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TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Safety	C-072: Mayfield–Marcy	Rail Line Segment	Cuyahoga	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident. (A key and a major key route).
	C-073: Quaker – Mayfield	Rail Line Segment	Cuyahoga	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	C-074: Short – Berea	Rail Line Segment	Cuyahoga	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	C-075: Willard – Fostoria	Rail Line Segment	Huron, Seneca	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A major key route). *Freight Rail Operations*: Increase in accident frequency.
	C-228: Fostoria – Toledo	Rail Line Segment	Seneca, Wood	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident. (A key and a major key route).
	C-229: Columbus – Marion	Rail Line Segment	Marion, Delaware, Franklin	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	C-230: NJ Cabin, KY – Columbus, OH	Rail Line Segment	Marion, Franklin, Pickaway, Pike, Ross	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
			OHIO (Continued)	
Safety	N-070: Buffalo FW, NY – Ashtabula, OH	Rail Line Segment	Ashtabula	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	N-071: Bucyrus – Bellevue	Rail Line Segment	Crawford, Sandusky Seneca, Huron	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Crawford County Andrews
	N-072: Vermilion – Bellevue	Rail Line Segment	Huron, Erie, Sandusky	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-073: Fairgrounds (Columbus) – Bucyrus	Rail Line Segment	Crawford, Delaware, Franklin, Marion	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Crawford County: Hopley Marion County: Galion-Marseilles, Scott Twp. Road-190
	N-074: Cleveland–CP-190	Rail Line Segment	Cuyahoga	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A major key route).
	N-075: Ashtabula – Cleveland	Rail Line Segment	Cuyahoga, Lake, Ashtabula	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	N-077: Oak Harbor – Miami	Rail Line Segment	Lucas, Ottawa, Wood	*Freight Rail Operations*: Increase in accident frequency.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Safety	N-079: Oak Harbor – Bellevue	Rail Line Segment	Ottawa, Sandusky	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Sandusky County Kilbourne Street CR 292 Fangboner Road *Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-080: Cleveland – Vermilion	Rail Line Segment	Cuyahoga, Erie, Lorain	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	N-081: White – Cleveland	Rail Line Segment	Cuyahoga	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A major key route).
	N-082: Youngstown – Ashtabula	Rail Line Segment	Ashtabula, Mahoning, Trumbull	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-085: Bellevue – Sandusky Dock	Rail Line Segment	Erie, Huron	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Erie County Bradshar Skadden/CR 42

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Safety	N-086: Miami – Airline	Rail Line Segment	Lucas	*Freight Rail Operations*: Increase in accident frequency.
	N-095: Rochester, PA – Youngstown, OH	Rail Line Segment	Mahoning	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-293C: CP-190–Berea	Rail Line Segment	Cuyahoga	*Freight Rail Operations*: Increase in accident frequency.
	CY04: Stanley Rail Yard	Rail Yard	Wood	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Wood County City of Toledo
	NY06: Conneaut Rail Yard	Rail Yard	Ashtabula	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Ashtabula County City of Conneaut
	NY07: Homestead Rail Yard	Rail Yard	Lucas	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Lucas County City of Toledo
	NY08: Airline Rail Yard	Rail Yard	Lucas	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Lucas County City of Toledo

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Safety	NM11: Sandusky Intermodal	Intermodal Facility	Erie	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Erie County City of Sandusky
	NM12: Discovery Park Intermodal	Intermodal Facility	Franklin	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Franklin County City of Columbus
	CC-06: Greenwich Connection	Rail Line Segment	Huron	CSX shall comply with its Negotiated Agreement executed with the Village of Greenwich, Ohio and the Board of Huron County, Ohio Commissioners regarding relocation of the connection construction project in Greenwich. Hazardous Materials Transport.
	NC-11: Bucyrus Connection	Rail Line Segment	Crawford	Hazardous Materials Transport.
Transportation	C-063: Cincinnati – Hamilton	Rail Line Segment	Butler, Hamilton, Sandusky	*Highway/Rail At-grade Crossing Delay*: Increase in vehicle delay at crossing. Butler County: Vine Street Hamilton County: Township Avenue
	NC-12: Columbus Connection	Construction	Franklin	*Safety and Traffic:* Vertical alignment of new highway/rail at-grade crossing.
	NC-13: Oak Harbor Connection	Construction	Ottawa	*Safety and Traffic:* Vertical alignment of new highway/rail at-grade crossing.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Safety	NC-14: Vermilion Connection	Construction	Erie	*Safety and Traffic:* Vertical alignment of new highway/rail at-grade crossing.
Noise	C-061: Berea – Greenwich	Rail Line Segment	Cuyahoga, Lorain, Huron	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Berea, Grafton, Rochester Olmsted Falls, LaGrange, New London Eaton Estates CDF, Wellington
	C-065: Deshler – Toledo	Rail Line Segment	Henry, Wood	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Perrysburg, Weston, Deshler Haskins, Milton Center Tontogany, Custer
	C-072: Mayfield – Marcy	Rail Line Segment	Cuyahoga	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Cleveland Cuyahoga Heights
	C-073: Quaker – Mayfield	Rail Line Segment	Cuyahoga	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA Community: Cleveland

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
			OHIO (Continued)	
Noise	C-074: Short – Berea	Rail Line Segment	Cuyahoga	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Middleburg Heights Berea
	N-074: Cloggsville–CP 190	Rail Line Segment	Cuyahoga	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Cleveland Brooklyn Linndale
	N-079: Oak Harbor – Bellevue	Rail Line Segment	Huron, Ottawa, Sandusky	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Kingsway Booktown Fremont Clyde
	N-085: Bellevue – Sandusky Dock	Rail Line Segment	Huron, Erie, Sandusky	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Weyers Parkertown

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Noise	CC-06: Greenwich Connection	Rail Line Segment	Huron	CSX shall comply with its Negotiated Agreement executed with the Village of Greenwich, Ohio and the Board of Huron County, Ohio Commissioners regarding relocation of the connection construction project in Greenwich. Wheel squeal noise.
Cultural Resources	CR-03: Collinwood Yard, Cleveland	Construction	Cuyahoga	Acquisition and probable destruction of four to nine extant historic district contributors.
	NC-11: Bucyrus Connection	Construction	Crawford	NS shall retain its interest in and take no steps to alter the historic integrity of sites identified at Bucyrus, Ohio until completion of the Section 106 process of the National Historic Preservation Act.
Natural Resources	CR-03: Collinwood Yard, Cleveland	Construction	Cuyahoga	Expand existing rail yard to accommodate intermodal facility.
	NC-14: Vermilion Connection	Construction	Erie	Potential impacts on endangered Indiana bat.
	NC12: Columbus Connection	Construction	Franklin	Expanding existing rail yard to accommodate intermodal facility.
	NC13: Oak Harbor Connection	Construction	Ottawa	Expanding existing rail yard to accommodate intermodal facility.
	NC14: Vermilion Connection	Construction	Erie	Expanding existing rail yard to accommodate intermodal facility.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Natural Resources	NA03: Toledo - Maumee Abandonment	Abandonment	Lucas	Expanding existing rail yard to accommodate intermodal facility.
Environmental Justice	C-074: Short – Berea	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Berea
	C-072: Mayfield – Marcy	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Cleveland
	C-072: Mayfield – Marcy	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Cleveland Heights
	C-073: Quaker – Mayfield	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Cleveland
	C-073: Quaker – Mayfield	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of East Cleveland

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Environmental Justice	N-075: Ashtabula – Cleveland	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Cleveland
	N-075: Ashtabula – Cleveland	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Cleveland Heights
	N-075: Ashtabula – Cleveland	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of East Cleveland
	N-075: Ashtabula – Cleveland	Rail Line Segment	Cuyahoga	Minority and low-income population: Hazardous Materials Transport Cuyahoga County City of Euclid
	N-075: Ashtabula – Cleveland	Rail Line Segment	Lake	Minority and low-income population: Hazardous Materials Transport Lake County City of Mentor
	N-075: Ashtabula – Cleveland	Rail Line Segment	Lake	Minority and low-income population: Lake County City of Painesville

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Environmental Justice	C-061: Berea – Greenwich	Rail Line Segment	Huron	Minority and low-income population: Hazardous Materials Transport Huron County City of New London
	C-068: Greenwich – Willard	Rail Line Segment	Huron	Minority and low-income population: Hazardous Materials Transport Huron County City of Willard
	C-066: Deshler, OH – Willow Creek, IN	Rail Line Segment	Defiance	Minority and low-income population: Hazardous Materials Transport Defiance County Defiance City
	C-066: Deshler, OH – Willow Creek, IN	Rail Line Segment	Henry	Minority and low-income population: Hazardous Materials Transport Henry County Holgate Village
	C-075: Willard – Fostoria	Rail Line Segment	Seneca	Minority and low-income population: Hazardous Materials Transport Seneca County City of Fostoria
	C-075: Willard – Fostoria	Rail Line Segment	Seneca	Minority and low-income population: Hazardous Materials Transport Seneca County City of Tiffin

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Environmental Justice	C-075: Willard – Fostoria	Rail Line Segment	Huron	Minority and low-income population: Hazardous Materials Transport Huron County City of Willard
Community	Ashtabula	Rail Line Segment	Ashtabula	With the concurrence of the City of Ashtabula, Ohio, NS shall provide install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching.
	Bellevue	Rail Line Segment	Sandusky	NS shall comply with the terms and conditions of its Negotiated Agreement executed with the City of Bellevue, Ohio.
	Brook Park	Rail Line Segment	Cuyahoga	CSX shall comply with the terms and conditions of its Negotiated Agreement dated February 17, 1998 with the City of Brook Park, Ohio.
	Brook Park and Olmsted Falls	Rail Line Segment	Cuyahoga	CSX and NS shall comply with the terms and conditions of their Negotiated Agreement dated February 24, 1998 with the Cities of Brook Park and Olmsted Falls, Ohio.
	Cleveland	Rail Line Segment	Cuyahoga	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. The Applicants shall construct and maintain, where not already present, fencing and landscaping at various locations within the City of Cleveland. Cuyahoga County City of Cleveland

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Community	Greater Cleveland Area	Rail Line Segment	Cuyahoga	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. The Applicants shall install and maintain supplemental train defect detection devices at various locations within the Greater Cleveland Area.
	Fostoria	Rail Line Segment	Seneca	Minority and low-income population: Hazardous Materials Transport Traffic delay and safety at highway/rail at-grade crossings. Seneca County City of Fostoria
	New London	Rail Line Segment	Huron	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Synchronization of warning devices at highway/rail at-grade crossing of State Route 162 in New London, with devices of Wheeling and Lake Erie Railroad at the same location. Huron County City of New London
	Oak Harbor	Rail Line Segment	Ottawa	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident.
	Oxford Township	Rail Line Segment	Butler	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Upgrading warning devices from passive to flashing lights at highway/rail at-grade crossing of Thomas Road in Oxford Township. Butler County Town of Oxford Township

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
OHIO (Continued)				
Community	Defiance	Rail Line Segment	Defiance	Minority and low-income population: Hazardous Materials Transport *Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Installation and maintenance of advance warning devices at highway/rail at-grade crossing at U.S. Route 24 in Defiance. Defiance County City of Defiance
	East Cleveland	Rail Line Segment	Cuyahoga	CSX shall comply with the terms and conditions of its Negotiated Agreement executed with the City of East Cleveland, Ohio. NS shall comply with the terms and conditions of its Negotiated Agreement executed with the City of East Cleveland, Ohio. Cuyahoga County City of East Cleveland
	Peru	Rail Line Segment	Huron	Train horn noise.
	Toledo	Rail Line Segment	Lucas	NS shall comply with the terms of its Negotiated Agreement with the Toledo-Lucas County Port Authority and the Toledo Metropolitan Area Council of Governments.
	Vermilion	Rail Line Segment	Erie	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
			PENNSYLVANIA	
Safety	C-766: West Falls – CP Newton Jct.	Rail Line Segment	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident. (A key route).
	C-767: CP Newton Jct. – CP Wood	Rail Line Segment	Bucks, Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	C-768: CP Wood, PA – Trenton, NJ	Rail Line Segment	Bucks	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-070: Buffalo FW, NY – Ashtabula, OH	Rail Line Segment	Erie	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Erie County Peach Street — Raspberry Street Cherry Street — Lucas Road *Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key and a major key route).
	N-090: Rutherford – Harrisburg	Rail Line Segment	Dauphin	*Freight Rail Operations*: Increase in accident frequency.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
PENNSYLVANIA (Continued)				
Safety	N-091: Harrisburg, PA – Riverton Jct, VA	Rail Line Segment	Cumberland, Franklin Dauphin, York	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Cumberland County: York Road/SR 74, Criswall, Mill Franklin County: Guilford Springs Road, Alleman, Hayes Road
	N-095: Rochester, PA – Youngstown, OH	Rail Line Segment	Lawrence, Beaver	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-203: Bethlehem – Allentown	Rail Line Segment	Lehigh, Northampton	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-216: Reading – Reading Belt Jct.	Rail Line Segment	Berks	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	S-232: Park Jct. – Philadelphia Frankford Jct.	Rail Line Segment	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	S-233: Philadelphia Frankford Jct., PA – Camden, NJ	Rail Line Segment	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
PENNSYLVANIA (Continued)				
Safety	SY01: Greenwich Rail Yard	Rail Yard	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Philadelphia County City of Philadelphia
	NY09: Harrisburg Rail Yard	Rail Yard	Dauphin	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Philadelphia County City of Harrisburg
	CM05: Greenwich Intermodal	Intermodal Facility	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Philadelphia County City of Philadelphia
	NM13: New AmeriPort/South Philadelphia Intermodal	Intermodal Facility	Philadelphia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Philadelphia County City of Philadelphia
	NM14: Allentown Intermodal	Intermodal Facility	Lehigh	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Lehigh County City of Allentown
	NM15: Rutherford Intermodal	Intermodal Facility	Dauphin	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Dauphin County City of Harrisburg

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
			PENNSYLVANIA (Continued)	
Safety	NM16: Morrisville Intermodal	Intermodal Facility	Bucks	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Bucks County City of Morrisville
	NM17: Pitcairn Intermodal	Intermodal Facility	Allegheny	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Allegheny County City of Pittsburgh
Noise	C-085: Sinns – Brownsville	Rail Line Segment	Allegheny, Fayette, Westmoreland	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5dBA. Communities: McKeesport, Elkhorn, Milesville Glassport, East Monongahela, Webster Lincoln, Manown, Belle Vernon Elizabeth, Gallatin, Fayette Bunola, Sunny Side, Newell
Environmental Justice	N-070: Buffalo FW, NY – Ashtabula, OH	Rail Line Segment	Erie	Minority and low-income population: Hazardous Materials Transport Traffic delay and safety on 19th Street. NS shall comply with the terms and conditions of its Negotiated Agreement with the City of Erie, Pennsylvania. Erie County City of Erie

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
PENNSYLVANIA (Continued)				
Community	Erie	Rail Line Segment	Erie	Traffic delay and safety on 19th Street. NS shall comply with the terms and conditions of its Negotiated Agreement with the City of Erie, Pennsylvania. Erie County City of Erie
	Commonwealth of Pennsylvania	Rail Line Segment	Philadelphia	CSX shall comply with the terms and conditions of its Negotiated Agreement with the Commonwealth of Pennsylvania and the City of Philadelphia. NS shall comply with the terms and conditions of its Negotiated Agreement with the Commonwealth of Pennsylvania and the City of Philadelphia. Philadelphia County Commonwealth of Pennsylvania City of Philadelphia
SOUTH CAROLINA				
Safety	C-344: Ashley Jct. – Yemassee	Rail Line Segment	Colleton, Charleston, Beaufort	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
TENNESSEE				
Safety	N-361: Asheville, NC – Leadvale, TN	Rail Line Segment	Cocke	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-392: New Line – Leadvale	Rail Line Segment	Cocke, Jefferson, Hamblen	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
			TENNESSEE (Continued)	
Safety	N-399: Bulls Gap – Frisco	Rail Line Segment	Hawkins	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	N-406: Frisco – Kingsport	Rail Line Segment	Sullivan	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
	CY05: Leewood Rail Yard	Rail Yard	Shelby	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Shelby County City of Memphis
	NM18: Forrest Intermodal	Intermodal Facility	Shelby	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of handling. Shelby County City of Memphis
			VIRGINIA	
Safety	C-101: Fredericksburg – Potomac Yard	Rail Line Segment	Stafford, Prince William, Fairfax, Alexandria City, Arlington, Fredericksburg City	*Passenger Rail Safety*: Increase in risk of passenger train accidents.
	C-103: S. Richmond, VA – Weldon, NC	Rail Line Segment	Greensville, Sussex, Dinwiddie, Chesterfield, Colonial Heights City, Petersburg City, Prince George, Richmond City	*Passenger Rail Safety*: Increase in risk of passenger train accidents.

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
VIRGINIA (Continued)				
Safety	N-091: Harrisburg, PA – Riverton Jct., VA	Rail Line Segment	Clarke, Warren	*Highway/Rail At-grade Crossing Safety*: Increase in potential for vehicle-train accident. Clarke County: SR 7 Warren County: Rockland Road
	N-432: Poe ML – Petersburg	Rail Line Segment	Petersburg City	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).
Noise	N-100: Riverton Jct. – Roanoke	Rail Line Segment	Augusta, Botetourt, Buena Vista City, Clarke, Page Roanoke City, Roanoke, Rockbridge, Rockingham, Warren, Waynesboro	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Front Royal, Shenandoah, Lyndhurst, Glasgow Bentonville, Elkton, Cold Spring, Buchanan Kimball, Lynnwood, Vesuvius, Lithia Luray, Grottoes, Midvale, Troutville Stanley, Crimora, Cornwall, Cloverdale Ingham, Waynesboro, Buena Vista, Hollins
WEST VIRGINIA				
Noise	N-111: Deep Water – Fola Mine	Rail Line Segment	Fayette, Nicholas	Exceeds 70 dBA L_{dn} at noise-sensitive receptors and an increase of at least 5 dBA. Communities: Jefferson Gauley Bridge Falls View

TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

Technical Area	Site ID: Name	Type of Activity	County	Potential Impact
DISTRICT OF COLUMBIA				
Safety	C-003: Washington, DC – Point of Rocks, MD	Rail Line Segment	District of Columbia	*Passenger Rail Safety*: Increase in risk of passenger train accidents.
	C-031: Alexandria Jct., MD – Washington, DC	Rail Line Segment	District of Columbia	*Hazardous Materials Transport*: Increase in potential for hazardous materials release because of an accident (A key route).

[a] Even though the noise levels do not warrant mitigation at this time, SEA included the impacts to be considered cumulatively with other potential adverse impacts.

Note: Rail line segments N-060 (Corning-to-Geneva, NY) and N-110 (Elmore-to-Deep Water, WV) do not have noise-sensitive receptors within the noise contour boundary; therefore there are no potential impacts.

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

GUIDE TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT

This Final Environmental Impact Statement (Final EIS) evaluates the potential environmental impacts that could result from the proposed Acquisition of Conrail Inc. and Consolidated Rail Corporation (Conrail) by CSX Corporation and CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS). The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321); the Council on Environmental Quality (CEQ) regulations implementing NEPA; the Board's environmental rules (49 CFR Part 1105); and other applicable environmental statutes and regulations.

SEA issued the Draft EIS on December 19, 1997. Subsequently, SEA issued an Errata (January 12, 1998) and a Supplemental Errata (January 21, 1998) to clarify statements and analyses in the Draft EIS. The 45-day public comment period closed February 2, 1998. This Final EIS provides responses to comments, questions, and issues that the public, agencies, and other document reviewers raised. It describes SEA's additional environmental analysis and includes SEA's final environmental mitigation recommendations to the Board.

To assist the reader in the review of this document, each volume contains a Guide to that volume and a Table of Contents for each chapter in that volume. In addition, each individual volume also contains a Guide to the Final EIS, a Glossary of Terms, a List of Acronyms and Abbreviations, and the Table of Contents of the Final EIS. Specifically, the Final EIS document includes the following volumes:

Executive Summary Volume

The **Executive Summary** provides an overview of the proposed Conrail Acquisition, including the potential environmental impacts and the mitigation measures that SEA recommends to address those impacts. In addition, the Executive Summary Volume contains the **Letter to Interested Parties** that SEA attached to copies of this Final EIS, the **Information Sources** that SEA used for preparing both the Draft EIS and the Final EIS documents, and the **Index** of keywords and phrases that appear in this Final EIS.

Volume 1: Chapters 1, 2, and 3

- Chapter 1, "Introduction and Background," describes the purpose and need for the project, the proposed action, and the alternatives to the proposed action. It also sets forth the jurisdiction of the Board and outlines SEA's environmental review process. In addition, this chapter presents an overview of SEA's agency coordination and the public comment process.

- Chapter 2, "Scope of the Environmental Analysis," identifies the proposed Conrail Acquisition-related activities that SEA analyzed. This chapter includes a table presenting the thresholds SEA used to identify activities for environmental analysis and explains project activities that differ from those set forth in the Draft EIS.

- Chapter 3, "Agency Coordination and Public Outreach," describes SEA's public outreach activities to notify interested parties and environmental justice populations of the potential environmental impacts of the proposed Conrail Acquisition and of the availability of the Draft EIS and the Final EIS. Additionally, the chapter explains SEA's distribution of the Draft EIS and the Final EIS, explains the methods that SEA used to facilitate the public comment process, and describes the agency coordination that SEA performed as part of the environmental review process. Chapter 3 also reviews the historic properties outreach activities that SEA conducted in Ohio.

Volume 2: Chapter 4

- Chapter 4, "Summary of Environmental Review," outlines the additional environmental analysis that SEA conducted for each environmental issue area since preparation of the Draft EIS. Specifically, it explains the methods of analysis, presents the public comments and additional evaluations, identifies the results of the analysis, and reviews SEA's assessment of environmental impacts. In addition, this chapter describes SEA's refinement of the mitigation measures recommended in the Draft EIS, SEA's final recommended mitigation measures, anticipated environmental benefits, and the adverse environmental impacts of the proposed Conrail Acquisition.

Volume 3: Chapter 5

- Chapter 5, "Summary of Comments and Responses," contains summaries of the comments that SEA received on the Draft EIS and SEA's responses to the comments. The chapter provides the following: (a) an overview of the comments, including those

from Federal agencies, the Applicants, and national and regional groups as well as groups and individuals within specific states; (b) general comments on the Draft EIS, including the Application review process, the environmental review process, and the system-wide technical analysis; and (c) comments on state and community issues, organized by state and environmental issue category.

Volume 4: Chapter 6

- Chapter 6, "Safety Integration Planning," sets forth the purpose and topics of the Safety Integration Plans and presents summaries of comments that reviewing agencies and the public submitted about the Safety Integration Plans. The chapter also includes SEA's analysis and response to those comments and provides SEA's conclusion and recommended conditions regarding the Safety Integration Plans.

Volume 5: Chapter 7

- Chapter 7, "Recommended Environmental Conditions," describes the final environmental mitigation conditions that SEA recommends to address significant adverse environmental impacts that could result from the proposed Conrail Acquisition.

Volume 6: Appendices

- These four volumes (6A through 6D) include appendices containing the comments on the Draft EIS and the analysis by the technical disciplines as well as appendices containing public outreach and agency consultation information and documents.

Volume 6A contains the following appendix:

A. Comments Received on the Draft Environmental Impact Statement.

Volume 6B contains the following appendices:

B. Draft Environmental Impact Statement Correction Letter, Errata, Supplemental Errata and Additional Environmental Information, and Board Notices to Parties of Record.
C. Settlement Agreements and Negotiated Agreements.
D. Agency Consultation.
E. Safety: Highway/Rail At-Grade Crossing Safety Analysis.
F. Safety: Hazardous Materials Transport Analysis.
G. Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis.
H. Transportation: Roadway Systems Analysis.
I. Air Quality Analysis.

Volume 6C contains the following appendices:

J. Noise Analysis.
K. Cultural Resources Analysis.
L. Natural Resources Analysis.
M. Environmental Justice Analysis.

N. Community Evaluations.

Volume 6D contains the following appendices:

O. EPA Rules on Locomotive Emissions.
P. SEA's Best Management Practices for Construction and Abandonment Activities.
Q. Example Public Outreach Materials.
R. All Relevant Board Decisions.
S. Index for the Draft Environmental Impact Statement.
T. Final Environmental Impact Statement Rail Line Segments.
U. List of Preparers.

Addendum Volume

The **Addendum** contains information SEA did not include in the other portions of the Final EIS because of production timing constraints. The Addendum contains SEA's evaluation and additional analyses SEA conducted for train traffic rerouting proposed as mitigation for the Greater Cleveland Area. The Addendum also contains additional analysis of the proposed connection in Alexandria, Indiana (one of the Seven Separate Connections) as well as comments received during an additional comment period and summaries of, and responses to, those comments.

GLOSSARY OF TERMS

abandonment: The discontinuance of service on a rail line segment and the salvaging and/or the removal of railroad-related facilities for reuse, sale, and/or disposal.

Acquisition: The proposal by CSX, NS, and Conrail to acquire control of Conrail's assets and its basic railroad operations.

active warning devices: Traffic control devices that give positive notice to highway users of the approach or presence of a train. These devices may include a flashing red light signal (a device which, when activated, displays red lights flashing alternately), a bell (a device which, when activated, provides an audible warning, usually used with a flashing red light signal), automatic gates (a mechanism added to flashing red light signals to provide an arm that can lower across the lanes of the roadway), and a cantilever (a structure equipped with flashing red light signals and extending over one or more lanes of traffic).

Advanced Civil Speed Enforcement System (ACSES): A supplement to the Automatic Cab Signal (ACS) and Automatic Train Control (ATC) systems currently in place within the Northeast Corridor (NEC), ACSES uses a series of transponders to communicate location and other factors to passing trains whose on-board computers utilize the information to achieve system function. These functions include: (1) civil speed enforcement; (2) temporary speed enforcement, including protection of roadway workers; and (3) enforcement of positive stop at interlocking home signals and Control Points (CPs).

adverse environmental impact: A negative effect, resulting from the implementation of a proposed action, that serves to degrade or diminish an aspect of human or natural resources.

Advisory Council on Historic Preservation (ACHP): An independent Federal agency charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act.

air-brake test: A test made prior to train departure, required by Federal Railroad Administration regulations and by railroad rules to ensure that a train's air-brake system is functioning as intended and that certain devices are within prescribed tolerances and physical parameters.

Allied Rail Unions (ARU): A group of unions representing railroad employees, including the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen, and the Brotherhood of Maintenance-of-Way Employees.

Applicants: CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company and Norfolk Southern Corporation (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail).

Application: A formal filing with the Surface Transportation Board related to railroad mergers, acquisitions, constructions, or abandonments. Applications may be either Primary Applications or Inconsistent and Responsive (IR) Applications. See *Primary Application* and *Inconsistent and Responsive (IR) Application.*

Area of Potential Effect(s) (AoPE): The geographic area surrounding a rail activity where an individual (or resource) or group of individuals (or resources) could likely experience adverse environmental effects. For this Final EIS, where applicable, the different technical disciplines determined their own specific definitions of this term for their individual technical disciplines.

attainment area: An area that EPA has classified as complying with the National Ambient Air Quality Standards specified under the Clean Air Act.

authorized speed: Maximum permitted speed for a specific train at a specific location, taking into account the prevailing weather conditions (for example, restrictions due to heavy rain, extreme heat or cold).

Automatic Block System (ABS): A series of railroad signals that indicate track occupancy in the block (length of track of defined limits) ahead and govern the use of a consecutive set of blocks by a train. These signals include wayside track signals and cab signals (signals displayed in the locomotive cab instead of, or in addition to, wayside track signal displays), or both. This system combines automatic detection of train position with control of signals.

Automatic Train Control (ATC): A system that has components installed on both trains and tracks that, when working together, will cause the train brakes to apply automatically if the engineer fails to respond to a condition requiring train speed to be reduced.

Best Management Practice (BMP): Technique that various parties (for example, the construction industry) use to provide protection from adverse impacts to the environment. The Board may designate these techniques as mitigation measures.

block group: A small population area that the U.S. Census Bureau uses to measure and record demographic characteristics. The population of a block group typically ranges from 600 to 3,000 people and is designed to reflect homogeneous living conditions, economic status, and population characteristics. Block group boundaries follow visible and identifiable features, such as roads, canals, railroads, and above-ground high-tension power lines.

block swapping: The process of moving groups of cars with a common destination (called "blocks") from one train to another.

Board: The Surface Transportation Board, the licensing agency for the proposed Conrail Acquisition.

bulletins: Documents addressed to train crews and other operating employees specifying temporary or local operating rules and restrictions.

cab signaling: System that provides signal indications in the locomotive cab instead of, or in addition to, wayside signal displays.

carload: A unit of measure used to describe commodities transported on a railroad typically in a boxcar, tank car, flat car, hopper car, or gondola.

centralized traffic control system: A signal system that allows for the movement of trains in either direction on designated tracks at the maximum authorized speed, in accordance with the wayside or cab signals or both.

census tract: Small, relatively permanent statistical subdivisions of a county containing between 2,500 and 8,000 persons. The U.S. Bureau of Census designs census tracts to reflect homogeneous living conditions, economic status, and population characteristics.

Clean Air Act (Clean Air Act Amendments): The Clean Air Act of 1970 and the subsequent amendments, including the Clean Air Act Amendments of 1990 (42 U.S.C. 7401-7671g); the primary Federal law that protects the nation's air resources. This act establishes a comprehensive set of standards, planning processes, and requirements to address air pollution problems and reduce emissions from major sources of pollutants.

Clean Water Act: The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*;) is the primary Federal law that protects the nation's waters, including lakes, rivers, aquifers, and coastal areas. This act provides a comprehensive framework of standards, technical tools, and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Specifically, the Clean Water Act provides for the following:

- Requires major industries to meet performance standards to ensure pollution control.
- Charges states and tribes with setting specific water quality standards appropriate for their waters and developing pollution control programs to meet them.
- Provides funding to states and communities to help them meet their clean water infrastructure needs.
- Protects valuable wetlands and other aquatic habitats through a permitting process that conducts land development activities and other activities in an environmentally sound manner.

coastal zone: According to the Coastal Zone Management Act of 1972, lands and waters adjacent to the coast that exert an influence on the uses of the sea and its ecology, or whose uses and ecology the sea affects.

Coastal Zone Management Act (CZMA): The Coastal Zone Management Act of 1972, as amended ((16 U.S.C. 1451-1464; P.L. 92-583), is also known as "Federal Consistency With Approved State Coastal Management Programs" (15 CFR 930). This Federal act preserves, protects, develops, and, where possible, restores or enhances the resources of the nation's coastal zone for the present and for future generations. The provisions of 15 CFR 930.30 ensure that all Federally conducted or supported activities, including development projects directly affecting the coastal zone, are consistent with approved state coastal management programs as much as possible.

collective bargaining agreement: An agreement between a union and an employer that defines the scope of work, rates of pay, rules, and working conditions for the union's members.

common corridor: For the purposes of this Final EIS, a railroad line segment that accommodates both public mass transportation service and passenger and freight train operations by using separate tracks adjacent to each other in the same right-of-way or area.

compensation wetlands (compensatory wetlands): Wetlands that an agency or entity creates, enhances, or preserves to mitigate for unavoidable impacts on existing wetlands that occur as a result of implementation of the agency's or entities' proposed action. These compensation (or compensatory) wetlands replace, "in kind", wetlands that an agency or entity partially or totally fills or drains during its construction or earth-moving activities.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675; P.L. 96-510); the Federal act that provides EPA with the authority to clean up inactive hazardous waste sites and distribute the cleanup costs among the parties who generated and/or handled the hazardous substances at these sites.

Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS): Federal database containing information on potential hazardous waste sites that states, municipalities, private companies, and private persons have reported to the EPA, pursuant to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act. This database contains sites that are either proposed for inclusion on, or are currently on, the National Priorities List (NPL) and sites that are in the screening and assessment phase for possible inclusion on the NPL.

condition: A provision that the Board imposes as part of any decision approving the proposed Conrail Acquisition and that requires action by one or more of the Applicants.

conductor: The operating employee on a train responsible for safe and efficient train movement in accordance with all railroad operating rules and special instructions.

Conrail Shared Assets Operations: See *Shared Assets Areas*.

consist: The number and type of locomotives and cars included in a train, considering special factors such as the tonnage and the placement of hazardous materials cars and "high-wides" (oversize dimension cars).

constant warning time: A motion-sensing system with the capability of measuring train speed and providing a relatively uniform warning time by warning signal devices to highway traffic at highway/rail at-grade crossings.

Control Date: The date on which the merger can become effective, following formal approval of the Board.

Council on Environmental Quality (CEQ): Federal agency responsible for developing regulations and guidance for agencies implementing the National Environmental Policy Act.

craft employee: Term applied to a railroad employee qualified in a specific railroad operating or maintenance activity (for example, locomotive engineer, train dispatcher, signal maintainer, or car inspector).

crew caller: Term applied to a railroad employee who is responsible for notifying train crews when and where to report for duty.

crew calling: Process of notifying train crew members when and where their next tour-of-duty will start. Labor agreements commonly specify that railroads call train crews a minimum of 2 hours before crew members are required to begin their tour-of-duty.

critical habitat: The specific sites within the geographical area occupied by a threatened or endangered species that include the physical or biological features essential to the conservation of the species. These areas may require special management considerations or protection. These areas include specific sites outside the geographical areas occupied by the species at the time of the listing that are essential for the conservation of the species.

criteria of significance: The criteria SEA developed specifically for the proposed Conrail Acquisition to determine whether a potential adverse environmental effect is significant and may warrant mitigation.

cross-tie: Transverse wooden, concrete, or steel beam supporting the rails of a railroad track.

cultural resource: Any prehistoric or historic district, site, building, structure, or object that warrants consideration for inclusion in the National Register of Historic Places. A cultural resource that is listed in or is eligible for listing in the National Register of Historic Places is considered a historic property (or a significant cultural resource). For the purposes of this Final EIS, the term applies to any resource more than 50 years old for which SEA gathered information to evaluate its significance. In addition, this Final EIS addresses potential environmental impacts of the proposed rail line construction and abandonment activities on Native American reservations and sacred sites.

cumulative effects: Effects resulting from the incremental impacts of the proposed Conrail Acquisition when added to other past, present, and reasonably foreseeable future actions, regardless of which agency (Federal or non-Federal) or person undertakes such actions, as described in 40 CFR 1508.7. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Day 1: In the event that the Board approves the proposed Conrail Acquisition, the date (as the Applicants determine through mutual agreement) when operating responsibility for the acquired railroad is transferred to the Applicants' organizations.

decibel (dB): A unit of noise measured on a logarithmic scale that compresses the range of sound pressures audible to the human ear over a range from 0 to 140, where 0 decibels represents sound pressure corresponding to the threshold of human hearing, and 140 decibels corresponds to a sound pressure at which pain occurs. Noise analysts measure sound pressure levels that people hear in decibels, much like other analysts measure linear distances in yards or meters. A-weighted decibel (dBA) refers to a weighting that accounts for the various frequency components in a way that corresponds to human hearing.

degradation: To change a habitat, either terrestrial or aquatic, so that it no longer meets the survival needs of a particular species of plant or wildlife. Such change could include reducing the feeding area, modifying the vegetation type, and limiting the available shelter.

detector car: One of two types of rail equipment designed to detect imperfections in railroad track structure. Rail detector cars detect internal imperfections within the rail, using ultrasonic techniques. See also *track geometry inspection car*.

dimensional traffic: A freight shipment requiring special authorization for movement because of height, width, length, or gross weight.

dispatcher (train): The railroad operating employee responsible for issuing on-track movement and/or occupancy authority through the use of remotely controlled switches, signals, visual displays, voice control written mandatory directives, and/or all of the above.

dispatcher desk: The workstation from which a train dispatcher controls a specific portion of a railroad's network.

dispatching: The process of real-time planning, supervising, and controlling of train movements.

disproportionality (test for): A comparison test to assess whether potentially high and adverse impacts of an action are predominantly borne or more severe or greater in magnitude in an Environmental Justice (EJ) population than a non-EJ population within the current analysis scale (that is, at the system, state, county, segment, or block group level).

double-stack freight service: The transport of two intermodal containers stacked on top of each other on one platform of an intermodal rail flat car.

double tracking: Construction of a second railroad track immediately adjacent to an existing track, to perform railroad activities similar to those occurring on the existing track.

emergent species: Any type of aquatic plant whose vegetative growth is mostly above the water.

emissions: Air pollutants that enter the atmosphere.

endangered species: A species that is in danger of extinction throughout all or a significant portion of its range. Federal and state laws protect these species.

Endangered Species Act (ESA): The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; P.L. 93-205), as amended in 1978, is the primary Federal law protecting endangered and threatened wildlife and plant species. The purpose of the law is to provide for the conservation of habitat for such species.

engineer (railroad): Employee responsible for operating a railroad locomotive in accordance with train-handling practices, signal indications, operating rules, speed limits, and the technical requirements of the particular locomotive.

Environmental Impact Statement (EIS): A document that the National Environmental Policy Act requires Federal agencies to prepare for major projects or legislative proposals having the potential to significantly affect the environment. A tool for decision-making, it describes the positive and negative environmental effects of the undertaking, and alternative actions and measures to reduce or eliminate potentially significant environmental impacts.

Environmental Justice (EJ): For purposes of this document, SEA defines environmental justice as the mission discussed in Executive Order (EO) 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 11, 1994). This EO directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their programs, policies, and activities on minority and low-income populations in the United States. EO 12898 also calls for public notification for environmental justice populations, as well as meaningful public participation of environmental justice populations. In this document, SEA used the guidance provided in the Department of Transportation Order on Environmental Justice, the Council of Environmental Quality, Environmental Justice Guidance under the National Environmental Policy Act, and the Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA analysis to analyze potential disproportionately high and adverse impacts on environmental justice populations for rail segments, intermodal facilities, rail yards, and new construction.

Environmental Justice (EJ) population: A population within an Area of Potential Effect whose minority and low-income composition meets at least one of the following criteria: (1) The percentage of minority and low-income population in the Area of Potential Effect is greater than 50 percent of the total population in the Area of Potential Effect; or (2) The percentage of minority and low-income population in the Area of Potential Effect is at least ten percentage points greater than the percentage of minority or low-income population in the county of which the Area of Potential Effect is a part.

Environmental Resource Category: Any of the environmental issues that serve as the major topics of impact analysis for this EIS. Examples include land use, natural resources, noise, hazardous materials, cultural resources, water quality, or air quality.

Environmental Resource Score (ERS): The impact score determined for an environmental resource category within a (block group) Area of Potential Effect. A typical ERS ranges from 0 to 6, reflecting the relative impact on the Area of Potential Effect compared with impacts on other Areas of Potential Effect. For the Environmental Justice analysis, SEA calculated an ERS for noise, hazardous materials transport, and traffic safety and delay.

equipment: For a railroad, a term used to refer to the mobile assets of the railroad, such as locomotives, freight cars, and on-track maintenance machines. Also used more narrowly as a collective term for freight cars operated by the railroad.

equipment restrictions: Operating instructions that restrict certain types of locomotives or freight cars from operating over selected line segments.

Errata: A list of corrections to the Draft EIS, prepared to facilitate public review of the Draft EIS and to clarify some of the information contained therein.

Executive Order (EO) 12898: Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," issued in February of 1994; directs Federal agencies to identify and address as appropriate "disproportionately high and adverse human health or environmental effects," including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States.

extra board crew caller position: Railroad employee who does not have a regularly assigned position but who works on an on-call basis.

floodplain: The lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands, including, at a minimum, those areas that have a 1 percent or greater chance of flood in any given year (also known as a 100-year or a Zone A floodplain).

Four City Consortium: An alliance of the cities of East Chicago, Hammond, Gary, and Whiting, Indiana.

freight car inspections: Pre-departure tests required for railroad freight cars pursuant to Federal Railroad Administration regulations.

fugitive dust: According to EPA regulations, those particulate matter emissions that could not "reasonably pass" through a stack, chimney, vent, or other functionally equivalent opening. Examples of fugitive dust include wind-borne particulate matter from earth-moving and material handling during construction activities.

Geographic Information System (GIS): A computer system for storing, retrieving, manipulating, analyzing, and displaying geographic data. GIS combines mapping and databases.

grade crossing: See *highway/rail at-grade crossing*.

grade separation: See *separated grade crossing*.

gross ton-mile: A measure of railroad production that represents the weight of cars and freight movement in terms of total tons per mile transported system-wide or over a specific rail line segment. Specifically, 1 ton of railroad car and loading carried 1 mile.

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haulage right(s): The limited right (or combination of limited rights) of one railroad to have their freight traffic moved by another railroad over the designated lines of the other railroad.

hazardous materials: Substances or materials that the Secretary of Transportation has determined are capable of posing an unreasonable risk to human health, safety, and property when transported in commerce, as designated under 49 CFR Parts 172 and 173.

hazardous wastes: Waste materials that, by their nature, are inherently dangerous to handle or dispose of (for example, old explosives, radioactive materials, some chemicals, some biological wastes). Usually, industrial operations produce these waste materials.

high-and-wide load: Load on a freight car that exceeds the normal height and/or width limits for general operation over a railroad. Such loads may move only with special operating precautions to prevent damage to wayside structures and trains on adjacent tracks.

high-profile crossings: A condition at a highway/rail at-grade crossing where the elevation of the tracks is above the elevation of the approaching roadway. This condition, generally the result of the periodic raising of the tracks for maintenance of the track bed, can affect sight distance for highway users and can become a hazard for trucks and trailers with low ground-clearance. This is also referred to as "hump crossings".

highway/rail at-grade crossing: The general area of an intersection of a public or private road and a railroad where the intersecting rail and highway traffic are at the same level.

historic property: Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places (NRHP). The term "eligible for inclusion in the NRHP" pertains to both properties that the Secretary of the Interior has formally determined to be eligible and to all other properties that meet NRHP listing criteria.

horn noise (train): Noise that occurs when locomotives sound warning horns in the vicinity of highway/rail at-grade crossings.

hours-of-service regulations: Federal Hours of Service Law, which Federal Railroad Administration enforces, governing maximum shift lengths and minimum rest periods for railroad operating employees. These employees include train crew, train dispatchers, and signal maintainers, as well as mechanical employees such as hostlers who move equipment for the purpose of test and inspection.

Implementing Agreement: An agreement between a railroad company and an employee union regarding working conditions on a combined system, and specifying the corresponding seniority districts, work locations, and other terms and conditions of employment.

Inconsistent and Responsive (IR) application: Proposal to the Surface Transportation Board that Parties of Record submitted prior to October 21, 1997, requesting modifications of, or alternatives to, the proposed Conrail Acquisition.

Indian tribe: According to Indian Self-Determination and Education Assistance Act (25 U.S.C. 450-458; P.L. 93-638), any Indian tribe, band, nation, or other organized group or community recognized as eligible for the special programs and services that the United States provides to Indians because of their status as Indians.

interchange point: Point at which two or more railroads join to exchange freight traffic.

interlocking: An arrangement of switch, lock, and signal devices that is located where rail tracks cross, join, or separate. The devices are interconnected in such a way that their movements must succeed each other in a predetermined order, thereby preventing opposing or conflicting movements.

intermodal facility: A site consisting of tracks, lifting equipment, paved and/or unpaved areas, and a control point for the transfer (receiving, loading, unloading, and dispatching) of trailers and containers between rail and highway, or between rail and marine modes of transportation.

jurisdictional wetland: Wetlands that the U.S. Army Corps of Engineers regulates under Section 404 of the Clean Water Act (33 U.S.C. 1344).

key route: For the purposes of this Final EIS, a rail line segment that carries an annual volume of 10,000 or more carloads of hazardous material.

key train: Any train with five or more tank carloads of chemicals classified as a Poison Inhalation Hazard (PIH), or with a total of 20 rail cars with any combination of PIHs, flammable gases, explosives, or environmentally sensitive chemicals.

L_{dn}: The day-night average noise sound level, which is the receptor's cumulative noise exposure from all noise events over a full 24 hours. This is adjusted to account for the perception that noise at night is more bothersome than the same noise during the day.

$L_{eq(h)}$: The hourly energy-averaged noise level.

labor relations culture: Philosophy by which an employer and/or parties to a collective bargaining agreement conduct labor-management relations.

land use consistency: Determination of whether the proposed Conrail Acquisition represents a change that is consistent with local land use plans in effect, based on consultation with local and/or regional planning agencies and/or a review of the official planning documents that such agencies have prepared.

Level of Service (LOS): A measure of the operational efficiency of a roadway vehicle traffic stream using procedures that consider factors such as vehicle delay, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. Traffic analysts express LOS as letter grades, ranging from Level of Service A (free flowing) to Level of Service F (severely congested); they measure LOS by the average delay for all vehicles. Specifically, Level of Service A describes operations with very low delay (less than 5.0 seconds per vehicle); Level of Service B describes operations with delay in the range of 5.1 to 15.0 seconds per vehicle; Level of Service C describes operations with delay in the range of 15.1 to 25.0 seconds per vehicle; Level of Service D describes operations with delay in the range of 25.1 to 40.0 seconds per vehicle; Level of Service E describes operations with delay in the range of 40.1 to 60.0 seconds per vehicle; and Level of Service F describes operations with delay in excess of 60.0 seconds per vehicle.

low-income population: A population composed of persons whose median household income is below the Department of Health and Human Services poverty guidelines.

maintenance area: An area classified by EPA as meeting National Ambient Air Quality Standards (NAAQS) and which previously (within the last 10 years before reclassification) did not meet NAAQS.

maintenance-of-way: The activity of maintaining the track and structures of a railroad.

major key route: For the purposes of this Final EIS, a rail line segment where the annual volume of hazardous material it carries is projected to double and also exceed 20,000 carloads as a result of the proposed Conrail Acquisition.

Mechanical Department: Department of the railroad primarily responsible for the maintenance and inspection of locomotives, freight cars, and other moving equipment.

Memorandum of Agreement (MOA): With regard to cultural resources for the Final EIS, a legally binding document executed under 36 CFR 800.5(e)(4) that either specifies the process a Federal agency will undertake in order to avoid, reduce, or mitigate adverse effects on historic properties by the implementation of a proposed action, or documents the acceptance of such effects in the public interest. The parties who sign a MOA generally include the lead agency, the State Historic Preservation Office, the Advisory Council on Historic Preservation, and sometimes other interested parties.

Memorandum of Understanding (MOU): An agreement that two or more parties execute that sets forth the specific duties and responsibilities of each party. For the purposes of this Final EIS, MOU is an agreement that the Applicants may negotiate with communities.

minority population: A population composed of persons who are Black (non-Hispanic), Hispanic, Asian American, American Indian, or Alaskan Native.

mitigation: An action taken to prevent, reduce, or eliminate adverse environmental effects.

motive power: Locomotives operated by the railroad.

multi-level rail car: A two- or three-level freight car, designed for transporting automotive vehicles.

Multiple Resource Score (MRS): For the Environmental Justice analysis, a measure of aggregate impacts used to identify the geographic areas of greatest concern. This score sums the environmental resource scores for hazardous materials transport, noise, and traffic safety and delay and forms the basis for the tests for disproportionality.

National Ambient Air Quality Standards (NAAQS): Air pollutant concentration limits established by the EPA for the protection of human health, structures, and the natural environment.

National Environmental Policy Act (NEPA): The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347; P.L. 91-190) is the basic national charter for the protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. Its purpose is to provide for the establishment of a Council on Environmental Quality and to instruct Federal agencies on what they must do to comply with the procedures and achieve the goals of NEPA.

National Historic Preservation Act (NHPA): The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470t *et seq.*; P.L. 89-665), is the basic legislation of the Nation's historic preservation program that established the Advisory Council on Historic Preservation and the Section 106 review process. Section 106 of the NHPA requires every Federal agency to "take into account" the effects of its undertakings on historic properties.

National Priorities List (NPL): A subset of CERCLIS; EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial action under the Superfund Program.

National Register of Historic Places (NRHP): Administered by the National Park Service, the Nation's master inventory of known historic properties, including buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archaeological, or cultural significance at the Federal, state, and local levels.

Native American: According to the Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001 *et seq.*; P.L. 101-601), of, or relating to, a tribe, people, or culture that is indigenous to the United States.

Native American lands: According to the regulations of the Advisory Council on Historic Preservation in 36 CFR 800.2, as modified by the scope of this EIS, all lands under the jurisdiction or control of an Indian tribe, including all lands within the exterior boundaries of any American Indian reservation.

Negotiated Agreement: An agreement between CSX, NS, or both, and one or more communities or other governmental units that addresses potential environmental impacts or other issues.

No-Action Alternative: The proposed acquisition of Conrail by CSX and NS does not take place under this alternative; also the present setting for the pre-Acquisition conditions.

noise: A disturbance or annoyance of an intruding or unwanted sound. Noise impacts essentially depend on the amount and nature of the intruding sound, the amount of background sound already present before the intruding or unwanted sound occurred, and the nature of working or living activity of the people occupying the area where the sound occurs.

noise contour: Lines plotted on maps or drawings connecting points of equal sound levels.

noise-sensitive receptor: Location where noise can interrupt ongoing activities and can result in community annoyance, especially in residential areas. The Board's environmental regulations include schools, libraries, hospitals, residences, retirement communities, and nursing homes as examples of noise-sensitive receptors.

nonattainment area: An area that EPA has classified as not complying with the National Ambient Air Quality Standards promulgated under the Clean Air Act.

Northeast Corridor (NEC): Railroad right-of-way between Boston, Massachusetts and Washington, D.C. on which Amtrak and others operate; Amtrak is responsible for operation and maintenance on all of the route, except the route segment between New Haven, Connecticut and New Rochelle, New York.

Northeast Operating Rules: Rules that govern railroad operations, adapted by members of the Northeast Operating Rules Advisory Committee (NORAC). These operating rules apply to all railroads when working on any NORAC member's territory. The NORAC members are Bay Colony Railroad, Conrail Inc. and Consolidated Rail Corporation (Conrail), Delaware & Hudson Railway company, Guildford Transportation Industries, National Railroad Passenger Corporation (Amtrak), New Jersey Transit (NJT), New York Susquehanna & Western Railway Corporation, Providence & Worcester Railroad Company, and Southeastern Pennsylvania Transportation Authority (SEPTA).

notices: Documents addressed to engineers and other operating employees detailing temporary or local operating rules and restrictions.

on-track (maintenance) equipment: Track and other maintenance equipment provided with flanged wheels and able to move along railroad track.

operating employee: Railroad employee engaged in the operation of trains, including a member of the train crew; a train dispatcher; and a track, a signal, and an equipment maintenance employee.

Operating Plans: Documents that CSX and NS provided as part of the Application, detailing their planned railroad operations following the proposed Conrail Acquisition.

operating practices: Safety and operating rules, practices, and procedures contained in operating rulebook, timetable, special instructions, or any other company-issued instructions and the management decisions implementing those rules and instructions that govern the movement of trains and work on or around active tracks.

operating rules: Written rules of a railroad governing the operation of trains and the conduct of employees responsible for train operations when working on or around active tracks.

Operation Lifesaver: A non-profit public information and safety education program dedicated to eliminating collisions, deaths, and injuries at highway/rail at-grade crossings and on railroad rights-of-way. It is composed of a broad-based coalition of Federal, state, and local government agencies, private safety groups, and transportation industry representatives.

particulate matter (PM): Airborne dust or aerosols.

Party of Record (POR): Party that notified the Board of their active participation in the proceeding about the proposed Conrail Acquisition. When submitting a filing to the Board, the POR must also notify the entire POR service list.

passive warning devices: Traffic control devices that do not give positive notice to highway users of the approach or presence of a train. These devices may include signs and pavement markings, located at, or in advance of, railroad crossings to indicate the presence of a crossing and the presence of a train. These signs are either regulatory or non-regulatory and may include parallel track signs, crossbucks, stop signs, yield signs, and constantly flashing lights.

positive train separation: Mechanism included in positive train control, an experimental, automated safety system, using Global Positioning System (GPS) technology, onboard computers and wayside information inputs to control train movement. In the event of failure on the primary safety system, positive train control reduces the risk of single-point failure (that is, human error).

posted speed: Maximum speed permitted at a specific location on the railroad network irrespective of train type.

Prevention of Significant Deterioration (PSD) Class I Areas: National parks and wilderness areas designated under the Clean Air Act as areas for which users are to maintain air quality at pristine levels, with very small increases in air pollution levels allowed.

Primary Application: The formal filing of documents with the Surface Transportation Board by applicants for railroad mergers, acquisitions, constructions, or abandonments. The Primary Application contains Operating Plans and information describing related construction projects. It also includes an Environmental Report, describing the physical and operational changes associated with the proposed action and the potential environmental effects of that action.

prime farmland: According to Natural Resources Conservation Service, land having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.

proposed Conrail Acquisition: The proposed acquisition of Conrail's physical assets and operating systems by CSX and NS, for which the Applicants are seeking approval from the Board.

public uses: According to 49 U.S.C. 10905 and STB Regulations "Surface Transportation Manual," Section 1105.7(3)iv, those identified alternative public purposes for the use of rail properties proposed for abandonment or discontinuance, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.

queue: A line of vehicles waiting at a highway/rail at-grade crossing for an obstruction to clear.

rail line segment: For the purposes of this Final EIS, portions of rail lines that extend between two terminals or junction points.

rail route: Line of railroad track between two points on a rail system.

rail spur: A railroad track that typically connects to the main line at only one end and provides rail service to one or more railroad freight customers. A rail spur could also parallel the main line.

rail yard: A location or facility with multiple tracks where rail operators switch and store rail cars.

receptor: See *noise-sensitive receptor*.

regional and system gang: A group of railroad maintenance-of-way employees that work a particular region or an entire railroad system.

remediation (remedial actions): Actions taken to mitigate the adverse effects, or potential adverse effects, to the environmental or to the public health and welfare resulting from the release or spill of hazardous substances.

Request for Conditions: A document filed with the Board by a party to this proceeding on or before October 21, 1997, that requests the Board to impose one or more specified requirements on the Applicants as a condition to the Board's approval of the proposed Conrail Acquisition.

Resource Conservation and Recovery Act (RCRA): The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*; P.L. 94-580) is a Federal act governing the generating, storing, transporting, treating, and disposing of hazardous waste.

Resource Conservation and Recovery Information System (RCRIS): Federal database containing information on facilities that generate, transport, store, treat, and/or dispose of hazardous waste.

Responsive Environmental Report (RER): A report, submitted by an Inconsistent and Responsive applicant, that contains detailed environmental information regarding the activities proposed in its IR Application and complies with the requirements for environmental reports in the Board's rules at 49 CFR 1105.7(e).

restricted speed: A speed that will permit a train to stop within one-half the range of vision of the railroad employee controlling the movement of the train; the train must stop before passing improperly aligned switches, a defect in the track structure, deliberately placed objects, or striking other railroad equipment. According to Federal Railroad Administration regulations, this speed is not to exceed 20 miles per hour.

retarder: In railroad yards, a braking device, usually power-operated, built into a railroad track to reduce the speed of cars by means of brake-shoes which, when set in braking position, press against the sides of the lower portions of the wheels.

right-of-way: The strip of land for which an entity (for example, a railroad) has a property right to build, operate, and maintain a linear structure (for example, a rail line).

roadmaster: Railroad supervisor responsible for track inspection and maintenance over a specified portion of the railroad network.

Safety Assurance and Compliance Program (SACP): Federal Railroad Administration program to audit railroad safety practices and to ensure compliance with Federal regulations.

safety culture: The manner in which management and employees in an organization view and approach the issue of safety, including both formalized rules and informal practices in the organization.

Safety Implementation Plan Guidelines (SIPG): A series of acquisition-related guidelines that the Federal Railroad Administration developed for CSX and NS, detailing a list of safety concerns that CSX and NS must address in their Safety Integration Plans.

Safety Integration Plans: Plans that the Applicants prepared and submitted to the Board to explain how they propose to provide for the safe integration of their separate corporate cultures and operating systems, if the Board approves the proposed Conrail Acquisition.

Section 106 review process: The review process set forth in Section 106 of the NHPA (16 U.S.C. 470) that requires every Federal agency to "take into account" the effects of its undertakings on historic properties and affords the ACHP the opportunity to comment on those undertakings and their effects.

seniority district: A geographic area within which a group of employees in a specific labor union (for example, engineers, dispatchers) are authorized and expected to work.

seniority rights: The priority one employee has over another employee in bidding for available positions, choice of work assignments, and similar matters, based on length of employment in a specified category. Agreements between railroad companies and labor unions specify such rights.

sensitive receptor: See *noise-sensitive receptor*.

separated grade crossing: The site where a local street or highway crosses railroad tracks at a different level or elevation, either as an overpass or as an underpass.

service: The official notification and delivery of Board decisions and notices (including EAs and EISs) by the Secretary of the Board to persons involved in a particular proceeding.

Settlement Agreement: An agreement negotiated between CSX or NS or both and one or more parties, including other railroads, that addresses concerns or requests of the party (or parties). Generally, such an agreement addresses competitive customer service or labor issues.

Seven Separate Connections: Seven new rail line connection construction projects in Illinois, Indiana, and Ohio. These projects total approximately 4 miles of new track. CSX and NS requested that the Board give early consideration and approval to the physical construction of these particular connections.

Shared Assets Areas: Areas comprising Conrail facilities in southeastern Michigan, northern New Jersey, and southern New Jersey/Philadelphia that CSX and NS would share and Conrail Shared Assets Operations would operate for the benefit of both CSX and NS, if the Board approves the proposed Conrail Acquisition.

shifted load: An improperly secured freight car load that has moved and may protrude beyond the allowed dimensional limits.

shipment: A unit of freight given to the railroad for movement to its destination by an individual customer.

siding: A track parallel to a main track that is connected to the main track at each end. A siding is used for the passing and/or storage of trains.

signal maintainer: Railroad employee who maintains signal and communications systems.

socioeconomic: For this Final EIS, job loss directly attributable to changes in the physical environment as a result of construction and abandonment activities and other activities related to the proposed Conrail Acquisition project.

Sound Exposure Level (SEL): For a transient noise event such as a passing train, equivalent to the maximum A-weighted sound level that would occur if all of the noise energy associated with the event were restricted to a time period of 1 second. The SEL accounts for both the magnitude and the duration of the noise event; noise analysts use SEL to calculate the day-night average noise level.

Spill Prevention, Control, and Countermeasures Plan (SPCCP): A site-specific document written to detail measures to prevent discharges of oil into waters of the United States (as defined in the Clean Water Act). Facilities with aboveground storage capacities in a single container greater than 660 gallons, or the aggregate aboveground storage capacity greater than 1,320 gallons, or total underground storage capacity greater than 42,000 gallons are required to prepare SPCCPs.

superior train: For purposes of this Final EIS, a passenger train operating on the same track network with freight trains. Superior trains must have track clear of all trains not less than 15 minutes prior to their arrival. See *temporal train separation*.

Supplemental Environmental Report: A report that analyzes the environmental impacts of operating changes related to a Settlement Agreement between an Applicant and another railroad that exceed the Board's thresholds when added to changes proposed in the Applicants' Operating Plans.

switch: The portion of the track structure used to direct cars and locomotives from one track to another.

switching: The activity of moving cars from one track to another in a yard or where tracks go into a railroad customer's facility.

temporal train separation: The time separation of passenger trains that share rail lines with freight trains, in order to reduce the possibility of train collisions. See *superior train*.

territory: The portion of a railroad's track network under the management of a particular supervisor.

threatened species: A species that is likely to become endangered within the foreseeable future throughout all or part of its range. Federal and state laws protect these species.

threshold for environmental analysis: A level of proposed change in railroad activities that determines the need for SEA's environmental review. For the proposed Conrail Acquisition, SEA used the Board's environmental rules at 49 CFR Part 1105 to determine the activities that it would examine for air and noise impacts ("Board thresholds"). For other issue areas, SEA developed appropriate thresholds to guide its environmental review ("SEA thresholds"). The term "Board thresholds", as used in this EIS, may refer to either Board or SEA thresholds.

timetable: A document that identifies key railroad line features over a defined portion of the network. The features usually include distances, speed limits, track layout, type of signaling, location and length of passing sidings, and the local applicability of specific operating rules. Operating rules are often published with the timetable.

track geometry: Dimensional description of railroad track and individual rails compared to optimal design criteria.

track geometry inspection car: Rail vehicle equipped with instruments to make continuous, in-motion measurements of variations in the track gauge, alignment, and cross level.

trackage right(s): The right (or combination of rights) of one railroad to operate over the designated trackage of another railroad including, in some cases, the right to operate trains over the designated trackage; the right to interchange with all carriers at all junctions, the right to build connections or additional tracks to access other shipper or carriers. See also *haulage right(s)*.

trackage rights agreement: An agreement between two parties that defines the trackage rights granted to one party over the tracks of a second party.

traffic volume (highway): The number of highway vehicles that pass over a given point during a given period of time, often expressed on an annual, daily, hourly, and sub-hourly basis. For the purposes of this Final EIS, SEA expressed highway traffic volumes on a daily basis.

traffic volume (rail): The total volume of rail traffic that passes over a given rail line segment, typically expressed in either trains per day or annual million gross tons per year.

train (freight): A conveyance transported by one or more locomotives typically with 40 to 150 freight cars, measuring approximately 5,000 to 8,000 feet in length. For the purposes of this Final EIS, does not apply to locals, work trains, switch-engine movements, or engine-only movements.

train (passenger): Equipment composed of one or more rail cars designed to carry passengers, propelled by a locomotive or self-propelled, moving from one place to another.

train crew: Employees assigned to operate a train, usually an engineer, a conductor, and one or more trainmen.

train defect detector: An electronic device located alongside a rail track that monitors passing trains to determine the presence of certain potentially dangerous conditions, such as an overheated wheel bearing ("hot box") or a shifted load that protrudes from the rail car.

trainman: Member of a train crew responsible for assisting the engineer and conductor in operating the train, especially with switching cars.

trainmaster: Railroad operations supervisor responsible for managing train and yard operations and operating employees on a defined portion of the railroad network.

transient noise event: An intermittent occurrence of noise, such as the passing of a train that generates such noise.

