

STB

FD-33388 (SUB2)

12-8-97

K

ID-BUSINESS

ENVIRONMENTAL DOCUMENT

SURFACE TRANSPORTATION BOARD
Washington, DC 20423-0001

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

December 8, 1997

Mr. Carl Gerhardstein
CSX Transportation
1331 Pennsylvania Ave., NW, Suite 560
Washington, DC 20004

Re: Finance Docket No. 33388 (Sub. Nos. 1-7) - CSX and
Norfolk Southern - Control and Acquisition of
Conrail - Proposed Construction at Willow Creek,
Indiana

Dear Mr. Gerhardstein:

We have received the enclosed material from the U.S. Army Corps of Engineers concerning the proposed CSX construction at Willow Creek, Indiana. As you will note, the Corps requires the completion of a permit application if construction work within identified wetlands in the Willow Creek area is anticipated.

In the Board's final decision for the proposed construction at Willow Creek, served November 25, 1997, the Board imposed a condition requiring CSX to 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.

Accordingly, we are forwarding the enclosed material from the Corps to you for appropriate action. Thank you for your prompt attention. If you have any questions, please do not hesitate to contact me at (202) 565-1552.

Sincerely yours,

Dana G. White

Dana G. White
Section of Environmental Analysis

Enclosure

cc: Robert Tucker, Corps of Engineers, Detroit, MI



DEPARTMENT OF THE ARMY

DETROIT DISTRICT, CORPS OF ENGINEERS

BOX 1027

DETROIT, MICHIGAN 48231-1027

November 28, 1997

IN REPLY REFER TO

Construction-Operations Division
Regulatory Branch
File No. 97-200-014-OE / 97-164-015-OE



Surface Transportation Board
Vernon A. Williams, Secretary
1925 K Street, NW, Suite 700
Washington, District of Columbia 20423

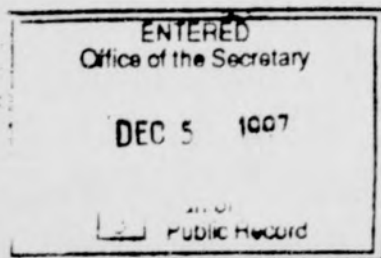
Attention: Dana White
Environmental Comments
Finance Docket No. 33388 (Sub Nos. 1-7)

Dear Ms. White:

This is in response to Elaine K. Kaiser's letter dated October 2, 1997 and received in this office October 15, 1997. Within this letter comments regarding proposed rail line constructions located in Madison County, Alexandria, Indiana and Porter County (T36N, R7W, Sections 11 and 12), Portage, Indiana, adjacent to Willow Creek, were requested.

In all waters of the United States including wetlands, any discharge of dredged spoil and/or fill material must be authorized by the Department of the Army. The authority of the Corps of Engineers to regulate the discharge of dredged and/or fill material is contained in Section 404 of the Clean Water Act and regulations promulgated pursuant to that Act. Please be advised that filling and grading work, mechanized landclearing, ditching or other excavation activity, and piling installation constitute or otherwise involve discharges of dredged and/or fill material under the Corps' regulatory authority.

Please be advised that the site located in Alexandria is outside of the Detroit Districts jurisdiction. It is suggested that you contact the Louisville District Corps of Engineers, Ms. Brenda Carter at P.O. Box 59, Louisville, Kentucky 40201-0059 or telephone her at (502) 582-5607. Correspondence in regards to the Alexandria site should reference ID Number 199701220-bkc.

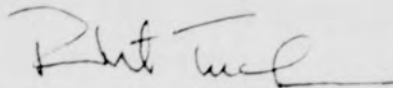


This office previously responded to the proposed construction at Willow Creek in a letter dated June 16, 1997. This letter advised Mr. Gary S. Cipriano of Dames and Moore that any development within wetlands would require a Federal permit prior to the initiation of any work. A copy of this letter can be found in Appendix B of the Environmental Assessment, Decision No. 28330. The National Wetland Inventory (NWI) Map for this area identifies wetlands to be located within the immediate vicinity of the proposed rail connector. Consequently, this office requires that you or your designee complete and return the enclosed permit application if work within these wetlands is anticipated. Plan view and cross-sectional view drawings, in 8 1/2" x 11" format, should accompany the application. Drawings and the application should include a description of all quantities, dimensions, and nature of material to be placed and soil to be moved within wetland areas.

Furthermore, it is suggested that you contact both the Indiana Department of Environmental Management (IDEM) as well as the Indiana Department of Natural Resources (IDNR) for possible State authorizations. IDEM can be reached at P.O. Box 6015, Indianapolis, Indiana 46206-6015 and the IDNR can be reached at 402 West Washington Street, Room W-273, Indianapolis, Indiana 46204.

Should you have any questions, please contact Mary C. Miller at the above address or telephone (313) 226-2220. All correspondence should reference File Numbers: 97-200-014-0E and/or 97-164-015-0E.

Sincerely,



Robert Tucker
Chief, Enforcement Section
Regulatory Branch

Enclosures

CF: South Bend Field Office
IDNR / Jose
IDEM / Maupin
COE Louisville District / Carter

STB

FD-33388 (SUB2)

12-4-97

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DEPARTMENT OF THE ARMY

DETROIT DISTRICT, CORPS OF ENGINEERS

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DETROIT, MICHIGAN 48231-1027

November 28, 1997

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ENTERED
Office of the Secretary

DEC 5 1997

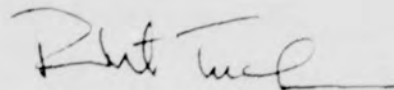
PUBLIC RECORD

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Should you have any questions, please contact Mary C. Miller at the above address or telephone (313) 226-2220. All correspondence should reference File Numbers: 97-200-014-0E and/or 97-164-015-0E.

Sincerely,



Robert Tucker
Chief, Enforcement Section
Regulatory Branch

Enclosures

CF: South Bend Field Office
IDNR / Jose
IDEM / Maupin
COE Louisville District / Carter

STB FD 33388 (Sub 2) 12-4-97 K 184597



DEPARTMENT OF THE ARMY

DETROIT DISTRICT, CORPS OF ENGINEERS

BOX 1027

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File No. 97-200-014-0E / 97-164-015-0E

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1925 K Street, NW, Suite 700
Washington, District of Columbia 20423

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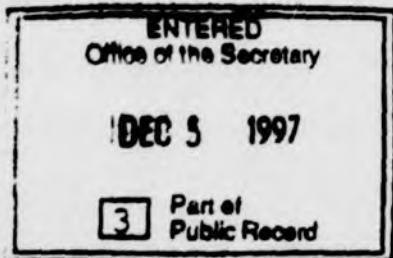
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Sub 2

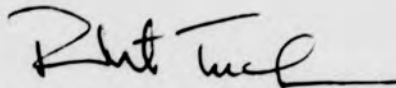


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Sincerely,



Robert Tucker
Chief, Enforcement Section
Regulatory Branch

Enclosures

CF: South Bend Field Office
IDNR / Jose
IDEM / Maupin
COE Louisville District / Carter

STB

FD-33388 (SUB2)

11-12-97

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ID-STBSEA

ENVIRONMENTAL DOCUMENT

MEMORANDUM

November 12, 1997

TO: Ann Newman, Environmental Coordinator
Office of Proceedings

CC: Paul Nishimoto
Paul Markoff

FROM: Elaine K. Kaiser, Chief
Section of Environmental Analysis

SUBJECT: **Post Environmental Assessment:**
Finance Docket No. 33388 (Sub. No. 2) — CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company, and Conrail Inc., and Consolidated Rail Corporation — Willow Creek CSX/Conrail Rail Line Connection – City of Portage, Porter County, Indiana

CSX Corporation and CSX Transportation Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Corporation (collectively NS), and Conrail Inc. and Consolidated Rail Corporation (collectively Conrail) have filed a joint Application with the Surface Transportation Board (the Board) seeking authorization for the acquisition of Conrail by CSX and NS. The fundamental objective of the proposed acquisition is to divide existing Conrail assets and operations between CSX and NS. As a result, certain Conrail facilities and operations would be assigned individually to either CSX or NS through operating agreements or other mechanisms, and certain other existing Conrail facilities would be shared or operated by both CSX and NS.

In Decision No. 9, served June 12, 1997, the Board granted CSX's and NS's petitions seeking a waiver of the Board's regulations at 49 CFR 1180.4(c)(2)(vi) that provide that all "directly related applications, e.g., those seeking authority to construct or abandon rail lines,..." be filed at the same time. The waiver would allow CSX and NS to seek the Board's authority to construct and operate seven rail line connections (four for CSX and three for NS) prior to the Board's decision on the acquisition and division of Conrail. Without early authorization to construct these connections, CSX and NS contended, each railroad would be severely limited in its ability to serve important customers.

In granting the waiver, the Board noted that the railroads were proceeding at their own risk. If the Board were to deny the primary application, any resources expended by CSX and NS in building the connections would be of little benefit to them. Both the railroads and the Board recognized that no construction could occur until the Board completed its environmental review of each of the

construction projects.

The proposed 2,800-foot connection is located in the City of Portage, Porter County, Indiana. 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 the CSX Garrett Subdivision rail line (which generally runs northwest to southeast) and the Conrail 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, Indiana and Chicago, Illinois. 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. A map of the proposed connection and the surrounding area is attached (see Figure 1).

On October 7, 1997, the Section of Environmental Analysis (SEA) issued an Environmental Assessment (EA) which concluded that, subject to the recommended mitigation, construction and operation of the proposed connection would not significantly affect the quality of the human environment. The EA recommended a number of mitigation measures and requested comments on all aspects of the EA.

SEA received no comments on the EA. A reply was received from the National Park Service acknowledging receipt of the EA, but it included no specific comments on the proposed rail line connection. Therefore, SEA reaffirms that the scope of the EA is appropriate, that the EA adequately identifies and assesses potential environmental impacts, that there are no significant environmental impacts, and that the proposed connection location, subject to the recommended mitigation, is the environmentally preferable route. The mitigation measures included in the EA remain unchanged. SEA recommends that any Board decision approving the proposed construction and operation of this connection be subject to the mitigation measures outlined in the EA and attached to this document.

Attachments

SEA RECOMMENDED FINAL MITIGATION

CSX/CONRAIL RAIL LINE CONNECTION WILLOW CREEK, INDIANA

SEA recommends that the Board impose the following mitigation measures in any decision approving the construction waiver for the proposed Willow Creek rail line connection in Portage, Indiana.

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 be revegetated 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).

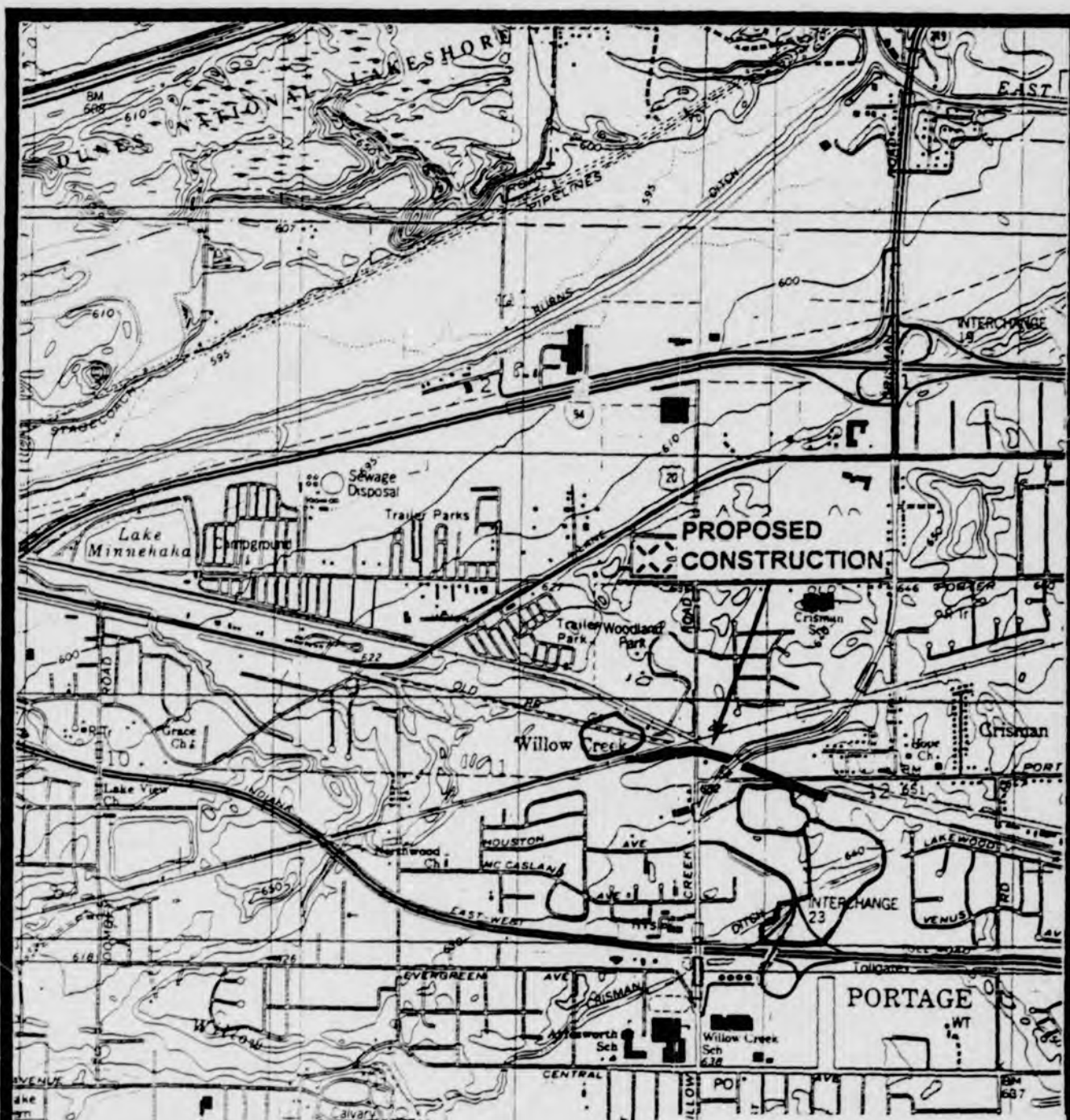


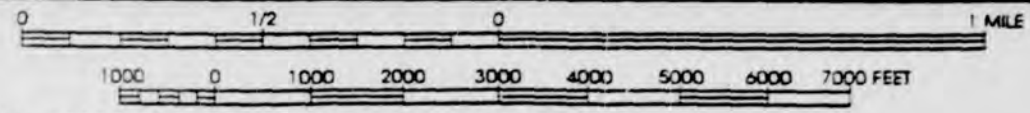
Figure 1
PROJECT LOCATION

CSX/Conrail Connection
Willow Creek, Indiana

KEY:
W = WETLAND

SITE IS NOT IN A DESIGNATED FLOOD ZONE.
THERE ARE NO KNOWN HISTORIC SITES
IMPACTED BY THE PROPOSED CONSTRUCTION.

SCALE 1:24,000



Base Map: USGS 7.5' Topographic Quadrangle: Portage, Indiana 1992



United States Department of the Interior

NATIONAL PARK SERVICE

Midwest Field Area
1709 Jackson Street
Omaha, Nebraska 68102-2571

IN REPLY REFER TO:
L7619 (MSO)

OCT 27 1997

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423



Dear Mr. Williams:

In accordance with the letter of October 2 from the Board, we have reviewed information provided concerning Finance Docket No. 33388--CSX and Norfolk Southern, Acquisition and Control, Conrail Environmental Assessment. Involved are the following construction projects: Sub Number 1 (Crestline, OH), No. 2 (Willow Creek, IN), No. 3 (Greenwich, OH), No. 4 (Sidney, OH), No. 5 (Sidney, IL), No. 6 (Alexandria, IN), and No. 7 (Bucyrus, OH). While we have no comments on the rail-line construction, we appreciate the opportunity to review the work.

Sincerely,

For William W. Schenk
Regional Director

STB

FD

33388

(Sub 2)

10-9-97

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SURFACE TRANSPORTATION BOARD

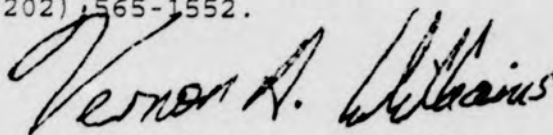
Washington, DC 20423-0001

STB Finance Docket No. 33388 (Sub No. 1)¹

CSX Transportation, Inc. and Consolidated Rail Corporation -
Construction - Crestline, OH

NOTICE TO THE PARTIES

Due to an administrative oversight, this environmental assessment was not served on all the parties on the service list in this proceeding. The original service date for the environmental assessment was October 7, 1997, with a comment due date of October 27, 1997. Persons receiving this late-served environmental assessment may request to file their comments at an appropriately later date by contacting Dana White, Section of Environmental Analysis, (202) 565-1552.



Vernon A. Williams
Secretary

1

This notice also embraces the following proceedings: STB Finance Docket 33388 (Sub-No. 2), CSX Transportation, Inc., and Consolidated Rail Corporation - Construction - Willow Creek, IN; STB Finance Docket 33388 (Sub-No. 3), CSX Transportation Inc., and Consolidated Rail Corporation - Construction - Greenwich, OH; STB Finance Docket 33388 (Sub-No. 4), CSX Transportation, Inc., and Consolidated Rail Corporation - Construction - Sidney Junction, OH; STB Finance Docket 33388 (Sub-No. 5), Norfolk Southern Railway Company and Consolidated Rail Corporation - Construction - Sidney, IL; STB Finance Docket 33388 (Sub-No. 6) - Norfolk Southern Railway Company and Consolidated Rail Corporation - Construction - Alexandria, IN; STB Finance Docket 33388 (Sub-No. 7) - Norfolk Southern Railway Company and Consolidated Rail Corporation - Construction - Bucyrus, Ohio.

SERVICE LIST FOR: 10-oct-1997 STB FD 33388 1 CSX TRANSPORTATION, INC.--CONSTRUCTI

JOHN J PAYLOR
CONSOLIDATED RAIL CORP.
P O BOX 41416
PHILADELPHIA PA 19101-1416 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

RICHARD A. ALLEN
ZUCKERT, SCOUT, RASENBERGER
988 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

MICHAEL F. MCBRIDE
LEBOEUF LAMB GREEN & MACRAE, L. L. P.
1875 CONNECTICUT AVE N W, STE 1200
WASHINGTON DC 20009 US

PAUL A CUNNINGHAM
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1300 19TH STREET, N. W., STE 600
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RICHARD S. EDELMAN
HIGHSAW MAHONEY CLARKE
1050 SEVENTEENTH STREET N W, SUITE 210
WASHINGTON DC 20036 US

MELISSA B KIRGIS
HIGHSAW MAHONEY & CLARKE PC
1050 SEVENTEENTH STREET SUITE 210
WASHINGTON DC 20036 US

GORDON P. MACDOUGALL
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WASHINGTON DC 20036 US

CHRISTOPHER A. MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

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COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE NW
WASHINGTON DC 20503 US

KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC.
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ALEXANDRIA VA 22314-4677 US

JAMES R. PASCHALL
NORFOLK SOUTHERN CORP.
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NORFOLK VA 23510-2191 US

CHARLES M. ROSENBERGER
CSX TRANSPORTATION
500 WATER STREET
JACKSONVILLE FL 32202 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

Records: 15

STB FD 33388 (Sub 2) 10-7-97 K 28330 1/2

Decision No. 28330

Service Date: October 7, 1997
Comment Due Date: October 27, 1997

Environmental Assessment

Finance Docket No. 33388 (Sub No. 2)

**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

Willow Creek

**CSX/Conrail Rail Line Connection —
City of Portage, Porter County, Indiana**

Information Contact:

**Elaine K. Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street NW, Suite 500
Washington, DC 20423
(888) 869-1997**

EXECUTIVE SUMMARY

CSX Corporation and CSX Transportation Inc. (CSX), Norfolk Southern Corporation and Norfolk Southern Railway Corporation (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail) have filed a joint Application with the Surface Transportation Board (the Board) seeking authorization for the acquisition of Conrail by CSX and NS.

