianapolis Line Subdivision, Indianapolis Terminal Subdivision – Louisville Secondary  
40 Branch, and Louisville Connection.

1                   **Monitoring and Reporting**  
2

3 MM 23. Beginning six months after the effective date of any Board approval of the Proposed  
4 Transaction, Applicants shall prepare and submit semi-annual reports to OEA on the progress of,  
5 implementation of, and compliance with all Board-imposed mitigation measures. These semi-  
6 annual reports shall be submitted to OEA for the duration of Transaction-related upgrades to the  
7 L&I Line and for the first three years of Transaction-related train operations over the L&I Line.  
8 A copy of each semi-annual mitigation and monitoring report shall also be provided to each  
9 mayor on the L&I Line.