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SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

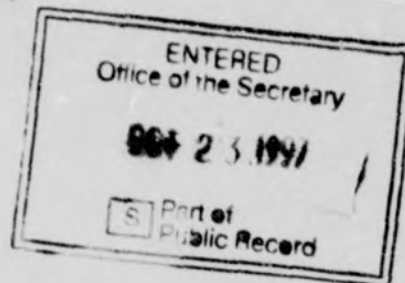
WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III



October 22, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: 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

Dear Secretary Williams:

Yesterday, we filed the Comments and Requests for Conditions of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, The Four City Consortium)(FCC-9). In accordance with the Board's directions (see, e.g., Decision No. 12, page 22) we also submitted 4 computer diskettes containing the text and exhibits of the filing. (Our cover letter for the filing was inaccurate in indicating that there was a single diskette.) The diskettes filed did not, however, contain the exhibits to the Verified Statement of Phillip H. Burris. Accordingly, we enclose an additional diskette containing those exhibits in LOTUS 1-2-3 (v.5) format.

We also inadvertently failed to serve copies of the enclosed letter to Ms. Kaiser of the Board's Section of

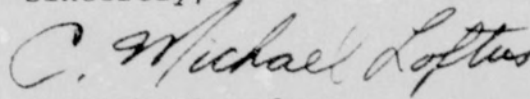
The Honorable Vernon A. Williams * * *

October 22, 1997

Page 2

Environmental Analysis on parties of record. We are serving copies of that letter at this time along with this letter.

Sincerely,

A handwritten signature in cursive script that reads "C. Michael Loftus".

C. Michael Loftus

An Attorney for the Cities of
East Chicago, Indiana; Hammond,
Indiana; Gary, Indiana; and
Whiting, Indiana (collectively,
The Four City Consortium)

Enclosure

cc: All Parties of Record
The Honorable Jacob Leventhal
Elaine K. Kaiser, Section of Environmental Analysis
(w/encl.)

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

STAMP & RETURN



October 21, 1997

BY HAND DELIVERY

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
ATTN: STB Finance Docket No. 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: 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

Dear Ms. Kaiser:

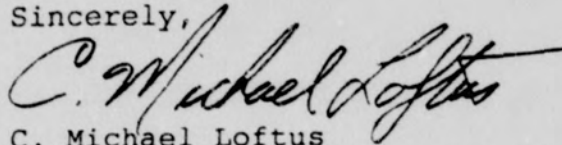
Enclosed please find three (3) copies of the Comments and Requests for Conditions of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, The Four City Consortium)(FCC-9) filed today with the Board as part of the above-referenced proceeding. Also enclosed, please find a computer diskette containing the text of this document in WordPerfect 5.1 format.

These copies of the Four Cities' Comments are being sent to the SEA because of the extensive negative environmental impacts that the Applicants' proposed division of Conrail would have on the Four Cities area, located in northwestern Indiana. The Four Cities' Comments address these environmental impacts in detail, which primarily are the result of Applicants' plans to move their traffic over line segments containing numerous at-grade highway/rail crossings. The Four Cities' Comments also describe an Alternative Routing Plan that was developed to mitigate the negative environmental and related impacts that would be caused under the Applicants' plan, while requiring only minimal adjustments to the Applicants' proposed operations plan. The Four Cities are requesting that the Board condition any approval of the Application on the imposition of this important alternative plan.

Elaine K. Kaiser
October 21, 1997
Page 2

Through an October 1, 1997 letter, you invited the public to submit comments on the potential environmental impacts that might result from the above-referenced transaction, and which might assist the SEA in their preparation of a draft and final Environmental Impact Statement ("EIS"). The Four Cities intends to fully participate in the environmental portion of this proceeding. We hope that the enclosed comments will assist you in better understanding the enormous environmental implications of the transaction on the Four Cities and northwest Indiana and that you will closely review these impacts as you develop the EIS.

Sincerely,

A handwritten signature in cursive script, reading "C. Michael Loftus".

C. Michael Loftus
An Attorney for the Cities of
East Chicago, Indiana; Hammond,
Indiana; Gary, Indiana; and
Whiting, Indiana (collectively,
The Four City Consortium)

Enclosures

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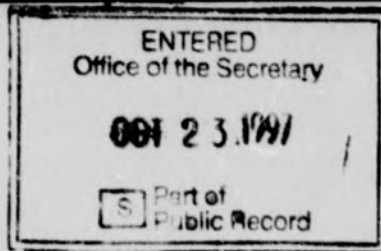
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PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

WILLIAM P. HANKOWSKY
President

October 20, 1997



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, DC 20423

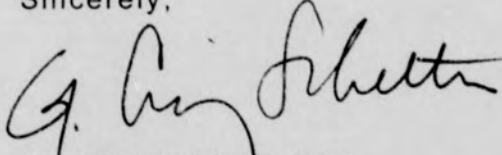
RE: Finance Docket No. 33388. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation.*

Dear Secretary Williams:

Enclosed herewith is a 3.5 inch diskette in Microsoft Word Version 6.0 containing the Joint Comments of the City of Philadelphia and Philadelphia Industrial Development Corporation.

Our written comments together with twenty five copies were filed by hand on October 21, 1997. Also enclosed is an additional copy of those comments bearing the original ink signatures of the representatives of the City of Philadelphia and the Philadelphia Industrial Development Corporation.

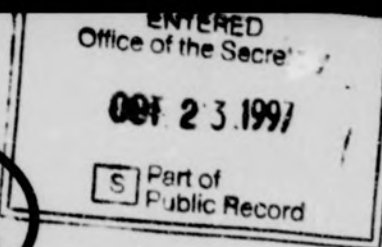
Sincerely,


G. CRAIG SCHELTER
Executive Vice President

GCS:jmw

Enclosures

cc: All Parties Of Record



183061

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

WILLIAM P. HANKOWSKY
President

October 20, 1997



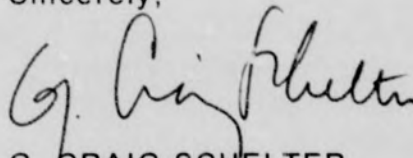
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, DC 20423

RE: 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.*

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Joint Comments of the City of Philadelphia and the Philadelphia Industrial Development Corporation. An additional copy of the filing is enclosed for file stamp and return to the undersigned. Please note that a copy of the Joint Comments is also enclosed on a 3.5 inch diskette in Microsoft Word Version 6.0 format.

Sincerely,


G. CRAIG SCHELTER
Executive Vice President

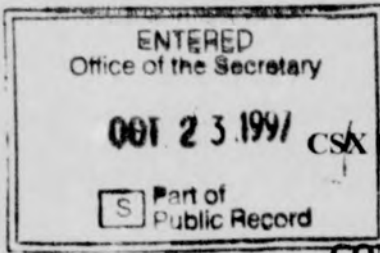
GCS/EWD/mac

Enclosures

cc: All Parties of Record

183061

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**

**JOINT COMMENTS OF THE CITY OF PHILADELPHIA AND THE
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION IN
SUPPORT OF APPROVAL OF THE PROPOSED CONTROL APPLICATION**

I. INTRODUCTION

The City of Philadelphia ("City") and the Philadelphia Industrial Development Corporation ("PIDC"), together with PIDC's wholly owned subsidiaries Philadelphia Authority for Industrial Development, hereinafter PAID, and Philadelphia Food Distribution Center, hereinafter PFDC, respectfully submit their comments as recognized parties of record in Finance Docket No. 33388. For the reasons set forth more fully within, the City and PIDC support approval by the Surface Transportation Board of the transaction by which CSX and Norfolk Southern would jointly acquire Conrail and divide Conrail's assets and operations between them as outlined in their respective Operating Agreements and the other transaction documents.

II. THE CITY AND PIDC

The City of Philadelphia is the fifth largest city in the United States with a population of 1,524,338, and the vital commercial and cultural hub of a region striving to maintain an economic leadership role in the life of the Nation. PIDC is a private, not-for-profit economic development corporation created in 1958 by the Greater Philadelphia Chamber of Commerce and the Commerce Department of the City of Philadelphia. It is the City of Philadelphia's economic development arm.

PIDC has four principal lines of business: 1) providing financing to industrial, manufacturing, and warehousing firms starting up, moving into or expanding in the City of Philadelphia; 2) selling land for industrial use in eleven fully-improved industrial parks; 3) managing major developments for public, not for profit, and private clients; and 4) working with neighborhoods to foster economic development.

Among other things, PIDC is responsible for converting the Philadelphia Naval Shipyard from military to commercial and industrial use.

In addition, PIDC owns and maintains the Northeast Philadelphia Airport Industrial Track, which is currently served by Conrail and is proposed to be served by the Conrail Shared Assets Operation. PIDC's subsidiary Philadelphia Food Distribution Center owns an extensive network of tracks that are served, according to the Philadelphia Belt Line Principle, by the three railroads at this time having access to South Philadelphia - Conrail, CSX Transportation, and Canadian Pacific Railroad. Tracks owned by PIDC and PFDC together generate traffic volume of over 3,000 rail carloads shipped or received annually. Rail customers include Allied Tube & Conduit, Stone Container, Interstate Brands, PBS Foods, M. Levin & Company, and others. Products transported by rail include steel, paper, flour, plastics, and produce.

III. Background of the City and PIDC's Position

The City and PIDC are keenly aware of the transportation implications of the proposed action. We believe that the proposed action is necessary so that the railroads serving Philadelphia will have the financial strength and the desire to continue or expand freight services, and we seriously doubt that an independent stand-alone Conrail could have fulfilled this role for very much longer. At the same time, the City and PIDC recognize the significant job loss and loss of goods and services purchased locally by Conrail.

Having met with Philadelphia manufacturers, distributors and other shippers who are dependent on rail transportation, the City and PIDC are appreciative of the value of restored rail-to-rail competition that has been proposed for the Philadelphia Region by the applicants.

The City and PIDC acknowledge that since 1976, Conrail management and labor have done a remarkable job of rebuilding the wreckage of the bankrupt Northeastern United States rail system into a profitable carrier. Some of its success is due to the fact that it was protected from rail competition by being granted a de facto monopoly over freight rail service, and this has presented both benefits and costs to Philadelphia rail shippers, many of whom previously had had a choice of two or more rail carriers who were Conrail predecessors.

While many Philadelphia shippers have seen their deteriorated rail infrastructure and service revitalized, the City and PIDC recognize that others lost theirs entirely through abandonments. Shippers have notified PIDC that monopoly rail service in Philadelphia may have shrunk the competitive range of their Philadelphia production facilities because of increases in rail transportation costs, particularly on the fast-growing north-south corridor, making Philadelphia a less attractive center for rail-oriented business development. The City of Philadelphia and its neighborhoods have also been impacted by Conrail decisions to close facilities without finding viable reuses or properly maintaining them. Companies faced with plant location choices and rail transportation requirements have rarely sited plants in Philadelphia in the last twenty years. For these reasons, the City and PIDC believe that the level of rail-to-rail competition proposed in this Application will be a vital improvement to Philadelphia's economy.

The City of Philadelphia and its neighborhoods have also been impacted by Conrail decisions to close facilities without finding viable reuses or properly maintaining them. Examples include Conrail's former Reading Railroad Port Richmond Terminal, a 200 acre facility that once was the Reading's rail-water intermodal hub, and is now virtually bereft of employment and activity, and the abandoned Berks Industrial Track, which has been allowed to become one of the worst unlicensed dumps in the City of Philadelphia, although it adjoins homes and a public school at Third and Ontario Streets. The City and PIDC believe that the Applicants will have the financial strength and interest to redevelop rail properties for rail-oriented industrial development uses, or else secure and divest them if future rail uses appear improbable.

IV. PROPOSED CSX PHILADELPHIA IMPROVEMENTS

CSX and Norfolk Southern have committed in their Operating Plans and in discussions with the City and PIDC to a variety of infrastructure and service investments which will greatly benefit the City's economy and environment. For CSX, these include:

1. A new intermodal facility, estimated to cost \$15 million, at Greenwich Rail Yard.
2. Belmont Siding, improving flow of traffic through the City, at estimated cost of \$3 million.
3. Implementation of the Eastwick Connection, at estimated cost of \$4 million. This improvement should eliminate a reverse movement of freight trains through a predominantly residential and recreational Center City area between the Philadelphia Art Museum and the Grays Ferry section of South Philadelphia. Coupled with the Belmont Siding Improvement, it will allow for greater utilization of the predominantly industrial West Bank of the Schuylkill River for freight movements, and a corresponding reduction in freight movements through Center City Philadelphia.
4. Retention of the headquarters of Conrail, Inc. in Philadelphia for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.
5. Creation of new rail-related jobs in Philadelphia as a result of CSX commercial and operational activities in the Philadelphia area, as well as the anticipated establishment of a regional office in Philadelphia to include government relations, industrial development, sales, and operations.

V. PROPOSED NORFOLK SOUTHERN PHILADELPHIA IMPROVEMENTS

For Norfolk Southern, these improvements include:

1. A new intermodal facility, estimated to cost \$10 million.
2. A new automobile facility, estimated to cost \$16 million.
3. A new intermodal "Triple Crown" facility, estimated to cost \$4 million.
4. Track connection at Zoo interlocking, estimated to cost \$1.4 million.

5. Retention of the headquarters of Conrail, Inc. in Philadelphia for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.
6. Creation of new rail-related jobs in Philadelphia as a result of Norfolk Southern's commercial and operational activities in the Philadelphia area as well as establishment of a Mid-Atlantic regional headquarters in Philadelphia to include a Regional Vice President.

VI. ADDITIONAL GUIDELINES AND OVERSIGHT

The City and PIDC believe that the Board will establish the necessary guidelines to insure that the actual implementation of the proposed application follows the agreements that CSX and Norfolk Southern have made with the Commonwealth of Pennsylvania, the City and PIDC, as noted more fully in the comments submitted to the Board by the Commonwealth of Pennsylvania and the attachment thereto. This is fully in keeping with, CSX and Norfolk Southern's statements that no implementation should take place until the Commonwealth of Pennsylvania, county and local governments have been given reasonable opportunity to provide comments to CSX and Norfolk Southern on their detailed operating plans. The City and PIDC plan to provide comments that will include, but is not limited to, requesting detailed maps of active and inactive rail property ownership in Philadelphia; implementation of extant City/Conrail and Conrail/Pennsylvania Public Utility Commission agreements, orders and other court actions; and identification of specific railroad employees with whom the City and PIDC will need to contact regularly for implementing engineering, design, construction and other on-going activities. The City and PIDC also plan to discuss in their operating plan dialogue with the Applicants the possibilities for reactivation of abandoned branch lines where economically feasible for the Applicants. In addition, the City and PIDC remain concerned about the impact of the merger on regional rail transit passengers. Accordingly, the City and PIDC request that the Board give due consideration to the comments separately filed with the Board by SEPTA.

VII. FINAL COMMENT

The City and PIDC respectfully suggest that in 1976, the creation of a monopolistic Conrail truly served the benefit of the public because the Northeastern Region was on the brink of losing rail service altogether. The application now before the Surface Transportation Board proposes to considerably expand competition by jointly serving selected markets.

The Journal of Commerce has estimated in a July 11, 1997 article that twenty two percent of Conrail's existing traffic will be opened to competition if this application is approved. The City and PIDC recognize that this holds out the promise of being a very significant improvement, especially given the fact that many believe this transaction to carry the largest acquisition premium ever paid in any railroad merger to date - over \$4 billion, according to an estimate submitted to the Board by Consumers United for Rail Equity. The City and PIDC believe that this application strikes a proper balance between providing the public benefit of restored competition in the Northeastern United States and maintaining the financial viability of the applicants on the one hand and reemphasizing Conrail's headquarters commitment to the City and addressing the future of Conrail's employees on the other. We are confident that the present application's merits will be fairly recognized by the Surface Transportation Board.

The City of Philadelphia and Philadelphia Industrial Development Corporation appreciate the opportunity to provide these comments in support of approval of the Application before the Board. We respectfully request that they be considered by the Board and that after consideration, that the transaction be approved.

VIII. PARTICIPATION IN PROCEEDINGS

The City and PIDC intend to participate formally in any proceeding held on this application. To the extent that the Board determines that any hearing is necessitated by the comments set forth herein or submitted by any other party, the City anticipates that its witnesses would be Edward G. Rendell, the Mayor of Philadelphia, and/or Denise Goren, Deputy Mayor for Transportation. PIDC anticipates that its witness would be G. Craig Schelter, Executive Vice President of PIDC, or William P. Hankowsky, President of PIDC.

CITY OF PHILADELPHIA

BY: 

WILLIAM R. THOMPSON
CHIEF DEPUTY CITY SOLICITOR
CITY OF PHILADELPHIA LAW DEPT.
1600 ARCH STREET, 10TH FLOOR
PHILADELPHIA, PA. 19103
(215) 686-0923

**PHILADELPHIA INDUSTRIAL
DEVELOPMENT CORPORATION**

BY: 

G. CRAIG SCHELTER
2600 CENTRE SQUARE WEST
500 MARKET STREET
Philadelphia, Pa. 19102
(215) 496-8020

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, I caused a true and correct copy of the within Joint Comments of the City of Philadelphia and the Philadelphia Industrial Development Corporation to be served upon all interested parties by causing same to be sent by first class mail, postage prepaid, to all parties on the service list of Finance Docket No. 33388.

BY: _____

G. CRAIG SCHELTER

EXECUTIVE VICE PRESIDENT

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORP.

2600 CENTRE SQUARE WEST

1500 MARKET STREET

PHILADELPHIA, PA. 19102

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OPPENHEIMER WOLFF & DONNELLY

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Suite 400
Washington, D.C. 20036-6105

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FAX (202) 293-6200

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San Jose
Washington, D.C.



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October 22, 1997

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

**Re: 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 -- Transfer of Railroad Line by Norfolk Southern Railway
Company to CSX Transportation, Inc.**

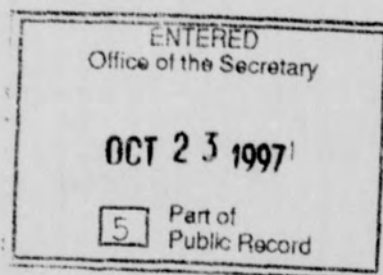
Dear Secretary Williams:

Enclosed you will find the original verification page for the Verified Statement of Frank M. Russo.

Respectfully submitted,

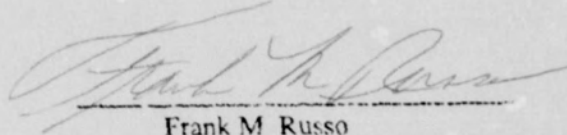
Kevin M. Sheys

Enclosures



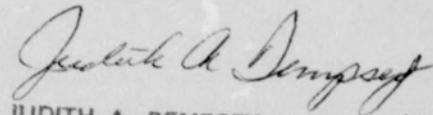
Verification

I, Frank Russo, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.



Frank M Russo
Senior Director -New Rail
Construction

Executed on: October 20, 1997.



JUDITH A. DEMPSEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 22, 2001

10/20/97

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HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006-4103 (202) 835-8000
FACSIMILE (202) 835-8136
INTERNET <http://www.hopsut.com>

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4205
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220

JAMIE PALTER RENNERT
(202) 835-8112

October 22, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

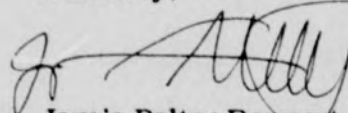
Re: CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388

Dear Secretary Williams:

On behalf of the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, I am enclosing the following: (i) the original signature page of Mr. Vaughn L. Stoner, Chief Operations Officer, Metra, for his Verified Statement filed yesterday as METR-7 in the above-referenced proceeding; and (ii) an original and twenty-five (25) copies of the map, in color, that was attached to Mr. Stoner's Verified Statement (METR-7) at Tab A.

An additional copy of each of the filings are enclosed for file stamp and return with our messenger.

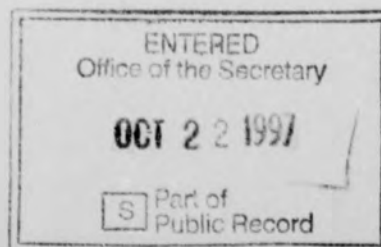
Sincerely,


Jamie Palter Rennert

Enclosures

cc: Hon. Jacob Leventhal
Applicants' Counsel

Q52714-1



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OCT 21 31 11:00 AM 1997 P.14

Verification

State of Illinois)
)
City of Chicago) ss:

Vaughn L. Stoner, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Vaughn L. Stoner

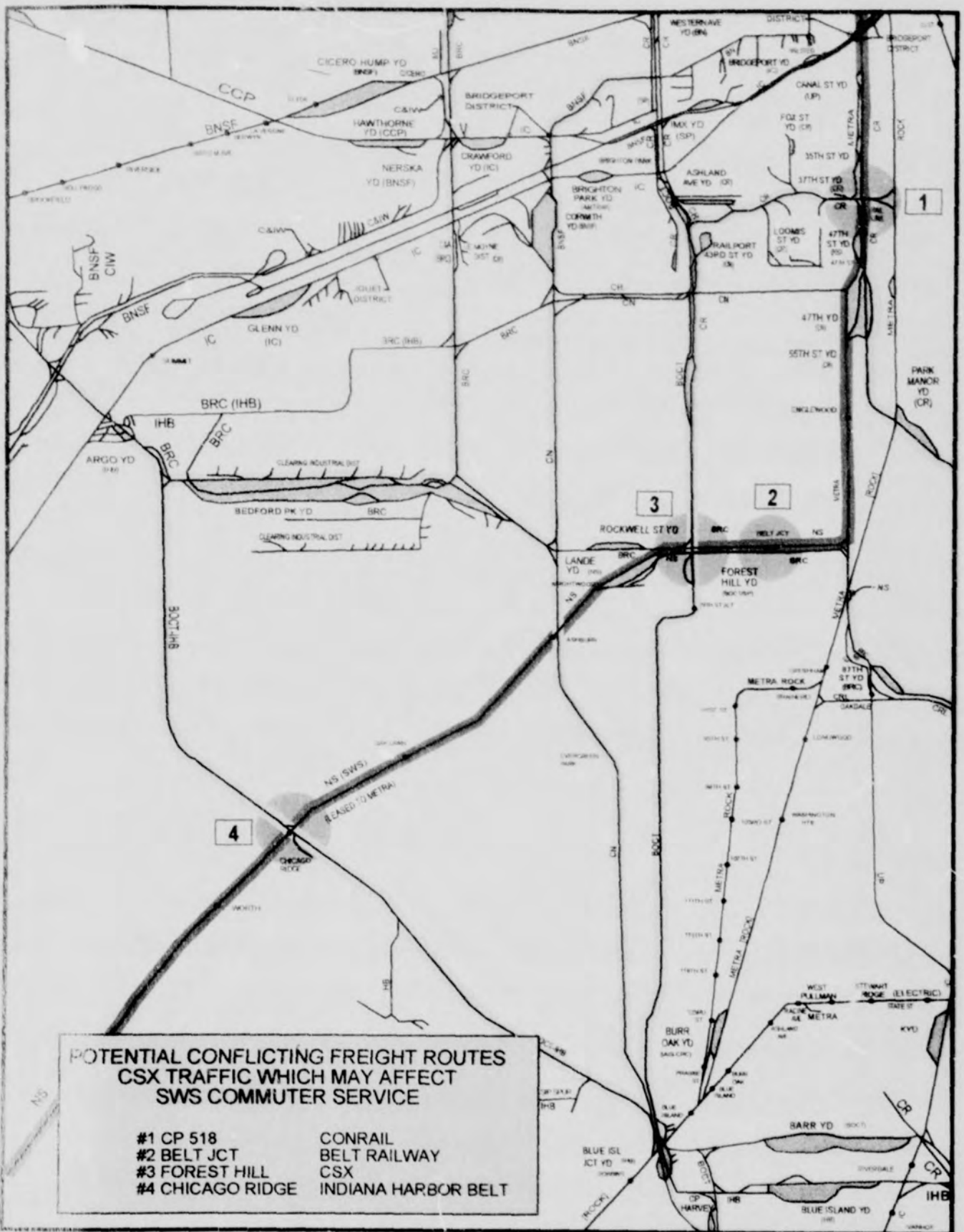
Vaughn L. Stoner

Subscribed and sworn to
before me this 21st
day of Oct, 1997.

Margaret A. Griffin
Notary Public

~~~~~  
"OFFICIAL SEAL"  
Margaret A. Griffin  
Notary Public, State of Illinois  
My Commission Expires 7/16/2001  
~~~~~

My commission expires:
7/16/2001



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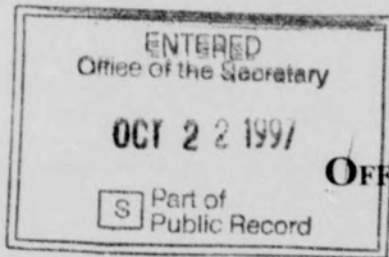
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

October 20, 1997

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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Attn: Case Control Branch, Finance Docket No. 33388

Dear Mr. Williams:

Enclosed for filing in Finance Docket No. 33388 are an original and twenty-five copies of the Verified Statement of Kirk Brown, Secretary of the Illinois Department of Transportation (IDOT-2).

Sincerely,

William F. Cottrell
Special Counsel
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601
(312) 814-2516

cc: Service List

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



VERIFIED STATEMENT OF KIRK BROWN, SECRETARY OF THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

My name is Kirk Brown, and I am Secretary of the Illinois Department of Transportation (IDOT). IDOT is the agency responsible for both rail policy and rail planning activities in Illinois, which requires us, among other things, to analyze any proposed railroad merger, consolidation, or acquisition in order to determine its potential effects on the adequacy of transportation for the public in our state. The proposed acquisition by CSX and Norfolk Southern (NS) to acquire the Conrail System is of vital interest to our state.

IDOT has responsibility under Illinois law for rail planning and programming. IDOT represents the public interest in the transportation system of the State of Illinois and expresses its essential concern for a continued growth in competitive transportation alternatives for Illinois shippers. In addition, IDOT is concerned about the potential economic impact upon the state resulting from major changes in its transportation

As described in the Application, IDOT expects that the provisions proposed should yield shorter routes, expanded single-line service, greater capacity, better equipment supply, faster and more reliable service, and lower costs. Following an analysis of the proposed application submitted by the CSX and NS to purchase the Conrail System, IDOT has determined that the acquisition would be of benefit to the state and its users of rail transportation with two specific exceptions.

First, the proposed construction by CSX of a connection to the Belt Railway at 75th Street in Chicago would result in placing new diamonds across the track shared by NS and Metra commuter trains to Orland Park, Illinois. Since CSX can easily reach the Belt Railways' yard at Bedford Park through existing connections or by utilizing the Conrail track it will control if this Application is approved, we see no compelling argument that would justify the risk inherent in establishing yet another crossing point for freight traffic and commuter traffic. The added risk may be small, but it is unnecessary and should be avoided.

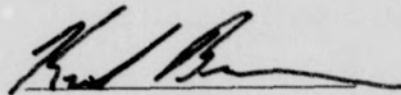
Second, IDOT has grown quite concerned over the proposed allocation of Conrail's assets in the Chicago switching area. After counseling with both CSX and NS, and with several of the smaller carriers serving Chicago, we have become convinced that the allocation of these assets in the manner proposed in the Application could be extremely damaging to the free flow of rail traffic through the Chicago terminal. The Chicago switching district is the most important terminal in the U.S. for the facilitation of the free flow of east-west and north-south traffic. Its operation depends upon the unimpeded interchange of rail traffic between carriers, which in large part depends upon the existence of more-or-less neutral switching carriers.

After the proposed transaction, CSX and NS will have effective control of all three major terminal carriers in the Chicago area. In actuality, it appears that one of these carriers, the Indiana Harbor Belt (IHB), will de-emphasize its function as a switching carrier in favor of becoming purely an extension of the mainlines of NS and CSX, to the detriment of carriers who need the IHB to connect their traffic to some other railroad. Large portions of the Chicago switching district will become dependent on CSX dispatching, which has been problematic in Chicago for some time. To NS, the potential for such problems is of less concern, given its concentration on the new markets to be gained in New York and the Northeast through this acquisition and its ability to retaliate against CSX in the future if necessary in order to obtain fair treatment. Neither compensating new markets nor such retaliatory power is available to the other carriers in Chicago who will be hampered by the proposed consolidation of power over switching in the hands of CSX.