As a part of their joint Application, CSX proposes to construct a rail line connection at Willow Creek in Portage, Indiana to permit traffic movements between the CSX and Conrail systems. The Board's Section of Environmental Analysis (SEA) has prepared this Environmental Assessment (EA) to determine whether construction of this connection would have any significant effects on the environment.

The proposed 2,800-foot connection is located in the City of Portage, Porter County, Indiana. 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 the CSX Garrett Subdivision rail line (which generally runs northwest to southeast) and the Conrail Porter Branch rail line (which generally runs northeast to southwest). Most of the connection (1,800 of the 2,800 feet) would be constructed within the existing CSX right-of-way, though acquisition of an additional 0.2 acre of new right-of-way would be required. The new connection would allow progressive east-west movements between the CSX and Conrail lines, enhancing rail operations and traffic movements between Garrett, Indiana and Chicago, Illinois. 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. The potential environmental effects of constructing the proposed connection are summarized in the table on the following page.

Based on its independent analysis of all the information available at this time, SEA concludes that construction of the proposed rail line connection would not significantly affect the quality of the environment with the implementation of the mitigation measures set forth in this EA. Accordingly, SEA recommends that the Surface Transportation Board impose the mitigation measures set forth in Chapter 5.3 as conditions in any final decision approving construction of the proposed CSX/Conrail connection at Willow Creek in Portage, Indiana.

**SUMMARY OF ENVIRONMENTAL EFFECTS
-CSX/CONRAIL RAIL LINE CONNECTION-
WILLOW CREEK, IN IANA**

Effect Type	Assessment Criteria	Effects
Land Use	New Right-of-Way Required Prime Farmland Affected Within Coastal Zone Management Area	0.2 acre None No
Socioeconomics and Environmental Justice	Disproportionate Effect on Minority and Low Income Groups	None
Transportation and Safety	Train Movements Over Connection New Grade Crossings Grade Crossing Safety/Delay Effects Effect on Transportation of Hazardous Materials Hazardous Waste Sites Affected	10 trains per day One* Minor None None
Water Resources	Effect on Surface Water Wetlands Affected	None None
Biological Resources	Loss of Critical Habitats Effect on Threatened and Endangered Species Effect on Parks, Forest Preserves, Refuges and Sanctuaries	None None Negligible
Air Quality	Emissions from Construction + Idling Vehicles Effect on Air Quality Due to Construction (Fugitive Dust)	Negligible Negligible
Noise	Additional Receptors within the L _{dn} 65 dBA Contour	None
Historic and Cultural Resources	NRHP-Eligible or Listed Historic Sites Affected NRHP-Eligible or Listed Archeological Sites Affected	None None
Energy	Changes in Fuel Consumption due to Construction Effect on Transportation of Energy Resources and Recyclable Commodities Overall Energy Efficiency Rail to Motor Carrier Diversions	Negligible None Improved None

* New at-grade crossing for connection would be constructed just south of the existing mainline crossings; existing protection systems would be modified to control all three crossings.

SEA specifically invites comments on all aspects of this EA, including the scope and adequacy of the recommended mitigation. SEA will consider all comments received in response to the EA in making its final recommendations to the Board. Comments (an original and 10 copies) should be sent to: Vernon A. Williams, Secretary, Surface Transportation Board, 1925 K Street NW, Suite 700, Washington, D.C. 20423. The lower left-hand corner of the envelope should be marked: Attention: Dana White, Environmental Comments, Finance Docket No. 33388 (Sub Nos. 1-7). Questions may also be directed to Ms. White at this address or by telephoning (888) 869-1997.

Date EA Made Available to the Public: **October 7, 1997**

Comment Due Date: **October 27, 1997**

ES-4

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CSX/NS CONSTRUCTION WAIVER APPLICATION
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CHAPTER 1

Description of the Proposed Action

CSX Corporation and CSX Transportation Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Corporation (collectively NS), and Conrail Inc. and Consolidated Rail Corporation (collectively Conrail) have filed a joint Application with the Surface Transportation Board (the Board) seeking authorization for the acquisition of Conrail by CSX and NS. The fundamental objective of the proposed acquisition is to divide existing Conrail assets and operations between CSX and NS. As a result, certain Conrail facilities and operations would be assigned individually to either CSX or NS through operating agreements or other mechanisms, and certain other existing Conrail facilities would be shared or operated by both CSX and NS.

As a part of proposed transaction, CSX proposes to construct a rail line connection at Willow Creek in Portage, Indiana to permit traffic movements between the CSX and Conrail systems. The Board's Section on Environmental Analysis (SEA) has prepared this Environmental Assessment (EA) to determine whether construction of this connection would have any significant effects on the environment.

1.1 OVERVIEW OF THE PROPOSED RAIL LINE CONNECTION

1.1.1 Location and Description

The proposed connection is located in the City of Portage, Porter County, Indiana. Portage is located in northwestern Indiana, approximately 20 miles east of Gary. 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 (see Figure 1).

CSX would construction a new 2,800-foot connection, shown in Figure 2, between the CSX Garrett Subdivision rail line (which generally runs northwest to southeast) and the Conrail Porter Branch rail line (which generally runs northeast to southwest). Most of the connection (1,800 of the 2,800 feet) would be constructed within the existing CSX right-of-way, though acquisition of an additional 0.2 acre of new right-of-way would be required. The connection would begin at the Conrail rail line at approximately 1,000 feet west of Willow Creek Road and terminate on the CSX rail line at Milepost 235, approximately 1,800 feet east of Willow Creek Road. The connection at the eastern end would be double-tracked within the existing CSX right-of-way. The connection would cross Willow Creek Road and Portage Road, and the existing at-grade crossings would be modified. The new connection would allow progressive east-west movements and permit rail traffic between Garrett, Indiana and Chicago, Illinois.

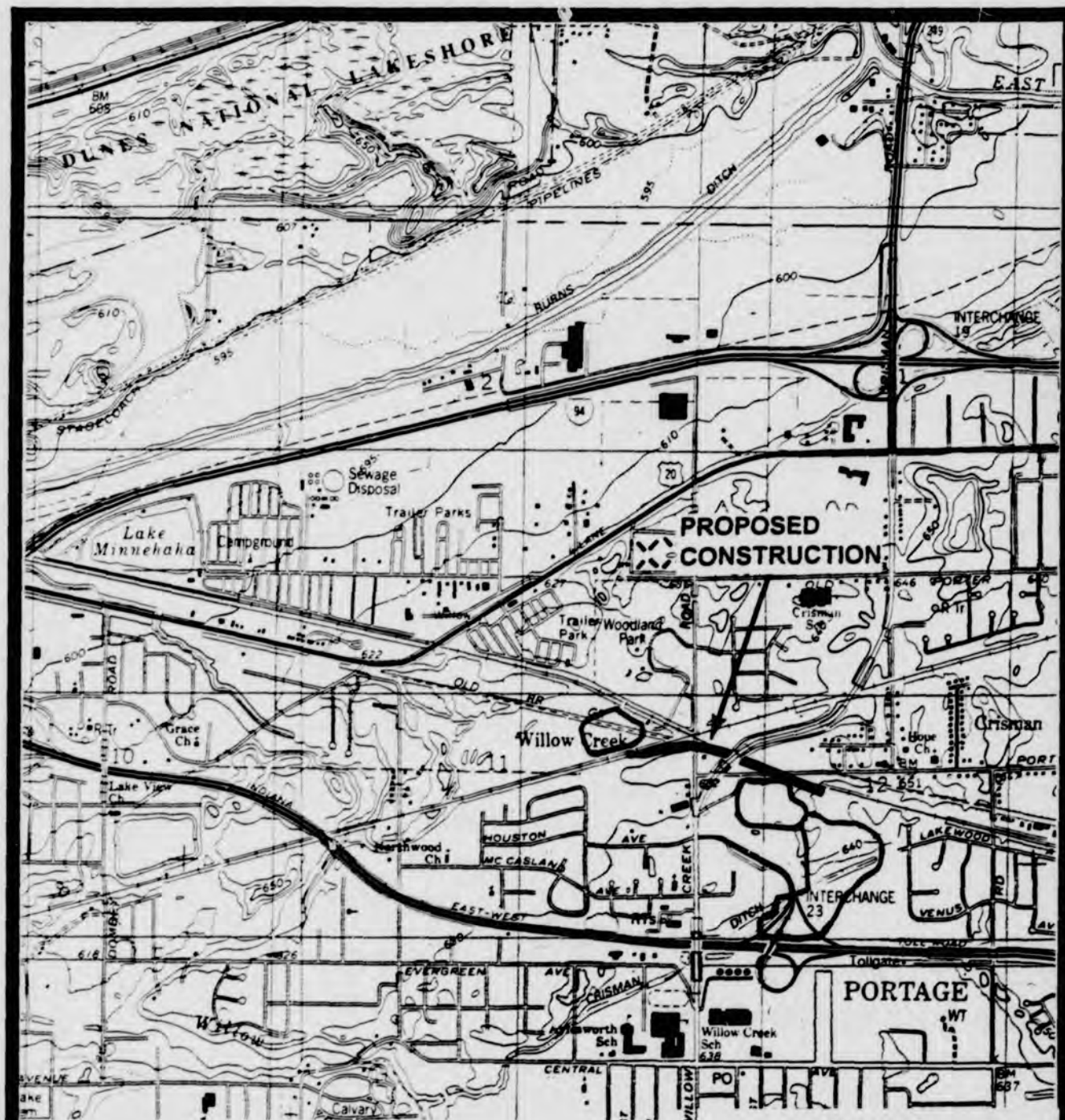
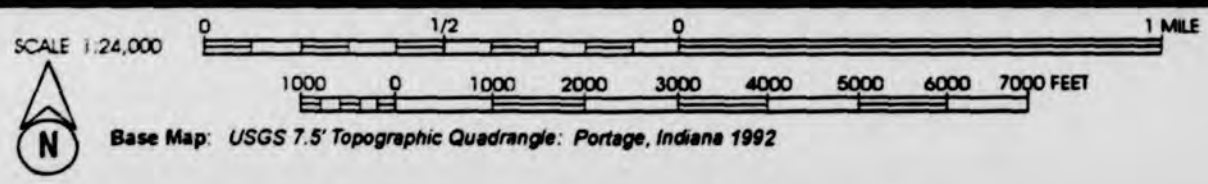
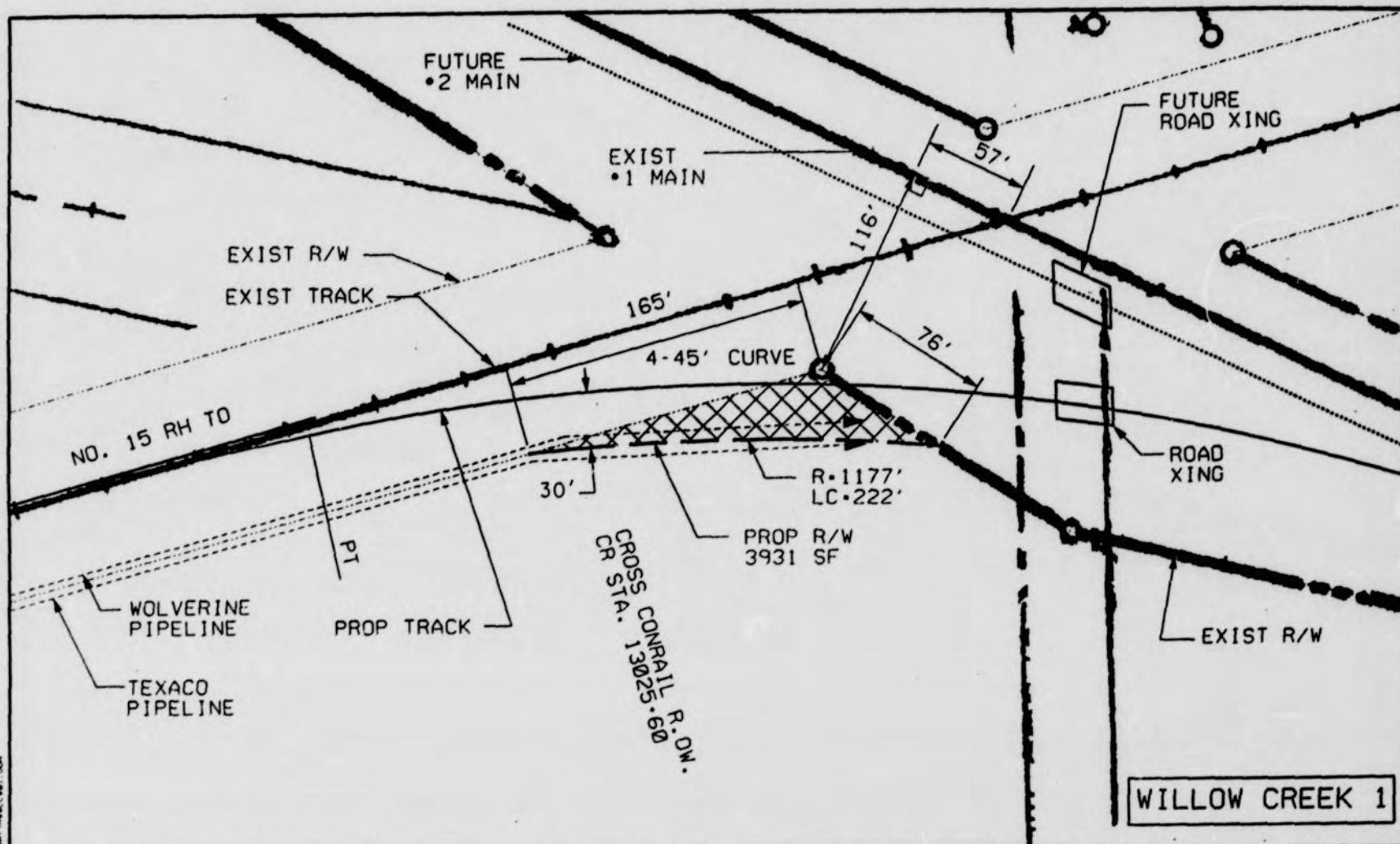


Figure 1
PROJECT LOCATION

CSX/Conrail Connection
Willow Creek, Indiana





COUNTY : LAKE
 U.S.G.S. QUAD. MAP REF.: PORTAGE, INDIANA
 C.S.X. EVALUATION MAP : V134.1/2

DWG: JMB	DES:	PROJECT NO.: 13824
CHKD: DHB	APPD: DFP	SCALE: 1"=50'
DATE: AUGUST 97	REV:	

Sverdrup
 CIVIL INC.

Figure 2 PROPOSED CONNECTION

CSX/Conrail Connection
 Willow Creek, Indiana

1.1.2 Construction Requirements

CSX estimates that the construction of the new rail line connection would require a labor force of 25 people over a period of approximately 45 days. The construction would require clearing existing vegetation, but little excavation or grading. Various types of heavy equipment (such as bulldozers, roller/compactors, tie loaders, and rail installers) would be used during construction.

1.1.3 Changes in Rail Traffic

The proposed connection would enhance rail operations and train movements on the CSX and Conrail rail lines. 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. Rail traffic on the existing rail lines served by the connection would change as follows:

- Traffic on the existing Conrail rail line would decrease, on average, from 9.6 to zero trains per day northeast of the proposed connection (Willow Creek to Porter, Indiana segment) and would increase, on average, from 9.6 to 11.4 trains per day southwest of the proposed connection (Willow Creek to Ivanhoe, Indiana segment).
- Traffic on the existing CSX rail line would increase, on average, from 23.4 to 49.7 trains per day southeast of the proposed connection (Willow Creek to Deshler, Ohio segment), and would increase, on average, from 22.1 to 38.6 trains per day northwest of the proposed connection (Willow Creek to Pine Junction, Indiana segment).

1.2 PURPOSE AND NEED FOR THE PROPOSED CONNECTION

The purpose of the environmental review documented in this EA was to identify, analyze, and disclose the environmental issues and potential effects associated with the construction of the rail line connection at Willow Creek in Portage, Indiana. Based on the joint Application filed by CSX and NS, this connection would improve the service capabilities and operating efficiencies of each railroad. These efficiencies include enhanced single-line service, reduced travel times, and increased utilization of equipment.

This EA was prepared to determine whether the Board should approve construction of the connection before it decides on the merits of the entire acquisition transaction. If approved by the Board, this connection would be constructed before the Board's final decision on the CSX and NS Application to acquire Conrail. If the entire transaction is subsequently approved by the Board, CSX intends to begin operations on this connection immediately. If the Board does not approve the transaction, or approves it with conditions which preclude its use, operation of this connection would not be allowed.

1.3 RELATIONSHIP BETWEEN THE PROPOSED ACTION AND THE CONRAIL ACQUISITION TRANSACTION

On April 10, 1997 CSX, NS, and Conrail filed their notice of intent to file an application seeking the Board's authorization for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets. On May 2, 1997 CSX and NS filed petitions seeking a waiver of the Board's regulations at 49 CFR 1180.4(c)(2)(vi) that provide that all "directly related applications, e.g., those seeking authority to construct or abandon rail lines,..." be filed at the same time. The waiver would allow CSX and NS to seek the Board's authority to construct and operate seven rail line connections (four for CSX and three for NS) prior to the Board's decision on the acquisition and division of Conrail.

The seven constructions are each relatively short connections between two rail carriers and have a total length under 4 miles. Most of the construction on these short segments would take place within existing rights-of-way. CSX and NS stated that these seven connections must be in place before the Board's decision on the primary application in order for them to provide efficient service in competition with each other. Without early authorization to construct these connections, CSX and NS contended, each railroad would be severely limited in its ability to serve important customers.

In Decision No. 9 (see Appendix A) served June 12, 1997, the Board granted CSX's and NS's petitions. The Board stated that it understood the railroads' desire to "be prepared to engage in effective, vigorous competition immediately following consummation of the [acquisition]." In granting the waiver, the Board noted that the railroads were proceeding at their own risk. If the Board were to deny the primary application, any resources expended by CSX and NS in building the connections would be of little benefit to them. Both the railroads and the Board recognized that no construction could occur until the Board completed its environmental review of each of the construction projects. Thus, the Board stated that it would consider the environmental aspects of these proposed constructions and the railroads' proposed operations over these lines together in deciding whether to approve the physical construction of each of these lines.

The operational implications of the Conrail acquisition as a whole, including operations over the roughly 4 miles of line included in the seven connection projects, will be examined in the Environmental Impact Statement (EIS) being prepared to assess the impacts of the entire acquisition transaction. The EIS will be available for a 45-day public review and comment period in late November 1997.

