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SERVICE DATE - LATE RELEASE NOVEMBER 25, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 1)<sup>1</sup>

CSX TRANSPORTATION, INC.--CONSTRUCTION AND OPERATION  
EXEMPTION--CONNECTION TRACK AT CRESTLINE, OH

Decided: November 25, 1997

By this decision, we are giving final approval, subject to certain environmental mitigation conditions, to build seven proposed construction projects. This proceeding is related to STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR). In CSX/NS/CR, Decision No. 9, served June 12, 1997, after seeking and fully considering public comments on the railroads' proposals, we granted the requests by applicants<sup>2</sup> for waivers, with respect to four CSX construction projects and three NS construction projects, from our otherwise applicable "everything goes together rule"

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<sup>1</sup> This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 2), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN; STB Finance Docket No. 33388 (Sub-No. 3), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH; STB Finance Docket No. 33388 (Sub-No. 4), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH; STB Finance Docket No. 33388 (Sub-No. 5), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Union Pacific Railroad Company at Sidney, IL; STB Finance Docket No. 33388 (Sub-No. 6), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Alexandria, IN; and STB Finance Docket No. 33388 (Sub-No. 7), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Bucyrus, OH.

<sup>2</sup> CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT) (collectively with their wholly owned subsidiaries, CSX), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR) (collectively with their wholly owned subsidiaries, NS), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC) (collectively, Conrail) seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets by and between CSX and NS.

governing railroad consolidations. See 49 CFR 1180.4(c)(2)(vi). We established a process which would allow CSX and NS to begin construction of the proposed connection tracks following completion of our environmental review of each of these seven constructions, and our issuance of a further decision allowing the physical constructions, but prior to our decision on the primary application. In Decision No. 9, we emphasized that we would consider the competitive impacts of these projects, and the environmental effects of the operations, along with our consideration of the primary application. We made it clear that no operations can begin on the seven connections until a decision is rendered on the primary application that would allow these operations. We also stated that if we determined during the course of our environmental review that any of the seven construction projects could potentially cause, or contribute to, significant environmental impacts, then the project would be incorporated into the Environmental Impact Statement (EIS) for the primary application and would not be separately considered.

In the Sub-Nos. 2 through 7 dockets, we served on July 23, 1997, and published that day in the Federal Register (62 FR 39591-602), notices of the petitions for exemption to construct and operate these proposed constructions.<sup>3</sup> Our notices provided for the filing of comments on whether the proposed construction projects would meet the exemption criteria of 49 U.S.C. 10502, and on any other non-environmental concerns regarding the connections.

Comments regarding non-environmental concerns and the exemption criteria applicable to applicants' proposed construction projects were filed by Allied Rail Unions (ARU), the United Transportation Union--Illinois Legislative Board, and the Cities of East Chicago, Hammond, Gary, and Whiting, IN. ARU also filed a petition to stay the notice of exemption in Sub-No. 1, arguing

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<sup>3</sup> With regard to the remaining construction project at issue here, STB Finance Docket No. 33388 (Sub-No. 1), we served and published in the Federal Register (62 FR 37331) on July 11, 1997, a notice of exemption filed by CSX to construct a connection track between two Conrail lines crossing at Crestline, OH. By decision served September 18, 1997, the effective date of the notice of exemption in Sub-No. 1 was stayed by the Board's Chairman pending further agency action to allow completion of the environmental review process.

that CSX did not qualify for the class exemption. After reviewing the comments and stay petition, in a decision served October 9, 1997, and published that day in the Federal Register (62 FR 52807), we: (1) conditionally exempted applicants' construction of the proposed connections in STB Finance Docket No. 33388 (Sub-Nos. 2 through 7) from the prior approval requirements of 49 U.S.C. 10901, subject to the completion of environmental review and the issuance of a further decision; and (2) denied ARU's petition to stay the notice of exemption in STB Finance Docket No. 33388 (Sub-No. 1).

The Environmental Report filed with the Board in STB Finance Docket No. 33388 included information covering the proposed seven construction projects. In addition, as required in Decision No. 9, CSX and NS submitted preliminary draft environmental assessments (PDEAs) on September 5, 1997, for each of these construction projects. We required CSX and NS in their respective PDEAs to comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. We also required that the PDEAs be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. See Decision No. 9, at 8.