Transportation Department: Department of the railroad responsible for day-to-day train operations and dispatching.

Triple Crown Service (TCS): An expedited intermodal service offered by both Conrail and NS. TCS trains do not require the use of flat cars, but rather use specially designed dual-mode highway trailers that are coupled together with two-axle rail wheel sets that support the ends of the trailers for the rail portion of the rail-highway movement. The equipment used is similar to "RoadRailer" equipment.

turnout: The portion of railroad track structure where a single track divides into two tracks.

Verified Statement: A party's sworn statement that provides information to the Board.

vibration velocity: The rate of change of displacement of a vibration. Noise analysts often express measurements of vibration in terms of velocity because velocity correlates well with human response to vibration.

waybill: Document or computer record containing details of a rail shipment: origin, destination, route, commodity, freight rate, car or cars used, and similar information.

wayside: Adjacent to the railroad track, as in "wayside signals" or "wayside defect detectors."

wayside noise: Train noise adjacent to the right-of-way that comes from sources other than the horn, such as engine noise, exhaust noise, and noise from steel train wheels rolling on steel rails.

wetlands: According to 40 CFR Part 230.41, those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions," generally including swamps, marshes, bogs, and similar areas.

yardmaster: Railroad operations supervisor responsible for railroad operations and employees in a railyard.

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LIST OF ACRONYMS AND ABBREVIATIONS

AAR	Association of American Railroads
ABS	Automatic Block System
ACHP	Advisory Council on Historic Preservation
ACS	Automatic Cab Signals
ACSES	Advanced Civil Speed Enforcement System
ADT	Average Daily Traffic
Amtrak	The National Railroad Passenger Corporation
ANSI	American National Standards Institute
AoPE	Area of Potential Effect(s)
APL	American Presidents Line
APTA	American Public Transit Association
ARU	Allied Rail Unions
ASTM	American Society for Testing and Materials
ATC	Automatic Train Control
B&O	Baltimore & Ohio Railroad Company
B&OCT	Baltimore & Ohio Chicago Terminal Railroad Company
BIA	Bureau of Indian Affairs
BMP	Best Management Practice
Board	Surface Transportation Board
BOCT	Baltimore & Ohio Chicago Terminal Railroad Company
BRL	The Cities of Bay Village, Rocky River, and Lakewood, Ohio
CAA	Clean Air Act of 1970
CAAA	Clean Air Act Amendments of 1990
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CFR	Code of Federal Regulations
CO	carbon monoxide
Conrail	Conrail, Inc. and Consolidated Rail Corporation
CP	Control Point
CPR	Canadian Pacific Railway
CRC	Comments and Requests for Conditions
CSX	CSX Corporation and CSX Transportation, Inc.

CTC	Centralized Traffic Control
CZM	Coastal Zone Management
CZMA	Coastal Zone Management Act of 1972
dB	decibel
dBA	A-weighted decibels
DES	Division of Endangered Species
DOI	U.S. Department of the Interior
DOT	U.S. Department of Transportation
EA	Environmental Assessment
EDR	Environmental Data Resources, Inc.
EIS	Environmental Impact Statement
EJ	Environmental Justice
EO	Executive Order
EPA	U.S. Environmental Protection Agency
ERS	Environmental Resource Score
ESA	Endangered Species Act of 1973
FAA	Federal Aviation Administration
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
FMEA	Failure Mode and Effects Analysis
FRA	Federal Railroad Administration
FRA ID	Federal Railroad Administration Identification Number
FTA	Federal Transit Administration
GIS	Geographic Information System
GPS	Global Positioning System
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
HCM	The Transportation Research Board's *Highway Capacity Manual*
HMERP	Hazardous Materials Emergency Response Plan
HMIS	Hazardous Materials Information System
HUD	Department of Housing and Urban Development
ICC	Interstate Commerce Commission
ID	Identification
IHB	Indiana Harbor Belt Railroad Company
IR	Inconsistent and Responsive [application]
ISTEA	Intermodal Surface Transportation Efficiency Act
IT	Information Technology
LAL	Livonia, Avon, and Lakeville Railroad Corporation
L_{dn}	day-night equivalent sound level
$L_{eq(h)}$	hourly energy-averaged sound level
LOS	Level of Service
LUST	Leaking Underground Storage Tank

MARC	Maryland Rail Commuter (Maryland's Mass Transit Administration's Commuter Rail Service)
MBTA	Massachusetts Bay Transportation Authority
Metra	Northeast Illinois Regional Commuter Railroad Corporation
min./veh	minutes per vehicle
MNR	Metro-North Railroad (Metro-North Commuter Railroad Company)
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
mph	miles per hour
MRS	Multiple Resource Score
MRTA	Metro Regional Transit Authority of Akron, Ohio
MUTC	Manual of Uniform Traffic Control Devices
N/A	Not Applicable
NAAQS	National Ambient Air Quality Standards
NEC	Northeast Corridor
NEPA	National Environmental Policy Act of 1969
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act of 1966
NHTSA	National Highway Traffic Safety Administration
NJT	New Jersey Transit
NORAC	Northeast Operating Rules Advisory Committee
NO_x	nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
NPS	National Park Service
NRC	Nuclear Regulatory Commission
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NS	Norfolk Southern Railway Company and Norfolk Southern Corporation
NWI	National Wetlands Inventory
NYCH	New York Cross Harbor
O_3	ozone
OAR	Office of Air and Radiation (within Environmental Protection Agency)
OHPO	Ohio Historic Preservation Office
OMS	Office of Mobile Sources (within Environmental Protection Agency)
OTR	Ozone Transport Region
PCB	polychlorinated biphenyl
PDEA	Preliminary Draft Environmental Assessment
PIH	Poison Inhalation Hazard
P.L.	Public Law
PM	particulate matter
PM_{10}	particulate matter less than 10 microns in diameter
POR	Party of Record

PSD	Prevention of Significant Deterioration
P&W	Providence & Worcester
QA/QC	Quality Assurance/Quality Control
RCRA	Resource Conservation and Recovery Act of 1976
RCRIS	Resource Conservation and Recovery Information System
RER	Responsive Environmental Report
RQ	Reportable Quantity
SACP	Safety Assurance and Compliance Program
SARA	Superfund Amendments and Reauthorization Act of 1986
SCS	Soil Conservation Service
SEA	Section of Environmental Analysis
sec/veh	seconds per vehicle
SEL	Sound Exposure Level
SEPTA	Southeastern Pennsylvania Transportation Authority
SHPO	State Historic Preservation Office
SIPG	Safety Implementation Plan Guidelines
SPCCP	Spill Prevention, Control, and Countermeasures Plan
Stat.	Statute
STB	Surface Transportation Board
SO_2	sulfur dioxide
TCS	Triple Crown Service
TLCPA	Toledo-Lucas County Port Authority
TMACOG	Toledo Metropolitan Area Council of Governments
Tri-Rail	Florida Tri-County Commuter Rail Authority
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code
USCG	U.S. Coast Guard
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
VRE	Virginia Railway Express
WMATA	Washington Metropolitan Area Transit Authority

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FINAL ENVIRONMENTAL IMPACT STATEMENT

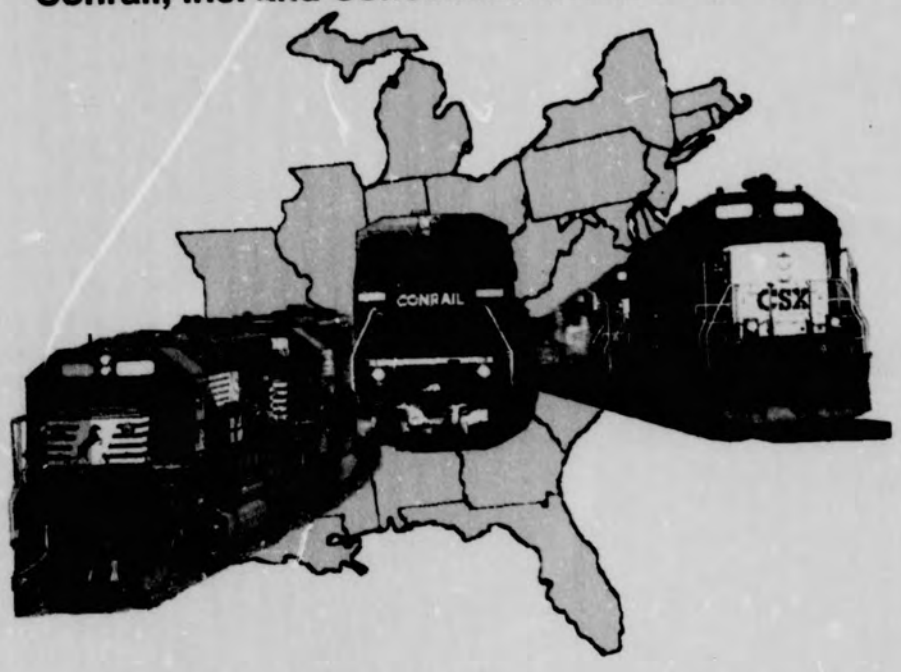
Finance Docket No. 33388

"PROPOSED CONRAIL ACQUISITION"

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



VOLUME 6A

Appendix A: Comments Received on the Draft EIS

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"PROPOSED CONRAIL ACQUISITION"

GUIDE TO VOLUME 6A

Volume 6A of the Proposed Conrail Acquisition Final EIS contains the following items:

- List of Appendices.
- Appendix A, "Comments Received on the Draft Environmental Impact Statement."
- Guide to the Final EIS.
- Glossary of Terms.
- List of Acronyms and Abbreviations.
- Contents of the Final EIS.

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Appendix C: Settlement Agreements and Negotiated Agreements

Appendix D: Agency Consultation

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Appendix F: Safety: Hazardous Materials Transport Analysis

Appendix G: Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis

Appendix H: Transportation: Roadway Systems Analysis

Appendix I: Air Quality Analysis

Appendix J: Noise Analysis

Appendix K: Cultural Resources Analysis

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Appendix N: Community Evaluations

Appendix O: EPA Rules on Locomotive Emissions

Appendix P: SEA's Best Management Practices for Construction and Abandonment Activities

Appendix Q: Example Public Outreach Materials

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APPENDIX A
COMMENTS RECEIVED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

On December 19, 1997, the Section of Environmental Analysis (SEA) of the Surface Transportation Board (the Board) issued a Draft Environmental Impact Statement (Draft EIS) that evaluated the environmental impacts that could result from the proposed Conrail Acquisition. SEA prepared the Draft EIS in accordance with the requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321); the Board's environmental rules (49 CFR Part 1105); and other applicable environmental statutes and rules.

This Final Environmental Impact Statement (Final EIS) addresses the comments on the Draft EIS, as well as other environmental comments that SEA received during its ongoing environmental review, and it reflects SEA's further environmental analysis, including site visits and consultations. In addition, the Final EIS contains SEA's final environmental recommendations to the Board. The Board will consider SEA's recommendations and the environmental record before making a decision in this proceeding.

This appendix contains the 257 written comments on the Draft EIS that SEA received during the formal comment period that ended on February 2, 1998. SEA also fully considered comments received after February 2 during its environmental review process. Although they are not reproduced here, these comments are part of the Board's administrative record and the Board will consider them in making its decision.

Table A-1 lists the comments on the Draft EIS in order of comment date and organizes them as follows:

- Federal agencies.
- Applicants.[1]
- National and regional groups.[2]

---

1 "The Applicants" refers to CSX Corporation and CSX Transportation, Inc. (CSX); Norfolk Southern Corporation and Norfolk Southern Railway Company (NS); and Conrail, Inc., and Consolidated Rail Corporation (Conrail).

2 This group also includes comments submitted anonymously or without addresses.

- States, regional, and local agencies, elected officials, organizations, and individuals, grouped by state.

The reproduced comment letters follow the order presented in Table A-1. For ease of reference, each page of each document contains the document identifier number, as listed in Table A-1.

SEA also provided an additional full 45-day comment period (ending April 15, 1998) specifically for refined hazardous materials transport, noise, and environmental justice analyses. SEA refined these analyses to be able to include information that was unavailable during its preparation of the Draft EIS and then opened this second comment period to allow the public to review all of its analysis. Table A-2 lists the letters SEA received during this comment period. The addendum to this Final EIS presents copies of these letters, along with SEA's responses.

Table A-3 is a list of comment letters that SEA received between publication of the final scope and service of the Draft EIS. Table A-4 is a list of comment letters that SEA received after Final EIS analysis and writing.

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Federal Agencies		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/16/97	U.S. Department of the Interior, Bureau of Indian Affairs; Thank You Letter for Update on Intent to Prepare EIS	12/31/97 10:12:57 AM
1/6/98	U.S. Department of Housing and Urban Development, R. S. Carlson; Comment on Draft EIS	1/15/98 4:59:29 PM
1/27/98	U.S. Army Corps of Engineers, Florida District, H. K. Smith; Comment on Draft EIS	2/2/98 6:00:02 PM
1/28/98	U.S. Army Corps of Engineers, Buffalo District, NY, S. V. Metivier; Comment on Draft EIS	2/3/98 11:10:37 PM
1/29/98	U.S. Army Corps of Engineers, New York District, G. Nieves; Comment on Draft EIS	2/3/98 11:35:58 AM
1/30/98	U.S. Army Corps of Engineers, Detroit District, MI, R. Tucker; Comment on Draft EIS	2/3/98 2:29:02 PM
2/2/98	U.S. Department of Transportation, N. E. McFadden; Comment on Draft EIS	2/3/98 10:16:37 AM
2/2/98	U.S. Environmental Protection Agency, R. E. Sanderson; Comment on Draft EIS	2/4/98 11:49:40 AM
2/3/98	U.S. Department of the Interior, Office of Secretary, W. R. Taylor; Comment on Draft EIS	2/10/98 12:00:45 PM
2/6/98	U.S. Army Corps of Engineers, Pittsburgh District, PA, A. H. Rogalla; Comment on Draft EIS	2/11/98 9:55:55 AM
2/10/98	U.S. Coast Guard, G. Kassof; Comment on Draft EIS	2/17/98 3:48:52 PM
Applicants		
Comment Date	**Commentor, Subject of Document**	**Document ID**
2/2/98	Applicant, Norfolk Southern, B. Maestri; Comment on Draft EIS	2/2/98 4:17:23 PM
2/2/98	Applicant, CSX, D. G. Lyons, et al.; Comment on Draft EIS	2/3/98 10:22:58 AM
National/Regional Groups		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/21/97	Concerned Citizen; Opposition Letter and Newspaper Article	1/5/98 3:40:44 PM
1/28/98	William & Letha Smith; Environmental Concern	2/2/98 4:19:38 PM
1/29/98	Ohio-Kentucky-Indiana Regional Council of Governments, R. Victor; Comment on Draft EIS	2/2/98 5:09:20 PM
1/30/98	Conservation Law Foundation, R. B. Kennelly, Jr.; Comment on Draft EIS	2/2/98 11:19:21 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

National/Regional Groups		
Comment Date	**Commentor, Subject of Document**	**Document ID**
2/2/98	Amtrak-National Railroad Passenger Corporation, D. G. Avery, et al.; Comment on Draft EIS	2/3/98 10:04:04 AM
2/2/98	Transportation Communications International Union, M. M. Kraus; Comment on Safety Integration Plans and Draft EIS	2/2/98 6:20:02 PM
2/2/98	Allied Rail Unions, R. S. Eldeman, et al.; Comment on Safety Integration Plans and Draft EIS	2/3/98 1:29:58 PM
2/2/98	American Public Transit Association, D. Duff; Comment on Draft EIS	2/3/98 10:33:03 AM
2/2/98	E. I. Du Pont de Nemours and Company, C. N. Beinkampen; Comment on Safety Integration Plans	2/3/98 12:26:44 PM
State, Regional, and Local Agencies, Elected Officials, Organizations, and Individuals (grouped by state)		
Connecticut		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/6/98	Connecticut Historical Commission, J. W. Shannahan; Comment on Draft EIS	1/26/98 12:13:03 PM
1/30/98	Connecticut Department of Transportation, J. S. Sullivan; Comment on Draft EIS	1/30/98 1:14:21 PM
1/30/98	South Western Regional Planning Agency, CT, R. C. Carpenter; Comment on Draft EIS	2/2/98 4:21:18 PM
Delaware		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/29/98	Delaware State Senate, H. B. McDowell, III; Comment on Draft EIS	2/2/98 2:26:18 PM
2/2/98	Delaware Dept. of State, Division of Historical & Cultural Affairs, G. Davis; Comment on Draft EIS	2/10/98 12:26:44 PM
2/4/98	Delaware Department of Transportation, F. H. Schranck; Comment on Draft EIS	2/9/98 2:53:16 PM
Florida		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/17/97	Florida Department of State, Division of Historical Resources, G. W. Percy; Comment on Potential Impacts	12/31/97 9:38:53 AM
12/30/97	Florida State Clearinghouse; Clearinghouse Acknowledgment	1/12/98 8:21:47 AM
1/5/98	Hillsborough County Planning Commission, FL, R. B. Hunter; Comment on Draft EIS	1/16/98 11:49:40 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Florida		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/29/98	North Central Florida Regional Planning Council, FL, S. Dopp; Comment on Draft EIS	2/3/98 11:26:57 AM
Georgia		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/23/97	Georgia State Clearinghouse, D. S. Stephens; Comment on Draft EIS	1/5/98 10:13:22 AM
1/25/98	Brian Williamson, Powder Springs, GA; Environmental Concern	2/3/98 11:23:18 AM
1/28/98	Richard T. Huber, Sr., Powder Springs, GA; Comment on Draft EIS	2/2/98 6:07:32 PM
1/29/98	Athens Clarke County, GA, J. M. Stockbridge; Comment on Draft EIS	2/3/98 2:58:36 PM
1/30/98	Atlanta Regional Commission, GA, H. West; Comment on Draft EIS	2/3/98 2:43:20 PM
Illinois		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/7/98	Lois M. Cooper, Danville, IL; Environmental Concern	1/20/98 4:11:07 PM
1/9/98	Village of Tilton, IL, C. Wantland; Environmental Concern	1/19/98 1:37:16 PM
1/13/98	Illinois Historic Preservation Agency, A. E. Haaker; Comment on Draft EIS	1/26/98 11:47:51 AM
1/15/98	Joe & Rita Mitchell, Chrisman, IL; Comment on Proposed Danville to Paris, IL Abandonment	1/27/98 12:39:09 PM
1/21/98	Champaign County, IL, F. DiNovo; Comment on Draft EIS	1/27/98 1:34:02 PM
1/21/98	Gene, Delores & Larry Quick, Danville, IL; Environmental Concern	2/2/98 6:02:49 PM
1/21/98	Village of Tolono, IL, C. McCormick; Comment on Draft EIS	1/23/98 9:14:07 AM
1/30/98	City of Danville, IL, R. E. Jones; Comment on Draft EIS	2/2/98 3:48:31 PM
2/2/98	Center for Neighborhood Technology, IL; Comment on Draft EIS	2/2/98 4:14:01 PM
not dated	Blue Island Greens, L. Trepanier, IL; Comment on Draft EIS	2/13/98 5:00:12 PM

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COMMENTS RECEIVED ON THE DRAFT EIS

Indiana		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/2/98	Indiana Department of Natural Resources, L. D. Macklin; Conclusions of Environment Assessment Review	1/9/98 3:12:36 PM
1/12/98	The Four City Consortium, IN, C. M. Loftus, et al.; Request for Additional Information	1/16/98 9:18:31 AM
1/26/98	Frank and Frankie Eads, Princeton, IN; Comment on Draft EIS	2/2/98 3:48:08 PM
1/30/98	City of Fort Wayne, IN, P. Helmke; Comment on Draft EIS	2/2/98 5:35:27 PM
1/30/98	City of Lafayette, IN, D. Heath; Comment on Draft EIS	2/2/98 3:23:48 PM
2/2/98	City of New Haven, IN, L. H. Shaw; Comment on Draft EIS	2/5/98 4:06:26 PM
2/2/98	Indianapolis Power & Light Company, IN, B. Durham, et al.; Comment on Draft EIS	2/3/98 12:35:56 PM
2/2/98	The Four City Consortium, IN, C. M. Loftus, et al.; Comment on Draft EIS	2/3/98 10:08:49 AM
2/6/98	Indiana Department of Natural Resources, L. D. Macklin; Comment on Draft EIS	2/10/98 11:17:00 AM
Kentucky		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/20/98	City of Hopkinsville, KY, W. W. Bryan, Jr.; Comment on Draft EIS	2/2/98 3:34:55 PM
1/20/98	City of Madisonville, KY, P. H. Terry; Comment on Draft EIS	1/26/98 11:21:44 AM
1/20/98	Kentucky State Legislature, J. E. Bruce; Comment on Draft EIS	2/2/98 3:24:03 PM
1/22/98	Myrtle Jayne Wheeler Minix, Painsville, KY; Request for Clarification of Newspaper Notice	1/27/98 2:36:00 PM
1/28/98	Kentucky Transportation Cabinet, J. C. Codell III; Comment on Draft EIS	2/3/98 3:19:07 PM
Louisiana		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/21/98	City of New Orleans, LA, M. H. Morial; Comment on Draft EIS	2/3/98 11:38:46 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Maryland		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/8/98	Maryland Office of Planning, L. C. Janey; Clearinghouse Acknowledgment	1/21/98 10:44:40 AM
1/28/98	Maryland Office of Planning, L. C. Janey; Comment on Draft EIS	2/10/98 11:20:48 AM
1/29/98	Department of Public Works & Transportation, MD, E. A. Daniel; Comment on Draft EIS	2/6/98 4:02:24 PM
1/29/98	Maryland Department of The Environment, S. Bieber; Comment on Draft EIS	2/4/98 5:02:57 PM
1/30/98	Baltimore Metropolitan Council, MD, J. Arason; Comment on Draft EIS	2/3/98 4:04:56 PM
1/30/98	Maryland Department of Transportation, H. L. Flechner; Comment on Draft EIS	2/2/98 10:46:35 AM
2/2/98	Maryland Department of Housing & Community Development, E. J. Cole; Comment on Draft EIS	2/5/98 5:08:43 PM
Massachusetts		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/13/98	Massachusetts Historical Commission, J. B. McDonough; Comment on Draft EIS	1/26/98 12:06:17 PM
1/27/98	Berkshire County Regional Planning Commission, MA, N. W. Karns; Comment on Draft EIS	2/2/98 5:55:05 PM
1/29/98	Montachusett Regional Planning Commission, MA, D. Jarvenpaa; Comment on Draft EIS	2/3/98 2:53:05 PM
Michigan		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/13/98	Southeast Michigan Council of Governments, J. M. Amberger; Request Extension for Draft EIS Comment	1/21/98 9:31:18 AM
1/27/98	City of Northville, MI, G. Word; Comment on Draft EIS	2/3/98 12:12:54 PM
1/27/98	Village of Holly, MI, M. A. Allison; Comment on Draft EIS	2/3/98 11:32:18 AM
1/28/98	Charter Township of Highland, MI, J. P. Stakoe; Comment on Draft EIS	2/2/98 5:14:59 PM
1/30/98	City of Monroe, MI, R. A. Hamilton; Comment on Draft EIS	2/2/98 5:43:55 PM
1/30/98	City of Wixom, MI, J. M. Dornan; Comment on Draft EIS	2/2/98 5:02:11 PM
1/30/98	Monroe County Planning Department & Commission, MI, M. K. Webb; Comment on Draft EIS	2/2/98 5:41:50 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Michigan		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/30/98	Southeast Michigan Council of Governments, J. M. Amberger; Comment on Draft EIS	2/2/98 4:11:59 PM
1/30/98	Village of Milford, MI, A. Shufflebarger; Comment on Draft EIS	2/3/98 3:09:07 PM
2/1/98	City of Taylor, MI, T. Keyes; Comment on Draft EIS	2/3/98 4:29:00 PM
Mississippi		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/19/97	Mississippi State Clearinghouse; Clearinghouse Acknowledgment	1/7/98 12:04:40 PM
Missouri		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/20/98	Missouri Office of Administration Clearinghouse, MO, L. Pohl; Comment on Draft EIS	2/3/98 11:41:50 AM
New Jersey		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/27/98	Middlesex County Fire Academy, NJ, R. R. Zach; Environmental Concern	2/3/98 11:52:57 AM
1/28/98	Somerset County Chamber of Commerce, NJ, B. C. Roos; Comment on Draft EIS	2/2/98 3:57:36 PM
1/29/98	New Jersey Department of Environmental Protection HPO, D. P. Guzzo; Comment on Draft EIS	2/4/98 5:00:39 PM
1/30/98	County of Bergen, NJ, W. Schuber; Comment on Draft EIS	2/2/98 6:42:12 PM
1/30/98	Somerset County Planning Board, NJ, R. Bzik; Comment on Draft EIS	2/2/98 2:35:30 PM
1/30/98	Township of Woodbridge, NJ, J. M. Davy; Comment on Draft EIS	2/4/98 4:55:05 PM
1/30/98	Village of Ridgefield Park, NJ, M. T. Durkin; Comment on Draft EIS	2/2/98 2:51:42 PM
New York		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/9/98	New York State Department of State, W. F. Barton; Request for Completion of Form To Review Draft EIS	1/27/98 1:11:08 PM
1/13/98	Landmark Studios, Inc., NY, Z. Frank; Environmental Concern	1/16/98 2:36:39 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

New York		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/13/98	Rensselaer County Economic Development and Planning, NY, R. Pasinella; Environmental Concern	1/19/98 2:21:24 PM
1/27/98	St. Lawrence County, Board of Legislators, NY, R. S. Gray; Comment on Draft EIS	2/5/98 3:28:43 PM
1/28/98	Landmark Studios, Inc., NY, Z. Frank; Environmental Concern	1/30/98 8:38:27 AM
1/28/98	NY State Office of Parks, Recreation & Historic Preservation, R. L. Goll; Invitation to Meeting	2/2/98 5:19:54 PM
1/29/98	Orange County, NY, J. G. Rampe; Comment on Draft EIS	2/6/98 4:31:22 PM
1/29/98	Robert W. McKnight, Rochester, NY; Environmental Concern	1/30/98 8:41:59 AM
1/29/98	Schuyler County Environmental Management Council, NY, J. L. Murphy; Comment on Draft EIS	2/2/98 5:31:04 PM
1/30/98	Capital District Transportation Committee, NY, J. P. Poorman; Comment on Draft EIS	2/2/98 2:39:33 PM
1/30/98	Metro-North Commuter Railroad Company, NY, W. E. Zullig, Jr.; Comment on Draft EIS	2/2/98 4:04:51 PM
1/30/98	City of Dunkirk, NY, R. D. Kesicki; Environmental Concerns	2/16/98 4:07:1[illegible] PM
2/1/98	Tri-State Transportation Campaign, NY, E. Lloyd; Comment on Draft EIS	2/2/98 4:02:41 PM
2/2/98	New York City Economic Development Corporation, C. Spitulnik; Comment on Draft EIS	2/3/98 1:38:28 PM
2/2/98	Seneca Nation of Indians, Environmental Protection Dept., NY, L. Maybee; Comment on Draft EIS	2/3/98 3:35:26 PM
2/2/98	New York Department of Transportation, W. L. Slover, et al.; Comment on Draft EIS	2/3/98 10:21:13 AM
2/2/98	U.S. House of Representatives, NY & CT, J. Nadler, et al.; Comment on Draft EIS	2/3/98 1:34:21 PM
12/18/97	North Carolina Department of Administration, J. Furney; Clearinghouse Acknowledgment	12/30/97 9:04:06 AM
1/22/98	City of Rocky Mount, NC, P. F. Varney; Comment on Draft EIS	1/29/98 2:16:24 PM
1/29/98	North Carolina Department of Administration, C. Baggett; Comment on Draft EIS	2/3/98 2:20:06 PM
2/3/98	North Carolina Department of Administration, C. Baggett; Distribution List Of Environmental Document	2/10/98 11:33:51 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

North Carolina		
Comment Date	**Commentor, Subject of Document**	**Document ID**
2/4/98	North Carolina Department of Administration, C. Baggett; Comment on Draft EIS	2/10/98 11:27:07 AM
Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
12/17/97	Ohio Historical Society, OH, M. J. Epstein; Comment on Crestline, Ohio Rail Line Connection	12/30/97 2:54:27 PM
12/19/97	Ohio Historical Society, D. Snyder; Transmit Comments from Four Ohio Offices	12/31/97 9:06:08 AM
12/20/97	Ray and Lorie Neitrel, Lakewood, OH; Environmental Concern	12/30/97 3:13:25 PM
12/22/97	John A. Pfeifer, Bay Village, OH; Environmental Concern	1/7/98 12:12:10 PM
12/24/97	Ohio Historical Society, D. Snyder; Evaluation & Assessment of Connections & Railroad Yard Expansion	12/30/97 4:03:53 PM
12/26/97	Katherine A. Ingersoll, Lakewood, OH; Environmental Concern	1/5/98 3:44:28 PM
12/28/97	Lena MacFarlane, Cleveland West Shore Area, OH; Environmental Concern	1/5/98 2:59:04 PM
12/29/97	Northeast Ohio Four County Regional Planning & Dev. Org., OH, Chinn-Levy; Clearinghouse Acknowledgment	1/5/98 3:48:23 PM
1/2/98	Village of Wellington, OH, K. Webb; Environmental Concern	1/19/98 11:59:12 AM
1/3/98	M. Jones, Bay Village, OH; Environmental Concern	1/9/98 2:59:31 PM
1/5/98	Elton J. Nichols, Lakewood, OH; Environmental Concern	1/27/98 1:44:47 PM
1/5/98	F. G. Westerman, Rocky River, OH; Environmental Concern	1/9/98 3:05:02 PM
1/5/98	Mr. & Mrs. Christopher S. Hund, Bay Village, OH; Environmental Concern	1/9/98 11:59:57 AM
1/6/98	City of Olmsted Falls, OH, B. A. Walker; Comment on Draft EIS	1/16/98 9:23:24 AM
1/7/98	Saul J. Stone, Pickerington, OH; Comment on Conrail Signal Shop	1/16/98 9:45:18 AM
1/12/98	Bucyrus Historical Society, Bucyrus, OH, B. Anslow, Jr.; Response to 12/19/97 SEA Letter	1/26/98 12:15:52 PM
1/12/98	Jill and Brian Duffin, Rocky River, OH; Environmental Concern	1/21/98 9:19:12 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/12/98	Lakewood Hospital, OH, W. R. Gorton; Environmental Concern	1/21/98 9:40:50 AM
1/13/98	Metro Regional Transit Authority, OH, R. K. Pfaff; Comment on Draft EIS	1/26/98 11:51:15 AM
1/13/98	Ohio House of Representatives, R. Damschroder, R. Gardner, C. R. Brading; Comment on Draft EIS	1/26/98 11:40:10 AM
1/15/98	Village of New London, OH, D. Sholes; Comment on Draft EIS	1/30/98 1:44:54 PM
1/16/98	Seneca Regional Planning Commission, OH, Mark R. Zimmerman; Comment on Draft EIS	1/27/98 1:24:55 PM
1/20/98	City of Olmsted Falls, OH, Councilwoman Ward II, J. Johnson; Environmental Concern	1/26/98 11:32:01 AM
1/20/98	Mid-Ohio Regional Planning Commission, OH, M. Ismail; Comment on Draft EIS	1/27/98 2:01:04 PM
1/21/98	City of Olmsted Falls, OH, T. C. Jones, et al.; Environmental Concern	2/2/98 6:08:08 PM
1/22/98	City of Cleveland, City Council 10th Ward, OH, R. Coats; Comment on Draft EIS	2/2/98 5:51:13 PM
1/22/98	Gail M. Schaffer, Vermilion, OH; Environmental Concern	1/29/98 2:00:34 PM
1/23/98	Mary Myracle, Vermilion, Ohio; Environmental Concern	2/4/98 4:45:13 PM
1/23/98	Sheila Myracle, Vermilion, OH; Environmental Concern	2/4/98 4:43:47 PM
1/25/98	Bob Higley, Vermilion, OH; Comment on Draft EIS	2/3/98 12:04:10 PM
1/26/98	Ashtabula County Commissioners, OH, D. S. Feher; Comment on Draft EIS	2/11/98 2:32:21 PM
1/26/98	City of Huron, City Council, OH, E. Asher; Comment on Draft EIS	2/6/98 4:15:49 PM
1/26/98	Eastgate Development and Transportation Agency, Citizens Advisory Board, OH, N. D. Brundage; Comment on Draft EIS	2/4/98 2:08:03 PM
1/26/98	Euclid Park, Forest Hills Park, Collinwood Coalition, OH, R. Coats, et al.; Comment on Draft EIS	2/2/98 5:54:17 PM
1/26/98	Jeanne Pauly, Vermilion, OH; Environmental Concern	2/3/98 12:18:33 PM
1/26/98	Ohio Senate, 19th District, D. Schafrath; Comment on Draft EIS	2/3/98 3:26:39 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/26/98	Pamela J. Holt-Higley, Vermilion, OH; Environmental Concern	2/3/98 2:20:06 PM
1/26/98	Seneca County, OH, J. R. Nimz; Comment on Draft EIS	1/30/98 1:52:07 PM
1/27/98	City of Vermilion, OH, J. L. Davis; Comment on Draft EIS	2/6/98 1:26:56 PM
1/27/98	Oxford Township, OH, J. Stewart, et al.; Comment on Draft EIS	2/2/98 4:28:31 PM
1/27/98	Robert & Norma Pinkie, Vermilion, OH; Environmental Concern	2/6/98 10:54:49 AM
1/28/98	Faith-Based Organizing for Northeast Ohio, D. Wheeler, C. J. Matthews; Environmental Concern	2/12/98 10:21:20 AM
1/28/98	City of Fostoria, OH, J. E. Bailey, et al.; Comment on Draft EIS	2/2/98 5:37:09 PM
1/28/98	Clay and Diana Kilgore, Rocky River, OH; Environmental Concern	2/3/98 11:20:12 AM
1/28/98	U.S. Congress, 5th District, OH, P. E. Gillmor; Comment on Draft EIS	2/3/98 10:26:11
1/28/98	Board of Trustees of Vermilion Township, OH, C. W. Kishman; Comments on Draft EIS	2/2/98 5:21:54 PM
1/28/98	Berlin Township Trustees, OH; Environmental Concern	2/5/98 2:32:03 PM
1/28/98	City of Dayton, Water Department, OH, D. Gorby-Lee; Comment on Draft EIS	1/30/98 11:25:01 AM
1/28/98	Northeast Ohio Four County Regional Planning & Dev. Org., OH, Chinn-Levy; Comment on Draft EIS	1/28/98 4:27:53 PM
1/28/98	City of Ashtabula, City Council, OH, C. L. Lovas; Comment on Draft EIS	2/11/98 11:19:25 AM
1/29/98	Abington Arms, University Circle, Cleveland, OH, E. B. Heil; Environmental Concern	2/3/98 11:51:24 AM
1/29/98	Board of Huron County Commissioners, T. Boose, et al., OH; Comment on Draft EIS	1/30/98 1:41:22 PM
1/29/98	Church of the Convenant, University Circle, Cleveland, Ohio, A. J. Dahm; Environmental Concern	2/3/98 11:55:01 AM
1/29/98	Liz Pim, Lakewood, OH; Environmental Concern	2/3/98 11:14:37 AM
1/29/98	Huron Soil & Water Conservation District, OH, C. Brickner; Comment on Draft EIS	2/2/98 5:11:56 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/29/98	Johanna Barbato, Vermilion, OH; Environmental Concern	2/3/98 2:22:55 PM
1/29/98	Lorain County Board of Commissioners, OH, R. Blair; Comment on Draft EIS	2/5/98 10:22:02 AM
1/29/98	Lorain County, OH, M. J. Vasi; Comment on Draft EIS	2/5/98 4:29:36 PM
1/29/98	Ronald J. Geil, Vermilion, OH; Environmental Concern	2/6/98 1:23:05 PM
1/29/98	Seneca County Commissioners, OH, K. J. Estep, et al.; Comment on Draft EIS	2/5/98 5:16:15 PM
1/29/98	Village of LaGrange, OH, D. R. Stewart; Comment on Draft EIS	2/3/98 11:58:57 AM
1/30/98	Citizens of Olmsted Falls, OH; Environmental Concern	2/4/98 4:15:03 PM
1/30/98	Cleveland Hearing & Speech Center, OH, B. P. Henri; Environmental Concern	2/3/98 11:48:14 AM
1/30/98	Erie County Commissioners, OH, M. Bixler; Environmental Concern	2/2/98 11:06:38 AM
1/30/98	Huron Township Board of Trustees, OH, D. R. Ritzenthaler, et al.; Comment on Draft EIS	2/3/98 3:30:02 PM
1/30/98	U.S. Congress, 11th District, OH, L. Stokes; Comment on Draft EIS	2/2/98 3:39:34 PM
1/30/98	Village of Oak Harbor, OH, T. Wilkins; Comment on Draft EIS	2/3/98 2:49:27 PM
1/30/98	Broadway Area Housing Coalition, OH, B. Reichtell; Environmental Concern	2/4/98 4:48:31 PM
1/30/98	City of Sandusky, Department of Engineering Services, OH, B. R. Smith; Comment on Draft EIS	2/2/98 3:43:12 PM
1/30/98	Northeast Ohio Areawide Coordinating Agency, OH; H. R. Maier; Comment on Draft EIS	2/2/98 11:31:21 AM
1/30/98	Ohio Canal Corridor, T. Donovan; Environmental Concern	2/4/98 4:39:45 PM
1/30/98	Associated Estates Management Company, OH, G. M. Eovito; Comments on Draft EIS	2/19/98 11:11:53 AM
1/30/98	Ben Gleason, Vermilion, OH; Environmental Concern	2/10/98 11:51:22 AM
1/30/98	Toledo Metropolitan Area Council of Governments, OH, W. L. Knight; Comment on Draft EIS	2/2/98 3:56:41 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/30/98	University Circle Incorporated, OH, J. S. Wilbur, Jr.; Environmental Concern	2/3/98 11:42:52 AM
1/30/98	University Circle Police Department, OH, T. J. Peppard; Environmental Concern	2/3/98 11:19:55 AM
1/31/98	Hazel Cramer, Vermilion, OH; Environmental Concern	2/11/98 9:51:44 AM
1/31/98	Irene Fowler, Cleveland, OH; Environmental Concern	2/5/98 5:30:58 PM
1/31/98	Second Metropolitan Missionary Baptist Church, OH, Members; Environmental Concern	2/4/98 4:52:25 PM
2/1/98	Idelle White, Elyria, OH; Environmental Concern	2/5/98 4:57:31 PM
2/1/98	Fredrick Hood, Cleveland, OH; Environmental Concern	2/5/98 4:51:33 PM
2/1/98	Martha Pye, Lorain, OH; Environmental Concern	2/10/98 11:46:03 AM
2/1/98	Jeffrey L. Prokop, Avon Lake, OH; Environmental Concern	2/6/98 3:38:03 PM
2/1/98	William P. LaFrance, Lorain OH; Environmental Concern	2/5/98 4:10:11 PM
2/2/98	Cities of Bay Village, Rocky River & Lakewood, OH, S. J. Kalish, et al.; Comment on Draft EIS	2/3/98 2:13:55 PM
2/2/98	City of Berea, OH, G. M. Sponseller; Comment on Draft EIS	2/2/98 4:44:30 PM
2/2/98	City of Cleveland, OH, C. A. Spitulnik; Comment on Draft EIS	2/3/98 4:27:43 PM
2/2/98	City of East Cleveland, OH, E. Onunwor; Comment on Draft EIS	2/3/98 12:13:45 PM
2/2/98	Erie County Department of Engineering, OH, J. D. Farschman; Environmental Concern	2/4/98 5:08:36 PM
2/2/98	James & Evelyn Patton, Lorain, OH; Environmental Concern	2/5/98 3:58:14 PM
2/2/98	Marie Louise Kittredge, Cleveland, OH; Environmental Concern	2/6/98 4:02:33 PM
2/2/98	Ohio Attorney General, et al., K. G. O'Brien, et al.; Comment on Draft EIS	2/3/98 1:45:54 PM
2/2/98	Ohio Senate, J. E. Carnes; Comment on Draft EIS	2/6/98 3:30:07 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Ohio		
Comment Date	**Commentor, Subject of Document**	**Document ID**
2/2/98	U.S. Congress, 10th District, OH, D. J. Kucinich; Comment on Draft EIS	2/3/98 1:24:33 PM
2/3/98	Isabelle H. Chamberlain, Vermilion, OH; Comment on Draft EIS	2/3/98 4:13:24 PM
2/3/98	Lakewood PTA Council, OH, P. Reed; Environmental Concern	2/3/98 2:55:27 PM
2/3/98	Larry J. Brandal, OH; Comment on Draft EIS	2/4/98 9:42:11 AM
2/3/98	Huntington Township Trustees, OH, J. E. Eaton; Comment on Draft EIS	2/10/98 12:20:52 PM
2/4/98	U.S. Congress, 10th District, OH, D. J. Kucinich; Addendum to Comment on Draft EIS	2/5/98 10:30:02 AM
2/4/98	City of Cleveland, OH, C. Spitulnik; Errata to Comments on Draft EIS	2/5/98 10:34:55 AM
2/5/98	Bessie Eva Nelson, Lorain, OH; Environmental Concern	2/5/98 5:27:10 PM
2/5/98	Charlean Lurry, Lorain, OH; Environmental Concern	2/5/98 5:25:40 PM
2/5/98	Rita A. Spinale, Lorain, OH; Environmental Concern	2/5/98 5:06:45 PM
2/5/98	Royalton Acres Development Corporation & Flair Corporation, D. N. Steiger, OH; Comment on Draft EIS	2/6/98 3:12:24 PM
2/6/98	Lorain County Community Alliance, OH, B. Blair; Comment on Draft EIS	2/11/98 9:44:43 AM
Pennsylvania		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/9/98	City of Erie, PA, J. A. Savocchio; Comment on Draft EIS	1/21/98 10:18:34 AM
1/13/98	Don L. Gaerttner; Erie, PA; Environmental Concern	1/26/98 11:53:54 AM
1/19/98	Belknap Freeman, PE; Rosemont, PA; Comment on Draft EIS	4/6/98 10:57:25 AM
1/20/98	City of Harrisburg, PA, S. R. Reed; Comment on Draft EIS	1/30/98 11:12:41 AM
1/21/98	Beaver County Planning Commission, PA, R. W. Packer, Jr.; Comment on Draft EIS	1/27/98 2:06:26 PM
1/23/98	County of Allegheny, PA, C. W. Banks, et al.; Comment on Draft EIS	2/11/98 11:25:04 AM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Pennsylvania		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/28/98	Port Authority of Allegheny County, PA, P. Skoutelas; Comment on Draft EIS	2/3/98 3:10:58 PM
1/29/98	Barry Longenecker, New Providence, PA; Comment on Draft EIS	2/2/98 5:05:56 PM
1/30/98	Historic Preservation Trust of Lancaster County, PA, R. J. Harris; Comment on Draft EIS	2/4/98 4:09:39 PM
1/30/98	Lancaster County Transportation Coordinating Committee, PA, T. L. Kauffman; Comment on Draft EIS	2/2/98 11:03:08 AM
1/30/98	Pennsylvania Turnpike Commission, D. E. Zazworsky; Comment on Draft EIS	2/2/98 11:10:24 AM
1/30/98	Southeastern Pennsylvania Transportation Authority, T. E. Hanson; Comments on Draft EIS and Safety Integration Plans	2/2/98 11:23:59 AM
1/30/98	Tri-County Regional Planning Commission, PA, R. E. Shaffer, Sr.; Comment on Draft EIS	2/3/98 4:20:08 PM
2/1/98	Richard H. Moffitt, Brownsville, PA; Comments of Draft EIS	2/5/98 4:54:13 PM
2/2/98	Southeastern Pennsylvania Transportation Authority, T. E. Hanson; Comments on Draft EIS and Safety Integration Plans	2/3/98 12:09:32 AM
2/2/98	Commonwealth of Pennsylvania, Lieutenant Governor's Office, M. S. Schweiker; Comment on Draft EIS	2/6/98 4:41:04 PM
2/2/98	Pennsylvania Department of Environmental Protection, B. A. Sexton; Comment on Draft EIS	2/5/98 2:56:54 PM
2/6/98	City of Harrisburg, Hydroelectric Project, PA, D. R. Lispi; Comment on Draft EIS	2/10/98 11:39:45 AM
South Carolina		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/7/98	Anderson County, SC, J. Ricketson; No Comment on Draft EIS	1/16/98 11:34:05 AM
Tennessee		
Comment Date	**Commentor, Subject of Document**	**Document ID**
2/2/98	Nashville Area Metropolitan Planning Organization, TN, P. Watson; Comment on Draft EIS	2/5/98 3:17:13 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

Virginia		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/7/98	West Piedmont Planning District Commission, VA, R. W. Dowd; Comment on Draft EIS	1/16/98 2:59:09 AM
1/15/98	Virginia Department of Conservation and Recreation, J. R. Davy, Jr.; Comment on Draft EIS	1/26/98 11:35:03 AM
1/20/98	Warren County Board of Supervisors, VA, J. Manaway; Comment on Draft EIS	2/2/98 5:38:19 PM
1/27/98	Town of Ashland, VA, D. W. Reynal; Comment on Draft EIS	2/3/98 11:16:14 AM
1/28/98	Commonwealth of Virginia, Dept. of Rail & Public Transportation, L. Bevon; Comment on Draft EIS	2/3/98 4:21:01 PM
1/28/98	Town of Stanley, VA, M. M. Graves; Comment on Draft EIS	2/4/98 2:18:19 PM
1/29/98	City of Lynchburg, VA, C. F. Church; Comment on Draft EIS	1/30/98 11:08:21 AM
1/29/98	Lord Fairfax Planning District Commission, VA, T. J. Christoffel; Comment on Draft EIS	2/4/98 4:02:37 PM
1/29/98	Town of Front Royal, VA, R. S. North; Comment on Draft EIS	2/2/98 5:41:27 PM
2/2/98	Northern Virginia Planning District Commission, J. V. Zee; Comment on Draft EIS	2/4/98 4:36:42 PM
2/2/98	Town of Haymarket, VA, S. J. Kalish, et al.; Comment on Draft EIS	2/3/98 10:30:29 AM
2/5/98	Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission, K. M. Sheys; Comment on Draft EIS	2/5/98 3:45:30 PM
2/6/98	Virginia Department of Environmental Quality, M. Murphy; Comment on Draft EIS	2/13/98 4:59:29 PM
West Virginia		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/28/98	West Virginia Development Office, F. Cutlip; Comment on Draft EIS	2/3/98 2:17:51 PM
1/30/98	West Virginia Division of Natural Resources, J. W. Rawson; Comment on Draft EIS	2/3/98 2:25:11 PM

TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

District of Columbia		
Comment Date	**Commentor, Subject of Document**	**Document ID**
1/5/98	Women Like Us, DC, B. L. Richardson; Request for Community Meeting and Comments on Environmental Concerns	1/9/98 3:07:19 PM
1/30/98	Washington Metropolitan Area Transit Authority, DC, J. C. Elkins; Comment on Draft EIS	2/2/98 2:58:13 PM
2/2/98	District of Columbia Department of Public Works, K. G. Laden; Comment on Draft EIS	2/2/98 3:32:05 PM
2/2/98	United Parcel Service, DC, A. F. Wellman; Comment on Draft EIS	2/2/98 5:03:30 PM

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Eastern Area Office
Suite 260
5701 North Fairfax Drive
Arlington, Virginia 22203

IN REPLY REFER TO:
Trust Services
Natural Resources

CENTRAL ADMINISTRATIVE UNIT
REC'D: 12/30/97
DOCUMENT # 12/31/97 10:12:57am

RECEIVED DEC 22 1997 BIA

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

Dear Ms. Kaiser:

Thank you for your letter of November 26, 1997, updating the Bureau of Indian Affairs (BIA) about the status of the CSX Corporation (CSX) and Norfolk Southern Corporation (NS) joint application to acquire Conrail Inc.

We appreciate the notification of intent to prepare an Environmental Impact Statement (EIS) for the proposed CSX-NS acquisition of Conrail Inc. and commend the Surface Transportation Board for notifying the two (2) federally-recognized Indian tribes (Seneca Nation of Indians & Poarch Band of Creek Indians) of its intent to evaluate the potential environmental impacts of this proposed action including any and/or all impacts on the Indian reservation trust lands and related trust resources of these tribes.

This type of open communication between non-BIA federal agencies and Indian tribes is an outstanding example of how other federal government agencies are recognizing Indian tribal governments and consulting with Indian tribes in assessing the impact of federal and non-federal actions on tribal trust lands and related trust resources.

We look forward to receiving copies of the various environmental documents related to this proposed action and will coordinate with the two tribes in preparing comments and input for your consideration in preparing the Environmental Impact Statement for the CSX-NS acquisition of Conrail Inc.

12/31/97 10:12:57am-1

If we can be of further assistance to your agency concerning this matter, please do not hesitate to contact the Eastern Area Office of the Bureau of Indian Affairs.

Sincerely,

Franklin Keel
Eastern Area Director

12/31/97 10:12:57am-2

U.S. Department of Housing and Urban Development

Columbus Office, Region V
200 North High Street
Columbus, Ohio 43215-2499
January 6, 1998

RECEIVED JAN - 9 1998 BIA

Office of the Secretary
Case Control Unit
Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

CENTRAL ADMINISTRATIVE UNIT
REC'D: 1/14/98
DOCUMENT # 1/15/98 4:59:29am

Attn: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear Ms. Kaiser:

This is in response to the request for comments concerning the proposal listed below. The U.S. Department of Housing and Urban Development has determined that the proposal does not present any special interests or concerns to HUD.

Conrail Acquistion by CSX and Norfolk Southern

Thank you for the opportunity to comment. If you should require any further input from HUD, I may be reached at (614) 469-5737, x8252.

Sincerely,

Ross S. Carlson
Environmental Officer

1/15/98 4:59:29am

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO ATTENTION OF
Regulatory Division

JAN 27 1998

COPY

Office of the Secretary
Attention: Ms. Elaine K. Kaiser
Case Control Unit
Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

Thank you for mailing to us a copy of the Draft Environmental Impact Statement (DEIS) for the proposed acquisition of Conrail, Inc., by Norfolk Southern Railroad and CSX Railroad.

We note that the description of the analysis methods used in the preparation of the DEIS at paragraph 3.15.3, specifically included consideration of U.S. Army Corps of Engineers permitting requirements under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. This office, the Regulatory Division of the Jacksonville District of the U.S. Army Corps of Engineers, administers the permitting program for activities occurring in Florida.

The Executive Summary, at page ES-24, and the specific discussion for Florida, at page FL-2, reports no construction activity in Florida. Therefore, an application for a permit is not required to be submitted to this office. However, if there are any changes that result in work in Florida, please advise this office at the address above. We will assist in determining whether the construction is in the location and of the nature that requires a permit.

Feel free to contact Bob Barron at the letterhead address or by telephone at (904) 232-2203.

Sincerely,

Stanley K. Smith
Acting Chief, Regulatory Division

Attention: Elaine K. Kaiser
Environmental Project Director
Environmental Filing

2/2/98 6:00:02pm

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO ATTENTION OF

January 28, 1998

CENTRAL ADMINISTRATIVE UNI
REC'D: 2/3/98
DOCUMENT # 2/3/98 11:10:37

Regulatory Branch

SUBJECT: Department of the Army Processing No. 98-493-0001(1); STB Finance Docket No. 33388; Draft Environmental Impact Statement, "Proposed Conrail Acquisition"

ENVIRONMENTAL DOCUMENT

Office of the Secretary
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

FEB 3 1998

Dear Ms. Kaiser:

This is in reference to the Draft Environmental Impact Statement (DEIS) received by this office on January 2, 1998 entitled "Proposed Conrail Acquisition." The transmittal requested comments prior to February 2, 1998.

I have reviewed the DEIS with regard to potential impacts to waters of the United States within the Buffalo District. Eight projects were identified for which Department of the Army authorization would potentially be required. These projects include the following:

New York:

- Gardenville Junction Construction (Erie County, NY)
- Blasdell Connection (Erie County, NY)

Ohio

- Collinwood New Intermodal Facility (Cuyahoga County, OH)
- Oak Harbor Connection (Ottawa County, OH)
- Willard Fueling Facility (Huron County, OH)
- Vermilion Connection (Erie County, OH)
- Abandonment: Toledo to Maumee
- Abandonment: Toledo Pivot Bridge

In each of these projects, the proposal would either directly impact a water of the United States or potentially impact a water of the United States. The DEIS correctly

2/3/98 11:10:37am-1

Regulatory Branch
SUBJECT: Department of the Army Processing No. 98-493-0001(1); STB Finance Docket No. 33388; Draft Environmental Impact Statement, "Proposed Conrail Acquisition"

indicates that Department of the Army authorization would be required for the placement of fill material into a water of the United States. The Buffalo District strongly encourages further coordination with this office prior to construction of any of the cited projects.

Questions pertaining to this matter should be directed to me at (716) 879-4314, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, or by e-mail at: Steven.V.Metivier@usace.army.mil

Sincerely,

Steven V. Metivier
Biologist

2/3/98 11:10:37am-2

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO ATTENTION OF

JAN 29 1998

FEB 03 1998

Regulatory Branch

SUBJECT: Comments to the Draft Environmental Impact Statement for Proposed Conrail Acquisition

ENVIRONMENTAL DOCUMENT

Ms. Elaine K. Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K. Street, NW
Washington, D.C. 20423-0001

CENTRAL ADMINISTRATIVE UNIT
REC'D: 2/3/98
DOCUMENT # 2/3/98 11:35:58AM

Dear Ms. Kaiser:

This is in response to your October 1, 1997 letter requesting comments on the Draft Environmental Impact Statement (DEIS) for the proposed acquisition of Conrail's assets by Norfolk Southern Railroad and CSX Railroad.

We have reviewed the DEIS and noted that the map of Little Ferry, Bergen County, New Jersey in Figure 5-NJ-5, Volume 3B of the DEIS depicts wetland areas regulated by New Jersey Department of Environmental Protection. Work in these and/or nearby areas may also be regulated by the U.S Army Corps of Engineers. Our jurisdiction would include the discharge of dredged or fill material into any wetlands, freshwater or tidal, on the site or into the waterway waterward of the spring high tide line. If such work is proposed within waters of the United States at Little Ferry, a Department of the Army permit from the New York District will be necessary. In order for us to accurately determine the extent of our jurisdiction on the site, a wetland delineation would need to be submitted for our review and approval. Once we receive a wetland delineation for the site, we will then be able to schedule a site inspection.

If the proposed work would not involve work within our jurisdiction, a permit will not be required and no further contact with this office will be necessary. If work is proposed within our jurisdiction, the appropriate application documents should be submitted at an appropriate juncture.

For impacts to waters of the United States at the Gardenville Junction at the City of Buffalo, Erie County, New York you will need to contact the US Army Corps of Engineers Buffalo District at 1776 Niagara Street, Buffalo, New York 14207-3199, ATTN: NCBCO-S.

2/3/98 11:35:58am-1

If you have any questions regarding this letter, please contact Mr. James Cannon, of my staff, at (212) 264-0184.

Sincerely,

George Dieves
Chief, Western Permits Section

2/3/98 11:35:58am-2

DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
BOX 1027
DETROIT, MICHIGAN 48231-1027

January 30, 1998

RECEIVED FEB - 3 1998 MANAGEMENT STB

Construction-Operations Division
Regulatory Branch
File Number 97-200-014-OE

ENVIRONMENTAL DOCUMENT

CENTRAL ADMINISTRATIVE UNIT
REC'D: 2/3/98
DOCUMENT # 2/3/98 2:29:02 PM

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

ATTN: Elaine K. Kaiser
Environmental Project Director
Environmental Filing

Dear Ms. Kaiser:

This is in response to the Draft Environmental Impact Statement (DEIS) for the "Proposed Conrail Acquisition" dated December 12, 1997 and received in this office December 24, 1997, wherein comments have been requested by February 2, 1998.

The Detroit District Corps of Engineers has the responsibility of regulating activities in the waters and wetlands of Michigan and the northern third of Indiana. The Corps' jurisdiction in Michigan is unique in the fact that we have joint regulating responsibilities with the Michigan Department of Environmental Quality (MDEQ) along all the navigable waters and their adjacent wetlands. Work along these areas, therefore, requires prior authorization from both governmental agencies. The remaining inland waters and/or wetlands will require prior authorization from the MDEQ only.

Within the DEIS it specifically stated that there would be new construction/connections and abandonments within the Detroit Districts jurisdiction limits and those actions would be permitted before the fact by the actual railway company. However, this office has yet to receive any such request. For your convenience, informational brochures and applications for both Indiana and Michigan have been enclosed. Please complete and return these applications to the attention of Mary C. Miller, Project Manager. Plan view and cross-sectional view drawings, in 8 1/2" format, should accompany the applications, along with a clear description of all quantities, dimensions, and nature of

material placement or soil movement. Be advised that a wetland delineation, in accordance with the Corps of Engineers 1987 delineation Manual, must also be completed for each proposed work site to determine if any wetlands are present.

The authority of the Corps of Engineers to regulate construction or other work in navigable waters of the United States is contained in Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act and regulations promulgated pursuant to these Acts. Please be advised that filling and grading work, mechanized landclearing, ditching or other excavation activity, and piling installation constitute or otherwise involve discharges of dredged and/or fill material under the Corps' regulatory authority.

It was noted that the DEIS Volume 5B, Appendix L, section of environmental analysis sample consultation letter and recipients, did not identify the MDEQ as being on the contact list. Therefore, we recommend that you contact Ms. Peg Bostwick, Lake and Stream Protection Unit, Land and Water Management Division, MDEQ, P.O. Box 30458, Lansing, Michigan, 48909, (517)373-1950, for their comments and a determination of State permit requirements.

Should you have any questions, please contact Mary C. Miller at the above address or telephone (313) 226-2220. All correspondence should reference File Number: 97-200-014-OE.

Sincerely,

Robert Tucker
Chief, Enforcement Section
Regulatory Branch

Enclosures

MDEQ / Bostwick

COPY

RECEIVED FEB - 2 1998

Before the
Surface Transportation Board
Washington, D.C.

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 33388

Comments of the
United States Department of Transportation
on the
Draft Environmental Impact Statement

I. Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding is considering the proposed acquisition of Consolidated Rail Corporation and Conrail, Inc. ("Conrail") by Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") and CSX Corporation and CSX Transportation, Inc. ("CSX").[1] By Decision No. 6 (served May 30, 1997), the Board directed its Section of Environmental Analysis ("SEA") to prepare an Environmental Impact Statement ("EIS") in order to assess the transaction's potential impacts on, *inter alia*, the environment and safety. On December 12, 1997, the SEA issued a Draft Environmental Impact Statement ("DEIS") and sought comment thereon. The United States Department of Transportation ("DOT" or "Department") hereby offers these comments on the safety and environmental aspects of the DEIS.[2]

1/ Collectively, these entities are referred to herein as "Applicants."

2/ These comments, of course, do not in any way reflect a view as to whether the pending transaction should be approved. DOT will address this fundamental issue in its brief on February 23, 1998.

The Department commends the Board for ordering the preparation of an EIS for this complicated and important matter. DOT's comments address the impacts of the pending transaction on the following major subject areas covered in the DEIS: (1) railroad safety, (2) rail passenger transportation, and (3) severely affected communities. We also wish to inform the SEA of our view that a purely technical application of environmental thresholds can result in real-world impacts being overlooked.

As discussed more fully below, the Department believes that (1) the safety integration plans ("SIPs") submitted by the Applicants appropriately address the safety issues raised by their operating plans for purposes of the EIS, (2) the DEIS recommendations concerning a 15 minute separation of passenger trains from other trains and implementation of industry guidelines for carriage of hazardous materials should not be adopted, (3) the consequences of the transaction for rail passenger transportation require oversight, (4) prospective impacts on communities are best resolved by STB action that will facilitate prompt resolution of mitigation problems by direct agreements between the Applicants and affected communities, and (5) the DEIS analysis isolates some of the "individual" impacts of the transaction in such a way that it fails to identify certain broader consequences and indeed whole communities. DOT recommends that the final EIS should focus more broadly in order to measure the transaction's true impacts more accurately, and for this reason we urge the Board to retain oversight.

II. Rail Safety Impacts

A. Safety Integration Plans

Following the Department's expression of concern about the effect that the proposed transaction might have on rail safety (DOT-3, filed October 21, 1997), the STB directed each of the Applicants to prepare a SIP. Decision No. 52, (served November 3, 1997). These plans were intended to explain in detail the steps to be taken by the Applicants to ensure that the division and integration of Conrail into the NS and CSX systems, and the formation and operation of the Shared Asset Areas ("SAA"s), occurred in a safe manner. DOT again extends its appreciation for the STB's prompt action.

As we explained earlier in this proceeding (DOT-4, filed December 3,

1997), the Applicants worked closely with the Federal Railroad Administration ("FRA") to produce the SIPs filed on December 3, 1997.[3] Specifically, immediately following the issuance of Decision No. 52, FRA and the Applicants began a close dialogue regarding the contents of the SIPs. At that time FRA also developed merger-related Safety Integration Plan Guidelines ("SIPG"), which were crafted specifically for the Applicants, to address all of the safety concerns identified by FRA in the original application filed by Applicants and through its consideration of earlier rail mergers.[4]

Concurrently with the preparation of the SIPG, FRA and the Applicants established a ten member SIP review team made up of various FRA subject experts and Conrail/CSX/NS representatives. The team's initial purpose was to prepare SIPs that were as comprehensive as possible given the short time allotted for submission to the STB. Subsequently, the SIP review team continued to refine the SIPs and prepare for their implementation by the Applicants under the supervision of FRA, in the event that the STB approves the proposed transaction. DOT wishes to emphasize that each of the Applicants has cooperated fully with FRA and continues to do so, and we highly commend their efforts.