1.4 SEA ENVIRONMENTAL REVIEW PROCESS

SEA prepared this EA to ensure that the proposed action complies with the statutory requirements under the National Environmental Policy Act (NEPA), the Board's environmental

regulations, and other applicable rules and/or regulations. SEA is responsible for conducting the Board's NEPA environmental review.

The Board has adopted the former Interstate Commerce Commission's environmental regulations (49 CFR Part 1105), which govern the environmental review process and outline procedures for preparing environmental documents. Section 1105.6(b) of these regulations established the criteria that identify the types of actions for which an EA would be required. The construction of a rail line connection, like the one proposed at Willow Creek, is classified under the Board's regulations as normally requiring preparation of an EA. SEA reviewed the proposed rail line construction and determined that because the connection is not expected to result in significant environmental impacts, an EA should be prepared.

In preparing the EA, SEA identified issues and areas of potential environmental effect, analyzed the potential environmental effects of the proposed rail line construction project, reviewed agency comments, and developed mitigation measures to avoid or reduce anticipated effects on the environment. To assist it in conducting the NEPA environmental analysis and in preparing the EA, SEA selected and approved De Leuw, Cather & Company to act as the Board's independent third party consultant, in accordance with 49 CFR Part 1105.10(d). The independent third party consultant worked solely under the direction and supervision of SEA in conducting the environmental analyses related to the proposed construction. The Applicants provided funding for these activities.

SEA analyzed the Environmental Report and Operating Plan that accompanied the transaction Application, technical studies conducted by CSX's environmental consultants, and the Preliminary Draft Environmental Assessment for the Willow Creek connection. In addition, SEA conducted its own independent analysis of the proposed construction, which included verifying the projected rail operations; verifying and estimating future noise levels; estimating air emission increases; performing land use, habitat, surface water, and wetland surveys; assessing effects to biological resources; and performing archeological and historic resource surveys. In addition, SEA and/or its independent third party consultant consulted with CSX and its environmental consultants and visited the proposed rail line construction site to assess the potential effects on the environment.

CHAPTER 2

Alternative Actions Considered

This chapter outlines the alternatives considered for the proposed connection.

2.1 NO-ACTION ALTERNATIVE

In its environmental review, SEA considered a "no-action" alternative. Under this alternative, current operations would continue over existing CSX and Conrail rail lines. However, as outlined below, access between the two lines would be limited to existing connections, interchanges, or terminals. According to CSX, if no connection is built at Willow Creek, CSX's service to the Gibson Yard (for finished auto) and the Blue Island Yard in the Chicago area would remain difficult. Trains destined to these yards would lose the operational flexibility provided by the connection and the travel time savings resulting from the shorter route (approximately 15 fewer miles than the existing route) it would create. Without a new connection at Willow Creek, anticipated reductions in air pollutant emissions and fuel usage would also not be achieved. Without the connection, it is also likely that congestion would increase on other existing rail lines, to the detriment of local shippers and efficient operations in the Chicago and northwestern Indiana areas.

2.2 BUILD ALTERNATIVES

SEA considered an alternative location—also in the southern quadrant of the intersecting rail lines—for the proposed connection. However, after an initial environmental review, SEA rejected this alternative as infeasible because it would require acquisition of additional right-of-way, reconstruction of the recently completed Crisman Road, relocation of bridge piers, and the demolition of at least two residential properties. This alternative also would move rail operations closer to the residential neighborhood southwest of the rail line intersection. In contrast, the selected alignment would be the most direct connection between the existing rail lines and would minimize the use of new land outside the CSX and Conrail rights-of-way.

2.3 SELECTION OF PROPOSED CONNECTION LOCATION

The 2,800-foot single-track connection in the southern quadrant of the existing CSX/Conrail intersection provides the optimal location and most direct routing for a new connection, which would allow CSX to use the Indiana Harbor Belt rail line for access to the Gibson Yard, the Blue Island Yard, and other destinations in the Chicago area. After reviewing alternative locations for this connection, SEA concluded that there were no construction, operational, or

environmental features that would render another alignment of the proposed rail line connection more reasonable than the proposed location.

CHAPTER 3

Existing Environment

This chapter provides an overview of the existing environment in the vicinity of the proposed construction.

3.1 LAND USE

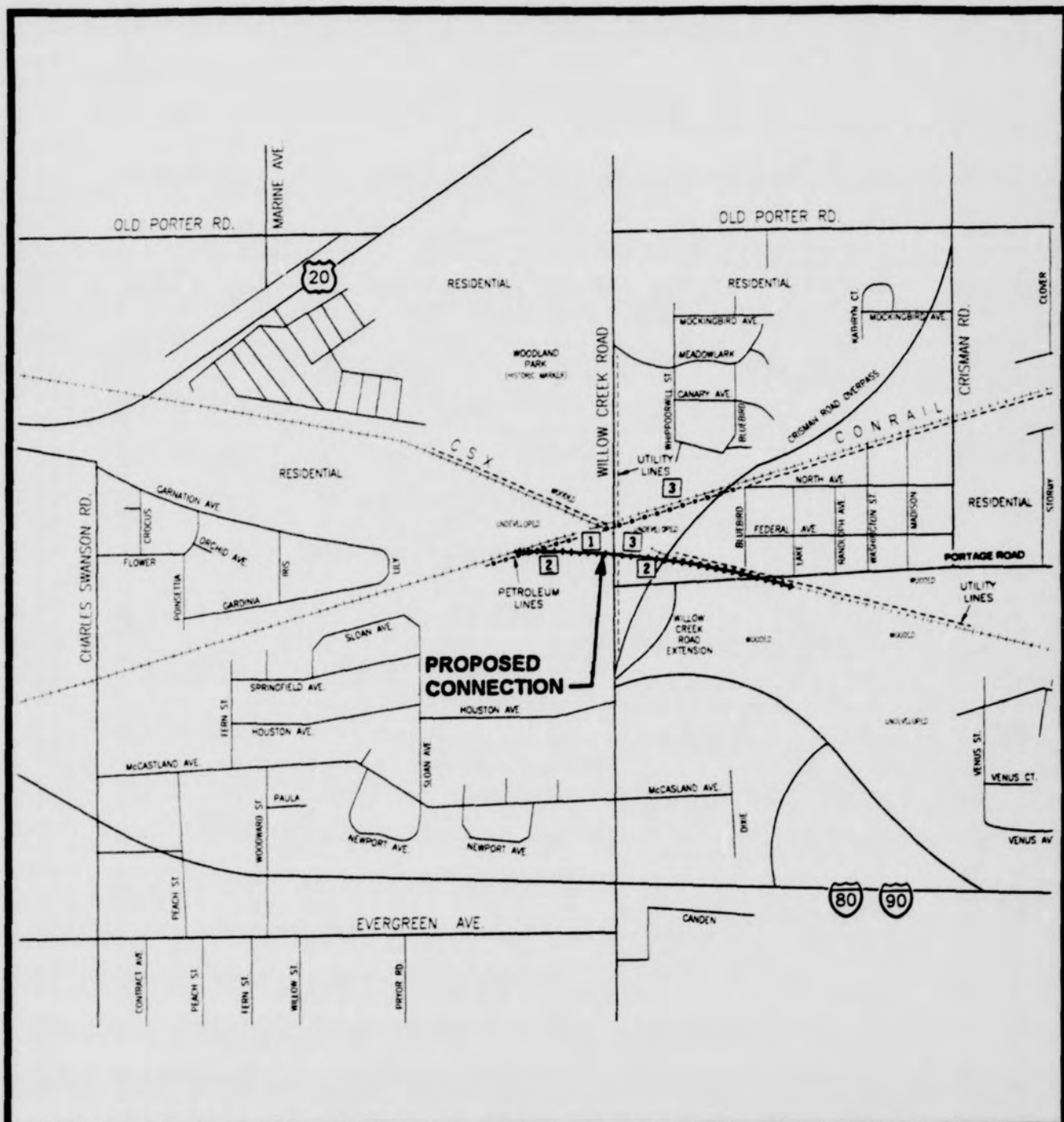
3.1.1 Current Land Use

To identify current land uses and protected lands in the vicinity of the proposed construction, SEA reviewed local plans and maps, consulted with the appropriate federal, state and local agencies, and conducted field reviews at the proposed connection site. Land uses of concern include those sensitive to environmental changes, such as residential properties, commercial buildings, educational and medical facilities, and institutions. SEA also contacted the Bureau of Indian Affairs to obtain information on any federally recognized American Indian tribes or reservations within the project area.

The current CSX/Conrail track intersection is located in an area of mixed rural, suburban, and commercial development and undeveloped land (see Figure 3). The existing rail lines cross each other at equal grade approximately 30 feet west of Willow Creek Road, where an existing at-grade crossing accommodates both the CSX and Conrail rail lines. A recently constructed overpass (for Crisman Road) crosses over the CSX rail line southeast of the at-grade crossing and the Conrail rail line northeast of the at-grade crossing, and then connects at grade with Willow Creek Road.

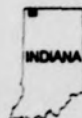
Undeveloped land west of the rail line intersection supports hardwood trees, small shrubs, non-woody vegetation, and grasses. Farther to the west, approximately 1,500 feet from the intersection (north of the Conrail right-of-way), a residential development of single-family homes is under construction. South of the rail line at this location is an older neighborhood of single-family homes. Areas of undeveloped property supporting trees, non-woody vegetation, and grasses are located just east of the intersection. Farther east, about 1,000 feet from the intersection and north of Portage Road, is a residential area. Northeast of the intersection are residential properties. Woodland Park is located 500 feet northwest of the proposed project. The topography in the proposed project area is relatively flat, and the surrounding area consists of low rolling hills.

None of the land for the proposed construction is within an American Indian reservation. According to the Bureau of Indian Affairs, there are no federally recognized American Indian tribes or reservations in Indiana.



KEY:

- 1. Marathon Pipe Line
- 2. Fiber Optic Cables
- 3. Nearby Residences



QUADRANGLE LOCATION

Figure 3
LAND USE

CSX/Conrail Connection
Willow Creek, Indiana



NOT TO SCALE

3.1.2 Consistency with Local Plans

SEA contacted representatives of the City of Portage and Porter County to obtain information on local planning and zoning requirements. Although neither the City of Portage nor Porter County have a local land use plan, the land that would be acquired for the proposed connection is currently zoned for commercial uses (C-2); railroad development is allowed in the area. The area surrounding the proposed connection is zoned for residential uses to the east and west, commercial or business use to the south, and recreational uses or open space to the north.

3.1.3 Prime Farmlands and Coastal Zones

The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) maintains a national database of prime farmlands. SEA contacted the local NRCS office to determine whether any prime farmland soils were located in the vicinity of the proposed project. According to the NRCS and the Porter County, Indiana Soil Survey, no prime farmland soils are located within or adjacent to the project site.

Any proposed project which may affect land or water uses within a coastal zone designated pursuant to the Coastal Zone Management Act (16 USC 1451 *et seq.*) must be consistent with the state's Coastal Zone Management Plan. SEA contacted the Water Resources Division of the Indiana Department of Natural Resources (DNR) to determine whether the proposed connection site was located in an area covered by a coastal zone management plan. According to the Indiana DNR, there is no federally recognized coastal zone management program in Indiana.

3.2 SOCIOECONOMICS AND ENVIRONMENTAL JUSTICE

Based on the 1990 census, the population of Porter County is 128,932; the population of the City of Portage is 29,060; and the population of the area in the vicinity of the proposed construction is 5,428.

Approximately 5.9 percent of the residents in the vicinity of the proposed construction are minorities, compared to 7.2 percent of residents in the City of Portage and 4.3 percent in Porter County. The racial composition of these areas is summarized in Table 1.

Census data indicate that the 1989 median family income for Porter County was \$41,929 and \$37,032 in the City of Portage. In the vicinity of the proposed construction, median family income in 1989 was \$33,402. Approximately 12.2 percent of the residents in the vicinity of the proposed construction are low-income (below the federal poverty level), compared to 7.9 percent of residents in the City of Portage and 6.1 percent in Porter County.

Table 1
RACIAL COMPOSITION OF POPULATION

Race	Porter County	City of Portage	Area of Proposed Connection
White	95.7 %	92.5 %	94.1 %
Black	0.3 %	0.4 %	0.6 %
Asian	0.7 %	0.5 %	0.4 %
Hispanic (Any Race)	3.0 %	6.3 %	4.8 %
American Indian	0.2 %	0.2 %	0.1 %
Other	0.1 %	0.2 %	0.0 %

3.3 TRANSPORTATION AND SAFETY

3.3.1 Transportation Systems

SEA gathered information relating to the existing transportation system in the vicinity of the proposed construction during consultations with federal, state, and local agencies and field visits to the proposed connection site.

The existing rail transportation network consists of CSX and Conrail rail lines that intersect just west of Willow Creek Road. Both lines are currently used for rail operations. The existing roadway network in the vicinity of the proposed construction includes Willow Creek Road, Portage Road, and Crisman Road. Access to the proposed construction area would be from Willow Creek Road, Portage Road, and Crisman Road.

Willow Creek Road is a two-lane, asphalt road with an average daily traffic (ADT) volume of 6,477 vehicles. The at-grade crossings of the CSX and Conrail tracks are currently protected by a cross buck, gates and lights. The proposed connection at Willow Creek Road would be south of the current at-grade crossing, very close to the existing crossing for the CSX and Conrail rail lines. CSX is currently determining whether the distance between the existing at-grade crossing and the new at-grade crossing requires the installation of a separate protection system south of the current one. Whether or not a separate protection system is installed, the proposed connection crossing would essentially be a widening of the existing at-grade crossing rather than a new one. Widening the crossing to accommodate the proposed connection would not change the traffic flow on Willow Creek Road, but vehicles would stop for trains in a different place. Portage Road is a two-lane, asphalt road with an ADT volume of 3,000. At the Portage Road and CSX at-grade crossing, the connection would run parallel to the existing track. This at-grade crossing is currently protected by a cross buck and lights. No modifications to the protection

system are proposed for this crossing. Crisman Road, a two-lane asphalt road, crosses the CSX and Conrail lines via an overpass.

3.3.2 Transport of Hazardous Materials

SEA reviewed CSX and Conrail operational data to determine whether the trains that would operate on the proposed connection are used to transport hazardous materials. The CSX rail line is designated as a Key Route for the shipment of hazardous materials. A Key Route, as defined by the Inter-Industry Task Force, is a route on which more than 10,000 carloads of hazardous materials are transported per year. The Conrail rail line carries between 8,000 and 10,000 carloads of hazardous materials per year between Toledo, Ohio and Chicago, Illinois. A hazardous material spill did occur in Portage in September 1995. According to Conrail, less than one gallon of inhibited styrene monomer was released. Appropriate clean up and remediation measures were implemented to mitigate any long-term effects.

3.3.3 Hazardous Waste Sites

SEA reviewed railroad records and government databases to determine whether any known hazardous waste sites or reports of hazardous materials spills within 500 feet of the proposed construction site. The databases reviewed include: the National Priority List; the Comprehensive Environmental Response, Compensation, and Liability Information System; Resource Conservation and Recovery Information System--Treatment, Storage or Disposal sites; Emergency Response Notification System spill sites; the State Priority List; State Licensed Solid Waste Facilities; the State Inventory of Leaking Underground Storage Tanks; the State Inventory of Reported Spills; and the orphan, or unmappable, sites list.

No hazardous waste sites or other sites of environmental concern were identified as being located within 500 feet of the proposed rail line construction. The database search did reveal five orphan sites within the Willow Creek search area. Based on the limited address information available, none of these sites appear to be located in the immediate vicinity of the proposed construction.

3.4 WATER RESOURCES

SEA identified water resources that could be adversely affected by the construction of the new rail connection. SEA also ascertained whether there were any designated wetlands or 100-year flood plains in the vicinity of the proposed construction.

SEA consulted several data sources, including United States Geological Survey (USGS) 7.5-minute topographic maps, National Wetland Inventory (NWI) maps produced by the U.S. Fish & Wildlife Service (USFWS), Federal Emergency Management Agency (FEMA) flood insurance maps, and NRCS soil survey maps, to identify existing water resources. Each site was also visited by SEA's third-party consultant for field reviews and data verification. Water

resources within 500 feet of the centerline of the proposed construction site, as described below, were identified primarily from site inspections and the interpretation of hydrologic features delineated on USGS topographic maps. The other information sources were used to confirm and/or refine the locations and extent of these features.

3.4.1 Wetlands

NWI mapping indicates that three wetlands are located within 500 feet of the proposed connection (see Figure 4). The first wetland is located approximately 125 feet north of the Conrail rail line and 750 feet west of Willow Creek Road. It is classified as a palustrine forested broad-leaved deciduous temporary flood (PFO1A) wetland. Since the NWI mapping was completed, much of this wetland has been filled and the area developed for residential use. The second wetland, also classified as a PFO1A wetland, is located approximately 125 feet south of the CSX rail line and 430 feet east of Willow Creek Road. The third wetland, located 300 feet south of the CSX rail line and 1,300 feet east of Willow Creek Road, is classified as a palustrine emergent temporarily flooded (PEMA) wetland.

Two additional wetlands, not depicted on the NWI map, were identified near the proposed construction site. Wetland A (designated as W_A in Figure 4), located approximately 100 feet north of the Conrail rail line and approximately 300 feet west of Willow Creek Road, between the existing CSX and Conrail tracks, is classified as a PEMA wetland, and has a total area of 0.24 acre. Wetland B (designated as W_B in Figure 4) is located approximately 25 feet north of the CSX rail line and approximately 125 feet east of the Crisman Road overpass. It is classified as palustrine emergent semi-permanently flooded (PEMF), and has a total area of 0.74 acre.