Clearly, the specter of the Houston terminal must be cited here. IDOT believes it is vital that both remaining eastern carriers continue to have free access to not only the two major western carriers and the two Canadian carriers, but to traffic flowing from smaller railroads such as the Wisconsin Central, the Illinois Central, and the Elgin, Joliet and Eastern. All three of these smaller carriers have concerns with the proposed allocation of Conrail assets in the Chicago switching district, particularly with respect to the interchange of traffic between carriers and the provision of intermediate switching services. As a result of the acquisition, CSX will be able to regulate and control nearly all traffic moving through the Chicago switching district. Allowing Chicago to suffer anything like the merger-related impacts seen in Houston would negatively impact the national economy - and Illinois - to a frightening degree.

To avoid such a scenario, IDOT has become convinced that Conrail's 51 percent ownership share of the Indiana Harbor Belt Railroad must be transferred instead to a neutral carrier or to a balanced group of concerned carriers, thus preserving the IHB as a neutral connection. IDOT urges the Surface Transportation Board to impose a protective condition similar to that sought by the smaller carriers noted above, blocking CSX and NS control of Conrail's interests in the Indiana Harbor Belt after the acquisition. The national importance of the Chicago Terminal, and the fresh evidence of the potential for near-disastrous national economic impacts flowing from a single major rail terminal adversely affected by a rail merger, dictates that extreme care be used in any transfer of Conrail assets therein.

In summary, IDOT supports the proposed acquisition of the Conrail system by CSX and NS. As stated, the continued viability of CSX and NS is of great importance to Illinois as is that of the other railroads operating within the state. Still, the exclusion of the Indiana Harbor Belt from the transaction will not greatly harm NS or CSX, while it will protect Chicago from the potential of another terminal "melt-down" as seen in Houston. With this condition, IDOT supports the Control and Operating leases/Agreements.

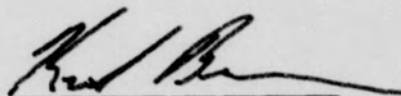


Kirk Brown
Secretary

Verification

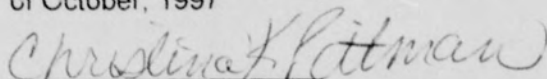
State of Illinois)
) SS
County of Sangamon)

I, Kirk Brown, being duly sworn, depose and state that I have read the foregoing statement, know the contents thereof, and the statements made therein are true and correct, to the best of my knowledge and belief.

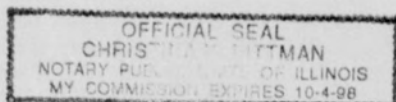


Kirk Brown

Subscribed and sworn to
before me this 16 day
of October, 1997

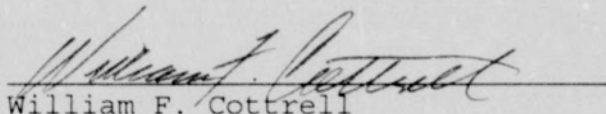


Notary Public



Certificate of Service

I hereby certify that copies of the Verified Statement of Kirk Brown, Secretary of the Illinois Department of Transportation (IDOT-2) were served upon all parties of record on October 20, 1997 by U.S. Mail, postage prepaid from Chicago, Illinois 60601.



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Attorney General
Betty D. Montgomery

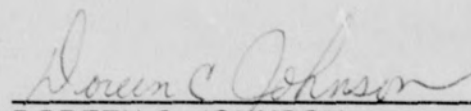
State Office Tower
30 E. Broad Street
Columbus, Ohio 43215-3428

182984



CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 1997, a copy of all filings in Finance Docket No. 33388 submitted by Ohio Attorney General prior to the service list date of Board Decision No. 43 have been served by first class mail upon Administrative Law Judge Jacob Leventhal and all new Parties of Record on the service list attached to Board Decision No. 43.



DOREEN C. JOHNSON

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October 21, 1997

Via Hand Delivery

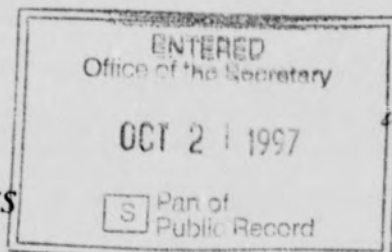
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, *CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control And Operating Leases/Agreements—Conrail Inc., et al.*

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Redacted (to be filed in the public record) Comments, Evidence, Request for Conditions and Other Relief of AK Steel Corporation, which has been designated as AKSC-7.

Respectfully submitted,



ENCLOSURES
0400-020

Frederic L. Wood
Frederic L. Wood
Attorney for AK Steel Corporation

cc: All Parties of Record

REDACTED
(To Be Filed in the Public Record)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

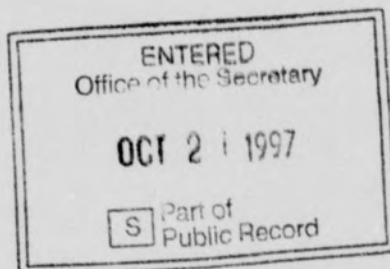
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

—CONTROL AND OPERATING LEASES/AGREEMENTS—
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**COMMENTS, EVIDENCE, AND REQUEST
FOR CONDITIONS AND OTHER RELIEF**

OF

AK STEEL CORPORATION



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*Attorneys for
AK Steel Corporation*

DATE: OCTOBER 21, 1997

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

**COMMENTS, EVIDENCE, AND REQUEST
FOR CONDITIONS AND OTHER RELIEF**

OF

AK STEEL CORPORATION

In accordance with the provisions of the Board's procedural order in this proceeding (Decision No. 6 served on May 30, 1997) AK Steel Corporation ("AK Steel") submits its comments, evidence, and request for conditions and other relief. This transaction involves the joint application of CSX Corporation ("CSX") and its principal railroad subsidiary, CSX Transportation, Inc. ("CSXT") and Norfolk Southern Corporation ("NS"), and its principal railroad subsidiary Norfolk Southern Railway Company ("NSR"), to acquire control of Conrail, Inc. ("Conrail") and its principal railroad subsidiary, Consolidated Rail Corporation ("CR").¹ In addition to applying for joint control of Conrail, CSX and NS are also proposing to divide the properties, rights and other assets of CR between them for separate operation in connection with CSXT and NSR. They are also proposing a considerable number of modifications in existing

¹ All of these parties are referred to collectively as "Applicants."

arrangements between and among the various Applicants. It is the Applicants' request for approval by the Surface Transportation Board ("Board or STB") of the proposed modification of one part of those existing arrangements that is of concern to AK Steel.

I. INTRODUCTION

The transaction presented by the Applicants for approval is extensive and complex. Much of the complexity arises from the need to overlay this transaction onto the often Byzantine relationships between the Applicants and other carriers that have evolved over decades. AK Steel's objection to this transaction relates to a very narrow but very significant part of the entire transaction. After careful analysis of the convoluted documentation presented to the Board for approval, a significant anti-competitive effect emerges. Presently, AK Steel has the right to obtain rail transportation service from either CR or CSXT for the transportation of iron ore from the Toledo Docks to its plants at Middletown, Ohio and Ashland, Kentucky. If the transaction is approved as proposed, AK Steel will be able to obtain such transportation of iron ore only from CSXT. Once the tedious task of peeling away the complex layers of the current and proposed agreements is completed and their terms are revealed, it should be clear that the result is a plain case of anticompetitive harm that requires action by the Board.

II. IDENTITY AND INTEREST OF AK STEEL CORPORATION

AK Steel Corporation is an integrated producer of iron and steel with headquarters in Middletown, Ohio. AK Steel operates two facilities for the production of iron and steel that require the use and availability of iron ore; one at Middletown, Ohio, and the other at Ashland, Kentucky. The facility at Middletown is served today by rail lines operated by CSX and CR. The CR line, which is part of the line from Columbus to Cincinnati, Ohio, is proposed to be assigned to NSR for operation and control. App. Vol. 8B at 100. This means that the Middletown plant will continue to have two-carrier competition. However, AK Steel is heavily reliant for its operations on the use of iron ore obtained from the region around the upper Great Lakes and similar

areas. Much of that iron ore can be and is transported via lake vessel to lower lake ports for further movement beyond by rail to Middletown and Ashland. At the present time, all of AK Steel's iron ore moving by lake vessel moves over dock facilities at Toledo, Ohio. Iron ore moving through Toledo is presently transported by CSX to both Middletown and Ashland.

III. DESCRIPTION OF PRESENT CIRCUMSTANCES AT TOLEDO DOCKS

At the present time, there are two major dock facilities near Toledo, Ohio, that will be affected by the proposed transaction. One of these dock facilities, known as the Lakefront Dock, is owned by a company known as Lakefront Dock and Railroad Terminal Company ("LDRT"). In 1946, the ICC authorized LDRT to construct "a line of railroad extending from a connection in Ironville, [near] the city of Toledo, Ohio, to the Lake Erie lake front on Maumee Bay, approximately 2.65 miles, and incidental terminal facilities" The ICC authorized the New York Central Railroad Co. (predecessor of CR) and the Baltimore & Ohio Railroad Co. ("B&O," predecessor of CSXT), to acquire joint control of LDRT. The two lines were also authorized to acquire "joint trackage rights over and joint use of the property of" LDRT. *Lakefront Dock & Railroad Terminal Co. et al., Construction*, 261 I.C.C. 812 and 823 (1946). The decision also approved a modification of a 1932 agreement authorizing New York Central to use its trackage rights over the Toledo Terminal Railroad Company ("Toledo Terminal") to reach the tracks of the LDRT at their point of connection near Ironville.²

² This 1932 agreement and its amendments were produced by Conrail during discovery. See CR 13 CO 000101-000104 and 000114-000128.

See also Orrison Dep. Tr. at 605-607. The ICC authorized CSX to acquire control of the Toledo Terminal in 1983, after CSX had apparently bought out the other owners of the Toledo Terminal. I.C.C. Fin. Docket No. 30201, *Chesapeake & O. Ry. Co. — Control — Toledo Terminal R. Co.* (not printed) decided Oct. 21, 1983)

At the present time, 50% of the stock of LDRT is still owned by Conrail and 50% is owned by CSXT. App. Vol. 1 at 271, 284. CSXT also own 100% of the stock of a company known as the Toledo Ore Railroad Co. ("TORCO"). App. Vol. 1 at 273. CSXT also owns and operates the other dock at Toledo, known as the Presque Isle Dock.³ In addition, the trackage rights authorized by the ICC in 1946 over LDRT for both Conrail and CSXT are still in effect. App. Vol. 5 at 473. See also CSX/NS 68, Applicants' Response to First Set of Interrogatories and Requests for Production of Documents of AK Steel Corporation ("CSX/NS-68") at 6.⁴

³ Several maps showing the location of the two docks and related rail facilities can be found in the application at: Vol. 3A, at 329; Vol. 3B at 404; Vol. 5 at 486, Vol. 8A at 279 and Vol. 8B at 495. In addition, a more detailed set of maps of the lines of railroad immediately around the Toledo Docks was introduced at the deposition of CSX witness Orrison, Orrison Dep. Exh. 14. These maps show that the lead tracks from the Presque Isle and Lakefront Docks connect to the line of the former Toledo Terminal at a point identified as "MI" near Millard Avenue. NSR's main line from Homestead yard into Toledo crosses the Toledo Terminal line (with a short connecting track) at a point called "Ironville Tower." See Orrison Dep. Tr. at 604-605 and Ex. 14. However, NSR does not currently have any connection or other direct or indirect access to the tracks at the Toledo Docks.

⁴ Even though Applicants represented in their response to AK Steel's discovery request that they would provide the agreement "under which Conrail currently has access to LD&RT," (see CSX/NS-68 at 16), no copy of the agreement approved by the ICC in 1946 has been produced.

In 1980 Conrail, CSXT,⁵ LDRT and Lakefront Dock Company⁶ entered into a joint facility agreement relating to the operation and use of these two dock facilities.⁷

Hart Dep. Ex. 14 ¶ 1.6.

Hart Dep. Ex. 14 ¶ 1.2.

Hart Dep. Ex. 14 ¶¶ 2.2 and 2.7.

⁵ Then represented by two of CSXT's predecessor companies, Baltimore & Ohio and Chesapeake & Ohio. This agreement is referred to as the "Toledo Docks Operating Agreement." Hart Dep. Tr. Ex. 13.

⁶ This company (sometimes referred to as the Toledo Lakefront Dock Company) provides the rail-lake transfer services at the Toledo Docks. At one time it was "owned equally by the B&O [CSXT's predecessor] and Pickands-Mather Company." *Coal Transfer Charges at Lake Erie Ports*, 352 I.C.C. 661, 669 (1976). That decision also confirms that, prior to the 1980 agreement, the Lakefront Dock was "operated for the use of the two railroads" that owned LDRT, the predecessors of CSXT and Conrail. *Id.*

⁷ This agreement was produced in response to requests for production by AK Steel by both CSX and Conrail. Conrail designated this agreement as "Confidential" under the protective order (Decision No. 2); CSX initially designated this document as "Highly Confidential" but later changed its designation to "Confidential."

In 1984, an agreement similar to the Toledo Docks Operating Agreement was negotiated between the same parties, except that TORCO was substituted for LDRT.⁹

IV. IMPACT OF THE PROPOSED TRANSACTION ON AK STEEL'S USE OF THE TOLEDO DOCKS

CSX, CR and their affiliates, LDRT and TORCO, are thus under a contractual obligation to provide CR with unrestricted access and impartial treatment for the movement of all commodities, such as iron ore and coal, handled over the Toledo Docks.

⁸ CR 13 CO 000129-000140. *Cf.* Notices filed with the Federal Maritime Commission regarding application for review and approval of the lease financing agreement under former section 15 of the Shipping Act, 1916, 46 U.S.C. App. §814. 45 Fed Reg. 44399 (July 1, 1980) and 46 Fed. Reg. 53217 (October 28, 1981).

CSX was, or should have been,¹⁰ well aware of the existence of these commitments when it was negotiating with NS for an agreement to acquire and divide Conrail. In spite of these commitments, CSX, with the possibly unwitting assent of NS,¹¹ has included within the transaction presented for approval by the Board provisions and agreements that will give CSX exclusive access to and use of the Toledo Docks.

Under the terms of the letter agreement of April 8, 1997, NS and CSX agreed that CR's 50% interest in LDRT would be assigned to CSXT, so that CSXT would have 100% ownership of LDRT. App. Vol. 8A at 373. In addition, the letter agreement explicitly stated that NS would inherit CR's "overhead trackage rights on CSXT-controlled portion of former Toledo Terminal RR." *Id.* at 377. However, even though the agreement specifically mentioned the assignment of the 50% interest of CR in LDRT, no explicit mention was made in the agreement of any disposition of any of CR's trackage rights over either the former Toledo Terminal line or the LDRT that were necessary to obtain access to the terminal facilities operated on the dock, such as those operated by TORCO for the transfer and storage of iron ore. The letter agreement also included a provision that stated:

Unless a contrary intent appears from this Agreement including Exhibit A, or from the Definitive Documentation, existing Conrail trackage rights over CSXT will be assigned to NS and existing Conrail trackage rights over NS will be assigned to CSXT.

App. Vol. 8A at 379 (emphasis added).

¹⁰ CSX witness Hart, its principal negotiator of the proposed transaction, professed to be unaware of the existence of the Toledo Docks Operating Agreement. Hart Dep. Tr. at 183-185; 188-194. CSX witness Orrison, on the other hand, was well aware of the existence of these agreements and that CR moved traffic to and from the Toledo Docks, albeit with some prompting by counsel. Orrison Dep. Tr. at 607-610.

¹¹ The principal negotiator for NS was its witness McClellan, who was almost entirely unaware of the nature of the existing arrangements between CSX and CR at the Toledo Docks. McClellan Dep. Tr. at 57-61, 63.

After the execution of the letter agreement, CSX and NS negotiated and executed on June 10, 1997, a detailed Transaction Agreement (including numerous ancillary agreements). App. Vol. 8B and 8C ("Transaction Agreement"). This is the Definitive Documentation referred to in the letter agreement provision quoted above. Unlike the letter agreement, the Transaction Agreement contains an explicit statement that the Lakefront Docks Lead Tracks were being allocated to CSX. Transaction Agreement, Schedule 1, Attachment I, Vol. 8B at 97. *See also* Attachment II.

However, like the letter agreement, the Transaction Agreement contains an explicit reference to a grant to NS of "overhead rights on CSXT-controlled portion of former Toledo Terminal Railroad." Transaction Agreement, Schedule 4, Item 23, App. Vol. 8B at 113. All of the trackage rights granted in this Schedule 4 are subject to the following limitation:

Unless otherwise provided herein, a trackage rights tenant shall only have the right to enter on and exit from the trackage rights lines at points other than endpoints where the tenant may make a connection with its existing railroad line and joint CSXT/NSR lines

Transaction Agreement, Schedule 4, App. Vol. 8B at 110. NS does not have any existing lines that connect with the LDRT lines into the Toledo Dock area.

The Transaction Agreement contains, as an attached ancillary agreement, a specific form for a trackage rights agreement covering the NS rights on the Toledo Terminal line involved. App. Vol. 8B at 489-495. Section 2 of this agreement states:

The Trackage Rights herein granted are granted for the sole purpose of NSR using same for bridge traffic only between the endpoints of Subject Trackage¹² and NSR shall not perform any local freight service whatsoever at any point located on Subject Trackage.

Id. at 490. These trackage rights do not permit NS to use them to access the tracks of the LDRT where the LDRT tracks connect with the former Toledo Terminal tracks at MI.

¹² Defined in Section 1 of the agreement as the two ends of the complete segment of the Toledo Terminal controlled by CSXT. See Vol. 8B at 489, 495.

The provisions of this trackage rights agreement replace and supersede the rights granted in the 1932 agreement described above. The provisions of the Transaction Agreement include a provision and an ancillary agreement intended to assign to NS any existing trackage rights held by CR over CSXT lines. Transaction Agreement, Schedule 4, item 4, No. 11, and Exhibit PP; App. Vol. 8B at 120-21 and 8C at 793-796. However, these provisions are subject to the explicit limitation that they are not operative if "otherwise provided in the Transaction Agreement." *Id.* Because there is an express agreement relating to the NSR trackage rights over the Toledo Terminal, NSR does not receive CR's pre-existing trackage rights over the Toledo Terminal under the 1932 agreement, as amended.

It is clear from Mr. Hart's deposition that CSX was or should have been aware of the possibility that an agreement like the 1932 agreement might exist, even if he was specifically unaware of it. Hart Dep. Tr. at 193-194. Mr. Hart referred to the existence of this catch-all provision transferring CR's trackage rights on CSXT to NSR, and indicated that "to the best of his understanding," NS would have access to the Toledo Docks after this transaction. Hart Dep. Tr. at 197-198. However, a careful analysis of the Transaction Agreement, in connection with the current agreements, plainly shows that Mr. Hart's understanding is not correct. In contrast, NS witness McClellan admitted that CSX and NS have agreed that NSR will not have any means of access in order to replace CR as the second carrier serving the Toledo Docks. McClellan Dep. Tr. at 56-57. But Mr. McClellan was unfamiliar with any of the current agreements in place relating to the Toledo Terminal, LDRT and any related matters. McClellan Dep. Tr. at 57-58 and 59-61.

In addition to the provisions of the Transaction Agreement, it is necessary to consider a related application included with the principal application. Applicants are seeking approval of their agreement to transfer CR's 50% ownership of the LDRT to be transferred to CSXT (which already owns the other 50%) and for CSXT to exercise complete control of LDRT. Finance Docket No. 33388 (Sub-No. 26) *CSX Corp. et al.*

— *Control* — *The Lakefront Dock and Railroad Terminal Company*. App. Vol. 5, at 464-486. It is also clear that, by agreeing to control of LDRT by CSXT, Applicants have also eliminated any opportunity for NSR to have any involvement in the management and operation of the Lakefront Docks, including the operation of the ore dock transfer facilities operated by TORCO. The inclusion of this related application also implies that CSX had every intention of modifying the existing relationships at the Toledo Docks area in order to obtain an exclusive right to serve that facility.

V. STANDARDS FOR RELIEF

As the Board's policy statement on rail consolidation applications explicitly acknowledges, any elimination of the only remaining rail competitor by a proposed transaction is a significant element of competitive harm that must be addressed. 49 C.F.R. §1180.1(c)(2)(i). Specifically, the Board has come to focus in many recent cases on the so-called "2-to-1" shippers. In *UP/SP*, the Board focused primarily on the need to prevent loss of competition at points where the available rail competitive alternatives would be reduced from two to one. *See UP/SP* at 98-103.

In that proceeding the Board accepted and imposed as part of a condition a general definition of a "2-to-1 shipper" or a "2-to-1 customer" as one "presently served by both UP and SP and no other railroad." *UP/SP* at 57, n.71 (referring to definition in BNSF agreement, section 8i). For purposes of considering the situation at Toledo Docks, the term "presently served" would have been determined in relation to the time the Applicants began negotiating their merger agreement.

During the course of the *UP/SP* proceedings, a clarification of the definition of a 2-to-1 shipper was agreed to by applicants and the Chemical Manufacturers Association ("CMA"), which stated that:

BN/Santa Fe has the right to serve all shippers that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the BN/Santa Fe Settlement Agreement was signed, regardless of how long ago a shipper

may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP.¹³

The clear import of this definition of 2-to-1 is that it does not matter, for the purpose of determining whether relief is necessary, that one or the other of two rail carriers that has the right to serve a facility has ever actually transported any traffic. In this proceeding, CSX has attempted to justify the exclusion of NS from the Toledo Docks and the transfer of CR's ownership interest in LDRT to CSX on the grounds that all of the iron ore handled through the TORCO and LDRT facility is moving on long-term contracts. CSX/NS 68 at 8-9; App. Vol. 5 at 467-469.¹⁴ However, Mr. Hart for CSX also acknowledged that in any 2-to-1 situations, the fact that one carrier has never carried any traffic is not grounds for not protecting that point from harm. Hart Dep. Tr. at 171-173.¹⁵

In summary, the Toledo Docks is clearly a 2-to-1 point used by shippers such as AK Steel that will lose a competitive alternative as a result of the proposed transaction.¹⁶ For this reason, it is necessary for the Board to provide appropriate relief to prevent this competitive harm.

¹³ UP/SP-230 at 20-21 and attached CMA Settlement Agreement at 4. Virtually identical language was later included in a supplemental agreement dated June 27, 1996, between UP/SP and BN/Santa Fe. UP/SP-266. The supplemental agreement was imposed as a condition by the STB. Decision at 12, n. 15 and 231.

¹⁴ CSX witness Orrison, who in the recent past had operating responsibility for CSXT's lines serving the Toledo Docks, indicated that there had been Conrail traffic to and from the Docks. Orrison Dep. Tr. at 609-610.

¹⁵ Mr. Hart also testified that he did not have any part in preparing the response to AK Steel's interrogatory, which clearly conflicts with his understanding of how a 2-to-1 point should be handled. Hart Dep. Tr. at 175-176.

¹⁶ Although AK Steel obviously has a direct interest in the iron ore moving over the Toledo Docks, the Docks can also be used by other shippers, for both iron ore and coal. Their ability to use the Toledo Docks would also be compromised by the proposed transaction.

VI. REQUESTED RELIEF

In order to remove the competitive harm caused by this transaction, specifically, the elimination of competitive alternatives available to AK Steel for the movement of iron ore from the Toledo Docks, the following specific relief should be granted:

1. A condition directing Applicants not to execute the new ancillary agreement granting NSR trackage rights over the former Toledo Terminal line found in Vol. 8B of the Application at 489-495. Such action would leave in effect, and transfer to NSR under the ancillary agreement contained in Exhibit PP to the Transaction Agreement, the rights granted to CR by the 1932 agreement, as amended (relating to trackage rights over the same Toledo Terminal line), so that NSR would have the right to access and use the Toledo Docks facilities.

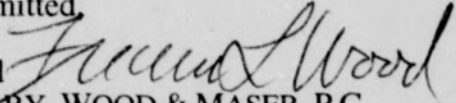
2. An order disapproving the related application in Finance Docket No. 33388 (Sub-No. 26), and directing that this related application be amended to provide for the transfer of CR's 50% ownership to NS or NSR.

3. A condition requiring the assignment to NS or NSR, as the case may be, of all of CR's rights and interests in the various agreements relating to the Toledo Docks, including, without limitation, the 1946 trackage rights agreement with LDRT approved by the ICC, the 1980 Toledo Docks Operating Agreement and the 1984 TORCO Operating Agreement, and any other disclosed and undisclosed agreements relating to the ownership, use, access, management or any other aspect of the Toledo Docks.

VII. CONCLUSION

In view of all of the foregoing considerations, the proposed transaction in this proceeding should not be approved by the Surface Transportation Board, unless it is subject to the conditions and other relief described above.

Respectfully submitted,

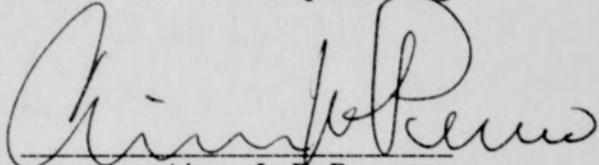
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Attorneys for
AK Steel Corporation

DATE: OCTOBER 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMMENTS, EVIDENCE, REQUEST FOR CONDITIONS AND OTHER RELIEF OF AK STEEL CORPORATION has been caused to be served by first class mail, postage prepaid, on all parties of record in this proceeding this 21st day of October, 1997.


Aimee L. DePew

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Wednesday, September 24, 1997
13 Deposition of WILLIAM M. HART, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at 9:05 a.m.,
21 Wednesday, September 24, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
24 RPR, and transcribed under their direction.
25

1 A. Don't recall.

2 Q. Let me ask you if you could or if
3 counsel could provide you with a copy of what was
4 previously identified as Exhibit 2, which was the
5 two pages from the work papers.

6 A. Exhibit 2 here?

7 Q. Yes.

8 A. Yes.

9 Q. Did I understand you to say in response
10 to Mr. McBride that you prepared this two pages?

11 A. I said I participated in this.

12 Q. Who else was involved in preparing
13 this?

14 A. Probably counsel from Hogan & Hartson.
15 Lawyers from Harkins, lawyers from A&P, lawyers
16 from CSX and folks from Conrail and folks from
17 CSX.

18 Q. Just so the record is clear, the
19 reference to Harkins, is that Harkins Cunningham,
20 Conrail counsel?

21 A. Yes.

22 Q. And A&P is Arnold & Porter, CSX counsel
23 in this proceeding?

24 A. Yes.

25 Q. You indicated that in the preparation

1 of this document, if I understood, the answer was
2 that the STB decision in the Union
3 Pacific-Southern Pacific case had been reviewed.

4 A. Yes.

5 Q. Did you personally conduct a review of
6 that decision?

7 A. Yes, sir.

8 Q. Did you read any parts of the record in
9 that proceeding?

10 A. Yes, sir.

11 Q. As part of the preparation of this?

12 A. Yes, sir.

13 Q. Do you recall what those were, what
14 parts of the record you looked at?

15 A. No, sir.

16 Q. Do you recall if you looked at a
17 document that was known in that proceeding as the
18 CMA settlement agreement?

19 A. I don't believe I looked at that one.

20 Q. Do you recall if you looked at the
21 definition, contained in any documents in the
22 record, of a two-to-one shipper?

23 A. Yes, I did read UP definitions of
24 two-to-one.

25 Q. The UP definitions?

1 A. Yes, sir.

2 Q. Do you recall if you read the
3 definition in the CMA agreement?

4 A. I don't recall that.

5 Q. Are you aware that the CMA agreement
6 includes the definition of a two-to-one shipper
7 as contained in that document?

8 A. I'm not familiar with that document.

9 Q. So the answer is you're not aware that
10 there is such a definition there?

11 A. That's correct.

12 Q. The first portion of this document,
13 Exhibit 2, contains a heading two-to-one
14 definition. And section A first refers to
15 two-to-one shippers as any customer that
16 currently is rail served only by Conrail and
17 CSX. Do you see that portion of the definition?

18 A. Yes, sir.

19 Q. In the next heading, or the next
20 portion of that, it says that a railroad can
21 serve a railroad shipper so long as it is able to
22 serve the shipper, even if it doesn't carry any
23 traffic today. Is it your understanding that
24 that portion of the definition, the last portion
25 after the comma at the end, is applicable even if

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1 the particular railroad has never served, never
2 transported any traffic, as long as it is able to
3 serve the shipper? Do you understand the
4 question?

5 A. I don't think I do.

6 Q. Let's assume that a customer facility
7 can be served by two rail carriers. Both of them
8 have, let's say, sidings that provide access from
9 their lines to the customer facility. They're
10 physically able to serve the customer facility.

11 A. Physically able because they have the
12 right?

13 Q. Well, in this case, they clearly have
14 the right, don't they, because they have tracks
15 that go into the customer facility?