The primary criteria used by FRA in reviewing the SIPs were (1) that each safety item identified in the SIPG be thoroughly considered, (2) that provisions for the reasonable integration of the disparate procedures and cultures prevalent in the operations of the Applicants be developed for each safety item, and (3) that the integration process reflect a logical sequence of events, including the identification of workforce and resource allocations, and the delegation of authority necessary to carry out the stated action items.

The following are FRA's major findings with respect to the SIPs:

1. The SIPs demonstrate that each Applicant has systematically considered, and established procedures for integrating, all potentially significant sources of increased safety risk. These sources include the following:

3/ FRA is the agency within DOT that exercises plenary authority over the safety of the railroad industry. *See generally* 49 U.S.C. §§ 20101-53 and 49 C.F.R. § 1.49.

4/ The final version of the SIPG is attached hereto as Exhibit 1.

a) Differences in employee cultures. These differences have required (i) the establishment of adequate lines of communication between management, labor, and field personnel, (ii) prevention of harassment and intimidation, and (iii) the provision of adequate training to employees.

b) Differences in railroad management and operating procedures. These differences have necessitated taking advantage of the "best practices" and unique strengths of each carrier.

c) Loss of institutional knowledge. This prospect has required integration of railroad field, mid-level, and senior management with knowledge of operating and safety practices, and

d) The very large increase in the size of two major railroad systems, including train volumes, and potential additional workloads for management and labor of both NS and CSX.

2. The CSX, NS, and the Shared Assets Area SIPs adequately address all of the safety items listed in FRA's SIPG in a reasonable manner. Each identifies the significant safety issues and provides a detailed approach to integration through the implementation of a logical sequence of events involving detailed workforce and resource allocations that employ sound industry/engineering safety practices.

FRA has held extensive discussions with the Applicants in order to match specific timing and resource allocations, in terms of both manpower and expenses, to each safety action item identified in the SIPs. A common understanding of the issues and the Applicants' undertakings will be critical to assure a safe implementation of the SIPs under FRA direction, assuming the acquisition is approved. FRA is satisfied with the commitments made to date and will continue to work with the Applicants to address implementation issues as they arise.

Accordingly, the Department is satisfied that the SIPs address and satisfactorily mitigate every safety concern raised in the environmental review portion of this proceeding. The Applicants' commitments to cooperate with FRA, the accountability embodied in agreed-upon resource allocations, and the SIPs themselves have put FRA in a position to ensure that the SIPs are implemented by the Applicants in a timely manner, consistent with existing railroad safety laws. No other mitigation on this subject is necessary or appropriate.

Although DOT believes no further changes should be made to the SIPs, we request the SEA and/or the Board to consult with FRA to the extent they may consider comments of other parties that are inconsistent with our findings.

B. Passenger/Freight Train 15 Minute Separation

The Department takes issue with the DEIS recommendation that passenger and freight trains operating on the same track be "cleared" by not less than 15 minutes temporal separation between them. DEIS, Executive Summary, at ES-17. This suggestion is not only impractical, but would unduly burden passenger and freight railroad operations.

Historically, railroads have not segregated passenger and freight trains for safety reasons. Rather, passenger trains received a preference over freight trains, which meant that slower-moving freight trains were kept out of the way of faster-moving passenger trains, because of the premium placed on passenger service. This practice endures, and both types of trains continue to operate safely in a "commingled" status.

The DEIS recommendation is predicated on "minimizing the potential conflicts" between passenger and freight trains, thereby reducing the risk of collisions. Id. There are three types of collisions at risk here: (1) head-on, (2) rear-end, and (3) "raking," that is, when a shifted load on one train strikes a train on an adjacent track. As discussed below, the proposed 15 minute temporal separation is not a good way of reducing the risk of head-on or rear-end collisions, and it is irrelevant to the prevention of raking collisions. The risk of collisions overall is best addressed uniformly under FRA's plenary rulemaking authority over railroad safety.

FRA and the railroad industry are now seeking to minimize the risk of head-on and rear-end collisions through operating rules and practices, track structure, and signal systems (including Advanced Train Control and Positive Train Separation), communications systems, and braking systems. Positive Train Separation holds the promise of virtually eliminating head-on and rear-end collisions. Indeed, FRA's Railroad Safety Advisory Committee is now working with FRA to develop standards for these systems, and the Applicants are all jointly developing such systems for their respective operations under a grant from FRA. A 15 minute temporal separation would thus hinder the installation of Positive Train Separation, which would be a step backward.

Neither would a 15 minute separation reduce the risk of "raking." On single line

track, one of two trains would have to be placed in a siding to permit the other to pass.[5] On multiple line track, both trains would continue and pass each other. A temporal buffer would not change these operating realities.

This proposal also poses substantial operating problems. In many single track situations, there is insufficient trackage to accommodate freight trains "clearing up" for passenger trains by 15 minutes in each and every case. For example, passing sidings may not be long enough, or they may not be spaced at convenient intervals. This could result in freight trains being held at terminal points for extended periods.[6]

Not only would this be very disruptive of freight operations, it could create a cumulative crew fatigue issue. With expanded crew runs, some crew districts now extend over 300 miles. The federal hours of service laws, of course, still apply in these instances.[7] Application of the 15 minute separation recommendation, however, could create any number of instances in which freight trains could not pass through such districts within the statutory limit of 12 hours. The necessary result would be re-staffing of the crews (together with the logistical and dispatching problems this creates) and inordinate delays for rail traffic.

In sum, the proposed 15 minute temporal separation is both inappropriate and unworkable, and it should be withdrawn.

C. Hazardous Materials Recommendation

The DEIS contains two recommendations to address increased or rerouted shipments of hazardous materials brought about by the merger. The Applicants would be required to: (1) implement guidelines of the Association of American Railroads ("AAR") concerning the carriage of hazardous materials (*i.e.*, circular OT-55-B) and develop emergency response plans on major or new routes on which hazardous

5/ Ordinarily this would be the freight train, although it could also be the passenger train for logistical reasons.

6/ It is also the unfortunate reality that prolonged waiting periods in sidings or terminal points increase the risk of vandalism to freight trains (particularly in more populated areas), which produces its own threat to safety. For example, safety appliances aboard trains may be tampered with or hazardous materials released.

7/ *Previously codified* at 49 U.S.C. §§ 21101-21108, now contained in various provisions in Title 49.

materials are transported, and (2) prepare emergency response plans and establish training programs for local communities in which new hazardous materials facilities are constructed. DEIS, Vol. 3B, Table 5-2.

The Department has consistently promoted emergency response planning and community awareness programs with respect to shipment of hazardous materials. We therefore agree that the applicants should be involved in such planning with the input of local communities. We cannot, however, endorse the imposition of AAR circular OT-55-B as though it were a federal regulatory standard.

DOT regulations establish minimum requirements for packaging, handling, and transporting hazardous materials. 49 C.F.R. Parts 171-180. These rules provide mandatory, uniform safety standards applicable to all movements of dangerous commodities, including those that move by more than one mode. Circular OT-55-B, by contrast, is more narrowly focused on large volume movements of a selected group of chemicals, and is written and intended as a "good practices" guide rather than a binding regulatory standard. It calls, for instance, for restrictions on the meetings and passings of trains carrying hazardous materials "when practicable," and requests "maximum reasonable efforts" to reduce coupling speeds of loaded, placarded tank cars to no more than "4 MPH." As salutary as the industry efforts represented in this document are, to accord them the status of a mandatory federal standard would be a mistake because it could confuse the regulated community in general, and the Applicants in particular, about their duty to comply with the Code of Federal Regulations.

DOT is also concerned, for example, that the adoption of the circular's "key train" concept (a train with more than a minimum number of cars or intermodal containers loaded with certain classes of hazardous materials) could lead to lower standards of care for other trains carrying hazardous materials. The Department's hazardous materials regulations impose higher standards for packaging, handling, and documentation of more dangerous commodities and less stringent standards for less dangerous items, in order to secure the same low level of risk for the transportation of all regulated commodities. The "key train" concept, made mandatory, would tend to frustrate this interest.

We do not question that the industry may adopt higher standards for itself, so long as they are in addition to and not inconsistent with existing federal standards. DOT would, however, consider it unwise for the STB to attempt to create alternative binding standards in this area. DOT urges the SEA merely to commend these "good practices" to the Applicants for appropriate use consistent with federal hazardous

materials regulations. Finally, it is important to underscore that in the SIPs the Applicants have already developed plans to comply with all federal hazardous materials regulations. DEIS, Vol. 2, at 168-77 (CSX) and at 147-66 (NS).

III. Rail Passenger Transportation Impacts

The purchase and division of Conrail has the potential to affect rail passengers significantly, both commuter and intercity, particularly in the northeastern United States. Rail passenger transportation is an important national resource. Federal, state, and local governments have invested billions of dollars on capital equipment, operating subsidies, track acquisition, maintenance, and similar purposes for Amtrak and several commuter rail operators. This funding reflects a deep commitment to fundamental values such as reducing pollution and highway congestion, enhancing energy efficiency, and improving the quality of life, particularly in major metropolitan areas. *See, generally*, 49 U.S.C. §§ 5301 *et seq*. Much of this investment has been concentrated in the region affected by this transaction.

In this region, too, most passenger and freight railroads operate on each others' lines to some extent. DEIS, Vol. 1, chap. 4, at 4-22. They must therefore coordinate extensively, rely upon each other for dispatching in many instances, and otherwise accommodate sometimes inconsistent interests. DOT believes that Conrail, the various commuter rail agencies, and Amtrak have managed this interdependence in relatively harmonious fashion overall. Effectively eliminating Conrail and replacing it with NS and CSX introduces at least the potential for concern that this may not continue to be the case.

Although Amtrak operates nationwide and therefore has ongoing dealings with CSX and NS, its operations elsewhere are relatively infrequent, low in volume, and spread out over the day by comparison with those taking place in the most relevant area for present purposes, the Northeast Corridor. Moreover, neither CSX or NS has any real experience with the kind of high-volume commuter services they would encounter in former Conrail territory. As discussed below, these dissimilar backgrounds with respect to commuter rail transportation and other factors counsel caution and careful observation of the true impacts of the pending transaction.

Accurate assessment of the possible consequences of the pending application on passenger rail operations is crucial in this regard. The DEIS, however, contains

significant flaws and so in some cases does not accurately portray those consequences. In other cases it recommends inappropriate mitigation measures. In our view, the actual conditions that may emerge militate in favor of an oversight condition through which the Board can retain the ability to respond to demonstrations of adverse impact.

The DEIS appears to make several dubious assumptions. The first concerns the capacity of affected rail lines, a factor that undermines the DEIS's assessment of the acquisition's real impact on passenger railroads. The DEIS seems to assume that freight trains are evenly distributed over a 24-hour day. See DEIS, Vol. 5A, Appendix C, at C-1 through C-23. To the extent such trains operate disproportionately in periods when passenger trains also operate, this will understate the transaction's impact on rail passenger service.

A primary example is on the line segment from Washington, D.C. to Richmond, Virginia. Passenger operations on this line are conducted by both Virginia Railway Express ("VRE") and Amtrak. Currently there is an average of 44 daily passenger trains on the segment between Washington and Alexandria, Virginia, 30 between Alexandria and Fredericksburg, and 18 between Fredericksburg and Richmond. DEIS, Vol. 1 Chap. 4, at 4-39. Post-transaction, CSX intends to raise the number of average daily freight trains between Washington and Alexandria from 17.9 to 28.6 and from Alexandria to points south from 16.3 to 23.4. Id.

The DEIS concluded that the increased freight traffic levels were well within the capacity of these segments. DEIS, Vol. 3B, Chap. 5, at VA-15. That may or may not actually be the case. Most of this line has two main tracks with centralized traffic control, and so theoretically can absorb projected traffic levels. However, there are a number of physical and operating factors that can reduce the segment's capacity in reality. These include the location and spacing of crossovers, the single-track Quantico Bridge, the restrictions of VRE boarding platforms to the east track at most stations, and the bunching of freight and passenger trains at certain times of day. [8]

[8]/ For example, there is a significant number of freight trains passing through Alexandria between 4:40 AM and 9:50 AM., a period that coincides with VRE's morning "rush hour" and also includes Amtrak trains. CSX/NS-177, Rebuttal Verified Statement of John W. Orrison, Figure JWO-18 at HC 607-610. During this time a similarly large number of passenger trains also pass through Alexandria. Id. Delays to any one train during such busy periods often result in collateral delays to other trains, particularly since the dispatcher's options are limited by physical factors. Planned capital improvements (such as crossovers in Woodbridge and Aquia, Virginia, and design work on a new Quantico Bridge)

There is also an implicit assumption in the use of a statistic like "average daily traffic," that all freight trains will have the same impact on passenger service. DEIS, Vol. 5A, Appendix C, at C-1 through C-23. However, intermodal trains, coal trains, and grain trains travel at different speeds with different priorities and can have different effects on a freight railroad's capacity and, possibly, inclination to accommodate passenger operations. [9] In certain instances, passenger train speeds also play a larger role. The Chicago - Detroit corridor is such an example. This is a highly competitive passenger market, in which Amtrak vies for business with airlines and the private automobile; consequently, there is little tolerance for delays. Maximum authorized passenger train speed is currently 79 miles per hour, but improvements will soon permit speeds of 100 miles per hour or higher on the Kalamazoo, Michigan to Porter, Indiana (97 mile) segment, thereby increasing the likelihood that freight trains will be overtaken here. [10] The DEIS concludes that the existence of passing sidings and Amtrak's control of dispatching on this line will prevent the projected addition of 10 more freight trains daily from causing a problem. DEIS, Vol. 1, Chap. 4, at 4-28, -29. The existence of sidings and the performance of dispatchers are likewise relied upon to avoid capacity problems on the (147 mile) segment between Kalamazoo and Detroit, although Amtrak does not own or dispatch that portion. DEIS, Vol. 3, Chap. 5, at MI-14. The spacing of sidings, however, can allow for poorly planned meetings of passenger and freight trains, with the prospect of rippling delays in a market particularly sensitive to them. The entry of a third freight railroad, the Canadian Pacific, is also in prospect. [11] Close cooperation among the affected carriers will be necessary to match theoretical capacity to operating realities.

do not wholly alleviate DOT's concerns, particularly if they are not completed prior to increased freight operations. The Department believes that CSX, Amtrak, and VRE should work together to develop operating plans and performance standards to avoid disruptions.

[9]/ A generic treatment of freight trains also ignores such realities as the necessity for "helper" locomotives on certain track segments in certain circumstances. This additional traffic would consume capacity and potentially affect passenger trains.

[10]/ The State of Michigan and FRA are assisting Amtrak to install Positive Train Control on this segment.

[11]/ NS is reportedly discussing haulage rights for Canadian Pacific trains on this segment. DEIS, Vol. 1, Chap. 4, at 4-28.

One of the Department's most basic concerns in this aspect of the proceeding stems from the fact that the DEIS does not properly consider the transaction's impacts on passenger train reliability due to increased freight traffic.

> SEA determined that impacts of freight operations on passenger rail service would be significant if the anticipated post-Acquisition increases in freight operations resulted in the need to reduce passenger service by one or more trains per day. However, the current operating agreements between the passenger service operators and the freight railroads preclude reduction in passenger service. Thus, any significant impact that would result from increased post-Acquisition freight operations could occur only after expiration of a current agreement.

DEIS, Vol. 1, at 3-16.

DOT finds this approach unacceptable for two reasons. First, it effectively defines away impacts -- an impact occurs only if one or more passenger trains must be canceled, but this cannot occur because operating agreements forbid it. This approach overlooks what could be the more significant impact of an substantial increase in freight traffic -- a decline in reliability of passenger service, a development that has potentially profound environmental consequences. Track capacity is a fluid concept. It is certainly possible to demonstrate that additional freight trains may be operated without interfering with commuter and inter-city passenger schedules. However, additional trains clearly create a greater potential for conflict with passenger trains. Freight trains do not always operate on firm schedules. Train numbers vary with the demand for service, and freight trains are subject to mechanical and other problems that interfere with the operation of passenger trains.

In addition to outright cancellations, erratic delays in passenger trains, particularly commuter operations, can have a serious impact on riders and can reduce ridership and thwart the goal of publicly supported passenger operations. The DEIS offers assurance that there is adequate capacity in all of the commuter rail corridors for the proposed additional freight operations. However, it should also discuss the potential effect on passenger train reliability. DOT notes that Amtrak and most of the commuter rail agencies may be close to agreement with the Applicants. We support this process, but urge the SEA to consider carefully the impact on passenger operation reliability of the proposed transaction, particularly in the absence of such agreements between the parties.

The second difficulty with the DEIS's treatment of this issue is that it is too narrowly confined to the period covered by existing agreements between Conrail and passenger rail agencies. Id. Regardless of whether such agreements terminate in as little as six months, their ordering of the current operational and financial relationships between freight and passenger railroads, in the view of the DEIS, again means that the purchase and division of Conrail has no effects cognizable by the SEA.

The Department considers this too restrictive a scope to measure the application's true potential effects. Quantitatively, these agreements will only govern the parties (and their successors) for a relatively short period. Most of the agreements will expire within either the usual three year term projected by rail merger applicants under the STB's rules, or the five year period set for oversight of the effects of the most recent rail merger. Finance Docket No. 32760, Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co. -- Control and Merger -- Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPCSC Corp., and the Denver & Rio Grande Western Railroad Co., Decision No. 44 (served August 12, 1996) ("UP/SP") at 146-47. Qualitatively, approval of the application will eliminate Conrail, a freight railroad with substantially more experience on the Northeast Corridor and in dealing with intercity and commuter rail operators than either CSX or NS. In Conrail's stead will be two freight railroads with much less exposure to the different problems presented by passenger rail agencies, whose operations tend to be concentrated in certain hours of the day, and for whom reliability and on-time performance are especially critical. Moreover, those two freight railroads have different histories and radically different track systems reaching different markets, and carrying different commodities, than Conrail. It is consequently at least plausible that NS and CSX will bring to the bargaining table very different goals and incentives in the near future, when existing contracts with passenger operators must be renegotiated.

The fact that the Applicants have entered into negotiations with such operators and have reached settlement agreements with several bodes well for future relations, and DOT commends these efforts. But this does not change the prospect, at least for the other operators, that their negotiations and relationships with CSX or NS may produce different results in the near future than would have been the case had Conrail continued in existence. The extent to which this proves so is a true measure of the impact of this transaction on these operators. Finally, of course, the continuing national interest in fostering passenger rail transportation extends beyond the terms of the current operating agreements.

DOT does not advocate that existing contract terms should remain forever unchanged, that passenger rail agencies should obtain whatever they please from NS and CSX, or any other particular outcome. On the basis of concerns broadly expressed by Amtrak and these commuter agencies, however, we strongly recommend that the STB retain jurisdiction for a five year period to monitor relevant developments regarding on-time performance and capacity, and to remain in a position to address passenger service issues that may arise.[12]

IV. Community Impacts

The DEIS also addresses the various potential consequences this transaction may have on affected communities, including noise, vibration, pollution, and vehicular traffic delays. As here relevant, the DEIS recommends that the communities most affected by projected rail traffic increases and reroutings should pursue negotiations with the Applicants in order to reach mutually satisfactory solutions. DEIS, Vol. 3B, at OH-140, -150; Vol. 3A, at IN-85. The specific communities are in Ohio (Cleveland, Lakewood, Rocky River, Bay

[12]/ The ICC refused to impose on-time conditions for the benefit of Amtrak in the railroad merger immediately preceding UP/SP, but that case presented very different facts from this one. Finance Docket No. 32549, Burlington Northern, Inc. & Burlington Northern R.R. - Control & Merger - Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Railway, Decision served August 23, 1995 ("BN/SF"), at 97. The bases for the Commission's decision there were (1) the adequacy of existing contractual and statutory remedies, and (2) the absence of merger-related harm arising from increased freight traffic. Id. The very much larger number and complexity of rail passenger operations (intercity and commuter) here and the clear transaction-related increases in freight trains on affected lines projected in the Applicants' operating plans provide a rational basis to expect that the pending transaction is more likely to have an impact. The total absence of statutory protection for commuter agencies, the relatively short duration of existing agreements, and the replacement of Conrail (the freight carrier with the most experience with passenger operations) with two different freight carriers (with possibly the least exposure) suggests that in the near future there may be more problems in renewing operating agreements than has been the case in the past. The national, state, and local interest in passenger rail services offers a reason to be concerned by this prospect. Finally, the condition DOT tenders does not require proactive intervention by the Board, but simply a period of observation to monitor developments and not foreclose all possibility of further relief.

Village, and Olmsted Falls) and Indiana (East Chicago, Hammond, Gary, and Whiting). Id. The Department supports the general SEA approach in these cases of urging the parties to negotiate settlement agreements. However, we are concerned that this approach, without more precise guidance, may lead to interminable delays in a situation where the adverse consequences of such delay are likely to be substantial. We therefore urge the SEA in the final EIS to recommend that the Board take direct steps to facilitate a more timely mitigation of outstanding issues.

In the most recent rail merger case, the STB encouraged Reno and Wichita to negotiate agreements with the UP to resolve environmental issues identified in those communities, rather than mandating specific mitigation measures at the outset. UP/SP at 278-80. This basic approach is generally preferable to a binding regulatory condition because it is far more flexible and allows the parties to negotiate agreements that best suit their situations. Such agreements could include mitigation that encompasses issues of specific interest to a party that are beyond those that directly concern the STB, or that otherwise address concerns beyond traditional criteria for imposing merger conditions. For example, under existing precedent the Board would not itself impose a condition that addresses existing (pre-merger) problems, although private agreements that encompass such matters have traditionally been incorporated into conditions of regulatory approval at the request of the parties.[13]

It now appears that such a process is finally working in Wichita, where the STB has suspended issuance of the Final Mitigation Plan at the request of the UP and the community while they make progress toward an agreement. Finance Docket No. 32760, Decision No. 76 (served December 12, 1997). However, in Reno the same cannot be said. The STB approved the UP/SP merger with the proviso that UP could only operate two additional trains a day through these communities until the earlier of the completion of the final mitigation plan (which was to take eighteen months) or a settlement agreement was reached. UP/SP at 279-80. Since agreement has not yet been reached, that limitation continues to this day.

[13]/ *See* BN/SF at 83, in which the ICC accepted provisions in voluntary settlement agreements among parties that extended "far beyond" any the Commission would have imposed.

The Department is concerned that, without incentives to spur negotiations, following this approach again may lead to inordinate delays in reaching agreements mitigating the more complex and extensive problems posed by the Conrail acquisition. Since, unlike the Reno and Wichita situations, the affected areas already should have been examined comprehensively by the time the Board votes on the pending transaction, there is no basis to allow much time to pass while the matter is considered.[14] Moreover, DOT submits that the facts of the instant transaction do not afford the luxury of extended negotiations.

As noted, the DEIS has again proposed that the affected communities and the railroads negotiate an agreement. If this can be accomplished in a timely manner, it is certainly the preferred approach. The Department strongly endorses a fair and equitable treatment of those areas that require mitigation, and believes that the affected parties themselves are in the best position, at least as an initial matter, to decide upon mutually acceptable mitigation measures.

It bears emphasis, however, that the situation in Cleveland and neighboring communities in northeastern Ohio, to take the most pressing example, is much more complicated than the situation faced in Reno or Wichita. Agreement must be reached between at least two railroads and several different communities. Some of the mitigation proposals solve one community's problem at the expense of another; some proposals solve one railroad's problem at the expense of the other. Noise impacts on residences, blockage of grade crossings, safety hazards at grade crossings, the avoidance of disproportionate effects on poor and minority residents, improved service to local industries, efficient transit of through trains, and cost, among other factors, must all be weighed and balanced fairly and sensitively. We understand, for instance, that the Mayor of Cleveland has identified potential impacts of the acquisition on the City, and has proposed mitigation measures. These mitigation measures, however, could have consequences for other communities. Reaching an agreement that meets the requirements of all of the interested parties in northeastern Ohio thus promises

[14]/ We discuss below, however, our conviction that the analytical approach followed in the DEIS has resulted in an incomplete identification of affected communities and areas. Adoption of the five year oversight period we propose should alleviate concerns on this score.

to be much more difficult than the problems faced after the UP/SP merger.[15]

The financial problems likely to face the Applicants in the event of a delay in their plans to stimulate and reroute traffic would seem to give them sufficient encouragement to reach timely agreements and to give the cities a certain leverage. However, without incentives to prompt the communities to avoid delay on their part, there is less prospect for reasonably prompt resolution. Moreover, since reaching an overall solution in an affected region like northeastern Ohio or northwestern Indiana requires cooperation from a number of stakeholders, it is by no means clear that comprehensive negotiated settlements can be reached in a timely fashion without assistance.

The Department proposes that the SEA facilitate this critical negotiation process by providing in the final EIS a clearer exposition of what needs to be mitigated and the measures the Board might order absent an agreement within a reasonable time. These measures should be carefully crafted to balance the environmental burdens placed on communities against the anticipated economic benefits to shippers so that, under the circumstances facing the communities and the Applicants, all parties have an incentive to negotiate on an accelerated basis.[16] This would also help to foreclose at the outset any unrealistic expectations held by the participants as to the scope and cost of the mitigation measures that might be imposed in the absence of settlement, and thus make good faith negotiations more likely to follow.

The DEIS also proposes that the Applicants upgrade warning devices at 118 highway-rail crossings throughout the Conrail territory where train traffic will increase as a result of the pending transaction. DEIS, Executive Summary at ES-18. In reaching this recommendation, the SEA appears to have examined the projected volume of rail and vehicular traffic at individual crossings and other

[15]/ Moreover, if the agreed-upon mitigation program includes any substantial construction (e.g. rail or highway overpasses, significant sound barriers, etc.) additional environmental assessments may be required. Even if they are not, planning and construction could take one or two years.

[16]/ For example, a stringent limit on new train routings or operations would be likely to leave communities satisfied and less interested in hard bargaining. On the other hand, permission for NS and CSX to implement their operating plans without meaningful restrictions would leave the Applicants content with the status quo.

crossing-specific factors but no other considerations. DEIS, Vol. 1, Chap. 3, at 3-10.

The Department certainly supports mitigation to remedy transaction-related safety risks, and although the DEIS approach is appropriate for determining the risk presented at a single crossing, we believe that highway-rail crossing safety in the context of a comprehensive reordering of rail systems would be better served by adoption of a "corridor-based" analysis. The crossing-by-crossing approach used in the DEIS isolates each crossing from its overall setting, and so in this case may present a distorted or otherwise unrealistic view of the impacts under study.[17] By contrast, a corridor analysis focuses on train and vehicular traffic within a larger environment in an effort to reflect the way in which rail operations actually affect public safety and the way people and commerce move on surrounding roadways in a cohesive community. All crossings within such a community are examined, regardless of traffic volume at an individual location. Similarly, mitigation measures appropriate to this broader perspective are considered. These include crossing consolidation and low-cost improvements (e.g., clearing underbrush, pavement markings, etc.) in addition to installation or upgrading of automatic warning devices, grade separations, or other mitigation measures.[18] A number of states, including Ohio, follow this approach in their administration of federal highway funds. Once a more accurate picture of the transaction's true effects is obtained, the Applicants should be required to mitigate those effects as a condition of approval. DOT offers its full assistance in identifying the transaction-related grade crossing problems.

In sum, the Department submits that the final EIS should include specific recommendations for interim measures and/or mitigation conditions that the

[17]/ The next section in these Comments underscores the cumulative consequence of such a narrowly-focused analysis: failure to identify whole communities at risk from the transaction.

[18]/ DOT has described this approach in a publication, Rail Highway Crossing Safety - Action Plan Support Proposal (June 13, 1994). A copy is attached hereto as Exhibit 2. FRA and the Federal Highway Administration have developed and distributed a checklist of items to be considered an analyzed when following this approach to community safety. Exhibit 3.

STB would impose absent an agreement for the identified communities. To hasten serious bargaining, DOT recommends that the issue of required mitigation be resolved as soon as possible, but in any event, no later than the Board's final decision on the application. Finally, we propose that examination and mitigation of transaction-related grade crossing problems use a corridor approach in order to identify and remedy such impacts in a more realistic fashion. The Applicants should be responsible for mitigation of those problems.

IV. Impacts Not Meeting SEA's Thresholds

The Department appreciates the need to establish thresholds, such as the increase in the number of trains or the average daily traffic ("ADT"), for identifying locations that warrant further analysis of possible environmental impacts. However, it should be understood that thresholds only prompt further consideration, and their satisfaction, vel non, does not by itself conclusively demonstrate the need (or lack thereof) for mitigation. As suggested above, a purely technical application of threshold criteria may result in a lack of attention to some communities that would otherwise suffer serious consequences without remediation. We urge the SEA and the Board to consider several real-world examples of such problems.

DOT suggests that Greenwich and New London, Ohio, qualify. Between them there is only one vehicular crossing with traffic sufficient to meet the 5,000 ADT threshold (Main Street in Greenwich), and both communities face significant increases in rail traffic if the transaction is consummated. CSX/NS-20, Vol. 3A at 435, 446; CSX/NS-54, Vol. 6B Errata - page 20. The DEIS does not consider these communities for any mitigation, but the analysis undertaken overlooks the fact that another rail line (of the Wheeling and Lake Erie Railroad, or "WLE") crosses the Conrail line in New London and the CSX line in Greenwich, and also parallels the line between the two towns. Id. Moreover, in Greenwich, a Conrail and a CSX line cross. Yet WLE traffic waiting to cross the rail lines in both cities already blocks crossings, and with increases in traffic after the acquisition, this will become more frequent. A separated grade crossing may be miles away and this group of crossings may be blocked for extensive periods of time -- as they will be in New London with adverse effects on public safety and community cohesion.

In Greenwich, a road with fairly light traffic (Kniffin Road) has three grade

crossings within two hundred yards.[19] These three crossings will have nearly one hundred trains a day after the acquisition. CSX/NS-20, Vol. 3A at 435, 446. By considering the effects of this increase on each crossing separately, none may appear particularly intolerable. But trains on the lines that cross the town may block several crossings at the same time. Therefore, even if no one crossing meets the 5,000 ADT threshold, the Board should aggregate the traffic of several streets in close proximity to each other, and in such circumstances mitigation should be considered.

It must be emphasized that in the case of these two communities, CSX and the local authorities appear to have reached an agreement, and DOT has no desire to disturb such arrangements. We offer these situations only as support for the necessity for the final EIS, and the Board, to apply regulatory criteria not rigidly, but with an eye to the practical reality that will exist following any approval.

Lakewood, Ohio, is another example. Considered individually, only one of its vehicular crossings has sufficiently high ADT to meet the traffic threshold; yet train traffic following the integration of Conrail will clearly cut the town in half by blocking virtually all of its 27 crossings. BRL-2 at 7; CSX/NS-23, Vol 6B at 18-91. A more reasonable standard in such circumstances, in the Department's view, would be to adopt a corridor approach to consider impacts at all grade crossings and propose solutions that address the broader problems of emergency access, trespassers on railroad property, and noise. These could include requiring closing of some crossings and grade separation at others, based on the delays at all crossings that otherwise would be blocked without access to a grade separation.

Fostoria, Ohio, is another community as to which no mitigation measures are proposed in the DEIS, but which nonetheless faces very real transaction-related problems. The State of Ohio has described the impacts on Fostoria from significant transaction-generated increases in train traffic. OAG-4 at 33-34, and Exhibit 10. This community already experiences high levels of freight rail operations (more than 80 per day), which take place in a "U-shaped" configuration. Id. The three different rail lines pass through Fostoria at grade. When trains are stopped, waiting fort trains on other lines before proceeding, they sometimes block all roadway access to two sections of the town. Id., Exhibit 11. The addition of more trains poses a realistic risk of blocking off in particular those portions of Fostoria located in the middle of the "U" from access by

[19]/ Fin. Dkt. No. 33388 (Sub-No. 3), Decision No. 28331 (served October 10, 1997).

emergency vehicles in the not uncommon event that freight trains have to stop at particular locations. Id., Exhibit 11, Verified Statement of Charles Dodge. Given that three busy rail lines cross at grade in the town, such stoppages are likely to occur more frequently in the future, with attendant risks for delayed emergency response times.

The inability to satisfy the ADT threshold and the lack of a national standard for emergency response times, however, are no bases to ignore the problem. To disregard the effects of closing all grade crossings leading to a neighborhood for a significant but undetermined length of time beyond that occurring under current circumstances is to accept a fundamental risk simply because there may be some difficulty in measuring it. The community and the railroad should be directed to negotiate over potential mitigation measures that address this and other issues, such as noise.

Berea, Ohio, is the Department's final example of a community on which there are likely to be substantial environmental impacts, but which has not been identified in the DEIS. A four lane highway in Berea (Front Street) crosses both of what the Applicants propose to make their main lines, and does so within very close proximity. This circumstance is not mentioned in the DEIS. Vehicles in Berea today face an average of 65.8 trains daily on these lines. CSX/NS-20, Col. 3A at 446-47; Vol. 3B at 462. The Applicants project an increase to about 75.7 trains per day. Id. Even this relatively small addition could exacerbate emergency response difficulties and the usual crossing risks. Moreover, if NS's proposal to relocate trains from the Cleveland-to-Vermilion route is adopted, total rail traffic on these lines in Berea would reach 100 trains per day. DEIS, Appendix S at 2.

The Department poses these examples not to impugn the validity of the DEIS overall, but in order to emphasize that the SEA and the Board must be flexible in their assessment of the impacts of this transaction. In cases where rail lines cross roads in close proximity to each other, or multiple rail lines cross the same roads, the impacts should be aggregated to obtain a realistic view of post-transaction consequences. Those communities already saturated with railroad traffic may face serious impacts from the addition of more trains per day, depending upon schedules and operating plans of the new carrier(s) serving the route. Impacts from trains that block vehicular crossings while waiting permission to proceed should be considered in communities where there will be a significant increase in trains that will cross at grade. Impacts on emergency vehicle access should receive special concern as a general matter because of the obvious risks involved.

DOT urges that the final EIS consider appropriate mitigation measures for

each of the communities named above that are similar to those recommended for the communities identified in the DEIS. That is, these communities and the Applicants should be encouraged by appropriate incentives to reach reasonably prompt resolution of the problems posed by this transaction. Because the discovery of the above communities raises a concern that there may be more such communities that have not been identified in the DEIS, we recommend that the SEA and the Board broaden their focus, consider a more flexible application of threshold criteria, and encourage communities with potential problems to communicate them to the STB. For this reason, therefore, the Department strongly recommends that a five year oversight period be established, during which the Board would remain receptive to demonstrations of transaction-related problems from previously unidentified communities.

V. Conclusion

The Department appreciates the Board's recognition that the consummation of this transaction could have a major impact on safety. The preparation of the SIPs ordered by the STB and their ongoing detailed cooperation with FRA reflect a genuine commitment by the Applicants to maintain safety. FRA will continue to work with the Applicants to assure the proper implementation of the SIPs, consistent with its regulatory authority over rail safety matters, should the Board approve the proposed transaction. However, other safety recommendations contained in the DEIS, specifically those concerning hazardous materials carriage and temporal separation between passenger and freight trains, would not improve safety and should not be adopted.

The introduction of NS and CSX to the high-volume intercity and commuter passenger operations of the northeastern United States may portend significant changes, notwithstanding the fact that operating agreements will order relationships for the very near future. For this reason, and because dubious assumptions prevent the DEIS from conveying a truly accurate picture of the consequences of the pending transaction for Amtrak and commuter rail operators, DOT strongly recommends that a five year oversight period be established to allow the Board to monitor performance and capacity developments in this important aspect of the case.

Traffic generated or rerouted by the pending transaction will also have major effects on various communities, some of which the DEIS did not identify. The Department recommends that the Board impose conditions that promote reasonably prompt, effective, and flexible settlement agreements between the Applicants and the affected communities. We also encourage a more realistic application of the criteria by which communities facing such problems are identified. For this reason as well, DOT strongly supports a five year oversight period, during which the Board should remain receptive to demonstrations that transaction-related problems affect still more communities.

Respectfully submitted,

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Federal Railroad Administration (FRA)
Office of Safety

SAFETY IMPLEMENTATION PLAN GUIDELINES

November 7, 1997
Washington, D.C

SAFETY IMPLEMENTATION PLAN GUIDELINES

Introduction

The Federal Railroad Administration (FRA) has determined from the mergers of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company that integrating operations of two Class I railroads into one railroad presents significant challenges to rail safety. Investigations of recent collisions, derailments, and other serious incidents reveal a correlation between inadequately planned operational integration of independent railroad entities and compromises of rail safety. Railroads merging with or acquiring other railroads must prepare thorough and complete, formal, written safety integration plans to ensure safe operations.

For these reasons, FRA submits the following guidelines that CSX Transportation, Incorporated (CSXT), and Norfolk Southern Corporation (NS) should address in their respective safety integration plans (SIP). The SIPs should focus on the formulation, development, issuance, and implementation of measures that address specific operational elements, as detailed below, necessary to ensure compliance with the Federal railroad safety laws and otherwise provide safe railroad operations. As one example of how a SIP should extend beyond the reach of present Federal railroad safety regulations, an acquiring carrier should assure that personnel in safety-critical positions are not so burdened with tasks unrelated to safety that they cannot adequately perform their safety-critical functions. Principally, CSXT's and NS's SIPs must: show how their practices differ from Conrail's; identify as the end state to be achieved once their respective acquisitions are consummated practices that will minimize or eliminate incidents and injuries, and promote a culture emphasizing rail safety; and demonstrate step-by-step how they will effect the transition from current circumstances to their desired end states while maintaining safety. FRA underscores the need for the acquiring railroads to define the steps or procedures proposed to integrate Consolidated Rail Corporation's (Conrail) operational plans with their own during the transition process (i.e., until the acquisition is complete). FRA concludes that a SIP addressing the subject areas below will strengthen CSXT's and NS's integral operational interests and ensure safe rail transportation.

Safety Integration Plan

1. **Content of Plan**: Provide the following information for each subject matter listed in number 2:
   a. Itemized list or index of measures addressing (i) how Conrail differs from the acquiring railroad and best practices identified from either; (ii) description of how the railroad will operate once the acquisition is completed; (iii) step-by-step description of how elements of acquired property, including Conrail Shared Assets Operating Areas, will be integrated with operations of acquiring railroad; and (iv) efforts to comply with Federal regulations.

   b. Allocation of resources (e.g., work effort expressed as person-days per year, capital, facilities, and technology) directed to that subject.
   c. Schedule for implementing plans addressing that subject.

2. **Subject Matters To Be Addressed In Plan**
   a. Corporate Safety Culture
      i. Management attitudes, directives, priorities, practices, and philosophies, within each operating administration or division, that is directed to employee training, staffing, health, morale and safety practices
      ii. How organizational priorities will be balanced between (1) enhancing productivity (e.g., employment reduction and elimination of resource duplication) to achieve economic efficiency and (2) minimizing safety risks with no compromise of safety (e.g., narrowed communication forums between labor and management, excess hours, and loss of institutional knowledge)
   b. Training
      i. Train and engine service personnel
      ii. Roadway worker and bridge worker personnel
      iii. Motive Power and Equipment personnel
      iv. Dispatching and operating personnel
      v. Signal and Train Control personnel
      vi. Hazardous materials personnel
   c. Operating Practices
      i. Operating rules, practices, and instruction
         (1) Training and qualifying train crews
         (2) Rulebook(s) to govern
         (3) Standardizing operational testing programs
      ii. Accidents/Incidents
         (1) Reporting procedures for accidents/incidents
         (2) Procedures available to employees perceiving intimidation and harassment under Railroad Accidents/Incidents regulations
      iii. Alcohol and Drug
         (1) Integration of Conrail program with acquiring railroads' programs
         (2) Implementation of Post Accident Toxicological Testing and Random Drug and Alcohol Testing programs on acquired territories
      iv. Locomotive Engineer Qualification and Certification
         (1) Qualifying and certifying engineers on acquired territories
      v. Hours of Services laws
         (1) Implementing measures for electronic recordkeeping
         (2) Centralizing crew management functions
      vi. Yard/terminal operations
         (1) Training and instructing employees to ensure familiarity with rules

         governing yard/terminal operations
   d. Motive Power and Equipment
      i. Qualifying employees on inspections and tests of rolling equipment
      ii. Implementing mechanical department maintenance and equipment service plans
      iii. Implementing measures to ensure safe freight operations and compliance with the law when "blocking" and "block swapping" trains
      iv. Ensuring a sufficient fleet service and inventory to carry out field operations
   e. Signal and Train Control
      i. Operating budgets addressing
         (1) Training
         (2) Maintenance
         (3) Capital improvements
         (4) Research and development projects and programs
      ii. Ensuring safety maintenance with integration of, or migration to, properties acquired, specifically Automatic Cab Signal/Automatic Train Control systems and wayside and cab signal aspects and indications
   f. Track and Structures
      i. Maintenance, management and rehabilitation of track and bridges
      ii. Inspection program for track and bridges
      iii. Sufficient employee (including supervisors) coverage for track and bridge safety
   g. Hazardous Materials
      i. Programs addressing field operations and internal safety audits
      ii. Need for comprehensive inspection program addressing:
         (1) Field inspections
         (2) Hazardous materials communication standards (e.g., shipping paper, marking, labeling, and placarding requirements)
         (3) Employment staffing to implement program
         (4) Emergency response practices and procedures
      iii. Computer software systems to ensure immediate availability of hazardous materials shipping paper information
      iv. Customer service centers
         (1) Sufficient employment staff levels
         (2) Timely generation and transmission of hazmat information on trains and shipments to customers and Federal officials
   h. Dispatching Operations
      i. Measures to eliminate or minimize excess service performed and reduce maximum dispatching workloads, including criteria used for determining maximum safe workloads
      ii. Integrating acquired dispatching system with acquiring railroads' systems

i. Highway-rail Grade Crossings
Safety prevention and emergency response program addressing:
(1) Increase traffic volume, speeds, and track at crossings
(2) Improved warning devices
(3) Rail safety education of public
(4) Improved crossings with emphasis on closing existing crossings

j. Allocation and deployment of personnel in following sectors:
i. Management of safety programs
ii. Roadway maintenance
iii. Motive Power and Equipment maintenance
iv. Dispatching operations
v. Train and Engine service
vi. Yard and terminal service
vii. Signal and Train Control maintenance
viii. Customer service centers

k. Employee "Quality of Life" issues
i. Rest
ii. Travel/time away from home
iii. Perceptions of harassment or intimidation
iv. Health and wellness programs
v. Morale
vi. Availability and distribution of personal safety equipment (e.g., safety shoes, eye protection, and ear plugs)

l. Relationship between freight and passenger service. Each plan to address the integration of freight and passenger operations on the following lines:

i. MARC
ii SEPTA
iii VRE
iv METRA
v NJTR
vi MNCW
vii MBTA
viii Amtrak

m. Information Systems Compatibility. Each plan to address information systems to be implemented that will provide for the uninhibited interchange of information between the acquiring railroads in the following areas:
i. Train consists
ii. Train performance
iii Waybill/car movements
iv Dispatching
v Hazmat

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vi Crew management
vii Accidents/incident reporting and record keeping
viii Equipment management (locomotives and freight cars)
ix Emergency shutdowns

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U.S. Department of Transportation
Federal Railroad Administration

Rail-Highway Crossing Safety
Action Plan Summary

Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration
National Highway Traffic Safety Administration

June 13, 1994

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INTRODUCTION

Each day, we are reminded of the importance of our efforts to improve highway-rail grade crossing safety and trespass prevention. Highway-rail collisions and trespassing on rail properties are the number one and two leading causes of death in the entire railroad industry, far surpassing employee or passenger fatalities.

In 1993, grade-crossing deaths rose by 8.1% over 1992 and trespassing deaths remained high. Specifically, nearly 4,900 collisions occurred between highway users and on-track railroad equipment. More than 600 individuals were killed and over 1,800 were seriously injured in these collisions. These crashes occurred nearly equally at crossings equipped with automatic warning devices (flashing lights and sometimes gates) and at those not equipped. Also in 1993, more than 500 people died while trespassing on railroad rights-of-way.

On the United States' approximately 160,000 miles of rail rights-of-way, there are over 280,000 highway-rail intersections. Approximately 60,000 (21%) of these are equipped with automatic warning devices.

The very existence of crossings is a major challenge to growing rail traffic and higher speeds for both passenger and freight rail operations. Our efforts to develop a "seamless" national intermodal transportation network must resolve these challenges.

This *Action Plan* details six major goals and 55 actions, addressing some aspect of crossing safety or trespass prevention. To be successful, the proposed actions will require strong partnerships between local, State and Federal highway and rail officials, law enforcement, the rail and transit industries, Operation Lifesaver and the United States Congress. With this plan as our blueprint, we will work together to increase public awareness to help prevent these needless tragedies.

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MAJOR INITIATIVES

- Enhance Enforcement of Traffic Laws at Crossings.
- Enhance Rail Corridor Crossing Reviews and Improvements.
- Expand Public Education and Operation Lifesaver Activities.
- Increase Safety at Private Crossings.
- Improve Data and Research Efforts.
- Prevent Rail Trespass Tragedies.

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ENHANCE ENFORCEMENT OF TRAFFIC LAWS AT CROSSINGS

By improving the understanding and observation of existing traffic laws, collisions at highway-rail crossings will be reduced. Law enforcement initiatives and innovations reduce traffic law violations and therefore reduce collisions.

Objective: To establish an expanded and pro-active outreach program to our Nation's traffic law enforcement community ranging from patrol officers to judges.

Objective: To reduce the number of traffic law and warning device violations at highway-rail crossings by increasing enforcement and judicial support.

To meet these objectives we will:

1. Encourage State officials to use Section 402 funds (Highway Safety Program) to support education programs for the law enforcement and judicial communities.
2. Develop police officer and judicial outreach program materials for Federal, State and local advocates.
3. Develop an information package to assist States in revising their rules of evidence to allow for the use of photographic and video evidence for traffic citations and enforcement.
4. Consider a rulemaking to define violations of automatic warning devices at highway-rail crossings (e.g., going around lowered gates) as a serious offense, for holders of Commercial Driver's Licenses (CDL).
5. Update and republish the 1983 compilation of state laws and regulations regarding highway-rail crossings.

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ENHANCE RAIL CORRIDOR CROSSING REVIEWS AND IMPROVEMENTS

Traditionally, highway-rail crossings are selected for safety improvements one at a time based on the crossing's accident experience and highway and rail traffic counts. This fosters a bias toward urban areas and main roads where traffic densities are high, and excludes most low density crossings and those already equipped with automatic devices. In many cases, these crossings are not reviewed but would benefit from low cost improvements or could be eliminated.

Objective: To promote comprehensive and systematic corridor reviews of highway-rail crossings, especially those over our nation's Principal Railroad Lines (PRLs).

Objective: To eliminate little used and redundant crossings within corridors where alternatives exist, especially those on the National Highway System (NHS).

Objective: To upgrade signs and signals at all crossings, taking full advantage of available state-of-the-art technologies.

To meet these objectives we will:

1. Nominate PRL corridors for review and organize and promote State, local, MPO and industry safety corridor review programs.
2. Propose the elimination of crossings where NHS roads cross PRLs and upgrading or elimination of all other NHS crossings, as part of the Safety Management System.
3. Promote the upgrading of existing signal circuitry and signage. In addition, States should consider the installation of STOP signs where warranted.
4. Review the allocation of responsibilities for the selection and installation of warning devices and the potential for uniform nationwide standards.
5. Make legislative proposals to provide Federal funds for bonuses, matched by the railroad(s), to local highway authorities for closing crossings.
6. Convene railroads, State DOTs and MPOs in regional meetings to facilitate integrated intermodal planning.
7. Update and republish the 1986 Handbook on highway-rail crossings, including a checklist of items to be considered in a corridor safety analysis.
8. Make a legislative proposal for incentive funding to promote the accomplishment of corridor safety programs.
9. Study the potential for a more equitable allocation of Section 130 funds to individual States, reflecting crossing needs and accident rates.

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EXPAND PUBLIC EDUCATION AND OPERATION LIFESAVER ACTIVITIES

Over $2.8 billion in Federal-aid funds have been invested by States for safety improvements at highway-rail crossings since 1973. Over half of these funds were for automated warning devices. However, half of all collisions occur at crossings equipped with these devices. To realize full benefit from the public investment in these devices, motorists must be educated in their responsibilities at all types of crossings.

Operation Lifesaver (OL) is an active, continuous public information and education program to help prevent and reduce crashes, injuries and fatalities and improve driver performance at our Nation's 250,000 public and private highway-rail crossings.

Objective: To increase public awareness of
1) hazards at crossings and,
2) motorist responsibilities at crossings.

To meet this objective we will:

1. Work with OL to plan, coordinate, initiate and sustain a nationwide mass-media and youth education campaign.
2. Develop new and updated driver-training materials related to crossing safety. Distribute materials to state officials.
3. Promote outreach to our Nation's truck and bus industry stressing the hazards of highway-rail crossings.
4. Discuss crossing safety with truck and bus operators during on-site compliance reviews by State and Federal inspectors.
5. Increase Federal funding to OL, Inc. on the condition that the increase be matched from non-public sources.

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INCREASE SAFETY AT PRIVATE CROSSINGS

Private crossings are categorized as either farm, residential, recreational or industrial. Nearly two-thirds are farm crossings. However, most accidents occur at industrial crossings.

In the U.S., there are 110,000 private highway-rail crossings. More than 400 accidents and 40 deaths occur at these crossings each year. In most years, the number of deaths which occur at private crossings exceeds the number of on-duty deaths among railroad employees in all rail operations.

Objective: To develop and provide national, minimum safety standards for private crossings.

Objective: To eliminate the impediment to high speed rail operations posed by private crossings.

To meet these objectives we will:

1. Develop operational definitions and monitor accident rates for each private crossing category.
2. Conduct an informal safety inquiry to consider the definition of responsibilities, minimum safety requirements and warning device standards for each category.
3. Promote research to determine the feasibility of using railroad-dispatcher controlled cipher locks to secure highway barriers at private crossings.

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IMPROVE DATA AND RESEARCH EFFORTS

Access to valid data is key to good decision making. Additionally, for progress to occur, research and innovation are necessary. However, for highway-rail crossing issues, institutional concerns regarding costs (research and potential implementation), liability and current convention often impede progress. With the Department's involvement and leadership these obstacles can be overcome.

Objective: To enhance the effectiveness of our resources through research and data analysis.

Objective: To promote research and champion plausible innovation.

Objective: To insure that timely and accurate information needed by decision makers is available.

To meet these objectives we will:

1. Host Research Roundtables/Workshops with highway safety, law enforcement, rail and transit industry officials, governors' highway safety representatives, academia, consultants and defense industry representatives to examine research needs.
2. Develop demographic information regarding accident fatalities.
3. Investigate causes of increasing accident severity and the potential for severity mitigation measures.
4. Examine the potential of providing additional information to the motorist through innovative signs, signals, lights and markings.
5. Review available automated presence and intrusion detection hardware and the potential effectiveness of existing and proposed technology for conveying emergency messages.
6. Develop a hardware/software package for automatically receiving and forwarding reports of malfunctions and emergency situations at highway-rail crossings.
7. Expand transit safety data to include specific data on shared rights-of-way accidents involving light rail vehicles.
8. Review and confirm DOT's currently available highway-rail crossing resource allocation procedures and accident prediction formulas.
9. Promote more systematic updating of the U.S. DOT/AAR National Highway-Rail Crossing Inventory.

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PREVENT RAIL TRESPASS TRAGEDIES

Trespassing, with over a thousand deaths and injuries each year, presents the rail industry with a serious dilemma. Trespassers are not a single, cohesive group. Their one common attribute is the illegality of their act (trespassing). Because of this diversity, it is not likely that trespassers will respond to a single national initiative. Regional programs have more promise. The Department of Transportation will target this problem. Our goal is to prevent trespassing, not to make the railroad right-of-way safe for trespassers.

Objective: To raise public and police awareness of the unlawfulness of, and dangers inherent in, trespassing on railroad right-of-way.

Objective: To develop and make available sufficiently detailed information to prepare and focus trespass prevention campaigns.

To meet these objectives we will:

1. Conduct a demographic survey of past casualties to determine the types of individuals and activities involved.
2. Refine future railroad "Injury and Illness" reporting requirements to provide more detailed and useful information regarding trespasser casualties.
3. Conduct a second Workshop on Trespass Prevention in cooperation with Operation Lifesaver, railroad police and the industry.
4. Plan and promote regional anti-trespass campaigns in cooperation with Operation Lifesaver, railroad police and the industry.
5. Develop model code for possible adoption by State legislatures dealing with trespassers and vandals in cooperation with the rail industry.

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Memorandum

U.S. Department of Transportation

Federal Highway Administration | Federal Railroad Administration

Subject: INFORMATION: Highway-Rail Crossing Safety, Corridor Analysis Guide

Date: May 17, 1995

From: Associate Administrator for Safety and System Applications, FHWA
Associate Administrator for Safety, FRA

Reply to Attn of: HHS-20
RRS-23

To: FHWA Regional Administrators
FHWA Division Administrators
FRA Regional Directors

Low cost grade crossing safety improvements can best be identified when all crossings along a railroad corridor or in a given geographic area (urban area, county, highway district, etc.) are analyzed at the same time. This method of reviewing crossings is especially important for developing crossing consolidation programs.

A number of our respective field offices have requested guidance for conducting corridor reviews. In response to these requests, the FHWA and FRA jointly developed the attached "Corridor Analysis Guide" and a list of references for use in analyzing grade crossings for improvement. While the Guide includes an extensive list of items that should be investigated/considered when making reviews, State and local officials and the railroads may find it desirable to consider additional topics unique to a specific corridor or area.

We encourage you to share the Guide with State and local highway agencies, those agencies responsible for statewide and metropolitan planning processes, railroad regulatory agencies in the states, and the railroads. As more experience is gained with corridor reviews, it is likely that the Guide will need to be expanded or modified. Your feedback toward this end will be appreciated.

Bruce H. Fine

Dennis C. Judycki

Attachments

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CORRIDOR ANALYSIS GUIDE

PROCEDURE

I. Corridor Selection
II. Organize Diagnostic Team
III. Pre-site Visit Data Gathering and Review
IV. On-site Crossing Assessment
V. Update Inventory as Necessary
VI. Post-site Visit Review and Recommendations for Interim (if applicable) and Permanent Improvements

RESOURCES

1. Accident History
   - Number by severity
     - Involving train
     - Not involving train; train a contributing factor
     - Not involving train; train not a contributing factor
2. Crossing Inventory Data
3. Accident Prediction/Hazard Index Data
4. Maps
   - State/local
   - Railroad
5. Photographs
   - Ground
   - Aerial
6. State/local jurisdiction short- and long-range plans for crossing/highway improvements
7. Railroad short- and long-range plans for crossing improvements or abandonment/lease/sale
8. Traffic studies/projections (highway and railroad)
9. Multidisciplinary diagnostic team reviews
10. Funding source information

DATA COLLECTION AND ANALYSIS

Crossing Location/Description

A. U.S.DOT/AAR number

B. Highway/street name or number

C. Railroad(s) name and milepost(s)

D. Urban/rural

E. Development
   - Open space
   - Residential
   - Commercial
   - Industrial
   - Institutional

F. Crossing angle

Crossing Users

Highway

A. AADT (current and projected)
   - Motor vehicle mix--cars, trucks, hazardous materials carriers, buses (school/for hire), emergency vehicles
   - Pedestrians (ADA requirements)
   - Bicycles
   - Other (farm machinery, oversize loads, etc.)
   - Seasonal variations

B. Traffic generators in area (current and projected)
   - CBD, schools, shopping malls, industries, sports facilities, cultural facilities, etc.

Railroad

A. Number of daily train movements (current and projected)
   - Day, night
   - Thru, switching
   - Freight, passenger, light rail, high-speed rail
   - Seasonal variations

B. Traffic generators in area (current and projected)
   - Industries, rail yards, other

Roadway Approaching Crossing

A. Functional Class

B. Federal-aid Route
   - National Highway System
   - Other Federal-aid highway
   - None

C. Roadway characteristics
   - Number and width of lanes (through, turning, truck)
   - Posted speed/projected changes
   - Shoulder (width, material, condition)
   - Roadway surface (material and condition)
   - Approach grades
   - Low-clearance (humped) crossing
   - Illumination

D. Traffic Control Devices (Type and Condition)
   - Pavement markings
   - Passive signs
   - Active advance warning signs
   - Active devices at crossing
   - Railroad/highway signal interconnect/preemption
   - Compliance with MUTCD (all devices)
   - Day/night visibility

E. Sight Distance
   - Approach to crossing
   - To/along tracks for vehicles approaching crossing
   - Along tracks from vehicles stopped at crossing
   - Weather-related factors
   - Seasonal factors

Railroad Approaching Crossing

A. Principal Rail Line?

B. Number of tracks and type (thru, siding)

C. Train speed
   - Maximum timetable
   - Typical range
   - Projected changes

D. Track circuit
   - Approaches
   - Island
   - Length
   - Speed setting
   - Type
     - Motion detection
     - Speed prediction

Crossing Surface

- Material
- Condition
- Length and width

Crossing Closure/Consolidation Candidates

A. Distance/additional travel time to alternate crossing
B. Alternate crossing at grade or grade separated
C. Alternate crossing capacity, warning devices, etc.
D. Impact on property owners in vicinity of crossing
E. Means of access to alternate crossing
F. Utility relocations
G. Environmental impact (wetlands, waterways, train horns, etc.)
H. Emergency access needs

CORRIDOR ANALYSIS GUIDE
****

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REFERENCES AND RESOURCE DOCUMENTS

1. *Factors Influencing Safety at Highway-Rail Grade Crossings*, NCHRP Report 50, National Research Council, 1968. (T)

2. *Railroad Crossing Corridor Improvements: A Model Program Based on Field Reviews in Six States*, Report FHWA-DP-70-1, Federal Highway Administration, June 1986. (H)

3. *Railroad-Highway Grade Crossing Handbook - Second Edition*, Report FHWA-TS-86-215, Federal Highway Administration, September 1986. (H)

4. *Manual on Uniform Traffic Control Devices for Streets and Highways*, Federal Highway Administration, 1988 Edition. (G)

5. *Highway-Railroad Grade Crossings - A Guide to Crossing Consolidation and Closure*, Federal Railroad Administration/ Federal Highway Administration, July 1994. (R1)

6. *Highway-Rail Crossing Elimination and Consolidation: A Public Safety Initiative*, AASHTO Committee Report from the National Conference of State Railway Officials, March 1995. (A)

7. *Highway-Rail Crossing Accident/Incident and Inventory Bulletin (Annual)*, Federal Railroad Administration, Office of Safety. (R2)

To obtain publications:

(T) - Transportation Research Board
National Research Council
2101 Constitution Avenue NW
Washington, DC 20418
Telephone: (202) 334-3214

(H) - Federal Highway Administration
Federal-Aid Program Branch (HNG-12)
Washington, DC 20590
Telephone: (202) 366-0450

(G) - Government Printing Office (GPO)
Superintendent of Documents
Washington, DC 20402
Telephone: (202) 783-3238

(A) - American Association of State Highway and Transportation Officials
444 N. Capitol Street NW, Suite 249
Washington, DC 20001
Telephone: (202) 624-5086

(R1) - Federal Railroad Administration
Industry Operations and Safety Analysis Division (RRP-12)
Washington, DC 20590
Telephone: (202) 366-0400

(R2) - Federal Railroad Administration
Office of Safety (RRS-22)
Washington, DC 20590
Telephone: (202) 366-2760

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 2 1998

ENVIRONMENTAL DOCUMENT

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

CENTRAL ADMINISTRATIVE UNIT
REC'D: 2/4/98
DOCUMENT #: 2/4/98 11:49:40 AM

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear Ms. Kaiser

In accordance with the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is providing comments to you on the "Draft Environmental Impact Statement (EIS) for the "Proposed Conrail Acquisition." Our comments are meant to build upon our previous scoping comments and technical assistance offered to you in 1997.

As outlined in this letter and technical enclosure, EPA has many specific concerns with the proposed acquisition; however, we think the impacts from the proposal can be successfully avoided, offset or mitigated. Therefore, EPA has rated the potential impacts from the acquisition as described in the draft EIS "EC" (environmental concerns). EPA rates the documentation of the draft EIS "2" (insufficient information) because, while EPA recognizes the difficulty in trying to analyze and document an undertaking which affects 24 states and the District of Columbia, we also think the draft EIS could have described more fully the potential impacts to and risk from air quality, noise, increased hazardous material transport, and the direct and cumulative impacts to water quality from increased rail operations and activity in rail yards and intermodal facilities. Our major issues are summarized below and our detailed technical comments are attached. The combined rating for the draft EIS is EC-2, a copy of our rating system is also enclosed.

EPA is concerned about the potential impacts to air quality that the proposed acquisition may impose. In our August 1997 scoping letter we indicated that the Surface Transportation Board (STB) needed to address the applicability of the General Conformity regulations of the CAA (40CFR 93.150-160). We further recommended that this information be included in the draft EIS. The draft EIS does not address our recommendation. If the STB has the ability to

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condition its approval of the proposed acquisition and division which limit the operation of the railroads, then the STB would have a continuing program responsibility for the approval and the resulting emissions. It appears that in some nonattainment and/or maintenance areas there will be a net increase in emissions above the deminimis levels, thus, a conformity determination may be necessary. EPA expects the STB to address our comments regarding General Conformity and recommends that this discussion be included in the final EIS. Please see our enclosed technical comments for our detailed concerns.

EPA also is concerned with the lack of justification for a number of critical assumptions used in the noise analysis. The noise mitigation results are directly related to the validity of these assumptions. The final EIS should offer a more substantive description of the STB's assumptions and their results or correct them.

Finally, although many minority or low income communities were identified by the STB, it appears that the STB has thus far made little effort to mitigate potential impacts. EPA believes that additional coordination may be appropriate in the communities identified and that mitigation should be discussed in the final EIS. Because the STB does not have extensive regional or field staff, the STB staff may want to contact the Environmental Justice Coordinators located in other federal regional or field offices to see if they can provide information on these potentially affected communities. Additionally, the Council on Environmental Quality issued its "Environmental Justice Guidance Under the National Environmental Policy Act" in December 1997. This guidance should be referred to during the preparation of the final EIS.