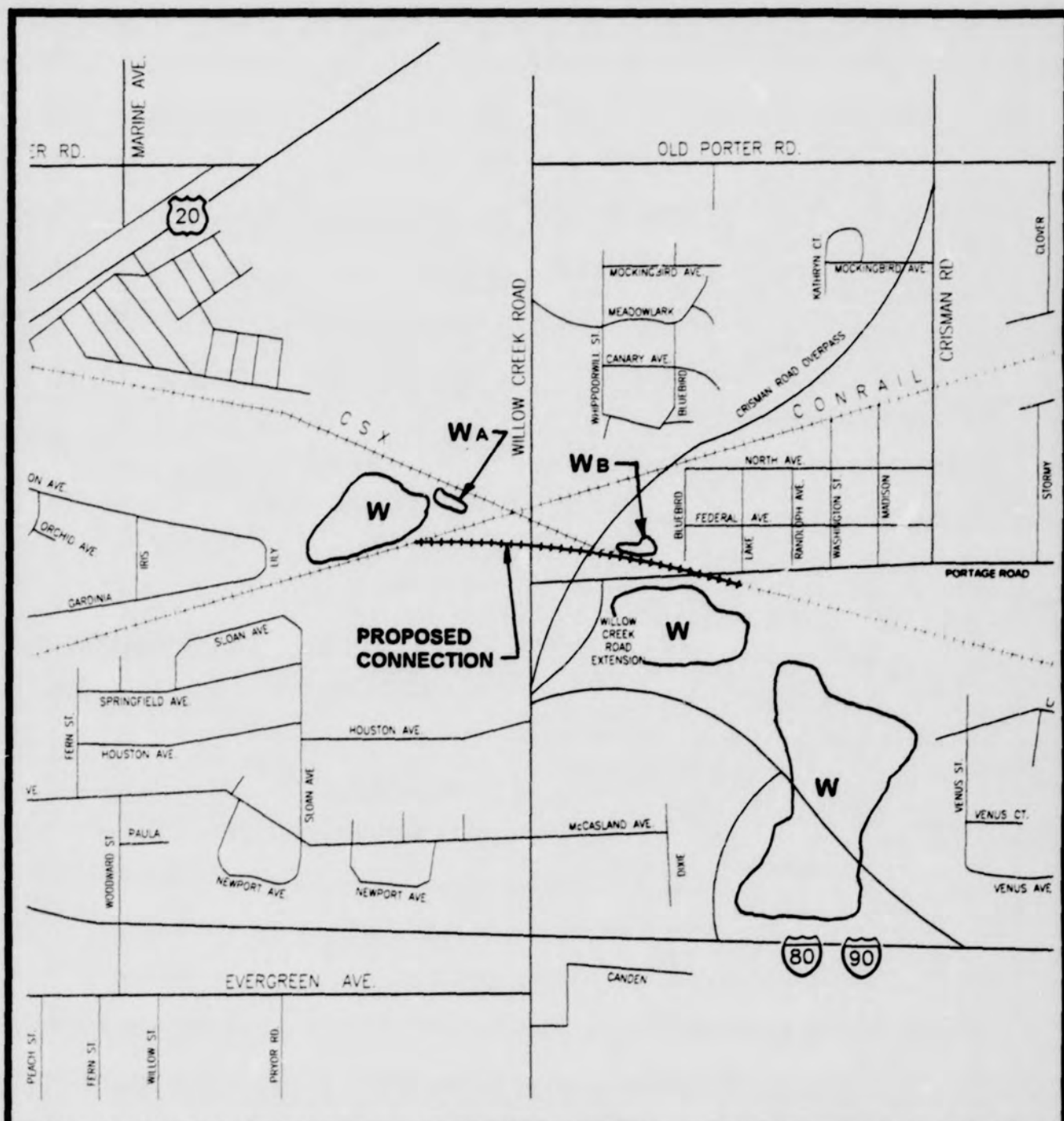
3.4.2 Surface Waters

No surface or open waters are located within 500 feet of the proposed construction site. The site is outside the 500-year flood plain.

3.5 BIOLOGICAL RESOURCES

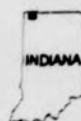
SEA identified biological resources that could be adversely affected by the construction of the proposed rail connection. SEA also investigated whether there were any parklands, forest preserves, refuges, or wildlife sanctuaries in the vicinity of the proposed construction site.

SEA consulted several data sources to identify existing biological resources, including USGS 7.5-minute topographic maps, NRCS soil surveys, and USFWS lists of sensitive or threatened and endangered species. Each site also was visited by SEA's third party consultant to evaluate habitats, identify the presence or potential occurrence of sensitive species, and to verify published data. Federal and state resource management agencies were consulted concerning the potential occurrence of sensitive plants and animals.



KEY:
W = WETLAND

SITE IS NOT IN A DESIGNATED FLOOD ZONE.
THERE ARE NO KNOWN HISTORIC SITES
IMPACTED BY THE PROPOSED CONSTRUCTION.



QUADRANGLE LOCATION

Figure 4
WATER RESOURCES

CSX/Conrail Connection
Willow Creek, Indiana



NOT TO SCALE

3.5.1 Vegetation

The proposed construction site consists of sandy soils which support a variety of non-woody vegetation and trees. West of Willow Creek Road and south of the Conrail tracks is a wooded area with a variety of trees, including oaks (white and black), poplar, locust, cherry and sassafras. While most trees are small (less than 4 inches in diameter), oaks as large as 12 to 16 inches in diameter were observed within 50 feet of the tracks. A variety of other plants and vegetation are present, including raspberry, thistles, iris, meadow fescue, poison ivy, burr oak, evening primrose, and sweet clover.

The slopes of the Crisman Road overpass are stabilized by a heavy growth of crown vetch and grasses. East of the overpass and south of the CSX tracks is a grassy field that is mowed periodically to maintain a groomed appearance. South of Portage Road and east of the Willow Creek Road extension is a densely wooded area containing sassafras, locust, and some large oak (2 feet in diameter) trees. Farther to the east and south of the CSX tracks, the wooded area thins and the trees are primarily small locust. The area south and immediately adjacent to the railroad tracks had been brush-hogged recently for several hundred feet. Other vegetation observed in this area included sweet William, bluestem grasses, wild lupine, and centaury.

3.5.2 Wildlife

Wildlife habitat found on or adjacent to the proposed construction site consists of small areas of forest, forest edge, and prairie habitats which include the vegetation discussed above. The area provides suitable habitat for a variety of mammals, birds, reptiles, and invertebrates. During a field visit in mid-July, deer tracks, as well as numerous birds (sparrows, robins, indigo buntings, chickadees) and several skinks were observed.

3.5.3 Threatened and Endangered Species

Five federally threatened or endangered animal species and one federally threatened plant species are known to occur in Porter County. Animal species include: the endangered Karner blue butterfly (*Lycaeides melissa samuelis*), Indiana bat (*Myotis sodalis*), and American peregrine falcon (*Falco peregrinus anatum*); and the threatened Bald eagle (*Haliaeetus leucocephalus*) and Northern copperbelly water snake (*Nerodia erythrogaster neglecta*). The listed plant species includes the threatened Pitcher's thistle (*Cirsium pitcheri*).

The habitat of the Karner blue butterfly includes dry sand savannas, typically on sand dunes, excessively drained sites and northern Indiana sand ridges. According to the Indiana Department of Natural Resources (DNR), the dominant plant species of these communities are black oak and big bluestem. Such habitat is found commonly at the Indiana Dunes National Lakeshore, about 1.5 miles northwest of the proposed construction site. Remnants of this habitat exist in the area of the proposed construction, which include a sandy ridge west of the connection site and well-drained sandy soils along the right-of-way. The right-of-way also supports black

oak and big bluestem as well as wild lupine, the only reported larval food plant of the Karner blue butterfly. The closest reported occurrence of the Karner blue butterfly to the proposed construction site is at the Inland Marsh area of the Indiana Dunes National Lakeshore. Although the habitat at the proposed construction site is marginal for this species when compared to that of the nearby National Lakeshore, its occurrence at the proposed construction site is possible and it may be an occasional visitor.

The Indiana bat typically winters in caves or abandoned mines; during the rest of the year its habitat includes wooded areas along or near small or medium-sized streams where the species roosts in hollow trees, under bark of trees with exfoliating bark, or in man-made structures. The environment at the construction site for the proposed northwest quadrant connection provides habitat that may be attractive to the Indiana bat. Both the Bald eagle and the American peregrine falcon generally nest on cliffs (or a series of cliffs), though other forms of nesting habitat, such as river cutbanks, trees, and manmade towers, are also used. Copperbelly water snakes are almost always found near the bottomland forests and shrub swamps.

The Pitcher's thistle is a colonizing plant of open sand dunes that requires disturbed areas to become established. The closest reported occurrence of this species to the proposed project is at West Beach of the Indiana Dunes National Lakeshore. The Indiana DNR indicated its occurrence at the proposed construction site is unlikely.

The Indiana DNR also indicated that there is a 1922 historical record of the state-listed endangered plant, the Carolina fimbry (*Fimbristylis puberula*), from a prairie habitat along the "New York Central Railroad," one-half mile west of the Town of Crisman, the present-day location of the proposed construction. This plant was not observed in the project area during field reviews.

3.5.4 Parks, Forest Preserves, Refuges and Sanctuaries

A city park, Woodland Park, is located approximately 500 feet north of the proposed connection. There are no other parks, forest preserves, sanctuaries, refuges, or national, state or local recreational areas within one mile of the project.

3.6 AIR QUALITY

Porter County, Indiana is currently categorized as being in attainment with the National Ambient Air Quality Standards (NAAQS). Current sources of emissions in the project area include locomotives, vehicles, and industries.

During construction, ambient air quality in the vicinity of the proposed connection could be affected by fugitive dust. The State of Indiana regulates fugitive dust emissions under Rule 326

IAC 6-4. Construction projects are exempt from this rule provided reasonable precautions have been taken to minimize fugitive dust emissions.

3.7 NOISE

SEA identified noise-sensitive land uses in the vicinity of the proposed construction site and measured existing noise levels resulting from operation of the existing Conrail and CSX rail lines.

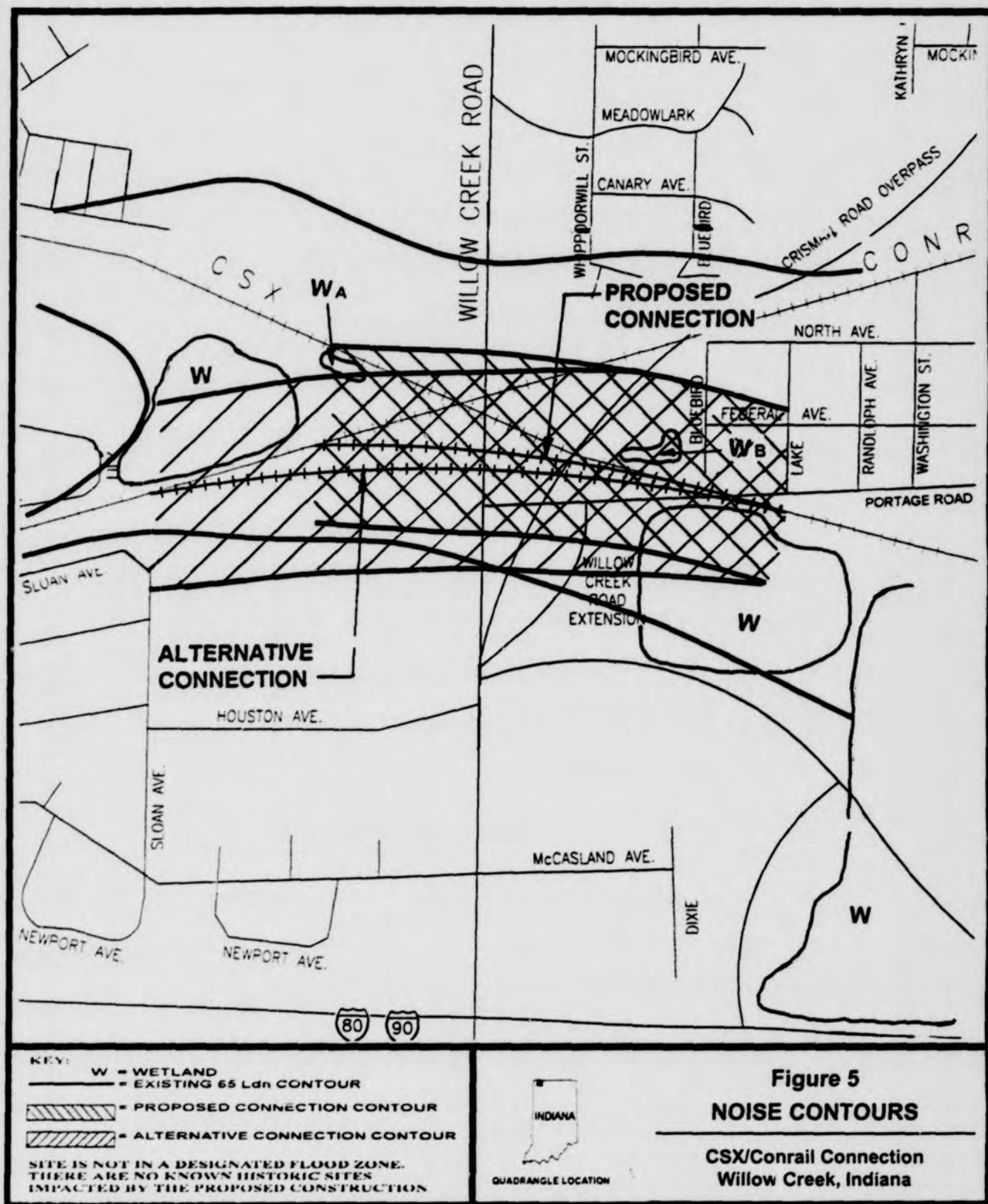
The proposed connection is located in the Willow Creek area of Portage, which contains residential, commercial, and recreational land uses. The Board's regulations require the use of day-night sound level (L_{dn}) measurements to characterize community noise; a standard of 65 decibels (L_{dn} 65 dBA) is used to determine the extent of affected sensitive receptors. Operation of rail traffic on the existing rail lines results in a L_{dn} 65 dBA noise contour which affects approximately 140 residences (see Figure 5). Portions of residential neighborhoods to the northeast and southwest, and several homes on Willow Creek Road (south of the existing rail lines) already experience noise levels in excess of 65 dBA from rail operations. Much of the existing noise in the vicinity of the proposed connection is horn noise from trains as they approach the Willow Creek Road and Portage Road at-grade crossings, and noise from vehicle traffic on local streets.

3.8 CULTURAL RESOURCES

To identify cultural (archeological or historic) resources in the area of the proposed construction, SEA reviewed CSX and Conrail records and historic valuation maps, examined soil surveys and topographic maps, reviewed the State's archives, conducted site visits, and consulted with the Indiana State Historic Preservation Officer (SHPO).

3.8.1 Archeological Resources

There are no known archeological sites in the project area. A site visit confirmed that the area of proposed construction has been previously disturbed; no archeological sites are believed to be present within the project area. The Indiana SHPO concluded that no archeological investigation was warranted because it is highly unlikely that any undisturbed archeological sites would be identified within the area of proposed construction. No archeological sites in the vicinity of the proposed construction have been recorded in the Indiana State Site Files or the National Register of Historic Places.



3.8.2 Historic Resources

One historic resource, an historical marker, is located in the vicinity of the proposed construction site. The Indiana Historical Bureau has erected an historical marker in Woodland Park (approximately 500 feet from the proposed connection) commemorating the Willow Creek confrontation, an important event in railroad history. The text of the marker reads:

WILLOW CREEK CONFRONTATION

As railroad lines expanded through U.S., conflict occurred between competing lines. Michigan Central Railroad, with track in Porter County since 1851, briefly defied state militia and court orders (1874) to allow Baltimore and Ohio Railroad to cross its track. Crossing was built at Willow Creek Station.

No historic structures in the vicinity of the proposed construction site have been recorded in the Indiana State Site Files or the National Register of Historic Places, nor are any other historic resources known to exist in the area of the proposed construction.

3.9 ENERGY

Current sources of energy consumption in the project area include locomotives, railroad maintenance equipment, and motor vehicles. The existing CSX and Conrail lines may be used to transport energy-producing commodities and recyclables.

CHAPTER 4

Potential Environmental Effects

This chapter provides an overview of the potential environmental effects from the proposed rail line connection. This connection would involve the construction of a new rail line segment, mostly within existing CSX new right-of-way to connect the existing CSX tracks to the Conrail tracks. As with any construction of new railroad tracks, the steps required to build a new connection include site preparation and grading, railbed preparation, ballast application, track installation, and systems (signals and communications) installation. Although the construction zone required would vary depending on site conditions, most work would be completed within 250 feet of the new rail line.

In conducting its analysis, SEA considered potential effects in the following environmental areas in accordance with the Board's environmental rules at 49 CFR Part 1105.7(e) and other applicable regulations:

- Land Use
- Socioeconomics and Environmental Justice
- Transportation and Safety
- Water Resources
- Biological Resources
- Air Quality
- Noise
- Cultural Resources
- Energy
- Cumulative Effects

4.1 POTENTIAL ENVIRONMENTAL EFFECTS FROM THE PROPOSED ACTION

4.1.1 Land Use

Assessment Methods and Evaluation Criteria

To assess land use effects, SEA consulted with local planning officials to establish whether the construction and operation of the proposed rail line connection were consistent with existing land uses and future land use plans. Determination as to whether a proposed rail line construction would affect any prime agricultural land was based on SEA's consultations with the NRCS. SEA conducted similar consultations with state Coastal Zone Management agency to assess whether the proposed construction would harm protected coastal areas. SEA also contacted the

Bureau of Indian Affairs to obtain information on any federally-recognized American Indian tribes or reservations within the project area.

SEA considered land use effects to be adverse if any construction activities or subsequent operations would cause long-term changes that:

- Conflict with existing land uses in the area or future land use plans.
- Displace prime farmland from use for agricultural production.
- Conflict with an existing Coastal Zone Management Plan.
- Affect any American Indian reservation or tribal lands.

Potential Effects

No adverse land use effects are expected from the construction of the proposed connection. It is compatible with surrounding land uses, complies with applicable zoning ordinances, and is consistent with community plans for the area. A small amount (0.2 acre) of property adjacent to the existing rail lines would be acquired for new right-of-way; this the land is currently undeveloped and no buildings or residents would be displaced. No conversion of prime farmland soils would be necessary to complete construction of this connection, nor would any construction activities disrupt a designated coastal zone. No known American Indian reservations or tribal lands would be affected.

4.1.2 Socioeconomics and Environmental Justice

Assessment Methods and Evaluation Criteria

SEA analyzed the effects of the proposed construction on low-income and minority populations in accordance with the procedures outlined in the Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." SEA reviewed demographic and income data from the 1990 census to compare the population in the area of the proposed construction with that of the City of Portage and Porter County.

An adverse environmental justice effect would occur if any significant adverse effects of the proposed construction fall disproportionately on low-income or minority populations.

Potential Effects

SEA concluded that no environmental justice effects would result from the construction or operation of the proposed connection. Although the population in the area surrounding the proposed connection has a higher proportion of minority (5.9 percent vs. 4.3 percent) and low-income residents (12.2 percent below the Federal poverty level vs. 6.1 percent) than Porter County as a whole, this difference in racial composition and economic status is not substantial. SEA does not expect construction of the proposed connection to result in any significant adverse

effects to any residents, regardless of race or income. Therefore, minority or low-income communities would not be disproportionately affected by the proposed project.

4.1.3 Transportation and Safety

Assessment Methods and Evaluation Criteria

SEA examined the existing local and regional rail systems which could be affected by the proposed construction of the new rail line connection. Potential effects on the local and regional roadways were also evaluated. In evaluating potential safety effects, SEA assessed: (1) the need for new grade crossings; (2) modifications at existing grade crossings; (3) the effect of the proposed connection on the transportation of hazardous materials; (4) the likelihood of encountering hazardous waste sites during construction; and (5) the likelihood of a hazardous material release during construction.

Effects are considered adverse if the construction or operation of the proposed connection would cause long-term disruptions to vehicular traffic, increase the potential for delays or accidents at grade crossings, increase the risk of transporting hazardous materials, or cause spills or release of hazardous materials during construction.

Potential Effects

Transportation Systems. The proposed connection would improve rail access to and through Willow Creek and enhance the efficiency of CSX operations. The connection would not increase the number of trains crossing Willow Creek Road, though the number of trains crossing Portage Road would increase because some trains traveling northeast on the Conrail rail line would turn southeast over the connection and across Portage Road.