16 A. If they have owned tracks that go into
17 the facility, yes.

18 Q. But let's assume that even though one
19 of those carriers has the ability to serve that
20 customer, it has never carried any traffic for
21 that customer; is it your understanding that that
22 point is still considered a two-to-one point?

23 A. Yes, sir.

24 Q. Let's modify the assumption for a
25 minute. Let's assume that one of those carriers

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1 has physical access and the ability to serve the
2 customer but hasn't transported any traffic for,
3 say, 10 years. Is it still your understanding
4 that that customer is considered a two-to-one
5 customer?

6 A. If two railroads have track into a
7 customer's facility, then the answer is yes.

8 Q. Let's modify the assumptions in this
9 hypothetical slightly. Let's assume that instead
10 of each having separate access, direct access,
11 that one has access via its own line and the
12 other has access by reciprocal switching provided
13 by the first carrier. In that circumstance, with
14 that change, would you agree that whether or not,
15 let's say, the second carrier has ever carried
16 any traffic to or from that customer facility,
17 that still would be considered a two-to-one
18 point, is that correct, as you understand the
19 definition?

20 A. As long as the carrier maintains the
21 rights, that's so.

22 Q. And let's set up a third arrangement.
23 Let's assume that there is, instead of one
24 carrier having direct access and the other having
25 reciprocal switching, that instead they have a

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1 joint facility that they both own or they both
2 have right to use that gives them access to that
3 facility. Even if one of those carriers that has
4 an ownership interest or some other interest in
5 that joint facility has never carried any
6 traffic, that would still be considered a
7 two-to-one point, isn't that correct?

8 A. If the joint facility definition
9 provided access of the carrier to the customer,
10 then it's so.

11 Q. Part 2 of this Exhibit 2 refers to a
12 two-to-one implementation process. Was there any
13 effort as part of this process to examine
14 existing joint facility agreements between CSX
15 and Conrail to determine if those joint
16 facilities related to a two-to-one customer?

17 A. Not that I recall.

18 Q. Were you the one who designed or
19 prepared this description of the implementation
20 process?

21 A. No. I participated in it with other
22 folks that were more knowledgeable about the
23 analytical steps required to develop it. This
24 was a work plan.

25 Q. Looking at the second page of the

1 exhibit identified with the Bates Number 102 at
2 the end, the last item refers to, "Do not weigh
3 truck, geographic, or product competition." Do
4 you know what that means?

5 A. Uh-huh. We were not going beyond the
6 definition of two-to-one other than that which
7 was stated in this paper.

8 Q. You're only looking at whether or not
9 two railroads, specifically CSX and Conrail,
10 served the customer?

11 A. Yes.

12 Q. And as long as those two railroads and
13 no other served the customer, that was regarded
14 as a two-to-one customer, two-to-one point?

15 A. With the variations previously
16 described, yes.

17 MR. WOOD: I would like to have an
18 exhibit marked.

19 (Hart Exhibit No. 12 was
20 marked for identification.)

21 BY MR. WOOD:

22 Q. This document marked as Exhibit 12 is
23 identified as CSX/NS-68, Applicants' Response to
24 First Set of Interrogatories and Request for
25 Production of Documents of AK Steel Corporation.

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1 Just for the record, I've been informed that
2 applicants regard this response as being public
3 under the protective order. Just so the record
4 is clear on that.

5 MR. HITCHCOCK: And the source of that
6 information is what, please?

7 MR. WOOD: Pardon me?

8 MR. HITCHCOCK: And by whom were you so
9 informed? I'm just asking by whom you were so
10 informed.

11 MR. WOOD: Mr. Chris Datz, an associate
12 lawyer at Arnold & Porter.

13 MR. HITCHCOCK: Thank you.

14 BY MR. WOOD:

15 Q. Mr. Hart, did you have any role in
16 preparing the responses to interrogatories that
17 are reflected in this document, that are included
18 in this document?

19 A. I'm not certain. I may or may not
20 have.

21 Q. Let me direct your attention
22 specifically to page 8.

23 A. Okay.

24 Q. And if you could read the
25 interrogatory, which actually begins on the

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1 previous -- interrogatory number 5, which begins
2 at the bottom of the previous page, and the
3 response.

4 A. You want me to read this?

5 Q. Not to read it out loud. I just want
6 you to read it because I'm going to ask you a
7 question or two about it.

8 A. Okay.

9 Q. Did you have any involvement in
10 preparing the portion of the responses identified
11 as being from CSX?

12 A. No.

13 Q. Do you know who did?

14 A. No.

15 Q. Could I ask you to look at 8A again,
16 please, and 373.

17 A. Okay.

18 Q. This again is Exhibit A to the letter
19 agreement of April 8th. And about three quarters
20 of the way or so down the page, under the
21 heading, disposition of certain Conrail
22 interests, it refers to Lakefront Dock. What do
23 you understand that reference to Lakefront Dock
24 to refer to?

25 A. That Conrail's ownership in the

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1 Lakefront Dock is proposed to be assigned to
2 CSXT.

3 Q. Is Lakefront Dock a shorthand reference
4 to the Lakefront Dock and Terminal Railroad
5 Company?

6 A. It is.

7 Q. And what is the nature of Conrail's 50
8 percent interest? Is it a stock ownership?

9 A. I'm not certain if it's a stock company
10 or not. I think it is, but they own half the
11 company.

12 Q. Who owns the other half?

13 A. CSX.

14 Q. Was it CSX, or you specifically, that
15 proposed transferring Conrail's 50 percent
16 ownership interest to CSX in the course of the
17 negotiations?

18 A. It was part of the negotiation.

19 Q. Did you initially propose it?

20 A. I don't specifically recall.

21 Q. How did you know that CSX had a 50
22 percent ownership interest at the time you were
23 conducting the negotiations?

24 A. I just know we own it and I know a
25 little bit about Toledo, and I know it.

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1 Q. Was this a subject that Mr. Carpenter
2 might have been primarily involved in discussing
3 with Norfolk Southern?

4 A. Not particularly.

5 Q. How about Mr. Hinsdale?

6 A. Not particularly. It was not a
7 contentious topic.

8 Q. You met no resistance from Norfolk
9 Southern when you proposed this?

10 A. None.

11 Q. Do you recall if the matter of
12 assigning Conrail's 50 percent interest in
13 Lakefront Dock and Rail Terminal Company to CSX
14 was discussed at the same time there was a
15 discussion of the provision we've previously
16 discussed on page 365 about maintaining parity at
17 Lake Erie docks?

18 A. No, it wasn't.

19 Q. When the interrogatories and request
20 for production of documents propounded by AK
21 Steel Corporation were served on the applicants
22 on or about August 20th, were you provided a copy
23 of those discovery requests?

24 A. Sometimes yes and sometimes no.

25 Q. Do you recall specifically receiving

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1 these?

2 A. No, I don't.

3 Q. Do you recall if someone -- anyone
4 called you and asked you for information
5 regarding the negotiations between CSX and
6 Norfolk Southern with respect to Conrail's
7 interest in Lakefront Dock and Railroad Terminal
8 Company?

9 A. I specifically recall that no one
10 called to ask that question, because the record
11 is clear.

12 Q. What was the reason that CSX wanted to
13 acquire Conrail's 50 percent ownership interest
14 in Lakefront Dock and Railroad Terminal Company?

15 A. It was an asset that Conrail rarely if
16 ever used and, therefore, just wasn't an issue.

17 Q. As part of the work plan identified in
18 Exhibit 2, on page 2, item number 5 at the top
19 mentions conducting an examination of the 100
20 percent traffic flow data. Do you see that
21 reference?

22 A. Uh-huh.

23 Q. Do you know for what time period that
24 traffic flow data would have been examined?

25 A. 1995.

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1 Q. 1995 only?

2 A. Yes, sir.

3 Q. Why would that have been a relevant
4 inquiry in determining whether or not a customer
5 was a two-to-one shipper?

6 A. Well, the traffic didn't determine it.

7 Q. Pardon me?

8 A. The traffic levels didn't determine
9 it.

10 Q. Had you ever receive a copy of these
11 responses identified as Exhibit 12 before today?

12 A. No, sir.

13 Q. No?

14 A. No.

15 Q. Do you have any knowledge as to who
16 prepared this response to interrogatory number 5
17 that represents that it's on behalf of CSX?

18 MR. SIPE: I believe that's been asked
19 and answered but you can answer again.

20 THE WITNESS: I don't know who answered
21 it correctly.

22 BY MR. WOOD:

23 Q. Do you know who prepared any of the
24 responses in this Exhibit 12 that are represented
25 as being on behalf of CSX?

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1 A. No, I don't.

2 Q. Turn back to page 8. Look at the
3 bottom of the page and the response to
4 interrogatory number 6. Could you take a moment,
5 please, Mr. Hart, and read the interrogatory and
6 the response?

7 A. Yes, sir. I've read the question and
8 the answer.

9 Q. Do you know the identity of the
10 shipper, 100 percent of whose traffic is subject
11 to contract with CSXT, that's referred to in this
12 response?

13 A. I don't read the sentence as
14 necessarily one shipper but I know who a major
15 user of the facility is.

16 Q. And who is that?

17 A. AK.

18 Q. And that refers to AK Steel?

19 A. Yes, sir.

20 Q. Were you aware that AK Steel was a
21 major user at the time you were involved in the
22 negotiations with Norfolk Southern?

23 A. Yes, sir.

24 Q. How did you have that awareness?

25 A. It's an important customer.

1 Q. Would that perhaps explain why you
2 might have proposed transferring Conrail's 50
3 percent interest to CSX?

4 A. I think what drove that allocation,
5 that proposed allocation is what I said earlier.
6 Conrail never used the facility.

7 Q. Do you know what commodity AK Steel was
8 transporting --

9 A. Iron ore.

10 Q. Let me finish my question. -- via the
11 Lakefront Dock and Railroad Terminal Company?

12 A. I believe the commodity is iron ore.

13 Q. Do you know where it originates?

14 A. No, I don't.

15 Q. Do you know how it arrives at --

16 A. Yes, sir, in lake vessels.

17 Q. Do you know where it's transported to?

18 A. Yes, sir.

19 Q. Where?

20 A. Ashland and Middletown.

21 Q. Does Mr. Sharp have responsibility
22 within CSX's marketing department for movements
23 of iron ore?

24 A. I believe that's yes.

25 Q. Did you have any discussions with

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1 Mr. Sharp during the negotiations with Norfolk
2 Southern with regard to the movement of iron ore
3 via the Lakefront Dock?

4 A. We had no such discussions.

5 Q. Did you have any discussions with
6 Mr. Sharp about any subject matter?

7 A. No, sir.

8 Q. Do you know if Mr. Carpenter had any
9 such discussions?

10 A. I don't know.

11 Q. How about Mr. Hinsdale?

12 A. Don't know.

13 Q. Could you turn to page 16 of Exhibit
14 12, please. And actually, if you could read the
15 document request number 3 that begins on the
16 previous page and the response.

17 A. Aloud?

18 Q. Pardon me?

19 A. Aloud?

20 Q. No, just read it to yourself. You said
21 you hadn't seen it before today. I just want to
22 be sure you're aware of what's in here.

23 A. I've read it.

24 Q. Are you aware of the agreement that's
25 referred to in this response?

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1 A. Not at all.

2 Q. Have you ever seen it?

3 A. I have never seen it.

4 Q. Maybe we can help you out. I would
5 like to have another exhibit marked.

6 (Hart Exhibit No. 13 was
7 marked for identification.)

8 MR. SIPE: Rick, I would note for the
9 record that there is a provision of the discovery
10 procedures in this case that examining counsel
11 are to attempt to make available or identify, at
12 least, documents a day in advance of the
13 deposition that they plan to show to the witness,
14 a provision which Mr. McBride, to his everlasting
15 credit, complied with.

16 And now you have handed the witness
17 today in the middle of his deposition a document
18 that's some, close to 37 pages long with
19 attachments. I hope you'll be able to ask him
20 questions that move expeditiously so we don't get
21 bogged down on this thing.

22 MR. WOOD: Well, I will certainly do my
23 best. Just so the record is clear, this is the
24 document that was produced in response to
25 document production request number 3. In my

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1 letter of last week indicating that I intended to
2 participate in Mr. Hart's deposition, I
3 specifically identified the responses to the
4 discovery requests made by, among others, AK
5 Steel. I believe that provides sufficient
6 notice.

7 MR. SIPE: I didn't see the letter but
8 I'm not --

9 MR. WOOD: You're on restricted service
10 list and I served it on everybody. I don't have
11 a lot of questions on this but I would like to
12 pursue the inquiry.

13 BY MR. WOOD:

14 Q. Let me ask you a preliminary question,
15 Mr. Hart. I think the import of your previous
16 responses is that you understand that Conrail
17 today has access to the Toledo docks?

18 A. Yes, sir.

19 MR. SIPE: Now, you're using a term
20 Toledo docks. We've been talking about Lakefront
21 Dock. Are we talking about the same facility or
22 not?

23 MR. WOOD: Let me try to clarify that.
24 That's fair enough.

25 BY MR. WOOD:

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1 Q. Have you ever visited CSX's Toledo
2 docks facility?

3 A. Yes, sir.

4 Q. Recently?

5 A. Not recently.

6 Q. Do you recall approximately when it
7 was?

8 A. I'll say five years ago.

9 Q. Are you aware that there is facilities
10 there not only for the movement of iron ore but
11 also for the transfer of coal --

12 A. Yes, sir.

13 Q. Let me finish. -- from railcars to
14 lake vessels for movement via the lakes? Are you
15 aware that there are such facilities?

16 A. Yes, I am.

17 Q. When you were negotiating with
18 Mr. McClellan and Norfolk Southern with respect
19 to the 50 percent capital stock of Lakefront Dock
20 and Railroad Terminal owned by Conrail, were you
21 aware that Lakefront Dock owned and operated the
22 dock facilities at Toledo?

23 A. Yes, I was.

24 Q. Do you know if Lakefront Dock owns and
25 operates all the dock facilities at Toledo?

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1 A. My understanding is that the facility
2 that I call Presque Isle, that is the coal
3 facility, is a CSX, not a Lakefront Dock
4 property.

5 Q. Is what you've referred to as the
6 Presque Isle facility today used entirely for the
7 movement of coal?

8 A. To the best of my knowledge, almost
9 exclusively.

10 Q. And is it your understanding that the
11 Lakefront Dock-owned facilities are used only for
12 the movement of iron ore?

13 A. Almost exclusively.

14 Q. Do you have any knowledge as to whether
15 or not Conrail moves coal through the Presque
16 Isle facility today?

17 A. Rarely.

18 Q. Do you have any knowledge as to when
19 the last time Conrail might have moved coal
20 through that facility?

21 A. Somebody told me there was one move
22 this year.

23 Q. When you said that Conrail rarely used
24 the iron ore handling facilities at Lakefront
25 Dock, are you aware of the last time Conrail used

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1 that facility?

2 A. Not at all.

3 Q. You don't have any knowledge of that?

4 A. I have no knowledge.

5 Q. Looking at Exhibit 13, Mr. Hart, let me
6 ask you again, seeing this document in front of
7 you, which was produced in discovery by CSX, do
8 you still not have any recollection of having
9 ever seen this document?

10 A. I have never seen it.

11 Q. So that would suggest that when you
12 were conducting your negotiations with Norfolk
13 Southern, you were not aware of the existence of
14 this document?

15 A. It doesn't suggest that.

16 Q. You were aware that this agreement
17 existed?

18 A. I knew that CSX and Conrail owned the
19 dock.

20 Q. I'm sorry, they what?

21 A. Owned the Lakefront Dock. And I
22 imagine, without thinking about it, that there
23 had to be a piece of paper.

24 Q. Were you aware that at the time you
25 were negotiating with Norfolk Southern, that

1 Conrail had the right to access both the Presque
2 Isle coal dock facility and the Lakefront Dock
3 iron ore facility?

4 A. Yes, sir.

5 Q. Let me ask you to turn in Exhibit 13 to
6 the page identified -- and if I didn't previously
7 identify this document, let me do so now. This
8 is a document, Exhibit 13, identified with the
9 numbers CSX 48 HC 000101 through 132 and ask you,
10 Mr. Hart, to turn your attention to page 103. At
11 the very bottom, there is the beginning of a
12 paragraph numbered 1.2.

13 A. What page again, please?

14 Q. I'm sorry, it's number 1 in the
15 agreement. The page number is 103 for the Bates
16 stamp, which is the series of numbers.

17 A. Okay. I've got it.

18 Q. Could you read that first sentence of
19 that paragraph, or read the entire paragraph into
20 the record, please?

21 A. 1.2?

22 Q. Beginning with 1.2 at the bottom of the
23 page.

24 A. You want me to read that aloud?

25 Q. Yes, please.

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10 Q. Thank you. Were you previously aware
11 of the existence of that provision?

12 A. As I said to your previous question, I
13 was aware that Conrail had access to the docks.

14 Q. But you weren't aware of the existence
15 of this specific provision?

16 A. I've never seen the document, nor ever
17 read the document.

18 Q. In the response to interrogatories in
19 Exhibit 12 on page 6, in the response that we
20 previously discussed -- no, we didn't discuss
21 this. Interrogatory number 2. Could you read
22 interrogatory number 2 on page 6 and the
23 response? Read it to yourself, please.

24 A. Page 6, number 2, correct?

25 Q. Correct.

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1 A. I've read it.

2 Q. Am I correct in understanding, as with
3 all the other responses, you did not have any
4 involvement in preparing this response?

5 A. You just said all of the other
6 responses? That's not what I said.

7 Q. Well, let me ask you specifically, were
8 you responsible for preparing the response to
9 this interrogatory?

10 A. This specific question?

11 Q. Yes.

12 A. No, I didn't.

13 Q. Were you consulted by anyone with
14 respect to preparing a response to this
15 interrogatory?

16 A. To question number 2, no, I was not.

17 Q. Having read this response, would it be
18 your view that the response is supported by the
19 provisions of section 1.2 of Exhibit 13 that you
20 just read?

21 MR. SIPE: I object to that question as
22 being difficult to follow.

23 BY MR. WOOD:

24 Q. Would you like me to try it again or do
25 you understand the question?

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1 A. I think I understand his question.

2 MR. SIPE: And I also object because I
3 think you're asking him, who doesn't have, by his
4 testimony, does not have direct knowledge about
5 interrogatory response number 2, to speculate
6 about the relationship between the interrogatory
7 and Exhibit 13. But subject to those objections,
8 if he can answer it, so be it.

9 MR. HITCHCOCK: And I would like to
10 add, I don't think it's fair to ask the witness
11 to attempt to interpret the contract which he
12 neither negotiated nor was aware of before
13 today.

14 MR. WOOD: Well, if he can answer,
15 fine. If he can't, I indicated before,
16 Mr. Hitchcock, the document responses in response
17 to our discovery requests as being subjects I
18 might inquire about.

19 MR. HITCHCOCK: That's an entirely
20 different issue. My point is you're asking a
21 witness who did not negotiate the contract to
22 read it and attempt to interpret it.

23 PY MR. WOOD:

24 Q. Do you recall the question, Mr. Hart?

25 A. Vaguely.

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1 Q. Would you like to have it read back?
2 Would you like to try it again?

3 A. Why don't you ask the question again
4 and I'll try to answer it.

5 Q. Are you aware -- and I think you may
6 have answered this before -- that Conrail has
7 access via trackage rights to the Lakefront Dock?

8 A. I didn't say that. I said I was aware
9 that Conrail had access to the docks.

10 Q. Do you know by what means it has that
11 access?

12 A. No, I'm not sure about that.

13 Q. Do you see the portion of this response
14 that says Conrail has trackage rights over CSXT?

15 A. I see the phrase that says that Conrail
16 has trackage rights over CSXT. I see that
17 phrase.

18 Q. Do you have any knowledge as to whether
19 those trackage rights are conveyed or provided by
20 the agreement identified as Exhibit 13?

21 A. That I'm really not qualified for.

22 Q. Do you have any reason to think there
23 might be other agreements other than the Exhibit
24 13 that might provide such trackage rights?

25 A. (Witness nodding.)

1 MR. SIPE: I think that question calls
2 for speculation.

3 THE WITNESS: Yes, it is speculation.

4 BY MR. WOOD:

5 Q. But the answer, with that caveat, is
6 yes? You shook your head.

7 A. The answer is, the Toledo Terminal
8 Company was in and around this neighborhood for
9 100 years so I don't know what agreements might
10 control.

11 Q. Could you look in, again, Volume 8A,
12 this time at page 377, which is another exhibit
13 attached to the letter agreement. It begins on
14 page 375, refers to Exhibit B, Trackage Rights
15 and Haulage.

16 A. Okay.

17 Q. Were you involved in Exhibit A,
18 drafting this particular document?

19 A. Yes.

20 Q. On page 377, under a heading referring
21 to NS rights on CSXT, it includes a reference
22 about the middle of the page to Toledo, Ohio.

23 A. Yes.

24 Q. And it says inherits, and I assume it
25 means Norfolk Southern inherits on

1 CSXT-controlled portion of former Toledo terminal
2 railroad. Are those the trackage rights that you
3 might have been referring to in your previous
4 response?

5 A. It could be those.

6 Q. Are there other trackage rights on CSXT
7 that Conrail presently uses or has the right to
8 use in the Toledo area today, other than the ones
9 on the former Toledo terminal railroad, that
10 you're aware of?

11 A. Could be.

12 Q. Are these the only trackage rights that
13 Conrail has in Toledo that are going to be
14 transferred to Norfolk Southern?

15 A. Not necessarily.

16 Q. Even limiting my question specifically
17 to the Toledo area?

18 A. Even limiting your question
19 specifically to the Toledo area, not necessarily.

20 Q. What other trackage rights identified
21 in Exhibit B, that Conrail presently holds are
22 going to be transferred to CSX in the Toledo
23 area?

24 A. If there is a trackage right that
25 Conrail has that we didn't specifically list,

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1 then to the extent that Norfolk is stepping in to
2 a proposed allocated track as a result of this
3 transaction, then Norfolk would step into that
4 trackage right.

5 MR. WOOD: Could you read back that
6 answer?

7 THE REPORTER: "Answer: If there is a
8 trackage right that Conrail has that we didn't
9 specifically list, then to the extent that
10 Norfolk is stepping in to a proposed allocated
11 track as a result of this transaction, then
12 Norfolk would step into that trackage right."

13 BY MR. WOOD:

14 Q. Do you have any specific examples
15 anywhere, if you can recall, where that type of
16 situation exists?

17 A. No, because by definition, it was those
18 that are not listed.

19 Q. Why was it necessary to specifically
20 mention this particular situation at Toledo?

21 A. Because it was one we were aware of.

22 Q. Do you know if these trackage rights
23 referred to here on page 377 are the trackage
24 rights that Conrail uses to get access to the
25 connection with the Lakefront Dock and Railroad

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1 Terminal Company?

2 A. I'm not certain.

3 Q. Is it possible that among the trackage
4 rights that you referred to a few minutes ago,
5 that may not be specifically identified here that
6 are being transferred to Norfolk Southern, would
7 be trackage rights that Conrail has the right to
8 use to get access to the Lakefront Dock? Do you
9 understand the question?

10 A. Could I have her repeat it?

11 Q. Sure.

12 A. It was complicated enough that I have
13 lost track.

14 THE REPORTER: "Question: Is it
15 possible that among the trackage rights that you
16 referred to a few minutes ago, that may not be
17 specifically identified here that are being
18 transferred to Norfolk Southern, would be
19 trackage rights that Conrail has the right to use
20 to get access to the Lakefront Dock?"

21 THE WITNESS: Yes.

22 BY MR. WOOD:

23 Q. Let me ask you, Mr. Hart, is it your
24 understanding that notwithstanding the proposed
25 allocation of Conrail's 50 percent interest in

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1 Lakefront Dock and Railroad Terminal Company,
2 that post-transaction, Norfolk Southern will have
3 the right to access the Toledo docks facilities?

4 A. To the best of my understanding, that's
5 correct.

6 MR. WOOD: That's all the questions I
7 have.

8 (Recess.)

9 (Hart Exhibit Nos. 14
10 and 15 were marked
11 for identification.)

12 EXAMINATION BY COUNSEL FOR
13 STEEL DYNAMICS, INC.

14 BY MR. SCHNELL:

15 Q. Good afternoon, Mr. Hart.

16 A. Good afternoon.

17 Q. My name is Alex Schnell. I represent
18 Steel Dynamics, Inc., one of CSX's customers in
19 this case but also Conrail's. Could you turn to
20 page 139 of your deposition?

21 MR. SIPE: You mean his verified
22 statement?

23 BY MR. SCHNELL:

24 Q. I'm sorry, your verified statement.

25 MR. SIPE: Are you going to be asking

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 24, 1997

13 Deposition of WILLIAM M. HART, a
14 witness herein, called for examination by counsel
15 for the Parties in the above entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at 9:05 a.m.,
21 Wednesday, September 24, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
24 RPR, and transcribed under their direction.

25

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BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX/NS-68

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

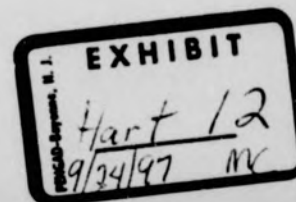
APPLICANTS' RESPONSE TO
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
OF AK STEEL CORPORATION

CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc. and Consolidated Rail Corporation hereby respond to the First Set of Interrogatories and Requests for Production of Documents of AK Steel Corporation (AKSC-2), served August 20, 1997.¹

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

¹ CSX Corporation and CSX Transportation, Inc. are collectively referred to as "CSX", Norfolk Southern Corporation and Norfolk Southern Railway Company as "NS" and Conrail, Inc. and Consolidated Rail Corporation as "Conrail". CSX, NS and Conrail are collectively referred to as "Applicants". AK Steel Corporation is referred to as "AK" or "requester".



- 2 -

1. Applicants have conducted a reasonable search for responsive documents and information to respond consistent with the stated objections. Except as objections are noted herein, all responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Arnold & Porter in Washington, D.C.²

2. Where objections have been raised as to the scope of the request or interrogatory, Applicants are willing to discuss searching for and producing documents or information covered by a more limited request or interrogatory taking into account the stated objections.

3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to discuss the matter with requester if this is of concern with respect to any particular answer.

² Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

- 3 -

GENERAL OBJECTIONS

The following general objections are made with respect to all of the interrogatories and document requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

1. Applicants object to production of, and are not producing, documents or information subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege.

2. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. Applicants object to production of, and are not producing, readily available public documents or information, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto, in accordance with past practice in railroad control proceedings.

5. Applicants object to the production of, and are not producing, information or documents that are as readily obtainable by the requester from its own files.

- 4 -

6. Applicants object to the production of, and are not producing, information or documents that contain confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law, in other proceedings, or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. Applicants object to the requests to the extent they seek documents or information in a form not maintained by Applicants in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which Applicants object to performing.

8. Applicants object to the interrogatories and requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1995.

9. Applicants object to AK's Instructions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. Applicants object to Instruction No. 3 to the extent it requests detailed information regarding otherwise responsive documents that fall within the scope of a privilege.

- 5 -

Such detailed information is not necessary, and it is unduly burdensome to provide. Such information was not required or provided in the most recent major control cases, and no showing has been made here to warrant different treatment.

11. Applicants object to Definition No. 7 to the extent it purports to define "Lakefront Dock" or "LD&RT" to include any facilities or property other than that owned or operated by The Lakefront Dock and Railroad Terminal Company. Applicants' responses will assume the definition to be limited consistent with this objection.

INTERROGATORIES

Interrogatory No. 1:

1. State separately for each Applicant what criteria were used to determine if the number of rail carriers that would be able either to provide service or to obtain access to a customer location or other facility (whether or not owned and/or operated by the customer) would be reduced from two rail carriers to one rail carrier as a result of the transaction involved in this proceeding.

Response:

1. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: See Hart V.S., Application Vol. 2A at 146-47.

NS: See McClellan V.S., Application Vol. 1 at 545-49.

Conrail: Not applicable.

- 6 -

Interrogatory No. 2:

2. State separately for each Applicant the reasons, if any, why the Applicants believe that Conrail did not have the ability either to provide service or to obtain access to Lakefront Dock as of April 8, 1997.

Response:

2. Applicants object to this request to the extent it asserts that they "believe" the statement set forth therein, for which no source is given. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: The statement set forth in the interrogatory is contrary to the facts provided in the Related Application, which clearly states that "LD&RT connects ... with CRC [Consolidated Rail Corporation] via CRC trackage rights over CSXT." Application, Vol. 5 at 473.

NS: See CSX response.

Conrail: See CSX response.

Interrogatory No. 3:

3. Identify for each Applicant all persons involved in the determination of whether or not Conrail had the ability to provide service or obtain access to Lakefront Dock as of April 8, 1997.