Thank you for the opportunity to review this document. If you have any questions regarding our review, the staff contact is Patricia Hanson. She can be reached at 202-564-7152.

Sincerely,

Richard E. Sanderson
Director
Office of Federal Activities

Enclosures

Technical Comments

Air Quality

Lake and Porter Counties in Indiana have been granted a nitrogen oxides (NO_x) waiver, however, Vanderburg, Marion, St. Joseph and Elkhart Counties all have maintenance plans and a NO_x budget. The NO_x emissions in these counties from the project (if above 100 tons per year) should be compared with the projected NO_x emissions in the maintenance plan to determine if the projected growth can be accommodated. If the NO_x emissions are found to be greater than the growth allowed by the maintenance plan, then mitigation measures could be implemented so the project can be found to conform.

Six Michigan counties were evaluated for potential impacts from the proposed Conrail Acquisition: Calhoun, Jackson, Kalamazoo, Monroe, Wayne, and Washtenaw. Monroe, Wayne, and Washtenaw are part of the Detroit-Ann Arbor, Michigan, metropolitan area which is an ozone maintenance area, and Wayne County is part of a nonclassifiable nonattainment area for carbon monoxide (CO). The Detroit-Ann Arbor, Michigan, area was redesignated to maintenance in 1995, but the areas subsequently violated the ozone standard in the same year. This violation prompted U.S. EPA to remove a NO_x waiver which was granted as part of the redesignation request. Please address this change in status in the final EIS.

EPA is also concerned that passenger or commuter trains which currently utilize freight train tracks affected by this acquisition may not be able to continue to provide valuable transportation services to the public. Specifically, because much of the area affected by this acquisition is in the Northeast corridor and is in non-attainment or maintenance status for ground level ozone, EPA is concerned that if these trains are unable to offer their services or must reduce service, their passengers may resort to additional single occupancy vehicle trips, potentially impeding an area's ability to attain the National Ambient Air Quality Standard for ozone. EPA thinks this potential resultant impact to air quality needs to be addressed in the final EIS.

The draft EIS assumes that relocation of intermodal facilities and increased truck activities at these facilities will have little impact on local roadway systems. However, the current conditions or Level of Service of these local roadways were not identified or the effects of the additional truck traffic evaluated. In the review of transportation projects, the effect of truck traffic and the percentage of truck traffic on local roadways contributes to operational and safety problems. The draft EIS also does not discuss the interaction of the proposed rail modifications with proposed transportation projects in the potentially affected states. There are a number of major highway projects that being undertaken near rail lines involved with this project. For example, the Erie East Side Access in downtown Erie, Pennsylvania (PA), will cross the relocated Norfolk Southern tracks in Erie; SR 322 in Dauphin County, PA, could be affected by changes in operation of the adjacent rail lines. Corridor H in West Virginia also could be affected. Coordination with the State Departments of Transportation should be undertaken for all activities within each state.

Hazardous Materials

The impact of the proposal on hazardous materials transport is not discussed fully in the draft EIS. It is unclear why the draft EIS only recommends mitigation for hazardous materials transport for rail segments which, post-acquisition, exceed 10,000 car loads of hazardous materials per year. The transportation of hazardous materials is increasing substantially on some rail routes (e.g., N-477 by 133%) albeit still to a level lower than 10,000 car loads. The risk calculations used in the draft EIS do not imply or support a significant increase of risk of release at the 10,000 car load level nor does the draft EIS provide enough discussion to explain what those risks may mean to a community.

We also are concerned about the adequacy of the proposed mitigation for hazardous materials transport to effectively address an anticipated increase in release of hazardous materials. The proposed mitigation which would be required for an increase in hazardous materials transport appears limited to complying with Association of American Railroads "Key Route" guidelines (AAR Circular No. OT-55-B). These guidelines appear only to address specific measures designed to decrease the probability of train accidents or car failures as the cause of accidental releases of hazardous materials and not what happens should an accident occur. The Key Routes or Major Key Routes do not appear to take into account the population or proximity of communities adjacent to these routes. We also note that the analysis of incidents involving hazardous materials contained in Chapter 4 of the draft EIS shows that vehicle-train accident/derailment accounts for less than 5% of the causes of these incidents. We suggest that an appropriate mitigation plan would include provisions to address all causes of incidents involving release of hazardous materials. Although the STB's Section of Environmental Analysis (SEA), "...believes that CSX and NS should establish a formal Failure Mode and Effects Analysis (FMEA) for reducing risk of spills both for storage and transport of hazardous materials... [page 4-21 of the draft EIS]," EPA could find no specific requirements that this be addressed with specific mitigation measures, or that if conducted, the results would be implemented.

Noise

In general EPA finds the noise analysis confusing and the methodological assumptions used not well documented. Specifically, we are concerned with the lack of justification for the mitigation criterion for wayside noise: "SEA considered noise impact of wheel/rail and locomotive engine noise (wayside noise) to warrant potential mitigation if any sensitive receptors are exposed to noise levels above 70 dBA-Ldn and have a 5 dB Ldn increase." Work done with airport- related noise [see Federal Agency Review of Selected Airport Noise Analysis Issues (Federal Interagency Committee on Noise), August 1992] indicates that threshold criteria for changes in noise levels should <u>decrease</u> with increasing absolute values. The SEA screening criterion goes the opposite direction, from 3 dBA change at 65 dBA to 5 dBA change at 70 dBA. The reason that this is a problem is that at the higher absolute levels, a greater percentage of people are "highly annoyed" for each dBA increase. Our concern is that this SEA mitigation threshold greatly underestimates the need for mitigation.

A number of other assumptions in the analysis which should be justified in the final EIS are:

- Why construction noise impacts were not analyzed nor discussed in the mitigation sections.
- The validity of the (implicit) assumption that post-acquisition traffic has the same day/night ratio as the pre-acquisition traffic.
- Why background noise was not included in the analysis and how its omission effects the noise mitigation outcome.
- Why the option of remote horn installations at crossings was not explored as a mitigation option.
- The need for mitigation for engine noise at switching or other engine "accelerating" areas.
- The feasibility of slower train speed through noise critical areas as a mitigation.

Finally, as a matter of clarification, while the draft EIS statement that "...noise effects in areas where the Ldn is less than 65 dBA are generally not considered adverse..." is true, the FICON group specifically concluded "...that it is prudent to provide for systematically analyzing noise levels below 65 dB in NEPA documents using the Screening Procedures indicated below. If done properly, this added level of analysis could provide useful information to both the public and decision-maker." (See Section 3.4, FICON.)

Water Quality

Most of the rail segments show an increase in the number of train operations. Also, there is an increase in activity at rail yards and intermodal facilities. However, there is no discussion of the potential water quality impacts of this increased activity. Since little information is given on the environment surrounding the rail line segments it is impossible to ascertain if there are any water resources that could be sensitive to additional pollutant runoff. There is no discussion of storm water management treatment for any of the facilities or operational changes. Please address these impacts in the final EIS.

Safety

The discussion on rail safety was confusing. Although the Federal Railroad Administration reports 2600 accidents nationally for 1996, the draft EIS shows that there will be no accidents for hundreds of years. We believe that both the Board and the public need to understand the potential for increases in rail accidents from the associated increases in rail operations.

The impact of additional freight trains on passenger rail operations is not fully addressed. For example, on page MI-9 the draft EIS states, "Based on information the railroads provided and SEA's independent analysis, SEA determined that the increased risk for passenger train accidents for three of the four rail line segments exceeded SEA's criteria for significance. The draft EIS notes that one of the rail line segments, Kalamazoo to Porter, Indiana is owned and dispatched by Amtrak, a passenger rail service. SEA encourages Amtrak to implement any necessary modifications through its management of this rail line segment's operations. For the remaining two rail line segments, SEA anticipates that potential conflicts can be minimized by reinforcing passenger trains' priority over freight trains." We are concerned about the possibility that these conflicts may not be worked out and that increased freight rail operations may impinge on safe passenger rail service. We recommend that the final EIS address this concern in more detail.

Site-specific Analyses

EPA is concerned with both the extent of the actions analyzed as well as the level of detail for those actions considered to "meet or exceed the Board's Environmental Thresholds". In particular, it appears that many of the activities resulting from the acquisition were not analyzed. We are unable to evaluate the direct and cumulative impacts of the changes to railroad operation or facilities as a result of the acquisition. For the segments or facilities evaluated in each of the states, regardless of the potential impact associated with the activity, the Board concludes a lack of significant impact with minimal data to support those assumptions.

In addition to these overriding concerns, EPA Region 5 expressed concern for specific sites in their review of the draft EIS. EPA believes additional analysis of potential impacts to watersheds, wetlands, and threatened or endangered species for construction/abandonment activities is needed for the following sites in:

State	Activity
Illinois	Exermont Connection
Illinois	Paris-Danville Abandonment
Illinois	Lincoln Avenue Chicago Connection
Illinois	59th Street Intermodal Facility
Indiana	Butler Connection
Indiana	South Bend to Dillon Junction Abandonment
Ohio	Oak Harbor, Ottawa County
Ohio	Willard Fueling, Huron/Seneca Counties
Ohio	Vermilion Connection, Erie County
Ohio	Toledo to Maumee Abandonment, Lucas County
Ohio	Columbus Connection, Franklin County
Ohio	Toledo Pivot Bridge Abandonment, Lucas County
Ohio	Collinwood New Intermodal Facility, Cleveland/Cuyahoga Counties

Best Management Practices

It is in the public interest that the details of construction are accomplished with the most environmentally sound methods practicable. To avoid the necessity of detailed specifications for each construction detail, it is our opinion that Best Management Practices (BMP), as amended below, be followed. In addition, a disinterested third party should be contracted to supervise and audit the ongoing construction and abandonment activities from an environmental standpoint.

Best Management Practices (BMPs) listed in Volume 1, page 3-43, are well stated, but incomplete. They are expanded upon in Volume 4, Chapter 7.2.5, however, they are referred to as "General Mitigation for Proposed Constructions and Abandonments" and again in Volume 5A, Appendix I, where they are again referred to as "mitigation." It is our position that these are construction and abandonment management practices and not mitigation. To facilitate the review of such an extensive document, they should be compiled into one "Best Management Practices" section and referred back to when applicable, not repeated. Attached is a list provided by one of EPA's regions which we recommend be used to augment the BMP list in the draft EIS.

Recommended Best Management Practices

a. We recommend the use of recycled materials and environmentally-sound products during construction. Abandonment activities should be coordinated with construction activities to take maximum advantage of reuse and recycled materials.

b. Impacts or losses to wetlands should be avoided wherever possible. If wetland impacts are unavoidable, it must be demonstrated that there are no practicable alternatives available that would avoid or further minimize impacts to wetlands. Unavoidable wetland losses must be compensated for at a minimum of 1.5 acres of compensatory wetlands per each acre of naturally occurring wetlands impacted by the project at issue.

c. Compensatory wetlands should be designed to replicate as closely as possible the specific mix of types, functions and values provided by the project-impacted wetlands. The compensatory wetlands should be established via the process of restoration to the extent feasible, and they should be located in an area as close as practicable to the project-impacted wetlands.

d. If, in the course of the project, it is discovered that impacts will occur in a fen, bog, or a bottomland hardwood assemblage, the responsible parties will cease activities and contact the U.S. Army Corps of Engineers and the U.S. EPA immediately. These wetland resources are extremely scarce and cannot be adequately compensated for with existing mitigation and restoration technology.

e. If trees will need to be cleared to accommodate the proposed project activities, compensation should be provided for the removed trees. Trees should be replaced with native saplings, if practicable, at a minimum ratio of 1:1, and replacement should occur as close as possible to the impacted areas. Replacement of removed trees would provide erosion control, increase the drainage capacity of the area, help mitigate the loss of habitat, and would improve aesthetics.

f. Measures should be taken to protect vegetation from impacts that may be incurred by the use of heavy equipment. All activities should be restricted to the footprint of the project. The contractor should be required to install fences around the project area so that vegetation outside the immediate footprint is protected.

g. To control erosion and spills, a staging area should be established for the construction equipment in an environmentally non-sensitive area, and all disturbed areas should be revegetated upon completion of the construction activities, preferably with native flora. The long root systems characteristic of native flora help hold the soil firmly in place. Also, natural vegetation works as an efficient filter, it provides habitat for wildlife, and improves aesthetics. "Natural landscaping" techniques maximize the use of native species thus reducing the need for fertilization and motorized maintenance.

h. Construction activities will temporarily increase levels of noise, dust and carbon monoxide. Measures should be taken to minimize any adverse impacts. We suggest that the contractor be

required to control noise and fumes emitted by construction equipment by installing control devices and employing prescribed control methods.

i. The project plan should consider in every way possible the pollution prevention impacts of materials that are decommissioned from the rail line. When recycling or reuse is not a viable option, the project plan should specify how disposal of materials such as rail ties and potentially contaminated surrounding soils and ballast materials will be accomplished to ensure compliance with applicable solid and hazardous waste regulations.

j. In counties where threatened and endangered species are documented to exist but site visits to the project area did not find supportable habitat, the responsible parties will cease activities and contact the U.S. Fish and Wildlife Service and the appropriate state Department of Natural Resources immediately if construction or abandonment activities discover such habitat and/or species.

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION*

Environmental Impact of the Action

LO--Lack of Objections
The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC--Environmental Concerns
The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO--Environmental Objections
The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU--Environmentally Unsatisfactory
The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1--Adequate
The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2--Insufficient Information
The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3--Inadequate
EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ER 98/020

FEB 3 1998

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

ENVIRONMENTAL DOCUMENT

ATTN: Ms. Elaine K. Kaiser, Chief
Section of Environmental Analysis (SEA)

Dear Sir/Madam:

The U.S. Department of the Interior has reviewed the Draft Environmental Impact Statement, Finance Docket No. 33388, "Proposed Conrail Acquisition," CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company. We have the following comments.

The Draft EIS showed one rail segment that occurs in Mississippi with a proposed increased environmental risk and exceedance of SEA's criteria for significance. Rail segment Site ID C-387 runs between Mobile, Alabama and New Orleans, Louisiana, and would have an increase in hazardous material transport. This segment passes through Jackson, Harrison, and Hancock Counties, Mississippi. It also crosses the Pascagoula, Biloxi, Wolf, and Pearl Rivers. These large river basins, and other lands along the rail route, have significant fish and wildlife resources including the following federally listed species:

brown pelican (*Pelecanus occidentalis*)
piping plover (*Charadrius melodus*)
bald eagle (*Haliaeetus leucocephalus*)
Gulf sturgeon (*Acipenser oxyrhynchus desotoi*)
inflated heelsplitter (*Potamilus inflatus*)
Mississippi sandhill crane (CH) (*Grus canadensis pulla*)
ringed sawback turtle (*Graptemys oculifera*)

2/10/98 12:00:45pm-1

The increase in transport of hazardous material would have a significant impact to trust resources if a spill were to occur. The standard Hazardous Materials Emergency Response Plan may not be adequate to address immediate and long term fish and wildlife resource impacts.

Specific Comments

S-MS.5.2

We believe preventing a spill is much preferable to cleaning one up. Therefore, we recommend the following:

1. Lower speeds should be adopted across bridges within the listed basins.

2. Inspections of cars carrying hazardous materials along this route should be increased.

3. Inspection of rail lines along this corridor should be increased.

4. Emergency management plans should include guidelines for immediate consultation with Service personnel regarding potential adverse impacts to the listed species.

Summary

The proposed project could have significant adverse impacts on present and future natural resources in this area if a spill were to occur. The Surface Transportation Board should adopt the above measures to prevent such an event from occurring.

Thank you for the opportunity to provide these comments.

Sincerely,

Willie R. Taylor, Director
Office of Environmental
Policy and Compliance

2/10/98 12:00:45pm-2

DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
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February 6, 1998

ENVIRONMENTAL DOCUMENT

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Operations and Readiness Division
Regulatory Branch

Ms. Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

CENTRAL ADMINISTRATIVE UNIT
REC'D: 2/11/98
DOCUMENT # 2/11/98 9:55:55 am

Dear Ms. Kaiser:

This is in reply to your letter, dated December 19, 1997, regarding Draft Environmental Impact Statement (DEIS) for the Proposed Acquisition of Conrail by Norfolk Southern Railroad and CSX Railroad.

We have reviewed the DEIS on potential environmental impacts within the regulatory boundaries of the Pittsburgh District. There does not appear to be impacts related to Section 404 of the Clean Water Act (33 CFR 320-330; 33 CFR 330, updated Nov. 22, 1991; 33 CFR 1344 or the Rivers and Harbors Act of 1899 (33 CFR 401, 403, 407).

If further information is required, please contact me at (412) 395-7155.

Sincerely,

Albert H. Rogalla
Chief, Regulatory Branch

Enclosure

2/11/98 9:55:55am-1

2/11/98 9:55:55am-2

U.S. Department of Transportation

United States Coast Guard

United States Coast Guard
Bridge Branch

408 Atlantic Avenue
Boston, MA 02110-3350
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RECEIVED
FEB 13 1998

CENTRAL ADMINISTRATIVE UNIT
DOCUMENT # 2/17/98 3:48:52pm

16590

February 10, 1998

ENVIRONMENTAL DOCUMENT

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

Subject: Proposed Conrail Acquisition by CSX Corporation.

Dear Ms. Kaiser,

This is in response to your request for comments on the proposed Draft, Environmental Impact Statement for the Conrail acquisition by the CSX Corporation.

Our review has not identified any additional issues than those previously sent to you by our letter dated August 6, 1997. I have enclosed a copy for your file.

I would like to take this opportunity to briefly reiterate our comments regarding the Lehigh Valley Bridge across Newark Bay in New Jersey. Federal Regulations governing the operation of drawbridges specifically require that this bridge over Newark Bay listed under § 117.735 be operated so as to not delay openings of the draw for more than periods of five minutes. It has been a practice to back up trains across this bridge during the process under which trains are "made up" for periods of several hours. The Coast Guard has assessed civil penalties for past violations and will continue to enforce the regulations with regard to these delays.

We strongly recommend, once the acquisition is finalized, that steps be taken to prevent these delays by considering alternatives necessary to expand or reconfigure the train yard to correct this problem. In this regard, we would be happy to meet with the new management team to discuss this matter.

If you have any questions please do not hesitate to contact me at (212) 668-7165.

Sincerely,

Gary Gasecof
Bridge Administrator
First Coast Guard District
By direction of the District Commander

Encl: USCG ltr. dated August 6, 1997.
ACTNY Waterway Oversight

U.S. Department of Transportation

United States Coast Guard

Commander
First Coast Guard District

Battery Park Bldg.
New York, NY 10004-5073
Staff Symbol(s):
Phone:212-668-7165

16590

AUG 06 1997

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

Dear Ms Kaiser:

This is in response to your request for comments on the proposed EIS scope for the consolidation of Conrail assets with those of the CSX and Norfolk Southern railroad companies. I am providing comments on behalf of Admiral Richard M. Larrabee, First Coast Guard District Commander.

The First Coast Guard District's Bridge Administration program closely interfaces and coordinates with Conrail's operations in the northeast. The following issues/impacts should be included in the environmental impact statement process:

o marine safety implications and intermodal conflicts anticipated by increased rail service particularly across drawbridges; discuss increase in number and frequency of trains crossing bridges. [redacted]

o expansion of rail facilities (yards, stations) particularly where freight trains are "made up" and the impacts on drawbridge operations eg. Lehigh-Valley Bridge across Newark Bay, NJ.

o plans to construct, replace or rehabilitate bridge structures over waterways; CG bridge permits and construction approvals may be required. The Draft Scope of the EIS (p. 13) omits compliance with the federal bridge statutes (33 U.S.C. 401, 491, 525 et seq)

o discussion of maintenance program for bridges to include operational machinery (for drawbridges), protective fenders, navigational lighting.

o training program for drawbridge operators and dispatchers to include knowledge of bridge owner's/operator's responsibilities in accordance with 33 CFR 117.

o plans to remove all abandoned bridge structures across navigable waters of the United States.

Please provide a copy of the railroads' Environmental Report, if available as I haven't received one. Once the DEIS is published we will provide more in depth comments. In the meantime we are available to answer any questions you may have. Please contact the Bridge Administration Branch at 212 668-7165.

Sincerely,

Gary Gasecof
Bridge Administrator
First Coast Guard District
By direction of the District Commander

CENTRAL ADMINISTRATION
REC'D: 2/2/98
DOCUMENT # 2/2/98 4:17:23PM

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

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY'S
COMMENTS

ON THE

DRAFT ENVIRONMENTAL IMPACT STATEMENT

FEBRUARY 2, 1998

NORFOLK SOUTHERN

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1.0 INTRODUCTION AND SUMMARY

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS" or "Norfolk Southern") hereby submit their comments on the December 12, 1997 Draft Environmental Impact Statement ("DEIS") prepared by the Surface Transportation Board's ("STB" or the "Board") Section of Environmental Analysis ("SEA") in Docket No. 33388. SEA has served the DEIS on over 2,000 persons and has provided a 45-day period for the submission of comments from all interested persons.

The six-volume DEIS documents the results of an exhaustive environmental analysis by SEA of the potential environmental impacts of the proposed Conrail Transaction ("Transaction"), involving the operation of rail service across 44,000 miles of the eastern United States. The DEIS addresses in comprehensive fashion every environmental issue which the Board is required to analyze independently in satisfaction of its obligations under the National Environmental Policy Act, 42 U.S.C. 4321, and the Board's own implementing regulations, 49 CFR 1105. The Board determined at the outset of this Transaction that it would prepare an Environmental Impact Statement ("EIS") to evaluate the potential impacts of the Transaction to ensure that the full range of environmental issues would be taken into consideration as the Board evaluated the application filed jointly by NS, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail"). The Board tasked SEA, and the third-party environmental consultants retained by SEA, with preparing an EIS for the Board's consideration in conjunction with the Board's analysis of the various transportation and competitive issues presented by the Transaction.

The overall conclusion of the DEIS is that the proposed Transaction will produce substantial system-wide environmental benefits in several respects, and will not create any system-wide significant adverse environmental impacts. For example, as noted in the DEIS, on a system-wide basis the Transaction:

- "[W]ould reduce emissions for most air pollutants" (DEIS at ES-23);
- "[W]ould result in net annual reduction in fuel consumption of approximately 80 million gallons of diesel fuel" (DEIS at ES-22);
- "[I]s expected to benefit the national and regional highway systems by reducing truck traffic on major state, regional and U.S. highways" (DEIS at ES-21); and
- "[S]hould result in a slight safety improvement for rail transportation of hazardous materials" (DEIS at ES-19).

NS not only concurs with these important conclusions by SEA, it believes that the true benefits of the proposed Transaction--which must be balanced against its adverse impacts--are much greater than indicated in the DEIS. A discussion by NS of the significant environmental, safety, and other benefits of the Transaction follows at Section 3 of these comments.

Notwithstanding its acknowledgment of the correctness of the DEIS's overall conclusion of net system-wide environmental benefits, NS is concerned that the approach to implementation of the Board's obligations under NEPA, as demonstrated by some portions of the DEIS, indicates a potential misapplication of the principles of NEPA and may go beyond the limitations on the Board's legal authority in deciding railroad control applications. NS provides its analysis of these issues at Section 2 of these comments. In addition, NS believes that SEA's analysis of potential environmental impacts has, in certain instances, applied unduly conservative or flawed approaches or assumptions and thereby overestimated the predicted impacts. In those instances where NS takes issue with the approach, the analysis or other aspects of the DEIS's assessment of a particular environmental impact, NS sets out the basis for its conclusions at Section 4 of these comments. Through the DEIS, SEA has directed NS to "consult" with cities with unique circumstances and other specific local communities to seek to negotiate mutually-acceptable agreements to address potential environmental impacts. NS' response to this direction is provided in Sections 5 and 6. In addition, NS has identified a number of minor corrections to the DEIS which are primarily editorial in nature. These comments are provided in Section 7 and are for the purposes of clarification.

As discussed in detail in these comments, the following are the principal areas of NS concern with the analysis and recommendations of the DEIS:

The DEIS Unnecessarily Seeks to Mitigate All Environmental Impacts: Since an EIS, rather than an EA, is being prepared in this case, there is no requirement that all identified adverse environmental impacts be mitigated. The DEIS blurs this important distinction, however, with a variety of mitigation proposals that appear designed to deal with virtually every potential localized adverse impact, and without adequate balancing of the potential adverse impacts against the positive benefits of the Transaction, including its environmental benefits.

Proposed Passenger Rail Safety Mitigation: The DEIS identifies certain line segments over which both freight and passenger operations are conducted as warranting special safety mitigation consisting of establishing passenger trains as "superior" and requiring freight trains to clear the line 15 minutes before and, in some instances, 15 minutes after a passenger train passes. This proposal is unprecedented and would involve outdated, cumbersome procedures that would

seriously impact rail line efficiency. As demonstrated in these comments, no passenger safety mitigation is in fact warranted. The statistical analysis presented in the DEIS overstates the Transaction-related impacts of freight traffic increases and utilizes data not directly applicable to the safety concern for which the proposed mitigation is purportedly designed. Moreover, the question of passenger rail safety is most properly left to the jurisdiction of the Federal Railroad Administration (FRA). Assuming that any mitigation is appropriate, it should be in the form of railroad consultations with the FRA and the affected passenger rail agencies.

Proposed Interim Two-Train Per Day Limitation on Traffic Increases at Erie, PA: The DEIS proposes that traffic increases over NS' main line through Erie, PA be limited to two trains per day until completion of NS' proposed track relocation project (which project will move all NS operations through Erie to new trackage on the grade-separated Conrail right-of-way). In view of the substantial benefits (including environmental benefits) associated with the Transaction, this type of localized service limitation is not warranted in Erie (nor would such limitations be warranted in other localities), and it would have serious adverse ramifications for NS' proposed operating plan, particularly in the crucial Midwest to New York/New Jersey market. Moreover, there appears to be no analytical basis for the DEIS' selection of two trains per day as the number for such a limitation on traffic increases. This proposed limitation is particularly unjustified in view of the temporary nature of anticipated traffic increases through downtown Erie and the significant long-term environmental benefits that Erie will experience once the track relocation project is completed.

Proposed Mitigation for Highway/Rail At-Grade Crossings: The DEIS proposes that NS upgrade protection devices at 44 highway/rail at-grade crossings in order to mitigate perceived grade crossing safety issues, and the DEIS further proposes mitigation for certain crossings based on purported vehicle delay impacts. In both the safety and delay areas as respects grade crossings, the DEIS' proposed approach would displace the well-established authority of state transportation departments to conduct final analysis of and to prioritize grade crossing projects. Additionally, the methodology by which the DEIS identifies crossings requiring such mitigation is flawed. In the grade crossing safety context, the DEIS improperly utilizes a formula designed for ranking grade crossings according to a perceived need for crossing protection upgrade as the sole basis for determining the need for, and type of, crossing protection upgrades. In the grade crossing delay context, the DEIS improperly uses a method developed for assessing delay at signalized vehicular highway intersections for determining highway/rail at-grade crossings actually requiring mitigation. Finally, the DEIS recommendations threaten to disrupt well-established policies and practices regarding cost allocation for grade crossing improvements and grade separations.

Environmental Justice Analysis and Recommendations: The DEIS includes an unprecedented effort to apply an environmental justice analysis to consolidations of long-established transportation systems of broad geographical reach. In an attempt to work within the framework of an Executive Order that was principally designed for and is most logically applied to the localized siting of a new facility (as opposed to changed utilization of an existing infrastructure over a broad geographic area), SEA is sailing in uncharted waters. The substantial difficulties in attempting to apply to a transaction of this kind the Executive Order and the guidance and methodologies developed thereunder to date by other agencies, should counsel caution. Nevertheless, in the DEIS, SEA has utilized new processes and untested analytic methodologies for environmental justice, and has recommended consideration of untried mitigation strategies. The resulting environmental justice discussion in the DEIS fails to reflect any assessment of whether adverse impacts would be predominantly borne by minority or low-income populations or whether potential adverse impacts on minority or low-income communities would be more severe or greater in magnitude than among other affected populations. NS' analysis confirms that, in fact, the potential environmental impacts of the Transaction are not borne disproportionately by minority or low-income communities. There are other serious flaws in the environmental justice analysis of the DEIS. Moreover, for reasons described in Section 4.16 of these comments, application of environmental justice principles to this Transaction may, at most, lead to enhanced outreach and consultations with certain local communities, not to the imposition of mitigation measures beyond those that might otherwise be recommended to mitigate significant adverse impacts upon full consideration of the substantial environmental, safety and other benefits of the Transaction.

Noise Analysis and Potential Mitigation: While much of the treatment of noise in the DEIS is correct, the analysis significantly overstates potential noise levels on NS lines. This results from a combination of overly conservative methodology, application of noise models developed for CSX trains to the quieter NS trains, and failure to recommend or conduct site-specific measurements and analysis. There is, moreover, no analytic or other support in the DEIS for the suggestion that noise barriers be deemed the "preferred" method of mitigating noise.

In sum, NS believes that SEA has conducted a comprehensive assessment of the environmental aspects of the proposed Transaction that satisfies and exceeds the mandate of NEPA and the Board's implementing regulations. SEA has clearly taken a "hard look" at all the attendant issues and its DEIS provides a good foundation for a comprehensive Final Environmental Impact Statement ("FEIS") in full compliance with the Board's obligations under NEPA. For publication of the FEIS in May, SEA should now in light of these comments consider what recommendations for mitigation are factually warranted, within the lawful purview

of the Board and consistent with the appropriate balance of public benefits and interests related to this Transaction.

2.0 APPLICABLE LEGAL PRINCIPLES

2.1 Scope of Environmental Impact Analysis and Standards Governing Proposed Mitigation Conditions

As the Board knows, this is the first railroad consolidation proceeding in which it has undertaken to prepare an Environmental Impact Statement ("EIS") pursuant to the requirements of NEPA. In all previous cases, the Board and the ICC only performed Environmental Assessments ("EA"), because in each case the EA was able to conclude that the consolidations would have no significant environmental impacts if the parties complied with various mitigation conditions prescribed in the agency's final decisions. As a result of the decision to prepare an EIS in this case, the Board's SEA staff and the Applicants have been required to engage in a far more intensive and comprehensive analysis of the potential environmental impacts of the Transaction than in any previous case.

The DEIS represents SEA's preliminary conclusions based on its comprehensive and exhaustive environmental review of the proposed Transaction. Its six volumes contain a detailed and wide-ranging analysis of the potential environmental effects of the Transaction. The DEIS also contains a lengthy list of proposed conditions recommended to be imposed on Applicants; these are proposed for the purpose of mitigating virtually every adverse environmental effect of the Transaction identified in the DEIS.

The FEIS issued by the Board in this case must conform to the requirements both of NEPA and the Board's governing statute, the ICC Termination Act of 1995, 49 U.S.C. §§ 10101 et seq. ("ICCTA"). As discussed below, NS respectfully submits that a number of the mitigation conditions proposed in the DEIS, some of which are unprecedented and address far more than the impacts asserted, are not consistent with the Board's basic function and responsibilities under NEPA and the ICCTA in several critical respects.

2.2 NEPA Only Requires the Board to Consider Environmental Effects. Imposition of Conditions Must Be Based on a Balancing of All Relevant Factors, Which the DEIS Does Not Do.

The proposed conditions appear to be based on the assumption that NEPA and/or the ICCTA require all adverse environmental effects to be mitigated before the Transaction can be approved. That assumption is not correct.

The fundamental command of NEPA is that federal agencies must consider -- or take a "hard look" at -- potential environmental impacts associated with the exercise of federal regulatory functions. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). The obligations that it imposes on federal agencies are procedural in nature. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 588 (1978) ("NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural"). When, as the Board has determined to be the case here, a federal agency concludes that a proposed federal action may have significant impacts on the quality of the environment or the conservation of energy resources, the agency must prepare an Environmental Impact Statement assessing those impacts, and must consider the identified impacts in deciding upon its course of action. 42 U.S.C. § 4332 (2)(C). However, neither NEPA nor an EIS prepared in accordance with NEPA *requires* the agency to do more than consider the potential environmental impacts of its actions. They do not require the agency to take any measures to eliminate or mitigate *any* -- let alone *all* -- of those impacts. What mitigation measures to impose, if any, is a matter of the agency's discretion as defined and limited by its responsibilities and authority under its governing statute, as the Board's environmental regulations expressly recognize. 49 CFR 1105.10 (f). See also Stryker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227-28 (1980).

Under the ICCTA, the Board has broad, but not unlimited, authority to impose conditions on a transaction to ensure that it is consistent with the public interest. 49 U.S.C. § 11324(c). In deciding whether to impose any conditions, including environmental mitigation conditions, the Board must weigh and balance *all* considerations relevant to the ultimate public interest determination. These include not only specific adverse environmental effects, but also the positive environmental effects and the positive economic and other public benefits of the transaction. The Supreme Court has clearly ruled that there is a fundamental distinction between the process of considering the environmental impacts of a particular federal action under NEPA and a requirement that those impacts be mitigated. NEPA mandates only that environmental impacts be considered, *not* mitigated. Robertson, 490 U.S. at 352-53. In choosing a course of action, the agency properly must weigh positive environmental effects against adverse environmental effects and, even more importantly, must balance environmental factors against other relevant legal or policy considerations bearing on the propriety of the proposed action. Id. at 350. Indeed, the basic purpose of NEPA is to require a federal agency to "balance a project's economic benefits against its adverse environmental impacts." Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996); the intent of NEPA is not to "elevate environmental concerns over other appropriate considerations" before the agency. Baltimore Gas and Electric Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983).

In this sense, the purpose of an EIS is fundamentally different from an EA, the form of environmental analysis that has been employed by the Board and the ICC in prior rail consolidation proceedings. The purpose of an EA is simply to assess whether the proposed federal action would have significant environmental effects warranting the preparation of an EIS. For this reason, any significant adverse environmental impacts identified in an EA *must* be fully mitigated as a condition to the proposed federal action, or else the agency would be required to perform a complete EIS *before* undertaking the proposed action. E.g., 46 Fed. Reg. 18026, 18037 (1981) (Agencies can include enforceable mitigation measures to conclude that an action does not require preparation of an EIS); Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F.2d 678 (D.C. Cir. 1982) (upholding Forest Service's use of mitigation measure to conclude no EIS was necessary). When, as here, a full EIS is prepared, there is *no* corresponding requirement that all identified adverse impacts be mitigated, but only the essentially *procedural* requirement that all environmental impacts be taken into consideration by the agency in deciding upon a course of action. Robertson, 490 U.S. at 352-53. In this case, the DEIS blurs this important distinction, as it proposes a plethora of mitigation measures that appear designed to alleviate or eliminate virtually every potential adverse impact of the Transaction, without regard to the impact of those measures upon other aspects of the Transaction or the costs to the transportation industry and shipping public. The Board is obligated by NEPA and the ICCTA to balance adverse environmental effects against offsetting positive environmental effects and, importantly, non-environmental public benefits of the Transaction.

In deciding this case, the Board must consider the very substantial benefits this Transaction will provide, benefits not only to the U.S. transportation system and the economies of the regions that NS and CSX will serve but also to the environment. Because NS believes that it is critical that the Board consider all of those benefits as part of its environmental review as well as in its decision on the merits, those benefits are summarized in Section 3 of these comments.

2.3 Several Proposed Mitigation Conditions Exceed Basic Limitations on the Board's Conditioning Power Long Recognized By the Board and the ICC.

The measures proposed in the DEIS to mitigate identified potential adverse environmental effects of the Transaction are also governed by the limitations on the Board's authority to impose conditions to its approval of a proposed rail consolidation. *See generally* CSX/NS-176 at 36-43. Any condition imposed by the Board must be directly related to the transaction at issue. As such, the proposed condition may appropriately address and ameliorate *only* those identified impacts that are directly attributable to the proposed transaction, and may not be designed to remedy pre-

existing conditions or effects unrelated to the transaction at issue. Indeed, SEA has acknowledged the clear-cut limitations on the Board's ability to impose mitigation to remedy environmental conditions that arise prior to the transaction or that would address circumstances that are not directly related to the Board's action. DEIS at 1-10. Accordingly, proposed conditions are justified *only* if they are narrowly tailored to remedy specific transaction-related harms. Proposed conditions are not warranted if other alternative remedies are available or if the proposed condition would improve the pre-transaction condition of third parties, would be operationally infeasible, or would disproportionately undermine the other public benefits of the proposed transaction. *See, e.g.*, BN/Santa Fe at 55-56; UP/SP at 144.

Although the DEIS at several places makes reference to these established limitations on the Board's authority to impose environmental conditions (*e.g.*, DEIS at 7-31), it fails to apply these standards in critical respects. The DEIS identifies various adverse environmental effects that are claimed to be traceable to the Transaction but, in proposing measures to mitigate these identified harms, fails to assess whether the proposed mitigation is narrowly tailored to remedying *only* the Transaction-related harm, whether alternative remedies are available, and whether the proposed mitigation would be operationally feasible and preserve the other public benefits of the Transaction.

For example, the DEIS proposes that Applicants be required to (1) comply with various laws, regulations and private agreements that would be independently binding on them (measures that, by definition, are not necessary and for which alternative remedies exist), (2) install, with or without otherwise required state and federal funding, costly upgrades in highway/rail at-grade crossings that would more than rectify the claimed Transaction-related adverse impacts on accident rates and traffic delays (measures that, by definition, would improve pre-Transaction conditions), and (3) commit enormous funds to the installation of new rail facilities, limit the number of trains moving over certain line segments and implement new operating procedures and other measures that would disproportionately undermine the public benefits of the Transaction. In all of these respects, such proposed mitigation measures should be rejected.

In addition, the NEPA process and the Board's conditioning power should not be used to re-write industry-wide regulations and operating practices related to railway safety and operations. Just as the Board has recognized that its conditioning power may not be used to effectuate broad restructuring of the rail industry and the competitive balance among carriers (see, e.g., BN/Santa Fe at 55-56), so too it would be an inappropriate exercise of the Board's responsibility to consider environmental impacts of the Transaction to impose conditions that

fashion broad new safety and operating rules to which other major railroads are not subject and that fall within the regulatory responsibility of other federal and/or state agencies.[1]

Such "de facto" rulemaking -- resulting in the selective imposition of new standards upon only a portion of the railroad industry -- is neither legally sound nor a prudent exercise in implementing federal transportation policy. SEA recognized this limitation in the DEIS in its proposal not to impose noise-impact abatement measures falling within the FRA's regulatory jurisdiction over train horn signals (DEIS at 3-36), but it strayed from this standard in several respects, including its proposals to require Applicants to (1) comply with a *proposed* industry-wide FRA regulation governing rail inspections, (2) alter the existing regulatory scheme governing selection and funding of grade crossing improvements, (3) maintain 15 and 30-minute separations between passenger and freight trains on certain line segments, without regard to FRA's passenger train safety role, prevailing industry standards and operating practices on similar rail lines, and (4) comply with various newly fashioned operating requirements and procedures governing transportation of hazardous materials, again without regard to the established FRA role in regulating the safe transport of hazardous materials, prevailing industry guidelines and operating practices in the handling of such traffic.

2.4 The DEIS's Recommended Mitigation to Impose Grade Crossing Protection Device Upgrades Conflicts with the Traditional Role of State DOTs.

SEA has recommended in the DEIS that 118 NS and CSX at-grade crossings be upgraded based on SEA's analysis of the predicted impact of the proposed Transaction upon safety conditions at those locations. NS will address the specific results of SEA's safety analysis at Section 4.3 below. A more fundamental issue, however, is raised by SEA's proposal to impose upon NS and CSX a requirement that they upgrade the 118 at-grade crossings in accordance with SEA's judgment, without state involvement, as to the need for additional protection devices, the priority of need, the design of such devices for individual locations and the funding of the cost of installing and maintaining such devices.

[1] The ICC recognized the wisdom and propriety of leaving to state and industry expertise decisions concerning industry practices that have traditionally been addressed through cooperative state/industry relationships. See, e.g., Yellow Freight System, Inc. of Indiana, Petition For Declaratory Order -- Weighing Shipments MCC Dkt. No. 40853 (served January 20, 1995). (ICC declined to regulate motor common carrier weighing practices where traditional mechanisms are in place for state/industry cooperative effort.)

It is important to understand that this issue is not tied only to a determination as to how the cost of SEA's recommendations for upgrading the 118 grade-crossings will be borne. Of greater concern is the undermining of a role assigned by federal statute and duly promulgated administrative regulations to state DOTs and other relevant state transportation agencies. The DEIS proposal to impose as mitigation requirements that NS and CSX install the specified protection devices at each location as indicated at Table 7-4 ("Preliminary Recommended Highway/Rail At-Grade Crossings That May Warrant Safety Improvements") would contravene the statutory authority granted to the state DOTs and other state bodies. It would also ignore and override the states' expertise necessary to assess the appropriate levels of crossing protection within their jurisdictions. Federal law assigns the determination of the need for, and priority to be assigned, the upgrading of a particular grade crossing to the state transportation agency charged with ensuring the road safety of its citizens. Federal law assigns to that state agency the right to determine the type of warning device that is most appropriate for the location in question. Traditionally, the state agency has worked with the railroads in a cooperative effort to allocate the costs of installing and maintaining the protection devices.

Many considerations are taken into account by the state agency in making its grade crossing determinations, and there is no one set of factors that is required to be considered universally to derive a common answer. Rather, a determination as to the need for, priority of, design, and funding for a grade crossing upgrade project is typically based on specific factors assigned degrees of importance by the state agency. These decisions are based on criteria as appropriate in each state. These decisions are not made in a vacuum, but instead take into appropriate account the different priorities that may be expressed within the state or a local community.

SEA's approach removes this very site-specific prioritization duty from the appropriate state regulatory body. It also attempts to apply a set formula for determining what design of protection device is to be installed at each of the 118 locations, without regard to site-specific conditions and variables. This approach is inconsistent with established practices and is simply unworkable. For example, in the DEIS SEA would require NS to install four-quadrant gates or median barriers at seven crossings in Indiana, Ohio, Pennsylvania and Virginia, based solely on SEA's significance criteria without required consideration of site-specific factors, and despite the fact that such devices are still experimental. These devices have not received FRA approval to date. Indeed, they are currently being installed and tested at limited, controlled locations with case-by-case state and local approval. In addition, these warning devices are not appropriate for any and all sites. States typically rely upon the Manual for Uniform Traffic Control Devices ("MUTCD") for guidance on warning devices; notably, the MUTCD has not approved the

installation and use of four-quadrant gates or median barriers. Obviously, NS cannot lawfully implement SEA's recommended mitigation without the express approval by the state, for the very same reason that one cannot unilaterally install a stoplight at a chosen location on a state roadway without first obtaining authorization from the state to do so.

As the above comments indicate, the only feasible way to determine how and when individual grade crossings in a state should be upgraded is through consultation by NS with the responsible state transportation agency. NS would provide the relevant state agencies with the necessary information it has developed to predict changes in NS train traffic as a result of the Transaction. Armed with that information, the state entities can assess the need for particular upgrades at individual locations. They can then determine, in consultation with NS, the desired timing and funding of the upgrade projects consistent with their other priorities.

2.5 Localized Service Limitations Should Not Be Imposed as Environmental Mitigation in This Case.

The significant economic and environmental benefits that can be expected to result from this Transaction can only be fully realized if the Applicants are permitted to implement the operating plans upon which such benefits are predicated. Among other things, the operating plans were designed to maximize the efficiency of each Applicant's expanded system, to improve service times, to satisfy the service needs of all existing shippers, to make rail transportation more attractive as compared to other modes of transportation to current and potential shippers, and to ensure that each Applicant can fully and effectively compete with the other. If artificial limitations are imposed upon NS' train operations in any particular locality, the above-mentioned goals of the operating plan will be impaired. Among the preliminary mitigation possibilities recommended by the DEIS (in Erie, Vol. 3B at PA-56), and which may be suggested for certain other locations by other parties, are restrictions on the number of trains which may be operated over a particular section of track or other routing or operating restrictions. Such restrictions are

not appropriate in this case.[2] They would: (1) create operational bottlenecks or clogs which will inhibit service and infect the network with congestion and delay, (2) preclude realization of transportation benefits of the Transaction, (3) reduce the environmental benefits of the Transaction, and (4) impose long-term rigidity on railroad operating decisions which would otherwise be entirely discretionary.

2.5.1 Operating Restrictions Would Create Bottlenecks and Clogs.

The parties and, indeed, many commentors in this proceeding have recognized the enormous challenge of allocating the assets of a single, integrated rail network between two operators, NS and CSX. The division is fundamental to the competitive benefits of the Transaction, but it is a mammoth and at the same time a delicate operation. The parties worked diligently to allocate routes so as to provide both competitive balance and operational integrity. Getting the physical plant right assures that the transition from single railroad to dual railroad service will occur safely and smoothly, with the fewest possible disruptions for shippers.

Among the most difficult allocations were those in urban areas, and urban geography consumed a large share of the effort for both NS and CSX. Making the transition from lines on a map to a determination of actual rail capacity presented an array of complex operational challenges. The roadbed, track structure, signaling, connections, and access to yards and sidings all go into the equation governing what traffic a line can actually handle.

The resulting plan for achieving division, transition, and balanced competitive capability is too fine to admit artificial adjustments. It has been reported, for example, that many operating problems experienced in the West by UP/SP rippled out from the closure of a single yard in Houston. A railroad is like a hydraulic line; a kink in one place can drastically affect the whole system.

[2] NS urges SEA to undertake a thorough examination of any mitigation options it might consider that have the potential to interfere with Applicants' Operating Plans. All potential adverse effects related to such mitigation proposals should be carefully analyzed before selection for recommendation. Even should SEA determine that a specific measure that could have other ripple effects on the railroad system is potentially available to address a significant local impact, SEA should, at a minimum, provide the Board with several alternatives to that measure so the Board can properly weigh all of the environmental, commercial and other benefits that would be disturbed and other adverse impacts that would flow from any tinkering by the Board with an Applicant's Operating Plan.

Arbitrary train limits or other operating restrictions (such as a directive to use one route in preference to another) are a particularly dangerous form of mitigation. For example, the two-train-increase ceiling proposed for Erie could mean the traffic will not be handled (see Transportation Benefits at Section 2.5.2 below), or trains will be held, combined, or otherwise handled in a less than optimal manner. As the experience of the West shows so well, sub-optimization of personnel and equipment use quickly balloons into train crew and motive power shortages with impacts on the adjoining parts of the network.

Similarly, train limits or routing directives in Cleveland or northern Ohio would risk upsetting a carefully planned equilibrium. Northern Ohio is where the "X" of the Conrail system crosses, and where the major lines of the New York Central and Pennsylvania intersected before the merger of those railroads. (Friedmann VS, Rebuttal Vol. 2A, pp. 165-66). Moreover, Conrail's announced strategy over the past decade was to concentrate rail traffic through Cleveland. Id. The disaggregation of these properties was particularly challenging, yet central to the competitive thrust of the undertaking. Applicants' solution puts CSX traffic through Cleveland on the so-called "Short Line," a wide, grade-separated route with excellent safety characteristics.

Adjustment and restrictions that have been proposed, and which are not acceptable, would make less use of the Short Line and more use of the Lakefront line. One suggestion would require construction of a two-mile long flyover, dividing and shadowing the city of Berea (southwest of Cleveland). The same proposal complicates access to Norfolk Southern's Rockport Yard, hurting service to shippers such as Ford Motor Company (Friedmann VS, Rebuttal Vol. 2A, p. 168), eliminates NS' access to its major ore dock at Whiskey Island, and entails increased train traffic and the construction of an embankment by a waterfall which Cleveland had desired to protect. The crimping of the operation again poses the strong probability of congestion.

The purpose of these general comments is not to provide an engineering assessment of each proposal. Rather, it is to point out that the introduction of arbitrary restrictions into a carefully engineered system will necessarily constrain the capacity of the system, and that congestion, delay, and attendant power and crew shortages and service failures are the predictable consequence.

2.5.2 Operating Restrictions Would Impair Transportation Benefits.

The EIS process involves balancing Transaction benefits (including environmental benefits) against environmental costs. Consequently, proposed mitigation must be evaluated in light of the price it exacts in lost Transaction benefits. Train limits and operating restrictions threaten the fundamental transportation benefits of the Transaction.

For example, a major commercial objective of NS in this Transaction is to use the Southern Tier route for its only access to New England and for an important second mainline to the Port of New York/New Jersey through New York State (Application, Vol. 1, pp. 5/3-30; Vol. 2B, p. 249; Vol. 3B, pp. 14-15, 38). The Southern Tier route, not the favored route today, needs every possible flexibility to compete with CSX's Water Level Route and to provide service comparable to that on NS' Pennsylvania Route, the routes which today have most of the East-West traffic.

Long-haul traffic which NS is projecting for the Southern Tier will move over Buffalo and Erie. The two-train-increase limit in Erie would prevent NS from handling traffic that is projected for Day 1 in competitive train service. Particularly since Erie will ultimately receive major environmental benefits from the Transaction through the construction of a bypass, an interim punitive restriction on NS' ability to use the Southern Tier effectively and to compete with CSX in the critical startup period is wholly unwarranted.

In northern Ohio, traffic from the former PRR lines to be operated by NS crosses to the former NYC line for movement to and from Chicago (Application, Vol. 1, p. 522). Train limits or operating restrictions here at the epicenter have the potential for major disruption to the fluidity of the system. The routes have been put together with attention to signals, curvature, grade, capacity and service. Even so, NS is not simply standing on its plans. For example, in order to avoid increased traffic at Lakewood, NS has volunteered, subject to funding, to work with local governments to build a connection to move some of the traffic through a more industrial corridor. However, any imposition of unilateral solutions would come at a cost to the Transaction which is always greater than appears on the surface. Ultimately, a wrench in the works at Cleveland would cripple the ability of one or both parties to provide efficient, competitive service along the critical East-West routes to Chicago. It would be highly unfortunate if the Applicants, who are making the greatest investment in new capacity the East has seen in decades, would find themselves hobbled by arbitrary limits on train operations.

2.5.3 Operating Restrictions Would Reduce Environmental Benefits.

The traffic which causes train increases in Erie, in and around Cleveland, and elsewhere on the network is either being removed from other routes or diverted from trucks or other modes of transportation. The environmental benefits of the Transaction are not independent of these traffic changes. On the contrary, traffic changes resulting in train increases in a real sense are the consequence and measure of the undisputed environmental benefits of the Transaction.

The substantial highway safety, energy efficiency, and pollution reduction improvements of the Transaction account for the preponderance of the net environmental benefits identified by the DEIS (see Section 3 below). These benefits come from diverting truck traffic, and to a lesser extent from handling rail traffic more efficiently, with fewer switches and interchanges.

Over half the train increases in the northern Ohio region are accounted for by the capture of business now moving by highway. Because northern Ohio is an interstate highway as well as a rail hub, with Interstate Highways 80, 90 and 77 criss-crossing the region, it will be among the major beneficiaries of the diversion of truck traffic. Train limits or other restrictions will keep much of the additional traffic from moving by rail, with adverse emissions, safety, fuel efficiency and highway congestion and maintenance consequences. Such limits and restrictions could also result in rerouting of rail traffic and resulting increases in adverse environmental impacts for different localities. The DEIS does not attempt to weigh these adverse consequences against the benefit of restrictions. The required balancing would be difficult, and reemphasizes the impropriety of using arbitrary train limits to try to reform the predicted but changeable downstream impacts of the Transaction.

2.5.4 Operating Restrictions Would Unduly Limit Operating Discretion.

Under normal circumstances, decisions about numbers of trains and routing of trains rest with railroad management. For example, in recent years, through voluntary coordination agreements with Conrail, NS has rerouted substantial volumes of north-south interchange from Potomac Yard (Washington) to Hagerstown, Maryland to take advantage of the more efficient interior route via Harrisburg (Application, Vol. 1, p. 510). Without this route, no carrier would be able to offer Northeast/Southeast doublestack service. Similarly, NS has agreed with Conrail to concentrate the interchange of auto traffic moving to and from the East at Cleveland, rather than leaving it dispersed among several other points.

Commercial initiatives, laudable in the context of coordinations, should not be stymied when they happen to surface in a control case. These operating and marketing adjustments go on continually in the railroad industry and do not require federal approval. In the context of a control proceeding, the Board should be very cautious about imposing restrictions that would disable an applicant railroad's ability to achieve efficient and commercially attractive operations.

In northern Ohio, traffic has varied among the involved routes as the economics of the industry, the demands of customers and the operating imperatives of the time have required. For example, the Cleveland Short Line corridor from Collinwood through East Cleveland handled well over 50 trains per day from the time of its completion in 1912 through the late 1950's, then still over 40 trains per day through the early 1960's. Thus, for about 50 years this corridor had train volumes greater than or equal to the volume that CSX now expects to operate over it. Now some interested parties would freeze the discretion which has permitted these adjustments.

The Transaction that is proposed facilitates routing and traffic changes, but as the history of train movements through Cleveland shows, such changes would go on in any event. Authorization of control does not cause trains to move on different routes in the same sense that construction of an interstate causes trees to be destroyed or farmland consumed. Because of the contingent and downstream connection between the financial transaction proposed and the train movements which give concern, the Board should be especially reluctant to impose operating restrictions on the Applicants.[3]

As explained above in Section 2.1, the Board is not required in this Transaction, as it was in the UP/SP merger, to mitigate every (or indeed, any) environmental impact it anticipates. In UP/SP, the Board was faced with no option other than to proceed, upon completion of its EA, with a full EIS *unless* it determined that no significant adverse environmental impacts would remain following Board-imposed mitigation. Hence, SEA had no viable option other than to recommend that the Board impose a restriction on the increase in train traffic at Reno and

[3] Indeed, a recent search by NS of the Federal Register found *no* other merger, in *any* industry, regulated or unregulated, in 1997 for which an EIS was required. This is probably due to the fact that mergers per se are financial transactions which do not have automatic environmental consequences. The Federal Energy Regulatory Commission, for example, has "categorically excluded" merger approvals from the actions requiring either an EA or an EIS except where scenic rivers, wilderness areas or other unique resources are affected. 18 C.F.R. § 380.4. See also 61 Fed. Reg. 68595, 68605 (Dec. 30, 1996) (reaffirming categorical exclusion rule). No other sector of the American economy undergoes this kind of merger scrutiny, a fact which argues for extreme restraint in imposing burdensome conditions with unpredictable consequences.

Wichita pending selection and completion of mitigation to eliminate the adverse environmental impacts of the merger. Here, the Board faces no similar NEPA restriction or other legal impediments to the fulfillment of its task of balancing any localized environmental impacts with the system-wide environmental and other public benefits to be derived from the Conrail Transaction. Thus, the rationale applied by the Board for imposing traffic restrictions in UP/SP is neither relevant nor appropriate in this proceeding.

In view of the fact that the DEIS recognizes a number of system-wide environmental benefits associated with the proposed Transaction and does not identify any system-wide significant adverse environmental impacts, and the fact that restricting traffic on one line segment can have adverse effects on operating capacity, efficiency and the net benefits of the Transaction, localized environmental impacts should not be allowed to disrupt the overall operating plans developed by the railroads.

2.6 Opposition to STB Imposition of Negotiated Agreements as Conditions to STB Approval

SEA has indicated in the DEIS that it intends to impose as a condition of its approval of the Transaction any negotiated settlement agreements or other mutually-acceptable binding agreements pertaining to the Transaction that NS and CSX enter into with non-Applicants. SEA apparently intends to take all such agreements completed prior to the publication of the FEIS and recommend to the Board that it impose the terms of the agreements as environmental conditions to any decision approving the Transaction. DEIS at 7-4. SEA and the Board should, however, give serious consideration to whether this proposed action to impose conditions is in fact within the Board's authority and whether it is a prudent and necessary step.

While it is true that the Board and the ICC have in several instances involving railroad mergers and other consolidations conditioned agency approval upon the parties' compliance with various environmental mitigation measures, there is no basis in NEPA for requiring in all instances that negotiated agreements pertaining to mitigation be made formal conditions of Board approval. As explained at Section 2.1 above, NEPA mandates a process, not a result. Moreover, the present application by CSX, NS and Conrail is the first instance in which the Board has prepared an EIS to evaluate fully the range of potential environmental impacts associated with a proposed consolidation. Because of the fundamental differences between the process and end result of the preparation of an EIS versus the completion of an EA, as explained at Section 2.1 above, it is not necessary in this instance that the Board resolve each and every potential environmental impact that can be identified. Yet this is precisely what SEA suggests it would do

by requiring that all solutions to potential environmental impacts that the Applicants negotiate be imposed as formal conditions. Not only is this standard for imposing conditions unnecessarily stringent in the context of an EIS, which requires that the Board balance the identified adverse environmental impacts with the identified system-wide environmental, commercial, and other public benefits of the proposed Transaction, it fails to heed clear limits on the Board's authority to impose conditions.

Because of the amorphous nature of some of the perceived environmental impacts that may become the subject of negotiations between NS and affected entities, it can be expected that some of the negotiated solutions to the impacts will fall outside the limited authority of the Board to impose as mitigation measures. Moreover, any insistence by SEA that the terms of a negotiated agreement be converted into a Board-imposed condition would have an obvious dampening effect on the ability of NS to consider and agree to innovative, creative solutions to community concerns. The Applicants would likely be less willing to negotiate such agreements with the prospect hanging over their heads of the Board turning a voluntary, uniquely-tailored solution in a specific instance into a formal condition that could later be argued to have precedential effect because of the Board's imposition of the agreement as a condition of approval.

NS is actively seeking bilateral agreements with third parties where feasible and appropriate to address environmental concerns. The recognition in the FEIS of voluntary stipulated agreements between an Applicant and a third party is an appropriate alternative mechanism for addressing identified environmental issues related to the proposed Transaction. Such voluntary third-party agreements should be recognized as stipulations, not conditions of Board approval. The Board's ability to carry out its responsibilities does not require that such voluntary agreements become formal conditions of approval -- the Board will have continuing oversight following any decision to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required.

Moreover, SEA and the Board should not presume that the lack of a voluntary agreement between an Applicant and a third-party at the time of issuance of the FEIS and/or at the time of the Board's voting conference necessitates the imposition of a formal condition. As the DEIS itself recognizes, the consultative process is a far superior means for developing and implementing creative, mutually-beneficial solutions to local environmental impacts than is the formal conditioning process. The consultation process allows the parties to share responsibilities and costs in a manner that the Board could not impose unilaterally. However, the consultative process cannot be expected to produce across-the-board agreements over the course of a mere

few months. Creative solutions with public entities require many levels of review and approval before the public entity can commit itself to a binding agreement. Given these realities, SEA and the Board should allow the consultative process to continue beyond issuance of the FEIS, the voting conference or the implementation of the Transaction, in order to allow the process a full opportunity to produce optimal results. Applicants propose that they report the outcome of the consultations to the Board as consultations are concluded or as otherwise appropriate.

3.0 BENEFITS OF THE CONRAIL TRANSACTION

The proposed Conrail Transaction will provide substantial environmental, safety and socioeconomic benefits. NEPA requires that the Board, in choosing a course of action, properly weigh positive effects against adverse effects, and balance environmental factors against other relevant legal or policy considerations bearing on the merits of the proposed Transaction. The following sections summarize the environmental, safety and socioeconomic benefits of the proposed Transaction. These benefits should be properly recognized within the FEIS, and taken into account by the Board in reaching a decision and determining what, if any, mitigation is required.

3.1 Environmental Benefits

The Transaction's benefits start from the basic fact that railroads are the least polluting, most energy efficient, and safest freight transportation mode on land in the United States. Railroads' environmental advantages are especially pronounced when railroads are compared with trucks:

- **Railroads are more fuel efficient than trucks** — using the same amount of fuel, trains can move the same amount of freight three times farther than trucks.
- **Railroads pollute less than trucks** - because of their superior fuel efficiency, trains emit less air pollution than trucks hauling the same freight the same distance.
- **Transportation of hazardous materials (hazmat) is safer by rail than by highway** — Railroads have less than one-tenth the hazmat incidents of trucks when compared on an equal ton-mileage basis.
- **Railroads provide lower accident risk than trucks** — Significantly more truck collisions than train accidents occur on a per ton-mile basis.

The Transaction's environmental benefits derive mainly from diverting freight from trucks to railroads. These truck-to-rail diversions will be substantial over the entire Transaction; for NS' portion alone, there will be a reduction of an estimated 589,000 truck trips annually. This will result in system-wide energy savings, fewer air emissions, reduced wear and tear on highways, and less highway congestion, as well as safety and socioeconomic benefits.

3.1.1 Air Emissions Benefits

Air pollutant emissions will decrease notably as a direct result of the Transaction. In particular, hydrocarbons, carbon monoxide, nitrogen oxides, particulates and lead emissions will substantially decrease. The DEIS correctly recognizes that the Transaction will result in "...an overall improvement in air quality." DEIS at 4-70.

Railroads are more fuel efficient than trucks, and this efficiency translates into fewer pollution emissions from trains than from trucks hauling the same freight the same distance. The system-wide decreases in air pollutant emissions will result primarily from the substantial truck-to-rail diversions that will occur due to the Transaction, but will also result from more efficient rail routings that will be available through the expanded CSX and NS systems.

The DEIS also notes another air quality benefit, "...a reduction in the potential for accidental release of ozone-depleting materials..." DEIS at 4-62. This benefit is due to the reduction in car-miles and freight-handling in rail yards for these shipments as a result of the Transaction.

3.1.2 Energy Benefits

The combination of truck-to-rail diversions and more efficient rail routings will result in very significant reductions in fuel consumption. Various models and estimates by the Applicants and the Board project a range of savings in net annual reduction in diesel fuel consumption. Estimates range from a high of 133.6 million gallons of diesel fuel, to the most conservative estimate used in the DEIS (at 3-1) of approximately 80 million gallons of diesel fuel saved annually. Thus, the DEIS concludes that "there would be no significant environmental impacts on energy consumption...as a result of the proposed Conrail Acquisition" (DEIS at 4-49), although this actually represents a significant benefit.