The connection would result in one new at-grade crossing on Willow Creek Road, just south of the existing crossing. Because of the limited distance between the connection at-grade crossing and the main line at-grade crossing, the existing crossing protection would be modified and enhanced. The wider at-grade crossing would not result in additional delays and disruptions to motor vehicle traffic or accidents, because vehicles would have to stop whether the train was on the CSX main line, the Conrail main line, or the connection. However, anticipated increases in CSX and Conrail mainline traffic if the proposed transaction is approved could cause additional grade crossing delays for vehicles at this location. These potential effects are discussed in the EIS on the effects of the entire acquisition transaction. The Portage Road at-grade crossing would be widened to accommodate the proposed connection. Existing protection systems would not be modified. Although the number of trains passing the Portage Road crossing would increase as a result of the connection, the increase in train traffic is not anticipated to result in a substantial increase in vehicle delays or accidents because of the relatively low ADT at this location. Construction at the Willow Creek Road and Portage Road crossings could temporarily disrupt vehicular traffic at those crossings. An alternate traffic route, such as Crisman Road (an

overpass) could be used during construction activities. Construction of the proposed connection is likely to temporarily increase traffic on Portage, Hamstrom, and Swanson Road crossings (the at-grade crossings closest to Willow Creek Road).

Other transportation effects would be limited to the increased use of public roads due to the transport of construction equipment. SEA expects this effect to be of short duration and unlikely to affect the long-term viability or life span of the roads. Short-term disruptions of local vehicular traffic could occur during the construction period.

Transport of Hazardous Materials. The transportation of hazardous materials is not expected to be affected by the proposed connection. The CSX rail line would remain a Key Route for transporting hazardous materials and the Conrail rail line also would continue to carry hazardous materials. The manner of transporting hazardous materials would not change and no increased risk of derailments or chemical releases is expected because of the new connection. The proposed alignment and associated switches would provide adequate safety margins for the proposed 30 mph train speed through the connection. CSX has policies to promote safe transportation of hazardous materials and procedures to deal with clean up and remediation if an accident or spill occurs.

Hazardous Waste Sites. No known hazardous waste sites were identified as being located in the vicinity of the proposed construction site. The probability of a spill of hazardous or toxic materials during construction is low. In the unlikely event that a spill or contamination occurs, CSX has policies and procedures to deal with clean up and remediation. Overall, the proposed construction project is not expected to increase the probability or consequences of hazardous waste contamination in the project area.

4.1.4 Water Resources

Assessment Methods and Evaluation Criteria

SEA assessed whether the following potential effects to water resources could result from construction and operation of the proposed connection:

- Alteration of creek embankments with rip rap, concrete, and other bank stabilization measures;
- Temporary or permanent loss of surface water area associated with the incidental deposition of fill;
- Downstream sediment deposition or water turbidity due to fill activities, dredging, and/or soil erosion from upland construction site areas;
- Direct or indirect destruction and/or degradation of aquatic, wetland, and riparian vegetation/habitat;
- Degradation of water quality through sediment loading or chemical/petroleum spills; and

- Alteration of water flow which could increase bank erosion or flooding, uproot or destroy vegetation, or affect fish and wildlife habitats.

Effects to water resources are considered adverse if there is substantial interference with drainage, adverse discharges (such as sediment or pollutants) or loss of wetlands or flood plains resulting from the construction or operation of the new rail line connection.

Potential Effects

SEA concluded that the proposed construction would not have adverse effects on surface water resources or wetlands. No surface or open bodies of water are located in the vicinity of the proposed connection. None of the five wetlands identified in the project area would be drained or filled as a result of the proposed construction. The proposed construction would not involve excavation from or the placement of dredged or fill material into the "waters of the United States," including designated wetlands. Therefore, authorization (a permit) under Section 404 of the Clean Water Act would not be required. The construction specification for the new connection would incorporate provisions for environmental protection (including appropriate measures for sediment and erosion control) as required by jurisdictional agencies and Federal, State, and local permitting authorities.

4.1.5 Biological Resources

Assessment Methods and Evaluation Criteria

SEA assessed whether the following potential effects to biological resources could result from construction and operation of the proposed connection:

- Loss or degradation of unique or important vegetative communities;
- Harm to or loss of rare, threatened, or endangered plant or animal species;
- Loss or degradation of areas designated as critical habitat;
- Loss or degradation of parks, forest preserves, wildlife sanctuaries or refuges;
- Alteration of movement or migration corridors for animals; and
- Loss of large numbers of local wildlife or their habitats.

Effects to biological resources are considered adverse if the proposed construction would result in the loss of important and/or critical vegetation or wildlife habitats, cause harm to threatened or endangered species, or the degradation of parklands, forest preserves, refuges or wildlife sanctuaries.

Potential Effects

Vegetation. A small area of vegetation (approximately 0.64 acre) would be cleared to accommodate the proposed connection. Trees in this area, including sassafras and mature oaks,

as well as shrubs and non-woody vegetation would be removed. In addition, vegetation within construction staging areas along the right-of-way would be temporarily affected by the operation of heavy equipment and storage of materials. Following completion of the connection, it is expected that opportunistic species would revegetate these areas.

Wildlife. The area cleared for construction of the connection would be permanently lost as wildlife habitat. However, a sufficient amount of similar habitat is available in the area; the loss of this small amount of habitat would not affect the viability of any species. It is possible that wildlife would temporarily avoid habitat near the connection site during the construction period, though SEA anticipates that any temporarily displaced wildlife would subsequently return to the area.

Threatened and Endangered Species. There are no reports of any state or federally threatened or endangered species for Porter County occurring in the vicinity of the proposed connection. Although the habitat in the construction area does have some of the characteristics attractive to the federally endangered Karner blue butterfly (*Lycaeides melissa samuelis*), this habitat is marginal and the USFWS concluded that the proposed connection would not adversely effect this species. Impacts to the federally threatened Pitcher's thistle (*Cirsium pitcheri*) are not expected due to lack of appropriate habitat in the proposed construction area. Although the potential exists for the state endangered Caroline fimbry (*Fimbristylis puberula*) to be present in the vicinity of the proposed construction, this plant species has not been reported in this part of Porter County since 1922.

Parks, Forests Preserves, Refuges, and Sanctuaries. Woodland Park could be temporarily affected by visual and noise effects during the construction period. Once construction is complete, no long-term effects are anticipated.

4.1.6 Air Quality

Assessment Methods and Evaluation Criteria

Potential air quality effects associated with construction of the proposed connection are primarily related to (1) effects associated with the operation of construction equipment and related vehicles, and (2) effects associated with fugitive dust generation.

SEA assessed whether the proposed construction would result in increased levels of pollutant emissions from the operation of construction equipment and vehicles. Air quality effects related to train operations over the CSX and Conrail rail line segments adjoining the connection, to the extent they meet the Board's thresholds for analysis, will be analyzed in the EIS being prepared for the entire acquisition transaction. SEA also evaluated the potential for air quality effects from fugitive dust emissions. In general, the amount of fugitive dust generated by construction activities depends on the topography of the site, soil conditions, wind speeds, precipitation, and the types of roadways used to access the site.

Air quality effects are considered to be adverse if the proposed construction would lead to long-term increases in pollutant emissions or excessive fugitive dust emissions.

Potential Effects

During construction of the Willow Creek connection, the air quality in the vicinity could be affected by temporary increases in vehicle and fugitive dust emissions. Pollutant emissions from a small number of heavy equipment and construction vehicles would occur. Particulate matter, volatile organic compounds (VOCs), carbon monoxide (CO) and nitrogen oxide (NO_x) result from combustion of diesel fuel. The emissions of these pollutants from construction operations generally would be minor and of short duration and would have insignificant effects on air quality. Emissions from the proposed construction project would not be sufficient to change Porter County's NAAQS attainment status. Increases in fugitive dust could occur due to grading and other earthwork necessary for railbed preparation. Appropriate control measures, such as the use of water or dust suppression chemicals, would be implemented to minimize fugitive dust effects during construction.

4.1.7 Noise

Assessment Methods and Evaluation Criteria

SEA evaluated the proposed rail line connection for effects from both short-term construction activities and long-term operations over the connection. SEA's approach for analyzing operational noise effects was to identify noise-sensitive land uses where changes in operation could result in noise exposure increases. Existing noise levels were measured and noise models were used to develop the current L_{dn} 65 dBA noise contours. The future L_{dn} 65 dBA noise contours resulting from operation of the connection were determined using the post-connection volumes on the main line and connection tracks. SEA then identified the number of noise-sensitive receptors (residences, schools, hospitals, and libraries) within these contours. Noise levels from rail traffic on the existing mainline tracks is generally greater than noise from operations over connections. Noise effects from the operation of the main line tracks will be analyzed in the EIS which addresses rail line segment effects for the entire acquisition transaction.

Noise effects were considered adverse if the connection would expand the L_{dn} 65 dBA contours and affect a substantial number of new noise-sensitive receptors.

Potential Effects

Although most construction activities have the potential of causing intrusive noise at nearby noise-sensitive land uses, any noise effects during construction of the Willow Creek connection would be for a limited duration and would not cause any permanent noise effects. Construction

activities would last for only a few months; most noise generated during that period would be similar to that caused by normal track maintenance.

An average of 10 trains per day would use the proposed connection. The construction of the new connection and the operation of trains over the connection would result in a L_{dn} 65 dBA contour which is within the existing noise contour for mainline track operations (see Figure 5). No new or additional sensitive receptors would be affected by the proposed connection. In general, the noise from train operations on the main lines far exceeds the noise from train operations over the connection. Train noise at this track junction for both the pre- and post-construction conditions is dominated by horn noise. The noise projections assume that the engineer begins blowing the horn one quarter mile before the grade crossing, and stops blowing the horn at the grade crossing. Wheel squeal can occur on any curve with a radius less than about 1,000 feet, or when the curvature is greater than approximately 5 degrees. The curvature on the connection is minimal (less than 5 degrees); no adverse noise effects from wheel squeal are expected. If wheel squeal occurs during operation of the connection, rail lubrication could be used to minimize noise levels.

4.1.8 Cultural Resources

Assessment Methods and Evaluation Criteria

SEA consulted with the Indiana SHPO to identify potentially affected archeological and historic resources in the vicinity of the proposed construction. If National Register of Historic Places-eligible or listed resources or properties were present within the project area, SEA consulted with the SHPO to determine what effect, if any, the proposed construction would have on these resources.

Effects to archeological and historic resources are considered adverse if any National Register-eligible or listed resource would experience an Adverse Effect as defined in 36 CFR Part 800.9 as a result of the proposed rail line constructions or subsequent rail operations.

Potential Effects

There are no National Register-eligible or listed historic resources in the immediate vicinity of the proposed construction site. The project area is the site of an event in railroad history. However, the proposed action would not affect the historic significance of the area and its association with railroading would continue. This history is commemorated at Willow Creek Station and the historical marker in Woodland Park. No effects to archeological resources are expected because the area has been previously disturbed.

4.1.9 Energy Resources

Assessment Methods and Evaluation Criteria

SEA assessed the effect of the proposed connection on energy consumption, the transportation of energy resources and recyclable commodities, and diversions of shipments from rail to trucks.

Energy effects are considered significant if the proposed action would result in a substantial increase in energy consumption, would adversely affect the transportation of energy resources or recyclable commodities, or would cause diversions from rail to motor carriers.

Potential Effects

The operation of construction equipment would require the consumption of a small amount of energy (primarily diesel fuel) to operate motor or rail vehicles required to deliver construction materials to the site, prepare the site, and construct the connection. SEA considers this minimal consumption of energy resources insignificant.

The amount of energy resources and recyclable commodities that would be transported over the proposed connection is not known. However, the construction and operation of the proposed connection and the resulting improvement in operating efficiencies is expected to benefit the transportation of energy resources and recyclable commodities. The connection also would reduce the route of trains accessing various yards in the Chicago area, thereby reducing energy consumption. Construction and operation of the proposed connection is not expected to result in diversions from rail to motor carrier.

4.1.10 Cumulative Effects

Based on a review of the transaction Application and the proposed Operating Plan supplied by CSX, no other rail construction projects are underway or planned in the vicinity of the proposed connection. Consultations with federal, state, and local agencies identified no other planned or on-going construction projects in the vicinity of the proposed connection. Therefore, the effects outlined above represent the cumulative effects of the proposed construction project. The cumulative effects of the entire acquisition transaction, which could result from increased rail line segment, rail yard and intermodal facility activity, abandonments, and other construction projects, will be addressed in the EIS.

4.2 POTENTIAL ENVIRONMENTAL EFFECTS OF ALTERNATIVE ACTIONS

4.2.1 No-Action Alternative

If the "no-action" alternative were implemented, the proposed rail line connection would not be constructed or operated. Therefore, the current land use and other existing environmental conditions would remain unchanged. However, if the related transaction is approved, the absence of this rail line connection could result in less efficient rail service. The capacity constraints, more circuitous routing of rail service, delays, and slower operating speeds that could result without the new connection may cause additional fuel consumption and increase pollutant emissions from locomotives.

4.2.2 Build Alternatives

As discussed in Section 2.2, SEA identified no feasible "build" alternatives to the proposed rail line connections. Therefore, the potential environmental effects of alternatives considered, but later rejected, were not evaluated.

CHAPTER 5

Agency Comments and Mitigation

This chapter summarizes comments received from federal, state, and local officials about the proposed construction, and outlines SEA's recommended mitigation measures.

5.1 SUMMARY OF AGENCY COMMENTS

A list of federal, state and local agencies consulted in considering the potential environmental effects of the proposed connection is provided in Appendix B. These agencies also were contacted by the Applicant while preparing the Environmental Report which accompanied the transaction Application. Any agency responses received during the consultation process are included in Appendix B.

Agency comments regarding the proposed construction project are summarized below:

- The NRCS indicated that the proposed project would not affect prime farmland soils.
- The Detroit District of the U.S. Army Corps of Engineers indicated that if the project would require the placement of fill into the wetlands adjacent to the proposed construction site, a Section 404 permit would be required.
- The USFWS indicated that the proposed project would not adversely affect the Karner blue butterfly (*Lycaeides melissa samuelis*).
- The Indiana DNR indicated that no state or federally -listed threatened, endangered or rare plant or animal species have been reported in the vicinity of the proposed construction. The DNR also stated that the proposed construction would not require agency approval pursuant to the Indiana Flood Control Act, but that Section 6(f) conversion would be required if the project adversely affects outdoor recreational facilities at Woodland Park.
- The Indiana SHPO indicated that no known historic, architectural, or archeological sites listed in or eligible for inclusion in the National Register of Historic Places would be affected by the proposed project. The SHPO also stated the need to comply with Section 106 requirements (36 CFR Part 800.11(b)(2)) should any previously-undiscovered archeological resources be discovered during construction.
- The Indiana DNR, Natural Heritage Data Center indicated that two federally listed threatened or endangered species—the dune thistle (*Cirsium pitcheri*) and the Karner

blue butterfly (*Lycaeides melissa samuelis*)—occur in Porter County, but that the closest documented occurrence of these species is approximately 2 miles from the proposed construction site, at the Indiana Dunes National Lakeshore. The Natural Heritage Data Center also indicated that there is an historical record (1922) of the Carolina fimbry (*Fimbristylis puberula*), a state endangered plant species along the railroad tracks in Porter County, 0.5 mile west of the Town of Crisman.

5.2 AGENCY SUGGESTED MITIGATION

The following mitigation measure was suggested for the proposed construction project by the various parties consulted in the process of preparing the EA:

- The Indiana DNR suggests that all bare and disturbed areas in the vicinity of the proposed construction be revegetated with a mixture of grasses (except tall fescue) and legumes following completion of construction activities to restore habitat and biological resources.

5.3 SEA RECOMMENDED MITIGATION

SEA recommends that the Board impose the following mitigation measures in any decision approving the construction waiver for the proposed Willow Creek rail line connection in Portage, Indiana.

5.3.1 General Mitigation Measures

Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to the 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.

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 SHPO to initiate the appropriate Section 106 process.

5.3.2 Specific Mitigation Measures

In addition to the general mitigation measures identified above, SEA recommends that the Board impose the following specific mitigation measure in any decision approving the construction of the proposed Willow Creek rail line connection in Portage, Indiana:

Biological Resources

- CSX shall revegetate all bare and disturbed areas in the vicinity of the proposed construction be revegetated with a mixture of grasses (except tall fescue) and legumes following completion of construction activities.

Noise

- If wheel squeal occurs during operation of the connection, CSX shall use rail lubrication to minimize noise levels.

5.4 REQUEST FOR COMMENTS

SEA specifically invites comments on all aspects of this EA, including the scope and adequacy of the recommended mitigation. SEA will consider all comments received in response to the EA in making its final recommendations to the Board. Comments (an original and 10 copies) should be sent to: Vernon A. Williams, Secretary, Surface Transportation Board, 1925 K Street NW, Suite 700, Washington, D.C. 20423. The lower left-hand corner of the envelope should be marked: Attention: Dana White, Environmental Comments, Finance Docket No. 33388 (Sub Nos. 1-7). Questions may also be directed to Ms. White at this address or by telephoning (888) 869-1997.

Date EA Made Available to the Public: **October 7, 1997**
Comment Due Date: **October 27, 1997**

APPENDIX A
CSX/NS CONSTRUCTION WAIVER APPLICATION
PRESS RELEASE FOR STB DECISION 9
STB DECISION 9

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

PETITION FOR WAIVER OF
49 C.F.R. § 1180.4(c)(2)(vi)

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),¹
Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC"),² hereby
petition the Board, pursuant to 49 C.F.R. § 1180.4(f), for waiver of those
provisions of 49 C.F.R. § 1180.4(c)(2)(vi) which might otherwise require that
certain Notices or Petitions for Exemption that CSX and Conrail wish to file
forthwith, for construction of certain connections, be delayed and filed
concurrently with the filing of the Primary Application.

CSX has determined that it is necessary to construct four connections
prior to a decision on the Primary Application. This construction must be
completed and ready to operate immediately in order for CSXT to provide
efficient service over its portions of Conrail and to compete effectively with
Norfolk Southern Railway Company ("NSRC") if the application for joint control

¹ CSXC and CSXT are referred to collectively as "CSX."

² CRI and CRC are referred to collectively as "Conrail."

of Conrail is approved. If the Board ultimately were to grant this Petition and the construction exemptions, CSXT would undertake to complete construction of these connections prior to the Board's decision on the Primary Application. As discussed more fully below, completion of these connections is essential if CSXT is to be able immediately to compete vigorously with NSRC at such time as the Board might grant the Primary Application. Without early authorization to proceed with such construction, CSXT would be severely limited in its ability to serve important customers.

Petitioners realize that such a request is not typical of the waivers routinely sought in major control transactions. For that reason, Applicants have limited the request as much as possible. If the Board agrees to waive the concurrent filing requirements of § 1180.4(c)(2)(vi), Petitioners initially would seek authority only to construct these essential connections. Petitioners would not operate over these connections unless and until the Board authorizes such operations pursuant to the Primary Application. Thus, the decision on operating authorization would depend on the Board's decision on the Primary Application.

If the Board grants this Petition for Waiver, CSX and Conrail will file, in separate dockets, a Notice of Exemption pursuant to 49 C.F.R. § 1150.36 for construction of a connection at Crestline, OH, and Petitions for Exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. §§ 1121.1, 1150.1(a) for the construction of connections at Willow Creek, IN, Greenwich, OH, and Sidney, OH. CSX and Conrail expect to demonstrate that the standards for exemption set forth in 49 U.S.C. § 10502 are satisfied here: regulation of the proposed constructions is not necessary to carry out the national transportation policy or to protect shippers from abuse of market power. CSX would consult with appropriate federal, state and local agencies with respect to any potential

environmental effects from the construction of their connections and would file environmental reports with SEA at the time that the notice and petitions are filed.