Response:

3. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

Not applicable. See Response to Interrogatory No. 2.

- 7 -

Interrogatory No. 4:

4. State separately for each Applicant, by commodity, for each year since 1975, the volume and revenue of all traffic transported by rail to or from Lakefront Dock.

Response:

4. Applicants object to this request to the extent it seeks data for periods prior or subsequent to 1995, which was the base year used for purposes of preparing the Application. Applicants also object to this request on grounds of overbreadth and undue burden to the extent it seeks traffic data for a period of more than 20 years. Applicants further object to this interrogatory to the extent it seeks information regarding any movements with respect to which AK was the shipper, consignor or consignee, on the grounds that such information is within AK's own possession, custody or control and it thus would be duplicative and unduly burdensome to require Applicants to provide it as well. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

Data regarding traffic moved to or from LD&RT is available in CSX and Conrail 1995 traffic data already in the depository. See CSX 23 HC 000027 (Rosen workpapers, file BAS2CCIO.BASEDATA).

Interrogatory No. 5:

5. State separately for each Applicant the reason, if any, why the 50 percent voting stock interest owned by Conrail in

- 8 -

the Lakefront Dock and Terminal Railroad Company was not to be allocated to NS instead of CSX under the terms of the proposed transaction involved in this proceeding.

Response:

5. Without waiving any objection, and subject to the general objections stated above, Applicants responds as follows:

CSX: The allocation of Conrail's interest in LD&RT to CSX instead of NS was the result of negotiations between CSX and NS in the context of the transaction as a whole.

NS: See CSX response.

Conrail: Not applicable.

Interrogatory No. 6:

6. State separately for each Applicant the reasons, if any, they believe the following statement in the Related Application is true:

"Applicants do not anticipate that the LD&RT control transactions will have any effect on inter- or intramodal competition, nor will they cause any lessening of competition or create any monopoly or restraint of trade."

Response:

6. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: The Related Application states that Conrail has not provided any service involving LD&RT in recent years, and that 100% of the traffic handled by LD&RT is subject to contracts with CSXT. See Application,

- 9 -

Volume 5 at 467, 469. Moreover, other routings and facilities that provide alternatives to movements over LD&RT will not be affected by CSX owning 100% rather than 50% of LD&RT's stock. Under these circumstances, CSX does not believe that its ownership of Conrail's 50% interest in LD&RT together with the 50% interest in LD&RT it now holds will lessen competition.

NS: Not Applicable. The Related Application (Sub-No. 26) referenced above was filed by CSX and The Lakefront Dock and Railroad Terminal Company.

Conrail: Not Applicable. The Related Application (Sub-No. 26) referenced above was filed by CSX and The Lakefront Dock and Railroad Terminal Company.

Interrogatory No. 7:

7. Identify and describe for each Applicant the number of employees engaged in conducting operations on the property of Lakefront Dock as of April 8, 1997.

Response:

7. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: The number and job classification of CSXT employees engaged in conducting operations

- 10 -

on LD&RT property as of April 8, 1997 was as follows:

Electricians	4
General Administrator	2*
Janitor	1
Longshoremen	19
Manager	1*
Yard clerks	2
Yard crew	4

* Split time with CSXT Toledo Docks.

NS: Not applicable. NS did not conduct operations on the property of Lakefront Dock as of April 8, 1997.

Conrail: None.

Interrogatory No. 8:

8. State whether any shipper, public official or railroad other than an Applicant has provided or was asked to provide a statement specifically supporting the transaction involved in the Related Application. Identify each such shipper, public official or railroad and the person or persons that provided or was asked to provide such a statement. Identify each person that made a request on behalf of Applicants for such a statement from a shipper, public official or railroad.

Response:

8. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: No.

NS: Not Applicable. The Related Application (Sub-No. 26) referenced above was filed by CSX and The Lakefront Dock and Railroad Terminal Company.

- 11 -

Conrail: No.

Interrogatory No. 9:

9. State separately for each Applicant the specific reasons why counsel for each Applicant believes that the transaction involved in the Related Application meets the requirements of law, as stated in Volumes 1 and 5 of the Application.

Response:

9. Applicants object to this request on the grounds that it is vague and ambiguous. Applicants also object to this request on the ground that it misstates the substance of the opinions referred to, which were provided pursuant to the Board's regulations and were in the form specified by Decision No. 7 in this proceeding. In addition, Applicants object on the grounds that the opinions speak for themselves and must be read in their entirety. Applicants further object to this request to the extent that it may call for the disclosure of information subject to the attorney-client privilege or, with respect to matters not specifically disclosed in the opinions referred to, the attorney work-product rule. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

CSX: The statements in the opinions of counsel that were provided as part of the Application were based on the familiarity, to the extent necessary to give the opinion, of said counsel with corporate governance requirements applicable to

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their respective companies, with the terms of the proposed transaction and with the contents of the Application, including the related applications referred to therein, as well as on review of relevant transaction documents that have been provided as part of the Application.

NS: See CSX response.

Conrail: See CSX response.

Interrogatory No. 10:

10. Identify and describe all facilities located in the Toledo Terminal Area where CSX and NS presently interchange rail freight traffic, and all facilities located in the Toledo Terminal Area where CSX and NS plan to interchange rail freight traffic after consummation of the transaction involved in this proceeding. State whether such interchange facilities are suitable for the interchange of trainload or multiple-car shipments of coal, coke or iron ore moving to or from Lakefront Dock.

Response:

10. Applicants object to the use of the term "suitable" in this request as vague and ambiguous in that it is subject to varying interpretations; for purposes of this response Applicants will interpret "suitable" to refer to the existence of facilities that are physically capable of interchanging the shipments indicated without regard to the operational reasonableness of making such interchanges. Applicants also object to this request to the extent it assumes that coal and coke shipments have moved "to or from Lakefront Dock" within the period covered by these

- 13 -

responses. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

Current CSX-NS Interchanges for Rail Freight Traffic:

Rossford Yard (CSX)
Walbridge Yard (CSX)
Toledo Docks (CSX & LD&RT)
Homestead Yard (NS)
Sumner Street Yard (NS)

Rossford Yard, Walbridge Yard and the Toledo Docks are described in the CSX Operating Plan, Application Vol. 3A at 189-90. Homestead Yard and Sumner Street Yard are described in the NS Operating Plan, Application Vol. 3B at 176.

Planned CSX-NS Interchanges for Rail Freight Traffic:

CSX and NS anticipate that the existing rail freight traffic interchanges identified above will continue to be available after consummation, and that they will also be able to interchange with one another at Stanley Yard, a Conrail yard that will be operated by CSXT, or Yard E, just north of Stanley Yard, a Conrail yard that will be operated by NS. See CSX Operating Plan, Application Vol. 3A at 189-92; NS Operating Plan, Application Vol. 3B at 244-46.

All of the existing and planned CSX-NS rail freight traffic interchange facilities are suitable for the interchange of trainload or multiple-car shipments moving to or from LD&RT. Applicants note that LD&RT is an iron ore handling facility and that other facilities in the Toledo area handle coal and coke. See, e.g., CSX Operating Plan, Application Vol. 3A at 190.

- 14 -

Interrogatory No. 11:

11. Identify and describe the arrangements for control and operation of the rail interlocking and crossing facilities owned and operated by NS and CSX known as "Ironville Tower" located in the vicinity of the property of Lakefront Dock. State whether such interlocking and crossing facilities are suitable for the interchange between NS and CSX of trainload or multiple-car shipments of coal, coke or iron ore moving to or from Lakefront Dock. State whether such interlocking and crossing facilities have been used since 1948 for the interchange between NS and CSX of trainload or multiple-car shipments of coal, coke or iron ore moving to or from Lakefront Dock.

Response:

11. Applicants incorporate by reference their objections to Interrogatory No. 10. Without waiving any objection, and subject to the general objections stated above, Applicants respond as follows:

NS controls and operates Ironville Tower. The Ironville Tower facilities are suitable for interchange of trainload or multiple-car shipments moving to or from LD&RT. See also Response to Interrogatory No. 10. Since 1995, NS has not used the Ironville Tower facilities for interchanges of the types of shipments indicated moving to or from LD&RT.

DOCUMENT REQUESTSDocument Request No. 1:

1. Produce any and all documents that relate to the subject matter of each interrogatory set forth above.

Response:

- 15 -

1. Applicants object to this request on grounds of overbreadth and undue burden to the extent it seeks "any and all documents" that in any way "relate to the subject matter of each interrogatory." Without waiving any objection, and subject to the general objections stated above, Applicants will place in the depository any documents specifically identified in the responses to the foregoing interrogatories.

Document Request No. 2:

2. Produce all documents relating to the construction, operation, management, and financing of Lakefront Dock, including, without limitation, all documents relating to the construction in 1948 of Lakefront Dock as a joint project by CSX and Conrail, and all subsequent amendments.

Response:

2. Applicants object to this request on grounds of overbreadth and undue burden to the extent it seeks "all documents relating to" the matters described and to the extent it seeks documents prior to 1995. Without waiving any objection, and subject to the general objections stated above, Applicants will place in the depository copies of the agreements between CSX and Conrail governing the ownership and operation of LD&RT, and amendments thereto.

Document Request No. 3:

3. Produce all documents created since January 1, 1948 that relate to any trackage rights, joint facility, reciprocal switching, haulage or other arrangement whereby any of the Applicants could or did provide service or obtain access to Lakefront Dock. This request includes, but is not limited to,

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the trackage rights provided by CSX to Conrail as described in the Related Application.

Response:

3. Applicants object to this request on grounds of overbreadth and undue burden to the extent it seeks "all documents created since January 1, 1948 that relate to" the matters described. Without waiving any objection, and subject to the general objections stated above, Applicants will place in the depository the agreement under which Conrail currently has access to LD&RT as noted in the Related Application.

Document Request No. 4:

4. Produce all documents that relate to any agreement, commitment, understanding or arrangement by any of the Applicants involving the ability of any Applicant or any other rail carrier to provide service or to obtain access to Lakefront Dock prior to April 8, 1997.

Response:

4. Applicants object to this request on grounds of overbreadth and undue burden to the extent it seeks "all documents that relate to" the matters described and to the extent it seeks information regarding any rail carrier other than CSX and Conrail. Applicants are willing to provide a response limited to CSX and Conrail and to the time frame contemplated by General Objection No. 8. Without waiving any objection, and subject to the general objections stated above, responsive documents, if any, will be placed in the depository.

Document Request No. 5:

- 17 -

5. Produce all documents that relate to any agreement, commitment, understanding or arrangement by Conrail to cease or limit service or limit using its access to Lakefront Dock.

Response:

5. Without waiving any objection, and subject to the general objections stated above, Applicants state that there are no such documents.

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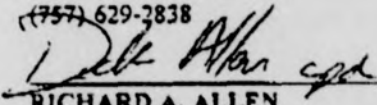
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Respectfully submitted,

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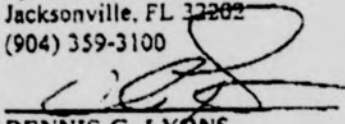

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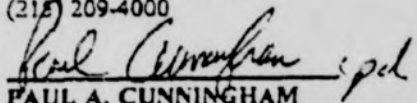
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Consolidated Rail Corporation

CERTIFICATE OF SERVICE

I, Chris P. Datz, certify that on September 4, 1997 I caused to be served by facsimile service a true and correct copy of the foregoing CSX/NS-68, Applicants' Response to First Set of Interrogatories and Requests for Production of Documents of AK Steel Corporation on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance No. 33388.


Chris P. Datz

September 4, 1997

STB

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HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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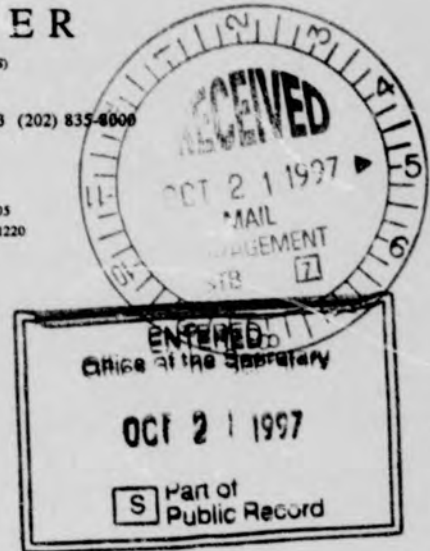
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CHARLES A. SPITULNIK
(202) 835-8196

October 21, 1997

Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



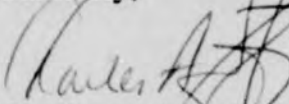
Re: CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the Comments in Opposition and Request for Conditions of the City of Cleveland, Ohio (CLEV-9) and accompanying Verified Statements for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition to these documents, we are enclosing twenty-five copies of a videotape prepared by the City of Cleveland that further documents the issues raised in the City's Comments and Request for Conditions. We are serving copies today on Judge Leventhal and Applicants' counsel. Any other parties wishing to receive a copy of the City of Cleveland's videotape are requested to contact undersigned counsel, and a copy will be provided immediately.

Sincerely,


Charles A. Spitulnik

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record

~~CONFIDENTIAL MATERIAL~~
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~~to working copy of the filing sent~~
~~Office of the Secretary~~
~~UNDER SEAL~~

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

CLEV-9



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

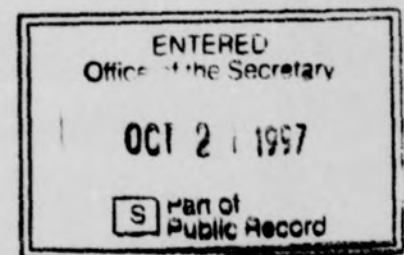
**COMMENTS IN OPPOSITION AND REQUEST FOR CONDITIONS
OF THE CITY OF CLEVELAND, OHIO**

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Dated: October 21, 1997

Counsel for the City of Cleveland, Ohio

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**COMMENTS IN OPPOSITION AND REQUEST FOR CONDITIONS
OF THE CITY OF CLEVELAND, OHIO**

The City of Cleveland, Ohio, by its undersigned counsel, hereby submits its Comments in Opposition to the transactions proposed in this case, and requests that this Board reject the Applications unless or until the Applicants present a plan, acceptable to Cleveland, that will reduce the inordinately large impacts this transaction as proposed would otherwise cause for the populace of the City and its surrounding communities.

In support of these Comments and the Request for Conditions, the City of Cleveland is attaching the Verified Statements of Mayor Michael R. White (CLEV-10), Hunter Morrison, Director of the Cleveland City Planning Department and the City Planning Commission (CLEV-11), William Denihan, Director of the Department of Public Safety (CLEV-12), Terri D. Hamilton, Director of Community Development (CLEV-13), Christopher P. Warren, Director of Economic Development (CLEV-14) and

Philip G. Pasterak, P.E., Vice President of Parsons Brinckerhoff (CLEV-15).¹ In addition, the City is also attaching statements in support of its position by Jeri E. Chaikin, Cuyahoga County Administrator, on behalf of the Cuyahoga County Board of Commissioners (CLEV-16), and Dr. Richard A. Boyd, Superintendent of the Cleveland Public Schools (CLEV-17), which supports the City's position with respect to the proposed transaction. As Dr. Boyd points out, more trains mean more safety hazards for our school children.

The City of Cleveland opposes the transaction described in the application of CSX Transportation, Inc. ("CSXT") and Norfolk Southern Corporation ("NS") to acquire Consolidated Rail Corporation ("Conrail"), filed on June 23, 1997 (the "Application").² As proposed in the Application and the Operating Plan, the impacts of the transaction will be severely detrimental to the interests of the City of Cleveland. The increases in train frequencies will produce virtually no benefit to the City and will burden its neighborhoods with increased danger at the many at-grade crossings, with increased noise and vibrations as trains pass through back yards and near schools, religious or institutions and hospitals, and increased burden on highway infrastructure. The increased train volumes will severely compromise City safety services and dramatically increase the risk of exposure to hazardous materials as a result of accidents. Worse yet, the most serious impacts, and a disproportionate amount of the adversity, will fall on

¹In this document, these Verified Statements will be referred to as "VS [witness last name] at [page]".

²In these Comments, CSXT and NS are sometimes jointly referred to as "Applicants." Citations to their joint application will be in the form "App. vol. ___ at ___." Citations to Applicants' witnesses' verified statements will be in the form "VS [witness last name], App vol ___ at ___."

the backs of the City's minority and low income populations because the Applicants plan to increase enormously the frequency of trains running through residential neighborhoods inhabited by members of these groups. The increased train traffic will not harm only the residents. Businesses will suffer from delays in receipt of materials and supplies as a result of the delays in transit caused by traffic congestion at crossings. Emergency fire and rescue equipment will be prevented from reaching both homes and businesses for the same reasons. While CSXT and NS tout substantial public benefits from this transaction, the City of Cleveland will bear burdens far outweighing any minimal benefits that may flow in its direction.

This transaction can not be approved unless and until CSXT and NS devise a plan to reduce the harm to this City's residents and businesses. CSXT and NS have agreed upon a plan to divide the assets of Conrail and to rearrange their operations to take these new routes and service options into account. While the City recognizes the magnitude of their investment and their resulting interest in maximizing the return from that investment, their plan for reallocation and operation is not necessarily the only way to implement this reallocation. The City asks this Board to require NS and CSXT to reexamine their existing physical plant and the new properties to be acquired from Conrail's system to determine what alternatives are available and practical. The transaction can not be approved until NS and CSXT present alternatives acceptable to the City to reduce the impact on its citizens. Alternatives could include but are by no means limited to:

- (1) Rerouting through traffic away from the City. Both carriers have substantial networks that will allow traffic originating or terminating in

the mid-Atlantic region that passes through Cleveland without stopping to be rerouted away from Cleveland.

- (2) Reallocating the right-of-way and tracks within the Cleveland metropolitan area. Each railroad, of course, is interested in operating its own trains on its own lines. However, using the shared use operating arrangement models proposed for northern New Jersey, Detroit and southern New Jersey/Philadelphia, NS and CSXT should carefully examine the existing routes of all three carriers that exist in Cleveland to determine whether shared operations of remaining trains are possible, and/or how the operations on individually owned and operated tracks could be fairly and efficiently conducted using a plan that does not have as broad and serious an impact on residential communities.
- (3) Construct grade separations for crossings currently at grade on lines that will see an increase in freight traffic as a result of the proposed transaction.

As Mayor White points out in his Verified Statement, it is incumbent " ... upon the leadership of the two railroads to study their proposed operations, present proposals to the City and its surrounding communities for re-arrangement of operations through the City, and determine which if any will have less serious effects and will be operationally and commercially feasible for the railroads." VS White at 5 - 6.

BACKGROUND

In this transaction, CSXT and NS present a plan to acquire Conrail, then allocate its assets between them. CSXT and NS tout the benefits of the transaction, proclaiming that "quantifiable public benefits alone will total nearly \$1 billion per year".

Application, vol. 1 at 2. CSXT will see revenue growth of \$200 million annually by the third year after implementation, and NS will see revenue growth of \$269 million annually within the same time frame. *Id.* at 5.

These benefits will bypass the City of Cleveland almost entirely. In fact, the benefits CSXT and NS claim will be achieved not for the good of the residents of Cleveland, but at their expense. Applicants will find new ways to route their trains over the newly configured route system. They will increase the numbers of trains passing through Cleveland's residential neighborhoods, with increases in frequency ranging from 114% to over 1000%. V.S. Hamilton at 5. They will expose the City's neighborhoods to enormous increases in noise from these increasingly frequent trains. Houses, through whose back yards these trains will pass, will vibrate night and day. Children walking to school will cross the railroad tracks that will see an increase in daily train frequencies of 181%. VS Hamilton at 7. Many at-grade crossings in Cleveland's neighborhoods will see more trains, providing serious potential for delays in emergency response time. V.S. Denihan at 6. The neighborhoods on which CSXT and NS have chosen to impose their increased noise, vibration and risk are home to populations whose poverty rate is above the city wide average, and whose median household incomes are below the city wide average. V.S. Hamilton. In four of the eight neighborhood clusters that will experience the enormous increases, the proportion of non-whites in the population is over 70%. *Id.*

Whether this inordinate impact on the residential neighborhoods of Cleveland is by design or by ignorance, it cannot be tolerated. CSXT and NS have designed their new route systems, presumably to achieve maximum benefit from their proposed investment in Conrail. Yet, the new system will have extraordinary adverse impacts

on neighborhoods across the City as a direct result of the decisions by CSXT and NS to use three principal routes:

- (1) The CSXT line proposed for a major increase in freight traffic begins on the east side of Cleveland in the Forest Hills and South Collinwood neighborhoods, south of I-90 near East 131st Street, and continues in a southerly and southwesterly direction through the Little Italy, University Circle, Fairfax, Kinsman and South Broadway neighborhoods, before crossing the Cuyahoga River and paralleling I-480 to West 150th Street. The typical increased traffic for this line is from 7 trains per day to 44 trains per day, an increase of nearly six times the existing train frequency.
- (2) One of the two new NS lines crosses Cleveland in an east-west direction, entering from the west in the Edgewater and Cudell neighborhoods, continuing through the Detroit Shoreway and Ohio City neighborhoods, crossing the Cuyahoga River through the Industrial Valley, and continuing east through the Kinsman, University Circle/Fairfax and Little Italy neighborhoods, passing through East Cleveland, and then exiting Cleveland through the Euclid - Green and South Collinwood/Nottingham neighborhoods. This line is proposed to increase in traffic volume from 14 to 38 trains per day, an increase of nearly three times the existing frequency.
- (3) The second NS line that will see a dramatic increase in traffic begins near downtown Cleveland (at the former Conrail Lakeshore Line), and continues in a southerly and southeasterly direction through the Goodrich (Payne-Sterling), Central, Fairfax, Kinsman and South Broadway

neighborhoods before exiting into Garfield Heights. Traffic on this line is proposed to increase from 13 trains to 27 trains per day, more than doubling existing traffic.

See VS Morrison and maps attached as Attachments 1 and 2 thereto. In these communities within the City of Cleveland, 64,400 people live within 1,000 feet of the right-of-way that will experience increases in train traffic by over 1000%. *Id.* and VS Hamilton. In the eight neighborhoods most severely affected, non-white population percentages range from 20.9% in one of the areas traversed by the first of the two NS lines, where traffic will increase by 181%, to 99.2% in the Forest Hills and South Collinwood neighborhoods where the traffic on the CSX line will increase by 544%. VS Hamilton. In all of these affected neighborhoods, the median income is below the city-wide median. Taken together, 38% of the population of these neighborhoods live in poverty. *Id.*

Impacts on the City's ability to respond to health and police emergencies will also be severely affected. As William Denihan, Director of the Department of Public Safety states,

"From the perspective of the City's safety services, these increased train frequencies spell disaster almost any way you look at them. A loss of response time caused by increased rail traffic could impair the ability of EMS technicians to effectively treat patients suffering from cardiac arrest or other major trauma. The blocking of grade crossings by rail traffic can reduce time for police response to Priority One calls (that is, calls made when shots are fired or a violent crime is in progress). In numerous areas of the City, increased rail traffic will affect the Fire Department's ability to timely respond to emergency calls."

VS Denihan at 3.

No matter what the perceived financial benefits to CSXT and to NS from implementing this transaction, it can not proceed in its current form because of its disproportionately high impact on low income and minority residents and communities and the untenable risks to the safety and well-being of the residents of these neighborhoods. The benefits to the Applicants will be achieved at the expense of a population that has no say in the selection of the routes the railroads will use and no ability to move away from the source of inordinately increased intrusive noise and danger. This Board's public interest standard requires that it not approve a transaction that will have this level of impact, at least until the Applicants have devised a plan to change the proposed operations in a way that will reduce the impact on these communities.

THE STATUTE

This Board's review of the Application is governed by the standards articulated in 49 U.S.C. §11324, which permits approval only if "the transaction is consistent with the public interest." 49 U.S.C. §11324(c). After listing a number of factors relating to the effect of a proposed transaction on railroads, their employees and the competitive environment in which they function, the regulations that describe the scope of the public interest inquiry state specifically: "The ... [Board] must also consider the impact of any transaction on the quality of the human environment and the conservation of energy resources." 49 C.F.R. §1180.1(b)(2). The Board must find a way to undertake the balancing required by the statute in a way that takes the human impact factors into account. Risk to lives from increased safety response times, impacts on homes from the increased vibrations of passing trains, increases in noise as trains pass schools, hospitals or senior citizen centers -- all these must be taken into account as part of the

balancing of the interests of the public. These are not matters to be relegated only to assessments of the environmental impacts of a transaction. The existence of these issues must be valued and placed in the equation of the public interest balancing test.

The President of the United States has recently added another important factor that this Board must consider in assessing the impact of a transaction on the human environment when determining whether a proposed transaction is consistent with the public interest. In Executive Order No. 12898, the President stated the following:

"To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations in the United States"

Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, §1-101, 3 C.F.R. 859 (1995), 30 Weekly Comp. Pres. Doc. 276 (Feb. 11, 1994).

Fulfilling its mandate to devise a means to comply with Executive Order No. 12898, the U.S. Department of Transportation has recently adopted an Order that describes the process that the Office of the Secretary and each Operating Administration will use to incorporate environmental justice principles into existing programs, policies and activities. 62 Fed. Reg. 18377 (April 15, 1997). DOT's order³ now

³This Order is not specifically binding on the Surface Transportation Board, which has not yet devised its own regulations to address the President's directive. However, its approach provides useful insight into the way in which regulatory approvals of matters in the transportation industries, all of them, including rail, should take environmental justice issues into account.

" ... provides that disproportionate impacts on low-income and minority populations are to be avoided, if practicable, that is, unless avoiding such disproportionate impacts would result in significant adverse impacts on other important social, economic, or environmental resources."

Id. at 18378. By these measures, including the Board's rules and the recent environmental justice orders, this transaction can not be approved as presented.

THE PROBLEM

The Applicants' joint proposal will create four (4) types of problems for the City of Cleveland. These relate to: (1) environmental justice; (2) safety services; (3) impact on sensitive receptors; and (4) the high cost to the City of all of these impacts.

(1) Environmental Justice. The joint proposal¹ of NS and CSXT will have a disproportionately high and adverse impact on minority and low-income families living in Cleveland's neighborhoods.

The facts about NS's and CSXT's plans speak loudly of the environmental injustice of the proposed transactions. In the following neighborhoods, train frequencies on three lines -- 2 NS and one CSXT⁴ -- will increase from a minimum of 114% to a maximum of 1188%. As shown, these neighborhoods are characterized by poverty and by populations that are non-white by overwhelmingly large margins:

NEIGHBORHOOD	TRAINS/DAY % INCREASE	POP.	% NON- WHITE	% BELOW POVERTY
Forest Hill, South Collinwood (CSX line)	6.8 --> 43.8 544%	5,479	99.2%	33.9%

⁴These lines are described more fully above at p. 5-6.

NEIGHBORHOOD	TRAINS/DAY % INCREASE	POP.	% NON- WHITE	% BELOW POVERTY
Little Italy, University Circle, Fairfax (CSX and NS joint segment)	6.8 --> 43.8 544%	9,459	65.6%	44.0%
Kinsman, South Broadway (CSX line)	3.8 --> 43.8 1188%	10,379	72.0%	39.3%
Edgewater, Cudell, Detroit-Shoreway, Ohio City (first NS line)	13.5 --> 37.8 181%	20,541	20.9%	36.5%
Kinsman (first NS line)	13.5 --> 37.8 181%	4,913	80.1%	48.4%
Euclid-Green, South Collinwood (first NS line)	13.5 --> 37.8 181%	5,481	56.7%	20.1%
Goodrich, Central, Fairfax (second NS line)	12.5 --> 26.8 114%	6,683	72.8%	56.5%
Kinsman, South Broadway (second NS line)	12.5 --> 26.8 114%	6,536	58.1%	37.3%
TOTAL FOR ALL 3 LINES	33 --> 108 277%	64,440	53.8%	38.0%

VS Morrison at Att. 1 and 2, VS Hamilton at 3 - 11.

(2) Safety Impacts. Mr. Denihan explains in some detail the adverse impacts on the ability of EMS, Police and Fire officials to respond to emergencies when trains block crossings. In the attachments to his Verified Statement, for example, he notes that EMS teams made 4,456 runs in 1996 in the Nottingham area and police responded to 12,701 in that area in the same period. Detours to avoid blocked crossings would add 3.7 miles to the response route, and 7.2 minutes to response time. Fire teams in

the same area would need to add 3.9 miles, with additional response times of 7.4 minutes. The line through this section of the City, which has 4 crossings in the area of the identified emergency response teams, will see an increase from 13.7 to 37.8 trains per day. VS Denihan, Attachments p.1.