3.1.3 Safer Hazardous Materials Transportation

Transportation of hazardous materials is safer by rail than by road. Railroads in the United States carry almost 2 million freight cars of hazardous materials annually; this is equivalent to almost 6 million trucks on U.S. roads. Yet, railroads have less than one-tenth the number of hazardous material incidents of trucks, despite equal ton-mileage. (Whenever a hazardous material leaks or spills from its container, it is considered an "incident" no matter how small the amount or minor the effect.) NS, in particular, has an excellent safety record. Of the 225,000

shipments of hazardous materials transported in 1996, less than one-tenth of one percent involved incidents, most of which were minor in nature and were shipper or tankcar owner-related.

The DEIS concludes, correctly, that "[o]verall, the proposed Acquisition should result in a slight safety improvement for rail transportation of hazardous materials and no significant system-wide adverse impacts related to hazardous materials transport." DEIS at ES-19. This improvement results from a decrease in rail car-miles of hazardous materials associated with more efficient routings and from a reduction in hazardous materials freight-handling in rail yards due to expansion of single-line service and reduction of interchanges. The expansion of single-line service and reduction of interchange (switching) is particularly important in improving hazardous materials transportation safety. Single-line service decreases the amount of rail car switching between tracks and carriers — and it is during switching that accidents are most likely to occur.

3.1.4 Enhancement of Long-Term Productivity

As required by NEPA, the DEIS considers the extent to which the Transaction would result in long-term productivity gains at the expense of short-term use of the environment and environmental impacts. The DEIS concludes that the short-term impacts would be more than offset by long-term gains in productivity, including increased productivity and efficiency of rail operations in the eastern United States. DEIS at 4-76. The long-term positive effects also include improved service and system-wide reductions in energy consumption, highway traffic congestion, highway accidents, and air pollutant emissions. NS concurs with this conclusion - the Transaction will have a net positive benefit for the environment and the economy.

3.1.5 Commitment of Resources

The DEIS evaluates the irreversible and irretrievable commitment of resources, including natural, physical, human, and fiscal resources; it concludes that the benefits of the proposed Transaction would outweigh the commitment of resources. DEIS at 4-77. NS agrees with this important conclusion in the DEIS.

3.1.6 Norfolk Southern's Environmental Policy

Another benefit of the Transaction will be the expansion of the best practices of NS' environmental commitment as selected Conrail operations and activities become part of the

expanded NS rail system. NS' environmental policy requires every employee to understand and comply with environmental requirements on the job. Government agencies are informed of any spill or hazardous materials incident regardless of the potential to cause environmental harm. Wastes are minimized through recycling, reduced consumption, and use of environmentally preferred materials and nonpolluting technologies. Cooperation is given to all governmental/environmental authorities. All laws and regulations related to protecting the environment and transporting environmentally sensitive materials are complied with in full. NS is committed to implement the best environmental practices of Conrail and NS after the Transaction.

Long-standing conservation practices at NS include collecting and recycling crossties, tires, paper, metal, aluminum, and rail car parts. Used rail is reweldied and reused. Lubricating oil and cleaning solvents are rejuvenated and reused. Tens of thousands of aging rail cars have been rebodied. NS works hard to be a sound environmental caretaker, and will utilize its proven environmental protection practices and programs to improve environmental management throughout its expanded system.

3.2 Safety Benefits

In addition to environmental benefits, the Transaction will bring about significant safety benefits which the Board should take into account as part of the NEPA balancing process. The most significant of these will result from the integration of Norfolk Southern's safety culture with that of Conrail. As SEA has noted (DEIS at B8-1), both NS and CSX had the lowest accident rates of all Class I railroads for the 1994 through 1996 period. Their rates have been lower than the Class I railroads as a whole. While Conrail's accident rate is higher than both NS and CSX, Conrail has been below or at the Class I accident rate average for the same period. DEIS at B8-1. The railroads' commitment to safety is reflected by these records and by their submission of detailed Safety Integration Plans to the Board in close coordination with the FRA.

3.2.1 Fewer Accidents

The greatest safety benefit from the Transaction will come from diverting freight from trucks to railroads. With an estimated reduction of 589,000 truck trips annually on the NS portion, there will be approximately 800 fewer truck crashes. This includes approximately 15 fewer fatal truck crashes involving one or more fatalities. DEIS, Volume 5A at B-14.

3.2.2 Reduced Switching

The expansion of single-line service (e.g., service via one railroad) that will result from the Transaction will also improve rail safety. Single-line service decreases the amount of rail car switching, where there is the greatest potential for collisions, derailments and employee injuries. The post-Transaction NS system will provide single-line service to an additional 245,000 freight units annually. Integration of some existing NS and Conrail terminals should reduce switching and improve safety as well.

3.2.3 Norfolk Southern Safety Program

One of the most important factors contributing to the environmental and safety benefits of the Transaction is NS' proven performance and commitment to safety. Within the railroad industry, NS is a safety leader, having recently earned the prestigious E.H. Harriman Memorial Gold Award for employee safety for the eighth straight year. NS strongly believes that safety is good business; its low number of injuries is proof its commitment is working. In 1996, NS employee injuries were one-fifth of what they were just eight years before. Since 1988, Norfolk Southern's train accident rate has dropped 31 percent, and is currently less than half that of the rail industry as a whole. Applying either NS or CSX's accident rate to the new lines will eliminate, even after accounting for new traffic, a net of approximately 50 rail accidents per year (Application, Vol. 6A, at 75).

Safely integrating NS' operations and activities with those of Conrail will be a key factor in maintaining and improving the safety of railroad operations. NS will accomplish this safe integration through, among other things, implementation of a comprehensive Safety Integration Plan (SIP) and by retaining key Conrail employees.

Safety Integration Planning. NS has been planning since the spring of 1997 how to integrate its part of Conrail in the safest and smoothest manner possible. In December 1997, NS submitted a comprehensive Safety Integration Plan to the Board, which documents all anticipated safety elements of the Transaction. NS has been and continues to consult with the FRA regarding the SIP and related planning for safe integration of operations.

Retaining Sufficient Employees. NS is committed to retaining sufficient numbers of Conrail employees (as well as Norfolk Southern's own valued workforce), particularly train crews and dispatchers. NS knows that a well-trained, skilled workforce is critical to safety. To underscore its commitment to retaining Conrail's institutional knowledge, NS has recently hired

several high-ranking Conrail employees knowledgeable about that carrier's operations and safety practices. For example, NS has already appointed Conrail's Director of Safety, William L. Barringer, to Director of Safety for NS, to capitalize on Conrail's own safety expertise and to meld smoothly the railroads' respective safety efforts. NS also plans to keep the same regional dispatching system in place to minimize the potential for disruption or disorientation, thereby ensuring that dispatchers are familiar with their territories.

3.3 Socioeconomic Benefits

The Transaction, and the resultant increased productivity and efficiency of rail operations in the eastern United States, will stimulate economic growth and deliver nearly $1 billion in public benefits to the nation as well as significant unquantified benefits. CSX/NS-18, Volume 1 at 16. The Board should give proper weight to these benefits, as well as environmental and safety benefits, as part of the NEPA balancing process.

3.3.1 Economic Benefits to the Public

CSX and NS have documented in submissions to the Board that the Transaction will generate nearly $1 billion in quantifiable public benefits. These benefits will result from the following:

- The proposed construction projects would increase transportation operation efficiency and improve service capabilities (shorter, more direct transportation routes), resulting in reduced transportation cost to shippers and consumers.
- These enhanced efficiencies would also facilitate the diversion of traffic from highways to rail. Over one million truck-to-rail diversions are predicted by NS and CSX, and NS alone anticipates approximately 589,000 diverted truckloads (Environmental Report at 2-2).
- In addition, truck-to-rail diversions would reduce fuel consumption by an estimated 23.6 million gallons of diesel fuel annually. DEIS at 4-47.
- Truck-to-rail diversions would also extend the life of the national highway system, and significantly reduce highway maintenance costs borne by federal, state and local agencies. The net savings from the Transaction to highway maintenance costs is approximately $93 million per year (Environmental Report at 2-6).

- In addition to the normal capital expenditures the railroads' would spend to operate Conrail, NS and CSX plan to spend a combined $1.3 billion for major capital improvements and equipment purchases. *[This $1.3 billion is the largest expenditure for new capacity on a railroad in at least four decades.]* NS alone anticipates spending $729 million in the first three years for projects such as rail corridor upgrades ($130 million), improvements to existing Conrail routes ($70 million) and new automobile facilities ($30 million).
- Other important public economic benefits will include reduced highway congestion and new opportunities for industrial development.

3.3.2 Benefits to Shippers from Increased Competition and Access

The Transaction will bring about a dramatic increase in competition between railroads, and will strengthen rail as a competitor with trucks for freight movements. The shift of traffic from the highways to NS will save shippers $92 million in annual logistics costs.

Conrail is presently the only Class I U.S. rail carrier operating throughout the Northeast section of the country. Shippers who are located in the Northeast thus lack the competitive and service benefits that come from having two strong rail networks serve them. The Transaction will introduce competitive Class I rail service for the first time since before the creation of Conrail for a substantial portion of the Northeast. The establishment of Shared Assets Areas for North Jersey, South Jersey/Philadelphia and Detroit and the restoration of rail competition for shippers served by the former Monongahela Railway will bring shippers in those areas the benefits of head-to-head competition between CSX and NS.

The expansion of CSX and NS's rail networks will also markedly improve rail service by creating new single-line service. Through the operation and use of Conrail's lines, CSX and NS will operate a number of new single-line routes, particularly between the Northeast and the Midwest and the Northeast and the Southeast. Shippers will benefit from the advantages of single-line service as compared to joint-line service in terms of timeliness, reliability and cost-effectiveness. There will be fewer interchanges, and more traffic will be able to bypass terminals, reducing delays and inefficiencies.

3.3.3 Industrial Development

Over the past seven years, NS' industrial development efforts have led the industry in creating economic growth and jobs in the Southeast and Midwest regions of the country. Just as NS' efforts have fueled growth in the areas it currently serves, so will the application of NS' proven industrial development strategy create substantial benefits for communities now served by Conrail. In 1997, 62 new industries located along NS' tracks, and 43 industries expanded existing facilities. Investments by these industries amounted to $2.6 billion, and 7,300 new jobs were created in the communities NS serves. Eight of the last 12 automobile plants built in the U.S. were built along NS lines.

4.0 PRINCIPAL COMMENTS ON ENVIRONMENTAL ISSUES

The following presents Norfolk Southern's comments on the scope, approach, methodology, technical analyses, conclusions, and recommended mitigation measures within the DEIS. These principal comments affect the DEIS conclusions and recommended mitigation measures. Overall, the DEIS provides a comprehensive assessment of the system-wide environmental effects of the proposed Transaction, and correctly concludes that the Transaction will have a net positive benefit on the environment and the economy. The DEIS analyses and conclusions regarding local impacts are equally comprehensive. However, there are several areas where NS has identified inappropriate analytical methods, technical inaccuracies, or other substantive errors in the DEIS which have led to erroneous conclusions and inappropriate recommendations for mitigation. Comments offered below support the DEIS where the analyses and conclusions are appropriate and accurate, and identify areas where the analyses and conclusions are inaccurate and mitigation inappropriate. In several areas where it appears improvements could be made to the DEIS, NS has offered a discussion of improvements or corrections and the results of their application, including the necessary technical justification for SEA's consideration.

4.1 Safety: Freight Rail Operations

For the freight rail operations safety analysis, the DEIS undertook both a system-wide and localized (rail line segment specific) safety analysis. The analyses estimated the probability of occurrence of freight train accidents that would result from the proposed Transaction.

4.1.1 Safety: Freight Rail Operations, System-Wide Analysis

The DEIS examined the system-wide freight operations accident risk for both pre- and post-Transaction configurations on all 1,022 rail line segments and 375 rail yards associated with the Transaction. To assess potential system-wide safety effects, the DEIS calculated the system-wide probability of an accident occurring based on the projected train activity data provided by NS and CSX in their Operating Plans. The DEIS concludes that the combined changes in freight traffic on rail line segments and freight activity in rail yards would result in a small overall decrease in the likelihood of freight rail accidents and derailments. DEIS at 4-10. Based on this analysis, the DEIS' findings are that the Transaction would not result in significantly adverse system-wide safety effects for freight rail operations and therefore, no system-wide mitigation measures are proposed.

NS believes the DEIS presents a well-founded, comprehensive analysis of the potential system-wide safety impacts from freight rail operations on the expanded NS and CSX systems. NS completely concurs with the DEIS conclusion of no significantly **adverse** system-wide safety effects from freight rail operations. Additionally, the Transaction will result in notably significant system-wide positive impacts on safety when the reduction in truck crashes resulting from truck-to-rail diversions is considered. The DEIS at 4-10 notes that the estimated reduction in truck-miles due to the Transaction could result in 1,600 fewer annual highway accidents. In addition, it should be noted that the latest statistics project a reduction of 31 fatal truck crashes each involving one or more fatalities. DEIS at B-14. Significant environmental benefits such as this must be acknowledged and properly weighed against any adverse environmental effects when considering mitigation, as discussed in Section 2.2 above.

4.1.2 Safety: Freight Rail Operations, Segment-Specific Analysis

The DEIS performed segment-specific analyses of accidents on rail line segments where estimated increases in freight train traffic would exceed the Board's environmental thresholds for air quality and noise analysis. The DEIS estimates the average annual accident rate for freight operations on each specific segment and adjusts these estimates based on the track condition and on whether or not the segment has a train control signal system (which reduces the potential for accidents). The DEIS then applies inappropriate significance criteria to the line segment predicted accident frequencies to recommend unwarranted mitigation.

NS does not believe the Transaction will have adverse impacts on freight rail operations, and opposes any mitigation for freight rail operations safety for numerous reasons. First, the Transaction is expected to result in substantially significant system-wide safety benefits primarily as a result of truck-to-rail diversions. Additionally, NS currently has numerous programs, the details of which can be found in the ER (Part 1, Section 3.3 and 7.2) and the SIP (DEIS, Volume 2), to effectively manage freight rail operations safety as evidenced by its consistently low accident rate. These safety benefits of the Transaction should be taken into consideration when evaluating the need to mitigate segment-specific safety concerns. Finally, the significance criteria of a predicted accident frequency greater than one every 100 years actually addresses pre-existing conditions rather than Transaction-related changes as well as being based on erroneous data.

The DEIS identifies four NS line segments which SEA has calculated will exceed the significance criteria defined in the DEIS. The significance criteria as described in the DEIS at B-13 to evaluate the significance for safety effects of freight rail operations are as follows.

"First, SEA compared the Acquisition-related change in accident rate for a rail segment to the normal fluctuation in the state-wide accident rate. Second, SEA determined if the rail segment is predicted to experience an accident more frequently than once every 100 years per route mile. If a rail line segment is predicted to have an increase in accident rate greater than the normal variations in state-wide accident rates and to have an accident more frequently than once every 100 years per route mile, SEA considered mitigation for safety impacts."

The criterion of more than one accident predicted every 100 years is not an appropriate threshold to determine significance of safety effects from Transaction-related changes in freight rail operations. Any condition imposed by the Board must be directly related to the Transaction's impacts and may not be designed to remedy pre-existing conditions. The criterion of a predicted post-Transaction accident rate greater than one accident in 100 years would actually address existing conditions rather than just the Transaction-related change in traffic on the line segment.

This is verified by the calculations provided in Attachment B-1 of Appendix B of the DEIS. For example, the NS line segment Miami to Airline (N-086) exceeds the DEIS so-called significance criterion with a predicted post-Transaction accident rate of one accident every 78 years. However, this is not a Transaction-related impact, because the pre-Transaction predicted accident rate for the same segment is one every 88 years which is already greater than the DEIS significance threshold. This significance criteria encompasses pre-existing conditions and neither restricts its focus to changes related to the Transaction nor results in recommendations narrowly tailored to mitigate the potential changes in such impacts.

Additionally, this significance criterion appears to have been based on incorrect data. The DEIS at B-13 states that a criterion of one accident every 100 years was based on the national frequency of railroad accidents calculated from the 1996 FRA Accident/Incident Bulletins. The DEIS uses the values 1,078 total freight and passenger accidents and 126,682 miles of main line railroad tracks operated in the U.S. to calculate that a freight train accident can be expected to occur once every 117 years per route mile.

However, there is no reference to 1,078 total freight and passenger accidents in the 1996 FRA Accident/Incident Bulletins. In fact, on page 14 of the Accident/Incident Bulletin, No. 165 for the Calendar Year 1996, a total of 2,584 train accidents were reported. These statistics suggest that a freight rail accident can be expected to occur once every 49 years, <u>not</u> once every 117 years. There are <u>no</u> NS line segments with pre- or post-Transaction predicted accident rates

exceeding one every 49 years. *For this reason and the reason described above, no mitigation related to freight rail operation safety is justified or warranted.*

There is, moreover, no analytical basis for the mitigation the DEIS proposes for the four NS line segments that are purportedly above the DEIS significance criteria for freight rail operations safety. Recommended mitigation in the DEIS includes annual training of mechanical and track inspectors and compliance with a proposed FRA rule requiring certain frequencies of rail inspection. *NS opposes imposition of any mitigation that would constrain its ability to adopt equally or even more effective alternative inspection and training programs.*

The DEIS proposes for line segments identified as having a significant impact for freight rail operations safety that NS comply with a proposed FRA rule which could require certain frequencies of rail inspection based on ton-miles of traffic on a line. The current proposal would require such inspections at least once every 40 million gross ton-miles, or annually, whichever is more frequent. NS already conducts such inspections on an equal or more frequent basis and stipulates it would continue to do so. NS believes, however, that it would be inappropriate for the FEIS to recommend such a requirement as it would encroach upon the jurisdiction of FRA regarding freight rail safety operating rules, and have the effect of prematurely adopting a proposed rule which is currently subject to the proper FRA rulemaking process.

Additional mitigation the DEIS recommends for the four NS line segments above the significance criteria includes annual training of mechanical and track inspectors for these locations. No justification is provided for this mitigation. The existing NS safety program is proven effective - the NS overall safety record is second to none. All NS inspectors receive extensive training and are fully qualified to provide inspections per NS standards. NS has systems in place to continually monitor and review the performance of its inspectors and to provide additional training when traffic or other condition changes warrant such training. The DEIS fails to provide a reasonable basis for implementing this specific annual training requirement. *For these reasons, NS believes there is no justification for any proposal to require annual training for these inspectors in the FEIS.*

4.2 <u>Safety: Passenger Rail Operations</u>

The DEIS correctly reports that the Transaction will not result in any system-wide degradation in the safety of passenger rail operations that are conducted on the expanded NS and CSX systems following the proposed Transaction. NS and CSX are both experienced in safely handling passenger operations on their systems and in working cooperatively with Amtrak and

other passenger rail agencies to enhance safety. NS and CSX have achieved outstanding safety records in this area.

Nonetheless, on the basis of a statistical analysis of passenger and freight operations on the 197 rail line segments over which both freight and passenger operations are conducted, the DEIS (Chapter 7 at 7.2.2) concludes that a total of ten NS and CSX segments may warrant special safety mitigation measures. The DEIS therefore proposes that NS establish passenger trains as "superior," and maintain 30-minute windows around passenger trains, on four NS line segments and possibly one additional route over which there are both freight and passenger operations.[4] Identical mitigation is proposed for five CSX line segments. The NS segments are:

- Kalamazoo, MI to Porter, IN (N-497)
- Campbell Hall, NY to Port Jervis, NY (N-063)
- Jackson, MI to Kalamazoo, MI (N-120)
- West Detroit, MI to Jackson, MI (N-121)
- Porter, IN to Chicago, IL route (if the Canadian Pacific (CP) is granted or given haulage or trackage rights over any segment on this route.) This route consists of the following four segments: Porter, IN to Control Pt. 501, IN (N-306); Control Pt.

[4] The DEIS is not internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7 are not consistent in their description of the proposed mitigation. The proposed "superior" passenger train/freight train separation mitigation described in Chapter 7 of the DEIS contemplates that freight trains moving in the same or opposite direction on the same track on any of these line segments would need to be clear of the track at least 15 minutes before <u>and</u> 15 minutes after the expected arrival of a passenger train at any point. This proposed measure would thereby establish a 30-minute separation window around passenger trains moving on that track. See DEIS Section 7.2.2 at 7-12.

By contrast, the discussion of mitigation of the individual line segments found in the state-by-state sections of Chapter 5 of the DEIS does not use the term "superior trains." Rather, Chapter 5 contemplates a proposed separation window under which freight trains, both opposing and moving in the same direction, would need to be clear of a point on the same track at least 15 minutes prior to the estimated arrival of a passenger train; no 15 minute window after a passenger train is proposed in Chapter 5. See DEIS at IL11-13, IN11-13, MI-7 through MI-9 and NY-8 through NY-10. Further, whereas the mitigation proposed in Chapter 7 contemplates that the separation requirements would not apply when the freight train is moving in the opposite direction away from the passenger train, there is no similar qualification in the Chapter 5 description of the proposed mitigation.

501, IN to Indiana Harbor, IN (N-042); Indiana Harbor, IN to South Chicago, IL (N-047); and South Chicago to Ashland Avenue, Chicago, IL (N-309).

Amtrak operates on segments N-497, N-120, N-121 and the Porter to Chicago route. On segment N-063, New Jersey Transit operates commuter train service for Metro North. Segment N-497 is owned by Amtrak, and Conrail currently operates a local train about twice a week on this segment. CP has haulage rights only over the Porter, IN to Control Pt. 501, IN (N-308) segment, a portion of the Porter to Chicago route. The CP traffic on this segment is now being hauled by CSX under CSX's trackage rights with Conrail over this segment.[5] While NS anticipates that CP traffic will stay on the line post-Transaction and be hauled by NS, the net result is that there will be no increase in CP traffic - just a shift as to which railroad will carry that traffic. No final agreement has been reached by NS with CP regarding possible CP haulage rights over segments N-497, N-120 and N-121, as is more fully discussed in Section 4.22.1.

Norfolk Southern does not believe there are any adverse safety impacts to passenger rail operations as a result of this Transaction for the following reasons:

First, no passenger safety mitigation is warranted because, by any standard, operations on these line segments -- which are already subject to FRA safety oversight -- are demonstrably safe and will remain equally as safe following the Transaction. The statistical analysis conducted by SEA to ascertain whether mitigation is warranted relied on data and assumptions that overstated the Transaction-related impacts of modestly increased freight traffic. For example, in conducting its statistical review of passenger/freight train collisions, the DEIS utilized a collision rate that was based on collisions of a type that are unrelated to increased freight operations and that would not be addressed by the proposed mitigation, i.e., collisions resulting from freight trains and passenger trains operating on different tracks or from passenger trains hitting parked freight cars. The actual rate of passenger trains being hit from behind by freight trains operating on the same track, or vice versa, is closer to zero, a fact that underscores the mitigation proposal addresses an unlikely safety risk.

Second, even assuming that some mitigation might be warranted on certain line segments, modern signaling systems and other safety controls offer the highest levels of safety without the cumbersome procedures and efficiency sacrifices inherent in the proposed mitigation

[5] Presently CSX has trackage rights on this Conrail line from Porter to Pine Jct., Indiana, east of Gary. All CSX trains on their way to Michigan use this line, including the CP haulage traffic.

procedures. Train superiority and temporal separation practices of the type proposed in the DEIS, which are not even listed among the potential safety mitigation measures identified in Chapter 3 of the DEIS, have been outdated for decades, and their re-introduction on NS now could well detract from safety.

Third, the proposed 15/30 minute separations would disrupt freight service on all five identified line segments, particularly the Porter to Chicago route. This would impose a substantial burden on commerce and attract more freight to trucks, reversing the significant environmental and other public benefits of the Transaction. The DEIS gives no consideration to possible adverse impacts and the overall balance of effects that would result from its proposed mitigations.

Fourth, to the extent that any mitigation might be appropriate, such mitigation should be in the form of a requirement that NS consult with the FRA and the passenger rail agencies concerning safety enhancements that might be considered for these line segments. A consultation requirement would fully comport with the Board's obligation under NEPA to identify matters that other federal and state agencies might more appropriately address.

4.2.1 The Board Should Not Adopt Mitigation Measures That Interfere with the FRA's Exclusive Authority to Regulate the Safety of Passenger Operations.

The Board should tread cautiously before imposing any special safety condition applicable to train operations, particularly passenger train operations. While NS does not question the Board's right to address legitimate Transaction-related safety concerns through the NEPA process, the propriety of any proposed condition in the passenger safety area must be measured against the FRA's "plenary authority over the safety of the railroad industry."[6] Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. §20101, grants the FRA the power to regulate "every area of railroad safety." The FRA has exercised that authority extensively, and as discussed further below is currently reviewing a variety of passenger train safety issues.

Congress has made clear that the FRA's role in regulating passenger train safety is exclusive. In explaining the 1973 deletion of language from section 801 of the Rail Passenger Service Act of 1970 that allowed the ICC to prescribe regulations "necessary to provide safe...service," the Conference Report on the Amtrak Improvement Act of 1973 stated as follows:

[6] DEIS, Volume 5 at B-2.

> The Conference substitute rewrites Sections 801 of existing law to clarify the jurisdiction of the Department of Transportation and the Interstate Commerce Commission over safety related and service related issues. First, this provision resolves a possible legislative inconsistency which results from the fact that Section 801 of existing law, as presently worded, authorizes the ICC to "prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service." The Federal Railroad Safety Act of 1970, enacted only two weeks prior to the rail passenger Service Act, defined the Secretary of Transportation's jurisdiction to include "all areas of railroad safety." It is the intent of the committee of conference to make clear that the Secretary's jurisdiction over railroad safety is exclusive. The ICC, in prescribing its own regulations with respect to the adequacy of service, should take account of safety regulations prescribed by the Secretary of Transportation.

H.R. Conf. Rep. No. 93-597, at 12 (1973), reprinted in 1973 U.S.C.C.A.N. 2331, 2342 (emphasis added).

Congress's message was unambiguous - the FRA has the sole authority to regulate rail safety. Moreover, nothing in the ICC Termination Act changes that fact. To the contrary, that statute curtailed the Board's limited authority with respect to commuter operations. See 49 U.S.C. §10501(c) (2) (providing that the Board does not have jurisdiction over commuter agencies other than with respect to access to facilities).[7] In view of the Board's absence of authority to regulate with respect to passenger carrier safety matters, and FRA's exclusive jurisdiction and ongoing activity in the area of passenger carrier safety, the Board should defer to its sister agency before adopting any passenger safety conditions, particularly a condition as far reaching as that proposed in DEIS Mitigation Measure 2(A) and (B).[8]

The FRA in fact has several pending rulemaking proceedings and other projects underway in connection with passenger safety. These include Passenger Equipment Safety Standards (FRA Docket No. PCSS-1), 62 Fed. Reg. 49730 (Sept. 23, 1997) and Passenger Train Emergency Preparedness (FRA Docket No. PTEP-1), 62 Fed. Reg. 8373 (Feb. 24, 1997). It is noteworthy that FRA has acknowledged the breadth of its interest in this area in its rulemaking notice at 62 Fed. Reg. 49732 (September 23, 1997) in the Passenger Equipment proceeding.

[7] See H. Rep. 104-422, 104th Cong. 1st Sess. 167 (statement of Board jurisdiction modified to "reflect curtailment of regulatory jurisdiction in areas such as passenger transportation.")

[8] In fact, were the STB to impose the type of superiority/temporal separation proposed in the DEIS, such a condition could conflict with NS' statutory right under section 402(e) to petition for relief from the preference rule for Amtrak operations.

> ...rail passenger safety does involve the safety of the railroad system as a whole, including the track structure, signal and train control systems, operating procedures, and station -- and platform-to-train interface design -- in addition to passenger equipment safety. To that end, FRA has active rulemaking and research projects in a variety of contexts that address non-equipment aspects of passenger railroad safety, including signal and train control systems.

The proposed separation measure could well intrude upon, or conflict with, FRA pending future proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activities of more than one safety regulator should be scrupulously avoided.

The Board should also take note of the fact that neither the FRA nor any participant in the rail safety community known to NS has proposed a temporal separation rule as a means of enhancing passenger train safety. Neither Amtrak, New Jersey Transit or Metro North (nor any other commuter agency) have requested the proposed mitigation -- or any safety mitigation on any line segments -- in their filings with the Board. NS works closely with these agencies on safety issues, and at no point in its safety-related dealings with any of these agencies have the notions of passenger train superiority or mandated temporal separations of trains as a means of ensuring safety been raised by any of these parties.[9]

Notably, neither Amtrak nor any commuter agency has claimed that the Transaction will have any detrimental impact on the safety of their operations on any NS lines. Nor have any

[9] Chapter 5 of the DEIS states that the potential for freight/passenger train conflicts could be reduced "by reinforcing passenger trains' priority over freight trains." This language is, at best, confusing, because there is no existing passenger train priority of the type contemplated in the proposed mitigation, and thus there is no rule to reinforce. It is possible that the DEIS is referring to the "preference" for Amtrak trains provided under section 402(e) of the Rail Passenger Service Act of 1970, 49 U.S.C. 24308(e). The proposed freight passenger train separation condition is entirely unlike the preference for Amtrak trains that is contemplated by that statute. Section 402(e) provides that except in an emergency, "Amtrak has preference over freight transportation in using a rail line, junction or crossing unless the Secretary of Transportation orders otherwise under this subsection." This statute does not require any temporal separation between Amtrak and freight trains, and does not apply to commuter operations at all. The purpose of the statutory preference for Amtrak, in fact, has nothing to do with safety, but rather was designed to address on-time performance issues that arose in the 1970's. See Hearings before the Senate Committee on Commerce on S. 1763, 93rd Cong., 1st Session at 46, 105 (1973).

passenger groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any NS lines, including the five lines identified by SEA for mitigation. The proposed mitigation thus not only addresses a problem that does not (and will not following the Transaction) exist, but it lacks any safety constituency.

As a matter of sound public policy and respect for its sister agency, the Board should not intrude into a passenger safety area reserved for another agency that is already active in these matters. Nothing in NEPA requires that it do so. Rather, in addressing passenger safety mitigation, the Board would appropriately fulfill its NEPA role by identifying potential safety issues for FRA, leaving it to the agency to address those issues as it best sees fit. See Robertson v. Methow Valley Citizens Council, supra, 490 U.S. at 352-353 (1989) (NEPA "imposes no substantive requirement that mitigation measures actually be taken"; agency preparing NEPA document fulfills its duty by identifying and evaluating environmental consequences that can be addressed only by another agency).

4.2.2 The DEIS Fails to Justify the Conclusion That Any Mitigation is Warranted on the Identified NS Line Segments.

In determining the significance of impacts on passenger train safety, SEA first identified an annual rate at which passenger/freight train accidents occur. SEA then identified the line segments shared by passenger and freight trains on which there would be an increase of at least one freight train/day as a result of the Transaction. Using the accident rate data SEA then determined for each of the identified line segments: (a) whether the proposed Transaction-related change in the projected accident rate on each line segment was greater than an annual increase of 25%, and (b) whether the accident frequency was less than one accident in 150 years. NS has several comments to offer on the SEA methodology and the significance factors used by SEA, as follows.

Appendix B of the DEIS explains that one element of the calculation of accident potential on the line segments that were reviewed in connection with the DEIS was a factor that assumed a passenger/freight train collision rate of 1.25 annually for Amtrak trains and 0.25 annually for commuter trains. See DEIS Appendix B at B-16. These accident rates were determined based on a review of freight/passenger train collisions over a four-year period, 1993 through 1996, inclusive. The collisions on which the DEIS accident rate was based are discussed below.

The list of collisions on which the DEIS relies is informative in several respects. First, it shows that there have been very few passenger/freight "collisions" in recent years (and in fact

fewer than identified by SEA as discussed below). Second, an analysis of the collisions identified by SEA also shows that the proposed mitigation addresses a "problem" of passenger/freight train separation distances that does not in fact exist.

Passenger/freight train collisions are very rare. Six passenger/freight collisions were used to calculate the accident rates used in the DEIS analysis. (Collisions involving passenger trains are identified on the list with the number "1" in either the Amtrak collision column or the commuter collision column.) There have in fact been only five such collisions during that four-year period, all but two of which occurred on the lines of Western railroads.

The list includes five Amtrak/freight train collisions and one commuter/freight train collision during the four year period studied, thus explaining the 1.25 and 0.25 annual accident rates. However, the one collision involving a commuter train was improperly included because it was not a commuter/freight train collision. Rather, that one accident was an Amtrak/MARC collision in Silver Spring in February 1996. Since this was a collision between two passenger trains, with no freight train involved, it should not have been counted in determining the rate of freight/passenger collisions. Accordingly, the actual annual rate of commuter/freight collisions during the four-year study period was zero, not 0.25 as applied in the DEIS.

Further, a closer analysis of the Amtrak accidents shows that the proposed separation rules are designed to address a situation that experience shows is highly improbable. At least four of the five Amtrak collisions on the list occurred in circumstances that would not be addressed by the proposed mitigation measure, i.e., circumstances other than passenger and freight trains sharing the same track and traveling under power too closely to one another. The September 1993 collision occurred when an Amtrak train hit parked freight cars in a siding that was not long enough to accommodate the freight and passenger cars. The May 16, 1994 accident involving a CSX and Amtrak train occurred when the Amtrak train was struck by a trailer that had become unfastened from its mooring on a CSX train on an adjacent track and protruded over the track on which the Amtrak train was moving.[10] Similarly, the February 1995 accident involving an Amtrak and a UP train occurred when the Amtrak train struck a load of steel that was projecting from a UP train located on an adjacent siding. A fourth collision on the list, which occurred on BN's lines in March 1995, was caused when the brakes on several parked BN

[10] The CSX train was located on a passing track on a single-track route, and because it was on a different track would not have been subject to a separation rule. Improved securement of intermodal trailers will help avoid the recurrence of this type of accident.

cars failed, causing those cars to hit an Amtrak train. The freight cars were not connected to a locomotive at the time of the accident.

This review shows that at least four of the five collisions from which the 1.25 annual accident rate involving Amtrak trains was calculated occurred in circumstances that the proposed train separation mitigation rule would not have addressed, i.e., circumstances that are unrelated to the level of freight train traffic on the same track as the passenger train traffic. These accidents did not involve freight and passenger trains moving under power and operating on the same track, and thus a separation rule designed to address freight and passenger trains sharing the same track would not have prevented the accidents.[11]

In fact, the proposed mitigation also would not address the causes of any of the major collisions involving passenger trains colliding with other trains over the last several years. A summary of these collisions is set forth in an FRA rulemaking notice on Passenger Equipment Safety Standards, 62 Fed. Reg. at 49730 (Sept. 23, 1997). Not one of the major collisions involved a passenger train colliding with a freight train operating on the same track. The one collision involving a freight and passenger train that ended up on the same track was the 1987 collision in Chase, MD between a Conrail and an Amtrak train. However, that collision resulted when the Conrail engineer, who was operating a freight train on another track, ignored signals and entered the track being used by the passenger train without permission. A separation rule of the sort proposed here would not have prevented a collision resulting from such actions by an engineer, who may have been impaired by drug use.[12]

The rate of passenger/freight collisions involving freight trains hitting passenger trains from behind or vice-versa on the same track is thus near or at zero, even on line segments where the level of passenger and freight train activity (pre and post-Transaction) is much higher than that on the segments identified in the DEIS for mitigation. (The projected level of increased freight train activity on the NS line segments identified for mitigation ranges between 4.1 trains and 9.2 trains on rail line segments N-497, N-063, N-120 and N-121 and 16.2 on rail line

[11] The remaining collision on the list was a March 1995 accident involving an Amtrak train operating on the BN system. NS is unable to find any reports concerning this accident, which suggests that the accident did not involve any loss of life, injuries or major property damage.

[12] The DOT/FRA drug testing rules were not in effect at the time. Neither were the rules regarding engineer certification, which impose penalties for abuse of prohibited substances.

segment N-042, which is part of the Porter to Chicago route. This route is double and triple track. Each of the line segments at issue can easily and safely accommodate these train increases). The facts thus show that the passenger train safety mitigation designed to address an increase in the level of freight train operations is simply not warranted.

In addition, SEA has applied an overly conservative threshold of 25% annual fluctuation in passenger train accident rate and a second tier criterion of an accident prediction value that would exceed one accident every 150 years. These factors appear to have been arbitrarily chosen, and their use would overstate any potential impact.

NS believes that the DEIS methodology for passenger rail line safety is too conservative and does not reflect NS' excellent safety history. NS has not had any accidents involving passenger/freight train collisions in over 30 years -- which is as far back as records and memory permit. By applying the national average passenger train accident rates instead of individual railroad accident statistics, the DEIS significantly overestimates the potential for any adverse post-Transaction safety impacts. This is demonstrated by considering the FRA train accident database, a much larger database with greater statistical confidence. Conrail has an accident rate that is close to the national average while the accident rate of NS is considerably lower. NS' average accident rate over the past three years is approximately 40% below the national average. Applying such a factor to the passenger rail safety analysis would more accurately predict accident probabilities on NS. Such a correction would show that rail line segments N-120, N-121, N-497, and N-063 will have a predicted post-Transaction interval between passenger collisions of over 150 years.

NS has reviewed the NS rail line segments where DEIS recommended "superior" trains. Dispatching for the segment Campbell Hall, NY to Port Jervis, NY (N-063) will be the responsibility of New Jersey Transit, and thus imposing mitigation under the EIS would be inappropriate. The segment Kalamazoo, MI to Porter, IN (N-497) is owned and dispatched by Amtrak and is neither the responsibility of NS, nor a suitable candidate for the imposition of mitigation under the FEIS.

NS also believes that the Porter, IN to Chicago, IL mitigation is unsubstantiated. The route consists of four segments: N-308, N-309, N-042 and N-047. Two of these segments (N-308 and N-309) are not even found in the DEIS analysis in Attachment B-2 (Appendix B, Volume 5-A) since they either have a predicted decrease in traffic or a negligible increase of 0.1 trains. For the segments N-042 and N-047, the DEIS itself indicates accident intervals of 3,970 years and 604 years, respectively. These rates are substantially less frequent than the 150-year interval

established by the DEIS for being significant, and thus these two segments should not have been included for mitigation. SEA should also refrain from imposing DEIS Mitigation No. 2(B) on this route because, as indicated earlier, there will be **no increase** in CP traffic on line segment (N-308) but only retention of the **same CP traffic** on the line if CP is given haulage rights by NS. This route is double and triple track with bi-directional CTC. Therefore, the entire route from Porter, IN to Chicago, IL should be deleted in the FEIS as requiring mitigation.[15]

4.2.3 The Proposed Mitigation Relies on Archaic Notions of Train Operation That Overlook the Existence of Modern Signaling.

Even assuming that some passenger safety mitigation were warranted, the proposed assignment of "superior" status to one type of train over another, and the proposed temporal separation of trains (e.g., the 15/30 minute separation rule proposed in the DEIS) would re-introduce into railroading outmoded and outdated operating procedures. The proposed mitigation is outdated in concept, would distract from safety, and would cause huge disruptions to NS' operations (especially on the Porter to Chicago route), impairing NS' ability to achieve significant Transaction-related safety and efficiency benefits.

While train superiority and temporal separation rules played a role in ordering train operations in the era prior to the introduction of modern train signals and communications, these procedures were rendered obsolete beginning in the early 20th century, with the advent of modern signals. Today, neither FRA rules nor rail operational rulebooks utilize the concepts of train superiority or temporal separation. Even when such rules were in effect -- decades ago and prior to the advent of modern signals -- rail rulebooks provided for a train to clear five minutes ahead of a passenger train schedule. On non-signaled main tracks, trains followed with a ten-minute interval. Trains were never required to remain clear of the track after passage of a train, merely to follow according to signal rules or the "dark territory" (no signals) separation prescribed. A 30-minute "balloon" around each passenger train was unheard of, even in the 1940's. Further, in the era when seperation rules were in effect, such "superiority" rules were not

[15] Also, the Board generally does not regulate haulage, which is a private contractual arrangement among carriers. The DEIS seems to equate haulage with trackage rights, but trackage rights are a Board-recorded legal right to use a rail line that may not be begun or terminated without Board approval. NS has no intention of granting CP trackage rights between Porter and Chicago. Finally, if any such mitigation is imposed on this particular route, at a minimum it should be tied to "commencement of haulage rights," not the granting of such rights.

designed as a safety measure at all, but as a means of enhancing the opportunity for trains to maintain on-time schedules.

Each of the five NS line segments identified for mitigation is fully signaled with modern signals. Each line has Automatic Block Signals that provide the engineer with information about other trains or broken rails within the block covered by the signal. Each line is also equipped with Train Control System signals ("TCS"). This is a remote dispatcher-controlled centralized train control system that provides the train engineer with additional information about authority for movement including route and speed at control points, in addition to the "train or broken rail in block" information provided by Automatic Block Signals.

These signals and train control systems will allow NS trains and passenger trains to operate over the same track with safe headways of approximately four to five minutes between the trains. Such signals and systems provide tolerances that allow all trains, both freight and passenger, to safely share the same tracks. These systems are designed to prevent train collisions, while enhancing track capacity and service efficiency. The systems are recognized as safe by the FRA and are in use throughout the rail industry. The analysis of the collisions discussed above underscores the fact that signals are in fact working to prevent trains from being struck from the rear.

Modern signals and centralized train control provide a uniform and proven method of achieving the safe separation of trains that the DEIS seeks. By contrast, the temporal separation that is envisioned in the DEIS would not enhance safety beyond the levels achieved through these modern signal and train control systems, but could well detract from the safety of rail operations. The proposed mitigation measures would effectively undermine the utility and consistency of these safety systems on the five line segments, in favor of an unconventional, non-technological approach for those segments of the type that pre-dates modern railroad operations. The introduction of this type of unusual operating rule on the five line segments would undermine the safety that is achieved through the use of the uniform rules now in effect, introducing a "wild card" into NS train operations. From a safety perspective, the introduction of such non-uniform rules enhances the possibility of confusion and human error -- thereby resulting in the potential for a net reduction in safety.

4.2.4 The Proposed Mitigation is Inconsistent with the DEIS Description of Appropriate Passenger Train Safety Mitigation Set Forth in Sections 3.2.3 and 3.3.3 of the DEIS.

As noted above, the proposed mitigation is also not consistent with the DEIS description of appropriate passenger train safety mitigation. Beginning at DEIS, 3-7, Section 3.2.3 lists a series of potential passenger/freight train safety mitigation measures that the DEIS deemed appropriate to consider in connection with its analysis of Transaction-related safety impacts, but does not include passenger train superiority or temporal separations on the list.

The measures that are identified in the DEIS at Section 3.2.3 (and incorporated for passenger trains by Section 3.3.3) offer a more appropriate series of potential approaches to the enhancement of operating safety on lines over which both freight and passenger operations are conducted. As described in Appendix NS-1, NS already adheres to each of the pertinent safety mitigation measures that are identified in Chapter 3 of the DEIS and will do so with the line segments NS will operate. These measures provide a formidable, uniform and consistent measure of safety for the identified line segments, consistent with modern procedures and technologies. *The Transaction will not undermine, or change in any way, the utility of any of these safety measures, and thus no mitigation is required.*

4.2.5 The Proposed Mitigation Would Effectively Confiscate NS Lines, Lead to More Truck Traffic and Eliminate Important Transaction-Related Benefits.

Were the proposed mitigation rule adopted, it would cause huge disruptions to NS' east-west operations, effectively confiscating NS' ability to use the Porter, IN to Chicago, IL route and achieve significant Transaction-related safety and transportation benefits. In these circumstances, the absence of any demonstrable safety benefit offered by the proposal, and the absence of any evidence that the increased level of freight operations poses a risk to passenger safety, strongly argues against adoption of the proposed mitigation. Nothing in NEPA requires a different result.

A 15/30 minute separation rule on the NS system would, on at least some of the line segments identified for such mitigation, make it impossible for freight trains and passenger trains to share the same tracks during periods of significant passenger use of the tracks. The problem would be particularly acute on the Porter to Chicago route, over which significant Amtrak operations are conducted.

The 30-minute separation balloon would have the effect of terminating virtually all freight service on the Porter to Chicago route and thus on NS' Chicago to New York area main line during daytime hours. The effective confiscation of NS' major east-west line for the benefit of passenger service would not only terminate efficient rail operations, but would disable NS' efforts to divert time-sensitive intermodal freight from less safe, and less environmentally friendly, highway carriage to the national rail system.

Further, the availability of passenger transportation could also suffer. If 30 or 15 minute separation windows were adopted, NS would be unable to entertain any proposals from Amtrak to expand its services on this route, with additional frequencies without major investments, on Amtrak's part, in additional capacity. *The proposed mitigation would effectively destroy the operational basis on which NS is able to accommodate extensive Amtrak service on its lines, and hinder NS' ability to work cooperatively with Amtrak with respect to future passenger service enhancements.*

4.2.6 Any Additional Safety Measures Should Be Carefully Considered in Coordination with FRA and the Passenger Agencies.

For all of the reasons stated above, NS does not believe that any special mitigation measures are called for in connection with the line segments identified for mitigation in the DEIS. However, if any mitigation were to be imposed, the Board could appropriately consider a provision for consultations by NS with FRA and other relevant parties over possible further passenger train safety enhancements that may be appropriate for these line segments. Such a mitigation approach would be consistent with the settled proposition that where other governmental agencies have jurisdiction over matters that might warrant mitigation, the Board, lacking such jurisdiction, satisfies its NEPA obligations by identifying the issues that those agencies might address. See Robertson, 490 U.S. at 352-353; CEQ Release, 46 Fed. Reg. 18031-32 (an EIS can appropriately identify matters outside the lead agency's jurisdiction so as to alert appropriate officials of other agencies).

NS already retains an open dialogue on safety issues with the FRA and Amtrak. It is prepared to engage in careful and considered deliberation and study of safety issues on these line segments. Such considered rail industry and FRA safety consultations offer the appropriate response to any legitimate safety concerns involving passenger operations.

4.3 Safety: Highway/Rail At-Grade Crossings

The DEIS treatment of grade crossing safety provides some useful information for consideration by state Departments of Transportation (DOTs) but is otherwise seriously flawed. Most importantly, the DEIS is in direct conflict with federal statutes and duly promulgated regulations assigning the state DOTs the primary responsibility for highway railroad crossing warning systems. In doing so, the DEIS would displace States' authority and well-established methods and processes for mitigating any potential grade crossing safety impacts. *Rather than requiring mitigation based on flawed analysis, the more appropriate and readily available alternative is to require NS to provide information on expected train traffic levels and to consult with the state DOTs.* This would assure any significant impacts are properly mitigated based on the substantial expertise and established practices of those with the necessary expertise and the duly assigned responsibility for grade crossing safety.

The DEIS treatment would preempt states' discretion to select the best method for ranking crossings in their state for further analysis. The DEIS then prematurely leaps directly from what is designed and intended to serve only as a preliminary ranking method to a mitigation requirement, ignoring the critically important analysis by state DOTs of state, local and site-specific considerations. Such state analysis is critical to determine whether any upgrade to warning devices is in order and, if so, the best type and design of the upgrade. The DEIS has specified installation of some devices which have not been sanctioned by the Manual of Uniform Traffic Control Devices and which are being used only on an experimental or limited basis in carefully selected locations. These DEIS recommendations were apparently made without any site evaluation to assure the upgrade would be a safe alternative or is even feasible at the specified crossings. The DEIS also recommends upgrades at numerous grade crossings where the specified upgrades have already been made, and at others where the specified upgrades have already been funded and scheduled. This reinforces the need for these issues to be addressed by the state DOTs' experts in consultation with the railroads.

The DEIS applied the U.S. DOT Accident and Severity Prediction Formula to identify crossings which it believes should be upgraded. NS believes that SEA has misused the formula for an unintended purpose. The primary role of the formula is to help state DOTs rank crossings and to identify crossings that potentially need safety improvements. In short, the formula simply identifies crossings for further evaluation. The formula is not intended to be used, as the DEIS has done, as the sole basis for determining the need to upgrade the warning device at a crossing. Application of the formula is just part of the processes used by state DOTs, which take into account many other factors (including completion of field investigations) that may influence

accident rates. Only after the full process is completed can an informed judgment be made on whether the warning device at a crossing should be upgraded. The DEIS does not indicate that field investigations were completed, that FRA data were verified, or that the appropriateness of proposed upgrade measures was evaluated. Because these steps were not conducted as part of the analysis, the conclusions and recommendations for mitigation are largely unsubstantiated.

After careful review and analysis, NS believes that 34 of the 44 crossings recommended by SEA for permanent upgrade should be dropped from consideration for such upgrades based on one or more of the following reasons:

- They do not meet the DEIS Category A or Category B significance criteria using 1991-1995 accident histories.
- They do not meet the DEIS Category A or Category B significance criteria using 1992-1996 accident histories.
- The upgrade device has already been installed or is already scheduled and funded for construction.

4.3.1 Display of a Toll-Free Number

The DEIS recommends that NS install emergency information signs that prominently display a toll-free telephone number and a unique crossing number at all grade crossings with active warning devices. In addition, SEA recommends that NS provide 24-hour, seven-day-a-week staffing to respond to calls to the toll-free telephone number. NS has already, independently of the proposed Transaction, equipped all of its public crossings and certain private crossings with such signs. All crossings, public or private, with active warning devices are equipped with signs asking the public to report signal malfunctions to a toll free number. These signs are located on the signal mast, and, where applicable, on the gate. Passive crossings (including marked private crossings) have a sign, mounted on each crossbuck pole, urging motorists to report a stalled vehicle blocking a crossing or other emergency to the same toll-free telephone number. All calls are received by personnel at NS' Police Communications Center, which is staffed 24-hours a day, seven-days-a-week.

NS concurs that this is a prudent action. Upon approval of the proposed Transaction, NS will install signs that display a toll-free number and a unique crossing number on all Conrail public at-grade crossings allocated to NS within two years following the control date. Further,

NS and CSX will coordinate with the Conrail Shared Assets Operator to ensure that a similar program is implemented within the Shared Assets Areas, within the same time frame.

4.3.2 Discussion of Analysis Method

For individual grade crossings, SEA has proposed mitigation for upgraded warning devices at highway/rail crossings based solely on the outcome of an analytical method used to model potential risk of safety impacts. The analytical method is part of a procedure developed by the U.S. Department of Transportation and published in a document titled "Rail-Highway Crossing Resource Allocation Procedure - User's Guide, Third Edition, August 1987." The part of the procedure used by SEA is called the DOT Accident and Severity Prediction Formula. The formula predicts the number of accidents and casualties at a crossing based on data on the characteristics of and the reported collision history for the crossing which is obtained from FRA's crossing grade inventory and collision files. The data is prepared on an annual basis after all information from the previous year has been incorporated in the files.

The DEIS has used the DOT Accident and Severity Prediction formula for a non-intended purpose. The Rail-Highway Crossing Resource Allocation Procedure clearly states that the primary role of the formula is to rank crossings by number of predicted accidents in order to identify crossings that potentially qualify for safety improvements appropriate to state-wide needs. The procedure is not intended to single out crossings on a national basis without considering the many other factors, including criteria appropriate to the individual state, which may influence accident rates.

Further, the federal regulations do not dictate a particular hazard ranking formula, but instead leave it to each state to select a formula best suited to its needs. Thus, decisions as to grade crossing improvements are made by each state applying its own criteria, which may differ from criteria used in other states. This is consistent with the federal scheme calling for state highway authorities to utilize their expertise to improve crossing safety within their borders.

The Federal Grade Crossing Program is based on the premise that a state's traffic engineers, who have been making similar judgments on signalization of intersections throughout the state for many years, have a much higher degree of expertise in traffic control than does the railroad. Only in this manner can it be ensured that the crossings which the state deems most hazardous are upgraded before crossings which are deemed less hazardous, and that the state's determination of relative hazard is based on a hazard ranking formula chosen by the state.

The formula used in the DEIS is part of a DOT procedure referenced in the "Rail-Highway Crossing Resource Allocation Procedure Users's Guide, Third Edition" which states:

> "Results of the DOT Procedure, findings of the diagnostic team, inclusion of any state warrants, and the judgment of state and local officials **should all be considered** before final improvement decisions are made" (emphasis added).

There is no indication in the DEIS that a diagnostic team evaluated the crossing sites and the proposed mitigation or that the appropriate state agencies were involved in the decision-making process.

A diagnostic team, consisting of experts with knowledge of local and state-wide needs, must conduct a field investigation to ensure the accuracy of the input data. (The FRA acknowledges that its grade crossing inventory database contains errors due to keypunch and submission errors.) The diagnostic team also needs to examine other critical factors that are not taken into consideration with the DOT Accident Prediction and Severity Formula, and which can only be examined by a field investigation. Examples of these factors include sight-distance, roadway geometrics, highway congestion, local topography, frequency of high-occupancy vehicles, and frequency of hazardous materials transport vehicles. Diagnostic teams can determine revised cost-effective improvement decisions for particular crossings where data from FRA files is found to be incorrect. The revised results obtained by the diagnostic team can then form a useful basis upon which state and local officials can finalize crossing improvement programs.

4.3.3 Four-Quadrant Gates and Median Barriers

The DEIS has proposed mitigation including the installation of four-quadrant gates and median barriers for certain NS crossings in Indiana, Pennsylvania, Virginia and Ohio. SEA's mitigation proposal appears to be based solely on the outcome of the DOT Accident and Severity Prediction Formula, without involvement of state and local officials or diagnostic review by such officials.

Four-quadrant gates and median barriers are not presently approved by the FRA or the Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD places the responsibility for the design, placement, operation and maintenance of traffic control devices with the governmental body or official having jurisdiction. In virtually all states, traffic control devices are required by statute to substantially conform to the MUTCD. Experimental devices such as

four-quadrant gates and median barriers require a request for permission of experiment from the governmental agency or private toll facility responsible for the operation of the road or street on which the experiment is to take place.

Furthermore, in those instances in which four-quadrant gates and median barriers have been installed on an experimental basis, preliminary studies have been conducted first. Each such preliminary study involved an evaluation of the geometric features, road width, and other local conditions on a case-by-case basis. The study first identified if a need existed, and if so, what device was best suited to fulfill the need at each particular location. For instance, four-quadrant gates were found best suited for roadway facilities over 45-feet wide and median barriers were only deemed appropriate where there was no road or driveway connections within 70 to 100-feet of the crossing.

4.3.4 Funding of Grade Crossing Wa...ng Upgrades

The DEIS is silent on funding for grade crossing upgrades and leaves unclear the mechanism for assuring the requisite and customary funding participation by state stakeholders. The proposed mitigation may thus be inconsistent with the message and the spirit of the national grade crossing safety program and with FHWA's requirements.

The assignment of the responsibility for grade crossing safety to governmental agencies has carefully evolved over many years. In the early 1960s, the Interstate Commerce Commission concluded:

> Highway users are the principal recipients of the benefits following from rail-highway grade separations and from special protections at rail-highway grade crossings. For this reason the cost of installing and maintaining such separations and protective devices is a public responsibility and should be financed with public funds the same as highway traffic devices.

These general approaches were adopted by the U.S. Congress in 1973 when it enacted 23 U.S.C. § 130(d). The congressional mandate was implemented by FHWA's requirements in 23 C.F.R. § 924.9 and in 23 C.F.R. § 646.210 (1), which reads as follows:

> (1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

The DEIS has failed to acknowledge the process which state authorities might follow to evaluate a hierarchy of options on a cost effective basis. The foremost option is to close the crossing if it is deemed redundant and/or unsafe. A closed crossing eliminates the possibility of collision; however, closing a crossing is not always possible because of high traffic volumes or a lack of alternative routes. The second option is the installation of additional passive devices such as stop or yield signs. The third option is the addition of flashing lights or flashing lights and gates. The fourth option, and by far the most costly, is to grade separate the crossing.

4.3.5 Suggested Revisions and Corrections to Table 7-4

The following inconsistencies illustrate the weakness of the DEIS' use of the FRA formula to require specific mitigations.

NS reviewed the proposed mitigation in DEIS Table 7-4 at 7-26 to 7-33, and has identified thirteen crossings apparently inadvertently included as requiring mitigation. These 13 crossings as reported in Attachment B-7 of the DEIS do not have accident prediction values that meet the DEIS' proposed significance criteria of an increase of one accident every 100 years for a Category A crossing or an increase of one accident every 20 years for a Category B crossing (see Tables 4.3.1, 4.3.2 and 4.3.3). These crossings are as follows:

IN 484248X	NY 471825F	OH 473726P	MD 534887F
IN 484209G	PA 471940M	OH 473668W	
IN 484246J	PA 592290T	OH 473673T	
IN 478240E	PA 592320H	OH 473680D	

There are also several NS crossings included in DEIS Table 7-4 that already have upgrades completed. The installed devices meet or exceed the mitigation recommended by the DEIS. Also, the appropriate public agency with jurisdictional authority has scheduled improvements at several other locations that have been included in Table 7-4. These crossings are already funded and are due to be constructed within the next ten months, under the respective agency's grade crossing program. *These crossings should be removed from Table 7-4.*

NS locations where upgrades are already installed:

AAR/DOT #	Type Device Installed	In-Service Date
IL 479845P	Installed Flashing Lights With Gates	7/1/93
IN 478314U	Installed Flashing Lights With Gates	6/4/97
MD 469321F	Installed Flashing Lights With Gates	1/3/96
OH 472012W	Installed Flashing Lights With Gates	5/13/97
OH 481584W	Installed Flashing Lights With Gates	8/13/97
OH 481490V	Installed Flashing Lights With Gates	7/2/97

NS locations currently scheduled and funded:

IN 478216D	Project #05.0241	Add Gates
IN 478270W	Project #05.1062	Add Gates
OH 481546M	Project #10.0317	Add Flashing Lights with Gates
VA 468634S	Project #13.0458	Add Flashing Lights with Gates
IN 484282E	Project #05.0243	Add Gates

When SEA performed its highway/rail at-grade crossing analysis, the most recent five-years of accident history available was the 1991 through 1995 period. Accident history data for the period 1992 through 1996 subsequently became available. Applying the DOT Accident Prediction and Severity Formula to this most recent data, several crossings in Table 7-4 do not exceed the DEIS Category A or DEIS Category B significance criteria (see Tables 4.3.1, 4.3.2 and 4.3.3). *Based on analysis using the most recent accident history, the requirement to provide upgraded warning devices at the following crossings to mitigate safety impacts should be deleted.*

IN 474598M	OH 481547U	PA 535146X	PA 592295C
IN 484216S	OH 503133H	VA 468599F	OH 481660M
IN 484229T	OH 472284J	IN 484269R	

It is possible that utilizing the most recent accident history data for this analysis will result in additional crossings exceeding the significance criteria. In that event, such additional crossings would be added to those being brought to the attention of the state DOTs

TABLE 4.3.1
Norfolk Southern Analysis
DOT Accident Prediction Summary
1992 - 1996 Accident History

ST	TRK CD	COUNTY	STREET	FAR ID	Calculated Annual Accident Frequency: Pre Improvement	Calculated Annual Accident Frequency: Post Improvement	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE 4.3.3
Norfolk Southern Analysis
DOT Accident Prediction Post-Transaction Case
1992 - 1996 Accident History

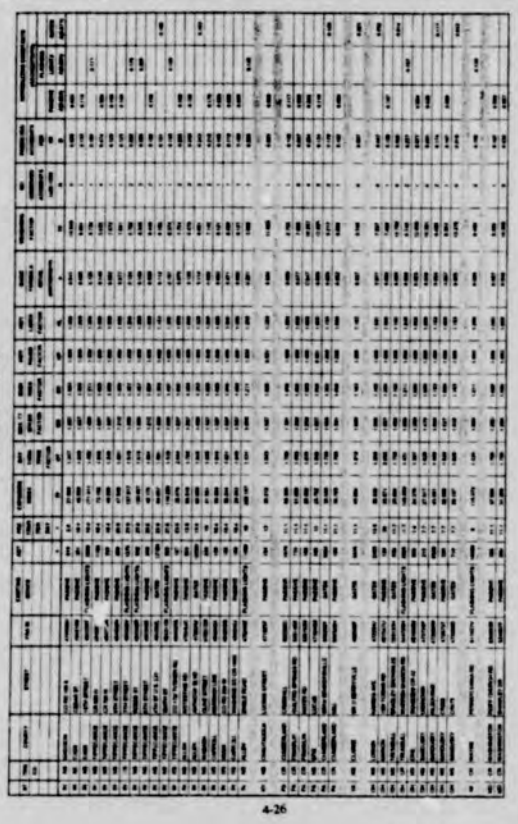

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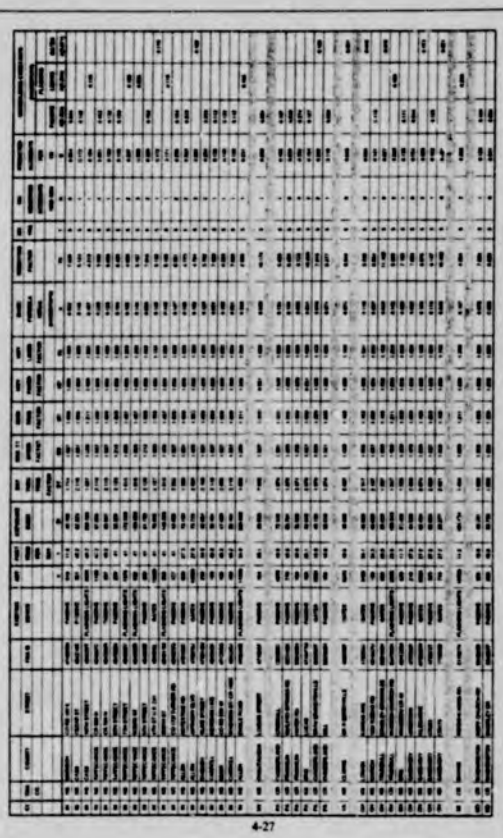
TABLE 4.3.3
Norfolk Southern Analysis
DOT Accident Prediction Post-Transaction Case
1992 - 1996 Accident History



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In sum, a review of the 44 NS highway/rail at-grade crossings where the DEIS proposed permanent warning device upgrades shows that 34 of them should not be included in Table 7-4 because of one or more of the following reasons:

- They do not exceed DEIS Category A or Category B significance criteria using the 1991 through 1995 accident histories;
- They do not exceed DEIS Category A or Category B significance criteria using 1992 through 1996 accident histories;
- The upgraded device has already been installed; or
- The upgraded device is already scheduled for construction.