In the environmental review process, SEA reviewed and verified the information contained in each PDEA, conducted further environmental analysis, as necessary, and developed appropriate environmental mitigation measures for each construction project. On October 7, 1997, SEA issued, and invited comments on, separate Environmental Assessments (EAs) for each of the proposed constructions. The EAs concluded that, subject to the recommended mitigation for each individual project, construction of the proposed connection would not significantly affect the quality of the human environment.

SEA received comments from federal, state, and local agencies and other entities concerning some of these projects.<sup>4</sup> Certain commenters requested specific measures to mitigate potential environmental concerns. However, no commenter argued that any of the seven constructions would have potentially significant environmental impacts that could not be adequately mitigated or contended that any of these constructions should not be considered separately and in advance of the primary application.

On November 12 , 1997, in each of the seven constructions, SEA issued Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation to address the environmental concerns that had been raised. SEA's final recommendations were based on its further analysis of these projects and reflected its review of the comments received and appropriate consultations with various agencies. In each Post EA, SEA concluded that the EA had adequately identified and assessed potential environmental impacts. The Post EAs also concluded that, with the imposition of the recommended environmental mitigation, there would be no significant environmental impacts resulting from any of these constructions. Furthermore, SEA determined that applicants' proposed construction locations would be the environmentally preferable construction option. Accordingly, SEA recommended that any Board decision approving the proposed constructions be subject to the environmental mitigation measures included in its Post EAs.<sup>5</sup> The Post EAs, which have been placed in the public record, contain a detailed analysis of the individual projects, the environmental comments received, and SEA's final recommendations and conclusions. In addition, each of these seven construction projects is briefly described below.

### **The CSX Connections.**

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<sup>4</sup> In some cases, no comments were received.

<sup>5</sup> That mitigation is the same as the mitigation previously recommended in the EAs, except that SEA updated its initial recommendations, where appropriate, to reflect the comments and SEA's further analysis and consultations.

Sub-No. 1. CSX proposes to construct a 1,507-foot rail line connection in Crestline, Crawford County, OH, to permit traffic movements between the CSX and Conrail systems. The new connection would be built in the northeastern quadrant of the intersecting Conrail lines in the southern portion of Crestline. The connection would link the Conrail lines north of the intersection of Lincoln Avenue and Ohio State Route 61 (also known as Thoman Street).

CSX states that the new connection would create an alternative east-west route on the CSX system for slower moving freight. This connection would enable CSX to route less time-sensitive east/west traffic on the alternative Chicago-Cleveland service route linking Crestline and Ft. Wayne, IN, that CSX would operate if the CSX/NS/Conrail transaction is approved. This would permit use of CSX's parallel B&O line for high-speed traffic over its proposed Northeastern Gateway service route. CSX anticipates that an average of 5 trains per day (unit trains and intermodal trains with an average length of 6,200 feet) would operate over the new connection.

Sub-No. 2. CSX proposes a 2,800-foot connection located at Willow Creek in the City of Portage, Porter County, IN. The new connection would be built in the southern quadrant of the intersecting CSX and Conrail rail lines, just north of the intersection of Willow Creek Road and Portage Road. The connection would link CSX's Garrett Subdivision rail line (which generally runs northwest to southeast) and Conrail's Porter Branch rail line (which generally runs northeast to southwest). The new connection would allow progressive east-west movements between the CSX and Conrail lines, enhancing rail operations and traffic movements between Garrett, IN, and Chicago. CSX estimates that an average of 10 trains per day (primarily automotive and merchandise trains with an average length of 6,200 feet) would operate over the new connection.

Sub-No. 3. CSX's proposed connections are located in Greenwich, Huron County, OH. Greenwich is in north-central Ohio, approximately 50 miles southwest of Cleveland and 75 miles north of Columbus. The new connections would be built in the northwest and southeast quadrants of the intersecting CSX and Conrail lines, which together would form the proposed Northeastern

Gateway service route, a major route for time-sensitive traffic moving between the northeastern United States and Chicago. At this location, an existing Conrail line runs southwest to northeast between Indianapolis and Cleveland and the existing CSX line runs west to east from Chicago to Akron, OH.