A similar analysis in the Aetna area shows EMS runs, which totalled 5,840 in 1996, facing detours of 2.3 miles and added time of 4.8 minutes to avoid one of the two crossings in the immediate area if blocked by a train. Fire teams, which made 450 runs in 1996, face possible detours of 1.6 miles, with additional response times of 4.2 minutes. In the Edgewater section, near the border with Lakewood, there are six rail crossings between West 110th Street and West 117th Street. EMS teams made 1,593 runs in this area in 1996 and Police responded to 15,878 calls in the same period. The detour routes here to avoid any one of these six crossings are 1.9 miles, adding 4 minutes to the teams' time to respond.

CSX projects that "the maximum amount of time that an at-grade crossing on the subject line will be blocked is 25 seconds." Response of Applicants to the First Set of Interrogatories and Document Requests of the City of Cleveland, CSX/NS - 115, at Response to Interrogatory No. 22(d), at 25. Mr. Denihan's experience is to the contrary. "Police department records show that trains sometimes block these crossings from two (2) to five (5) minutes, and delays have extended from five (5) to ten (10) minutes." VS Denihan at 3. In responding to any medical or other emergency, each minute is precious. In treatment of a person suffering from cardiac arrest, "[a]ny delay in accessing the patient seriously decreases the chance of survival." *Id.* at 4. No one wants fire engines en route to a fire in their home to have to wait another second, let alone several precious minutes while awaiting a delay at a crossing or finding a way to

detour around one. Yet, that is what the residents of Cleveland will face in communities around the City that will see substantial increases in freight train volumes.

(3) Sensitive Receptors.

The overall impacts on these communities, in terms of grade crossings, increased noise and vibrations at homes and other sensitive receptors are detailed in the Verified Statements of Messrs. Denihan and Morrison. Mr. Morrison reviews in detail the hospitals, parks, schools, historic properties and landmarks, and scenic areas that are close to the three (3) lines. As he explains, the impact on these sensitive receptors will threaten their viability as valuable resources to the community. VS Morrison at 11.

(4) The Cost to the City of Cleveland is Too High.

The destructive impacts of the joint proposal clearly outweigh any merger economic benefits to the City. As Director of Economic Development Chris Warren explains, while the proposed transaction might bring some increased jobs to the area, there is little to recommend this transaction to the business community of the area. Now, the area's shippers have two competitive rail alternatives. After this transaction is approved, they will still have two.

There may be some increases in economic opportunities for the freight forwarding businesses in the area, but CSXT and NS have not studied (or at least have not reported on the results of such a study of) the City's highway infrastructure, including the bridges and intersections that will be used by the trucks entering and exiting

the expanded intermodal facilities⁵, to determine whether there is sufficient capacity to handle the increased highway traffic. If that capacity does not exist, then what good does the City's business community gain from the transaction? Instead of benefit, the businesses will see only the increased congestion and traffic delays that will be the outgrowth of this new traffic.

Moreover, CSXT and NS have not consulted with the City's staff about plans for land use and economic development in the areas where their changed or increased operations will have the most impact. VS Warren at 4. Although they claim that "the transaction will have a substantial positive effect on the economy of the Cleveland area", CSX/NS-115 at No. 6(b), at 10, they can not honestly claim, because they have not inquired, that the benefits to the City will be net positive.

In fact, the net impact on the City of Cleveland will be overwhelmingly negative. The condition Cleveland seeks is designed to address that. Applicants must be required to review the trains now planned to run through the City of Cleveland to determine whether any can be rerouted to other portions of the newly configured systems without substantial impact to transit time and distance, while permitting the trains to remain a competitive service alternative. Some, particularly those that run through with stopping to swap blocks or have any local component, should be susceptible to such rerouting. See VS Pasterak at 2-3.

⁵Applicants have stated that CSX plans to add a new gate east of 152nd Street to provide staging for additional tractor trailer units inbound to the Collinwood terminal, which is "75% better than what exists today on the west side of 152nd Street and Darwin intersection", and to add a left turn signal at the intersection for southbound traffic. See CSX/NS-115 at Interrogatory No. 18, at 21. However, CSX states only that if improvements are required in the future, it will address those needs if and when they arise. *Id.* This does not appear to be a detailed study of infrastructure improvements that might be required.

For those trains that do business in Cleveland, picking up or dropping off blocks, or originating or terminating at the intermodal facilities in the metropolitan area, CSXT and NS should be required to consider alternatives, and to review those alternatives with local communities that might be affected by the increased train frequencies. Applicants already recognize the need to make capital investments in the rail infrastructure to be able to accommodate the increased numbers of trains, but the projections they present do not appear to fully account for the improvements that will be required. *Id.* at 3. Before spending any of this money, CSXT and NS should review the possible routes through and around the City of Cleveland and determine which might be a better arrangement from the perspective of reducing the impact on affected communities. Applicants are claiming hundreds of millions of dollars of increased profit each year from the implementation of the proposed transactions. This Board should not hesitate to require them to spend a portion of that to make changes to track and right-of-way, including construction of additional tracks where there are one-track segments, and to sidings, yards, bridges and signal systems, in order to reduce the harm that the transaction will otherwise cause.

One additional set of measures is required. No matter where the Applicants reroute traffic in and around this City, the lines they use cross streets at grade. Where those lines will see train frequencies increase, there is no alternative but to require construction of grade separations. Community safety and traffic congestion problems permit no other solution. This Board should require its implementation.

CONCLUSION

Applicants plans for the City of Cleveland leave the City with no choice but to oppose this transaction. The enormous impact from the substantial increase in train

volumes creates a situation for the Clevelanders that can not be endured. Increases of train frequency by as much as 1188% in some areas will create intolerable increases in noise, vibration, grade crossing hazards, and highway congestion. The burdens of this transaction will fall on the backs and in the back yards of the people of Cleveland. Worse yet, they will receive nothing in return. There has been no showing of any economic benefit for the City, other than a marginal and probably short term increase in employment opportunities. Instead, the poor and minority populations of the City will bear an inordinately large burden from the joint CSXT - NS proposal. There is no justification. The proposal is contrary to, not consistent with, the public interest by any measure. It can not be approved until NS and CSXT present alternatives acceptable to the City to reduce the impact on its citizens. NS and CSXT must present a plan to reroute as many through trains as possible to other routes that bypass the urban and suburban neighborhoods that will see the adverse effects of the current proposal. They must be required to construct grade separations for all at-grade crossings on the lines where Applicants propose to increase train frequencies. For those trains that must come through Cleveland, NS and CSXT must be required to review alternatives, present them to the City and other affected communities, and find routes to move the traffic through this area that will not burden the affected minority, low income and other populations at the same extreme level as will occur with the existing proposal. The statute, this Board's regulations and the President's Executive Order No. 12898 require nothing less.

WHEREFORE, and in view of the foregoing, the City of Cleveland asks that this Board disapprove the transactions proposed in the Application unless and until NS and CSXT devise and present to the City of Cleveland the surrounding communities an

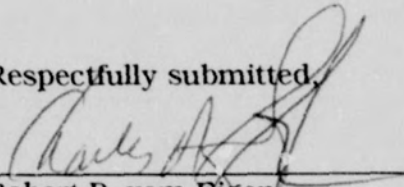
acceptable plan to reroute traffic, to construct at-grade crossings on lines where train frequencies will increase and to otherwise reduce the inordinate adverse impacts this transaction will create.

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Dated: October 21, 1997

Respectfully submitted,



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Counsel for the City of Cleveland, Ohio

**VERIFIED STATEMENT OF
MAYOR MICHAEL R. WHITE
CITY OF CLEVELAND
(CLEV-10)**

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**VERIFIED STATEMENT OF
MAYOR MICHAEL R. WHITE**

I am Michael R. White, the Mayor of the City of Cleveland, Ohio. The proposed acquisition of Conrail by CSX Transportation, Inc. and Norfolk Southern Corporation will wreak havoc on the lives and businesses of the people I represent. I have no choice but to oppose it.

I have proudly served the people of Cleveland as their Mayor since 1990. I was born and raised in Glenville. After receiving my B.A. in Education and Masters in Public Administration from Ohio State University, and serving a brief tenure as an aide to Columbus Mayor Tom Moody, I came home and was elected to represent Glenville on the Cleveland City Council, where I served on the Finance Committee and as Chairman of the Community Development Committee. In 1984, I was elected to serve in the Ohio State Senate, where I served until 1990 when I was elected Mayor of the City of Cleveland.

Since being elected Mayor, I have made improving the quality of life of the citizens of this City one of my top priorities. We have faced down criminals, reducing crime by 17% since 1990, and have established financial incentives and neighborhood development activities that have created more than 8,000 jobs and retained another 10,000 positions. We have seen growth in new home construction and a 300% increase in rehabilitation of formerly abandoned homes. We have met the challenges faced by this City, and have succeeded in making Cleveland a better place to live and work.

Now, however, we in Cleveland are faced with another challenge to our ability to improve the lives of our people. The proposed acquisition of Conrail by CSX and Norfolk Southern is an attempt by these two railroad giants to ride roughshod over the rights and concerns of the good people who live and work here. The City of Cleveland has lived proudly and well with heavy industry throughout our history, and we welcome the recognition by these two railroads of the importance of Cleveland as a crossroads of commerce for traffic moving between Chicago and the markets of the northeastern United States.

But at what cost? These two rail giants propose to increase freight train traffic from two to six fold directly through densely populated urban neighborhoods. There are not only schools, parks and playgrounds along the affected rail lines but also historic districts, scenic areas and hospitals. The proposal before the Surface Transportation Board does not take into account in any way the impact this merger will have on the lives and the property of our residents, or the aging infrastructure of this city. As a result, I am left with no choice but to oppose this merger because of the serious and destructive impact the transaction will have on the quality of life for

thousands of Clevelanders, especially poor and minority residents, in well established neighborhoods, now and for generations to come.

This transaction will see enormous increases in train traffic through several neighborhoods around the metropolitan area. Based on my staff's review of the joint plan of CSX and Norfolk Southern, we see the train frequencies increasing by as much as 1188% in some areas! Obviously, this is no minor matter. Imagine if you will the impact on the life of a poor, elderly resident who has lived in the same place for most of her adult life, near the railroad tracks that have seen at most a handful of trains each day. Now, she will face in her home and in her efforts to conduct the daily business of her life in her community all of the increased safety hazards, noise, vibrations and congestion, and decreased access, property values and overall quality of life that an increase in train frequencies of this magnitude will bring. The plight of this resident will be shared by thousands of others across the area.

Members of my staff are submitting testimony today that reviews the areas impacted, the nature of the communities that exist along these rail lines, and the problems these new volumes of train traffic will bring. As you will see in their testimony, this transaction has the potential to have a disproportionate impact on low income and minority populations in several areas of the City. The President's Executive Order No. 12898 mandates careful review of a transaction that would have such an impact, and CSX and Norfolk Southern admit that they have conducted no such study on the impacts of the transaction on the residents of this City. Clearly, they have not considered these impacts. In their haste to maximize their corporate profits, they must take the time and expend the necessary resources to examine these impacts and determine if there is a way to achieve their objectives without creating this

problem. Have they done this study yet? No. Can this transaction be approved before they do? No.

Surely, this transaction can not go forward without some recognition of the burden it will place on this City and some effort on the part of the two companies, CSX and Norfolk Southern, to resolve the problems they are creating. We continue to be astonished at the arrogance of a corporate culture that permits its leaders to think that they can bring potentially disastrous increases in train frequencies to this City with no plan, and with no mention to us of any idea whatsoever, of possible ways to reduce the disproportionate and detrimental impacts we will experience. Neither CSX nor Norfolk Southern has expressed to us any concern for the residents of our City, and neither has come to us with a plan as to how to reduce these impacts.

We have begun to review their plans, with an eye towards determining what alternatives might exist. Are there ways to reroute some of these new trains around Cleveland? CSX and Norfolk Southern should consider this, even if it means marginally longer transit times if the traffic is not time sensitive and if it will mean less of an impact on the lives of the people here. For those trains that need to pass through our City, are there other routes that could be used to spread the trains around, or to use existing lines in a different way that will allow reduction in the huge projected increases in frequency through some of the residential neighborhoods? This Board must require these two companies to study the existing route structures in and around the City and to modify their proposal to mitigate these harms before this transaction can be approved. This study must be conducted in a way that takes into account the human factors that must be of concern to this Board in making its public interest analysis. Yes, the use of some of these alternative routes might require CSX to spend some

money to upgrade the lines and facilities to accommodate these traffic increases. But why not? They are projecting total economic benefits of nearly \$1 billion annually if this proposal is implemented. This Board should not hesitate to require them to spend some of that to avoid the impact on the citizens of Cleveland. The railroads, not those of us who live in this City and are the passive victims of the railroads' greed, should be required to devise a workable plan to mitigate the harm caused by this transaction on this City and should be required to bear the cost of that mitigation. The railroads must not be permitted to destroy people's lives in the name of enhancing corporate assets.

This transaction can not be approved if it is not consistent with the public interest. I can not emphasize strongly enough my view that the interests of the public in the City of Cleveland will be ill-served, in fact will be harmed beyond measure, if this transaction is approved as proposed. I oppose this transaction and say to this Board that it can not be approved unless and until the railroads devise a realistic and comprehensive plan for reducing the devastating impact it will bring to the lives of the people of this City.

CSX and NS have brazenly pushed forward their plan to bring substantial amounts of increased traffic, with all of its attendant increases in noise, vibrations, traffic delays and safety risks to communities throughout the Cleveland metropolitan area, without consulting first with the communities that will experience the detrimental effects of those increases. I call upon the leadership of the two railroads to study their proposed operations, present proposals to the City and its surrounding communities for re-arrangement of operations through the City, and determine which if any will have less serious effects and will be operationally and commercially feasible for the railroads. This Board should require nothing less of them.

Verification

State of Ohio

City of Cleveland

SS:

Mayor Michael R. White, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Michael R. White, Mayor

Subscribed and sworn to
before me this 20th
day of October, 1997,

Notary Public

My commission expires:

RICHARD F. HORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

**VERIFIED STATEMENT OF
HUNTER MORRISON
DIRECTOR OF COMMUNITY PLANNING
(CLEV-11)**

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**VERIFIED STATEMENT OF
HUNTER MORRISON**

I am Hunter Morrison, Director of the Cleveland City Planning Department and the City Planning Commission. I have served in this capacity since 1981, and am responsible for the city's planning, zoning, design review and capital improvements programming. My department managed Civic Vision 2000, a \$3 million initiative which has resulted in a comprehensive updating of the City's Downtown Plan, City Plan and Zoning Code. My department has prepared urban design and development plans for downtown and neighborhood districts and has overseen the design of major projects totalling in excess of \$2.5 billion since 1980. Under my direction this department was responsible for overseeing the development of master plans for: the North Coast Harbor District, site of the Rock and Roll Hall of Fame and Museum; the Gateway Sports District, site of Jacobs Field and the Gund Arena; the Playhouse Square Theater District; the Midtown Industrial District; and six "Neighborhood Town Center" retail

districts. Before joining the Cleveland city staff in 1980, I held planning positions in Boston and worked on planning issues for the cities of New York and Nairobi, Kenya. I have a Bachelors Degree in City Planning and Political Science from Yale College, a Masters in City Planning from Harvard University and a Masters in Business Administration from Cleveland State University.

I am a member of the Governing Board of the Northeast Ohio Areawide Coordinating Agency (NOACA), the region's Metropolitan Planning Agency and have served as President of the organization and chairman of its Transportation Advisory Committee. In this capacity, I have been involved in all regional-level transportation planning and capital investment decisions since 1981. I have been appointed by Governor Richard Celeste and subsequently by Governor George Voinovich to serve on the Ohio State Historic Preservation Advisory Board, which board is responsible for opining on the eligibility of properties and districts nominated for inclusion on the National Register of Historic Places. I serve as Mayor Michael White's alternate on the Cuyahoga County Planning Commission and, in that capacity, am involved in land use and solid waste planning in the County and its constituent communities.

My work in this City has given me the opportunity to become very familiar with the rail network in and around Cleveland, because it has been my job, working with civic and business leaders here, to develop plans for the City to grow and meet the needs of its citizens into the next century. I have reviewed in detail the plans announced by CSX Transportation, Inc. and Norfolk Southern for reallocation of the routes and assets of Conrail. I know well the routes they plan to use, and I have worked closely with my colleague Terri Hamilton, the Director of Community Development, who is also submitting a Verified Statement today, to develop an understanding of the

impact of the proposed operating arrangements on this City's neighborhoods. For Cleveland, the news is not good.

The lines CSX and Norfolk Southern will use to run more trains through the City will traverse residential neighborhoods, moving anywhere from twice as many to over six times as many trains per day across these lines. The three lines that the two carriers will use to haul traffic through Cleveland are:

- (1) The CSXT line proposed for a major increase in freight traffic begins on the east side of Cleveland in the Forest Hills and South Collinwood neighborhoods, south of I-90 near East 131st Street, and continues in a southerly and southwesterly direction through the Little Italy, University Circle, Fairfax, Kinsman and South Broadway neighborhoods, before crossing the Cuyahoga River and paralleling I-480 to West 150th Street. The typical increased traffic for this line is from 7 trains per day to 44 trains per day, an increase of six times the existing train frequency.
- (2) One of the two new NS lines crosses Cleveland in an east-west direction, entering from the west in the Edgewater and Cudell neighborhoods, continuing through the Detroit Shoreway and Ohio City neighborhoods, crossing the Cuyahoga River through the Industrial Valley, and continuing east through the Kinsman, University Circle/Fairfax and Little Italy neighborhoods, passing through East Cleveland, and then exiting Cleveland through the Euclid - Green and South Collinwood/Nottingham neighborhoods. This line is proposed to increase in traffic volume from 14 to 38 trains per day, an increase of nearly three times the existing frequency.

- (3) The second NS line that will see a dramatic increase in traffic begins near downtown Cleveland (at the former Conrail Lakeshore Line), and continues in a southerly and southeasterly direction through the Goodrich (Payne-Sterling), Central, Fairfax, Kinsman and South Broadway neighborhoods before exiting into Garfield Heights. Traffic on this line is proposed to increase from 13 trains to 27 trains per day, more than doubling existing traffic.

These routes and the neighborhoods they pass through are shown on the two maps attached to my statement as Attachments 1 and 2. Ms. Hamilton's statement provides a description of these neighborhoods and their populations, and I will not repeat that information here, although it is summarized by notation on these two maps. My statement will review two issues with respect to these lines: (1) the detrimental effects they will bring; and (2) the question whether there are alternatives available for CSX and NS to consider as they plan to increase the volume of traffic they run through the City of Cleveland.

The Detrimental Effects on The Adjacent Neighborhoods

Most rail lines were created to serve industrial areas. As is the case with the three lines described above, they sometimes run through or adjacent to residential areas. This is particularly common in older urban areas like Cleveland, where much of the city developed before zoning laws required a separation between residential and industrial uses.

When freight rail lines adjoin residential areas, negative impacts are almost inevitable. Noise, vibration, odor, dust and safety hazards are the common consequences for households living close to the rail lines. Naturally, the more active

the rail line, the greater the impacts. Similarly, night-time impacts are typically more detrimental than are the same impacts occurring during daylight hours.

An issue of particular concern is the fact that the urban neighborhoods which adjoin freight rail lines are often home to residents who are either lower income or are members of minority groups. These individuals tend to be more severely affected by the adverse impacts of nearby freight rail lines for a number of reasons, including the following:

- (1) Mobility. The most basic limitation affecting lower and minority populations who are confronted with the impacts of increased freight rail traffic is the fact that these households often lack the financial resources and the options to move away from the impacted area.
- (2) Protection. The impact of increased freight rail traffic can be particularly severe for lower income households because they often cannot afford to make the kind of home improvements -- such as sound insulation, air conditioning and air filters -- which can assist in mitigating the adverse impacts caused by the proximity of rail lines.
- (3) Sensitive Populations. Senior citizens, disabled persons and children are often more highly represented in lower-income households than they are in the general population. These individuals are also prone to experience the greatest impacts from the noise, vibration, dust and traffic safety hazards associated with freight rail lines.

Another factor affecting the impact of freight rail lines on adjacent neighborhoods is the elevation of the tracks relative to the elevation of the land on which the houses are situated. Each of three relationships is associated with a different set of impacts.

- (1) At-Grade Tracks. When rail tracks are located at the same elevation (or "grade") as the adjacent housing, the impacts of noise, vibration, odor and dust are often at their most severe levels. Most significant, however, is the fact that at-grade crossings between rail tracks and streets pose serious hazards to public safety. These hazards result not only from the potential for vehicular and pedestrian accidents but also from obstructions in the routes for emergency vehicles. In addition, the at-grade crossings increase noise levels because of the necessity for the trains to sound horns as a warning at each of those crossings, in daylight as well as night-time hours.
- (2) Above-Grade Tracks. Rail tracks which are elevated above the grade of the adjoining neighborhoods and streets eliminate the traffic safety hazards caused by at-grade crossings and, also, reduce (but not eliminate) the impacts of vibration and dust. Noise, however, can be as great or greater in the case of elevated tracts, particularly when the tracks run at the level of upper-floor bedroom windows.
- (3) Below-Grade Tracks. Rail tracks which are depressed below the grade of adjoining housing and streets are most effective in reducing all of the adverse impacts of freight lines on nearby neighborhoods. Of course, some distance separation is still desirable -- a fact which is well known by residents who live directly above subway lines.

In addition to their impacts on neighborhoods, generally, the proposed increases in freight rail traffic through the City of Cleveland will have significant impacts on uses which are particularly susceptible to the noise, vibration, and safety hazards associated

with increased rail traffic. The following analysis examines four such uses -- schools, neighborhood parks, hospitals and historic districts.

Schools and Neighborhood Parks. A total of nine (9) primary and secondary schools and five (5) neighborhood playgrounds or playfields in the City of Cleveland are located in proximity to railroad grade crossings on lines where significant increases in freight rail traffic have been proposed. In such instances, children may cross the tracks in reaching the school or park. Any significant increase in rail traffic will increase the likelihood of accidents at these grade crossings.

Euclid-Green/South Collinwood (NS). The following schools and parks are located in proximity to either the London Road, Wayside Road or Nottingham/Dille Road grade crossings along the NS line through the Euclid-Green/South Collinwood section of northeast Cleveland.

- Euclid Park Elementary School, 17914 Euclid Avenue, located approximately 1,500 feet south of the rail tracks, in proximity to the Wayside and London Road grade crossings.
- Margaret Spellacy Middle School, 655 East 162nd Street, located approximately 2,500 feet north of the rail tracks, in proximity to the Wayside and London Road grade crossings.
- Collinwood High School, 15210 St. Clair Avenue, located approximately 2,000 feet north of the rail tracks, in proximity to the Wayside and London Road grade crossings but also directly accessible over the Ivanhoe Road grade-separated crossing.

- Holy Redeemer School, 15712 Kipling Avenue, located approximately 1,000 feet north of the rail tracks, in proximity to the Wayside and London Road grade crossings.
- Dugan Park, at Olympia Avenue and Avalon Road, located directly on the south side of the rail tracks, east of the Wayside and London Road grade crossings.
- Mark Tromba Park, at Mandalay Avenue and Royal Road, located approximately 500 feet north of the rail tracks, in proximity to the Wayside and London Road grade crossings.
- R.J. Taylor Park, located west of Nottingham Road, approximately 1,000 feet north of the rail tracks, in proximity to the Nottingham/Dille grade crossing.

Cudell/Edgewater (NS). The following schools and parks are located in proximity to the six (6) grade crossings between West 110th and West 117th Streets along the NS line which runs between Detroit and Clifton Avenues through the Cudell/Edgewater section of northwest Cleveland.

- Louisa May Alcott Elementary School, 10300 Baltic Avenue, located approximately 250 feet north of the rail tracks, in proximity to all six (6) grade crossings.
- St. Rose Elementary School, 1441 West 116th Street at Detroit Avenue, located approximately 500 feet south of the rail tracks, in proximity to all six (6) grade crossings.

- Baltic Playground, at Baltic Avenue and West 108th Street, located directly on the north side of the rail tracks, in proximity to all six (6) grade crossings.

Kinsman/South Broadway (NS). The following schools and parks are located in proximity to the grade crossings at Bessemer Road and Aetna Road on the line which runs in a north-south direction in the corridor between East 79th and East 93rd Streets in the Kinsman/South Broadway section of southeast Cleveland.

- South High School, 7415 Broadway, located approximately 1,500 feet west of the rail tracks, in proximity to the Aetna Road grade crossing.
- A.B. Hart Middle School, 3901 East 74th Street, located approximately 2,000 feet west of the rail tracks, in proximity to the Aetna Road grade crossing.
- Woodland Hills Elementary School, 9201 Crane Avenue (near Union Avenue), located approximately 1,500 feet east of the rail tracks, midway between the Aetna and Bessemer Road grade crossings, with access from west of the tracks available via a grade-separated crossing at Union Avenue.
- Stella Walsh Recreation Center, 7345 Broadway, located approximately 2,000 feet west of the rail tracks, in proximity to the Aetna Road grade crossing.

Historic Districts. The NS and CSXT lines targeted for significant increases in freight rail traffic run through or close to seven (7) nationally or locally designated historic districts in the City of Cleveland. The affected districts include the following:

- Franklin - West Clinton Historic District, designated locally, located in the vicinity of West 74th Street, just north of the NS line through northwest Cleveland.
- Lorain Avenue and Market Square Historic Districts, designated locally and nationally, located generally between West 25th and West 58th Streets, just north of the NS line traversing northwest Cleveland.
- Tremont Historic District, designated locally and nationally, located south of the NS line as it passes to the south of downtown Cleveland.
- Little Italy Historic District, designated locally, located on either side of Mayfield Road, just east of the NS and CSXT lines which traverse the University Circle area on Cleveland's central east side.
- Miles Park Historic District, designated locally and nationally, located just east of the CSXT and NS lines in the vicinity of East 91st Street, between Harvard and Miles Avenues, near Cleveland's southern boundary with the City of Garfield Heights.
- Prospect Avenue Historic District, designated locally (with individual buildings designated nationally), located just west of the NS line in the vicinity of East 55th Street on Cleveland's near east side.

It should be noted that expenditures of federal funds and certain other federal actions which may affect National Register Historic Districts must be preceded by a Section 106 review. This also applies to areas which have been identified as "potential" historic districts. The Cleveland Landmarks Commission has formally identified a number of potential historic districts, including one large district which directly abuts the NS line in northwest Cleveland. This is the potential Edgewater Historic District,

located north of the NS line in the northwest corner of Cleveland, bordering the City of Lakewood.

In many cases, these historic districts are the focal points which establish the character and identity of larger neighborhoods. Anything which lessens the desirability of a historic district, thereby lowering property values, works against the goal of preserving the districts and their architectural assets. Consequently, the proposed increases in freight rail traffic -- with the associated increases in noise, vibration and safety hazards -- threaten the viability of these valued and protected urban districts.

Hospitals. University Hospitals, a 947-bed hospital complex, is located adjacent to both the NS and CSXT lines which run through the University Circle area on Cleveland's central east side. The hospital's recently-expanded Rainbow Babies and Children facility is located less than 1,000 feet from the tracks. Because the tracks in this location are elevated, grade crossings are not an issue, but noise is a serious concern.

Scenic Areas. The CSX and NS lines which run in a north-south direction through Cleveland's central east side both traverse the Mill Creek stream valley south of Harvard Avenue, in the vicinity of Broadway Avenue. This section of the Mill Creek valley is noteworthy because of the presence of a 45-foot high waterfall -- the highest waterfall in Cuyahoga County. A photo of this waterfall is included on page 4 of Attachment 1 to the Verified Statement of Terri D. Hamilton. The Cleveland Metropolitan Park District agency is currently pursuing plans and seeking federal ISTEAF funding to develop a scenic overlook structure and a trail system to enhance access to this rare natural resource in a highly-urbanized area. The proposed increases in freight rail traffic in this area -- from 12 to 27 trains per day on the NS line and from

3 to 44 trains per day on the CSX line -- seriously threaten the viability of the Mill Creek waterfall site as a regional recreation resource.

Are There Alternatives?

In the course of my tenure with the City of Cleveland, my staff and I have met at various times with representatives of Conrail and Norfolk Southern -- the two major rail lines currently traversing the City -- and have discussed with them ways to improve the utilization of existing rail corridors and property to the benefit of both the railroad and the City.

In the early 1980's I participated in negotiations with Conrail which led to an agreement affording the City the opportunity to acquire air rights over the Conrail lakefront line to connect development occurring on our downtown lakefront with development in the rest of the Central Business District. In the mid-1980's I participated in negotiations with Conrail on the divestiture of the eastern half of their Whiskey Island property on Cleveland's lakefront, the analysis of the highest and best use for this property, and the preparation of Requests for Proposal for this important property. This property subsequently was developed as a pleasure boat marina.