4.3.6 Responsibilities and Jurisdiction for Upgrading Grade Crossing Safety Devices

The DEIS specifically states in Section 7.2.3.8 at 7-15 and Table 7-4 at 7-26 to 7-33, "CSX and NS shall upgrade warning devices at 118 highway/rail at-grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia as listed and specified in Table 7-4." This statement implies that NS has the authority to determine need and selection of traffic control devices. The *Manual of Uniform Traffic Control Devices* (MUTCD) Section 1A-3 and Section 8A-1 places this responsibility on the public agency with jurisdictional authority. While NS should report crossings that have the potential of increased accident probabilities due to a change in operational or physical characteristics, and NS may recommend a particular warning device, it is ultimately the responsibility of the public agency to confirm the need and select the type of device. Under most circumstances, the public agency will fund the project and maintain the devices. The railroad's role is normally to coordinate the design and construction of the project. Therefore, the DEIS statements in Volume 4, Chapter 7, Section 7.2.3.8 at 7-15 should be revised to say:

> *"SEA has identified grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia as listed in Table 7-4, that have been ranked using the DOT Accident and Severity Prediction Formula. CSX and NS should notify the appropriate State agency with jurisdictional authority of the potential of increased accident probabilities for these crossings due to a change in operational characteristics so these crossings can be evaluated to determine if closing of the crossing or upgrade of the warning device is needed."*

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4.4 Safety: Rail Transport of Hazardous Materials

The DEIS concludes that "[o]verall, the proposed Transaction should result in a slight safety improvement for rail transportation of hazardous materials and no significant system-wide adverse impacts related to hazardous materials transport." DEIS at ES-19. NS concurs and expects the improvements to be greater than described in the DEIS as the best of NS' and Conrail's practices are implemented system-wide. The DEIS recommends mitigations on 29 NS and 4 Shared Assets Areas rail line segments based on expected increases in hazardous materials traffic.

NS concurs with the large majority of these recommendations as prudent, but has concluded that certain aspects of the analysis and certain recommendations are unreasonable or impractical and should be amended. Recommendations that could postpone implementation of the Operating Plan, such as requiring implementation of OT-55B guidelines prior to increasing hazardous materials traffic on a rail line segment, are neither justified nor reasonable. The Board is obligated, as discussed in Section 2, to balance adverse environmental effects against offsetting positive environmental effects and, importantly, non-environmental public benefits to the Transaction. The recommendation that would establish a permanent new "rule" requiring drills or desk-top simulations on some line segments should have a sunset provision to allow those lines to be treated consistently with other similarly situated rail line segments after the first three years. The recommended adoption of a Failure Mode and Effects Analysis (FMEA) is aimed at pre-existing conditions and contradicted by the DEIS conclusion that yard activity is expected to decrease as a result of the Transaction. Each of these topics is discussed in more detail below.

Safety, including safe transport of hazardous materials, is Norfolk Southern's highest priority. This unflagging commitment, which goes far beyond simply complying with existing regulations and accepted industry practices, has resulted in NS' industry-leading safety performance. NS is dedicated to being a responsible member of the communities it serves and is also motivated by the tenet that safety is good business. Simply put, accidents are both damaging and expensive, and NS is devoted to preventing them. NS participates in many voluntary programs such as the guidelines of AAR Circular No. OT-55B - "Recommended Railroad Operating Practices for Transportation of Hazardous Materials," Responsible Care®, and the North American Non-Accident Release (NAR) Program. The intention of such programs is to voluntarily reduce risks, improve railroad performance, and thus to alleviate the need for even more government regulation. These programs have been very effective at reducing risks through innovative approaches. It is important that these efforts be encouraged and that Applicants retain

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the flexibility to continue to seek improvements. Recommendations in the DEIS should be considered in this context.

NS is committed to improvements it expects to be effective and concurs with a number of the recommendations presented in the DEIS. Many of these recommendations relate to practices which have already been voluntarily implemented by NS, and therefore are not required as a mitigation condition. In some cases, there are established, cooperative mechanisms in place for developing new rules or standards. These mechanisms involve the participation of NS and other railroads and effective use of their tremendous reservoir of experience and talent. NS only objects to DEIS recommended requirements that may create burdens without commensurate safety benefits and recommended requirements where existing industry practices already address the issue.

4.4.1 Key Route Requirements

The DEIS applies the definition of a "key route" from OT-55B as a significance criterion when hazardous materials traffic has increased from below to above 10,000 hazardous materials car loads per year, a line segment becomes a key route. NS concurs that this is an appropriate threshold and has itself adopted a stricter threshold of 9,000 car loads. NS supports the intent of the DEIS recommendation that NS should meet "key route" requirements on new key routes and that these existing standards and practices mitigate potential risks. However, as these industry standards are revised and improved, NS should retain the flexibility to adopt updated practices.

In addition to the OT-55B standards, which NS is committed to fulfill regardless of the Transaction, the DEIS recommends four additional requirements for "new key routes". The first is that, if NS has more stringent requirements than the provisions of the AAR "Key Route" and "Key Train" guidelines, NS shall comply with its own requirements. NS does have more stringent requirements and will comply with these. However, NS objects to its proactive responsibility being established as a condition by the STB. The actions required would not apply to other railroads and thus would create an inappropriate double-standard. Further, it could inhibit changes to NS practices aimed at further improving safety performance. *The recommendation to require Applicants, as a condition, to comply with their own more stringent key route requirements is neither necessary nor appropriate. NS recommends it not be included in the FEIS other than to acknowledge that NS has more stringent requirements with which it will voluntarily apply.*

The second additional DEIS recommendation is that NS implement the OT-55B requirements prior to increasing hazardous materials traffic on these lines. NS does not believe that such a condition is warranted because it adheres as a matter of practice to the industry-standard key route safety procedures set forth in the AAR circular. Thus, to the extent that any line segments meet the key route volume thresholds, NS would as a matter of long-standing practice apply the key route safety measures. In the event that such a condition were imposed, however, NS recommends that the condition be worded so that NS may retain the flexibility to adhere to any new industry standard that replaces, modifies or supplements the existing requirements in OT-55B. Those standards were developed in 1993, and could well be revised in future years. NS should be able to adhere to any future revised version of these standards without the need to seek Board approval.

As to the timing of implementation of any condition that may be adopted, NS notes that a determination of whether a route is a key route or not is made based on an assessment of the level of hazardous materials traffic on the route during the previous twelve months. Further, there will be no immediate overall change in traffic levels on these routes on Day One. Rather, the projected traffic increases are based on a growth of traffic over a three year period.

While NS is nonetheless prepared to comply with existing key route requirements in OT-55B for the identified line segments as of Day One, NS submits that any condition that might be imposed should allow for a one-year period following Day One before such a requirement would become effective. Also, any such condition should expire at the end of three years following Day One, after which time the determination of whether a line segment should be treated as a key route should be made in the same manner that it is made throughout the rest of the NS system (and the national rail system generally), i.e, on the basis of the actual level of hazardous materials carried. If the key route criteria are met, the key route obligations would attach.

A three-year time frame for any mitigation measure concerning these line segments is appropriate because the traffic projections on which the mitigation has been proposed are three year projections. If the projections prove accurate with respect to these line segments, then the key route test will have been met and NS would apply the key route measures identified in the AAR Circular. On the other hand, NS should not be bound to adhere to the key route obligations on line segments as to which projections for increased hazardous material traffic in excess of the key route criteria are not met.

The third additional DEIS recommendation is that NS "prepare a Hazardous Materials Emergency Response Plan for each local emergency response organization along these ['new key

route' and 'major key route'] rail line segments." This recommendation would appear to apply for each such organization in 63 counties in 10 states. Such an interpretation is too burdensome and unwieldy to implement. NS is prepared to provide plans for each county for distribution to Local Emergency Planning Committees (LEPCs) within that county. The plans would provide information about NS' hazardous materials emergency response practices and plans and instructions on railroad and other emergency contacts for the county. The NS-provided information will supplement each LEPC's own emergency response plans. NS concurs this is a prudent recommendation to help ensure emergency response organizations are prepared should an incident occur involving NS operations and activities.

It is obviously impractical and inappropriate for a railroad to prepare a detailed and customized plan to manage how a particular local emergency response organization would respond to an incident. NS is confident SEA did not intend its recommendation to be interpreted in this way, since it is to be expected that communities already have emergency response plans prepared by LEPCs as required by Section 303 of the Emergency Planning and Community Right-to-Know Act 41986 (SARA Title III). Notably, when Congress enacted SARA Title III, it did not require transporters to participate in the emergency planning process through the designation of facility emergency coordinators.[14] Nonetheless, NS routinely cooperates with LEPCs in the planning process. The DEIS should not be interpreted to shift a responsibility already assigned by federal law. NS recommends this issue be clarified in the FEIS - *that the railroads will provide planning information to designated counties for distribution to the LEPCs about the railroads' plans and practices, and information on railroad and railroad-related emergency contacts that apply within the county.*

The fourth additional DEIS recommendation for new key routes is that NS shall provide a 24-hour toll-free telephone number to all emergency response organizations for each community located along "new key route" and "major key route" line segments. *NS concurs this is a prudent recommendation and will provide to each county, for distribution to LEPCs, a toll-free number for the NS Police Communications Center in Roanoke which can immediately access all NS dispatch centers.* Local emergency response personnel could quickly obtain information regarding the transport of hazardous materials on a given train and appropriate emergency response procedures in the event of a train accident or train-related hazardous materials release.

[14] Section 327 of SARA Title III exempts transporters from all provisions of the statute, including the requirement to coordinate with the LEPCs, except for the emergency notification requirement for spills set forth in Section 304.

4.4.2 Key Train Requirements

The DEIS recommends that, before increasing the number of rail cars carrying hazardous materials on any train, NS shall comply with the AAR "Key Train" guidelines ("Recommended Railroad Operating Practices for Transportation of Hazardous Materials," AAR Circular No. OT-55B). *NS already complies with key train guidelines as a standard practice but urges that the FEIS not include such compliance as a condition for the reasons discussed in Section 4.4.1.*

4.4.3 Rail Line Segments on Which Hazardous Materials Traffic Doubles and Exceeds 20,000 Cars Per Year

The DEIS recommends certain requirements for rail line segments on which hazardous materials rail car traffic would double and exceed an annual volume of 20,000 cars per year as a result of the Transaction. NS concurs with the DEIS that this represents a significant change in hazardous materials traffic and that additional efforts are reasonable to increase the preparedness of local emergency response organizations. *NS concurs with the recommendation to provide emergency response planning information to affected counties as described above in Section 4.4.1 for new key routes.*

The DEIS also recommends that for line segments which exceed this higher threshold, NS shall implement a real time or desktop simulation emergency response drill with voluntary participation of local emergency response teams at least once every two years. NS concurs that it is reasonable to conduct one such drill within two years of Day One for rail line segments which exceed the threshold in order to orient and improve the preparedness of emergency response organizations. However, the recommendation in the DEIS would appear to be a permanent condition not having any "sunset" provision. It would also create a double-standard because the requirement would not apply to other rail line segments on NS or on other railroads which currently have as much or even more hazardous materials traffic. It would thus have the effect of rulemaking without the benefit of the cooperative and established rulemaking or standards setting process. The fact is, NS conducts drills already and should continue to be allowed to prioritize and schedule such drills as it does now in cooperation with state and local emergency response organizations. This recommendation should be modified for NS to *conduct one such drill for each line segment exceeding the threshold within two years of Day One.* This will appropriately "bring up to speed" local emergency response teams on these line segments, after which time these routes would be subject to the same NS management practices as other routes with similar hazardous materials traffic levels.

NS also recommends that the FEIS not utilize the term "Major Key Route." The term "key route" was established and defined by the Inter-Industry Task Force in OT-55B. While NS agrees that the DEIS threshold of a doubling of hazardous materials traffic plus an annual volume of 20,000 cars is reasonable, NS believes that the term "Major Key Route" would be confusing. The "key route" terminology should be reserved for the voluntary, proactive and effective industry efforts to provide safe transport of shippers' hazardous materials. *NS concurs with the threshold for routes that would double in hazardous materials traffic and exceed 20,000 hazardous materials car loads per year to trigger certain efforts (as modified above) but recommends the elimination of any and all use of the term "Major Key Route" in the FEIS.*

4.4.4 Failure Mode and Effects Analysis (FMEA) Program

The DEIS directs NS to establish a formal Failure Mode and Effects Analysis (FMEA) program for NS and Shared Assets Areas rail yards and intermodal facilities as mitigation to address the sources and consequences of spills of both stored hazardous materials and hazardous materials in transportation. This mitigation is without justification. The DEIS at 4-21 states that on a system-wide basis, the proposed Transaction "...should result in a modest, but virtually unmeasurable, decrease in hazardous material releases from derailments." The DEIS also states that, system-wide, the Transaction would result in fewer car miles per day of cars carrying hazardous material and a decrease in freight car handling in rail yards. *The DEIS also concludes, significantly, that the Applicants have the proper general measures in place to handle any potential increase in hazardous materials accidents.* DEIS at 4-21.

As an example of cooperative and proactive efforts by NS to improve safety of hazardous materials transport, NS is a member of Responsible Care® (a voluntary program) which includes management practices that address risk assessment issues. As noted at 2-152 in the DEIS in NS' Safety Integrative Plan, NS intends to adopt the Conrail framework (including the Transportation Incident Severity Index process used by Conrail) for systematic categorization of shipper-caused releases. NS also participates in industry programs such as the North American Non-Accident Release (NAR) Program, as outlined in the NS SIP. This is another existing voluntary initiative for the purpose of reducing hazardous material incidents. The program is based on a four-phase effort: (1) data collection; (2) data analysis; (3) communication of results; and (4) follow-up with shippers.

These and other programs, such as the Railroad Tank Car Safety Research and Test Project and OT-55B, were established for the industry to manage risks responsibly and effectively (to be self-regulating) and thus avoid the need for government regulation.

Government regulation of existing voluntary industry programs is redundant and unnecessary and eliminates the incentive for companies to participate in voluntary industry programs. The DEIS recommendation for FMEA clearly targets existing conditions, which are already properly managed. This recommendation also circumvents the established rule-making process. *For the foregoing reasons, the FMEA requirement should not be included in the FEIS.*

4.4.5 NS Rail Line Segment Alexandria, VA to Manassas, VA (N-315)

The DEIS at VA-14 erroneously displays 16,000 for the number of post-Transaction hazardous materials cars per year on NS rail line segment Alexandria, VA to Manassas, VA (N-315). Consequently, the DEIS recommends new key route mitigation for this line segment. The correct projected post-Transaction hazardous materials shipments on this line is 6,000 cars per year and, therefore, this rail line segment is not expected to be a new key route. *NS recommends the FEIS correct the 16,000 post-Transaction value to 6,000 car loads of hazardous materials and remove this line segment from all recommended hazardous materials transportation safety mitigation discussions.*

4.5 Transportation: Passenger Rail Service Capability

The DEIS presents a comprehensive analysis of the expected effects of the Transaction on passenger train service. NS' review indicates that the analysis was thorough and reasonable, albeit conservative. NS concurs with the DEIS findings that no adverse impacts on passenger train service capability will occur and there is no need for mitigation.

4.6 Transportation: Highway/Rail At-Grade Crossing Delay

The DEIS evaluates the potential impact of the Transaction on grade crossing delays, both on a system-wide and local (e.g., crossing-specific) basis. NS concurs with the DEIS that, on a system-wide basis, it is impossible to predict actual delays that would occur as a result of Transaction-related changes in train traffic. However, NS believes the DEIS analysis of local effects should be amended. Specifically:

- The DEIS uses the wrong equation to determine traffic delays.
- The DEIS consideration of level of service exceeds SEA's regulatory scope.
- The DEIS displaces the authority of state and local agencies responsible for grade separation issues.

- The DEIS determination of where grade separations would be necessary is without critical site-specific considerations.
- The DEIS suggests the possibility of mandatory negotiated agreements, which NS believes would be an improper requirement (See Section 2.6 of these comments).

NS believes that there are few, if any, crossings with significant delays as a result of the Transaction. However, if the FEIS concludes any crossings exceed a justifiable significance criteria for delays, NS recommends that Applicants be directed to consult with the appropriate state and local authorities. This established alternative is readily available and would allow prioritization and handling of such crossings in a manner consistent with other crossings in a particular state which may merit consideration of grade separation, including crossings not affected by the Transaction which could be of higher priority.

NS' observations on the DEIS treatment of grade crossing delays are discussed in more detail below. Additional technical details are presented in Appendix NS-2 of these comments.

The DEIS conducted emergency vehicle response delay analysis to determine the effect on response time of emergency vehicles from a crossing blocked by a passing train. The DEIS evaluated potential delay in two ways: delay per stopped vehicle, and total daily crossing blockage time. However, on a system-wide basis, the DEIS acknowledges that it is impossible to predict actual delays that would occur as a result of Transaction-related changes in train traffic. There are no national standards for measuring emergency response vehicle delay or the significance of any delay impacts. The preliminary conclusion of the DEIS is that no system-wide mitigation is recommended. NS concurs with this conclusion.

In Mitigation Measure No. 11 at 7-16, the DEIS recommends delay-related mitigation on NS crossings IN 474600L and IN 474601T due to an increase in average delay per stopped vehicle greater than 30 seconds. The DEIS has also made specific recommended mitigation on ten Lafayette, Indiana crossings and five Erie, Pennsylvania crossings[15] in Mitigation Measures No. 22 and 23 due to changes in the level of service from Pre-Transaction to Post-Transaction which meet the DEIS proposed significance criteria. NS officials are instructed by the DEIS to

[15] In SEA's January 21, 1998 Supplemental Errata, the DEIS was corrected to indicate that two of the five at-grade crossings at Erie would no longer meet SEA's threshold for mitigation due to a discovered error in SEA's calculations. Nonetheless, SEA states the correction should be ignored and the two crossings be included for mitigation because of their "close proximity." There is no justification for adoption of this new and arbitrary position.

consult with local officials and appropriate state DOTs to negotiate traditional separated grade crossing agreements or identify other mutually-acceptable approaches to address Transaction-related traffic delay impacts. In addition, SEA in its January 12, 1998 Errata to the DEIS directed NS to consult with the City of Cleveland to reach an agreement on measures to minimize or mitigate the effects of increased emergency vehicle delay. Possible mitigation measures suggested by SEA include increasing train speeds, upgrading communication between NS and the emergency dispatch center, or constructing grade separation. *NS does not believe that mandated negotiated-agreements are a proper mitigation approach.* (See Section 2.6 of these comments.)

The DEIS analysis of grade crossing delay finds no crossings in Cleveland are significantly impacted. No Transaction-related impact is mentioned that would suggest justification for the proposed mitigation. In like manner, there is no justification for SEA's recommended limitation of a two train increase in traffic through Erie, Pennsylvania for the reasons discussed at length in Section 5.6.

The DEIS has misused procedures contained within the Transportation Research Board's "Highway Capacity Manual" for a non-intended purpose. The DEIS defines level of service (LOS) as "... a measure of the operational efficiency of the highway/rail at-grade crossing using procedures contained in the Highway Capacity Manual (HCM)." In fact, the HCM does not address the operational efficiency of highway/rail at-grade crossings, and procedures do not exist to measure grade crossing efficiency in terms of LOS. A more detailed discussion of this issue is in Appendix NS-2. Moreover, the HCM does not contain the table shown at C-14 of the DEIS, which is purported to draw a correlation between LOS and delay at highway/rail at-grade crossings.

The DEIS does not explain the relationship between LOS and delay, but appears to have mischaracterized at-grade crossings as signalized intersections. The table presented in the DEIS purporting to correlate LOS and average delay per vehicle resembles, but in critical respects is not identical to, a table in the "Highway Capacity Manual" on page 9-6, titled "Table 9-1. Level-of-Service Criteria For Signalized Intersections." That table draws a correlation between LOS and stopped delay per vehicle, not LOS and average delay per vehicle as presented in the DEIS. It appears the DEIS has improperly modified this table to imply the same relationship between LOS and average delay per vehicles at a grade crossing.

In modifying the HCM, the DEIS has failed to acknowledge the fundamental differences in operational characteristics between signalized road intersections and highway/rail at-grade

crossings. The HCM defines level of service criteria for signalized intersections in terms of the average stopped delay per vehicle for a 15-minute analysis period. Delay at signalized intersections can be measured in the field or estimated using procedures contained in the HCM. These HCM procedures are complex empirical equations that are dependent upon a number of variables such as the quality of progression, the cycle length, the "green ratio", and the volume to capacity ratio that are unique characteristics to signalized road intersections, and have little or no relevance to highway/rail at-grade crossings. These procedures are inappropriate to estimate delay impacts of grade crossings.

Traffic signals and highway/rail at-grade crossings differ because traffic signals continuously operate in uniform cycles (red-green phase changes) throughout the majority of the day as opposed to intermittent crossing events at highway/rail at-grade crossings. Also, drivers do not have the same expectations from different types of warning devices. For instance, the HCM recognizes different LOS thresholds between signalized road intersections and road intersections only protected by stop signs. Drivers would reasonably expect longer intermittent delays at highway/rail at-grade crossings than for signalized intersections. Therefore, LOS as defined in the HCM for signalized road intersections cannot be directly applied to highway/rail at-grade crossings.

The equation used in the DEIS to decide LOS at highway/rail at-grade crossings is found in DEIS, Appendix-C at C-13 as Average Delay for All Vehicles. The equation over-simplifies a very complex traffic operation by making several general assumptions. For instance, the equation assumes that the period of critical delay at a crossing occurs during the peak hour of vehicular delay (i.e., during rush hour), the arrival rate of trains is spread evenly throughout the day, and vehicles arrive uniformly throughout the train blockage period. The equation also assumes that all trains are the same length and travel at the same speed through the crossing.

The flawed equation used by the DEIS to calculate at-grade crossing delays has resulted in overestimation of projected increases in average delay per vehicle at crossings. At two crossings (474600L and 474601T in Alexandria, IN) for which the DEIS recommends that NS consult with the community because the delay exceeds the significance criteria of 30 seconds, NS has used a more appropriate equation to recalculate the delay increase. The DEIS reports the delay increases to be 2.16 minutes and 1.68 minutes, respectively. NS' alternative equation shows a much lower delay increase of 0.73 minutes for each crossing. While NS acknowledges this would still exceed the 30 second criterion proposed in the DEIS, this demonstrates *the DEIS calculations overestimated these potential delays by over 100 percent. NS recommends use of the correct equation in the FEIS. Use of the incorrect equation has overstated potential delays.*

SEA relied on these overestimates of delays when proposing that delays be mitigated in Lafayette, Indiana; Erie, Pennsylvania; and Alexandria, Indiana.

System-wide, the assumptions made within the correct equation may be acceptable and the results may provide some useful screening of potential delay impacts. However, before recommending a final mitigation, a site-specific analysis should be done. Such an analysis would use more accurate data and would take into consideration actual site-specific characteristics and train/vehicular traffic patterns.

Generic modeled calculations may be revealed to be too conservative if a site-specific analysis determines, for example, that during the most congested period of vehicular traffic, no trains block the crossing. Conversely, actual conditions may show that during the peak train interval, very few vehicles use the roadway. At the site-specific level, various combinations of train length, train speed, vehicle arrival frequencies, and train frequencies should be considered based on actual conditions to decide the critical delay period.

Therefore, SEA should only use the results of this equation to "rank" the crossings in terms of delay severity, similar to the way the DOT Accident Prediction Formula is used to rank crossings for further evaluation of the need for warning device upgrades. After the crossings are ranked, state authorities should be notified that a change in the operational characteristics has taken place that may influence delay. The state authorities can then make their own determination regarding the need and method for mitigation. The state authorities are in a better position to consider all the other factors that influence a grade separation project, such as evaluating whether adequate alternative routes exist or determining the impact of purchasing additional right-of-way on adjacent land uses. *NS recommends that the FEIS direct Applicants to consult with state DOTs about any potential grade crossing delay impacts rather than directing NS to participate in implementation of specific mitigation measures.*

4.7 Transportation: Roadway Effects from Rail Facility Modifications

The DEIS considered the impact on local transportation systems of changes in truck activity at intermodal facilities, construction projects and abandonments. *NS concurs that the methods, analysis and results are reasonable and appropriate. In the following discussion, NS is providing updated information for SEA to use in the final analysis for the FEIS.*

The DEIS reports a new at-grade crossing would be constructed in Vermilion, Ohio. The DEIS recommends that NS fully fund the cost of raising Coen Road in order to create a level

highway/rail crossing. (See Volume 4, Chapter 7, Section 7.2.6, page 7-23; Volume 3A and 3B, Table 5-2, page 5-39; and Volume 3B, Chapter 5, Section 5-OH.10, page OH-40 and OH-41). NS has revised the proposed Vermilion, Ohio project since SEA evaluated the site. The new rail alignment will reuse the existing crossing in lieu of constructing a new at-grade crossing at Coen Road, as presented in the DEIS. *Therefore, no adjustment to the profile of Coen Road is needed.*

The DEIS reports a new at-grade crossing would be constructed in Oak Harbor, Ohio. The DEIS recommends that NS fully fund the cost of raising Toussaint-Portage Road in order to create a level highway/rail crossing. (See Volume 4, Chapter 7, Section 7.2.6, page 7-23 and 7-24; Volume 3A & 3B, Table 5-2, page 5-39; and Volume 3B, Chapter 5, Section 5-OH.10, page OH-39 and OH-40). The Oak Harbor, Ohio project involves the installation of connection track to be constructed between Conrail and Norfolk Southern lines. The proposed track is approximately 4,835 feet in length and will intersect Toussaint-Portage Road (Township Road #92) by means of an at-grade crossing. The proposed connection track will cross Toussaint-Portage Road at approximately 1,200-feet north of the existing Conrail crossing and approximately 950-feet south of the existing NS crossing. If approved by the state agency with jurisdictional authority, the proposed crossing will be equipped with mast-mounted flashing light signals with gates, activated by constant warning time circuitry.

The new connection track profile will descend to the proposed crossing at a rate of -0.30% from the existing NS track. The proposed track will remain level throughout the crossing before ascending at a rate of 0.24% to tie into the Conrail track. The proposed vertical alignment for the connection track will require that Toussaint-Portage Road be raised approximately 12-inches higher than the existing surface at the crossing. A smooth transition in the roadway profile will be made by constructing approximately 100-feet of run-off approaches on each side of the new at-grade crossings. *Therefore, the resulting crossing will not constitute a "roller coaster"-type safety hazard for vehicles on Toussaint-Portage Road, and raising the road is not necessary.*

4.8 Transportation: Navigation

The DEIS evaluated a total of 13 movable bridges on NS and CSX line segments system-wide where Transaction-related increases in rail traffic are projected to meet or exceed the Board's thresholds for evaluation. SEA determined that the U.S. Coast Guard has jurisdiction over these movable bridges, and that, in accordance with U.S. Coast Guard regulations, navigation use (e.g., ships) has priority over trains. Therefore, the DEIS concludes that there are no system-wide or site-specific adverse impacts on navigation, including service to coastal and

inland ports. Norfolk Southern concurs with this conclusion. Conrail, CSX, and Norfolk Southern together serve a combined total of 17 ports on the Atlantic and Gulf coasts, and 27 ports on the Great Lakes and inland waterways. Service to these ports will be maintained and enhanced by the Conrail Transaction.

4.9 Energy

The DEIS concludes that there will be a large annual reduction in diesel fuel consumption and no significant adverse environmental impacts on transportation of energy resources or recyclable commodities as a result of the Transaction. DEIS at 4-49. NS concurs with this observation but, as with other benefits of the Transaction, the substantial environmental benefits from the savings in energy consumption are undervalued in the DEIS. *The net reduction in fuel consumption is a notably significant positive impact compared to other significance criteria in the DEIS. The fact that it is a positive impact does not diminish its significance; rather, the value of this benefit should be given appropriate emphasis in the Board's decision.*

The overriding impact of the Transaction on energy consumption is the decrease in annual diesel fuel consumption resulting from truck-to-rail diversions - *a net annual decrease for NS and CSX combined of approximately 133.6 million gallons*, according to the DEIS. Both the methodology employed in the DEIS for evaluating fuel savings and the application of that methodology are reasonable and appropriate. Fuel consumption is the most dependable indicator of the net positive impact expected from the Transaction on energy resources.

The DEIS further projects a total Transaction-related net annual reduction in fuel consumption of 80.1 million gallons. This is clearly a significant environmental benefit and should be stated as such in the DEIS. Nevertheless, that figure grossly understates the actual amount of benefit which NS believes is more accurately reflected by the truck-to-rail diversion impacts discussed above. The DEIS arrives at the 80.1 million gallon decrease after a confusing and misleading discussion which concludes by erroneously subtracting 53.5 million gallons from the 133.6 million gallon net decrease associated with truck-to-rail diversions. DEIS at 4-47. The DEIS incorrectly calculates that an annual increase of 53.5 million gallons is the net change in fuel consumption from factors other than truck-to-rail diversions. The DEIS bases this calculation on the rail traffic data provided by NS and CSX that projects increases in rail traffic greater than those associated with truck-to-rail diversions. The error occurs when the DEIS makes a faulty assumption that projected rail traffic increases not associated with truck-to-rail diversions have no off-setting decreases on other railroads or other modes of transport.

The fact is that essentially all Transaction-related increases in rail traffic on NS and CSX lines segments beyond those associated with truck-to-rail diversions would, but for the Transaction, be shipped on other railroads or by other transport modes. The resulting decreases on other railroads or other modes of transport have not proven feasible to model. However, it is obvious they will result at worst in no net change in fuel consumption since railroads are the most fuel efficient land-based method of transporting freight in the United States. Therefore, a conservative estimate would be to assume that Transaction-related net fuel changes associated with NS and CSX rail traffic increases other than truck-to-rail diversions would be zero.

NS recommends the FEIS adopt this reasoning and acknowledge that the Transaction-related net impact on fuel consumption is a net annual decrease of approximately 133.6 million gallons - a much larger benefit than the 80.1 million gallons stated in the DEIS.

The DEIS also analyzes proposed changes in operations at rail yards and intermodal facilities that could affect energy resources. Additionally, the DEIS considered the proposed Transaction's effect on the transportation of energy resources and recyclable commodities, and also considered the consumption of energy resulting from vehicular traffic delays at highway/rail at-grade crossings. The DEIS concluded that there would be no significant adverse environmental impacts on energy consumption, transportation of energy resources, or recyclable commodities as a result of the proposed Transaction.

NS concurs that no significant adverse impacts are expected on transportation of energy resources or recyclable commodities from the Transaction, but urges SEA to recognize the projected greater decrease in fuel consumption as a notably significant positive impact.

4.10 Air Quality

The analysis of air quality impacts in the DEIS is thorough and comprehensive. NS agrees that some of the details where the DEIS methods depart from Applicants' analysis in the ER represent improvements in methodology. NS concurs with the DEIS adoption and application of recent EPA Ozone Transport Assessment Group (OTAG) conclusions. These recent conclusions confirm that air impact issues are system-wide or regional; analysis and significance criteria related to local emissions are now moot. NS concurs with the results of the DEIS analysis that there are no significant local impacts, and that system-wide reductions in air emissions is a net positive impact resulting from the Transaction. *On the other hand, NS believes the DEIS, with its focus on local increases in emissions, both understates and undervalues the*

positive overall impact of the Transaction on air quality. The positive impact of the Transaction on air quality should be considered significant.

4.10.1 Methodology

The DEIS evaluated both system and county-wide emission increases and decreases from each rail line segment, rail yard, and intermodal facility, as well as emission changes due to truck-to-rail diversions, rail-to-rail diversions, and emissions from idling vehicles at grade crossings. SEA's independent analysis deviated from Applicants' method in selection of certain emission factors. *NS' review indicates the factors and methods used in the DEIS are sound. This is consistent with the October 24, 1997 letter from SEA to EPA which discusses SEA's methodology and EPA's view that the methodology used is reasonable and conservative.*

The DEIS analysis does, however, suffer from the same bias discussed above in Section 4.9. That is, except for the truck-to-rail diversions, the air quality analysis includes all the expected NS and CSX rail traffic increases but does not include offsetting traffic decreases for other railroads and transportation modes that currently carry that freight. This exclusion is not through oversight, but because it has not proven feasible to model these reductions in detail. Common sense concludes, however, that the offsetting air emissions benefits from decreased traffic on other railroads or modes can be expected to be of approximately the same magnitude as the air emissions increases from the shift of traffic to NS and CSX. As with energy impacts, analysis of the truck-to-rail diversions most accurately reflects the net impact on air quality that can be expected from the Transaction.

4.10.2 System and Regional Impacts vs. Local Impacts

The DEIS points out that the Ozone Transport Assessment Group (OTAG) found that because ozone problems are a regional concern, local control of NO_x is less productive than control of NO_x emissions on a regional level. Mitigation on a local level for the Northeast Ozone Transport Region (OTR) was therefore considered unnecessary by SEA since NO_x emissions in this region are expected to decrease. Therefore, it is obvious the projected net system-wide decrease in emissions expected to result from the Transaction is more relevant than local increases and decreases. NS concurs that ozone is largely a regional concern rather than a local concern and suggests that this observation be emphasized in the FEIS by stating that *no local mitigation options for NO_x are indicated because NO_x emissions will decrease at the system-wide level over the Northeast Ozone Transport Region (OTR) and will decrease further in the future due to the newly promulgated EPA locomotive standards.*

4.10.3 Significance Criteria

The DEIS looked at overall air emission increases in terms of system-wide emission changes and county-by-county emission changes. System-wide, the Transaction would result in a net decrease in emissions. Local impacts of projected increases in activity were compared to the stationary source thresholds as a screening method, then compared to one percent of the existing county emissions. If the emission change from the Transaction was less than one percent of the existing county emissions, the change was considered insignificant. If the increase in emissions exceeded one percent of the existing county emissions, the emissions were then analyzed in terms of regional or multi-county emission changes. In some cases the emissions in a particular county exceed the one percent threshold. However, in no cases did SEA find that a particular county would be significantly affected by the Transaction.

NS concurs with this conclusion, noting however that establishment of local significance criteria, a practice reasonably employed by SEA for prior transactions, is inconsistent with OTAG's cited conclusions. *NS recommends further consideration of the implications of the recent OTAG conclusions and suggests that local air analysis and significance criteria is no longer relevant since it is a system and regional issue.*

4.10.4 Conclusions

The DEIS concludes there will not be a significant adverse impact on air quality resulting from the proposed Transaction either locally or system-wide. In fact, the DEIS finds there will be net system-wide reductions each year for five of the six pollutants analyzed, including reductions of over 4,500 tons of nitrogen oxides, over 6,000 tons of carbon monoxide and over 1,000 tons of volatile organic compounds and an "insignificant" net increase of 521 tons per year of sulfur dioxide (DEIS at 4-56). For nitrogen oxides, these reductions are equivalent to elimination of 180 major stationary sources (sources with nitrogen oxides emissions of 25 tons per year for severe ozone nonattainment areas), or to removing 300,000 passenger cars from the road. *The overall reductions in air emissions, particularly the reductions in ozone-related pollutants, represent the major impact of the Transaction on air quality and are a significant benefit.*

As mentioned above in the discussion of methodology, the DEIS presents a conservative analysis which does not account for all of the expected reductions in air emissions. *A more representative analysis of net system-wide air emissions impacts would be based on the truck-to-rail diversions which are expected to dominate the air and fuel impacts of the Transaction.*

Based on the same reasoning discussed above in Section 4.9 on fuel consumption, *such an analysis would result in estimated reductions in emissions over 60% higher than the DEIS has projected.*

New locomotive emissions standards were promulgated by EPA on December 17, 1997 and are discussed in the DEIS. The new standards will provide further substantial emissions reductions in the future. According to a U.S. EPA fact sheet on the new standards, the new emission standards will reduce nitrogen oxides emissions from locomotives by nearly two-thirds and hydrocarbons and particulates by half. This would result in an additional 304,000 tons per year reduction of nitrogen oxides emissions expected in 2005, and would be the equivalent of removing nearly 20 million passenger cars from the road.

4.10.5 Mitigation

The DEIS recommends that the railroads should use "best management practices" to minimize fugitive dust emissions that result from construction projects and associated activities. *NS already employs standard best management practices during construction activities to minimize fugitive dust, and is committed to using such practices to minimize dust during Transaction-related construction and associated activities.*

4.11 Noise

The DEIS provides a comprehensive, albeit highly conservative, analysis of potential noise impacts, and concludes that only a few rail line segments are likely to have significant adverse noise impacts. NS concurs with the noise impact significance criteria applied in the DEIS and the safety considerations recognized for horn noise by the DEIS. The general approach for modeling noise is appropriate for use as a screening tool. However, the DEIS applies a CSX noise model based on CSX noise measurements of CSX and Conrail trains and ignores equivalent data on noise measurements of NS trains. This information on measured NS train noise levels was supplied to SEA in Applicants' ER. The data demonstrates that NS trains, which are typically shorter and operate at slower average speeds, are quieter than the DEIS suggests. SEA's exclusive use of the CSX model and measurements significantly overstates noise levels on NS lines, as has been demonstrated by recent field measurements. Further, since all of the noise assessment models were intentionally developed to be conservative, the models should only be used as a screening tool to identify areas of potential concern for site-specific analysis. The DEIS also inappropriately and unnecessarily defines a "preferred" recommended mitigation approach. Appropriate mitigation, if warranted, should only be determined following

site-specific analyses of noise impacts, location and type of receptors, and other local conditions. These issues are discussed below and in Appendix NS-3.

The DEIS presents a noise analysis of local adverse impacts where railroad operations are expected to increase on rail line segments, intermodal facilities and rail yards. The DEIS only considers potential adverse local noise impacts. Noticeably absent is any discussion of the positive benefits in reduced noise level that will be experienced by communities and sensitive receptors along those lines and roads where train and truck traffic would decrease, and those lines proposed for abandonment. In order to provide some semblance of balance, *NS recommends the FEIS at least acknowledge that noise benefits will accrue wherever train or truck traffic will decrease as a consequence of shifts in traffic expected to result from the Transaction.*

The DEIS appropriately concludes that safety considerations necessitate the sounding of locomotive horns for crossings and take precedence over noise effects. This is consistent with FRA regulations which specify horn loudness and laws which require horns to be sounded at grade crossings to provide for public safety. Therefore, for areas near grade crossings, the DEIS does not consider noise mitigation to be feasible. *NS concurs with the conclusion that safety considerations necessitate the sounding of horns and with the precedence of public safety considerations and the existing FRA regulation.*

NS concurs that the significance criteria of 70 dBA and an increase of 5 dBA, applied in the DEIS for wayside and facility noise, is reasonable and appropriate.

4.11.1 The DEIS Fails to Apply NS Train Noise Data to NS Traffic.

The DEIS analysis of noise levels and contours related to NS rail operations purports to be based on noise levels which were based on measurements of NS trains. In fact, the DEIS impact analysis is consistent with use of a CSX noise model based on measurements of CSX and Conrail trains. As demonstrated by field measurements, this results in a significant overstatement of noise impacts on NS lines.

NS recognizes the validity of the general approach applied within the DEIS - applying noise models to project potential increases in noise levels as a screening tool to determine where there might be a significant noise impact. *NS also agrees that it is appropriate to be conservative in applying such a tool to screen for potential impacted areas.* This is the reason NS applied a conservative model in the Applicants' Environmental Report (ER) - to avoid underestimating potential noise impacts. As discussed in Appendix NS-3 of these comments, NS

used a model developed by Thornton Acoustics based on actual field measurements of NS trains. These measurements determined that the wayside SEL (the average Sound Exposure Level 100 feet from the track while the train passes) was 98.4 dBA for the representative NS train.

The train noise model used in the DEIS is apparently the CSX model from the ER. This CSX model is based on CSX field measurements of CSX and Conrail trains. As documented in the ER, Volume 6A, Appendix B, *field measurements found CSX trains to be louder than either* NS or Conrail trains.

Although the DEIS states that SELs of 98.4 dBA wayside noise and 108.5 dBA crossing noise were used to determine contours for NS trains (DEIS, Appendix F, page F-5), in fact the contours presented in the DEIS are consistent with SELs of 100 dBA (wayside noise) and 109.1 dBA (grade crossing noise). *Although this difference appears small, the CSX model represents approximately 50 percent higher noise energy from wayside noise than the Thornton Acoustics model due to the logarithmic nature of dBA.* The wayside noise level of 100 dBA in the DEIS was apparently derived by applying a model based on CSX measurements of CSX and Conrail trains to NS trains, which operate at slower speed and shorter train lengths than CSX trains. The noise at grade crossings (109.1 dBA) in the DEIS was apparently determined by adding the train noise (100 dBA) to the horn noise only (108.5 dBA).

Application of the incorrect SEL for NS trains in the DEIS results in significantly overstated L_{dn} 65 contour distances from the rail line over the already conservative model results based on noise measurements of NS trains. The measurements of NS trains and the Thornton Acoustics model were presented in detail in the noise methodology in Appendix B of Applicants' ER. The CSX model was presented in the same Appendix. The data on NS trains was apparently neither applied by the DEIS nor incorporated into a unified model for use in the DEIS. The DEIS does not indicate any attempt to validate the assumption that the CSX model is a better predictor of NS wayside noise than are the NS measurements and model.

4.11.2 The NS Model is Conservative.

NS and its consultant Thornton Acoustics recognized the need for a conservative model to avoid any possibility of understating potential noise impacts. The model was based on real-world measurements of NS trains, but conservative assumptions were made concerning shielding and background noise, effects which reduce the actual impact of a noise source. *Subsequent field measurements have confirmed that the Thornton Acoustics model is conservative and*

appropriate as a screening tool for NS trains since it consistently overstates actual noise impacts from passing trains.

The Thornton Acoustics noise model was based on noise measurements made in an open, flat field area in North Carolina adjacent to NS track over a four-day period. There were no structures present to shield (absorb or deflect) noise. There were essentially no noticeable sources of background or non-railroad noise. The model included a factor for background noise inputs, but for all modeling runs it was assumed that the background noise levels would be very low (50 dBA during daytime hours and 40 dBA during nighttime hours). Although standard shielding equations predict shielding of up to 10 dBA from structures between the noise source and the receptor, the Thornton Acoustics model restricted the maximum shielding attenuation in the model to 5 dBA and only if structures parallel to the track occupied at least 65 percent of the total frontage along the track. This very restrictive shielding assumption ensures the model provides a conservative, i.e., louder, estimate of noise levels. In addition, the quiet flat field noise measurements made in North Carolina accentuate the effects of train noise when compared to urban or town areas where the model is applied to determine impacts on receptors. The Thornton Acoustics model was intentionally made to be conservative.

4.11.3 Validation of the NS Model as a Conservative Screening Method.

Some models are better than others, but a model is only a model and only predicts potential noise levels. By using a conservative model, NS recognized that any areas identified through modeling as having potential significant impacts could then be measured to determine the site specific sound levels from trains. *Additional field measurements recently conducted by Wyle Laboratories, a consultant to NS, confirm that the Thornton Acoustics model is both conservative and more accurate for NS trains than the model applied by the DEIS. The Thornton Acoustics model consistently overestimated noise levels when compared to actual measured noise levels, confirming that, as is the general case with models, this model is only appropriate as a screening tool.* The results are presented in more detail in Appendix NS-3 and summarized below.

In December 1997 and January 1998, noise measurements were performed by Wyle Laboratories on Norfolk Southern rail segments in Cleveland, Bellevue, and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were made in order to: (1) determine if the existing Norfolk Southern noise model was conservative or if it underestimated noise impacts, and (2) perform site-specific modeling in areas on NS line segments where the DEIS identified a noise concern. Several of the measurements include horn and/or bell noise, which

SEA has acknowledged should not be considered for purposes of determining significance of impact or mitigation. Results are shown below and in Table 4.11.1.

TABLE 4.11.1

COMPARISON BETWEEN MEASURED AND MODELED NOISE VALUES

Location	Distance (ft.)	Grade Crossing	Highest Measured SEL[a]	Thornton Predicted SEL	Percentage Over-Prediction[b]
Bellevue					
Site 1	100	Yes	106.2	108.5	69%
Site 2	230	Yes	98.4	102.7	170%
Site 3	650	Yes	88.9	95.5	356%
Clyde					
Site 1	100	Yes	106.0	108.5	78%
Site 2	330	Yes	95.0	100.2	231%
Site 3	545	Yes	93.4	96.7	115%
Ft. Wayne					
Site 1	130	No	88.4	96.6	561%
Site 2	200	No	89.6	93.6	151%
Lafayette					
Site 1	100	No	93.8	98.4	188%
Site 2	250	No	86.8	92.0	231%
Cleveland					
Site 1	300	Yes	63.2[c]	67.7[c]	182%
Site 2	200	No	56.8[c]	62.7[c]	299%
Site 3[d]	235	No	60.8[c]	63.0[c]	65%

[a] The measured SEL includes horn and/or bell noise for Bellevue, Clyde and Lafayette.
[b] The percentage the Thornton model over-predicted the sound energy level over and above the actual measured level.
[c] All Cleveland measurements and model estimates are L_{dn} values.
[d] At this site, Conrail train noise was measured, and the predicted SEL is a blend of Conrail train noise as predicted by the Thornton model.

- Cleveland, Ohio - Noise measurements were made for 24 hour periods in each of three areas in Cleveland. In each case, a comparison was made between the measured L_{dn} noise value and the calculated L_{dn} noise value using the Thornton

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Acoustics train noise model. In each case, the noise levels measured were lower than the NS model predicted. The Thornton Acoustics model overstated noise levels at the three locations between 2.2 dBA (66 % too high) to 6.1 dBA (307% too high); the DEIS values would overstate the actual values by approximately 3.6 dBA (129% too high) to 7.7 dBA (489% too high).

- Bellevue, Ohio - In Bellevue, Ohio, Wyle Laboratories performed noise measurements at three locations on an existing NS rail line segment. The Bellevue noise measurements were taken over a three-hour period. Three train pass-by noise measurements were made and subsequently compared to the Thornton Acoustics noise model predictions. For each site and train pass-by, the measured noise levels were lower, i.e., quieter, than the levels predicted by the Thornton Acoustics model.

- Clyde, Ohio - Wyle Laboratories performed SEL noise measurements at three locations in Clyde, Ohio along NS' Oak Harbor to Bellevue line segment. Two train pass-by noise measurements were made. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

- Fort Wayne, Indiana - Wyle Laboratories performed SEL noise measurements at two locations in Fort Wayne, Indiana along an existing Norfolk Southern line segment. Three train pass-by noise measurements were made. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

- Lafayette, Indiana - Wyle Laboratories performed SEL noise measurements at two locations in Lafayette, Indiana along an existing NS line segment. One train pass-by noise measurement was made at each location. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

The comparison between Wyle Laboratories noise measurements and the predictions of the Thornton Acoustics noise model show that, in all cases, the Thornton Acoustics noise model overestimates the L_{dn} 65 dBA contour both at grade crossings and for wayside noise. *This conclusively confirms that the FEIS analysis should apply no higher noise levels than those predicted by the Thornton Acoustics model for NS trains and that modeled levels should be used only as a screening tool to determine where additional site-specific measurements are indicated.*

Only with this level of noise analysis can an accurate determination be made as to whether noise impacts are potentially significant.

4.11.4 Acoustic Shielding and Background Noise

The Thornton Acoustics and DEIS (CSX) models were all intentionally designed with conservative assumptions concerning acoustic shielding and background (non-railroad) noise. The modeling only applied a fraction of the shielding recommended by a Federal Highway Administration (FHWA) noise model. The recent measurements by Wyle Laboratories suggest *the full range of shielding from the FHWA model would provide a more accurate prediction of actual noise levels.* Also, urban areas and areas with other noise sources have higher background noise levels that reduce the impact of train noise. Therefore, potential noise impacts are overstated throughout the DEIS. Details are discussed in Appendix NS-3.

4.11.5 Exclusive Use of CSX Train Noise Levels for Shared Assets Areas

For the Shared Assets Areas, the DEIS apparently based noise projections solely on CSX model calculations for CSX's average train length and speed (102 dBA for wayside noise and 112.8 dBA for grade crossings [see DEIS Appendix F, Attachment F-1.]). This not only ignores the NS model for NS trains, it also ignores that the typical NS train operates at lower speeds and shorter length. *NS recommends the FEIS apply a weighted average SEL between CSX and NS trains for Shared Assets Area line segments since the Shared Assets Areas will have both NS and CSX trains.*

4.11.6 Arbitrary Inclusion of Noise as a Potential Environmental Justice Impact

The DEIS applies a dual-standard for consideration of noise impacts in the discussion of Environmental Justice on three levels:

1. An arbitrarily restrictive noise contour is established and used to define the affected area wherein the DEIS will address potential population characteristics for inclusion within the Environmental Justice category.

2. The DEIS identifies three line segments with DEIS-designated environmental justice communities as potentially warranting noise mitigation; *however, the three segments fail to meet the DEIS established noise criteria for significance.*

3. Although the DEIS analysis of noise finds no environmental justice communities with significant noise impacts warranting mitigation, the DEIS suggests continued evaluation is necessary to ensure there are no cumulative impacts which include noise - however, the same suggested analysis for potential cumulative impacts involving noise is not provided for other communities throughout the system.

The DEIS defines the "area of potential effect" for Environmental Justice analysis as the maximum area potentially exposed to the Board's noise threshold of 65 dBA. The justification offered within the DEIS is that the 65 dBA threshold offers a practical, uniform approach to identifying an outer boundary where communities could be reasonably expected to experience localized environmental impacts. Norfolk Southern agrees this is a reasonable approach, given the available guidelines. However, as has been conclusively demonstrated, the use of either the DEIS (CSX) noise model, or the Thornton Acoustics (NS) noise model, overstates the actual measured level of noise associated with NS trains, and would therefore provide an exaggerated area for analysis. The DEIS approach to noise for environmental justice further overstates the extent of actual noise impacts by applying two arbitrary assumptions *solely* to environmental justice analysis: (1) assuming an increase of three to seven trains per day generates as much noise as an increase of eight trains per day - effectively lowering the analysis threshold for environmental justice communities from an increase of eight trains per day to three; and (2) assuming that horn noise occurs along the entire line segment, not just at crossings. No justification is provided for this unfounded double-standard.

On page 3-51, Environmental Justice Analysis, the DEIS states, "SEA used the criteria for "significance" described in the preceding sections of this chapter." Preceding DEIS Section 3.12.2, at 3-35, provides the mitigation criteria for noise and states, "SEA considered noise impacts . . . to warrant potential mitigation if any sensitive receptors are exposed to noise levels above 70 dBA L_{dn} and have a 5 dBA L_{dn} increase." However, the NS line segments listed as having potential noise impacts at DEIS 7-48, Table 7-9 "Preliminary Communities that May Warrant Environmental Justice Mitigation," do not meet the criteria SEA has defined as warranting noise mitigation. These line segments are: Cleveland to Ashtabula (N-075), White to Cleveland (N-081), and Youngstown to Ashtabula (N-082). In DEIS, Appendix F, Attachment F-1, the change in dBA for these three line segments is 4.5, 3.6, and 4.2, respectively. All three of the changes are well below the significant impact criterion.

The DEIS indicates that the Board is still considering the possibility that "cumulative" impacts on environmental justice communities could result from noise and from other unspecified factors, and that further study is required. However, the DEIS does not identify

significant potential noise effects in any of the environmental justice communities, and based on NS analyses presented here and in Section 4.16 below, NS does not believe that these communities will see significant adverse impacts of any kind. A finding of cumulative impact is based on the idea that synergies between multiple insignificant effects can create a significant effect. However, the DEIS contains no discussion of a link between insignificant noise effects and other insignificant effects, and provides no evidence that such a link exists. Similarly, the DEIS provides no justification for why further noise studies are warranted if it is already established that these communities do not have significant noise impacts, nor what these additional noise studies might consist of. The continued review of noise, and the consideration of insignificant noise as a potential cumulative effect for environmental justice communities where there is no significant noise impact, represents an unsupportable double-standard. *Environmental justice communities should be subject to the same noise thresholds and criteria contained in the DEIS and applied to other communities.*

NS recommends that a double-standard not be employed in the FEIS. The significance criteria established for the noise analysis elsewhere is reasonable, appropriate and sufficient, without creation of a second more stringent standard for particular communities based on demographic composition.

4.11.7 Practical Problems with DEIS Preferred Noise Mitigation

The DEIS recommends that, if and where noise mitigation is warranted, "noise barriers would be the preferred type of noise mitigation for substantially impacted areas." NS believes this is an arbitrary statement, and fails to consider site-specific variables and local considerations. *If noise mitigation is considered for any line segment, the consideration of potential alternatives should be based on a site-specific analysis of the noise impact, receptors, site conditions, and desires of the affected community, not with an arbitrary "one size fits all" mitigation measure.*

4.12 Cultural Resources

The DEIS, in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, evaluated each proposed abandonment and construction action associated with the Transaction to determine whether cultural resources (e.g., historic properties) were adversely affected, and if so, what mitigation would be warranted. The DEIS applied the "Criteria of Effect and Adverse Effect" (36 CFR 800.9) developed by the Advisory Council on Historic Preservation as the criteria for determining whether there would be an adverse impact on cultural resources. In addition to SEA's own analysis of potential impacts to cultural resources,

each proposed abandonment and construction action was coordinated with the State Historic Preservation Officer (SHPO) for additional review. The DEIS (as amended by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata) concluded there are no adverse impacts to cultural resources along NS rail line segments from the Transaction.

NS concurs with the cultural resources evaluation approach and conclusions as presented in the DEIS (as amended by the two Errata). During the implementation of the proposed abandonment and construction activities, NS will continue to coordinate as required with the appropriate SHPOs to ensure that significant cultural resources are not adversely impacted by the Transaction-related activities.

During recent engineering studies on Conrail's Buffalo-Binghamton rail line (which will be operated by NS post-Transaction), a Conrail Bridge (No. 361.66) over the Genesee River near Portageville, New York, was found to be near the end of its useful life. The bridge is an 819-feet long steel viaduct carrying a single railroad track, and is currently rated for 263k (load rating) traffic at 10 mph due to its condition. The viaduct rests on six steel towers that were constructed in 1875. The design and age of the current structure preclude repair or renovation without replacing the entire bridge. NS is conducting further studies and working with federal state and local authorities, including consultation with the State Historic Preservation Officer, to evaluate alternatives to replace the existing bridge. The anticipated bridge replacement is in response to an existing condition, and is not related to the Transaction. NS will replace the bridge in full compliance with all applicable federal, state and local laws and regulations.

4.13 Hazardous Materials and Waste Sites

The DEIS evaluated the potential for the Transaction to affect existing hazardous waste sites within 500 feet of the Transaction-related rail line construction or abandonment activities. Investigation and cleanup of hazardous waste sites during construction or abandonment activities is controlled by several federal and state statutes and regulations. The DEIS therefore concluded that no further evaluation was necessary, and that additional mitigation measures were not warranted. *NS concurs with this conclusion. NS routinely coordinates with federal and state agencies as appropriate to ensure all hazardous waste sites where NS has responsibility are addressed in compliance with applicable laws and regulations, and in a manner protective of human health and safety and the environment. It will continue to do so.* NS does point out that, as a general rule, some sites only require the involvement of the appropriate state agency(ies) while others may require the involvement of U. S. EPA alone or, at times, joint State and EPA involvement - depending on the constituent or amount of contamination discovered. Applicants

should be given the flexibility they currently have to involve the most appropriate authority(ies) in cleanup matters consistent with legal requirements.

4.14 Natural Resources

The DEIS addresses natural resources (water and biological) for site-specific Transaction-related activities at rail line segment constructions and abandonments. SEA evaluated the site for the construction of the proposed NS connection at Vermilion, Ohio for its potential to impact natural resources. The DEIS at OH-105 indicated that a site visit determined the woodland area located south of the proposed Vermilion construction site may contain habitat for the endangered Indiana bat. However, a subsequent Errata to the DEIS (dated January 9, 1998, at page 13) indicated the Indiana bat is not historically documented in Erie County. The DEIS indicated the Vermilion construction site visit did not identify any potential habitat for other threatened or endangered species. No other potentially significant natural resource impacts were identified, although the bald eagle was identified in the DEIS as a threatened species known to occur in Erie County.

Although the wooded area south of the Vermilion construction site will not be directly affected by the construction, the DEIS recommends that consult with the U.S. Fish and Wildlife Service (USFWS) and the Ohio Department of Natural Resources to determine the potential effects to any federally-listed threatened or endangered species. Prior to initiating construction at the site, the DEIS at OH-105 directs NS to conduct a survey to determine the potential presence of the Indiana bat and the bald eagle.

NS does not concur with the DEIS proposed mitigation. NS believes that since the wooded area will not be directly affected by the construction, a survey for the Indiana bat is not necessary. According to NS' preliminary correspondence with the USFWS, dated January 12, 1998, a survey for the Indiana bat may not be needed even if the wooded area were to be affected by the construction. Also, based on the same preliminary correspondence, the USFWS believes a survey for the bald eagle would not be necessary because the Ohio Department of Natural Resources maintains good records of the nesting locations obviating the need for a survey. *Therefore, the proposed mitigation should be revised as follows: "NS should coordinate with the U. S. Fish and Wildlife Service and Ohio Department of Natural Resources prior to construction."*

NS concurs with the DEIS's three-step process for evaluating water resources (map review and analysis, field reviews, and evaluation of impacts) and for evaluating biological

resources (data collection, field review, and evaluation of impacts). The methodologies are applied appropriately and the findings in the DEIS are well-founded except for the unclear methodology for the distances used to identify biological resources described in Section 7.7 and the survey recommendation at Vermilion discussed above.

NS concurs that the proposed Transaction will not result in significant impacts to natural resources.

4.15 Land Use/Socioeconomics

The DEIS addresses land use and socioeconomic issues directly related to changes in the physical environment from the proposed Transaction-related rail line segment constructions and abandonments. The DEIS concludes there are no significant adverse effects on land use or socioeconomics resulting from the proposed Transaction. NS supports this conclusion. The DEIS conducted a thorough review of the proposed rail line segment constructions and abandonments for:

- consistency with local land use plans;
- effects on Prime Farmlands;
- consistency with State Coastal Zone Management Plans;
- need for relocation/demolition of any business or residence;
- consistency with local land use plans and other requirements if within Native American reservations; and
- effects on jobs as a direct result of or related to changes in the physical environment.

Proposed abandonments were also evaluated for suitability for alternative public uses and/or trail uses, and identification of alternative transportation modes for goods and services affected by the abandonment.

A few comments below offer clarification to the DEIS methodology and state-specific conclusions related to the Tolono, Illinois rail line segment construction and the Seneca Indian Nation/Cattaraugus Reservation in New York.

Tolono, Illinois The proposed Tolono Connection involves the construction and operation of a new rail line connection between the existing Illinois Central (IC) and NS lines. The City of Tolono, Illinois identified a potential concern that the proposed NS construction

activity would disturb Daggy Street and adjacent residential properties. This concern, expressed in comments by the City on the scope of the DEIS, was based on information within the Environmental Report which was misconstrued. *In a public meeting held to address the City's concerns, NS clarified that the construction of the Tolono Connection would occur entirely within the existing IC and NS rights-of-way and no additional land would be acquired for this construction.*

The DEIS concludes:

- "Because the proposed construction would not require the acquisition of land outside the existing railroad right-of-way, this activity would be consistent with the local land use plan."
- "...the land use within the existing right-of-way is railroad. Therefore, there would be no effect on prime farmlands in the area."
- "Based on the findings described above, SEA has determined that there would be no significant impacts to land use associated with the proposed action at Tolono so long as construction remains within existing railroad right-of-way. Because there are no significant impacts, SEA does not recommend mitigation."

However, in the next paragraph, the DEIS goes on to contradict itself and recommend mitigation. Specifically, the DEIS provides a preliminary recommendation which states "...that the Board state, as a condition for approval of the Transaction, that Norfolk Southern does not disturb Daggy Street or residential properties at this location." DEIS at IL-68 through 69.

NS does not believe this recommendation is necessary nor in keeping with the conclusions of the DEIS. In effect, the recommendation seeks to mitigate a potential effect that is not projected to happen and which SEA has determined is not an issue of concern. NS' proposed construction activity at Tolono would occur entirely within the existing IC and NS railroad rights-of-way and no additional land would be acquired for this construction. Further, NS has met with local officials to clear up the misunderstanding. *Therefore, there is no impact to Daggy Street, and there is no need for a mitigation requirement.*

Seneca Indian Nation, Cattaraugus Reservation, New York The DEIS departs from its stated methodology for land use and socioeconomic analyses in addressing Native American issues on the NS Ashtabula - Buffalo (N-070) rail line segment. The DEIS concludes that the N-070 rail line segment is projected to increase the transportation of hazardous materials from 7,000 carloads to 26,000 carloads per year. The DEIS recommends the following mitigation:

- Adhere to the provisions of the AAR for transport of hazardous materials, including: (1) restricting train speeds to 50 mph; (2) upgrading the track to Class 2 or better; (3) installation of wayside defect detectors; and (4) establishing a Hazardous Materials Response Plan, including accident simulations with local emergency response providers.

- Coordinate the preparation of the Plan with the Reservation, and assist the Reservation with emergency response preparedness as requested.

The DEIS also notes that SEA will conduct additional public outreach among the Seneca Indian Nation and the Cattaraugus Reservation. DEIS at NY-38.