If CSXT must wait for approval of the Primary Application before it can begin construction of these four essential connections, its ability to compete effectively with NSRC upon the effectiveness of a Board order approving the Primary Application (the "Control Date") would be severely compromised: neither CSX nor the shipping public would be able to reap the full competitive benefits of the proposed transaction. Specifically, if CSXT could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines that it proposes to acquire from Conrail (including its new "Water Level Route" between New York and Cleveland), the achievement of effective competition between NSRC and CSXT -- one of the fundamental underlying bases for the transaction proposed in the Primary Application -- would be delayed significantly. This delay would adversely affect the shipping public, which would benefit from the anticipated vigorous competition between CSXT and NSRC. Moreover, if CSXT cannot compete effectively with NSRC "out of the starting blocks," this initial competitive imbalance could have a deleterious -- and long term -- effect on CSXT's future operations and its ability to compete effectively with NSRC even when the connections were ultimately built. For example, if only NSRC is able to offer direct service to Chicago and other major midwestern cities, shippers examining their new rail options may turn away from CSXT to NSRC -- or trucks. Customers lost as a result of less competitive service would be hard to win back when the connections are finally ready.

Waiver of the "related application" concurrent filing requirement of 49 C.F.R. § 1180.4(c)(2)(vi) with respect to exemptions for the construction of these connections would not require the Board to prejudge the Primary

Application. While the connections are essential to the prompt and full realization of the benefits of the Primary Application, exemption of their construction from regulation does not require the Board to make any assessment of the merits of the Primary Application itself. CSX is prepared to accept the risk that the Primary Application will not be granted and that CSXT will not benefit from the connections.

I. DESCRIPTION OF THE CONNECTIONS

Maps illustrating the locations of the proposed connections are included as Exhibits A-C. Exhibit A is a depiction of the proposed CSXT/NSRC rail lines in the Northeast. Exhibits B and C depict the location of the Willow Creek, IN, connection and its relationship to Chicago and Gibson Yard. A narrative description of the four proposed connections follows.

A. Crestline

Two main line tracks of Conrail cross at Crestline. Petitioners propose to construct a connection track between those two Conrail main lines in the NW Quadrant. The connection will extend approximately 1,142 feet between approximately Milepost 75.5 on Conrail's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately Milepost 188.8 on Conrail's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.

B. Greenwich

The lines of CSXT and Conrail cross each other at Greenwich, OH. Petitioners propose to construct connection tracks in the NW and SE Quadrants between CSXT's main line and Conrail's main line. The connection in the NW Quadrant will extend approximately 4,600 feet between approximately Milepost BG-193.1 on CSXT's main line between Chicago and Pittsburgh, and

approximately Milepost 54.1 on Conrail's main line from Cleveland to Cincinnati. A portion of this connection in the NW Quadrant will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company (W&LE). The connection in the SE Quadrant will extend approximately 1.044 feet between approximately Milepost BG-192.5 on CSXT's main line and approximately Milepost 54.6 on Conrail's main line.

C. Sidney

CSXT and Conrail lines cross each other at Sidney Junction, OH. Petitioners propose to construct a connection track in the SE Quadrant between CSXT's main line and Conrail's main line. The connection will extend approximately 3.263 feet between approximately Milepost BE-96.5 on CSXT's main line between Cincinnati, OH, and Toledo, OH, and approximately Milepost 163.5 on Conrail's main line between Cleveland, OH, and Indianapolis, IN.

D. Willow Creek

CSXT and Conrail cross each other at Willow Creek, IN. Petitioners propose to construct a connection track in the SE Quadrant between CSXT's main line and Conrail's main line. The connection will extend approximately 2,800 feet between approximately Milepost BI-236.5 on CSXT's main line between Garrett, IN, and Chicago, IL, and approximately Milepost 248.8 on Conrail's main line between Porter, IN, and Gibson Yard, IN (outside Chicago).

II. EARLY CONSTRUCTION OF THESE CONNECTIONS IS NECESSARY TO REALIZE THE PUBLIC BENEFITS OF THE TRANSACTION IN THE EVENT THE BOARD APPROVES THE PRIMARY APPLICATION

An essential feature of the proposed transaction is the creation of two competitive routes between New York and Chicago, and between New York and

other major midwestern cities such as Cincinnati. The proposed transaction would provide both CSXT and NSRC with competitive routes from New York to Chicago and other major midwestern cities through, among other things, the division of operating rights over the "Conrail X"³ between them.

Under the terms of the Letter Agreement of April 8, 1997, between CSX and Norfolk Southern Corporation ("NSC"),⁴ CSXT would acquire the rights to operate over the leg of the Conrail "X" that runs from New York and Boston, through Cleveland, to St. Louis. NSRC would acquire the rights to operate over the leg that runs from Philadelphia to Chicago, and both parties will reach the New York/Northern New Jersey area. While CSXT has acquired the right to operate the Water Level Route to Chicago from New York and Boston as far west as Cleveland, the remainder of that route, running to Chicago, will be operated by NSRC.

The proposed transaction is designed, *inter alia*, to give CSXT and NSRC each competitive routes from New York to Chicago (and through the Chicago gateway to the West). The creation of two competitive rail routes from New York to Chicago is one of the most important competitive public benefits to be created by the division of Conrail. CSXT must find an alternative or alternatives for the "missing part" of the Water Level Route between Cleveland and Chicago. In addition, an efficient service route from Cleveland to Cincinnati (and beyond, to the Memphis gateway) must be developed by connections with existing parts of CSXT's system. The connections that CSXT proposes to

³ The Conrail lines running diagonally from Boston and New York to St. Louis, through Cleveland, form one half of the formation commonly known as the "Conrail X." The other half of the "X" encompasses the Conrail lines from Chicago to the Philadelphia area.

⁴ NSRC and NSC are referred to collectively as "NS."

construct on an expedited basis would facilitate the establishment of such efficient routes between the Northeast and Chicago over the Water Level Route and from New York to Cincinnati.

To reach Chicago, CSXT would route its New York-Chicago trains southwest from Cleveland on the Conrail line running through Greenwich and Crestline (which CSXT will operate under the proposed division). CSXT then would have two alternative routes to reach Chicago. At Greenwich, CSXT's Chicago-bound trains would be able to connect to the existing CSXT line (part of the former B&O line) from Greenwich to Chicago. At Crestline, these Chicago-bound trains would be able to connect to the Conrail line (which CSXT will operate under the proposed division) from Crestline, OH, to Chicago (via Lima, OH, and Fort Wayne, IN).⁵ Neither connection exists today.

Of these two alternatives, the primary route to Chicago would be the former B&O line, which would be accessed at Greenwich, OH. CSX has committed itself to a multimillion dollar program of improvement of the B&O line to Chicago.⁶ Yet, presently at Greenwich there is no connection at the only point where movement on and off the B&O line, coming off or going to the Water Level Route at Cleveland, can take place. Thus, a connection must be constructed.

The line from Crestline through Fort Wayne, IN, will handle less time-sensitive traffic. Again, there is no existing connection at the intersection of the

⁵ NS presently owns this line from Fort Wayne, IN, to Chicago. The Fort Wayne-Chicago line will be the subject of a like-kind exchange by NS with Conrail for another line.

⁶ During the pendency of the Primary Application, CSX intends to make substantial improvements, which are not subject to STB jurisdiction, to various of its lines such as double tracking, the installation of side tracks and the rehabilitation of track.

Conrail northeast to southwest line with its Fort Wayne line at Crestline. A connection must be constructed.

Trains moving to Chicago over the CSXT (former B&O) line would have to switch to the Porter Branch of the Conrail line at Willow Creek, IN, in order to enter the IHB's Gibson Yard in Chicago. Again, there is no connection at Willow Creek. Construction of connections at Greenwich, Crestline, and Willow Creek therefore are essential to permit CSXT's trains to move efficiently between New York and Chicago (and vice versa).

Similarly, to operate trains efficiently between New York and Cincinnati via the Water Level Route to Cleveland, CSXT must be able to run its trains from the existing Conrail line between Cleveland and Sidney, OH, to the CSXT line segment between Sidney and Cincinnati.⁷ Thus, construction of a connection at Sidney is essential to give CSXT the benefit of the competitive route it would acquire, and is necessary to effectuate the competitive purposes of dividing the "Conrail X."

It is critical that CSXT be able to complete construction of the connections at Greenwich, Crestline, Willow Creek, and Sidney before the decision on the Primary Application. Without these connections, CSXT would be unable to provide efficient, competitive service to the public on these important routes until several months after the Control Date.⁸ If CSXT could not

⁷ Cincinnati is important, not only as an originating/terminating area, but also as the location of CSXT's Queensgate Yard.

⁸ The time needed for construction and signal work could delay competitive operations over these important segments of the proposed CSXT rail system for as long as six months after the Board took action on the Primary Application. CSXT needs to begin construction by September 1, 1997, to avoid delay that would result from the interruption of construction due to the onset of winter in northern Ohio.

immediately begin operation over its new competitive routes from New York to Chicago and New York to Cincinnati, the opportunity for shippers to have access to new head-to-head competition -- a primary benefit of the proposed transaction -- would be delayed.

CSXT's initial inability to link its lines to create competitive routes from the New York to Chicago-Cincinnati markets would place CSXT at a severe competitive disadvantage if NSRC is able to run on its lines from the start. This initial competitive disadvantage could have continuing effects well into the future, diminishing CSXT's strength as a competitor and detracting from the public benefits of the CSXT/NSRC competition anticipated by the Primary Application.

III. APPROVAL OF THIS WAIVER WOULD NOT AFFECT BOARD CONSIDERATION OF THE PRIMARY APPLICATION OR OTHER RELATED APPLICATIONS

A waiver of 49 C.F.R. § 1180.4(c)(2)(vi) would not compromise the Board's ability to consider independently the merits of the Primary Application. First, the waiver simply would permit Conrail and CSX to seek exemptions for construction of the connections. Any grant of authority for CSXT to operate over the connections with Conrail Lines would be deferred until the Board's ruling on the Primary Application.

Second, CSX is willing to assume the financial risks associated with constructing these connections without any assurances that operating authority would be granted. If the Board does not approve the Primary Application, it need not approve operations over these connections; the Board also could entertain notices of exemption or other appropriate petitions to permit operations by the interested railroad or railroads over any of the four connections that would provide public benefits independent of the proposed transaction.

CSX's express acceptance of the financial risks attendant to constructing these connections prior to Board action on the Primary Application is intended to reassure the Board and the parties to Docket No. 33388 that CSX neither requests nor expects the Board to prejudge the Primary Application. Indeed, the costs and scope of these connections is quite small in comparison to the scope of the stock acquisition, construction and other expenditures associated with the transaction proposed in the Primary Application.

In the event that the Board rejects the Primary Application, the connections would remain the property of the railroad or railroads on which they are located. Some or all of the connections might later be determined to provide benefits to the national rail system independent of the proposed transaction. Or, the track materials could be removed and reused if needed elsewhere.

The Board has recognized, in other contexts, that conditionally approving construction projects before the Board completes its analysis of all issues related to those projects does not constitute prejudgment of any unresolved issues. For example, the Board has conditionally approved the construction of connections before it completed its environmental review, explaining that "[g]ranteeing the requested conditional exemption [would] not diminish [its] capacity to consider environmental matters when [it] issue[d] a final decision addressing environmental issues and making the exemption effective at that time." Hastings Indus. Link R.R. - Constr. and Operation Exemption - Hastings, NE, F.D. No. 32984, 1996 WL 706769 *2 (I.C.C.) (decided Dec. 2, 1996); see also Jackson County Port Auth. - Constr. Exemption - Pascaoula, MS, F.D. No. 31536, 1990 WL 287815 *2 (I.C.C.) (decided Aug. 6, 1990).

Permitting Conrail and CSX to file the requisite notice and petitions for exemptions for construction of the connections described herein prior to the filing

of the Primary Application would not affect the Board's ability to decide the Primary Application independently on its merits.

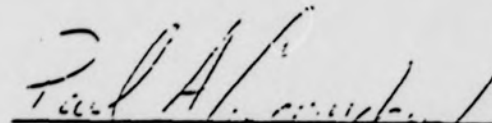
IV. NO ISSUE OF PREMATURE CONTROL IS PRESENTED

The construction of these connections in whole or in part on Conrail property would not involve any unauthorized or premature exercise of control over Conrail by CSX. The constructions would take place only with Conrail's consent, given by its present independent management, and on terms overwhelmingly favorable to Conrail. Construction would be entirely at CSX's expense. Steps would be taken to assure that there is no adverse impact on Conrail's train movements. Conrail would obtain title to the improvements made on its property. Appropriate indemnification of Conrail would be provided. If the Board does not approve the control transaction, Conrail would not be any the worse for having had new construction work done on its property, and may be benefited by it; it would own the constructed connections and, if it wishes, could seek authority from the Board to commence operations using them.

CONCLUSION

CSX and Conrail therefore request that the Board grant this Petition for Waiver of § 1180.4(c)(iv), so that the proposed Notice of Exemption and Petitions for Exemptions may be filed and acted upon separately from the

Primary Application. Further, to facilitate the environmental review process and achieve the benefits described herein in a timely manner, CSX and Conrail request that the Board act expeditiously on this petition.



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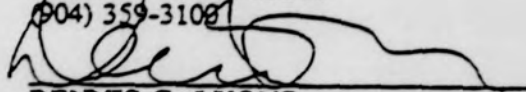
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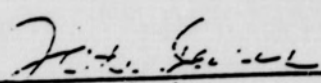
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May 2, 1997

CERTIFICATE OF SERVICE

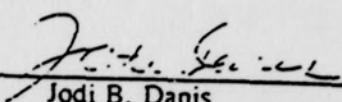
I, Jodi B. Danis, certify that on May 2, 1997, I have caused to be served a true and correct copy of the foregoing CSX-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means, as listed on the attached Service list.



Jodi B. Danis

CERTIFICATE OF SERVICE

I, Jodi B. Danis, certify that on May 2, 1997, I have caused to be served a true and correct copy of the foregoing CSX-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means, as listed on the attached Service list.



Jodi B. Danis



Surface Transportation Board
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NEWS

FOR RELEASE:
Wednesday, July 23, 1997
No. 97-58

Contact: Dennis Watson
(202) 565-1596
TDD (202) 565-1695

PUBLIC & MEDIA ADVISORY:

SURFACE TRANSPORTATION BOARD SEEKS COMMENT IN 6 CONSTRUCTION PROJECTS RELATED TO PROPOSED "CSX-NS-CONRAIL" RAILROAD CONTROL TRANSACTION

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued notices inviting public comment on non-environmental matters in six construction projects¹ related to the proposed "CSX-NS-Conrail" primary

¹Notice of the following exemption proceedings was published on July 23, 1997: CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN, STB Finance Docket No. 33388 (Sub-No. 2); CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH, STB Finance Docket No. 33388 (Sub-No. 3); CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH, STB Finance Docket No. 33388 (Sub-No. 4); 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. 5); Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Alexandria, IN, STB Finance Docket No. 33388 (Sub-No. 6); and Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track

--MORE--

railroad control transaction submitted to the Board in the case entitled *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*, STB Finance Docket No. 33388 (CSX-NS-Conrail) on June 23, 1997, by the CSX Corporation and CSX Transportation, Inc. (CSXT);² the Norfolk Southern Corporation and the Norfolk Southern Railway Company;³ and Conrail Inc. and the Consolidated Rail Corporation⁴ (collectively referred to as "applicants"). The railroad control application seeks Board approval for the acquisition by CSX and NS of control of Conrail and the division of Conrail's assets by and between CSX and NS.

In Decision No. 9 in *CSX-NS-Conrail*, the Board granted requests, with respect to four CSX construction projects and three NS construction projects, for waivers of the Board's otherwise applicable railroad merger rules. The waivers would allow consideration of CSX and NS's requests to permit them to begin physical construction, with the attendant risk that the Board may deny the primary control transaction, may approve but apply conditions to it, or may approve but deny authority for operations over such connection tracks. Such construction would follow completion of the Board's environmental review of the projects, and a Board decision authorizing the specific projects, prior to the time the Board issues its decision on the primary application.

In accordance with Section 10502 of Title 49, United States Code (49 U.S.C. 10502), CSX and NS have filed a total of six petitions (CSX and NS each filed three) for exemption from the

with *Consolidated Rail Corporation at Bucyrus, OH*, STB Finance Docket No. 33388 (Sub-No. 7).

²Collectively referred to as "CSX".

³Collectively referred to as "NS".

⁴Collectively referred to as "Conrail".

Board's prior-approval provisions of 49 U.S.C. 10901 to construct and operate connection tracks at Willow Creek and Alexandria, Indiana; Greenwich, Sidney Junction, and Bucyrus, Ohio; and Sidney, Illinois.⁵ CSX and NS contend that exemptions of the proposed construction projects, and the railroads' respective operations over the proposed connection tracks, would be consistent with the national rail transportation policy. The applicants stated that the exemptions would promote effective competition among rail carriers and with other transportation modes, and meet the needs of the shipping public.⁶

The railroads' environmental reports covering the proposed connection tracks are contained in the Environmental Reports filed with the Board in STB Finance Docket No. 33388. The applicants also must submit, no later than **September 5, 1997**, preliminary draft environmental assessments (PDEAs) for each proposed construction project. Each PDEA must comply with all of the requirements for environmental reports contained in the Board's environmental rules at Section 1105.7 of Title 49, Code of Federal Regulations (49 CFR 1105.7). Additionally, the PDEAs must be based on consultations with the Board's 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. If a PDEA is found to be insufficient, the Board may require additional environmental information or it may reject the PDEA.

As part of the Board's environmental review process, SEA will independently verify the information contained in each PDEA; conduct further independent analysis, as necessary; and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an Environmental Assessment (EA), which will

⁵CSX also filed a notice of exemption in *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Crestline, OH*, STB Finance Docket No. 33388 (Sub-No. 1), which was issued to the public and published in the *Federal Register* on July 11, 1997 (62 FR 37331). Petitions for the Board's reconsideration with respect to physical construction of the Crestline connection track, as proposed in STB Finance Docket No. 33388 (Sub-No. 1) embraced docket, and/or operation over the track by CSXT, are due by **July 31, 1997**.

⁶As indicated in the *Federal Register* notices published on July 23, 1997, non-environmental comments relative to the physical construction of connection tracks at Willow Creek and Alexandria, IN; Greenwich, Sidney Junction, and Bucyrus, OH; and at Sidney, IL, as proposed in STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6 and 7) embraced dockets, respectively, and/or operation over such track by the applicants, are due by **August 22, 1997**.

be issued to the public for its review and comment. The public will have 20 days to comment on the EA, including any proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation. Thus, in deciding whether to grant CSX and NS's exemption requests, the Board will consider the entire environmental record, including all public comments; the EA; and the Post EA. Should the Board determine that a construction project could potentially cause, or contribute to, significant environmental impacts, then that project would be incorporated into the Environmental Impact Statement for the proposed control transaction in STB Finance Docket No. 33388.