The proposed connection in the northwest quadrant would provide a 4,600-foot, 45-mph connection, which would enable eastbound CSX trains from Chicago to utilize the Conrail line to proceed northeast toward Cleveland. The proposed connection in the southeast quadrant would provide a 1,044-foot, 30-mph per hour connection between the existing CSX and Conrail rail lines. That connection would enable northeast bound trains from Indianapolis to access the eastbound CSX line toward Akron and would allow freight transportation from Indianapolis to Greenwich along the Conrail line, and from Greenwich to Baltimore, MD, along the CSX line. CSX estimates that an average of 31.7 trains per day (primarily automotive, merchandise, intermodal, and unit trains with an average length of 6,200 feet) would operate over the new connection in the northwest quadrant, and that an average of 9.4 trains per day would use the new connection in the southeast quadrant.

Sub-No. 4. CSX proposes a 3,263-foot connection located in Sidney, Shelby County, OH. The new connection would be built in the southeastern quadrant of the intersecting CSX and Conrail lines in the southern portion of Sidney. The connection would link the CSX line (which runs southwest to northeast between Cincinnati and Toledo) and the Conrail line (which runs from west to east between Indianapolis and Cleveland). The new connection would allow northbound trains to proceed east on the Conrail line toward Cleveland and westbound trains to proceed south on the CSX line toward Cincinnati. CSX anticipates that an average of 9.3 trains per day (intermodal, automotive, and merchandise trains with an average length of 6,200 feet) would operate over the new connection.

### **The NS Connections.**

Sub-No. 5. NS proposes to construct a rail line connection in Sidney, IL, to permit traffic movements between the NS and Union Pacific (UP) systems. The proposed 3,250-foot connection is located 0.5 miles east of Sidney, Champaign County, IL. The new connection would traverse cropland to the southeast of the existing UP line. The new connection would permit more efficient movement between UP points in the Gulf Coast/Southwest and NS points in the Midwest and particularly between Pine Bluff, AR, and Fort Wayne, IN, and allow the connection of a new operating gateway as a fully-competitive service for petrochemical traffic flows between the Northeast, the Southwest, and the Gulf Coast. NS anticipates that an average of 9 trains per day would operate over the new connection.

Sub-No. 6. NS proposes to construct a 1,052-foot connection at Alexandria, Madison County, IN, to permit traffic movements between the NS and Conrail systems. The new connection would be located 250 feet northeast of the existing NS and Conrail intersection. The proposed construction site is located in the south-central part of Alexandria, southwest of the intersection of Berry and Curve Streets.

The new connection would connect NS's current main line between Marion and Anderson, IN, to Conrail's main line between Muncie and Lafayette, IN. NS states that the connection would provide a new, more efficient route between points in the upper Midwest and points in the southeastern United States, increase rail traffic capacity, improve service to shippers, and reduce train delays in Chicago and rail traffic congestion in Fort Wayne, IN. NS anticipates that an average of 7 trains per day (single commodity, or unit trains and intermodal trains with an average length of 5,000 feet) would operate over the new connection.

Sub-No. 7. NS proposes to construct a 2,550-foot rail line connection at Bucyrus, Crawford County, OH, to permit traffic movements between the NS and Conrail systems. The new connection would be built in the southeastern quadrant of the intersecting NS and Conrail lines in the eastern portion of Bucyrus. The point of divergence from the NS rail line would be just south of the existing

East Warren Street grade crossing. The point of divergence from the Conrail rail line would be approximately 200 feet west of the existing Whetstone Street grade crossing.

The new connection would connect the existing north/south NS main line between Bellevue and Columbus, OH, to the existing east/west Conrail main line between Crestline, OH, and Fort Wayne, IN. NS states that the connection would provide a new, more efficient route from Columbus to eastern Ohio and western Pennsylvania by increasing rail traffic capacity and improving service to shippers. NS anticipates that an average of 8 trains per day (single commodity, or unit trains and intermodal trains with an average length of 5,000 feet) would operate over the new connection.