NS has several concerns regarding the DEIS approach on this issue:

- *This rail line segment is neither a construction nor an abandonment, and thus does not meet the DEIS criteria for evaluation for land use and socioeconomic issues. Therefore, this line segment should not be addressed within this section of the DEIS.*

- The potential issue identified, hazardous materials transportation, is already addressed for this rail line segment in the appropriate sections of the DEIS (e.g., DEIS Table 5-2). *Since recommended mitigation for increased hazardous materials transportation would eliminate the potential for a significant impact, there is no need to repeat the issue under land use and socioeconomic issues, and it should not be addressed in the section of the FEIS.*

- NS has raised several issues in Section 4.4 addressing the DEIS evaluation of hazardous materials transportation, including offering well-established mitigation measures (e.g., approaches to transportation of hazardous materials reflecting NS' excellent safety record) to address significant increases in hazardous materials rail traffic. These mitigation measures should be applied to the Cattaraugus Reservation in the same manner as they will be applied to other communities along rail lines projected to experience similar increases in hazardous materials transportation.

- The mitigation recommendation that NS "...assist the Reservation with emergency response preparedness as may be requested" is ambiguous and unsupported. This

requirement for additional, open-ended assistance is not specified for other non-Native American communities. *There is no justification for treating the Cattaraugus Reservation differently than any other community on the issue of increased hazardous materials transportation. This recommendation should not be included in the FEIS.*

- The DEIS does not state why the Seneca Indian Nation requires additional outreach. However, NS supports community outreach efforts with the Seneca Indian Nation (and all communities) to ensure information on the Transaction is available to the affected public and the community is informed so that it may participate in the EIS process.

4.16 Environmental Justice

NS strongly supports the objectives of inclusiveness and non-discrimination. However, the DEIS analysis of potential environmental justice effects of the Transaction is flawed and reflects a misapplication of sound environmental justice concepts. The analysis does not support additional mitigation and mitigation requirements predicated on it would exceed the legal authority of the Board. Specifically, NS believes:

- *There are substantial difficulties in attempting to apply the Executive Order on environmental justice and the guidance and methodologies developed thereunder by other agencies, to a transaction of this kind, which counsels caution.*

- *The Transaction will not have disproportionate effects on minority and low-income populations.*

  - *Potential impacts would not be borne predominantly by minority or low-income populations.*

  - *Effects on minority and low-income populations would not be more serious or greater in magnitude than on other populations.*

- *The Transaction will not have high and adverse effects on the "Environmental Justice communities" identified in the DEIS, disproportionately or otherwise.*

- *Communities identified as "Environmental Justice" communities in the DEIS are not predominantly minority or low-income.*

- *The environmental justice mitigation measures proposed in the DEIS are unjustified and impractical.*

4.16.1 Attempting to Apply to This Kind of Transaction the Executive Order on Environmental Justice and the Guidance and Methodologies Developed Thereunder by Other Agencies Presents Difficulties and Risks of Unforeseen Consequences, Which Counsels Caution.

The Executive Order on environmental justice defines its substantive standard as follows:

"Each federal agency shall conduct its programs, policies and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies and activities do not have the effect of excluding persons (including populations) from participation in, deny persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies and activities because of their race, color, or national origin."[16]

To achieve its objectives, the Executive Order urges Federal Agencies to conduct elaborate population demographic analysis for, "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects" on minority and low-income populations.[17] While the Executive Order requests that independent agencies such as the Surface Transportation Board comply with the terms of the Order,[18] the DEIS recognizes (at 3-46, note 4) that the Board is not bound to conduct environmental justice analyses, or to require mitigation on the basis of such analyses.

NS believes that the Board has always met the substantive standard of the Executive Order and can continue to do so through existing processes.[19] However, the guidance and

[16] Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994, paragraph 2-2.
[17] Id., Sec. 1-101.
[18] Id., paragraph 6-604.
[19] NS notes that the Board elected not to specifically address the terms of the Executive Order in the Burlington Northern / Santa Fe and Union Pacific / Southern Pacific railroad control proceedings, both of which post-dated the Executive Order.

methodologies developed to date by other agencies, applying the Executive Order to very different types of proposed actions, were not designed for, and are not well suited to, a rail consolidation of this kind. Attempting to apply such guidance and methodologies in this context, moreover, risks far-reaching and unforeseen consequences contrary to those intended.

First, the proposed action at issue – the Board's decision whether to approve this Transaction – does not present the potential for discrimination that the Executive Order was designed to protect against. This is not a situation in which certain communities might be excluded from participating in the environmental review process or otherwise receive less environmental protection. Notice of the proceedings and relevant information have been widely circulated every place where there could be potential environmental impacts from the proposed Transaction. SEA has undertaken a comprehensive analysis of potential environmental impacts system-wide and at each point in the 44,000-mile system controlled by the Applicants. Minority and low-income communities have not been overlooked. Potential impacts in these communities have not been dismissed or treated less seriously than potential impacts in other communities, because the DEIS evaluations of potential impacts and the criteria for analysis and for recommended mitigation have been applied evenly and neutrally system-wide. Population demographics have not been a factor in determining potential impacts or mitigation measures. Rather, the driving factors have been increases in rail traffic projected across the entire 44,000-mile system based on operational capacity and market demand. *Where neutral criteria are plainly applied across the system, as in this case, additional demographic analysis is not necessary to ensure nondiscrimination.*

Application of the Executive Order to this proceeding is not necessary to protect against discrimination by NS or CSX. The DEIS does not suggest that NS and CSX, in deciding how to route their trains, had any intent to disfavor minority or low-income populations. Nor could such a claim plausibly be made. The numerous complex factors which were taken into account in deciding how to route trains are discussed in the Operating Plans.[20] The demographics of communities along the rail lines is not among them.

Moreover, orders or conditions based on incomplete or technically flawed environmental justice analysis could inadvertently create preferential treatment on the basis of minority status or income level. Nothing in the Executive Order requires or suggests preferential or unique

[20] The primary factors are the origin and destination points for the expected freight shipments, geographic factors such as route distance and terrain, and the capacity of the tracks, yards and intermodal facilities.

mitigation for impacts in a minority or low-income community compared to a non-minority or non-low-income community similarly situated with respect to the impacts. *The recommendation in the DEIS for NS to enter into binding agreements for additional mitigation with certain communities but not with non-minority or non-low-income communities similarly situated with respect to impacts is an example of preferential treatment not warranted under the Executive Order and is a violation of its directive and spirit.*

In its attempt to work within the framework of an Executive Order aimed at different kinds of transactions, the DEIS unavoidably dealt with new processes, untested analytic methodologies and untried mitigation strategies. The Board has never issued guidance or proposed rules that address the application of environmental justice concepts to the types of issues typically reviewed by the Board. Virtually all of the academic literature and guidance from other federal agencies with respect to environmental justice describes analysis of localized facility siting or construction decisions (e.g., where to locate an industrial facility, or whether to expand an airport). NS can find no precedent for environmental justice assessment of a financial transaction like the Transaction here, the principal environmental effect of which is to cause interrelated system-wide shifts in train and truck traffic throughout the eastern United States. The railroad rights-of-way at issue in the proposed action were established beginning in the mid-nineteenth century and were largely determined by the early twentieth century. Nearby land was developed with the full knowledge that freight trains moved along the tracks, in most cases with much greater frequency than they do today (e.g., in Cleveland, see Section 2.5.4) or would following the consummation of the proposed Transaction. Neither the Executive Order, nor any other guidance promulgated to implement the Order, directly addresses the type of action proposed here. NS believes that the DEIS environmental justice analysis is technically flawed, due in large part to the conceptual incompatibility of a facility siting model with the very different nature of this Transaction. Given that the Board is not required to conduct such analysis and that such analysis is not necessary to ensure inclusiveness and non-discrimination, a better approach is to review environmental analytic procedures to ensure non-discrimination, or to limit additional demographic analysis to new construction, as was proposed in the draft scoping notice for the EIS.

However, if the Board believes that environmental justice considerations in the future should become a distinct part of its processes, NS urges the Board to follow the lead of DOT and other agencies. The Board (like DOT and other agencies) should issue proposed rules or guidance on environmental justice analysis and seek input from community organizations, state and local governmental agencies, and other stakeholders before issuing final rules. The EIS

process is not the appropriate place for the Board to establish for the first time its policy and approach to environmental justice.

4.16.2 The Proposed Action Will Not Have Disproportionate Effects on Minority and Low-Income Populations.

The President's Executive Order on Environmental Justice directs Federal Agencies to identify and address "*disproportionately* high and adverse human health or environmental effects" on minority and low-income populations (emphasis added).[21] The Applicants' Operating Plans have been devised to route freight traffic so as to provide the quickest, safest and most cost-effective rail transportation possible, to the benefit of persons of every racial and income group. Some lines will experience increased traffic and some will experience decreased traffic. Analysis of the minority and income status of populations adjacent to the rail lines, shown in Tables 4.16.1 and 4.16.2, discussed below, clearly shows that the increases and decreases in traffic over the 44,000 miles of rail lines at issue will not be borne by minority and low-income persons disproportionate to their presence along the rail lines. Since train routing decisions are not based on the status of the populations adjacent to the lines, this finding should come as no surprise.

The U.S. Department of Transportation's Order on Environmental Justice (as well as the literature in the field of environmental justice impact assessment) defines two tests to determine whether impacts are disproportionate: "Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

- is predominantly borne by a minority population and/or a low-income population, or
- will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low income population."[22]

Neither test is met in this Transaction.

[21] Executive Order 12898, Sec. 1-101.
[22] U.S. Department of Transportation, *Order to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 3, 1997, page 25.

Potential impacts are not borne disproportionately by minority or low-income communities. Table 4.16.1 compares the minority and low income concentrations of populations that would experience increases in train traffic post-Transaction with the minority and low-income concentrations of populations residing adjacent to all of the rail lines to be controlled by the Applicants.[23] Table 4.16.1 clearly shows that the demographic makeup of communities that would see increases in train traffic is virtually identical to that of the system as a whole. It shows, additionally, that about 75 percent of the population adjacent to the rail lines involved in this Transaction that will experience train traffic increases is non-minority, and about 85 percent of the population so impacted is non-low-income. Potential impacts would therefore not be "predominantly borne" by minority or low-income communities on a system-wide basis.

Table 4.16.1: Comparison of Communities Where Train Traffic will Increase and Decrease Across the Expanded NS, CSX and Shared Assets Areas Systems

		Communities where		
	Entire systems (NS, CSX and Shared Assets Areas)	Train traffic would increase above SEA threshold for analysis (8 trains per day)	Train traffic would increase by any amount	Train traffic would be unchanged or would decrease
Share of population with minority status	25%	22%	26%	24%
Share of population in poverty	15%	15%	15%	15%

On a system-wide basis, potential effects on minority and low-income populations would not "appreciably exceed," or be "more severe" or "greater in magnitude" than among other adversely populations effected. Table 4.16.1 shows that communities that would see increased train traffic at or above the Board's analytic threshold of eight trains per day are virtually identical in low-income concentration and, if anything, slightly lower in minority concentration

[23] Demographic data were gathered for populations adjacent to each rail line in the expanded NS, CSX and Shared Assets Areas systems using procedures similar to those described in the DEIS (Appendix K). Because NS' analysis is system-wide, and, by contrast, the DEIS includes demographic data for only a small number of segments, there are two important differences in methodology. First, data were collected for this analysis at the postal zip code level instead of the census block group level used in the DEIS. Second, NS' analysis does not isolate the portion of each zip code potentially affected by the Transaction. The DEIS provides no methodology for defining area of potential effect where the Transaction would result in benefits or in insignificant impact. This analysis is based solely on expected increases in traffic, as a surrogate for environmental impacts, and does not consider the mitigating effects of actions recommended by the DEIS.

than the system as a whole. Table 4.16.2 below focuses in on those segments where train traffic would increase. The table compares increases on segments with adjacent populations in the highest 20 percent in terms of minority and low-income concentration, with increases on other segments.[24] Table 4.16.2 clearly shows that, among communities adjacent to segments where train traffic would increase, those communities with the highest minority and low-income concentrations would not see bigger increases than the rest of the communities adjacent to such segments.

Table 4.16.2 Comparison of Rail Segments Where Train Traffic Would Increase (High Minority and Low-Income Concentration Segments Versus Other Rail Segments)

	Minority Concentration		Low-Income Concentration	
	Highest 20%	Other	Highest 20%	Other
Increase in train traffic (trains per day)	4.38	4.9	4.66	4.76

In the prevailing literature, statistical tests called "difference of means" tests are used to determine whether comparisons such as those made in Table 4.16.1 or Table 4.16.2 are "statistically significant," i.e., whether differences in the demographic data are real or random 'noise' in the data. These tests - conducted on all the comparisons made in Tables 4.16.1 and 4.16.2 - confirm that differences in the average demographics of communities that will see various effects are not statistically significant.[25]

[24] To construct the 'highest 20%' and 'other segment' groups, segments were ranked by minority or low-income concentration of adjacent populations from highest to lowest. Segments were then divided into five groups (quintiles). The sum of the populations in any quintile equals 20% of the total population adjacent to the entire system. The exercise was done separately for analysis of minority and low-income effects. The 'highest 20%' is the quintile with the highest minority or low-income concentration. The 'other segments' group includes the other four quintiles.
[25] As the literature suggests, difference of means tests are used to determine whether observed differences in minority and low-income concentrations are "statistically significant" at a 95% confidence level. See Vicki Been and Francis Gupta, "Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims," *Ecology Law Quarterly* v24 (1997) n1:1-56; Paul Mohai and Bunyan Bryant, "Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards," *University of Colorado Law Review* v63 (1992) n4:921-932; and Andrew Szasz, Michael Meuser, Hal Aronson, and Hiroshi Fukurai, "The Demographics of Proximity to Toxic Releases: The Case of Los Angeles County," Paper presented at the Annual Meetings of the American Sociological Association, Miami, FL, 1993.

Nowhere in the DEIS is there an assessment of whether impacts would be disproportionate, predominantly borne by minority or low-income populations, or whether potential impacts in low income communities would be more severe or greater in magnitude than among other affected populations. The only explanation of the DEIS methodology for determining whether effects on minority or low-income communities are disproportionate is as follows:

> "SEA used a qualitative analysis approach which included review of several different factual circumstances, including cumulative effects of exposure to health and environmental impacts from many sources, to determine the significance levels on a local case-by-case basis. A determination of a significant environmental justice impact specifically included SEA's consultation with affected communities."[26]

Such analysis can provide useful information, but it is not determinative of the question of whether impacts are predominantly borne by, or are more severe among, minority and low-income populations than among other populations on a system-wide basis. Members of communities consulted in such analysis would have limited knowledge of how other communities are being affected by the proposed action. Consultation might help to identify hypothetical cumulative effects (e.g., situations where individuals are more susceptible to effects because of site-specific circumstances) but the DEIS puts forward no reason why such consultation is needed only in minority or low-income communities, or why a community's demographics could affect the potential for cumulative effects.

4.16.3 The Proposed Action Will Not Have High and Adverse Effects on the "Environmental Justice Communities" Identified in the DEIS.

The DEIS identifies seven rail segments along the expanded NS system that "may warrant environmental justice mitigation"[27] (see Table 4.16.3). The list is composed of rail segments that (1) exceed DEIS significance criteria for one or more environmental effects and (2) also exceed a DEIS threshold for minority or low-income concentration in the surrounding population.[28] The potential adverse effects identified on these segments include at-grade crossing safety (2 segments), freight rail safety (2 segments), and increased hazardous materials transport (5

[26] DEIS, Appendix K at 10-11.
[27] DEIS, Table 7-9, at 7-47 to 7-48.
[28] DEIS at 3-48 to 3-49.

segments). The DEIS also suggests that otherwise insignificant noise effects, in combination with other factors, could pose a "cumulative impact" on five of the seven segments.

TABLE 4.16.3
NS RAIL SEGMENTS IDENTIFIED IN DEIS FOR ENVIRONMENTAL JUSTICE MITIGATION

Segment	At-Grade Crossings	Freight Rail Safety	Hazmat Transport	Noise*
N-041	X		X	X
N-045	X		X	X
N-075			X	X
N-081			X	X
N-082			X	X
N-086		X		
N-090		X		

*Potential cumulative impact concern.

These rail segments, like all areas that could potentially experience effects, were appropriately subject to SEA assessment. NS is prioritizing outreach activities in minority and low-income communities near these segments as the DEIS directs. However, a closer look reveals that these communities will not experience significant impacts from the Transaction, much less impacts that are "disproportionately high and adverse."

The initial step in the environmental justice methodology described in the DEIS is identification of health and environmental effects of the proposed Transaction.[29] The DEIS proposes system-wide and site-specific mitigation measures that SEA generally believes will "ensure" that no significant effects occur. Given these measures, NS sees no grounds for further environmental justice analysis. *There can be no disproportionately high and adverse effect on minority or low-income populations if there is no significant adverse effect at all, or if mitigation is in place to ameliorate the potential adverse condition.*

The failure to consider the benefits of proposed measures to promote at-grade crossing safety, freight rail safety, and safe hazardous materials transport is a major flaw in the DEIS environmental justice analysis. In this respect, the DEIS deviates from federal guidance and

[29] DEIS at 3-48.

accepted practice.[30] SEA proposes that its criteria-based at-grade crossing safety, freight rail safety, and safe hazardous materials transport measures be implemented in the identified environmental justice communities.[31] The DEIS states that these measures would "address environmental impacts for these [environmental justice] communities."[32] The DEIS states that proposed mitigation measures are of the type that the Surface Transportation Board typically considers and imposes to "ensure freight safety"[33] and to "ensure safety at specific grade crossings."[34] With respect to hazardous materials transport, the DEIS proposes system-wide measures to "prevent and quickly, efficiently and effectively respond to hazardous materials releases."[35] The DEIS also proposes measures on these specific segments that "reduce potentially significant Acquisition related impacts resulting from the increased transportation of hazardous materials."[36] Yet, the ameliorative effects of these mitigation measures are not taken into account by the DEIS' environmental justice analysis.

Even in its consideration of potential impacts (i.e., those that could potentially occur absent measures to address them), the DEIS fails to demonstrate any reasonable connection to minority or low-income populations. The U.S. Environmental Protection Agency's *Guidance on Incorporating Environmental Justice into EPA's NEPA Compliance Analyses* notes that "the effects of proposed actions will often vary depending on the distance of the affected community from the action and the type of effect created by the action. Effects on the community should be

[30] The U.S. Department of Transportation's Order on Environmental Justice states that, "in making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas." U.S. DOT, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, paragraph 8.b.
[31] DEIS recommended Mitigation Number 1 for at-grade crossing safety, at 7-11 to 7-12; DEIS recommended Mitigation Numbers 3(A), 3(B), 3(C), 4(A), 4(B), 5 and 6 for hazardous materials transport, at 7-12 to 7-14; DEIS recommended Mitigation Numbers 7(A) and 7(B) for freight rail safety, at 7-14 to 7-15. Table 7-4, at 7-26 to 7-33 for at-grade crossing safety; Table 7-5 and 7-6, at 7-34 to 7-42 for hazardous materials transport; Table 7-2, at 7-25 for freight rail safety.
[32] DEIS at 7-18.
[33] DEIS at 3-7.
[34] DEIS at 3-11.
[35] DEIS at 3-14.
[36] DEIS at 3-14.

discussed in terms of *reasonable* increments from the site"[37] (emphasis in original). In fact, the DEIS identifies minority and low-income populations based on areas that would hypothetically be affected by an exaggerated 65 dBA noise contour.[38] But the DEIS identifies no significant adverse noise impact in any of the seven environmental justice communities.

Two of the segments identified in the DEIS, N-086 (Toledo, Ohio) and N-090 (Harrisburg, Pennsylvania), are singled out for environmental justice analysis solely because of potential freight rail safety effects. The DEIS analysis of freight rail safety focuses on freight train collisions, derailments, and collisions with train service vehicles.[39] Freight rail safety effects are considered significant in the DEIS if, absent mitigation, they were projected to produce at least one accident in 100 years.[40] Freight rail incidents are almost always confined to the tracks themselves and, as the DEIS points out, are infrequent in any case.[41] Freight rail incidents are rarely noticeable to the neighboring community. NS submits that the very low risk of a freight rail incident, the effects of which are usually confined to the tracks themselves, does not create a "high and adverse effect" on surrounding populations.[42] In addition, measures taken to improve freight rail safety are determined by regulatory requirements, industry practice, available technology, and the railroad operating plan. Freight rail safety measures must be implemented system-wide, not on a community-by-community basis.

Two of the segments identified in the DEIS, N-045 (Ft. Wayne, Indiana) and N-041 (Danville, Illinois), are singled out for environmental justice analysis in part because of potential at-grade crossing safety effects. The potential effects are related to incidents involving highway vehicles, not residences. The DEIS provides no evidence linking the highway traffic at these crossings to the relevant populations, i.e., there is no evidence that a potential at-grade crossing safety issue has a significant adverse effect on an environmental justice community located elsewhere along the line segment.

[37] U.S. EPA, *Interim Final Guidance on Incorporating Environmental Justice into EPA's NEPA Compliance Analyses*, September 30, 1997, page 5. (Emphasis added)
[38] DEIS at 3-48 to 3-50.
[39] In the DEIS, freight rail safety issues are analyzed separately from hazardous materials transportation and at-grade crossing safety. The DEIS identifies no significant hazardous materials transport effect or at-grade crossing safety effect on either of these two segments.
[40] DEIS at 3-8.
[41] DEIS at 3-4.
[42] See Section 4.1 above for further discussion of freight rail safety.

These two segments, along with three others, N-081 (Ashtabula and Cleveland, Ohio), N-082 (Ashtabula and Youngstown, Ohio), and N-075 (Ashtabula and Cleveland, Ohio), are also singled out because of projected increases in hazardous materials transport. Rail transport of hazardous materials does not create a "high and adverse" effect in these communities. In 1996, 99.96 percent of all hazmat shipments through the NS system arrived without incident.[45] This figure has steadily improved from 99.90 percent a decade ago.[46] Like freight rail safety, measures taken to ensure safe transport of hazardous materials must be applied system-wide, not community by community. In similar fashion, the DOT has issued comprehensive hazardous materials regulations at 49 CFR Parts 171-174, which are intended to make the possibility of a hazardous materials incident unlikely. *Compliance with the DOT rules on a system-wide basis,* coupled with NS' voluntary proactive risk management efforts (see Sections 4.4 and 4.4.4 of these comments), means the possibility of an incident occurring is remote, further supporting NS' position that the projected increased hazmat traffic on those two line segments will have no high or adverse effect on the communities along those lines.

The additional safety benefits of the proposed Transaction should also be recognized in the environmental justice analysis. Between 1994 and 1996, the NS system experienced 2.13 incidents per million train miles, 41 percent better than Conrail's record of 3.63 incidents per million train miles. According to the DEIS, hazardous materials incidents on the NS system caused no injuries between 1992 and 1996, while incidents on the Conrail system caused nine injuries.[47] The DEIS recognizes that the proposed action will create fewer incidents and "an overall safety improvement for rail transportation of hazardous materials."[48] These findings should be reflected in any environmental justice analysis.

Finally, the DEIS indicates that the Board is still considering the possibility that "cumulative" impacts on environmental justice communities could result from noise and from other unspecified factors. However, the DEIS does not find "cumulative" impacts in other non-minority, non-low-income communities. The DEIS does not identify significant potential noise effects in any of the environmental justice communities. And, based on the analysis presented here, NS believes that these communities will not see significant adverse impacts of any kind. A finding of cumulative exposure is based on the idea that the whole is *sometimes bigger than the*

[45] As explained previously, an "incident" involving hazardous materials transportation refers to any leak or spill of material from its original container, without regard to the amount released or its effect. The loss of one drop of material is labeled an "incident."
[46] This represents a 60% improvement in the rate of hazmat incidents.
[47] DEIS at B8-1 – B8-4.
[48] DEIS at ES-19.

sum of its parts, e.g., that synergies between multiple insignificant effects create a significant effect. Neither the DEIS, nor the scoping documents that preceded it, discuss a link between insignificant noise effects and other effects. The DEIS provides no evidence that such a link exists. The DEIS contains no discussion of how the hypothetical cumulative effects are borne disproportionately in minority and low-income populations. A finding of cumulative effects must be based on sound science that is clearly explained.

NS supports the Board's efforts to reach out to these communities and all the communities affected by the Transaction. These efforts complement NS's own ongoing activities in community outreach. NS reiterates its intent, wherever mitigation measures are appropriate, to address significant human health and environmental impacts to implement such measures regardless of the race, color, national origin or socioeconomic status of the affected communities. *However, NS does not believe that conditions in these seven locations (or any other community along NS' expanded system) warrant additional environmental justice mitigation beyond what may otherwise be appropriate to ensure adequate opportunity to participate in the EIS process.*

4.16.4 "Environmental Justice" Communities in the DEIS Are Not Predominantly Low-Income or Minority.

According to the DEIS, in none of the seven communities is a majority of the potentially affected population classified as low-income. And in only one community, along NS line segment N-041, does the share of minority persons in the potentially affected population top 50 percent.[47]

Six of the seven communities were identified as "environmental justice" communities within the DEIS because they exceeded by ten percentage points the minority or low-income concentration in the surrounding counties. NS could find no applicable precedent for the use of this standard. Presumably, the DEIS meant to identify those communities that might be disempowered relative to wealthier or otherwise demographically different neighbors. The standard may be appropriate for examining the siting of a waste station, an industrial facility or a power plant. In such cases, plausible alternatives might shift the distribution of impacts among two neighboring communities. But the DEIS threshold of 10 percent greater minority or low-income population than the surrounding county makes no sense in the context of the proposed

[47] Segment N-041, in which 63.7% of the population are minority persons. Demographic information for each community is contained in Appendix K of the DEIS.

Transaction. The DEIS identifies no locality in which a decision on the proposed Transaction will redistribute burdens among neighboring communities not located adjacent to the railroad.

The potential effects identified in the DEIS for these seven communities result from interdependent changes in rail traffic patterns across a 44,000-mile system that crosses county, state and even national borders, changes that are central to the benefits of the proposed Transaction. Therefore, NS urges that this standard for defining a community as minority or low-income be dropped from the FEIS.

4.16.5 The Environmental Justice Mitigation Measures Proposed in the DEIS Are Unjustified and Impractical.

Notwithstanding the acknowledgment that other proposed mitigation measures address all of the relevant environmental impacts in the seven environmental justice communities, the DEIS directs the applicants to "meet with these communities *to identify and agree on any further appropriate measures* to address the specific environmental impacts that may disproportionately impact these communities."[48] The DEIS states further that, absent such agreement prior to issuance of the FEIS, "SEA may recommend that the Board, as a condition of the approval of the Application, direct CSX and NS to implement appropriate mitigation measures."[49]

It should be reiterated that the proposed Transaction will not have a disproportionate impact on minority and low-income communities in general, that the proposed Transaction will not have a high and adverse impact on the seven environmental justice communities identified in the DEIS, and that only one of these communities is predominantly made up of low-income or minority persons. For all these reasons, negotiation of further mitigation solely on the basis of population demographics would be inappropriate.

The Board is limited by its own regulations to condition approval of a proposed action on environmental mitigation only when that mitigation is directly related to the environmental impact of the proposed action.[50] Imposing mitigation based on the environmental justice analysis reflected in the DEIS, would, contrary to these regulations, be based not on evidence of additional human health or environmental impact on these communities, but rather solely on the

[48] DEIS at 7-18. (emphasis added)
[49] Id.
[50] 49 CFR 1180.1(d). The point is also made in the DEIS at 3-3.

minority or socioeconomic status of these communities. The additional mitigation proposed is *not connected to any significant environmental impact of the proposed Transaction.*

For example, consider the N-090 segment (Harrisburg, Pennsylvania) and the N-086 segment (Toledo, Ohio) that could see potential freight rail safety effects according to the DEIS. Based on the demographics of the surrounding populations, the DEIS characterizes these as environmental justice "communities" and recommends that NS consult and reach agreements with these "communities" for additional mitigation. There are two other segments in the NS system (N-047 (Indiana Harbor, Indiana) and N-077 (Oak Harbor, Ohio) that could see the same potential freight rail safety effects, according to the DEIS. The populations surrounding these segments do not exceed the DEIS environmental justice thresholds for minority or low-income concentration, so the DEIS does not call for additional mitigation. The DEIS does not claim that Harrisburg and Toledo would experience greater freight rail safety effects than would Indiana Harbor or Oak Harbor. *In fact, freight traffic will increase by less than 10 percent in the* Harrisburg and Toledo segments as contrasted with increases of 70 percent and 22 percent in the Oak Harbor and Indiana Harbor segments respectively.[51] The DEIS does not identify a technical basis for the additional mitigation, and mitigation is not justified based on population demographics alone. *An order made on this basis would clearly be contrary to the Board's regulations and the intent of the Executive Order.*

Furthermore, the method proposed in the DEIS for developing additional mitigation for DEIS-designated environmental justice communities -- negotiation of binding agreements with minority and low-income populations -- is impractical and inconsistent with existing guidance. Who has the authority to speak for "affected populations"? How are parties to be excluded from or included in the negotiation? Must there be unanimous agreement among all interested parties? If not, who must agree? Are the terms of the negotiation limited by the Board's authority to impose mitigation, or are all issues on the table? Given that these negotiations are to be based on or are the basis for an order of the Board, are they governed by the Federal Advisory Committee Act? How would the terms of an agreement be enforceable against any party other than the Applicants?

Similar concerns were raised when the U.S. Department of Transportation proposed the notion of developing environmental justice mitigation through binding agreements with affected

[51] DEIS at ES-8.

populations in its draft Order on Environmental Justice.[52] The State of Colorado called the proposal "far too expensive and time consuming." The National Association for the Advancement of Colored People (NAACP) argued that the option sent the "wrong message and should be removed" because it would create "powerful incentives for project sponsors and unrepresentative factions within a community to reach 'agreements' that are not truly representative of community sentiment."[53] The NAACP pointed out that parties to such an agreement might unknowingly compromise their rights to settle environmental justice complaints through other means.[54] The State of California asked how it would determine, "when there really is community 'buy in'"[55] California pointed to the West Cypress Expressway reconstruction in Oakland, where successful negotiations with one community group prompted a lawsuit from another. "A significant amount of resources had to be expended in defending the suit."[56] The New York City Bar Association, commenting generally in favor of environmental justice measures, called the proposal for negotiations with affected populations, "fraught with risk and unworkable. In particular, the identification of the appropriately representative group to enter into an agreement ... which, in effect, waives the whole community's environmental justice protections does not appear to be a task that a government agency is suited to undertake."[57] Finally, the State of Illinois commented that mitigation measures likely to be of interest to affected populations would be "impractical" because funding of those measures would be beyond the authority of state or federal public works and transportation agencies.[58]

In its Final Order, U.S. DOT noted that comments expressed "concern and uncertainty as to the implementation" of the negotiated agreement approach: "DOT agreed with the comments

[52] DOT proposed three options (A – C) for developing mitigation for environmental justice impacts (paragraph 6 of the draft order). Option B included a requirement that "an agreement is reached with the potentially affected populations to proceed with the program, policy or activity." U.S. DOT, *Proposed Order to Address Environmental Justice in Minority Populations and Low-Income Populations*, June 29, 1995, Option 'B', paragraph 6.b(1).

[53] Letter from Norman Chachkin, NAACP Legal Defense and Educational Fund, Inc., to Docket 50125, September 26, 1995, page 6.

[54] Id., page 7.

[55] Letter from Howard Saraiohn, Program Manager, California Department of Transportation, to Docket 50125, August 24, 1995, page 2.

[56] Id.

[57] Letter from the Association of the Bar of the City of New York, Committee on Environment and Committee on Civil Rights, to Docket 50125, February 13, 1996, page 6.

[58] Letter from Kirk Brown, Secretary of Transportation, State of Illinois, to docket 50125, September 6, 1995, page 3.

and, accordingly, that paragraph has been deleted from the final order."[59] NS recognizes that the Board is not bound by the DOT Order, but urges the Board to come to the same conclusion as DOT and public commentors on this matter.

NS is not opposed to additional consultation with individual communities. Our own outreach efforts to date are described in Sections 5 and 6 of these comments. Additional consultation may be useful, for example, in determining whether a particular at-grade crossing safety, freight rail safety or hazardous materials transportation mitigation strategy recommended by the DEIS can be tailored to address local concerns. Consultation may open the EIS process to input from a wider spectrum of interests. NS supports efforts to achieve these objectives. *But NS is opposed to binding negotiations of the type proposed in the DEIS, and to practices that might create preferential treatment on the basis of minority status or income.*

4.17 Cumulative Impacts

The DEIS evaluated system-wide cumulative effects of the Conrail Transaction, considering the scale and dimensions of the overall Transaction, including the effects on energy, air quality and transportation. Based on this evaluation, the DEIS concludes that the Transaction will result in a net positive cumulative effect. Norfolk Southern concurs with this conclusion - as stated in Section 3 herein, NS strongly believes that this Transaction will have a net positive benefit for the environment and the economy.

The DEIS also discusses evaluating cumulative impacts on identified environmental justice communities, but not, however, on other communities with similar potential impacts. The DEIS provides no supporting justification, analytical approach, or evidence supporting potential adverse cumulative effects at the local level. The DEIS includes no methodology for weighting and then combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delays, noise, etc.). And of course, there is no quantification of the benefits of the Transaction on a localized basis. Further, there is apparently no consideration of the mitigation effects of measures SEA plans to require. NS believes this approach is flawed as discussed in detail in Section 4.16 above.

[59] U.S. Department of Transportation, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, preamble, page 7.

4.18 Relationship Between Short-Term Uses of the Environment and Enhancement of Long-Term Productivity

The DEIS considers the extent to which the Transaction would result in long-term productivity gains at the expense of short-term use of the environment and environmental impacts. Potential short-term impacts result from construction activities for new rail line connections. The short-term impacts identified by the DEIS are typically very limited in geographic scope, and readily mitigated by the railroad's existing Best Management Practices employed at construction sites. The DEIS concludes that the short-term impacts would be offset by long-term gains in productivity, including increased productivity and efficiency of rail operations in the eastern U. S. Long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, highway safety and air pollutant emissions. *Norfolk Southern concurs with this conclusion - the Conrail Transaction will have a net positive benefit for the environment and the economy.*

4.19 Irreversible and Irretrievable Commitment of Resources

The DEIS evaluates the irreversible and irretrievable commitment of resources, including natural, physical, human and fiscal resources. The evaluation addresses resources committed to both operational changes and construction of new and/or modified intermodal facilities, rail yards and line segments. Operational changes on existing rail lines redistribute resources, but do not increase the use of irreversible and irretrievable resources. New construction activities typically involve use of land and construction materials, labor, and minor amounts of fossil fuels. Land use is an irretrievable commitment only for the period of use by the railroad; the land can later be converted to another use. The use of construction materials, labor, and fossil fuels represents a minor irretrievable use of resources; use of these materials will not have an adverse effect upon continued availability of these resources. Therefore, the DEIS concludes that the benefits of the proposed Transaction would outweigh the commitment of the described resources. The long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, and air pollutant emissions. Norfolk Southern concurs with this conclusion - the Conrail Transaction will have a net positive benefit for the environment and the economy.

4.20 Abandonments

SEA evaluated the potential for abandonment-related impacts on land use and socioeconomics, natural resources (water and biological), air quality, noise, cultural resources (historic and archeological), hazardous waste sites, transportation, and energy. The DEIS found that no significant impacts would result from the proposed abandonments. The findings in the DEIS are well-founded and the methodologies are appropriate for evaluating the potential for abandonment impacts.

In general, abandonments are expected to have a positive impact; therefore, mitigation measures were recommended on a system-wide basis. SEA recommended using "best management practices" to minimize soil erosion and sedimentation, restoring any adjacent properties that are disturbed during right-of-way salvage activities, controlling temporary noise caused by salvage equipment, restoring roads disturbed during removal activities, and contacting and coordinating activities with the State SHPO if any previously unknown archaeological remains are found. SEA also recommended that NS comply with all applicable federal, state, and local regulations regarding the control of fugitive dust and the handling and disposal of any waste materials. NS is committed to fulfill these requirements.

4.21 Construction

SEA evaluated proposed NS construction projects for 11 new connections and 1 bridge rehabilitation. The DEIS sets forth SEA's criteria for determining which constructions require environmental review (DEIS at 1-14). Normally, SEA does not evaluate the impacts of constructions and other activities that take place wholly within existing right-of-way. However, to ensure a thorough environmental review of the proposed merger, certain activities, even if they would occur solely within the existing railroad right-of-way, were reviewed in the DEIS. Specifically, SEA reviewed such projects if (1) they were major undertakings; (2) they would not be undertaken but for the proposed Conrail Transaction; and (3) they had the potential for environmental impacts outside the existing right-of-way (DEIS at 1-15).

NS concurs with the findings in the DEIS. The findings are well-founded and the methodologies are appropriate for evaluating the potential construction-related impacts.

During engineering studies on Conrail's Buffalo-Binghamton rail line, a Conrail Bridge (No. 361.66) over the Genesee River near Portageville, New York, was found to be near the end of its useful life. The bridge is an 819-feet long steel viaduct carrying a single railroad track, and is currently rated for 263k (load rating) traffic at 10 mph due to its design, age and condition. The viaduct rests on six steel towers that were constructed in 1875. The design and age of the current structure preclude repair or renovation of its load-handling capability without essentially replacing the entire bridge. NS is conducting further studies to evaluate alternatives to replace the existing bridge. The anticipated bridge replacement is in response to an existing condition, and is not related to the Transaction. NS will replace the bridge in full compliance with all applicable federal, state and local laws and regulations.

4.22 Other Miscellaneous Issues

4.22.1 Train Traffic Correction for CP Trains on the Michigan Line Segments

The presence in the DEIS of the W. Detroit to Jackson, Michigan (N-121) and Jackson to Kalamazoo, Michigan (N-120) line segments fails to consider important information provided by NS to SEA in October 30, 1997 correspondence. In that correspondence, NS clarified that the Canadian Pacific (CP) traffic that was included in the Operating Plan for these segments was not correct. As the October 30 letter specified, a final agreement with CP has not been reached. For the agreement to become final, CP would have to commit capital on the NS line and on the Amtrak line from Kalmazoo, Michigan to Porter, Indiana, including specialized locomotive equipment for the Amtrak line. No CP trains would be hauled on the NS or Amtrak lines until a final agreement has been reached. Further, by agreement with CSX, CP is required to send a minimum number of trains on the CSX line (from Detroit, MI to Grand Rapids, MI to Porter, IN). The specified minimum number of trains is confidential but would decrease the number of trains it would send on the NS line if a final agreement should be reached and if CP should choose to use its haulage rights with NS. With this understanding, the letter stated that the CP traffic should not have been added to these line segments. *The CP traffic should be deleted; as a result, the two line segments would not meet STB thresholds and, therefore, no longer need to be analyzed for environmental impacts.* Additionally, the CP trains should not have been added to the Amtrak line from Kalamazoo to Porter. The correct train data is included in Section 7.11 of these comments and should be used for these line segments for the FEIS.

4.22.2 Train Traffic Correction for Kankakee Connection

The Errata issued by SEA (January 12, 1998 Errata at 10, row 3, Subject - Construction) proposes to correct the DEIS at Chapter 5, page IL-22 by making the following correction: "according to the Application, approximately six trains per day will run over the new connection." This statement is only technically correct and is misleading. The ER did indicate this level of traffic, but in error. To correct this, October 2, 1997 correspondence from NS to SEA stated:

> *Traffic on the new connection would be zero trains per day after the Transaction but could increase later if the market for transportation services grows.*

and:

> The proposed project would allow NS to provide more consistent service for customers on these routes in anticipation of the growing future markets for transportation services in these areas.

Even though growth in the market for transportation services is anticipated, future traffic levels cannot be known at this time, and consideration of future market growth does not meet the Board's criteria for relation to the Transaction.

The DEIS was correct at Chapter 5, page IL-22. The DEIS was incorrect, however, in its discussion of the Kankakee connection at IL-74. The latter discussion and recommendations were based on outdated and incorrect information. (The initial error in the DEIS was compounded in SEA's January 12, 1998 Errata which proposed to eliminate the correct information and let the incorrect information stand.)

In summary, the correct information was properly reflected in the initial DEIS at IL-22. The January 12, 1998 Errata was incorrect. The discussion and references at Volume 3A, page IL-74 are incorrect. *Applying the correct information of zero trains per day, there is no potential impact in Kankakee. The FEIS should consistently reflect the correct information in its analysis.*

4.22.3 Miscellaneous Comments Addressed by CSX

NS concurs with CSX's comments on the DEIS regarding the Stark Development Board, Cross-Harbor Car Float Service, New Jersey Department of Transportation and New Jersey Transit Corporation and the Southeastern Pennsylvania Transportation Authority.

5.0 NORFOLK SOUTHERN RESPONSE TO DEIS DISCUSSION REGARDING COMMUNITIES WITH UNIQUE CIRCUMSTANCES

The DEIS identifies several communities with "unique circumstances" as areas of special concern. SEA conducted additional analysis and site visits to assess potential environmental impacts and public concerns in these communities. The DEIS identifies the following as communities with unique circumstances potentially affected by NS' operations and activities following the Transaction:

- Lafayette, Indiana
- Muncie, Indiana
- Four Cities Consortium (Gary, East Chicago, Hammond, and Whiting, Indiana)
- Cleveland, Ohio
- Western Cleveland Suburbs, Ohio
- Erie, Pennsylvania

The DEIS directs NS to resolve potential environmental impacts in these communities through negotiation of binding agreements between and among the locally affected community, NS and the appropriate government agencies. SEA is also planning and implementing an expanded public outreach program in these (and other) communities to ensure adequate public access to information about the Transaction and the EIS process.

NS believes SEA's approach of requesting binding agreements with the intent of imposing the agreements as conditions, as described within the DEIS, to be inappropriate. NS strongly opposes the imposition of negotiated agreements as a condition of approval of the Transaction (see Section 2.6). Agreements reached between the railroad and local communities should be recognized as stipulations by the Board, not made a condition of the Transaction approval.

Although NS does not believe negotiated settlements should be mandated as a mitigation measure, it does recognize the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues wherever possible. Accordingly, NS has initiated a community coordination and outreach program with the communities identified above. The purpose of NS' community outreach is to identify

community concerns relating to the Transaction, and provide information to the communities regarding NS operations and activities, including environmental and safety management programs. Where potential environmental impacts are identified and require mitigation, NS will coordinate potential mitigation strategies in an attempt to resolve the community concerns and potentially enter into memoranda of understanding (MOU's) with the affected parties.

NS' coordination efforts with the above communities are designed to be flexible and responsive to the needs of each community. Community-specific coordination and outreach efforts are summarized in the following sections. NS is willing to work with these communities to the extent practicable to mitigate the effects of increased train traffic. However, because these communities are located in or near long-standing major rail line routes and hubs, it is commercially and operationally infeasible to reroute large amounts of traffic away from these areas. Nonetheless, NS remains open to all constructive dialogues related to the Transaction and the potential impacts it may have on selected communities.

5.1 Lafayette, Indiana

The DEIS identifies potential environmental impacts for noise, transportation safety (eight at-grade crossings) and traffic delay (ten at-grade crossings) at Lafayette, which has a long-standing concern about the local impacts of railroad operations. The ongoing Lafayette Railroad Relocation Project, involving the relocation of the NS line and the removal of the existing NS tracks through Lafayette, was initiated to address existing conditions. The project will also offer mitigation for the transportation, noise, and air quality impacts of the Transaction, according to the DEIS. The Lafayette Railroad Relocation Project has been ongoing since the 1970's; completion is anticipated by 2001, pending final funding. The DEIS also includes additional mitigation requirements for Lafayette, including: directing NS to upgrade the at-grade crossing warning devices to mitigate the potential safety issues; and directing NS to meet with the City of Lafayette, Indiana DOT, and other appropriate parties to negotiate an interim mitigation plan to address potential vehicle delay at the ten crossings until the relocation project is completed.

There are several inconsistencies within the DEIS approach for Lafayette which overstate the need for special treatment:

- The DEIS concludes that Tippecanoe County is designated as attainment for all pollutants (DEIS at IN-46), and the Transaction-related air emissions would not

adversely affect air quality (DEIS at W-49). No need for air quality impact mitigation has been identified for Lafayette in the DEIS. However, in the Preliminary Recommended Mitigation section (DEIS at IN-89) for Lafayette, the completion of the Lafayette Railroad Relocation Project would reportedly mitigate air quality impacts. This is an inconsistent application in the DEIS of the basis for mitigation.

- The DEIS calculated the 65 dBA L_{dn} noise contours for pre- and post-Transaction conditions at the NS line segments Peru - Lafayette Junction and Lafayette - Tilton. These line segments exceed this DEIS threshold for evaluation, but do not exceed the 70 dBA L_{dn} and 5 dBA increase threshold as a significant impact. "SEA considered rail line segments eligible for noise mitigation for noise sensitive receptors exposed to at least 70 dBA L_{dn} and an increase of at least 5 dBA L_{dn} due to increased rail activity." DEIS at 3-35. Since noise levels at these rail line segments do not qualify as significant impacts, no mitigation is necessary for noise.

- The DEIS directs NS to upgrade safety warning devices at several crossings. However, as stated in Sections 2.4 and 4.3, of these comments, NS believes this requirement conflicts with state DOT authority to determine crossing upgrade priorities, and fails to consider site-specific variables.

- Traffic delay impacts identified at the ten NS at-grade crossings at Lafayette no longer meet the DEIS threshold for a significant impact resulting from the Transaction, as calculated within the January 21, 1998 Supplemental Errata. Nonetheless, the Supplemental Errata concludes that mitigation is required for the 10 crossings "...due to the unique conditions in this community with close proximity of these crossings to each other within an urban setting and the resultant effect on traffic delay along these roadways." Supplemental Errata, Table 1, at 3 of 4. Thus, the DEIS applies a more restrictive and arbitrary threshold for significance of traffic delays to Lafayette than to other communities. There is no supporting rationale for this more restrictive threshold, nor any supporting studies projecting "...the resultant effect on traffic delay along these roadways." In addition, the Lafayette Railroad Relocation Project will eliminate all highway/rail at-grade crossings, thus eliminating the projected vehicle delays.

The City of Lafayette is not significantly adversely impacted by the Transaction, as defined by the DEIS thresholds for significance. *The existence of multiple at-grade crossings is a pre-existing condition, with a plan to address the existing condition (the Lafayette Railroad Relocation Project) in place for the past several years, and now undergoing the final phase of construction. The additional temporary traffic delay related to the Transaction does not meet the DEIS requirements for significance, and therefore does not warrant special mitigation.*

Regardless of these inconsistencies, NS recognizes the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Lafayette and the Indiana DOT.

5.2 Muncie, Indiana

The DEIS notes that residents of Muncie have expressed concerns regarding traffic delays, including potential delays of emergency vehicles, that may result from increased train traffic on NS' line between Alexandria and Muncie. The DEIS directs NS to negotiate with the City of Muncie, Indiana DOT, and other appropriate parties to develop a binding agreement for the implementation and funding of measures to address safety and traffic concerns at seven highway/rail at-grade crossings in Muncie on the Alexandria to Muncie line.

There are several inconsistencies with this approach. In addition to NS' previously stated objection to mandated negotiations concerning grade crossings and Board imposition of stipulated agreements as conditions of approval (see Sections 2.4 and 2.6), the requirement for mitigation at Muncie is not based on any determination of potentially significant environmental impacts within the DEIS. The crossings at Muncie do not exceed the DEIS impact thresholds for significance for delay or safety, and therefore do not require mitigation. The sole reason for identifying Muncie as a community with unique circumstances appears to be the existence of public comments unsupported by technical analyses of impact.

Nonetheless, NS recognizes the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Muncie and the Indiana DOT. NS has also proposed to work with the Indiana DOT and other relevant governmental agencies to seek support and public funding for

upgrading seven existing grade crossings from Council Street to Morrison to include both automatic flashing lights and gates. NS submitted this proposal to SEA on November 25, 1997. A copy of the letter proposal is included in Volume 5B of the DEIS.

5.3 Four Cities Consortium, Indiana

The Four Cities Consortium is an association of East Chicago, Gary, Hammond, and Whiting, Indiana, formed to assess regional effects of the proposed Transaction. Its concerns focus on localized issues of safety and traffic delays at crossings. The DEIS identified potential significant safety impacts at four CSX at-grade crossings, but none for at-grade crossings on NS rail line segments. Traffic delay impacts were evaluated for 15 crossings (both CSX and NS), and the DEIS determined that levels of service remained unchanged and therefore no mitigation was warranted. However, recognizing the Four Cities Consortium's expressed concerns regarding potential delays for emergency vehicles, the DEIS recommends that NS and CSX negotiate with the Four Cities Consortium and the Indiana DOT to address potential traffic delay and safety concerns at nine at-grade crossings. Potential noise impacts were also addressed by the DEIS, but no significant noise impacts requiring mitigation were identified. The DEIS does not identify <u>any</u> disproportionate or specific impacts affecting low income or minority populations within the Four Cities Consortium area. Nonetheless, additional public outreach efforts are being conducted by SEA.

There are several inconsistencies with this approach to mitigation. In addition to NS' previously stated objection to mandated negotiations (see Section 2.6), the requirement for negotiated mitigation at the Four Cities is not based on any determination of potentially significant environmental impacts within the DEIS. The crossings within the Four Cities do not exceed the DEIS impact thresholds for significance for delay, and therefore do not require mitigation. The sole reason for identifying the Four Cities as a community with unique circumstances appears to be the existence of public comments unsupported by the DEIS technical analyses.

The Four Cities Consortium proposed two alternative plans, aimed principally at rerouting CSX train traffic. Implementation of the Consortium's Alternative 2 would compel NS to grant CSX trackage rights over the NS Fort Wayne - Chicago main line between Hobart and Van Loon, and construct new connections at Van Loon between NS and the Elgin, Joliet and Eastern Line at Pine Junction between the post-Transaction NS lines and CSX. *The proposed*

ope. tions over NS' lines are not feasible, and, moreover, would significantly undermine NS' service from Chicago to the Southeast.

The Hobart-Van Loon trackage rights would burden an important NS main line that represents NS' only route between Chicago and Cincinnati, Atlanta, Jacksonville, New Orleans, the Virginias, and the Carolinas. This additional burden would be placed on the NS line at the same time that NS would be losing the use of a second main line route in this corridor (the former Conrail Fort Wayne - Hobart line, which NS only recently acquired and which will be assigned to CSX as part of the Transaction). Following the Transaction, NS would be left without a viable alternative routing for time-sensitive and other high priority trains between Chicago and the Southeast. The unanticipated addition of CSX trains to NS' line between Hobart - Van Loon would aggravate congestion problems on the line and would threaten NS' ability to maintain schedules for time-sensitive traffic, including passenger trains. Currently, there are 16 Amtrak passenger trains per day using the line east of Pine Junction.

With respect to the two new connections that would have to be constructed under the Four Cities Consortium Plan, the Pine Junction connection would be especially problematic for NS. Due to the track arrangement east of Pine Junction, this "connection" would actually involve the crossing (via two intermediate crossovers) of a line that will be allocated to NS - the extremely busy Conrail Chicago - Toledo mainline. A crossing at that location would cause severe disruption, at substantial costs, to NS' planned operations.

Although NS' analyses clearly show the Four Cities Consortium's proposed alternatives to be unworkable, and the DEIS determined there are little if any adverse environmental effects on the area from the Transaction, NS is committed to working with the Four Cities Consortium to address its concerns. NS and CSX have established a series of working groups with representatives of the Four Cities. These groups are scheduled to meet January 30 and February 11, 1998 to continue discussions of alternative routings and train traffic flows.

5.4 Cleveland, Ohio

After careful review of the DEIS, NS believes that, notwithstanding SEA's designation of the City of Cleveland as a community with "Unique Circumstances" warranting mitigation, the public concern that has been expressed with regard to post-Transaction train traffic increases in Cleveland, and the reality of fairly substantial traffic increases on some lines, **there are few**

significant adverse impacts expected. Indeed, the overall objective analysis of the environmental impacts presented in the DEIS for the Cleveland area shows that, on the whole, there are relatively few significant impacts expected, and that these are addressed by mitigation measures applied on a larger scale. The only potentially significant environmental effects identified in the Cleveland area are as follows:

- Noise impacts on portions of three CSX line segments (CSX has proposed a noise abatement plan).
- Four CSX and one NS line segments have been classified as Key Routes for Hazardous Materials (mitigation measures proposed for key routes ameliorate the potential significant impact from hazmat transport).
- Grade crossing delays at two crossings on CSX line segment (C-070).
- "Environmental justice" communities as defined by SEA have been identified along two CSX and two NS lines. (NS' analyses, presented in Section 4.16, show there are no disproportionate high and adverse impacts on low-income and minority communities.)

Although there were no NS grade crossings that exceeded the DEIS threshold for significance for traffic delay, nonetheless, the January 12, 1998 Errata recommends that NS consult with the City of Cleveland to reach agreement on measures to minimize or mitigate the effects of "increased" emergency response vehicle delay. (London Road and Dillie Road crossings on the Cleveland to Ashtabula line segment [N-075]. DEIS at OH-146).

For the City of Cleveland as a whole, the DEIS directs CSX and NS to jointly and/or separately continue to consult with the City of Cleveland, the City of East Cleveland, the Ohio Department of Transportation, elected officials and others to address concerns about train traffic increases on the following line segments:

CSX - Quaker to Mayfield line segment
CSX - Mayfield to Marcy line segment
NS - Cleveland to White line segment
NS - Cleveland to Ashtabula line segment

The DEIS directs CSX and NS to negotiate a mutually-acceptable binding agreement on train routing through Cleveland and mitigation measures for those routes that could experience potentially significant environmental impacts. As stated previously, NS does not believe that negotiated settlements should be mandated as a mitigation measure, and Cleveland is no exception. Nonetheless, the Applicants have been meeting with City representatives and others in an attempt to fully address local concerns regarding the Transaction.

In December 1997, the City proposed that the Applicants "flip" ownership of selected lines traversing the City. Both railroads conducted an exhaustive operational, engineering, and environmental analysis of the proposal and reported back to Cleveland in mid-January 1998 that the flip proposal would not be feasible.

The alternative routings now proposed by the City (released publicly by the City of Cleveland on January 27, 1998), would result in NS traffic moving over the portion of the Short Line between Berea and Harvard/University Circle toward connections with its own Buffalo and acquired Pittsburgh lines. It would further result in all present and future CSX traffic moving between Berea and Collinwood over the Lakefront Line in order to connect with the newly acquired CSX route via Buffalo and upstate New York to the Northeast. This is essentially the same flip proposal examined by the railroad in December 1997. In the recent news release, dated January 27, 1998, from the office of Mayor White, the cost of the City's alternative was estimated by City consultants to be in the range of $148 to $171 million, with the need for a massive "fly-over" and other improvements in Berea at significant cost. The costs of the mitigation alternative proposed by the City are substantially disproportionate to the adverse environmental impacts identified within the DEIS.

Applicants' analysis confirmed that the routing alternative proposed by Cleveland would not be practical for several reasons. First, the alternate routing would adversely affect the primary mainlines of NS and CSX and would have these competing rail traffic flows intersecting at the town of Berea. This would create a massive bottleneck or "traffic jam," with resultant inefficiencies and delays in train traffic throughout this part of the system for both NS and CSX. Eliminating the "bottleneck" at the crossing would require construction of a massive "fly-over" at Berea to enable the unrestricted crossover of CSX and NS trains to and from their primary main lines. An unrestricted fly-over with the necessary 0.5 percent gradient and clearances for future improvements would be over two miles long, and would essentially cut the town of Berea in two. Construction would require almost two years, and could only begin after an exhaustive study and design period, including an assessment of environmental impacts, which would require

an additional one to two years (this assumes that the necessary federal, state, and local approvals were obtained in a timely manner). Construction would necessitate the disturbance and perhaps condemnation of existing residential and commercial structures, and would dramatically alter the existing character of the affected area. Of particular concern, but requiring further analysis, is the prospective impact of the construction on Berea's existing infrastructure, including highways, sewer lines, water lines, and utility and communication lines.

Applicants' analysis also indicated additional impracticalities in the proposed alternate route. A second track would be required at the Harvard Connection in order for NS to operate. The construction of this track would necessitate the building of a bulkhead in the adjacent creek basin and can be expected to adversely affect the environmentally sensitive waterfall located in Mill Creek which Cleveland has desired to protect. Also, in order for NS to maintain its critical operating base at Rockport Yard, substantial additional track construction would be required to be able to access Rockport Yard and the Ford Motor Company. The proposed alternate route would also adversely impact NS' efficient access to its major ore dock at Whiskey Island. **For these and other reasons, NS continues to oppose the flip of ownership of rail lines in Cleveland.**

Other responsive applications were filed by several parties for Cleveland expressing concern about the impact of increased train operations in the community. These included the City (Mayor White) and Congressmen Louis Stokes and Dennis Kucinich. A theme of all of these responsive applications has been to ask CSX and NS to reroute all rail traffic -- existing and future changes in trains -- away from Cleveland and consider reallocating rail lines within Cleveland.

Applicants stated in their rebuttal to these responsive applications that, while NS and CSX acknowledge that they are willing to work with Cleveland to the extent possible to mitigate impacts of increased traffic, the fact remains that the City of Cleveland has long served as a rail hub, and Conrail has concentrated its traffic flows through the city. In fact, historical train count data going back to the early 1900's show train traffic levels exceeding those anticipated by this Transaction.

NS and CSX presented to the City and other officials a set of detailed reasons why rerouting traffic flows away from Cleveland is neither commercially nor operationally feasible. Moreover, the potential alternatives for reallocating routes and rerouting rail traffic within

Cleveland's rail disproportionate expense and/or pose operating problems that would create fundamental disruptions in the CSX and NS rail systems. It should be further emphasized that NS and CSX, in developing their Operating Plans, made efforts to mitigate the impact of increased rail traffic, for example CSX's routing traffic over the Short Line Subdivision. Without any additional mitigation, CSX is reportedly planning to invest over $60 million in the Cleveland area for system improvements and upgrades, while NS is anticipating spending over $48 million on new and expanded facilities in Ohio in addition to necessary system improvements and upgrades. Because of Cleveland's key position as an important rail hub, both carriers (NS and CSX) will offer assistance to Cleveland from Applicants' industrial development staffs to assist the greater Cleveland area in attracting new industry and expanding existing developments with rail access.

NS urges the Board to review the information presented by Applicants regarding the City of Cleveland in the rebuttal. NS also urges the Board to give proper weight to the substantial benefits of the Transaction as compared to the relatively minor impacts predicted by the DEIS when evaluating the need for and extent of any mitigation and/or "binding agreements" in Cleveland. A recent editorial in the Cleveland "Plain Dealer," a local newspaper, offers support for this rational position (see Figure 5.1). Key information provided to the Board by Applicants regarding the City of Cleveland's concerns include:

- Applicants' Rebuttal, Volume 1: Section X (pages X-1 thru X-4)
- Applicants' Rebuttal, Volume 2A: Verified Statement of John Orrison (pages 546-556)
- Applicants' Rebuttal, Volume 2A: Verified Statement of John Friedman (pages 164-171)

NS remains open to addressing identified significant impacts and in dealing with issues raised by the community in a constructive fashion. However, localized solutions that appear to potentially substantially impact the overriding public and environmental benefits of the Transaction may make certain negotiations challenging.

White drives the train

Cleveland's effort to reconfigure major rail deal could damage others' interests – and its own

To his roles as airport master pioneer and stadium construction boss, Cleveland Mayor Michael R. White this week added an even more ambitious one: architect of a major railroad merger.

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To the consortium of professional railroad pioneers, White proposed to resolve concerns arising from the sale of Conrail by requiring CSX and Norfolk Southern to swap routes they would operate when the Conrail deal gets regulatory approval.

Both a move would move Cleveland neighborhoods the adverse effects of increased train traffic but could also transfer them to Berea, where Norfolk Southern and CSX tracks would come together.

To lighten the burden on that suburb, already a busy freight rail center, the White plan, would call for construction of a 2-mile-long, double-deck flyover to carry tracks above the streets. The price tag is estimated at up to $171 million, presumably to be paid by the railroads.

White, like Rep. Dennis J. Kucinich ahead of him, has embraced an issue that is loaded with popular appeal. The proposed Conrail turve-up strung a few surprises on Greater Cleveland, beginning with Norfolk Southern's announcement that it would triple the number of trains it operates through the west shore suburbs and into Cleveland.

There, CSX said it would run 44 trains a day on a loop from Collinwood through the East Side, Cuyahoga Heights and Brooklyn Heights to W. 130th St. and beyond. Interestingly, CSX intends to shift every freight train from the Lakefront route, which area transportation planners cover for commuter services.

On Tuesday, the mayor said city officials had concluded that CSX-Norfolk Southern proposals would harm Cleveland and that if a resolution could not be negotiated, the city would take legal action to stop Conrail's dismemberment.

White seems to believe the damaging effects would outweigh economic benefits to the city, which promises to be substantial. New routings would provide direct connections between Cleveland and major markets in all directions. CSX alone has promised to expand the Collinwood yards as an intermodal hub, substantially increasing the work force at what once was a major facility on the city's railway network.

Naturally is looking White, Kucinich or other political leaders for saying on constituents' genuine concerns. In Lakewood, for instance, Norfolk Southern should have anticipated that residents might worry, rightly, that east cross-city connections would be cut many more times a day, hindering emergency vehicles. Residents of the less affluent inner-city shoreline have valid questions about the new setup.

But the rails were not laid yesterday. The fortunes of Greater Cleveland in many ways were shaped by its proximity to the tracks. The re-emergence of freight trains as a vital component of the nation's transportation system carries economic and environmental benefits that should be acknowledged.

It seems reasonable to demand that the railroads take measures against increased noise, as CSX has told Cleveland it would do. Issues like that and the prospect of traffic tie-ups in the suburbs could be resolved through negotiation. White, however, appears to have raised the stakes in a way that could throw the matter into court, where the city's long-term best interests might not be served.