In the early 1990's, I led discussions with Conrail staff on the future of the western half of Whiskey Island -- the so called C&P Ore Docks -- and the historic Hulett Unloaders. These discussions eventually led to the acquisition of this property by the Cleveland Cuyahoga Port Authority with the intention of keeping his unique deep water, rail-served dockage in use for heavy industrial purposes. During these discussions, I and other members of Mayor White's administration negotiated for long-deferred maintenance of Conrail bridges, a process which led to an organized painting and repair program.

Two years ago, I participated in detailed discussions with Norfolk Southern about the future of their intermodal facility in downtown Cleveland, adjacent to the Gateway sports complex. While this site was determined to be unsuitable for the use proposed by Norfolk Southern -- a new stadium for the Cleveland Browns -- our subsequent meetings included discussions about the highest and best use of the property with the understanding that the railroad and the City should continue to work together to insure that the property was developed to maximum benefit of both parties.

Most recently, I participated in discussions with Conrail representatives on the reconfiguration of the two lakefront lines in downtown Cleveland to create the opportunity for additional, more intensive lakefront development adjacent to the rail corridor. These discussions included my participation in on-site exploration of the Conrail Short Line and Belt Line routes around the City from the Collinwood Yards to the Rockport Yard. These discussions also involved evaluation of the reconfiguration of Conrail's two lakefront lines between West 3rd Street and East 12th Street to consolidate rail operations and free up valuable lakefront property for more intensive commercial and civic development.

During my tenure as Planning Director, I have also been involved in several detailed planning efforts carried out by the region's Metropolitan Planning Organization (NOACA) and by the Greater Cleveland Regional Transit Authority, the community's transit agency. These projects include the Dual Hub Corridor and Euclid Corridor projects -- which would impact rapid transit lines adjacent to the existing Norfolk Southern tracks on the east side of Cleveland, the Waterfront Line -- which is adjacent to the Conrail lakefront lines, and the NOACA/GCRTA commuter rail study -- which involves development of commuter rail service on abandoned or little utilized rail

corridors throughout the five-county metropolitan area. Together, these projects, planning studies, and brain-storming sessions involving the existing rail system in the region generally and within the City in particular give me a detailed working knowledge of the existing rail systems and the opportunities that may exist for conscientious, planned reconfiguration of this collection of rail corridors, real property, and capital assets which Conrail inherited from the Pennsylvania, New York Central, and Erie Lackawanna systems and which CSXT and Norfolk Southern now proposed to subdivide and reallocate for the purposes of creating two efficient rail systems out of three sub-optimal ones.

Based on my extensive working knowledge of the existing Cleveland-area systems, combined with the knowledge of City staff and consultants available to the City, I have concluded that the subdivision and reallocation proposed by CSXT and Norfolk Southern is not the only -- and not necessarily the most efficient and least intrusive -- way to proceed. I believe that alternatives to the existing proposal clearly exist and should be conscientiously explored by the railroads prior to the granting of any approval for the proposed merger by the Surface Transportation Board.

Cleveland's long history as a rail center -- the "X" in the system between the East Coast and Chicago/St. Louis -- has left the City with a more extensive, complicated, and redundant rail system than most cities affected by the proposed Conrail breakup. Parallel, redundant systems -- originally part of the Pennsylvania, New York Central, Nickel Plate, and Erie Lackawanna systems -- traverse the City and impact its neighborhoods. Likewise, Ohio's long history as the principal corridor between the East Coast ports and the Midwest have resulted in the development of alternative rail

corridors between New York and Philadelphia on the east and Chicago and St. Louis on the west.

The existence of plausible, viable, and efficient alternatives, both at the national/regional level and at the local level within the City itself should argue persuasively for a thorough evaluation -- by the railroads in conjunction with the City of Cleveland, the State of Ohio, and other affected communities -- before the Board approves the current proposal, which disproportionately impacts low-income and minority communities, as the preferred new routing structure through the City of Cleveland.

While we firmly believe, based on our own investigation and analysis, that efficient alternatives promising fewer adverse impacts clearly exist, we are not in a position as a municipality to make specific proposals for routing alternatives to those currently proposed by CSXT and Norfolk Southern. The burden for identifying and testing specific routing alternatives can and should fall on the railroads who together are proposing a structure which so clearly and so adversely impacts Cleveland and its neighborhoods. They, not we are most familiar with the markets and customers they serve and with the operational characteristics of their systems, and with the routing options available to them.

They, not we, are in a position to simulate and test the alternatives for efficiency; to identify the likely noise, vibration, traffic, safety and air quality impacts; and to propose suitable mitigation measures. As the advocates -- and the principal beneficiaries -- of this dramatic change in the operations of rail service through the City, they, not we, have the principal responsibility to deal honestly, directly, and completely with the consequences for the City of the changes they propose and to level with the

Board, the City, and the public at large regarding the actions they propose and the reasonable measures that can and will be put in place to mitigate the adverse impacts on people and property.

For our part, Mayor White, my colleagues and I are prepared to work with CSXT and Norfolk Southern, as we have for the past 15 years with Conrail, to find practical ways to design two efficient rail networks while alleviating the adverse impacts of these networks on our citizens.

I would note that the Applicants have made clear in their application that they intend to expend significant capital dollars to improve their lines and facilities to accommodate the new traffic that they proposed to bring through the city. Although I am in no position to be certain, I have little doubt that the two companies realistically anticipate expending significant sums to upgrade and modernize the antiquated and inefficient systems they propose to acquire from Conrail. And, I have no doubt that both companies anticipate that such expenditures will result in significant financial return as a result of enhanced operating efficiency, improved economies of scale and routing flexibility, and expanded market share.

I believe that the substantial sums both companies propose to expend should be spent to create the most efficient, least intrusive networks and not on cobbling together the remnants of a 19th Century rail infrastructure into two sub-optimal systems which will, for the next 100 years, blight Cleveland neighborhoods and seriously compromise the continued recovery of our city and our suburban neighbors. In programming their capital investments, the Applicants should be required to consider rerouting trains around the City, avoiding highly populated urban neighborhoods and making improvements to track as necessary to accommodate increased train frequency.

Applicants should be required to thoroughly evaluate reallocation of the tracks within the city, identify routing configurations which minimize adverse impacts on Cleveland neighborhoods, and define the specific capital improvements which will be required to make these routes function efficiently. Norfolk Southern has already conducted such an investigation of alternative routes and their attendant costs to address the impacts of the proposed dramatic increase of train movements on the Norfolk Southern lines through the West Shore suburbs. Both companies should be required to perform such an analysis on the Cleveland routing structure as a whole, and not only on one high-profile alignment with a vocal suburban constituency rising up in opposition to it.

Applicants should be required to construct grade separations at each of the identified neighborhood grade crossings projected to experience an increase in train volume. Applicants should be required to work with us and with our counterparts in the villages, towns, cities, and counties that surround Cleveland to develop a plan which creates least harm while improving overall rail operating efficiency and providing the railroads with a reasonable return on their investment.

Applicants should be required to address the safety issues involved in routing trains carrying hazardous materials through dense residential communities. As a member of the NOACA Governing Board, I participated in the extensive multi-community analysis and negotiations involved in developing the designated Hazardous Materials (Hazmat) truck route through the 5-county NOACA planning region and am well aware of the safety issues involved in transporting such materials through urbanized areas. A well-defined Hazmat rail routing plan, developed in close

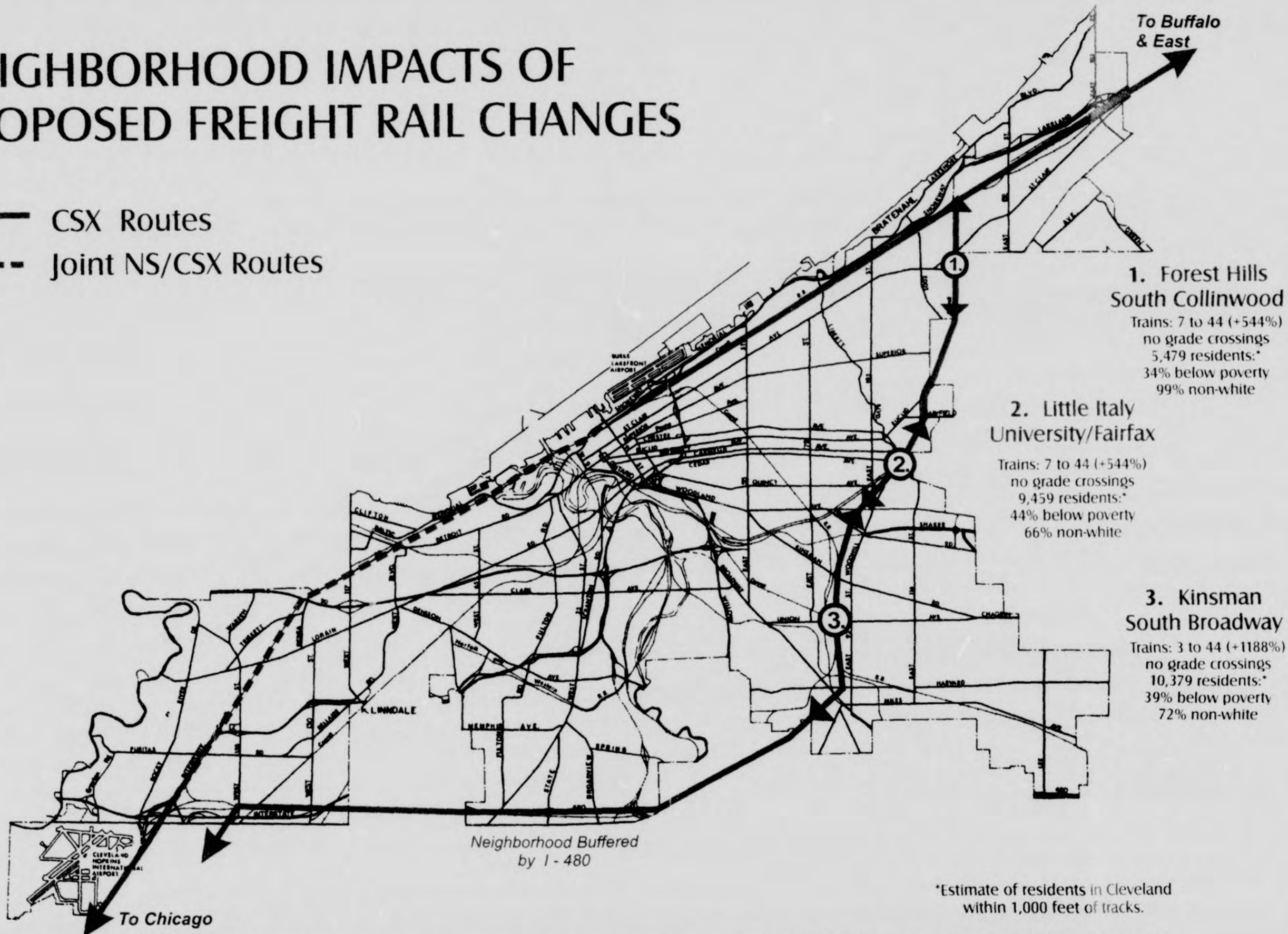
consultation with our safety forces and those of other, similarly affected communities, is essential if we are to protect the lives and livelihoods of our citizens.

Unless CSXT and Norfolk Southern are required by the Surface Transportation Board to develop an operation plan which equitably allocates costs and benefits to the companies and to the communities they are impacting, their application cannot be approved. The harm that their current proposal will create to the City is too great, and the measurable benefits too small. Cleveland is a city which, for the past 18 years has staged a carefully planned and executed recovery, transforming itself from "the Mistake on the Lake" to the New American City." In both downtown and our neighborhoods, the price of achievement is palpable.

These two companies, proposing an ill-considered and one-sided plan for the reallocation of the Conrail assets, cannot be permitted to destroy the progress our community has made. While we stand ready to work with them and with the Board to find reasonable alternatives, we insist that this plan -- which will disproportionately impact poor and minority communities in our city, compromises our safety of our citizens and businesses, and daily disrupt our neighborhoods -- be rejected and a more equitable, and no less efficient plan be brought forth by the Applicants.

NEIGHBORHOOD IMPACTS OF PROPOSED FREIGHT RAIL CHANGES

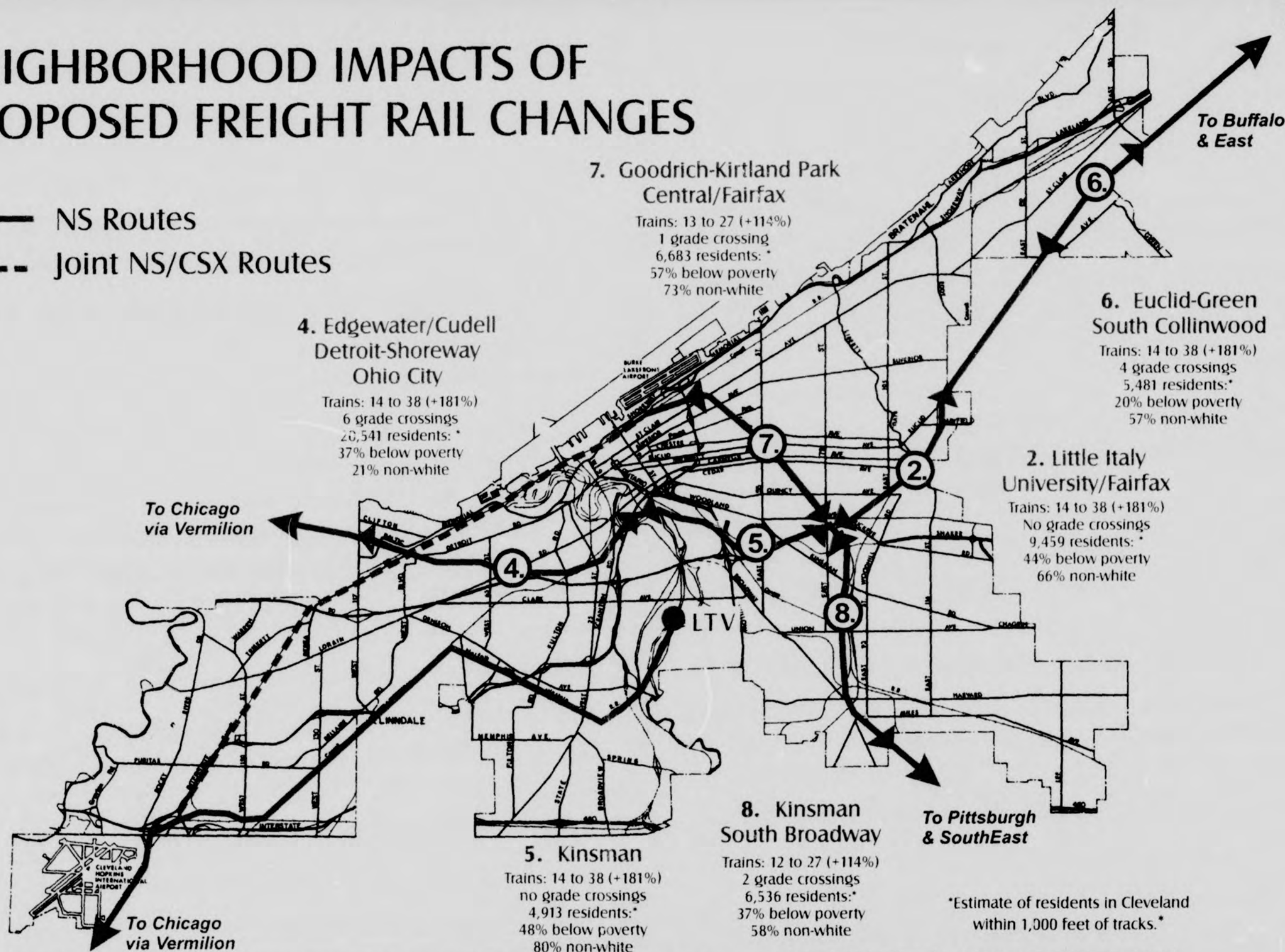
— CSX Routes
- - - Joint NS/CSX Routes



*Estimate of residents in Cleveland within 1,000 feet of tracks.

NEIGHBORHOOD IMPACTS OF PROPOSED FREIGHT RAIL CHANGES

— NS Routes
- - - Joint NS/CSX Routes




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SS:

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Franklin D. Roosevelt
Franklin D. Roosevelt


Notary Public

RICHARD F. HORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

RICHARD F. HORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

**VERIFIED STATEMENT OF
WILLIAM M. DENIHAN
DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY
(CLEV-12)**

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**VERIFIED STATEMENT OF
WILLIAM M. DENIHAN**

I am William M. Denihan, Director of the Department of Public Safety in the administration of Mayor Michael White in Cleveland, Ohio. Mayor White, my staff and I have had the chance to review the potential impacts on safety of the proposed new train operating arrangements that will result from the acquisition of Conrail by CSX Transportation, Inc. and Norfolk Southern Corporation. We see this transaction as having a serious negative impact on the ability of Cleveland's safety forces to adequately respond to emergencies in this community. More trains moving across tracks that have highway crossings on them means more delays for emergency response teams, as well as for all other traffic. There is no way that I can think that this kind of impact is good for this City. It is not. The transaction will present significant problems for residents across the City and the metropolitan area. I support

the City's position that the transaction presents so many problems for the City that it can not be approved.

I have held my current position since 1993. During my tenure in this position, I have twice served (briefly) as Acting Chief of Police. Before this position, I served Cleveland as Director of the Department of Public Service. Before that, I was Director of the Ohio Department of Highway Safety, serving on the Governor's cabinet for five years. I have served in several public sector positions over the past 24 years in positions in Ohio's departments of Natural Resources and Administrative Services, the State Employment Relations Board, and the Bureau of Workers Compensation. I have also held positions in Cuyahoga County, and have founded and operated a private sector temporary help services firm. Throughout my adult life, I have been active in community service, both when I was in the private sector and when I have worked in government. I founded Cudell Improvement, Inc., a neighborhood improvement group, which I led for its first five years from 1973 - 1978, and which is still recognized today as one of Cleveland's premier neighborhood organizations. I have a long career in a variety of positions which focus on strong administration and problem solving skills.

I have to admit that the proposed acquisition of Conrail by CSXT and Norfolk Southern presents a range of problems that Mayor White, my Department and I, and my colleagues in Mayor White's cabinet, can not solve by ourselves. I have reviewed the information my colleagues have collected from the application, including the operations planning and environmental impacts portions, and have concluded that the creators of the problem, CSXT and Norfolk Southern, with their plans to increase enormously the frequency of trains traversing our City's neighborhoods, must take the first steps to resolve the problem they bring to us. Working together, we can look for

solution. Without them, the transaction is flatly inconsistent with the interests of the public in this City.

From the perspective of the City's safety services, these increased train frequencies spell disaster almost any way you look at them. A loss of response time caused by increased rail traffic could impair the ability of EMS technicians to effectively treat patients suffering from cardiac arrest and other major trauma. The blocking of grade crossings by rail traffic can reduce time for police response to Priority One calls (that is, calls made when shots are fired or a violent crime is in progress). In numerous areas of the City, increased rail traffic will affect the Fire Department's ability to timely respond to emergency calls.

The proposed increases in freight rail traffic by NS and CSXT will impact on the ability of Cleveland's safety forces to adequately respond to emergencies in our community. I am attaching to this Verified Statement summary sheets that illustrate the problem created by the potential delays for EMS/Police and Fire response times on three (3) line segments in the City.

1. Emergency Medical Services ("EMS")

Effective treatment of patients suffering from cardiac arrest and other major trauma will be seriously impaired if EMS technicians are forced to wait at grade crossings for as little a period of time as a couple of minutes. In the Edgewater-Cudell area of Cleveland, six (6) grade crossings intersect rights-of-way from West 110th Street to West 117th Street. Police department records show that trains sometimes block these crossings from two (2) to five (5) minutes and delays have extended to five (5) to ten (10) minutes. In the Nottingham area (near #6 on the map attached to the Verified Statement of Hunter Morrison as Attachment 2), there are 4 at-grade crossings between

Dille Road and Landon road. A blocked crossing would cause a detour of 3.7 miles, with an increased response time of 7.2 minutes. In the Aetna area (near #8 on the same map), there are two (2) rail crossings at Bessemer and at Aetna. The detour route here is 2.3 miles, with an increased response time of 4.8 minutes.

Several factors affect the successful treatment of persons suffering from cardiac arrest. The most important factor is timely administration of CPR. Treatment must begin within four (4) minutes. Any delay in accessing the patient seriously decreases the chance of survival.

In cases of cardiac arrest, survivability is directly proportional to EMS response time. Based on a study of over three thousand cardiac arrests in the City of Cleveland, survivability decreases approximately 12.5% for each thirty second delay in response time.

The chance of survival of a person experiencing a cardiac arrest in any of the areas affected by the increased rail traffic will decrease as follows:

--	Thirty second delay:	12.5%
--	One minute delay:	25%
--	One and one-half minute delay:	37.5%
--	Two minute delay:	50%
--	Two minute and thirty second delay:	62.5%
--	Three minute delay:	75%

A response delay of greater than three minutes virtually guarantees 0% survivability.

Successful use of electrical shock, or defibrillation, is likewise lost with the passage of time. The American Heart Association places the optimal time for this treatment at eight (8) minutes after the onset of the arrest.

Major trauma outcome is also related to response time of emergency medical technicians. In cases of major trauma, delay in response or transport to the

hospital will adversely affect the outcome. A "Golden Hour" is commonly recognized as the time allowed for critically injured patients to receive surgical treatment and have a good chance of survival. The pre-hospital portion of this hour is 30 minutes; from occurrence to delivery at a trauma center. Therefore, each minute spent traveling reduces the time remaining in the "Golden Hour" and likewise reduces the patients chance of survival. Arrival on scene in less than 10 minutes from the injury gives the patient a good opportunity to receive definitive care within the first 60 minutes.

Similar problems exist once the EMS unit has accessed the patient and is beginning transport to a local hospital. Lakewood Community Hospital is a trauma center and the recipient of most of the trauma and medical patients living in the Edgewater-Cudell area of Cleveland. If the ambulance crew is not aware of a train blocking the tracks located to the south of the emergency call, they will be blocked in the northern portion of Cleveland or Lakewood unable to reach Lakewood Community Hospital and forced to determine an alternate route or destination to the hospital. For example, an alternate route around the rail crossings between West 110th Street to West 117th Street will delay response time for four (4) plus minutes. Such delays could prove life threatening to the patient.

2. Law Enforcement Services, Police

Similar to the problems with EMS, trains blocking intersections significantly reduce response time on Priority One calls (when shots have been fired or a violent crime is in progress). Police forces attempt to respond to a Priority One call within four (4) to six (6) minutes. When trains block grade crossings, the response time to Priority One calls can be delayed by five (5) to ten (10) minutes.

Increases in rail traffic at grade crossings will also increase the number of motor vehicle and pedestrian accidents with the trains.

3. Fire Fighting Services

The Fire Department's ability to respond to emergency calls in the area of Cleveland north of the Conrail tracks and west of West Boulevard to the City limit will be greatly hindered by an increase of rail traffic. The City of Cleveland has no fire station north of the rail tracks in this area. If the West Boulevard underpass were to become unusable for any reason the nearest unaffected intersection is miles away. Even diverting emergency vehicles to the West Boulevard underpass can add at least five (5) minutes to the response time. This area of Cleveland has a large number of multi-family dwellings. The Fire Department responds to approximately 300 emergency runs to this area each year. Many of these responses could be affected by increased rail traffic, resulting in injury property damage and possible loss of life. In the Aetna area I referred to earlier, a line that will see a 114% increase in train frequencies could block fire equipment at two (2) crossings. The detour route is 1.6 miles, which will reduce response time by 4.2 minutes. In the Nottingham area, the line that will see an increase of 181%, there are four (4) crossings that could impede fire equipment responses. The detour routes here are 3.9 miles, adding potentially 7.4 minutes in response times. In the Edgewater area, near the Lakewood line, there are six (6) at-grade crossings. The detours of 2.2 miles will add response time of over four (4) minutes. Think of the disasters these delays would have caused on the 450 fire

emergency runs in Aetna in 1996, or the 235 emergencies in Nottingham in 1996, or the 282 runs in Edgewater.

Other areas of Cleveland will be similarly affected by increased rail traffic:

- (1) Lakefront Line. Units of Battalion 1 and Car 729 (Heavy Duty Rescue), Car 705 (Air Supply), Car 744 (HazMat Supply) and Car 734 (Apparatus Repair) will be delayed if train traffic increases at East 26th Street, East 38th Street, East 40th Street, East 49th Street and Marquette Avenue.
- (2) Lakefront Line. Any response to South Marginal Road between East 9th Street and East 55th Street will be affected by increased traffic on the lakefront line. Operations which will be affected include Temcraft (3940 S. Marginal Road), Joseph Stamps Fuel Depo and Service Facility (4150 S. Marginal Road), Kirtland Water Pumping Station (4901 S. Marginal Road) and Hi Tech Metal Group, an industrial parkway located at Marquette Avenue and S. Marginal Road.
- (3) Lakefront Line. Any response on Lakeside Avenue from East 26th Street to West 6th Street would be affected. Cleveland City Hall and numerous public and private buildings on Lakeside Avenue are located in this area.
- (4) Ridge Road Area. There exists a potentially serious problem caused by increased rail traffic at Ridge Road south of Clifton. A mobile home park and a business (Ohio Northern Transit) is located in this area. Cleveland's Ridge Road solid waste transfer facility is also near this rail crossing. This facility has experienced numerous fires in the past.
- (5) London Road Crossing. Delays at the rail crossing at London Road just south of Mandalay will affect Star Catering, Superior Die Casing,

Designers Workshop and Westinghouse. Advanced Medical Systems is located at 1020 London Road and will similarly be impacted by the increased traffic at this crossing. This location is important because of a potential radiation hazard. Any alternate route would add five (5) minutes to the response time.

- (6) Wayside Road Crossing. Delays at the rail crossing located at Wayside will affect Property Opportunity, Erieview Cleaning, Hard Chrome Plating and Synthetic Products.
- (7) Aetna Road Crossing. The existence of several sets of train tracks at Aetna Road and the general poor condition of Aetna Road east of the tracks, the response time of Fire Station 11 to an alarm from this area could be significantly delayed. In response to a box alarm for this area, Engine 26 responds from the north along East 91st Street. If a train is blocking East 83rd Street and Aetna Road, Engine 26 would be forced to enter this area from the opposite direction and a significant delay would occur.
- (8) Harvard Avenue Crossing. The increased rail traffic at the crossing on Harvard Avenue just east of Jennings Road would affect the businesses of Aloa, Atotec and Conservation Energy. If Engine 20 encountered a train at Harvard Avenue, it would have to backtrack through the Flats and, thus, experience significant delays.

Finally, increases in rail traffic also will increase the risk of rail accidents, which can be catastrophic in densely populated areas of the inner city.

This is a serious matter. Five minutes more for an ambulance can literally be the difference between life and death for a person suffering a heart attack. Two minutes can make the difference when officers need to defuse an explosive situation involving a shooting or other violent crimes. There are two ways to think about removing this potential problem. One way is to eliminate by grade separation all of the at-grade crossings on lines that will see increased train frequencies. The other is to reduce frequencies on those lines by sending the trains somewhere else. Until one of those two types of measures is ordered as part of the approval of the proposed transaction, it can not be approved.