As in two prior decisions in *CSX-NS-Conrail*,⁷ the Board again emphasized that its consideration of these construction projects does not, and will not in any way, constitute approval of, or even indicate any consideration on the part of the Board relative to approval of, the primary control application in STB Finance Docket No. 33388. Rather, the applicants have willingly assumed the risk that the Board may deny the primary control application, or approve it subject to conditions unacceptable to the applicants, or approve the primary control application but deny an applicant's request to operate over any or all of the seven connections.

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⁷Decision No. 5, issued to the public on May 13, 1997, at page 3; and Decision No. 9, issued to the public on June 12, 1997, at page 6.

SURFACE TRANSPORTATION BOARD

DECISION

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

Decision No. 9¹

Decided: June 11, 1997

On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)² filed their notice of intent to file an application seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of Conrail's assets by and between CSX and NS. In Decision No. 5, served and published in the *Federal Register* on May 13, 1997, at 62 FR 26352, we invited comments from interested persons respecting the CSX-1 and NS-1 petitions filed May 2, 1997, by applicants CSX

¹ This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Crestline, OH*; STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Willow Creek, IN*; STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Greenwich, OH*; STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Sidney Junction, OH*; STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Colson/Bucyrus, OH*; STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Alexandria, IN*, and STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk Southern Railway Company--Construction--Sidney, IL*.

² CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

and NS, wherein applicants seek, for seven construction projects, waivers of our otherwise applicable "everything goes together" rule.³ The requested waivers, if granted, would allow CSX and NS to begin construction on the seven projects following the completion of our environmental review of the constructions, and our issuance of further decisions exempting or approving construction, but in advance of a final ruling on the primary application.

Seven construction projects, more fully detailed below, are the focus of the two petitions. Applicants contend that it is important that these projects (all of which involve relatively short connections between two rail carriers and which have a total length of fewer than 4 miles) be constructed prior to a decision on the primary application. Applicants claim that these connections must be in place prior to a decision on the primary application so that, if and when we approve the primary application, CSXT (with respect to four of the connections) and NSR (with respect to the other three) will be immediately able to provide efficient service in competition with each other. Applicants contend that, without early authorization to construct these connections, both CSXT and NSR would be severely limited in their ability to serve important (though different) customers. At the same time, applicants recognize that there can be no construction until we complete our environmental review of each of these construction projects and we issue a decision approving the construction, or an exemption from our otherwise applicable construction approval criteria, and impose whatever environmental conditions that we find appropriate.

The CSX Connections. If we grant its waiver request, CSXT will file, in four separate dockets,⁴ a notice of exemption pursuant to 49 CFR 1150.36 for construction of a connection at Crestline, OH, and petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Greenwich and Sidney, OH, and Willow Creek, IN. CSXT indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with our Section of Environmental Analysis (SEA) at the time that the notice and petitions are filed. The connections at issue are as follows:

- (1) Two main line CRC tracks cross at Crestline, and CSXT proposes to construct in the northwest quadrant a connection track between those two CRC main lines.

³ Our regulations provide that applicants shall file, concurrently with their 49 U.S.C. 11323-25 primary application, all "directly related applications, e.g., those seeking authority to construct or abandon rail lines, * * *," 49 CFR 1180.4(c)(2)(vi). Our regulations also provide, however, that, for good cause shown, we can waive a portion, but not all, of the requirements otherwise imposed by our regulations. 49 CFR 1180.4(f)(1).

⁴ These dockets will be sub-dockets 1, 2, 3, and 4 under STB Finance Docket No. 33388.

STB FD 33388 (Sub 2) 10-7-97 K 28330 2/2

The connection would extend approximately 1,507 feet⁵ between approximately MP 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately MP 188.8 on CRC's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.

- (2) CSXT and CRC cross each other at Willow Creek, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT main line between Garrett, IN, and Chicago, IL, and approximately MP 248.8 on the CRC main line between Porter, IN, and Gibson Yard, IN (outside Chicago).
- (3) The lines of CSXT and CRC cross each other at Greenwich, and CSXT proposes to construct connection tracks in the northwest and southeast quadrants between the CSXT main line and the CRC main line. The connection in the northwest quadrant would extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT main line between Chicago and Pittsburgh, and approximately MP 54.1 on the CRC main line between Cleveland and Cincinnati. A portion of this connection in the northwest quadrant would be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant would extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT main line and approximately MP 54.6 on the CRC main line.
- (4) CSXT and CRC lines cross each other at Sidney Junction, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT main line between Cincinnati, OH, and Toledo, OH, and approximately MP 163.5 on the CRC main line between Cleveland, OH, and Indianapolis, IN.

CSXT argues that, if it cannot begin the early construction of these four connections, its ability to compete with NSR will be severely compromised. CSXT claims that, if it could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines that it proposes to acquire from CRC, the achievement of effective competition between CSXT and NSR would be delayed significantly. CSXT adds that, if it cannot compete effectively with NSR "out of the starting blocks," this initial competitive imbalance could have a deleterious and

⁵ CSXT's correction, filed May 21, 1997, modified the length of this connection from 1,142 feet at MP 75.5 to 1,507 feet at MP 75.4.

long-term effect on CSXT's future operations and its ability to compete effectively with NSR, even when the connections are ultimately built. CSXT claims that, if its waiver was not granted, the time needed for construction and signal work could delay competitive operations for as long as 6 months after we take final action on the primary application.

The NS Connections. If we grant its waiver request, NSR will file, in three separate dockets,⁶ petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Alexandria, IN, Colson/Bucyrus, OH,⁷ and Sidney, IL. NSR indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with SEA at the time that the petitions are filed. The connections at issue are as follows:

- (1) The Alexandria connection would be in the northeast quadrant between former CRC Marion district lines to be operated by NSR and NSR's existing Frankfort district line. The new connection would allow traffic flowing over the Cincinnati gateway to be routed via a CRC line to be acquired by NSR to CRC's Elkhart Yard, a major CRC classification yard for carload traffic. This handling would permit such traffic to bypass the congested Chicago gateway. NSR estimates that the Alexandria connection would take approximately 9.5 months to construct.
- (2) The Colson/Bucyrus connection would be in the southeast quadrant between NSR's existing Sandusky district line and the former CRC Ft. Wayne line. This new connection would permit NSR to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former CRC northeastern points to be served by NSR. NSR estimates that the Colson/Bucyrus connection would take approximately 10.5 months to construct.
- (3) The Sidney connection would be between NSR and Union Pacific Railroad Company (UPRR) lines. NSR believes that a connection would be required in the southwest quadrant of the existing NSR/UPRR crossing to permit efficient handling of traffic flows between UPRR points in the Gulf Coast/Southwest and NSR points in the Midwest and Northeast, particularly customers on CRC properties to be served by NSR. NSR estimates that the Sidney connection would take approximately 10 months to construct.

⁶ These dockets would be sub-dockets 5, 6, and 7 under STB Finance Docket No. 33388.

⁷ Although NSR in its petition describes this connection as Colson/Bucyrus, the correct designation is Colson/Bucyrus. See diagram attached to NS-1.

Comments. Four comments opposing applicants' waiver requests were filed. Steel Dynamics, Inc. (SDI) filed comments (SDI-3) on May 6, 1997; The Allied Rail Unions (ARU)⁸ filed comments (ARU-3) on May 15, 1997; American Trucking Associations, Inc. (ATA) filed comments on May 16, 1997; and The Council on Environmental Quality, Executive Office of the President (CEQ) late-filed comments on June 4, 1997.⁹ On June 4, 1997, CSX filed a reply (CSX-3) to the comments of ARU and ATA; and NS filed a reply (NS-3) to the comments of SDI, ARU, and ATA. On June 6, 1997, CSX and NS filed a joint reply (CSX/NS-16) to the comments of CEQ.

Steel Dynamics, Inc. SDI asks us to deny NSR's waiver petition and to require NSR to file any construction application or exemption with its primary application.¹⁰ SDI believes that NSR's three proposed construction connections are intertwined with the issues involved in the primary application. Creating separate dockets for these connections, according to SDI, will not be an efficient use of the Board's resources nor permit an adequate review of the issues involved in the Midwest region. SDI contends that the proposed transfer of NSR's Fort Wayne line to CRC, followed by CRC's transfer of the line, under a long-term operating agreement, to CSXT, *see* Decision No. 4, slip op. at 6-7, is intended to disguise the asserted fact that the acquisition of Conrail will create duplicate Chicago-bound lines only about 25 miles apart, running through Waterloo and Fort Wayne, IN. SDI maintains that our consideration of issues as complex as NSR's proposed connections and the possible divestiture of duplicate lines should not precede our review of the primary application.¹¹

⁸ ARU's membership includes American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and Sheet Metal Workers' International Association.

⁹ As indicated in Decision No. 5, the comments filed by CEQ were due no later than June 2, 1997. We have accepted and considered CEQ's comments, and have permitted applicants to reply to the comments by June 6, 1997.

¹⁰ SDI did not address the merits of CSXT's waiver petition.

¹¹ SDI also asserts that NS has not sought waiver of our requirement that waiver petitions be filed at least 45 days prior to the filing of the primary application. *See* 49 CFR 1180.4(f)(2). SDI therefore asks us to clarify that NS may not file its application before June 16, 1997, regardless of whether NS-1 is granted. We note that, in accordance with the procedural schedule
(continued...)

The Allied Rail Unions. ARU opposes the CSX-1 and NS-1 waiver petitions as inconsistent with our review of the primary application. ARU argues that, by requesting the waivers, CSXT and NSR seek leverage for our ultimate approval of the application, while allegedly evading public scrutiny and comment on the transaction as a whole. ARU maintains that the construction projects are directly related to, and are dependent on, our approval of the primary transaction, and that the construction projects should be authorized only if the transaction itself is authorized. ARU argues that our merger regulations already confer a significant advantage on the applicants because they may immediately file for related abandonments and line transfers, even though they do not currently own the affected lines. ARU avers that, as a consequence, CSXT and NSR have no basis to seek additional advantage through their waiver requests. ARU contends that applicants offered no evidence to support their "competitive disadvantage" or "delay of public benefits" arguments. According to the unions, the applicants' arguments on competitive disadvantage are inherently inconsistent because both carriers assert that they will be disadvantaged unless their respective petitions are granted. Accordingly, ARU believes that a reasonable competitive balance can be maintained by denying both waiver petitions.

American Trucking Associations, Inc. ATA asks us to reserve judgment on the seven construction projects until the primary application is filed and reviewed by the parties. ATA contends that our approval of the waivers, despite any disclaimer to the contrary, could be interpreted by the public as tacit support for the primary application and inadvertently stifle full debate on the relevant issues. According to ATA, early consideration of the construction projects will unreasonably burden the parties and the Board's staff by requiring incremental participation in the transaction approval process. ATA also maintains that the competitive impact of the seven construction projects could not be adequately determined in the absence of consideration of the primary application.

The Council on Environmental Quality, Executive Office of the President. CEQ believes that the construction and operation aspects of applicants' track connection projects should be assessed at the same time so that the environmental impacts of operating these rail lines can be properly evaluated. CEQ cites its regulations at 40 CFR 1508.25(a)(1) that, when actions are "closely related," they "should be discussed in the same impact statement." CEQ also maintains that bifurcation of the related decisions appear to conflict with 40 CFR 1506.1(c)(3), which prohibits agencies from taking actions that will prejudice the ultimate decision in a programmatic

¹¹(...continued)

adopted in Decision No. 6 (served and published on May 30, 1997) applicants may not file their primary application until 30 days after the filing of applicants' Preliminary Environmental Report, which was filed on May 16, 1997. The primary application, therefore, may be filed only on or after June 16, 1997. SDI's request in this regard is moot.

environmental impact statement (EIS). In this regard, CEQ contends that, even though the proposed merger does not involve a programmatic EIS, if we grant the proposed waivers, the likelihood that we will subsequently deny the merger tends to decrease.

According to CEQ, courts have recognized the need to prepare a comprehensive EIS when actions are functionally or economically related in order to prevent projects from being improperly segmented. CEQ argues that the fact that applicants are willing to risk our eventual disapproval of the merger does not remove the interdependence of these individual decisions.

DISCUSSION AND CONCLUSIONS

Applicants' waiver petitions will be granted. It is understandable that applicants want to be prepared to engage in effective, vigorous competition immediately following consummation of the control authorization that they intend to seek in the primary application.¹² We are not inclined to prevent applicants from beginning the construction process simply to protect them from the attendant risks. We emphasize what applicants acknowledge--that any resources they expend in the construction of these connections may prove to be of little benefit to them if we 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

¹² In this regard, we note that ARU is simply wrong in its assertion that a reasonable competitive balance can be maintained by denying both waiver petitions, so that neither carrier would face unanswered competition from the other. In their original petitions requesting waiver, both CSX and NS separately explained that these connections would permit each carrier to be able, as soon as possible following any Board approval of the primary application, to link its expanded system and compete with the other carrier in areas in which the other carrier's infrastructure would already be in place. As CSX has further explained (CSX-3 at 8):

CSX and NS have requested permission to construct connections that largely address different markets. Three of CSX's connections are intended to allow it to provide competitive services on routes linking Chicago and New York and the fourth on Northeast-Southeast routes served via Cincinnati. These are routes that NS will be able to serve immediately upon any Board approval of the Acquisition. NS's proposed connections, on the other hand, are focused on allowing it to compete with CSX in serving southwestern markets and to make use of an important Chicago-area yard used for interchanging traffic with western carriers. Denying the waiver petitions will only assure that inequality in competition, and the potential long term problems created by such inequality, will occur.

connections. Nonetheless, given applicants' willingness to assume those risks, we will grant the waivers they seek in CSX-1 and NS-1.

ARU maintains in its comments that applicants have no basis for seeking the waivers. Our rules, however, specifically provide for such requests, and we have entertained numerous waiver and clarification petitions in previous rail merger cases, as well as this one. *See, e.g.* Decision No. 7 (STB served May 30, 1997). ATA and SDI argue that the competitive effect of the involved connections should be considered as part of the primary application. We agree. Applicants' operations over these connections are interdependent with the primary application, and we will consider the competitive impact of the projects and the environmental effects of those operations along with our consideration of the primary application. Without authority to operate over the seven track connections for which the waivers are sought, applicants' construction projects alone will have no effect on competition. We emphasize that the waiver petitions that we are granting here are restricted to the construction of, and not the operation over, the seven connection projects described above.

The commenters complain that granting the waivers constitutes a prejudicial "rush to judgment" with respect to the primary application. However, as we emphasized in our May 13, 1997 request for comments, our grant of these waivers will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application. We also found it appropriate to note that, if we granted the waivers sought in the CSX-1 and NS-1 petitions, applicants would not be allowed to argue that, because we had granted the waivers, we should approve the primary application. We affirm those statements here.

Environmental considerations. CEQ has advised us not to consider the proposed construction projects separately from the operations that will be conducted over them. CEQ's recommendation is based upon its regulations at 40 CFR 1508.25(a)(1)(i)-(iii), and upon various court decisions, indicating that "when a given project effectively commits decisionmakers to a future course of action [] this form of linkage argue[s] strongly for joint environmental evaluation." *Coalition of Sensible Transp. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). We believe, however, that we have the authority to consider the proposed construction projects separately, and agree with the applicants that permitting the construction proceedings to go forward now would be in the public interest and would not foreclose our ability to take the requisite hard look at all potential environmental concerns.

After reviewing the matter, we do concur with CEQ that regulatory and environmental issues concerning both the construction and operating aspects of these seven small construction

projects should be viewed together.¹³ Thus, in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project.¹⁴ The operational implications of the merger as a whole, including operations over the 4 or so miles embraced in the seven construction projects, will be examined in the context of the EIS that we are preparing for the overall merger. That EIS may result in further environmental mitigating conditions. No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

We believe that CEQ may have misconstrued the merger project as consisting of just two roughly equivalent elements: construction and operation. In fact, these seven construction projects, including the operations over them, are but a tiny facet of an over \$10 billion merger project. To put matters in perspective, the construction projects together amount to fewer than 4 miles of connecting track for a 44,000-mile rail system covering the eastern half of the United States.¹⁵ Our approval of the construction exemptions will in no way predetermine the outcome of our merger decision. As was the case in *North Carolina v. City of Virginia Beach*, 951 F.2d 596, 602 (4th Cir. 1991) (*North Carolina*), segmentation of one phase of a larger project prior to completion of environmental review will not have "direct and substantial probability of influencing [the agency's] decision" on the overall project. *Accord, South Carolina ex. rel. Campbell v. O'Leary*, 64 F.3d 892, 898-99 (4th Cir. 1995). Approval of the constructions will not make approval of the merger any more likely, and we have made that clear to the railroads in advance

¹³ The applicable statute for both construction and operation of new rail lines is 49 U.S.C. 10901, which requires us to permit such actions unless they are shown to be inconsistent with the public convenience and necessity.

¹⁴ We will have the information we need to do this because applicants' environmental report that will accompany the application will address the environmental impacts of both the construction and proposed operation of these projects. In addition, as discussed below, applicants will be required to file a detailed preliminary draft environmental assessment (PDEA) for each of the seven projects.

¹⁵ Applicants point out that much of the construction on these short segments will take place within existing rights-of-way, suggesting that they will be unlikely to have significant environmental impacts. *Compare Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985) (*Thomas*) (where the Forest Service proposed to construct a road through a pristine wilderness). Applicants also suggest that there are no alternative routings for these projects. That issue, however, has not yet been determined; it will be examined in the environmental assessments (EAs) or other environmental documents that will be prepared for each of these construction projects.

Compare Thomas (where the Forest Service committed substantial *public* funds to a road project that could not be recovered absent its approval of related logging projects) *with North Carolina*, 951 F.2d at 602 (where, as here, the facts reflect that the city proposing the project accepted the risk that funds expended or constructed could be lost if the overall project were not approved).

Nor will separate consideration and approval of these small construction projects in any way undermine our ability to give meaningful and thorough consideration to all environmental issues surrounding the larger merger proposal. We have not, by segmenting these construction projects, broken down the environmental impacts of the merger into insignificant pieces escaping environmental review. *See Swain v. Brinegar*, 542 F.2d 364 (7th Cir. 1976). Indeed, we are preparing an EIS for the overall merger, and we will undertake appropriate environmental documentation for each of the seven individual construction projects. Our approach is appropriate because the environmental impacts of these constructions tend to be localized, whereas the impacts of the merger will affect a much larger area (quite likely the Eastern United States).

In sum, separate consideration of the seven construction projects and their environmental impacts should not be precluded by 40 CFR 1508.25 because: (1) approval of the construction projects will not automatically trigger approval of the merger; moreover, we have already determined to do an EIS for the merger and separate approval of these construction projects will in no way affect that decision; and (2) these appear to be "garden-variety connection projects" that will proceed at the railroads' financial risk, independent of the much larger merger proposal.

Having decided to grant the petitions for waiver, we will now set out some details of how we plan to proceed. In order to fulfill our responsibilities under the National Environmental Policy Act (NEPA) and related environmental laws, we will require applicants to submit certain information on the environmental effects of the construction and operation of the seven proposed connections. As noted, the applicants will file an environmental report with the primary application that will address all of the construction projects associated with the proposed merger, including the seven connections discussed in this decision.