#### DISCUSSION AND CONCLUSIONS

We agree with SEA's conclusions that, based on its environmental review and the comments received, the physical construction of these seven connections will not have potentially significant environmental impacts if the mitigation measures recommended by SEA are imposed.<sup>6</sup> Accordingly, we will adopt the mitigation measures recommended by SEA and impose the measures as conditions to applicants' proposed constructions in Sub-Nos. 1 through 7, as set forth in the Appendix to this decision. Because we have determined that these constructions, as mitigated, could neither cause nor contribute to significant environmental impacts, we find that these constructions

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<sup>6</sup> As noted, we previously conditionally exempted six of these proposals from the prior approval requirements of 49 U.S.C. 10901, subject to completion of the environmental review and the issuance of a further decision. The effective date of the notice of exemption for the remaining construction project was stayed pending further agency action to allow completion of the environmental review process. Thus, there are only two issues before us at this time in these cases: whether we should deny any of these proposed constructions because of the potential environmental impacts, or fold one or more of these projects into the EIS for the primary application.

can go forward at this point and that there is no reason to incorporate an environmental analysis of any of the constructions into the EIS currently being prepared for the primary application.<sup>7</sup>

We again emphasize that our decision to allow these constructions to begin will not have any bearing on our determination of whether the transaction contemplated in the primary application is in the public interest. See Decision No. 9, at 6-8; STB Finance Docket No. 33388 (Sub-No. 1), served July 11, 1997; STB Finance Docket No. 33388 (Sub-Nos. 2-7), served July 23, 1997; and STB Finance Docket No. 33388 (Sub-Nos. 1-7), served October 1, 1997. Moreover, operations over these connections cannot commence unless and until we approve the primary application and authorize the operations, which SEA will analyze in the EIS.<sup>8</sup>

As we stated in Decision No. 9 at 6, any resources applicants expend in the construction of these connections may prove to be of little benefit to them if we deny the primary application or we authorize operations over one or more of the seven connections in a manner different from that which CSX and NS plan. In other words, although we are permitting the physical construction of these seven projects to go forward at this time, applicants will not be allowed to argue that, because they have expended resources to construct the connections, we should approve the primary application. Rather, applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicants' request to operate over any or all of the seven connections.

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<sup>7</sup> We note that the Council on Environmental Quality (CEQ) raised concerns about considering these seven construction projects separately prior to the issuance of Decision No. 9. We believe that we fully addressed CEQ's concerns in Decision No. 9, and we incorporate that analysis by reference here. Moreover, as discussed above, no commenters to the EAs contended that any of these constructions should not be considered separately and in advance of the primary application.

<sup>8</sup> In order to fully consider the environmental impacts of the physical construction of the lines at issue here, SEA conducted a limited review of operations for these constructions in the EAs and Post EAs. For example, SEA examined whether each proposed construction would increase the potential for delays or accidents at grade crossings or affect the transportation of hazardous materials over these connections.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt applicants' construction of the proposed connections in STB Finance Docket No. 33388 (Sub-Nos. 2 through 7), from the prior approval requirements of 49 U.S.C. 10901, subject to the condition that applicants comply with the mitigation measures applicable to the Sub-Nos. 2 through 7 proceedings set forth in the Appendix.

2. The stay of the proposed connection in Finance Docket No. 33388 (Sub-No. 1) is lifted subject to the condition that applicant comply with the mitigation measures applicable to the Sub-No. 1 proceeding set forth in the Appendix.

3. This decision is effective 10 days after its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

## APPENDIX

**1. In STB Finance Docket No. 33388 (Sub-No. 1), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Crestline, OH, are imposed:**

### Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- CSX shall consult with the National Geodetic Survey to locate any geodetic survey marker and, if necessary, assist in the relocation of the marker.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

### Transportation and Safety

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous

material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

### **Water Resources**

- CSX shall complete a detailed investigation to determine if any wetlands are located in the vicinity of the proposed rail line connection prior to initiating any construction activities at this location.
- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.
- CSX shall close the existing ground water monitoring well located within the project area if the well is affected by the project. The well shall be closed in accordance with local, state, and federal requirements.

### **Biological Resources**

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15<sup>th</sup> and September 15<sup>th</sup>. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.
- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

### **Air Quality**

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

### **Noise**

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

### **Cultural Resources**

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**2. In STB Finance Docket No. 33388 (Sub-No. 2), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Willow Creek, IN, are imposed:**

### **Land Use**

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.