Cleveland, Ohio
Impact on Increased Rail Traffic

Nottingham

RE: Pending Merge CSX/Norfolk Rail Lines

EMS/POLICE

Four Rail Crossings from Dille Road to London Road

(From Dynamic Station - I-90 at Nottingham to Cliffview at Euclid)

Detour Route: 3.7 Miles - Response Time: 7.2 minutes

Response Time Lost 7.2 minutes

1996 Runs

EMS: 4,456

POLICE: 12,701

FIRE

Station #31 - East 152nd at St. Clair (Straight Route)

Station #40 - East 189th at St. Clair (Detour Route)

Detour Route: 3.9 Miles - Response Time: 7.4 minutes

Response Time Lost 7.4 minutes

1996 Runs

235 runs in 1996

Trains Per Day: 13.5 to 37.8

181% Increase

Cleveland, Ohio
Impact on Increased Rail Traffic

Aetna

RE: Pending Merge CSX/Norfolk Rail Lines

EMS

Two Rail Crossings at Bessemer at Aetna

(From Dynamic Station - Broadway at East 65th to East 61st at Aetna)

Detour Route: 2.3 Miles - Response Time: 4.8 minutes

Response Time Lost 4.8 minutes

1996 Runs

5,840 runs in 1996

FIRE

Station #26 - East 74th at Kinsman (Straight Route)

Station #11 - East 77th at Broadway (Detour Route)

Detour Route: 1.6 Miles - Response Time: 4.2 minutes

Response Time Lost 4.2 minutes

1996 Runs

450 Runs in 1996

Trains Per Day: 12.5 to 26.8

114% Increase

Cleveland, Ohio
Impact on Increased Rail Traffic

Edgewater

RE: Pending Merge CSX/Norfolk Rail Lines

EMS/POLICE

Six Rail Crossings from West 110th to West 117th

(From Dynamic Station West 116th at Detroit to West 110th at Clifton)

Detour Route: 1.9 Miles - Response Time: 4.0 minutes

Response Time Lost 4.0 minutes

1996 Runs

EMS: 1,593

POLICE: 15,878

FIRE

Station #23 @ West 99th at Madison (Straight Route)

Station #33 @ West 117th at Linnet (Detour Route)

Detour Route: 2.2 Miles - Response Time: 4.4 minutes

Response Time Lost 4.4 minutes

1996 Runs

282 Runs in 1996

Trains Per Day: 13.5 to 37.8

181% Increase

Verification

State of Ohio

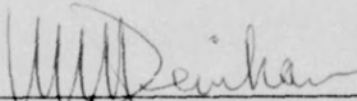
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SS:

City of Cleveland

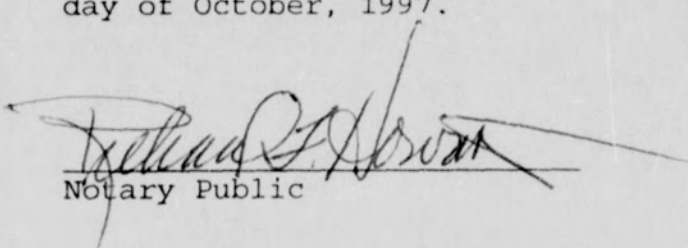
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William Denihan, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



William Denihan

Subscribed and sworn to
before me this 20th
day of October, 1997.



Notary Public

My commission expires:

RICHARD F. HORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

**VERIFIED STATEMENT OF
TERRI D. HAMILTON
DIRECTOR OF COMMUNITY DEVELOPMENT
(CLEV-13)**

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-- Control and Operating Leases/Agreements --
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**VERIFIED STATEMENT OF
TERRI D. HAMILTON**

I am Terri D. Hamilton, the Director of Community Development in the cabinet of Mayor Michael White in the city of Cleveland, Ohio. Like Mayor White and my colleagues who are also presenting Verified Statements in opposition to the proposed acquisition of Conrail by CSX Transportation, Inc. and Norfolk Southern Corporation, I fear the impacts of this transaction on the communities where Mayor White and community leaders are trying to improve the quality of life of the residents of this City, particularly those with predominantly poor and minority populations.

I have worked in the City's Department of Community Development since 1990, and have been Director since September 1995. I am now responsible for four divisions in this office: Neighborhood Development; Neighborhood Services, Building & Housing and Administrative Services. Since 1994, I have also served as Commissioner of Neighborhood Development. My office is responsible for coordinating new housing construction in Cleveland, and the City's Housing Construction Office and has

coordinated the development of more than 40 housing developments including over 2400 homes in this City since 1990. Before joining Mayor White's administration in 1990, I was a field officer for the Enterprise Foundation, a national non-profit intermediary, which supports the development of low-income housing by neighborhood organizations such as the Cleveland Housing Network. I have worked as a commercial banking officer in the Commercial Real Estate Department of Ameritrust's Cleveland and Cincinnati offices. I have a B.A. in economics from the University of Chicago and a Masters in City Planning from the Massachusetts Institute of Technology.

In my current position, I have learned a great deal about the character of the different sub-communities within the City, and the purpose of my statement here is to explain the nature of those communities that will bear the heavy burdens of the increased train frequencies that CSXT and Norfolk Southern have planned to run over the lines in our City. Working with Hunter Morrison and the staff of the City Planning Commission, I have developed the information about the communities through which these lines will pass. The maps attached to Mr. Morrison's Verified Statement as Attachments 1 and 2, which I will refer to here as VS Morrison Att. 1 and VS Morrison Att. 2, respectively, show where the affected communities are located. We in this City are particularly offended that the operations planned by Norfolk Southern and CSXT will have a disproportionately large impact on minority and low-income populations.

The analysis undertaken by the City Planning Commission focusses on land located within 1,000 feet on either side of the rail lines on which a significant increase in traffic is proposed. The data on the residential population located within 1,000 feet of the rail lines was prepared for the Cleveland City Planning Commission by the

Northern Ohio Data & Information Service (NODIS) of the College of Urban Affairs at Cleveland State University. All data is taken from the 1990 U.S Census.

The affected communities are:

Forest Hills/ South Collinwood [CSX] (VS Morrison Att. 1). A 544% increase in freight rail traffic, from approximately 7 trains to 44 trains per day, is proposed for the CSX line which runs through the Forest Hills and South Collinwood neighborhoods in the northeast section of Cleveland. The rail line runs just east of East 131st Street, from I-90 on the north to Cleveland's border with East Cleveland on the south. The tracks are generally elevated in relation to the adjoining neighborhoods; and, consequently, there are no at-grade street crossings.

Over 1 mile of CSX track frontage in South Collinwood and Forest Hills adjoins residential areas. The areas most directly impacted are just east of East 134th Street, between Coit Road and St. Clair Avenue, and just west of East 131st Street, between Shaw Avenue and the East Cleveland border on the south. These areas are densely developed with single-family, two-family and multi-family residential buildings. The third photograph on page 1 of the photos attached to this Verified Statement as Attachment 1 shows the types of residences that are typical in this community. Attachment 2 to my Verified Statement is an aerial photograph of a portion of this area, showing the density of housing here, and the proximity of these houses to the tracks. A total of 5,479 people live within approximately 1,000' of this segment of CSX tracks. This population is 99% non-white and is characterized by a poverty rate of 34% and a 1990 median household income of \$17,608, compared to citywide averages of 28.7% and \$17,822 and county-wide averages of 13.8% and \$28,595.

Little Italy/University Circle/Fairfax [CSX, NS] (VS Morrison Att. 1). The CSX line which runs through South Collinwood and Forest Hills continues south through Little Italy, University Circle and the southeast edge of the Fairfax neighborhood. The aerial photograph that is attached as Attachment 3 to my statement shows this area well. In addition, the top photograph on page 2 of Attachment 1 to my statement provides a closer look at the densely populated and mostly residential character of this section of the City.

The same 544% increase in traffic, from approximately 7 trains to 44 trains, would occur here. The tracks are elevated through most of this area, with no at-grade crossings, and run in a southwesterly direction between Euclid Avenue on the north and Quincy and Woodland Avenues on the south. Over 1 mile of CSX track frontage adjoins residential portions of the Little Italy and University Circle area. The areas most directly impacted are the streets in Little Italy on either side of Mayfield Road and a border area between University Circle and Fairfax, including an area east of East 105th Street, north of Quincy, and an area between Quincy and Woodland east of East 86th Street. These areas are also densely developed with one-family, two-family and multi-family residential buildings. The bottom photograph on page 3 of Attachment 1 shows a typical multi-family dwelling unit -- Abington Arms senior citizens building, which is located less than 500 feet from the NS and CSX lines where rail traffic will increase by a total of 302%.

A total of 9,459 people live in an area approximately 1,000 feet from this segment of CSX tracks. (See Attachment 3.) This population is 66% non-white and is characterized by a poverty rate of 44% and a 1990 median household income of

\$12,087, both of which reflect economic conditions well below citywide and county-wide averages.

The Little Italy and University Circle/Fairfax areas will also be impacted by a Norfolk Southern line which runs alongside the CSX tracks. Rail traffic on the Norfolk Southern line is proposed to increase by 114%, from 13 trains to 27 trains per day. Together, the two lines would see an increase of 255%, from 20 trains to 71 trains per day - or a 3 1/2-fold increase.

Kinsman/South Broadway [CSX] (VS Morrison Att. 1). The CSX line which runs through the South Collinwood/ Forest Hills and University Circle areas continues in a southwesterly direction through the Kinsman and South Broadway neighborhoods - generally running parallel to Woodhill and East 93rd Street, before turning to the west along Mill Creek, just north of the Warner-Turner neighborhood. Because most of this track is below grade, there are no at-grade crossings in this segment. An increase of over 1,000% in freight rail traffic, from approximately 3-4 trains to 44 trains per day is proposed for this segment. Increases in vibration effects from the enormous increase in train frequencies will cause serious problems around this area. For example, the new Mill Creek subdivision, now under construction in this area will have a two fold problem. The increased vibrations will create problems in the construction process for the remaining 190 or so units that are yet to be built. Then, once the houses are compiled, the new train frequencies and the associated effects will decrease the attractiveness of these homes to prospective buyers. Mill Creek is not intended to be a low-income development. The problems the proposed transaction will cause with this one subdivision present in microcosm the difficulties the City faces from the introduction of the substantial increase in train operations throughout the area.

Approximately 1 1/2 miles of CSX track frontage adjoins residential portions of the Kinsman and South Broadway neighborhoods. The areas most directly impacted include streets just west of East 93rd Street and the northwest corner of the Warner-Turney neighborhood. These areas are also densely developed with one-family and two-family residences. Although the fact that much of this line runs through tunnels mitigates impacts on nearby residences, prior discussions with Conrail officials indicate any significant increase in rail traffic is likely to require disruptive construction to upgrade the tunnels. The bottom photograph on page 4 of Attachment 1 shows one of these tunnels under Harvard Avenue.

A total of 10,379 people live in an area approximately 1,000 feet from this segment of CSX tracks. This population is 72% non-white and is characterized by a poverty rate of 39% and a 1990 median household income of \$13,388, reflecting greater levels of economic distress than either the citywide averages (28.7% and \$17,822) or county-wide averages (13.8% and \$28,595).

Edgewater, Cudell, Detroit-Shoreway, and Ohio City [NS] (VS Morrison Att. 2).

A 181% increase in freight rail traffic, from approximately 13 trains to 38 trains per day, is proposed for the Norfolk Southern tracks which run through the northwest Cleveland neighborhoods of Edgewater, Cudell, Detroit-Shoreway, and Ohio City. The tracks run in an east-west direction, entering Cleveland at West 117th Street, running north of and parallel to Detroit Avenue, and then crossing to the south side of Detroit near West Boulevard. East of West Boulevard, the tracks run parallel to and north of Madison Avenue before dipping south at West 65th Street and paralleling the north side of I-90 and Train Avenue through Ohio City. The aerial photo at Attachment 4 shows the density of residential development along these tracks.

It also shows a significant issue from a public safety perspective, that is, that there are a total of six *grade street crossings* in the area between Detroit Avenue and Clifton Boulevard, from West 108th Street to West 117th Street. The number and proximity of these non-grade-separated crossings raise serious concerns with regard to traffic safety, emergency vehicle access, and noise (from horn soundings at the crossings). For example, as shown in the middle photograph on page 2 of Attachment 2, many children attending the Louisa May Alcott School at West 104th Street and Baltic will have to cross these tracks on the way to and from school. Similarly, the St. Rose Elementary School is located just 500 feet south of the NS tracks (see top photograph on page 3 of Attachment 1).

Approximately 4 miles of Norfolk Southern track frontage adjoins residential portions of the Edgewater, Cudell, Detroit-Shoreway and Ohio City neighborhoods. Densely developed residential areas all along this corridor are directly impacted, with a particularly heavy concentration of households in multi-family buildings living in the area along Detroit Avenue and along Clifton Boulevard, along the most westerly segment of tracks in the City of Cleveland. A photograph showing the proximity of a typically densely populated residential community to the NS line is included as the top photograph on page 1 of Attachment 1.

A total of 20,541 people live within approximately 1,000 feet of this segment of Norfolk Southern tracks. Although portions of the Edgewater neighborhood are middle- and upper-income, the affected areas throughout this west side route are characterized by a poverty rate of over 36% and a 1990 median household income of \$14,363, indicating standards of living well below citywide and county-wide conditions.

Kinsman [NS] (VS Morrison Att. 2). The Norfolk Southern line which crosses through the City's northwest neighborhoods continues east across the Cuyahoga River, through the Industrial Valley, behind the Maingate industrial area and then across the Kinsman neighborhood, paralleling the RTA Red Line tracks, generally south of Woodland Avenue and north of Grand Avenue. The same 181% increase in freight traffic is expected here. Because most of this rail segment runs through a valley, there are no grade crossings here.

Approximately one mile of Norfolk Southern track frontage adjoins residential areas in the Kinsman neighborhood. Because much of this track is located below grade, such as the track just north of houses on Colfax Avenue, the negative impacts are less significant than they would otherwise be.

A total of 4,913 people live within approximately 1,000 feet of this segment of Norfolk Southern tracks. This population is 80% non-white and is characterized by a poverty rate of 48% and a 1990 median household income of \$10,208 -- making this area among the most impoverished in the City of Cleveland.

Euclid-Green/ South Collinwood [NS] (VS Morrison Att. 2). After leaving the Kinsman neighborhood, the Norfolk Southern line moves in a northeasterly direction through the Fairfax, University Circle and Little Italy areas (as discussed above). The line then traverses a portion of East Cleveland, north of Euclid Avenue, and then re-enters Cleveland, bisecting the Euclid-Green and South Collinwood neighborhoods. The same 181% increase in freight traffic is expected here. There are 4 grade crossings in the segment of tracks between London Road and Nottingham Road at Cleveland's border with the City of Euclid.

Approximately 2 miles of Norfolk Southern track frontage adjoins residential portions of the Euclid-Green and South Collinwood neighborhoods. The areas most impacted are portions of the Nottingham neighborhood (in South Collinwood), south of St. Clair Avenue, and portions of the Euclid-Green neighborhood, north of Euclid Avenue. Dugan Park, a popular public facility (see the middle photo on page 1 of Attachment 1) is adjacent to this Norfolk Southern line. The Euclid Park Elementary School in this area (see the bottom photo on page 2 of Attachment 1) is cut off from some of its student population by the Norfolk Southern tracks.

A total of 5,481 people live within approximately 1,000 feet of this segment of Norfolk Southern tracks. This population is 57% non-white and is characterized by a poverty rate of 20% and a 1990 median household income of \$20,375 - reflecting economic conditions somewhat better than that of the city overall but lower than county-wide averages.

Goodrich, Central, and Fairfax [NS] (VS Morrison Att. 2). A 114% increase in freight rail traffic, from approximately 13 trains to 27 trains per day, is proposed for the Norfolk Southern line which runs from downtown, southeast through the Goodrich, Central, and Fairfax neighborhoods in the east/central section of Cleveland. The tracks run in bridge structures, crossing over-head above a number of major intersections, including East 36th and St. Clair, East 55th and Euclid, and East 79th and Woodland - with one grade crossing at East 26th & Lakeside.

Much of the land abutting this segment of Norfolk Southern trackage is occupied by industrial uses. However, pockets of residential use border the tracks in a number of locations, including the area between Superior and Payne in the Goodrich

(Payne-Sterling) neighborhood and the area between Quincy and Woodland, near East 79th Street.

A total of 6,683 people live in an area approximately 1,000 feet from this segment of Norfolk Southern tracks. This population is 73% non-white and is characterized by a poverty rate of 57% and a 1990 median household income of \$12,191, both of which reflect economic conditions well below citywide and county-wide averages.

Kinsman/ South Broadway [NSI (VS Morrison Att. 2)]. The Norfolk Southern line which runs through Central and Fairfax continues south across Woodland Avenue through the Kinsman and South Broadway neighborhoods, paralleling and to the west of the CSX lines which run along the East 93rd Street industrial corridor. The same 114% increase in freight rail traffic, from 13 trains to 27 trains, would occur along this segment of Norfolk Southern tracks. Together with the adjoining CSX line, the total increase would be from 16 trains to 71 trains per day. The Norfolk Southern line crosses both Aetna Road and Bessemer Road at grade.

Although much of the land abutting this segment of Norfolk Southern tracks is industrial (in the corridor between East 79th and East 93rd Streets), over one mile of residential area adjoins the track. One particularly troubling circumstance occurs on the southwest corner of East 79th and Woodland, where elevated tracks run directly adjacent to second-story windows of a lower-income apartment complex. Other residential enclaves abutting the Norfolk Southern tracks include an area north of Kinsman and East of East 79th, an area between Union and Aetna, and an area in the vicinity of Harvard and Miles, in the East 90's. In addition, this line passes immediately

to the north of a 45 foot high waterfall, a significant natural feature (see the top photograph on page 4 of Attachment 1).

A total of 6,536 people live in an area approximately 1,000 feet from this segment of Norfolk Southern tracks. This population is 58% non-white and is characterized by a poverty rate of 37% and a 1990 median household income of \$13,089, both of which reflect economic conditions well below citywide and county-wide averages.

In conclusion, a review of the demographic characteristics of the neighborhoods within the City that will see the most dramatic increases in train frequency explains why the City of Cleveland can not stand still and allow this on-rushing freight train to bowl us over without protesting. Minority and low income populations in these predominantly residential communities will feel devastating impacts from these freight train increases. From the perspective of my office, which is charged with responsibility for improving housing options for the residents of this City, this transaction can not go forward.



This grade crossing on West 111th Street between Detroit and Clifton Avenues is one of 6 grade crossings created on residential streets by the Norfolk Southern line as it bisects northwest Cleveland's Edgewater and Cudell neighborhoods.



The baseball diamond at Dugan Park in northeast Cleveland's Euclid Green/South Collinwood neighborhood is located adjacent to a Norfolk Southern line, in the vicinity of 3 grade crossings, where freight rail traffic is proposed to increase from 14 to 38 trains per day.



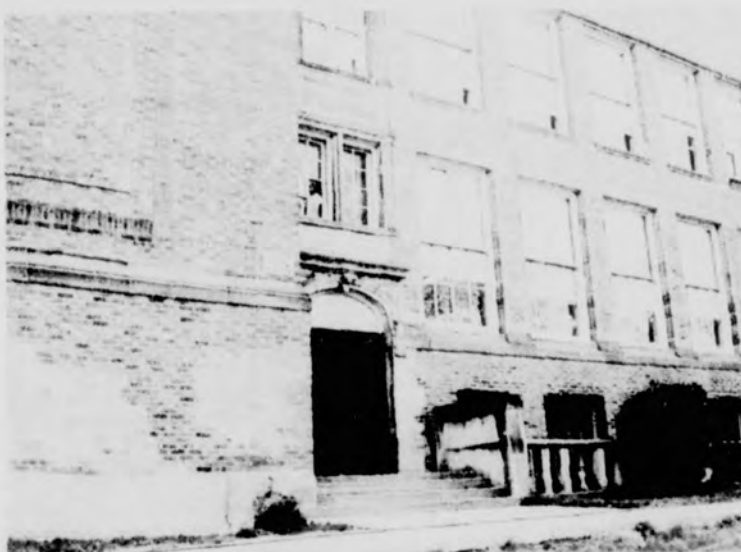
This house on East 131st Street is one of hundreds in northeast Cleveland's Forest Hills neighborhood which are situated just 100-200 feet from the CSX line which runs south of Collinwood Yards and is proposed for a 544% increase in rail traffic, from 7 to 44 trains per day.



The densely developed housing at East 120th and Coltman is part of Cleveland's Little Italy Historic District, which is bisected by both CSX and Norfolk Southern lines, where rail traffic is proposed to increase from 20 to 81 trains per day.



Many children attending the Louisa May Alcott Elementary School at West 104th and Baltic cross the Norfolk Southern tracks which run north of Detroit Avenue, in proximity to 6 grade crossings, where rail traffic is proposed to increase from 14 to 38 trains per day.



The Euclid Park Elementary School, at 17914 Euclid Avenue, is cut off from the northern section of its service area by the Norfolk Southern tracks which run in an east-west direction through northeast Cleveland, in proximity to 3 grade crossings.



The St. Rose Elementary School, at West 116th and Detroit, is located just 500 feet south of the Norfolk Southern tracks, in proximity to 6 grade crossings, where a nearly 3-fold increase in rail traffic is proposed.



The Miles Park Historic District in southeast Cleveland is located just east of both the CSX and NS lines, where a combined 338% increase in rail traffic has been proposed, from 16 to 70 trains per day.



The 152-unit Abington Arms senior citizen apartment building is located less than 500 feet from the Norfolk Southern and CSX lines, where a combined 302% increase in rail traffic has been proposed, from 20 to 81 trains per day.



The Norfolk Southern line, providing service to Pittsburgh and points east, passes immediately to the north of a 45-foot high waterfall along Mill Creek in the Broadway/ Warner-Turner area of southeast Cleveland. The Metroparks agency has requested ISTEAF funds to enhance access to the site of this significant natural feature.



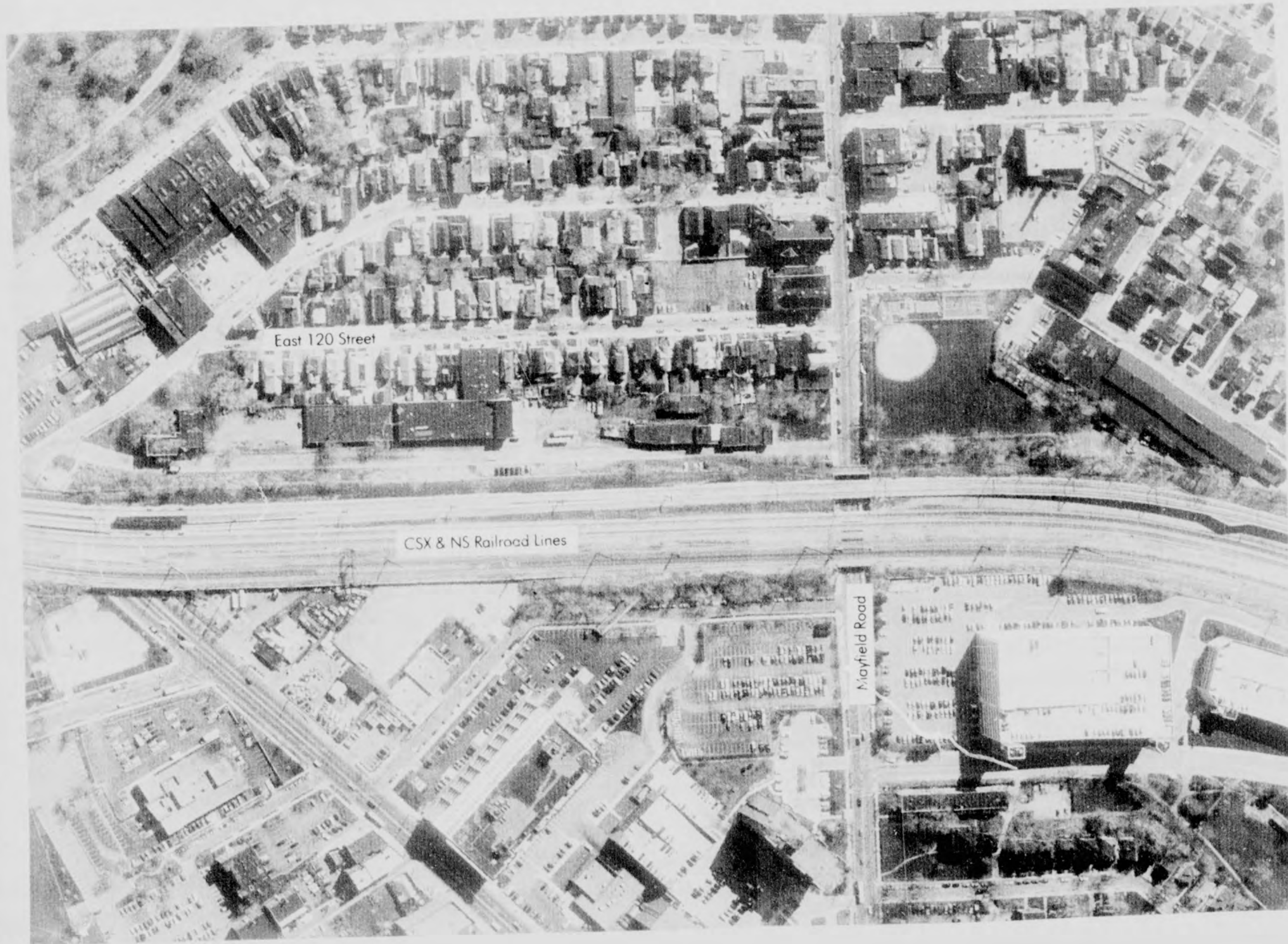
The proposed CSX line, running in a north-south direction between East 79th and East 93rd Streets through southeast Cleveland, passes through several narrow tunnels which would need to be re-constructed in order to accommodate a double track. This re-construction could force temporary closing of heavily-used neighborhood thoroughfares. *(Photo shows tunnel under Harvard Avenue).*



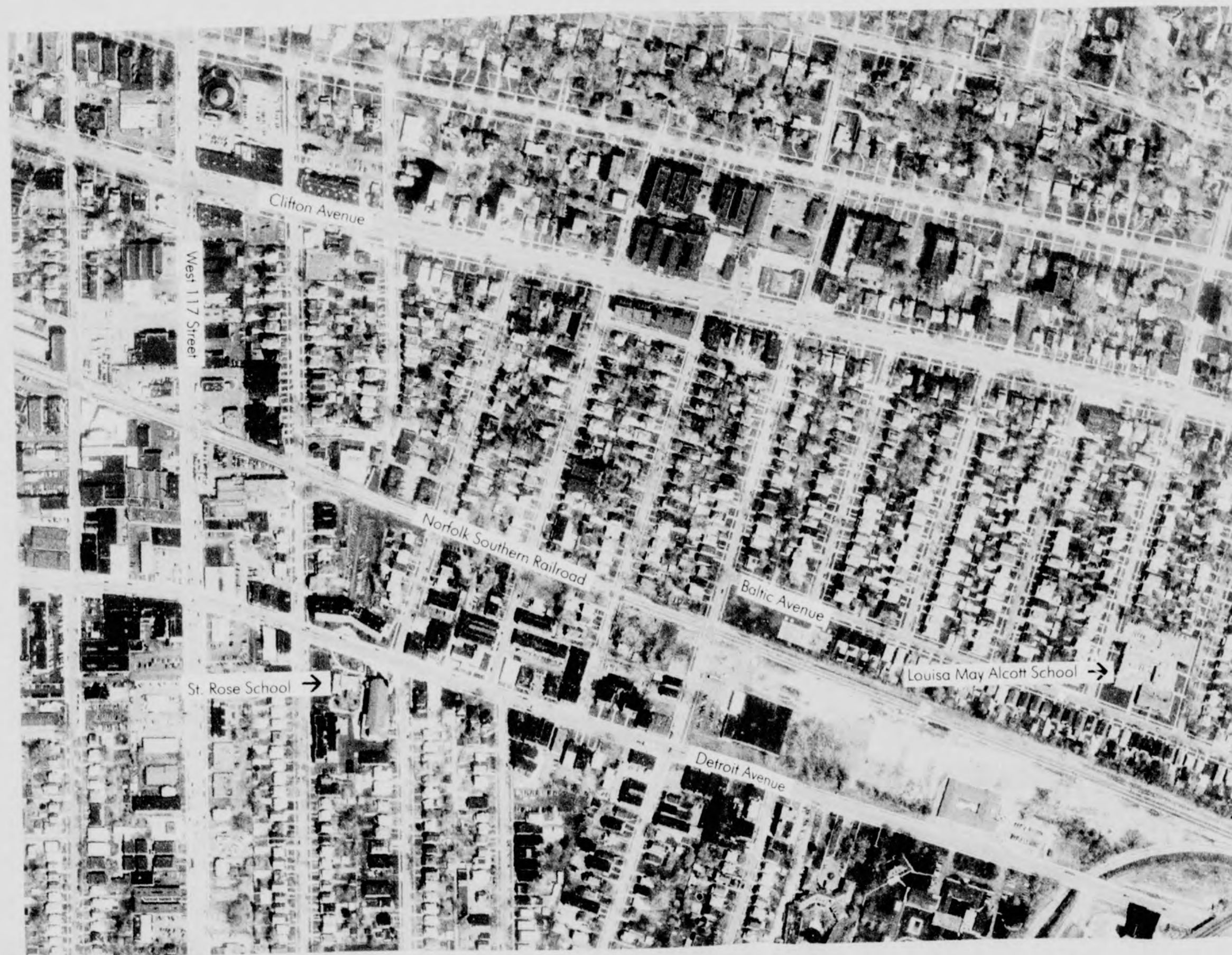
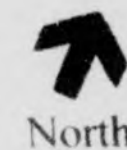
North



Densely-developed housing in Cleveland's Forest Hills neighborhood and in the City of East Cleveland adjoins the CSX line proposed for a 544% increase in rail traffic, from 7 to 44 trains per day.