In addition, we will require that applicants provide a specific PDEA for each individual construction project covered by this decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must 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. The information in the PDEA should be organized as follows: Executive Summary; Description of Each Construction Project Including Proposed Operations; Purpose and Need for Agency Action; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses. If a PDEA is insufficient,

we may require additional environmental information or reject the document. We advise the applicants to consult with SEA as soon as possible concerning the preparation and content of each PDEA.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate mitigation. In making our decision, we will consider the entire environmental record, including all public comments, the EAs, and the Post EAs.

Should we determine that any of the construction projects could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed merger and will not be separately considered. In order to provide SEA with adequate time to incorporate the proposed connections into the draft EIS, if warranted, applicants must file the PDEAs no later than Day F+75 under the procedural schedule established in Decision No. 6.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The CSX-1 and NS-1 petitions for waiver are granted.
2. NSR and CSXT must serve copies of this decision on the Council on Environmental Quality, the Environmental Protection Agency's Office of Federal Activities, and the Federal Railway Administration, and certify that they have done so within 5 days from the date of service of this decision.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX B

APPENDIX B
AGENCIES AND OTHER PARTIES CONSULTED
AGENCY CORRESPONDENCE

Federal Agencies Consulted:

Bureau of Indian Affairs—Eastern Area Office, Fairfax, Virginia
Council on Environmental Quality, Washington, D.C.
Federal Highway Administration, Washington, D.C.
Federal Railroad Administration, Washington, D.C.
National Forest Service—Eastern Region, Milwaukee, Wisconsin
National Geodetic Survey, Silver Spring, Maryland
National Park Service, Washington, D.C.
National Park Service—Great Plains Office, Omaha, Nebraska
U.S. Army Corps of Engineers—Detroit District, Detroit, Michigan
U.S. Department of Agriculture, Natural Resources Conservation Service—Indiana State
Conservationist, Indianapolis, Indiana
U.S. Department of the Interior, Washington, D.C.
U.S. Environmental Protection Agency—Office of Federal Activities, Washington, D.C.
U.S. Environmental Protection Agency—Region 5, Chicago, Illinois
U.S. Fish and Wildlife Service—Region 3, Fort Snelling, Minnesota
U.S. Fish and Wildlife Service—Ecological Services Field Office, Bloomington, Indiana

State Agencies Consulted:

Indiana Office of Management and Budget—State Clearinghouse, Indianapolis, Indiana
Indiana Department of Natural Resources—Division Historic Preservation and Archaeology,
Indianapolis, Indiana
Indiana Department of Environmental Management, Indianapolis, Indiana
Indiana Department of Natural Resources, Indianapolis, Indiana

Local Agencies Consulted:

City of Portage, Portage, Indiana
Porter County Board of Commissioners, Valparaiso, Indiana
Porter County Planning Commission, Valparaiso, Indiana



DEPARTMENT OF THE ARMY

DETROIT DISTRICT, CORPS OF ENGINEERS

BOX 1027

DETROIT, MICHIGAN 48231-1027

June 16, 1997

IN REPLY REFER TO

Construction-Operations Division
Regulatory Branch
File No. 97-164-015-0E

Gary S. Cipriano
Dames and Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, Illinois 60008

Dear Mr. Cipriano:

This is in response to your letter dated May 22, 1997 concerning the proposed construction by CSX Corporation to connect two rail lines in Porter County, Willow Creek, Indiana.

In isolated wetlands, as in all waters of the United States, any discharge of dredged spoil and/or fill material must be authorized by the Department of the Army. The authority of the Corps of Engineers to regulate the discharge of dredged and/or fill material is contained in Section 404 of the Clean Water Act and regulations promulgated pursuant to that Act. Please be advised that filling and grading work, mechanized landclearing, ditching or other excavation activity, and piling installation constitute or otherwise involve discharges of dredged and/or fill material under the Corps' regulatory authority.

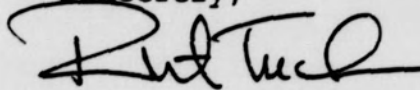
The National Wetland Inventory (NWI) map indicates that there are wetlands adjacent to your proposed project site. Therefore, this letter is written to officially advise you that the placement of fill into wetland areas will require prior authorization from this office. If your proposed project is conducted without a discharge of dredged/excavated or fill material within wetlands, then a Federal permit is not required. This jurisdiction determination is valid for a period of five (5) years from the date of this letter unless new information warrants revision of the determination before the expiration date.

To better explain the Corp's permit program, an application and informational brochures are enclosed. If the placement of fill material into wetlands is anticipated, please complete and return the enclosed permit application. Plan view and cross-sectional view drawings, in 8 1/2" x 11" format, should accompany the application. Drawings and the application should

accompany the application. Drawings and the application should include a description of all quantities, dimensions, and nature of material to be placed and soil to be moved within wetland areas.

Thank you for giving us the opportunity to review this proposed activity. Should you have any questions, please contact Kristi DeFoe, Project Manager, at the above address or telephone (313) 226-7712. Please refer to File Number: 97-164-015-0E.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Tucker", with a stylized, cursive script.

Robert Tucker
Chief, Enforcement Section
Regulatory Branch

Enclosures



United States
Department of
Agriculture

January 14, 1997

Natural
Resources
Conservation
Service

6013 Lakeside Blvd.
Indianapolis, IN
46278-2933
(317) 290-3200
FAX 290-3225

Carole W. Peter
Environmental Scientist
Dames & Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, Illinois 60008

Dear Mrs. Peter:

The construction of the railroad connection in Haley, Indiana in Vigo County and the railroad connection in Willow Creek, Indiana in Porter County are proposed in previously developed areas and will not impact resources within our area of concern.

The construction of the railroad connection at the Milford Junction in Kosciusko County would adversely impact prime farmland. The soil types of concern are Homer sandy loam and Bronson sandy loam. Bronson sandy loam is prime farmland and Homer sandy loam is prime farmland, if drained. To comply with the Farmland Protection Act, please complete Parts I and III of Form AD-1006 and return it to our office.

If you need additional information, contact Phil Bousman at (317) 290-3200 extension 385.

Sincerely,

ROBERT L. EDDLEMAN
State Conservationist

enclosure



IN REPLY REFER TO

United States Department of the Interior

FISH AND WILDLIFE SERVICE
BLOOMINGTON FIELD OFFICE (ES)
620 South Walker Street
Bloomington, Indiana 47403-2121
(812) 334-4261 FAX 334-4273

August 8, 1997

Ms. Linda Killion
Dames and Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, Illinois 60008

Dear Ms. Killion:

This responds to your letter of July 29, 1997 requesting endangered species consultation with the U.S. Fish and Wildlife Service (FWS) for a railroad construction project in Porter County, Indiana.

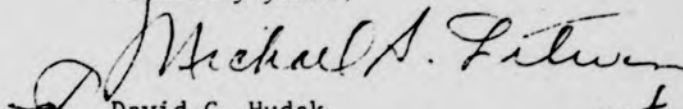
These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U. S. Fish and Wildlife Service's Mitigation Policy.

The proposed project is associated with the acquisition of Conrail by CSX, and consists of a new 2800-foot connection between 2 existing railroad lines near the City of Portage. After discussion with our Northern Indiana Suboffice, we have concluded that the proposed construction is not likely to adversely affect the federally endangered Karner blue butterfly (Lycaeides melissa samuelis).

This precludes the need for further consultation on this aspect of the acquisition project as required under Section 7 of the Endangered Species Act of 1973, as amended. If, however, new information on endangered species at the site becomes available or if project plans are changed significantly, please contact our office for further consultation.

For further discussion, please contact Mike Litwin at (812) 334-4261 ext. 205.

Sincerely yours,


David C. Hudak
Supervisor *acting*

cc: Steve Jose, Indiana Division of Fish and Wildlife, Indianapolis, IN
USFWS, Warsaw, IN



INDIANA DEPARTMENT OF NATURAL RESOURCES

LARRY D. MACKLIN, DIRECTOR

Executive Office
402 W. Washington Street, Rm. W-256
Indianapolis, IN 46204-2748

March 14, 1997

Ms. Carole W. Peter, Environmental Scientist
Dames & Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, IL 60008

Re: DNR #6205 - Proposed consolidation of CSX and Conrail Railroads: Haley, Vigo County; Milford Junction, Kosciusko County; and Willow Creek, Porter County

Dear Ms. Peter:

Per your request in accordance with the National Environmental Policy Act of 1969, the Indiana Department of Natural Resources has reviewed the above referenced project and offers the following comments for your information.

This proposal will not require the formal approval of our agency pursuant to the Flood Control Act (IC 14-28-1).

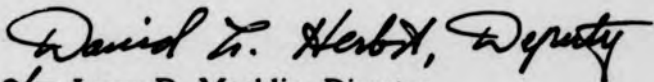
The Natural Heritage Program's data have been checked and, to date, no plant or animal species listed as state or federally threatened, endangered, or rare have been reported to occur in the project vicinity.

The project site at Willow Creek occurs adjacent to Portage Woodland Park which has been acquired, developed, or both with federal Land and Water Conservation Act funds. A Section 6(f) conversion may be required if the project negatively impacts the outdoor recreation capacity of the park. Please contact the Division of Outdoor Recreation at (317) 232-4070 for more detailed information concerning this.

Fish, wildlife, and botanical resource losses as a result of this project can be minimized through implementation of the following measure. All bare and disturbed areas should be revegetated with a mixture of grasses (excluding all varieties of tall fescue) and legumes upon completion.

We appreciate the opportunity to be of service and apologize for not being able to respond sooner in this matter. If we can be of further assistance, please do not hesitate to contact Steve Jose at (317) 232-4080.

Sincerely,


Larry D. Macklin, Director
Department of Natural Resources

LDM:SHJ

cc: Jonathan Heald, Division of Water, IDNR, Indianapolis, IN

"EQUAL OPPORTUNITY EMPLOYER"



PRINTED ON RECYCLED PAPER



INDIANA DEPARTMENT OF NATURAL RESOURCES

~~PATRICK R. RALSTON, DIRECTOR~~
Larry D. Macklin, Director

Division of Historic Preservation
and Archaeology
402 W. Washington St., Rm. 274
Indianapolis, Indiana 46204
317-232-1646

March 11, 1997

Carole W. Peter
Environmental Scientist
Dames & Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, Illinois 60008

Dear Ms. Peter:

We have reviewed the proposed consolidation of CSX Corporation and Conrail involving the construction of three new rail connections from Third Street to Beech Street in Terre Haute (Haley), from old SR 15 to new SR 15 at Milford Junction, and at the Willow Creek Road intersection with the CSX and Conrail lines in Kosciusko, Porter and Vigo Counties, Indiana.

No known historical or architectural sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project.

A review of our records indicates that the proposed project areas at Milford Junction and Willow Creek have not been assessed by a professional archaeologist. However, based on our knowledge of the region, the proposed project areas are physiographically suitable to contain archaeological resources. In order to determine the effects of this project on archaeological resources and as part of the Federal Agency Official's responsibilities to identify historic properties, pursuant to 36 CFR 800.4, we will need an archaeological reconnaissance level survey for both the Milford Junction and Willow Creek project areas. The survey must be done in accordance with the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation" (48 FR 44716). A description of the survey methods and results must be submitted to the Division of Historic Preservation and Archaeology for review before we can comment further. Please refer to the enclosed list of qualified archaeologists.

In the event that sites which are eligible for the National Register are discovered, the applicant must follow the rules and regulations established by the Advisory Council on Historic Preservation (found at 36 CFR Part 800) to implement federal Public Laws 89-665, 94-422, and 96-515, and Executive Order 11593.

"EQUAL OPPORTUNITY EMPLOYER"

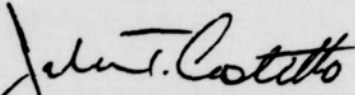


Carole W. Peter
March 11, 1997
Page 2

If you have any questions regarding the archaeological aspects of this project, please call Jim Mohow at (317) 232-1646. Thank you for your cooperation.

As long as the project in Terre Haute remains within areas disturbed by previous construction, no known archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project.

Very truly yours,



Larry D. Macklin
State Historic Preservation Officer

LDM:SLW:MMD:slw

Enclosure



ENVIRONMENTAL DOCUMENT

INDIANA DEPARTMENT OF NATURAL RESOURCES

LARRY D. MACKLIN, DIRECTOR

Division of Historic Preservation
and Archaeology
402 W. Washington St., Rm. 274
Indianapolis, Indiana 46204
tel: 317-232-1646
fax: 317-232-0693

CENTRAL ADMINISTRATIVE UNIT
REC'D: 9-24-97
DOCUMENT #



September 19, 1997

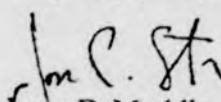
Elaine K. Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Kaiser:

We have reviewed the proposed construction of railroad connections at Alexandria and Willow Creek associated with the Norfolk Southern, CSX, and Conrail railroad acquisition project in Alexandria, Monroe Township, and Portage, Portage Township, Madison and Porter counties, Indiana [FINANCE DOCKET #33388]. This review has been conducted pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and implementing regulations found at 36 C.F.R. Part 800.

As long as no buildings or structures will be demolished or altered and the project remains within areas disturbed by previous construction, no known historical, architectural or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project. Therefore, the Section 106 review process is complete. However, if any archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and 29) requires that work must stop and that the discovery must be reported to the Division of Historic Preservation and Archaeology within two (2) business days. Additionally, in the event that artifacts or features are discovered during the implementation of the federally assisted project, activity, or program and a plan has not been developed, it is the federal agency's responsibility to contact the Advisory Council on Historic Preservation in accordance with 36 C.F.R. Section 800.11(b)(2). Thank you for your cooperation.

Very truly yours,


Larry D. Macklin
State Historic Preservation Officer

LDM:SLW:MMD:smg

cc: Richard Starzak, Myra L. Frank & Associates, Inc.

"EQUAL OPPORTUNITY EMPLOYER"



PRINTED ON RECYCLED PAPER



INDIANA DEPARTMENT OF NATURAL RESOURCES

LARRY D. MACKLIN, DIRECTOR

Division of Nature Preserves
402 W. Washington St., Rm. 267
Indianapolis, Indiana 46204
317-232-4052

July 9, 1997

Mr. Michael W. Ander
Dames & Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, IL 60008

Dear Mr. Ander:

I am responding to your request for information on the endangered, threatened, or rare (ETR) species, high quality natural communities, and natural areas documented from a proposed rail line connection project, Portage, Porter County, Indiana. The Indiana Natural Heritage Data Center has been checked and following you will find information on the ETR species documented from the project area.

1. There is a historical record of the state endangered plant *Fimbristylis puberula*, Carolina fimbry, documented in 1922 by Charles Deam with the location given as prairie habitat along NY Central Railroad 0.5 mile west of Crisman. (Note that Indiana does not have a state endangered plant law. The Indiana Department of Natural Resources does provide the status for endangered plants to provide as much protection as possible to these species.)

Cirsium pitcheri and *Lycaeides melissa samuelis* do occur in Porter County. *Cirsium pitcheri* is a colonizing species on open dunes requiring disturbance for establishment. Disturbance sites must be within dispersal distance to be colonized. Being a colonizing plant, it disappears from late successional communities. The closest occurrence that the Indiana Natural Heritage Data Center has documented is about 2 miles from the project location at West Peach of the Indiana Dunes National Lakeshore. *Lycaeides melissa samuelis* inhabits dry sand savannas, typically on sand dunes, excessively drained sites, and northern Indiana sand ridges. Most areas have swell and swale topography. Dominant species in these communities are *Quercus velutina* and *Andropogon scoparius*. Wild lupine, *Lupinus perennis*, must be present as it is the only known larval food plant. The closest occurrence that the Indiana Natural Heritage Data Center has documented is within 2 miles from the project location at the Inland Marsh area of the Indiana Dunes National Lakeshore.

"EQUAL OPPORTUNITY EMPLOYER"



PRINTED ON RECYCLED PAPER

July 9, 1997

The information I am providing does not preclude the requirement for further consultation with the U.S. Fish and Wildlife Service as required under Section 7 of the Endangered Species Act of 1973. You should contact the Service at their Bloomington, Indiana office.

U.S. Fish and Wildlife Service
620 South Walker St.
Bloomington, Indiana 47403-2121
(812)334-4261

At some point, you may need to contact the Department of Natural Resources' Environmental Review Coordinator so that other divisions within the department have the opportunity to review your proposal. For more information, please contact:

Larry Macklin, Director
Department of Natural Resources
attn: Stephen H. Jose
Environmental Coordinator
Division of Fish and Wildlife
402 W. Washington Street, Room W273
Indianapolis, IN 46204
(317)232-4080

Please note that the Indiana Natural Heritage Data Center relies on the observations of many individuals for our data. In most cases, the information is not the result of comprehensive field surveys conducted at particular sites. Therefore, our statement that there are no documented significant natural features at a site should not be interpreted to mean that the site does not support special plants or animals.

Due to the dynamic nature and sensitivity of the data, this information should not be used for any project other than that for which it was originally intended. It may be necessary for you to request updated material from us in order to base your planning decisions on the most current information.

Thank you for contacting the Indiana Natural Heritage Data Center. You may reach me at (317)232-4052 if you have any questions or need additional information.

Sincerely,

Ronald P. Hellmich
Ronald P. Hellmich
Indiana Natural Heritage Data Center

enclosure: Porter County ETR list

APPENDIX C

APPENDIX C REFERENCES

General:

- CSX Transportation Inc. *Preliminary Draft Environmental Assessment. Willow Creek, Indiana—New Connection.* September 1997.
- CSX Transportation Inc. and Norfolk Southern Railway Company. *Railroad Control Application: Finance Docket No. 33388. Volume 3—Operating Plan.* June 1997.
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- Indiana Department of Natural Resources, Water Resources Division. Personal communication with Dawn Deady. March 3, 1997.
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- Indiana Department of Natural Resources, Executive Office. Correspondence from Larry Macklin, March 14, 1997.
- Planning Resources Inc. Correspondence from Juli Crane. June 13, 1997.
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- U.S. Code of Federal Regulations. Volume 40, Part 1105.7. *Surface Transportation Board, Procedures for Implementation of Environmental Laws*.
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Service List

Environmental Organization

The Honorable Kathleen A. McGinty
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722 Jackson Place, N.W.
Washington, DC 20503

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Associate Director for NEPA Oversight
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Administrator
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USDA Natural Resources Conservation Service
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National Oceanic and Atmospheric Administration
National Ocean Service, National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910-3282

Federal Agencies

Mr. Robert Tucker
Chief, Enforcement Section Regulatory Branch
U.S. Army Corps of Engineers
Detroit District
Attn.: Mary Miller (File #97-200-14-0)
Box 1027
Detroit, MI 48226

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U.S. Department of Interior
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Board Of Commissioners President
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Valparaiso, IN 46383-6237

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Union Pacific Corporation and Union Pacific Railroad Company
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Midwest Area Field Office
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Omaha, NE 68102

Federal Agencies

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Regional Forester
U.S. Department of Agriculture
National Forest Service
Region 9 - Eastern Region
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Milwaukee, WI 53203

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Mayor
City of Portage, Indiana
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Portage, IN 46368

Rail Union

Ms. L. Pat Wynns
Allied Rail Unions
c/o Highsaw, Mahoney & Clarke, P.C.
1050 17th Street, N.W., Suite 210
Washington, DC 20036

Shipper

Mr. Christopher C. O'Hara
Steel Dynamics, Inc.
c/o Brickfield, Burchette & Ritts, P.C.
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