### **Transportation and Safety**

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.

- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

#### **Water Resources**

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

#### **Biological Resources**

- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.
- CSX shall revegetate all bare and disturbed areas in the vicinity of the proposed construction with a mixture of grasses (except tall fescue) and legumes following completion of construction activities.

#### **Air Quality**

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

### **Noise**

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.
- If wheel squeal occurs during operation of the connection, CSX shall use rail lubrication to minimize noise levels.

### **Cultural Resources**

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Indiana State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**3. In STB Finance Docket No. 33388 (Sub-No. 3), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Greenwich, OH, are imposed:**

### **Land Use**

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

### **Transportation and Safety**

- CSX shall use appropriate signs and barricades to control traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- To minimize disruption to the flow of north-south traffic in the Village of Greenwich, CSX shall not have construction activities occurring at the Kniffen and Townsend Street at-grade crossings simultaneously.

- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connections.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the sites.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in their Emergency Response Plans.

#### **Water Resources**

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

#### **Biological Resources**

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15<sup>th</sup> and September 15<sup>th</sup>. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.
- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.

- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

#### **Air Quality**

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

#### **Noise**

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.
- If wheel squeal occurs during operation of the connection, CSX shall use rail lubrication to minimize noise levels.

#### **Cultural Resources**

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**4. In STB Finance Docket No. 33388 (Sub-No. 4), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Sidney, OH, are imposed:**

#### **Land Use**

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

#### **Transportation and Safety**

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.

- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

#### **Water Resources**

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

#### **Biological Resources**

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15<sup>th</sup> and September 15<sup>th</sup>. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.
- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.

- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

#### **Air Quality**

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

#### **Noise**

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

#### **Cultural Resources**

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**5. In STB Finance Docket No. 33388 (Sub-No. 5), the following mitigation measures regarding NS's construction of the proposed rail line connection at Sidney, IL, are imposed:**

#### **Land Use**

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.

#### **Transportation Systems**

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.

- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

### **Safety**

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.
- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

### **Water Resources**

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

### **Biological Resources**

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

### **Air Quality**

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

### **Noise**

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

### **Cultural Resources**

- If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Illinois State Historical Preservation Office to initiate the appropriate section 106 process pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**6. In STB Finance Docket No. 33388 (Sub-No. 6), the following mitigation measures regarding NS's construction of the proposed rail line connection at Alexandria, IN, are imposed:**

### **Land Use**

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.

### **Transportation Systems**

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.
- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

### **Safety**

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.
- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

#### **Water Resources**

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

#### **Biological Resources**

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

#### **Air Quality**

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by

using such control methods as water spraying, installation of wind barriers, and chemical treatment.

### **Noise**

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

### **Cultural Resources**

- If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology within two business days to initiate the appropriate section 106 process pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f, as amended).

**7. In STB Finance Docket No. 33388 (Sub-No. 7), the following mitigation measures regarding NS's construction of the proposed rail line connection at Bucyrus, OH, are imposed:**

### **Land Use**

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.
- Prior to any construction activity, NS shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

### **Transportation Systems**

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.
- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

### **Safety**

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.
- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.
- NS shall upgrade existing flashing lights at East Warren Street and Rensselaer Street grade crossings to include both flashing lights and gates. NS shall also install flashing lights and gates at the new Rensselaer Street crossing.

#### **Water Resources**

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

#### **Biological Resources**

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

- NS shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, if encountered prior to construction. If such trees cannot be avoided, they shall not be cut between April 15<sup>th</sup> and September 15<sup>th</sup>. If such trees are to be removed and the time of year restriction is prohibitive, NS shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.

#### **Air Quality**

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

#### **Noise**

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

#### **Cultural Resources**

- In those cases where historic resources would be adversely affected, NS shall not undertake construction activities until the section 106 review process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) is completed. If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Ohio State Historical Preservation Office (SHPO) to initiate the appropriate section 106 process.
- NS shall adhere to the set of stipulations agreed to by NS and the Ohio State Historic Preservation Office designed to mitigate adverse effects to the T&OC freight depot. These stipulations are currently being incorporated in a Memorandum of Agreement.