Cleveland's Little Italy Historic District, a densely-developed city neighborhood, and the University Hospitals complex, adjoin the CSX and Norfolk Southern lines, which are proposed for a combined 302% increase in rail traffic, from 20 to 81 trains per day.



Six closely-spaced grade crossings on the Norfolk Southern line between West 110th And 117th Streets separate portions of the Edgewater and Cudell neighborhoods in northwest Cleveland. Rail traffic is proposed to increase from 14 to 38 trains per day through this neighborhood.

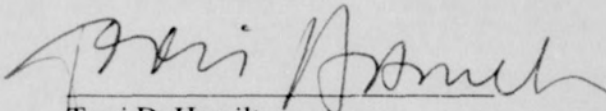
Verification

State of Ohio
City of Cleveland

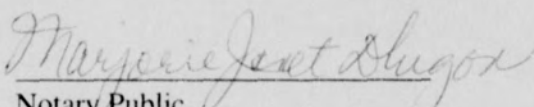
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ss:

Terri D. Hamilton, being duly sworn, deposes and says that she is qualified and authorized to file this Verified Statement, and that she has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of her knowledge, information and belief.


Terri D. Hamilton

Subscribed and sworn to
before me this 20
day of October, 1997.


Notary Public

My commission expires:

MARJORIE JANET DLUGOSZ, Notary Public
State of Ohio
My Commission Expires Jan. 29, 2000

**VERIFIED STATEMENT OF
CHRISTOPHER P. WARREN
DIRECTOR OF ECONOMIC DEVELOPMENT
(CLEV-14)**

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**VERIFIED STATEMENT OF
CHRISTOPHER P. WARREN**

I am Christopher P. Warren, the Director of Economic Development for the City of Cleveland, Ohio. I have worked in this position for two (2) years. My Department's major responsibilities include job creation activities associated with neighborhood development, business retention and expansion, international trade and downtown development. We also administer the \$40 million Neighborhood Development Investment Fund for major land development and economic development projects. The City's \$177 million Empowerment Zone program is also housed in the Department. Before taking this job, I served as the City's Community Development Director from 1990 - 1995. Prior to joining the administration of Mayor Michael R. White, I had served as Executive Director of the Cleveland Housing Network since 1985, the association of eleven (11) neighborhood-based non-profit organizations engaged in the rehabilitation of scattered site housing which is rented and sold to low-income families. During this period, I served as Chairman of the Citywide Plan Steering Committee,

which oversaw the City Planning Commission's comprehensive revision of the Citywide General Land Use Plan. A Cleveland resident for more than 25 years, I worked after graduating from Hiram College in 1973 with a Bachelor of Arts degree in political science, as a community organizer for Merrick House and the Greater Cleveland Welfare Rights Organization before being named Executive Director of the Tremont West Development Corporation in 1980.

When Mayor White and those of us on his staff first learned of the possibility of a change in the ownership or operation of Conrail, we were not sure of what the change would bode for Cleveland. We continue to rely heavily on rail transportation here, even though the mix of industries and rail uses in this area has changed quite a bit over the past 30 years.

Then, we began to learn of the railroads' plans to increase dramatically the volume of rail traffic moving through the City. This, we thought, has potential to be a net positive for the business community here. After all, increased traffic presumably affords rail users, primarily industries, greater access and therefore a less expensive means of shipping raw materials and goods across the country and to coastal ports for shipping. Furthermore, the introduction of enhanced intermodal facilities -- facilities capable of quickly transferring containers to and from trains and trucks -- gives local industries and retailers a definite competitive advantage. Unfortunately, our hopes for benefits to the City have come nowhere close to realization. The two railroads plan to move substantially increased volumes of traffic through the City, with almost no economic benefit other than the few new jobs that might be created because of the new intermodal facilities they are planning for this area.

Both CSXT and NS are considering making Cleveland a major hub in their service networks. Their interest is caused by two important factors: (1) Cleveland offers the opportunity to integrate north-south service, a strong suit for both railroads, with the east-west assets of Conrail; and (2) the co-existence in the Cleveland region of a stable and growing industrial base and a huge consumer market.

The strategic plans for both rail companies call for establishing intermodal facilities in the Cleveland area. Historically, NS and CSXT have concentrated such facilities in Columbus and Cincinnati forcing companies to rely heavily on trucking as a primary means of shipment. CSXT now plans a large, 25-acre facility at Collinwood Yards and NS is seriously considering an intermodal facility in a southeast side suburb.

Theoretically, there could be three major economic spin-offs, aside from the primary benefit of reducing shipping costs for Northeast Ohio firms, from an intermodal facility in Cleveland:

- (1) An increased demand for warehousing and distribution development adjacent to or near the intermodal. Significant underutilized land in Collinwood could conceivably be developed for these purposes although the negative effects of increased truck traffic on neighborhoods and road systems would be a challenge.
- (2) Considerable new truck commerce from Ohio, western New York, and western Pennsylvania. Such commerce would stimulate retail, public tolls, taxes, and employment within related sectors.
- (3) Further development of the emerging "freight-forwarders" industry. Freight-forwarders are third-party logistical experts (schedulers, software firms, etc.) who help industries plan the most efficient means of moving

products from the plant to trucks, to trains, to cargo planes, and/or to steamships. Freight-forwarder companies tend to cluster around intermodal facilities.

However, the economic gains derived from CSXT making Cleveland a service hub through the proposed intermodal facility would not come without public costs, a reality that has yet to be addressed by CSXT officials. At Collinwood Yards, it is not clear what the impact would be on East 152nd Street and the I-90 interchange, nor is it clear who would pay for the inevitable improvements. Furthermore, the projected increase in truck traffic from the region to Cleveland will put added burdens on an already overburdened road infrastructure. Again, no one has systematically analyzed these infrastructure issues and no one in the rail industry has suggested solutions.

Neither CSXT nor NS have completely addressed long-standing problems with the condition of their properties within the City. Despite recent efforts by Conrail, the upkeep and maintenance of their Collinwood neighborhood properties remains a sore point. NS property in downtown Cleveland, one block from Jacobs Field and stretching from East 9th and Carnegie to East 22nd and Broadway, is unsightly and poorly maintained. The City of Cleveland has received few positive assurances that such conditions, conditions that undermine market values of adjacent area, will be dealt with affirmatively.¹

¹CSX has recently stated in responses to discovery requests that near Collinwood Yard: fencing on S. Waterloo Road and 152nd Street is planned, and that landscaping and signage will be included in the gate and entrance plan; CSXT has no plans for landscaping; security of the terminal is part of the operating plan; the new facility will be lighted and paved, with proper drainage based on sound engineering practices; the site of the facility will be cleared of debris; CSX will repair or replace fencing along 152nd Street to secure the facility as necessary; and CSXT will implement a plan to prevent stacking containers more than two feet high. See Response of Applicants to the

The railroads are an important property owner in our City. As such, development as well as upkeep of their properties should be coordinated with the City's efforts to rebuild neighborhoods and retain businesses. Redevelopment of the NS East 22nd and Broadway properties as a "public transportation center" drawing together within one site a hub for crosstown buses, the St. Vincent rapid transit station, and possibly a new home for Greyhound, is one such opportunity. Sale of NS's 10-acre parcel within the Northern Ohio Food Terminal would open the way for much needed food terminal expansion. Disposition of Conrail-owned surplus land to National Paper Products on East 55th Street would make attempts to market an abandoned factory more feasible. These are few examples of possible positive partnerships between the City and the railroads.

CONCLUSION

When a person in a position like mine looks at rail mergers, he (or she) would look for economic benefits in several different forms. The shippers in the community might find some benefits from increased single line service opportunities. Cleveland is already served by main lines of both the Norfolk Southern and Conrail systems, so this will not be a new feature for us. Sometimes, mergers will bring a new or an enhanced competitor to the market. Again, not so here. We will see only a replacement for an existing service. Some mergers will bring new facilities, new programs and new jobs to the community. Maybe this will occur here, but the long term outlook for this is not clear. Intermodal facilities are not high volume employers, and the industries that

First Set of Interrogatories and Document Requests of the City of Cleveland, CSX/NS-115 at Responses to No. 33 and 34, pp. 31 - 33. These responses, which are quite positive and provide a good beginning to addressing the City's problems at this site, still leave many questions unanswered.

support or relate to them also usually do not employ large crowds. The proposed transaction and reconfiguration of the rail systems in this area will cause a net loss of 40 railroad jobs in Cleveland and at Collinwood over the first three years.² Company officials have indicated the possibility of reducing or maybe even eliminating the current NS yard on East 55th Street, an outcome that will cost Cleveland even more jobs. In short, the City of Cleveland will see harm, not benefit from this proposed transaction, no matter how you look at this projected transaction. We see no way that the Application can be approved as this transaction is currently configured.

²I base this calculation on the labor impact numbers presented by Applicants in their Submission of 1995 Labor Impact Exhibit, CSX/NS-26, filed on July 7, 1997, based on the 1996 average head count.

Verification

State of Ohio)
) ss:
City of Cleveland)

Christopher P. Warren, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Christopher P. Warren

Christopher P. Warren

Subscribed and sworn to
before me this 20th
day of October, 1997.

William H. Brown
Notary Public

My commission expires:

Alicia Torres
Notary Public, State of Ohio
 My Commission Expires May 10, 2000

**VERIFIED STATEMENT OF
PHILIP G. PASTERAK, P.E.
VICE PRESIDENT
PARSONS BRINCKERHOFF
(CLEV-15)**

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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

**VERIFIED STATEMENT OF
PHILIP G. PASTERAK**

I am Philip G. Pasterak, Vice President of Parsons Brinckerhoff in its Cleveland, Ohio office. I have worked in rail planning, engineering, and operations for more than 16 years. This includes seven years' experience as a CSX Transportation engineering management supervisor in Ohio and Michigan. I have provided consulting services in Cleveland and the eastern United States (Ohio, Michigan, New York, Virginia, and others) for 10 years, including planning and design for rail operations and facilities, intermodal facilities, passenger services, and other aspects of the rail industry. I have also worked as a transportation planner for NOACA, the Cleveland area metropolitan planning organization, and have seven years' experience as Vice President in charge of operations on a growing non-profit excursion railroad, the Cuyahoga Valley Scenic

Railroad. I have a BS in Civil Engineering from Case Western Reserve University and an MBA from Baldwin Wallace College.

I am submitting this statement in support of the City of Cleveland's request for conditions to the approval of the proposed acquisition of Conrail by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Corporation ("NS"). At the request of Mayor White, I reviewed the Operating Plan and the projected train schedules provided by the Applicants, CSXT and NS. I agree with the City's understanding of the projected train frequency increases on the new CSXT and NS routes through Cleveland, and I support the idea that the Applicants should be required to re-route some of the trains they now propose to move across lines through the heart of the City. The Cleveland and northern Ohio region include alternative routes and trackage that are available for some of this traffic.

Re-route Opportunities

A preliminary evaluation of available operational data suggests that a portion of the rail traffic proposed to be routed through Cleveland could be re-routed on other lines through other areas. The result here, of course, would be to reduce the significant impacts on the City of Cleveland. This potential applies to both CSXT and NS traffic.

In the case of CSXT, the Operating Plan proposes that certain trains with New Jersey and Philadelphia origins/destinations be operated through Cleveland and classified at Collinwood. From my preliminary review of available schedule data, I count 12 trains that CSXT proposes to move between Chicago/Detroit and Kearny, Little Ferry, Elizabeth or Philadelphia that operate through Cleveland. It is reasonable to suggest that these trains could operate via other CSXT routes.

In the case of NS, the Operating Plan also proposes that certain trains with New Jersey and eastern Pennsylvania origins/destinations be operated through Cleveland. This includes through trains as well as trains to be re-classified. Because of the significant impact of heavy Bellevue-Buffalo main line traffic on Cleveland neighborhoods, NS could consider re-routing this traffic via other available routes.

Both CSXT and NS have substantial rail capacity around Cleveland, in the surrounding counties, and around the state. In view of the problems the City of Cleveland has identified that will be created by this proposed increase in train frequencies, they should be required to find alternative ways to use that infrastructure in a way that will reduce the harm to the communities in Cleveland.

Understatement of Infrastructure Needs

The Operating Plan identifies the need for the construction of a key connection between the existing NS Bellevue-Buffalo lines and the Conrail Chicago Line in Vermilion, Ohio. It is my understanding that the Applicants estimate construction costs in the range of \$3 million. However, based on my review of the proposed construction and of the traffic patterns NS and CSXT have projected through the City, I believe that additional infrastructure improvements will be required to support this.

One reason I believe additional work will be required is the limited capacity of the Bellevue-Buffalo line through Cleveland. This line currently has significant segments of single track, including two (2) segments totalling more than 13 miles in Cleveland and its western suburbs. To accommodate the increased traffic over this line without unreasonable train delays, NS will likely need to provide additional improvements, if not immediately then possibly in the future. The effects of this

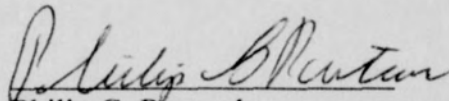
additional construction on the City have not been identified by the proposed Operating Plan. Similarly, CSX may be understating construction costs as well. CSX's proposed construction on the Short Line route in Cleveland provides track capacity that, based on CSX's modeling analysis, has sufficient capacity to meet the needs of the Operating Plan. However, this assumes the operation of 10 trains on NS trackage rights, and limits the ability to increase traffic in the future. It also appears that although some capacity improvements can be made without reconstruction of several narrow tunnels on the Short Line under existing City arterial roads, ultimately it is reasonable to assume that this reconstruction will be required in the future. It is likely that additional expenditures will be required.

I believe that Applicants have understated the infrastructure improvements required. Their plans should be carefully reviewed, and probable total costs presented. Then, as CSXT and NS consider the evaluation of proposed alternative means to move traffic through and/or around the City, which Cleveland is asking the Board to require them to do, they will be in a position to compare realistic and comprehensive projections of construction and rehabilitation costs for all alternatives.

VERIFICATION

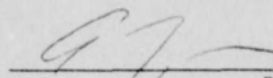
STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

Philip G. Pasterak, being duly sworn, deposes and says that he has read foregoing statement, knows the facts asserted therein are true and that the same are true as stated.


Philip G. Pasterak

Subscribed and sworn to before me this 17th day of October, 1997.

Notary Public of Cleveland


ANNIE P. HOGAN, Notary Public
State of Ohio
My Commission Expires Sept. 13, 2000
Recorded in Cuyahoga C

My Commission expires:

**VERIFIED STATEMENT OF
JERI E. CHAIKIN
COUNTY ADMINISTRATOR
CUYAHOGA COUNTY
(CLEV-16)**

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

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

Verified Statement of

Jeri E. Chaikin

Cuyahoga County Administrator

STATEMENT

IMPACT OF THE CSX AND
NORFOLK SOUTHERN CORPORATIONS
PROPOSED AGREEMENTS
REGARDING CONRAIL INC. ON THE
COUNTY OF CUYAHOGA, OHIO

October 20, 1997

By

Jeri E. Chaikin
County Administrator
Cuyahoga County, Ohio

The proposed acquisition of the Conrail Inc. assets and their division by CSX Transportation Inc. and Norfolk Southern Railway Company, as proposed, will have significant impacts on Cuyahoga County and the health and safety of its residents.

Cuyahoga County, Ohio, as indicated in Attachment A, is located on the southern shore of Lake Erie, where it has historically been crisscrossed by rail lines connecting the Eastern seaboard of the United States with the Midwest. Today, Cuyahoga County is astride railroad corridors which reach every part of the nation, and large volumes of freight move through its borders.

Cuyahoga County is also the home of approximately 1.5 million persons, many of whom reside in close proximity to the Conrail, Norfolk Southern, and CSX tracks. The proposed acquisition will dramatically increase the frequency and volume of train traffic, significantly impacting the safety, quality of life, economic development, and public facilities of Cuyahoga County, which comprises the City of Cleveland and fifty-eight (58) other local jurisdictions.

The Board of Commissioners of Cuyahoga County has received reports on the impacts of the proposed acquisition. These include the City of Cleveland's *Report on the Impact of the CSX/Norfolk Southern Proposal on the City of Cleveland*, dated October 14, 1997; testimony and information received from Cuyahoga County's Westshore communities (Bay Village, Westlake, Rocky River, Fairview Park, and Lakewood, Ohio); testimony by the Ohio Rail Development Commission staff; and information prepared for the Board of the Cuyahoga County Planning Commission.

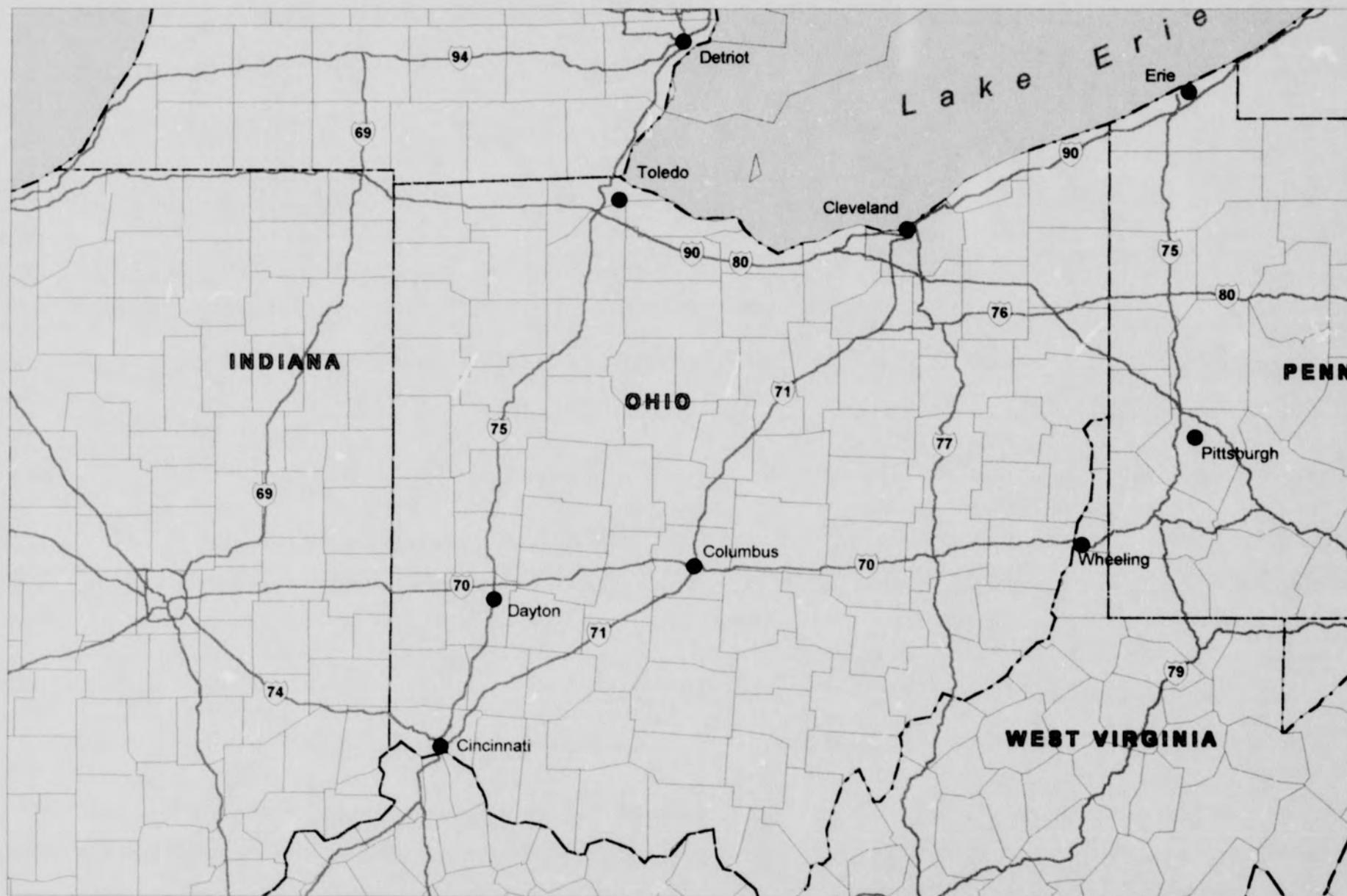
Based on this information, the Board of County Commissioners has adopted a resolution, Attachment B, opposing action by the Surface Transportation Board, Norfolk Southern and CSX Transportation which would increase the risk to the health and safety of Cuyahoga County residents.

The Board of County Commissioners agrees with the City of Cleveland that this proposal would have a disproportionate impact on the poor and minority residents of our community. This is true not only for the City of Cleveland, as documented by its report, but also for the Cities of East Cleveland and Euclid, Ohio. In the case of East Cleveland, 25,503 residents live within 1,000 feet of the railroad tracks that will experience increased rail traffic, 97.7% of whom are non-white and 35.8% of whose households earn less than \$15,000 per year. The comparable figures for Euclid are 17,427 residents, 32.3% non-white, and 24.2% household earnings below \$15,000 per year.

The Board of Commissioners of Cuyahoga County supports the statement of impacts by the City of Cleveland and has identified additional impacts in other County communities.

Furthermore, the Board of Commissioners urges the Surface Transportation Board to require the parties to this proposal to meaningfully consult with local officials and residents and revise the proposal in order to ensure that the health and safety of Cuyahoga County residents are not put at greater risk through implementation of the current plan, and not to approve this proposal until this condition is satisfied.

Finally, the Board of Commissioners urges the Surface Transportation Board to require the parties to this proposal to evaluate the routing of rail traffic through Cuyahoga County, a major metropolitan center, so that future rail routing accommodates the future redevelopment of Cuyahoga County while avoiding risks to its residents.



ATTACHMENT B

R E S O L U T I O N

Opposing any action by the Federal Surface Transportation Board, Norfolk & Southern and CSX Corporation which would increase the risk to the health and safety of Cuyahoga County residents.

WHEREAS, Norfolk & Southern and CSX Corporation are currently proposing acquisition and allocation of the assets of Consolidated Rail Corporation (Conrail), and plan to increase the number of freight trains running through residential communities of Cuyahoga County; and

WHEREAS, the proposal will be brought before the Surface Transportation Board in June, 1998, for approval; and

WHEREAS, increases in daily freight train use along the proposed rail lines would create serious health and safety concerns and risks for the residents of Cuyahoga county by significantly interfering with the ability of area hospitals, their ambulances and paramedic squads, to directly and timely respond to medical emergencies from any and all causes - a matter of life and death whereby minutes in response time can often mean the difference; and

WHEREAS, increases in daily freight train use along the proposed lines will interfere with the ability of police and fire safety forces of Cuyahoga County to directly and timely respond to fires, crime and natural disasters; and

WHEREAS, the potential increases in the transportation of hazardous materials along the proposed lines raises grave concerns for health and safety in the event of a derailment or other mishap that would imperil the safety of residents of the Cuyahoga County communities within 2 to 4 miles of the train tracks, an area that encompasses a sizable portion of the county; and

WHEREAS, the Board of County Commissioners, through its emergency management functions, has worked to dramatically improve the County's capability to address health and safety risks arising from transporting hazardous materials and is determined to avoid any potential increases in these risks to Cuyahoga County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Cuyahoga County, Ohio, that the Board recognizes the salutary efforts of local, state and federal officials to examine the pending acquisition of and allocation of assets of the Consolidated Rail Corporation (Conrail); and

BE IT FURTHER RESOLVED that the Board, together with local officials, is concerned about the health and safety risks caused by increases in daily freight traffic posed by the pending acquisition, particularly from the transportation of increased quantities of hazardous materials; and

BE IT FURTHER RESOLVED that the proposed acquisition presents an opportunity to examine and evaluate the routing of rail traffic through the County, a major metropolitan center, so that the future rail traffic serves the needs of the railroads while accommodating the future development of Cuyahoga County free of avoidable risk to its residents living in the proximity of rail ways.

BE IT FURTHER RESOLVED that the federal Surface Transportation Board is urged to insure that the health and safety of Cuyahoga County residents is not put at greater risk by its decision in this matter, and that Norfolk & Southern and CSX Corporation not be allowed to increase risks to Cuyahoga County through implementation of its current plan.

BE IT FURTHER RESOLVED that the Clerk of the Board be, and she is, hereby instructed to transmit a copy of this resolution to Paul Alsenas, Director, County Planning Commission; and one copy each to Madeline A. Cain, Mayor, City of Lakewood; Don Umerley, Mayor, City of Rocky River; Thomas L. Jelep, Mayor, City of Bay Village; Dennis Clough, Mayor, City of Westlake; and to Vincent M. Urbin, Mayor, City of Avon Lake.

On Motion of Commissioner Campbell, seconded by Commissioner McCormack, the foregoing resolution was duly adopted.

Ayes: Campbell, McCormack, Hagan.

Nays: None.

Resolution Adopted.

Marjorie J. Pettus
Clerk of the Board

Journal 256
October 14, 1997
974107
ee

Verification

State of Ohio

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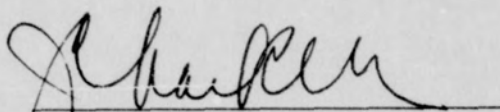
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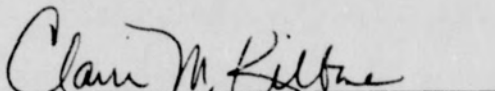
City of Cleveland

)

Jeri E. Chaikin, being duly sworn, deposes and says that she is qualified and authorized to file this Verified Statement, and that she has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of her knowledge, information and belief.


Jeri E. Chaikin, Cuyahoga County Administrator

Subscribed and sworn to
before me this 20th
day of October, 1997.


Notary Public

My commission expires:
CLAIRE M. KILBANE

Notary Public, State of Ohio, Cuy. Cty.

My Commission Expires July 30, 2001

**LETTER FROM
DR. RICHARD A. BOYD
SUPERINTENDANT OF THE CLEVELAND
PUBLIC SCHOOLS
(CLEV-17)**



Cleveland Public Schools

Dr. Richard A. Boyd
Superintendent

October 20, 1997

The Honorable Linda J. Morgan, Chair
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Dear Honorable Morgan:

As Superintendent of the Cleveland Public Schools, I am opposed to the proposal of Norfolk and Southern to increase train traffic within the Cleveland City School District and surrounding areas unless this increase is accompanied by a concrete plan by the railroad to mitigate the adverse effect in our communities--especially to our school children and their families. The costs of this plan must be paid by the railroad company--not by the school districts, cities and people which are being hurt by the railroad's disregard for their safety and quality of life.

The reasons for our opposition are simple and straightforward. More trains mean more safety hazards for our school children. More trains means less safety for children on their way to and from the many schools and playgrounds near railroad grade crossings. Whenever children must cross train tracks to reach their schools or playgrounds, any significant increase in train traffic will increase the likelihood of serious accidents involving children at these grade crossings.

More trains also means more noise and air pollution, less access to neighborhoods, and decreased property values and quality of life for our school children, their families and neighbors. Because so many (80%) of our school children and their families are poor, they are not in a position to move away from the increased hazard created by increased train traffic and the resulting decreased quality of life. They should not be made to suffer.

If the railroad wants to increase train traffic, then the railroad must devise and pay for a plan that preserves at least the current level of safety at railroad crossings and the current quality of life of our school children and their families.

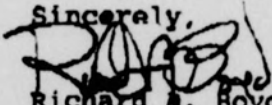
Page 2

The Honorable Linda Morgan

I urge the Surface Transportation Board to require a solution to this problem that respects the rights of citizens to the level of safety and quality of life they now enjoy--and protects those rights from being hurt by corporate profits. I believe there is a way to balance the economic interests of our country with citizen rights--but we cannot protect our children unless the corporations making more money from increased train traffic put their profits into mitigating the adverse effects of this business decision.

Thank you very much.

Sincerely,


Richard A. Boyd

RAB:dp

xc: Secretary Rodney Slater
Jolene Molitoris
Honorable Louis Stokes
Honorable Dennis Kucinich

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 1997, a copy of the foregoing Comments in Opposition and Request for Conditions of the City of Cleveland, Ohio (CLEV-9) and accompanying Verified Statements, was served by hand delivery upon the following:

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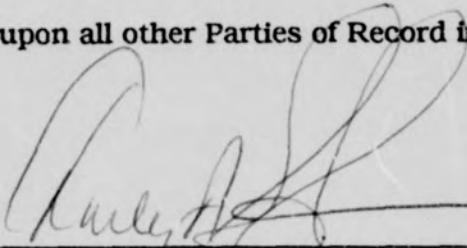
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Charles A. Spitulnik