Figure 5.1: Editorial from the *Plain Dealer*, a local newspaper in Cleveland, Ohio January 30, 1998

5.5 Western Cleveland Suburbs

For the Western Suburbs of Cleveland, the DEIS directs NS to continue to consult with appropriate parties to address concerns about train traffic increases on the NS Cleveland to Vermilion rail line segment. NS has proposed a preliminary alternative routing plan (as set forth in Appendix S of the DEIS) to balance NS rail post-Transaction traffic on the Cleveland to Vermilion line segment and the Lakeshore Line through Berea. NS has stated from the beginning, however that implementation of this plan (estimated to cost nearly $50 million) would require public funding. NS' view on this has not changed. The DEIS directs NS to negotiate a mutually-acceptable binding agreement on the construction and funding allocation for this plan prior to issuing the FEIS. NS is continuing consultations with parties from the Western Suburbs of Cleveland, as well as the State and other stakeholders, and those negotiations are on-going. Since October, 1997, NS has met with representatives of the Western Suburbs, as well as the Ohio Rail Development Commission and Public Utility Commission to discuss related issues. NS continues to meet and consult with representatives from these communities and agencies. Progress has been slowed due to the following factors: (1) uncertainty of public funding initiatives; (2) potential impacts of changes that the City of Cleveland seeks to make that could affect the Western Suburbs; and (3) environmental impacts that could result from the rerouting proposal for the Western Suburbs of Cleveland. No agreement has been reached to date.

5.6 Erie, Pennsylvania

The DEIS identifies potential significant environmental impacts involving pedestrian safety, emergency response, transportation safety (four at-grade crossings) and traffic delay (five at-grade crossings) as a result of NS' proposal to increase by 12 trains per day the number of freight trains on the NS main line that has run through the 19th Street corridor in Erie since 1882. The DEIS states that "the presence of the tracks results in the disruption delay and the potential for accidents involving roadway traffic along 19th Street." DEIS at PA-55.

NS and CSX included in their joint Application an agreement that would enable NS to reroute rail traffic from 19th Street to a new portion of NS track running parallel to the existing Conrail line north of downtown Erie that is to be operated by CSX post-Transaction. The new NS track would be constructed nearly exclusively on existing Conrail right-of-way. A description of the proposal by NS to reroute traffic to new track along the Conrail right-of-way

was submitted by NS in a letter to SEA, and is referenced in the DEIS at PA-55, and provided in Appendix S.

An important benefit of the rerouting proposal would be the elimination of long-present freight rail traffic, as well as post-Transaction increases in rail traffic that is now required to be routed along 19th Street. The Transaction would provide an opportunity to utilize the pedestrian and emergency vehicle crossing and road congestion advantages of the largely grade-separated Conrail corridor, following construction of the portion of the NS main line that would be rerouted off of 19th Street. However, because of the substantial infrastructure work required to accomplish the NS rerouting proposal, as well as the legal impediments to commencing construction on Conrail property prior to CSX control of the right-of-way and Board approval of the construction project, on Day One and for some time to come, NS will need to be able to continue operating freight trains on the existing route. NS estimates that the rerouting construction would require about 1.5 to 2 years to complete.

The DEIS originally indicated that a total of five existing at-grade crossings along the NS 19th Street corridor would exceed SEA thresholds for recommended mitigation due to potential traffic delay impacts. However, SEA subsequently discovered that an error had been made in its crossing delay calculations which resulted in the incorrect doubling of estimated traffic impacts. In SEA's January 21, 1998 Supplemental Errata, the DEIS was corrected to indicate, *inter alia*, that two of the five NS Erie at-grade crossings (Peach Street and Raspberry Street) along the 19th Street corridor included in Table 7-7 of the DEIS ("Preliminary Highway/Rail At-Grade Crossings That May Warrant Traffic Delay Mitigation") would no longer meet SEA's threshold criteria for mitigation. Despite having acknowledged that the DEIS erroneously identified those two crossings as meeting mitigation threshold criteria, SEA recommended in the Supplemental Errata that the error simply be ignored in favor of leaving the two Erie crossings on the DEIS' list of crossings recommended for mitigation. The rationale provided in the Errata suggests that SEA devised a new, heretofore unheard of, category for "measuring" impact -- a notion of "close proximity" to grade crossings that do meet SEA's threshold criteria. *There is no analytical support for such a deviation in the application of mitigation criteria and NS urges SEA to remove the two Erie crossings from its list of crossings recommended for mitigation.*

As to the appropriateness of the DEIS recommendation for mitigation of the other three at-grade crossings listed in Table 7-7 of the DEIS, NS has raised several substantive objections to

the DEIS approach and conclusions regarding safety of at-grade crossings (see Section 4.3).[80] In addition, as set out above at Section 2.3, it is not appropriate for the Board to displace the well-established role of state DOTs in determining the selection, priority and funding of grade crossing upgrades in communities within their jurisdiction. NS recommends that this important safety task be properly left to the state transportation agencies and the well-founded practices and procedures already in place for railroad/state cooperative resolution of grade crossing safety issues.

Moreover, the DEIS recommendation of a limit of two additional trains per day on the existing NS main line through the 19th Street corridor in Erie is without sound basis -- localized service limitations should not be imposed as environmental mitigation in this case (see Section 2.4). Having determined that certain of the NS grade crossings along 19th Street would meet the threshold criteria for mitigation consideration, *the DEIS did not take* into account several crucial facts.

First, the limit of a two-train per day increase in rail traffic pending completion of the proposed NS rerouting appears to have been taken from SEA's preliminary mitigation recommendations at Reno and Wichita in UP/SP. In that instance, SEA recommended that UP/SP be limited to running an additional two trains per day through Reno, Nevada and Wichita, Kansas pending completion of a post-EA mitigation study. The two-train limit was selected due to a desire to avoid SEA's threshold for air impact analysis in a non-attainment area, 49 CFR 1105.7(e)(5)(ii). This was necessitated by the fact that the environmental analysis of the UP/SP merger was being pursued by SEA through means of an EA, rather than an EIS, and therefore all significant impacts required mitigation. As described at Section 2.1 above, by choosing to prepare an EIS for the Transaction, the Board has eliminated the need to eliminate or mitigate all potentially significant environmental impacts--a fundamental distinction from the UP/SP scenario. Also, the DEIS acknowledges that, unlike the issue presented for further consideration in UP/SP, the Transaction would not have any significant air impact at Erie and that no mitigation is needed. DEIS at PA-43. Thus the reason for applying the train increase limit recommended in UP/SP at Reno and Wichita is simply not transferable to the circumstances of the Board's consideration of potential environmental impacts at Erie.

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[80] It should be noted that the construction of the Erie rerouting proposal will completely negate any need for grade separation along the 19th street corridor.

Second, the increase in NS traffic along the 19th Street corridor will be only temporary, until completion of the physical improvements to reroute traffic to the Conrail right-of-way. Once completed, rail safety in Erie will benefit far more than just the removal of the post-Transaction increase in train traffic along 19th Street. Because NS plans to remove all freight traffic to the new route, existing as well as increased traffic will be taken out of downtown Erie. Extraneous grade crossings along 19th Street will be able to be closed. *This is a substantial benefit to Erie that NS believes far exceeds the temporary increase in traffic until the rerouting construction work is completed.*

Third, the DEIS fails to recognize that, as of Day One, there will be freight traffic waiting to be carried by NS along its Cleveland to Buffalo main line. This represents carloads of freight traffic that will, up until Day One, have been carried over the Conrail system. In order to be competitive, and in order to provide vital, timely service to shippers, NS must be able on Day One to assume its share of the Conrail traffic. The only feasible way for NS to do so is to move trains over its existing main line route through Erie pending completion of the relocation. *This is a critical aspect of the commercial benefits and viability of the Transaction.*

An arbitrary and artificial limit of two additional trains per day in Erie, because of the much broader ripple effects, would have catastrophic consequences to the ability of NS and CSX to create a smooth transition for eastern United States rail service on Day One and thereafter. NS urges SEA to eliminate from further consideration any recommendation to the Board of "temporary" limits to the proposed increase in NS train traffic at Erie on Day One.

6.0 NORFOLK SOUTHERN COMMUNITY OUTREACH PROGRAM

The DEIS identifies several areas and communities where consultation and coordination with a local community or agency is recommended in order to resolve various potential environmental impacts or potential public concerns. *The DEIS further recommends* that NS negotiate binding agreements with affected communities to resolve potential environmental impacts. NS opposes the imposition of negotiated agreements as conditions to Board approval (see Section 2). Any negotiated agreements between NS and affected communities or agencies should be viewed as stipulations, not conditions, within the context of the Transaction. NS supports public outreach and coordination with neighboring communities. This section presents NS' response to the DEIS-directed community outreach for specific communities, other community outreach issues, and the need for consultation with state Departments of Transportation (state DOTs).

NS regularly meets with and hears the concerns of local citizens and government officials, in an effort to tailor its approach to doing business to community-specific needs wherever practicable. Examples of NS' current outreach efforts independent of the Transaction include:

- Operation Lifesaver, a program designed to reduce grade-crossing accidents and save lives by educating local communities and children.
- Working with state and local transportation agencies to improve grade crossing safety, including closing unnecessary grade crossings.
- Conducting Grade Crossing Collision Investigation courses for state and local agencies to assure proper investigative techniques, identify causes of collisions and improve safety.
- Meeting with interested communities to discuss railroad operations.

6.1 DEIS-Required Community Outreach

The DEIS recognizes that the recommended mitigation measures within the DEIS ameliorate the potential significant impacts. Nonetheless, the DEIS directs NS to resolve *potential environmental impacts* in several communities identified by the DEIS as "Environmental Justice Communities," as well as other communities, through negotiation of binding agreements between the locally affected community, NS, and the appropriate government agencies. At page 7-18, the DEIS says:

> "SEA's Recommended Mitigation Nos. 1-18, and 28-41 would address potential significant environmental impacts for these communities, which may experience disproportionately high adverse effects as a result of the proposed Conrail Acquisition. Nevertheless, CSX and NS shall meet with these communities to identify and agree on any further appropriate measures to address the specific environmental impacts that may disproportionately impact these communities, or to develop other mitigation measures that might offset these disproportionate impacts. If the parties have not reach mutually-acceptable binding agreement on the implementation of appropriate mitigation measures to address environmental impacts resulting from the proposed Acquisition prior to issuing the Final EIS, SEA may recommend that the Board, as a condition of the approval of the Application, direct CSX and NS to implement appropriate mitigation measures."

The DEIS directs NS to consult with the following communities:

- Fort Wayne, Indiana
- Alexandria, Indiana
- Tilton, Illinois
- Danville, Illinois
- Youngstown and Ashtabula, Ohio
- Toledo, Ohio
- Harrisburg, Pennsylvania
- Oak Harbor - Bellevue, Ohio.

SEA is also planning an expanded public outreach program in these (and other) communities to ensure adequate public access to information about the Conrail Transaction and the EIS process.

NS believes the requirement to negotiate binding agreements with these communities, and subsequent inclusion of such agreements as conditions of the Transaction, as described within the DEIS, to be flawed and inappropriate for the following reasons:

1. The potential environmental impacts to be resolved through negotiation are not identified within the DEIS. The Oak Hart - Bellevue, Ohio NS line segment is the only exception, where a potential for a noise impact has been identified.

2. The DEIS also fails to identify the specific portion of the community (e.g., the actual people, neighborhood, or group) significantly affected by the Transaction. In most cases, the affected "community" described within the DEIS is based on the DEIS environmental justice analysis, and is not representative of actual social or political boundaries or local communities. This makes it difficult to properly focus outreach, and, if appropriate, mitigation.

3. The DEIS does not provide any rationale for treating these communities differently than any other communities throughout the system (see Section 4.16, Environmental Justice). Those communities labeled as "environmental justice" within the DEIS do not suffer any disproportionate or high and adverse impacts as a result of the Transaction.

4. NS strongly opposes the imposition of a requirement to negotiate agreements as a condition of approval of the Transaction (see Section 2.6). CEQ and DOT guidance on considering environmental justice issues during the EIS process suggest outreach, but do not suggest negotiations with the community.

Although NS does not believe negotiated settlements should be mandated as a mitigation measure, it does recognize the importance of ensuring the public's access to information on the Transaction. Accordingly, NS has initiated a community outreach program within the communities identified above. The purpose of NS' community outreach is to identify community concerns relating to the Transaction, and provide information to the communities

regarding NS operations and activities, including environmental and safety management programs. Resolution of concerns, by agreement or otherwise, is the ultimate goal of these efforts.

NS' community outreach program is designed to be flexible and responsive to the needs of each community. NS' community outreach program includes some combination of the following, tailored to the needs of the individual community and the identified issues (if any):

- Contact with local government officials and agencies
- Contact with local community leaders
- Contact with local newspapers and/or other media
- Meetings with local organizations and groups.

To date, NS has completed the initial planning phases of its community outreach program in response to the DEIS mandate. A kick-off meeting was held on January 15, 1998, to brief NS resident vice presidents, strategic planning, public affairs, and legal departments on the purpose and scope of the NS outreach efforts. Community-specific updates are provided below.

6.1.1 Fort Wayne, Indiana

Background - The DEIS has identified the NS Butler - Fort Wayne line segment (N-041) as having potential environmental justice impacts in Fort Wayne, Indiana, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- An at-grade crossing safety potential impact is identified at Estella Road and Anthony Boulevard in Fort Wayne near Sunnymeade Woods. At-grade crossing safety issues are addressed and resolved at the direction of the Indiana DOT, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety.

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated community outreach efforts with Fort Wayne, Indiana. Discussions with local officials and other outreach efforts are ongoing.

6.1.2 Alexandria, Indiana

Background - Alexandria is the hub of the NS Alexandria - Muncie line segment (N-040). Alexandria (Madison County) includes one at-grade crossing identified by the DEIS as requiring mitigation for safety (CR 100 E). The DEIS recommends upgrading the crossing safety warning devices from passive to flashing lights. The DEIS also identifies two crossings in Madison County which are projected to exceed the significance thresholds for traffic delay. The increased delays at these crossings are due to slower moving trains through the new Alexandria connection.

The DEIS recommends that NS coordinate with the City of Alexandria, the Indiana DOT, and other appropriate agencies to agree on mitigation measures to address the potential traffic delay impact.

Status of Community Outreach - NS has been engaged in discussions with City officials since early 1997 concerning plans for addressing traffic delays. NS has scheduled additional community outreach efforts in February 1998.

6.1.3 Tilton, Illinois

Background - The DEIS has identified NS' Lafayette, Indiana - Tilton, Illinois line (N-045) as having potential environmental justice impacts in Tilton, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS's concerns with this requirement at this community include:

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials). Therefore, there is no need to negotiate with the community on this issue.

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status, or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative

impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.4 Danville, Illinois

Background - The DEIS has identified the NS Lafayette, Indiana - Tilton, Illinois line segment (N-045) as having potential environmental justice impacts in Danville, Illinois, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- At-grade crossing safety potential impacts are identified at Campbell Crossing, City of Danville (described in the DEIS as "proximal to minority and low-income communities"). The DEIS reviewed demographics and traffic grade-crossing potential impacts along this rail line segment, and found that traffic grade-crossing delay and traffic accident potential impacts would not be disproportionate for minority or low-income populations along this segment. The DEIS specifically concludes for this rail segment that "...no environmental justice impacts exist for grade crossing." The DEIS further recommends that NS mitigate the potential traffic safety impact for this segment by upgrading the existing warning devices (see Section 4.3 for NS comments on traffic safety). At-grade crossing safety issues are addressed and resolved at the direction of the Illinois Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety.

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold information meetings if they are requested.

6.1.5 Youngstown and Ashtabula, Ohio

Background - The DEIS has identified NS Youngstown - Ashtabula line segment (N-082) as having potential environmental justice impacts in both Youngstown and Ashtabula, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- At-grade crossing potential safety impacts are identified by the DEIS at Bradley-Brownlee Road and Warren Sharon Road, several miles north of Youngstown and away from environmental justice populations. At-grade crossing safety issues are addressed and resolved at the direction of the Ohio Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety. Moreover, due to the distance of several miles between the grade crossings in issue and the environmental justice populations in Youngstown designated by the DEIS, there is no evidence of high and disproportionate impacts on environmental justice populations.

- The segment is identified as a "key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.6 Toledo, Ohio

Background - The DEIS has identified the NS Miami - Airline line segment (N-086) as having potential environmental justice impacts in Toledo, Ohio, requiring outreach and a negotiated settlement. The rationale for this is not clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS threshold for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is readily mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

Status of Community Outreach - NS has scheduled community outreach efforts to begin in February 1998.

6.1.7 Harrisburg, Pennsylvania

Background - The DEIS has identified the NS Harrisburg - Rutherford line segment (N-090) as having potential environmental justice impacts in Harrisburg, Pennsylvania, requiring outreach and a negotiated settlement. The rationale for this is not at all clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS threshold for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is readily mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

Status of Community Outreach - NS has scheduled a series of meetings with the Mayor of Harrisburg and other local officials. In these meetings, NS will ensure that information on the Transaction is available to the public.

6.1.8 Oak Harbor - Bellevue, Ohio

Background - The DEIS identifies the NS line segment Oak Harbor - Bellevue, Ohio (N-079) as having potential significant adverse noise impacts requiring mitigation. The DEIS directs NS to meet with communities along the rail line segment to negotiate an agreement to implement measures to reduce the wayside noise for sensitive receptors experiencing noise levels above 70 dBA L_{dn} and with an increase of 5 dBA or more. The DEIS does not, however, provide specifics on which receptors are potentially significantly impacted by increased noise levels related to the Transaction.

Status of Community Outreach - NS will conduct additional community outreach efforts along the Oak Harbor - Bellevue line segment to ensure information on the Transaction is available to the public. NS will also conduct further technical reviews, including noise level measurements, on the potential for significant noise impacts along this line segment, to identify specific receptors where there may be a significant adverse effect from increased noise, and to assess the feasibility and effectiveness of mitigation alternatives.

6.2 Additional Community Outreach

The DEIS describes a program of expanded public outreach by SEA in specific communities, including several low income and minority communities, to ensure full opportunity to participate in the review of the proposed Transaction. These communities are:

- Seneca Indian Nation, Cattaraugus Reservation, New York
- Bellevue - Sandusky, Ohio
- Kankakee, Illinois
- Chicago, Illinois
- Delaware County, Indiana
- Detroit, Michigan
- Ontario & Seneca Counties, New York
- Cloggsville Junction, Ohio.

The DEIS does not direct NS to conduct any community outreach within these communities, nor to negotiate any agreements to mitigate potential environmental justice or other impacts. However, NS recognizes the importance of community outreach and public participation in the EIS process. Therefore, NS will also conduct additional outreach efforts in these communities to ensure the public has access to information regarding the Transaction, if directed by SEA.

6.2.1 Seneca Indian Nation, Cattaraugus Reservation, New York

The DEIS identifies the NS line segment Ashtabula, Ohio - Buffalo, New York (N-070) as meeting the threshold for a "major key" route for hazardous materials transportation. According to the DEIS, the rail line segment traverses the federally-designated Seneca Indian Nation, Cattaraugus Reservation. The DEIS proposes to mitigate the potential impact of increased hazardous materials transportation through the Reservation through implementation (by NS) of the AAR guidelines on hazardous materials transportation, emergency response planning and assistance (to be coordinated between NS and the Seneca Indian Nation), and additional outreach by SEA to the Seneca Indian Nation within the Cattaraugus Reservation.

The mitigation recommendation that NS "...assist the Reservation with emergency response preparedness as may be requested" is ambiguous and unsupported. This requirement for additional, open-ended assistance is not specified for other non-Native American communities. There is no justification for treating the Cattaraugus Reservation differently than any other community on the issue of increased hazardous materials transportation. This recommendation should be deleted.

NS has also raised several issues in Section 4.4 addressing the DEIS evaluation of hazardous materials transportation, including offering well-established mitigation measures (e.g., safe approaches to transportation of hazardous materials reflecting NS' excellent safety record) to address significant increases in rail traffic. These mitigation measures should be applied to the Cattaraugus Reservation in the same manner as they will be applied to other communities along rail lines projected to experience similar increases in hazardous materials transportation.

6.2.2 Bellevue - Sandusky Docks, Ohio

The Bellevue - Sandusky Docks NS line segment (N-085) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population along the line segment. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community. The January 12, 1998 Errata to the DEIS also identifies this line segment as having a potential traffic safety issue. NS comments on at-grade crossing safety are provided in Section 4.3.

6.2.3 Kankakee, Illinois

The planned new NS connection at Kankakee (line segment NC -01), is identified in the DEIS as having potential environmental justice effects from increased noise. This is based both on incorrect train traffic information and on unsupported reasoning. The correct information, supplied to SEA in October 2, 1997 correspondence from NS, is that traffic on this new connection would be zero trains per day after the Transaction. (The reason for the connection is anticipation of a growing need for transportation services, traffic which cannot be predicted and does not meet the Board's criteria for being related to the Transaction.) The initial DEIS provided the correct information at Chapter 5, page IL-22, although the information and discussion on page IL-74 was based on outdated and incorrect information. (As described in Section 4.22.2, herein, this error was compounded in SEA's January 12, 1998 Errata which proposed to eliminate the correct information and let the incorrect information stand.) Applying the correct information, there is no potential noise impact on environmental justice communities (or other populations) in Kankakee. *The FEIS should reflect the correct information for analysis of this connection.*

The DEIS discussion of potential impacts from increased noise on this connection is presumably due solely to the demographics of the population within Kankakee County. The DEIS noise impact evaluation does not identify this proposed new line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to

determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.4 Delaware County, Indiana

The Alexandria - Muncie NS line segment (N-040) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within Delaware County. The DEIS noise impact evaluation does not identify this proposed line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.5 Detroit, Michigan

The Detroit - N. Yard Shared Assets Areas line segment (S-021) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within the affected section of Detroit. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.6 Ontario and Seneca Counties, New York

The Corning - Geneva NS line segment (N-060) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within Ontario and Seneca Counties. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impact on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.7 Cloggsville Junction (Cleveland), Ohio

The Cleveland - Shortline Junction NS line segment (N-074) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population adjacent to the line in Cleveland. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations (21 sensitive receptors) are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.3 Consultation with State Departments of Transportation

The DEIS directs NS to consult with state DOTs (and appropriate local agencies) to address potential safety and traffic delay issues related to the Transaction, and to negotiate "traditional" separated crossing agreements or identify other mutually-acceptable approaches to mitigate potential impacts. The DEIS, as corrected by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata, identifies for NS 44 at-grade crossings as requiring mitigation for safety and 18 NS at-grade crossings requiring mitigation for traffic delays. Further, the DEIS specifies mitigation measures and types of crossing upgrades for each crossing.

NS concurs with the DEIS recommendation for consultation with state DOTs and other appropriate agencies to address potential safety and traffic delay issues. NS recognizes the importance of ensuring that issues affecting highway traffic safety and delay are dealt with under the direction of state DOTs and other appropriate agencies. Accordingly, NS has initiated a program of consultation with state DOTs and other appropriate agencies, following NS' standard practice in coordinating highway-rail crossing issues with state DOTs and other appropriate agencies. The purpose of NS's consultation with the state DOTs and other appropriate agencies is to ensure that the Transaction-related changes in traffic safety and delay at highway/rail at-grade crossings are understood by the state DOTs, and become part of the state DOTs planning process for crossing upgrades and/or closures according to state priorities.

NS is conducting a consultation with the state DOTs listed below, in accordance with the potential impacts identified by the DEIS. This consultation includes describing the Transaction, describing the projected effects on highway/rail at-grade crossings as determined within the DEIS (plus Errata) and by NS's calculations, and requesting the state DOT enter the crossing in question into the state crossing safety planning process as appropriate. NS will then work with the state DOT as appropriate to identify and implement those mitigation measures considered warranted by the state crossing safety planning process.

State DOTs*	Crossings With Potential Safety Issue	Crossings With Potential Delay Issue
IL	1	
IN	27	13
MD	3	
MI	1	
NY	1	
OH	13	
PA	9	5
VA	2	

*State Departments of Transportation or similar agencies.

NS will also discuss with the state DOTs all crossings affected by significant increases in traffic volume or train speed and those subject to physical change resulting from Transaction-related construction. The state DOTs will then be able to evaluate fully and prioritize all crossings affected by the Transaction, based on each state's unique criteria.

7.0 ADDITIONAL COMMENTS ON ENVIRONMENTAL ISSUES

Norfolk Southern's principal, substantive comments on the DEIS analysis of environmental and safety topic areas are contained in Section 4.0 of this document. Additional comments provided in this section are for the purpose of clarification or improving accuracy, and mainly note minor typographical or factual errors and inconsistencies and discrepancies. The comments and clarifications offered by NS in this section are not expected to substantively affect the conclusions or recommendations of the EIS.

7.1 Safety: Freight Rail Operations

Comment No. 1

NS has noted several inconsistencies in accident rates (accidents per million train miles) used in several locations in the DEIS as follows.

Accidents Per Million Train Miles

	Page 3-7 Second Paragraph, Fourth Sentence	Page 4-9, Figure 4-2	Page B8-1, Table B8-1, Appendix B
Year 1978	15.0	14.5	--
Year 1995	4.0	3.71	3.71
Year 1996	--	3.69	3.69

In order to remain consistent with the second sentence in the second paragraph on page 3-7, the accident rate value for 1996 should be used instead of the 1995 value that was used, and the period 1978-1996 should be analyzed in the fourth sentence of that paragraph using the values of *14.5* for 1978 and *3.7* for 1996. With this change, the fourth sentence should be revised to say, "In the last 20 years, the accident rate has decreased from *14.5* accidents per million train miles (in 1978) to *3.7* accidents per million train miles (in *1996*), an overall decrease of *75* percent in the accident rate." This revision results in the overall decrease changing from 73 percent to 75 percent.

Comment No. 2

The third sentence of the third paragraph on page 4-8 (Chapter 4, Volume 1, Section 4.4.2) says, "From 1970 until 1996, the national average accident rate has decreased from 15.0 to 3.7 accidents per million train-miles." In order to remain consistent with Section 3.2.2 on page 3-7 (Chapter 3), SEA should report the value over the last 20 years: 1978 to 1996. The accident rate in 1978 was 14.5 accidents per million train-miles as reported in Figure 4-2. SEA should revise the third sentence to say, "From *1978* until 1996, the national average accident rate has decreased from *14.5* to 3.7 accidents per million train-miles." However, if SEA's intent was to report the 1970 statistic, the correct value is 10.5 in lieu of 15.0 accidents per million train-miles.

Comment No. 3

The DEIS at 7-6 states the system-wide analysis examined accident risk for "all 119 rail line segments." It appears to NS that this sentence should read "all 1,022 rail line segments."

7.2 Safety: Highway/Rail At-Grade Crossings

Comment No. 1

NS has noted the following inconsistency on page B-5, (Volume 5A, Appendix B, Section B.3.2). The DEIS states, "SEA used the latest version of the FRA database to compile accident data for all crossings with at least <u>one</u> accident in the last five years." According to the grade-crossing tables located in Volume 3A & 3B, the analysis also includes grade crossings with <u>zero</u> accidents in the last five years. This should be corrected.

Comment No. 2

NS suggests a change to the title of Table B-7 on pages B-19 through B-21 (Volume 5A, Appendix B, Section B.4.3). The table is currently titled "Highway/Rail At-Grade Crossing Accident Index Roadway ADT More Than 15,000." Since Table B-7 also includes two other ranges of ADT's, the title should only read "Highway/ Rail At-Grade Crossing Accident Index."

Comment No. 3

NS suggests revisions to the definition of two factors in a formula presented in Section B.4.3, page B-22 (Volume 5A, Appendix B). The formula is presented under the heading "Segment-Specific Safety Effects Analysis:"

$$a = K \times EI \times DT \times MS \times MT \times HP \times HL$$

The definition for "a" should be revised to read, "a is the *unnormalized* initial predicted number of accidents per year," and the definition for "EI" should be revised to read "EI is the exposure index factor based on the product of the number of *average daily* roadway vehicles and *average* trains per day."

Comment No. 4

On page B-23 (Volume 5A, Appendix B, Section B.4.3), the second sentence of the second paragraph states, "FRA recommends that actual accident experience be limited to the 1991 through 1995 period, as..." NS suggests that this sentence be revised, replacing the portion of the sentence "1991 through 1995" with "*data for the most recent 5 years of history.*" NS notes that the period 1991 through 1995 was the most recent interval available at the time the DEIS analysis was conducted. However, more recent data (1992 through 1996) has since been released.

7.3 Safety: Rail Transport of Hazardous Materials

Comment No. 1

NS has noted that the definition of a "Key Train" as presented in the following sections of the DEIS is incorrect (Executive Summary, Glossary; Volume 1, Glossary; Volume 1, Chapter 4, Page 4-15; Volume 3A, Glossary; Volume 3B, Glossary; and Volume 5A, Glossary). The definition described in those DEIS sections is as follows: "The Association of American Railroads (AAR) defines a key train as any train handling five or more carloads of poison inhalation hazard (PIH) materials or a combination of 20 or more carloads containing hazardous materials."

This definition is incorrect because PIH Zone A or B materials are not specified, and because the definition implies that any train that contains 20 or more hazardous material

loads regardless of hazard classification are defined as "Key Trains." The correct definition should be: "'Key Trains' are any trains with five or more tank car loads of chemicals classified as Poison Inhalation Hazard (PIH) **Zone A or B**; or any train with a combination of 20 or more car loads or intermodal tank loads of PIH (Hazard A or B), Division 2.1 Flammable Gas; Division 1.1 or 1.2 Explosives, and Environmentally Sensitive Chemicals (ESCs) as defined in Appendix A to the Circular." (Bold added).

Comment No. 2

NS notes that one of the requirements for key routes as stated on page ES-19 under the Hazardous Materials Transportation section is incorrect. The DEIS states "These AAR [key route] guidelines include **visual** rail defect inspections at least twice per week..." The correct definition, which includes neither visual inspections nor twice weekly inspections, is referenced at DEIS, Volume 5A, Appendix B-10, page 2 of AAR Circular No. OT-55B: "2. *Main Track on "Key Routes" must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times each year; and sidings must be similarly inspected no less than one time per year.*" As a further note, FRA regulations specify weekly track inspections.

Comment No. 3

NS notes the following typographical error on page 4-61, Table 4-18 of the DEIS. The total number of rail cars should be 2,430 not 24,30.

Comment No. 4

NS notes the following misspelling on DEIS, Page 5-32, Table 5-2, Summary of Impacts Warranting Mitigation by State, for rail segment N-360: Berke County should be spelled Burke County.

Comment No. 5

NS suggests modifying Table 9-1 in Volume 5A, Appendix B, Page B9-4 and B9-5. For Conrail, the table includes "Key Routes" columns for 5,000-8,000 and 8,000-10,000 cars. These reflect tabulations of feeder routes to Conrail's "key routes". Neither OT-55B nor the criteria in the DEIS would consider routes with less than 10,000 carloads of hazmat to be "key routes". NS recommends the tables be modified to eliminate these columns to avoid confusion.

Comment No. 6

Table B9-2 on page B9-5 of the DEIS is persuasive in demonstrating that most reported hazardous materials incidents are of very small quantities very unlikely to have any noticeable impact for communities. However, the phrase "[t]he primary reason for most of the releases in the HMIRS database being non-reportable is their small size" is misleading, because all incidents regardless of their size must be reported, and is inconsistent with the fact that all releases have been reported in the HMIRS database.

7.4 Energy

Comment No. 1

As part of the system-wide analysis of energy consumption, the DEIS estimated changes in fuel consumption from increased delays to highway/rail at-grade crossings. (DEIS at 4-49.) This analysis considered this effect at crossings with average daily traffic (ADT) greater than 5,000 vehicles on rail line segments that met the Board's thresholds for environmental analysis. (See Energy Consumption Changes from Highway/Rail At-Grade Crossing Delays, DEIS, Appendix D, Page D-7.) These were the same at-grade crossings analyzed for air quality impacts.

This analysis arbitrarily excludes at-grade crossings with ADT greater than 5,000 projected to experience decreases in train traffic. This analysis thereby overestimates fuel consumption and fails to assess the benefits (e.g., decrease in fuel consumption) associated with the Transaction.

7.5 Air Quality

Comment No. 1

NS notes that there appears to be some inconsistency in the impacts reported in DEIS Appendix E, Attachments E-2 and E-4. If the differences are intentional, perhaps an explanation of why the impacts are different should be supplied in the FEIS. For example, if the difference in the two sets of data is a result of Attachment E-2 presenting emissions increases while Attachment E-4 presents net emission changes, this could be stated clearly in Appendix E. Otherwise, if the differences were in error, they should be corrected in the FEIS.

Comment No. 2

NS suggests a correction to the title of Figure 4-6 on page 4-52 of the DEIS. Figure 4-6 does not indicate the specific pollutant(s) for which each of the shaded areas is designated nonattainment. It is logical therefore to infer that the shaded areas are non-attainment for SO_2, CO, Pb, and particulate matter. This is not correct. At a minimum the title could be modified to say "*Areas of Non-Attainment for SO_2, CO, Lead(Pb) and/or Particulate Matter.*" Also, it would be appropriate to add a reference to Attachment E-1 in Appendix E where the pollutant(s) for which a county is nonattainment are specified.

Comment No. 3

NS suggests the following correction to the first sentence of the first full paragraph on page 4-54 of the DEIS which currently reads: "... EPA's proposed new NO_x emission control requirements for 25 eastern states ..." The sentence should be modified to read, "... *EPA's proposed new NO_x emission control requirements for 22 eastern states and the District of Columbia* ..."

Comment No. 4

NS suggests that the third sentence of the third paragraph on page 4-63, which currently reads, "... EPA has determined that NO_x is not ..." be modified to read, "... *EPA has determined that NO_x emissions locally are not* ..."

Comment No. 5

NS suggests the following modification to the fourth sentence of the last paragraph on page E-7. The sentence currently reads, "These lengths were multiplied by the corresponding annual gross tons, and then by a fuel efficiency (gross ton miles/gallon, or GTM/gal.), and by an emission factor (lb/gallon) to obtain emissions estimates for each segment (see Section E.7.1)." The sentence should be reworded to read "*These lengths were multiplied by the corresponding annual gross tons, **divided** by a fuel efficiency (gross ton miles/gallon, or GTM/gal), and **multiplied** by an emission factor (lb/gal) to obtain emissions estimates for each segment (see Section E.7.1).*"

Comment No. 6

The emission factor for NO_x is listed as 566.4 lb/Kgal on Table E-3, page E-9. The correct factor is **564.2 lb/Kgal.**

Comment No. 7

NS notes corrections to two emission factors used in Table E-4 on page E-10 of the DEIS. The emission factor for NO_x, is listed as 830.7 lb/Kgal, but should be **827.5 lb/Kgal**. The emission factor for VOC is listed as 46.2 lb/Kgal, but should be **46.0 lb/Kgal**.

7.6 Noise

Comment No. 1

In Appendix F, Attachment F-1, the DEIS indicates receptors along the Riverton Jct. to Roanoke line segment will experience a 5.0 dBA increase in noise level from the pre-Transaction to post-Transaction conditions. In the Applicants' Environmental Report (ER), noise receptors were expected to experience a 4.7 dBA increase along this line segment. Even applying the DEIS model, which we recommend be adjusted to accurately reflect NS train noise, it appears projected traffic changes would result in a 4.9 dBA increase. The equations used for this calculation follow:

- 10 * log (# of Pre-Transaction trains/# of Post-Transaction trains) = Change in dBA

where: # of Pre-Transaction trains = 3.9 and # of Post-Transaction trains = 12.1.

Comments No. 2

With reference to DEIS Appendix F, Attachment F-2, the following table identifies inconsistencies between the DEIS and information on operations submitted to SEA by NS in the ER and thereafter. The table below lists discrepancies in number of trucks, change in decibels (dBA) and distance to the 65 dBA Ldn contours at the intermodal facilities. NS requests that SEA verify the numbers presented in the DEIS for Luther. Also, the EIS should use the information for a proposed intermodal facility in Sandusky, OH and delete information for a proposed intermodal facility in Bellevue, OH since NS is no longer planning to construct a facility there.

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Discrepancies in Number of Trucks, Change in Decibels and Distances to the 65 dBA Ldn Contours at Intermodal Facilities

Location	ER Change in Trucks	DEIS Change in Trucks	ER Post-Act. Trucks/ Day	DEIS Post-Act. Trucks/ Day	ER Change in dBA	DEIS Change in dBA	ER Distance to 65 Ldn	DEIS Distance to 65 Ldn
Luther	63	194	251	382	<2	3	N/A	223
Sandusky*	71		71				73	
Bellevue*		65		65				69

*In a letter dated October 31, 1997 from NS to SEA, NS explained that the proposed new facility would be built at Sandusky rather than at Bellevue as had been indicated in the ER. In the same letter, a change in the projected number of trucks per day post-Transaction was provided.

Comment No. 3

The following table also lists discrepancies in the change in dBA and distances to the 65 Ldn contours at the intermodal facilities from DEIS, Appendix F, Attachment F-2. *NS requests that SEA verify that the latest information provided by NS has been used in the DEIS.* SEA may also wish to consider verifying the calculations for the intermodal facilities.

Discrepancies in Change in dBA and Distances to the 65 dBA Ldn Contour at Intermodal Facilities

Location	ER Change in dBA	DEIS Change in dBA	ER Distance to 65 Ldn	DEIS Distance to 65 Ldn
Baltimore	2.7	3.0	83	145
E-Rail, Portside	6.9	7.0	not different	
Allentown	5.5	6.0	57	113
Rutherford	7.7	N/A	229	250
Pincorn	not different		100	250

NS' consultant Burns & McDonnell, calculated the change in dBA using the formula below:

10 * log (# of pre-Transaction trucks/# of post Transaction trucks) = Change in dBA

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For example, at the Baltimore facility, the pre-Transaction number of trucks is 108; the post-Transaction number of trucks is 200. Using the equation above, the change in dBA was calculated to be 2.7 dBA. However, the DEIS lists 3.0 dBA.

The distance to the Ldn 65 contour was calculated using the equation from the ER (page B-39). The equation is shown below:

$$L_{dn} = 28.2 - 15 \log(D/450) + 10 \log [(H_d + 10 H_n)N_{total}/(H_d + H_n)]$$

where:

H_d = number of hours of operation during the daytime (7 am to 10 pm)
H_n = number of hours of operation during the night (10 pm to 7 am)
N_{total} = average number of daily operations
D = distance in feet to Ldn 65 contour

For example, at the Baltimore facility the number of daytime hours is 9, the number of nighttime hours is 1 and the average number of operations is 200. Using the above mentioned equation, the distance to the Ldn 65 contour is 83 feet. The DEIS lists 145 feet.

7.7 Natural Resources

Comment No. 1

The methodology for natural resources (DEIS at 3-41 and I-7) states, "The biological resources assessment included identifying and analyzing potential impacts to Federally listed threatened and endangered species, protected wildlife habitats and migration corridors, wildlife refuges and sanctuaries, national, state and/or local parks or forests, and protected unique or critical habitats." This methodology does not provide a specific distance from the construction or abandonment that was used for identifying biological resources, such as a parks or refuges, for inclusion in the analysis of potential impacts. However, varying distances to specific biological resources are provided in the following instances:

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- The DFIS at IN-62 states, "SEA determined that there are no Federal or state parks, forests, preserves, refuges, or sanctuaries located **within or adjacent to** the proposed construction site at Tolleston."

- The DEIS at IN-62 also states, ". . . there are no Federal or state parks, forests, preserves, refuges and sanctuaries that exist within **one mile** of the Tolleston site..."

- The discussion of the South Bend to Dillon Junction abandonment (DEIS at IN-68) states, "Kingsbury State Fish and Wildlife area is located approximately **one mile** southwest of Dillon Junction; and the Potato Creek Recreation Area is located less than **one mile** north of the proposed abandonment area. There are no sanctuaries, refuges, national, state, or local forest/parks within **500 feet** of the existing rail line for the proposed NS abandonment from South Bend to Dillon Junction."

The FEIS should clarify the natural resources methodology regarding distances to wildlife refuges and sanctuaries; national, state and/or local parks or forests. Also, if none are within the specified distance, this should be clearly stated under the Existing Conditions section.

Comment No. 2

Under the column, Preliminary Recommended Mitigation for the Alexandria, IN Construction (DEIS at Volume 3A, Page 5-24, Table 5-2 and Volume 3B, Page 5-24, Table 5-2), the following text appears "NS shall use only EPA-approved herbicides during right-of-way maintenance." The apparent error is that this statement is referenced under Environmental Justice in the technical area column, rather than the technical area for Natural Resources.

Comment No. 3

Under the Preliminary Recommended Mitigation heading for Tolono, Illinois Construction (DEIS at IL-62), there is an incorrect reference to CSX in the following sentence, "...SEA would require CSX to conform to its standard specifications during construction." *The FEIS should contain the corrected reference to NS not CSX.*

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7.8 Land Use/Socioeconomics

Comments No. 1

The reference to Native American Issues (DEIS at NY-38) appears to be associated with the Gardenville Junction construction because the text follows directly under the discussion of prime farmland at this construction. Separating the discussion of Native American Issues with a bolded heading similar to those used for constructions or abandonments could reduce the potential for confusion.

7.9 Abandonments

Comment No. 1

The Summary of Potential Effects and Preliminary Recommended Mitigation section (DEIS at IN-30) states, "Tables 5-IN-10 and 5-IN-11, presented at the end of this state discussion how..." There is no Table 5-IN-10 at the end of the Indiana State discussion. The reference actually appears to refer to Tables 5-IN-11 and 5-IN-12. If this is the case the sentence in question should be revised to say, "*Tables 5-IN-11 and 5-IN-12*, presented at the end of this state discussion, *show*..."

Comment No. 2

In both Figure 5-IN-4a (Volume 3A, Chapter 5) and Figure 2a (Volume 6) of the DEIS, the east end point for the South Bend to Dillon Junction Abandonment is in South Bend. The east abandonment end point on the figures should be moved to a point on the rail line approximately 200 feet northeast of U.S. Highway 20/31, southwest of South Bend. The correct end point is approximately 2 miles closer to Dillon Junction.

Comment No. 3

The Hazardous Waste Sites section (DEIS at Volume 6 Page 30) states, "...the EDR database report identified 13 sites including one NPL/CERCLIS site, four Indiana SPILLS sites, six LUST sites, and two RCRIS-TSD sites located within 500 feet of the proposed abandonment corridor." As discussed in Comment No. 2 above, the South Bend to Dillon Junction abandonment end point is located approximately 2 miles closer to Dillon Junction. Therefore, the hazardous spills sites located in South Bend are not within 500 feet of the proposed abandonment corridor. Therefore, this statement should be revised to

say, "*...the EDR database report identified 2 sites (one LUST site and one RCRIS-TSD site) located within 500 feet of the proposed abandonment corridor.*"

Comment No. 4

The last sentence of the first paragraph (DEIS at Volume 3 page 25) Proposed Action section states, "Dillon is a rail crossing..." The sentence should be revised to say, "Dillon *Junction* is a rail crossing..."

Comment No. 5

The DEIS at Volume 6, page 67 states, "NS would also dispose of all materials that **could** be reused in accordance with state and local solid waste management regulations." NS believes the DEIS intended to say and therefore should be modified to, "NS would also dispose of all materials that **cannot** be reused in accordance with state and local solid waste management regulations."

7.10 Construction

Comment No. 1

The DEIS at IL-67 states, "The construction of the new connection at Kankakee, would convert approximately 2.3 acres to rail line right-of-way." *The correct acreage is 1.0 acre* as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 2

The DEIS at IN-69 states, "The proposed construction would require that NS acquire and convert approximately 3.9 acres of currently undeveloped land to rail line right-of-way." *The correct acreage is 0.4 acre* as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 3

The DEIS at IN-29 states, "The connection . . . would be approximately 1,750 feet long." *The correct length is 1,700 feet* as provided in a letter from NS to SEA dated October 16, 1997. The correct length should be used in the FEIS.

Comment No. 4

The Summary of Sites Mapped by EDR, Table H-1 (DEIS at H-10) contains a reference to a LUST site 317 feet east of the proposed site for the Butler, Indiana construction. However, under the Indiana Hazardous Materials and Waste Sites, Existing Environment at the Butler construction (DEIS at IN-54 and IN-55), the text states, "The Environmental Data Resources, Inc. (EDR, 1997) report identified no hazardous waste sites or related environmental concerns within 500 feet of the proposed connection." The inconsistency should be corrected in the FEIS.

7.11 Data Differences Between the DEIS and Information Provided SEA by NS

7.11.1 Train Traffic Data

Comment No. 1

Some of the traffic data included in the DEIS differs from what was provided by NS to SEA in the ER, the Operating Plan or in supplemental submissions. The following table presents discrepancies noted by NS of plus or minus 2 trains or greater, or discrepancies of plus or minus ten percentage points or greater. Explanations which follow the table address apparent errors which should be corrected in the FEIS. The reason for other discrepancies is unclear, and the discrepancies are pointed out here for SEA's consideration and appropriate use.

Segment Name	SEA #	Type of Data	DEIS*	Correct	Source
Indiana Hbr to S. Chicago	N-047	Percent change in MGT	22	40	Revised Table 1-4, submitted on 10/17/97
W. Detroit to Jackson	N-121	Post freight	12.1	3.7	See explanation below
		Change in trains	9.2	0.8	See explanation below
		Percent change in MGT	313	-25	See explanation below
Jackson to Kalamazoo	N-120	Post freight	12	3.4	See explanation below
		Change in trains	6.6	-2.0	See explanation below
		Percent change in MGT	162	-49	See explanation below
Burstall to Meridian	N-343	Post freight trains	16.2	18.2	See explanation below

Segment Name	SEA #	Type of Data	DEIS*	Correct	Source
Calumet to Landers	N-499	Percent change in MGT	-99	40.3	Operating Plan Errata, page 18
Ridgewood to Suffern	N-064	Percent change in MGT/GTM	123	32	Revised Table 1-4, submitted on 10/17/97

* As listed in DEIS Attachments B-1 through B-3

The differences in tonnage on the **Indiana Harbor to South Chicago** segment are likely a result of the exclusion of 14.6 million gross tons per year of CSX post-Transaction trackage rights trains. Neither these trains nor their tonnage were included in the Operating Plan and it appears their tonnage was not included in the DEIS either. The tonnage should have been included in the DEIS and should be reflected in the percent change in tonnage.

As discussed in Section 4.22 in these comments, the expected change in traffic on the **W. Detroit to Jackson** and **Jackson to Kalamazoo** line segments was modified by NS based on new information on the status of the potential for haulage of CP trains across these line segments (addressed in a correspondence to SEA on 10/30/97). The FEIS should be edited to reflect these modifications.

In the Operating Plan, the post-Transaction train numbers for the **Burstall, Alabama to Meridian, Mississippi** line segment were listed as 2 passenger trains per day, 18.2 freight trains per day and 18.2 total trains per day. The total trains per day column was incorrect; it should have read 20.2 trains per day. Thus, 18.2 freight trains per day post-Transaction is correct.

The reason for the other data discrepancies is unclear. This information is supplied for SEA's consideration.

7.11.2 Other Data

The DEIS at GA-21 in Table 5-GA-16 incorrectly states NS is currently constructing a new intermodal facility in Fulton County, Georgia which is related to the proposed Transaction. This is not the case. NS is currently in the process of seeking permits for a

new intermodal facility in Austell, Georgia which is located in Cobb County. However, this action is completely unrelated to the Transaction and therefore, all references to it should be removed from the FEIS.

APPENDIX NS-1

DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

APPENDIX NS-1

DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

Chapter 3 of the DEIS, Sections 3.2.3 and 3.3.3, describe a variety of potential mitigation measures for passenger rail safety as follows:

- Enhanced rail-safety programs, such as closer spacing of rail car defect detectors along rail lines.
- Increased frequency of track inspections, tank car inspections, and highway/rail at-grade crossing signal inspections.
- Toll-free numbers for use by emergency response forces in communities to contact railroad authorities.
- Training programs for community and emergency response personnel to enhance their abilities to respond to rail-related emergency incidents.
- Head-hardened rail-on-track curves in mountainous territory to reduce the risk of track breakage and serious derailments.
- Centralized train traffic control systems for safer rail operations.
- Replacement of old rails to reduce the risk of derailment.
- New track installation to increase the capacity of the rail line segment, which reduces the potential for train collisions.
- Improved rail signal system to make more efficient and safer use of track.

In this appendix, NS will describe its existing compliance programs with each of the nine measures described above. These measures will be employed by NS on each of the line segments operated by NS.[1]

1. **Rail Safety Programs/Defect Detectors** - NS will maintain rail safety programs appropriate to the classification of the track on each of the four NS (now Conrail) involved line segments. With respect to defect detectors, Conrail's standard spacing for hot bearing detectors is 20 miles. Conrail presently has an approved

[1] N-063; N-120; N-121 and the Porter, IN to Chicago, IL route which consists of N-308, N-042, N-047, and N-309. Line segment N-497 is owned by Amtrak.

capital AFE to install 41 detectors to achieve nominal 20-mile spacing on lines where spacing presently exceeds this standard. Upon completion of this AFE, 20-mile nominal spacing will be achieved on these four line segments.

2(a). **Inspection of Track** - NS already has in place an inspection program which features twice weekly inspections (twice as frequent as the FRA requirements). In addition to these regular inspections, NS will perform more frequent inspections when: (a) ambient temperature conditions and/or temperature changes along the involved line segments create stresses in the track structure which produce the potential for track problems (such as kinks and pull aparts); and (b) weather conditions produce potential risks associated with the possibility of derailments caused by uncontrolled water flows or other weather phenomena as addressed in FRA Safety Advisory 97.

In addition, current NS standards require all main line rail to be tested at least once per year. Frequency of testing can be up to four times per year. NS testing frequency is based on density, traffic type, defect history, rail type and age. The NS track testing policy is more stringent in most cases than STB's proposed "at least once every 40 million gross ton-miles of rail traffic, or to inspect annually, whichever is more frequent."

2(b). **Inspection of Tank Cars** - Tank cars are inspected before acceptance at originating point, when received in interchange, and at any point where a train is required to be inspected (i.e., in yards where the car is put into a train). The cars may continue in transit only when the inspection indicates that the cars are in safe condition for transportation as required by 49 CFR 174.8 and NS Hazardous Materials Timetable Rule F.1 and F.2. The inspection is made from the ground and verifies that the car has no visible leaks and that all valves and openings are properly secured. Additional inspections in passenger corridors by railroads is not practical or necessary to ensure safety.

2(c). **Inspections of Highway/Rail At-Grade Crossing Warning Devices** - NS conducts monthly, quarterly and bi-annual tests and inspections of grade crossing warning devices in accordance with FRA and company standards and instructions. Such tests and inspections will continue to be done on the four lines.

3. **Toll Free Telephone Number** - The NS Police Communications Center has two toll free numbers (one is used for general emergencies and the other is displayed on railroad crossing devices). The general number is published in the phone books in all locations which NS operates. It has also been broadcast on the law enforcement network. Additionally, it is distributed at all Grade Crossing Collision Classes conducted by the NS police Department (approximately 30 classes per year).

4. **Emergency Response Training** - The NS Police Department conducts approximately 30 Grade Crossing Collision Courses each year. As part of that instruction, unique problems associated with passenger train collisions are

discussed. Passenger train locomotive and car schematics are included in the Operation Respond software NS donates to local communities. For more information on the Operation Respond program refer to the SIP at DEIS 2-159. Schematics for Amtrak, VRE, MARC and NJT will be included in version 3.2 of the OREIS software which will be available by January 1998.

5. **Head-hardened Rail** - None of the segments are located in mountainous territory. Application of head-hardened rail on these segments will be initiated in cases where this type of rail is justified by overall traffic levels and track curvature.

6. **Centralized Train Control** - Each of the four line segments mentioned is already equipped with centralized traffic control (CTC) signaling. When signal indications are complied with, these systems enhance safety by providing protection for opposing and following train movements on the same track, and allow for positive protection of roadway workers. In addition, these systems enable more efficient and fluid train operation.

In addition, Amtrak, Michigan DOT and CR (later NS) have a FRA grant for $9 million to install and test a positive train separation system called Incremental Train Control System (ITCS) on the Kalamazoo to Porter line. The grant will equip 40 locomotives, and 10 wayside servers along 70 miles of track. Imposition of the 15/30 minute rule would nullify the value of this system.

On the Campbell Hall to Port Jervis line New Jersey Transit (NJT) is installing a similar system. The objective of the NJT project is to implement technology to make the railroad safer. It consists of two systems for enforcing civil speed restrictions, signal indications, and positive stops at "Stop" or "Stop and Proceed" signals. The complementary system, using wayside transponders at interlockings and automatic signals interfaced to signal aspects, is called PTS or Positive Train Separation. It will be integrated into the remaining existing wayside signal systems and operate in conjunction with and enhance the capabilities of the existing and future Continuous Cab Signal Systems and Automatic Train Control.

7. **Rail Replacement** - NS will replace rail on the involved segments based on wear and defects detected in accordance with applicable FRA requirements.

8. **Enhancement of Track Capacity** - NS believes that existing track capacity on the five involved line segments is sufficient to safely accommodate existing and foreseeable future traffic levels. Should future traffic levels develop where additional track capacity is needed to safely and efficiently accommodate train operations, NS is prepared to initiate necessary track construction projects. There appears to be sufficient space in the rights-of-way on the Kalamazoo - Jackson; Jackson - West Detroit; and Campbell Hall - Port Jervis segments to add track if necessary.

In addition, the lines at issue are projected to experience only modest freight train

frequency increase of 4.1 for the Campbell Hall to Port Jervis line; between 6.7 and 9.2 on the two segments between West Detroit and Kalamazoo and 6 on the Amtrak line between Kalamazoo and Porter, IN. The line between Porter, IN and Ashland Avenue, Chicago is divided into four segments with an increase of 0.1 train per day between Porter and CP 501; an increase of 16.9 trains between CP 501 and Indiana Harbor; and an increase of 4.1 trains between Indiana Harbor and South Chicago and a decrease of 16.2 trains between South Chicago and Ashland Avenue. This 38-mile line is double and triple track with bi-directional CTC and is not going to be taxed with the train frequency shifts listed above.

9. **Rail Signal Systems**- Improvements have been approved for the Campbell Hall - Port Jervis segment. Conrail presently has an approved capital APE to eliminate the signal pole line on the Campbell Hall to Port Jervis line segment. This project will enhance signal system reliability and consequently improve passenger train safety. On the other three mentioned lines to be allocated to NS, pole lines have been eliminated, and the signal systems in use are both safe and reliable.

Also, see response to 6 above. In addition, NJT is adding wayside 4-aspect coded 100 hz Continuous Cab Signal Systems (CCSC) to an additional 214 track miles in 131 route miles of existing signaled territory, increasing ATC to about 76 percent of its system. The ATC portion of the project is expected to be completed by the end of 1998. Subsequent to installation of ATC all locomotives operating over such signal territory will be required to have ATC equipment. Imposition of the 15/30 rule would make the investment in these high-tech systems a waste of time and money as the railroad would be running as if the territory was dark, i.e., no signals at all.

APPENDIX NS-2

HIGHWAY/RAIL AT-GRADE CROSSING DELAYS

APPENDIX NS-2

HIGHWAY/RAIL AT-GRADE CROSSING DELAYS

In Volume 5A, Appendix C, Section C.4.3, pages C-11, C-12 of the DEIS, SEA has calculated the crossing delay per stopped vehicle by use of the following equation which the DEIS describes as "from" the Institute of Transportation Engineers, "Transportation and Traffic Engineering Handbook," Second Edition, 1982:

$$D_s = \frac{D_c \times (Sc/Sc-Sq)}{2}$$

This equation does not appear in the "Transportation and Traffic Engineering Handbook" in this form to represent a relationship of delay per stopped vehicle. Also, the equation is not semantically correct (i.e. Sc/Sc is equal to one). The equation SEA used to calculate crossing delay per stopped vehicle resembles the equation in the "Transportation and Traffic Engineering Handbook," for calculating the duration of the queue. The correct equation found in the publication that calculates the average minutes of vehicle delay is presented on the same page as the above equation in the ITE "Transportation and Traffic Engineering Handbook." The equation is expressed as follows,

$$d = r/2\,(1 - s_t/q)$$

where,

d = average minutes of vehicle delay
r = duration of blockade, minutes
s_t = flow rate (vehicles per minute) at bottlenecks during blockade
q = average arrival rate of traffic (vehicle per minute) upstream of bottleneck

The value of s_t is zero when the roadway is completely blocked as in the case of an at-grade railroad crossing. Therefore, the equation reduces to,

$$d = r/2$$

When an additional 0.30 minutes is added to allow for the waiting line of vehicles to dissipate, the equation resembles the average delay time equation presented in the Applicants' ER, Volume 6A, Appendix D, page 246. This equation was developed by the Stanford Research Institute "Guidebook for Planning to Alleviate Urban Railroad Problems," prepared for the Federal Railroad Administration and Federal Highway Administration, August 1974, RP-31, Volume 3, Appendix C and has been used previously in the Environmental Assessment prepared by SEA for the UP/SP merger. (STB, SEA. 1996. EA, Finance Docket No. 32760, Union Pacific Corporation, et. al. Control and Merger Southern Pacific Rail Corporation et. al.)

Therefore, the final form of the equation to calculate average delay per vehicle using the DEIS notation should be expressed as,

$$D_A = D_c/2 + 0.3$$

This equation will more accurately reflect the crossing delay per stopped vehicle definition as described in the DEIS Volume 1, Chapter 3, Section 3.7.1, page 3-17, that says SEA assumed that vehicles arrive at a crossing at a uniform rate and that the average delay for any particular roadway is half the time the crossing is activated ($D_c/2$), plus the time required for vehicles to disperse (0.3) after the train has passed.

In Volume 5A, Appendix C, Section C.4.3, the last paragraph on page C-16 describes Table C-5 as the variation of average delay per stopped vehicle with changes in train length and train speed for various roadway ADT volumes and number of roadway travel lanes. However, Table C-5 is titled "Blocked Crossing Times (in minutes)" which SEA defines differently than average delay per stopped vehicles. Furthermore, the ITE "Traffic Engineering Handbook" does not directly associate blocked crossing time and delay per stopped vehicle as functions of the number of lanes and ADT during a blocked crossing event. If it is SEA's intent to generate a table of average delay per stopped vehicle as defined int the ITE handbook, the table should contain the values generated by using the equation,

$$D_A = D_c/2 + 0.3$$

and the proposed table would be as follows:

Table C-5
Average Delay per Stopped Vehicle (minutes)

Train Speed	Train Length (in feet)				
	4,869	5,000	5,600	6,000	6,200
10	3.32	3.39	3.73	3.96	4.07
20	1.93	1.97	2.14	2.25	2.31
30	1.47	1.50	1.61	1.69	1.72
40	1.24	1.26	1.35	1.40	1.43
50	1.10	1.12	1.19	1.23	1.25

In Volume 5A, Appendix C, page C-14, the third paragraph says, "For crossing delay per vehicle, SEA determined that a significant impact would occur if vehicle delay at highway/rail at-grade crossings increased by 30 seconds. This figure represents a driver tolerance threshold above which the driver perceives added delay for an intermittent blocked crossing event."

The DEIS does not explain how the 30-second significance criteria was established. If this value is based on past research, it would be appropriate to cite the source. If SEA has performed their own study to derive at this value, details of that study should be included in the methodology. Furthermore, the 30-second criteria appears to be inconsistent with the statement in the DEIS Volume 1, Chapter 4, Section 4.9, page 4-44 that says, "There are no national standards for measuring emergency response vehicle delay or the significance of any delay impacts."

APPENDIX NS-3

ADDITIONAL NOISE MEASUREMENTS

APPENDIX NS-3

ADDITIONAL NOISE MEASUREMENTS

Noise measurements were performed on Norfolk Southern rail segments by Wyle Laboratories in Cleveland, Bellevue and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were performed in December, 1997 and January, 1998. The measurements were performed in order to: (1) determine if the existing Norfolk Southern noise model was conservative or underestimated noise impacts, and (2) perform site-specific modeling in areas where the STB identified a noise concern.

The noise model used in the Environmental Report (ER) was developed by Thornton Acoustics. The noise model was based on noise measurements made in a flat open field area in North Carolina over a four-day period. Wayside noise measurements were made at four locations perpendicular to the track at distances of 50, 100, 150 and 200 feet from track centerline. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six trains were measured for noise. The measurements were made without any horn soundings. Based on these noise measurements, SEL's were determined for trains traveling at 20 mph, 35 mph and 50 mph. For each train speed, train length was determined. For the model, trains were divided into three size categories (15 to 50 rail cars, 51 to 99 rail cars and 100 and greater rail cars). From evaluation of its system-wide operations, Norfolk Southern determined that the typical NS train travels at 35 mph and contains approximately 75 rail cars. For the representative NS train, the wayside noise SEL at a distance 100 feet from the track centerline was determined to be 98.4 dBA. The average attenuation rate of the noise was determined to be 4.8 dBA per doubling distance. A separate set of measurements were made of the locomotive with the horns soundings. The SEL noise level at 100 feet from a grade crossing was determined to be 108.5 dBA. The noise model was developed based on the measured data. Also included in the model was the option for background noise inputs. For all modeling runs it was assumed that the background noise levels would be relatively low. The background levels were set to 50 dBA during daytime hours (7 am to 10 pm) and 40 dBA during nighttime hours (10 pm to 7 am). The noise model allows for input runs used a shielding attenuation of 5 dB only if the structures parallel to the track occupied at least 65 percent of the total area parallel to the track. Further details of Norfolk Southern's noise model is contained in the Environmental Report, Volume 6A, Appendix B.

Wyle Laboratories performed noise measurements in Cleveland, Bellevue, and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The noise measurements in Cleveland were made in three areas for a 24 hour period. Two sites (Site 1 and 2) were on the NS Cloggsville to Ashtabula line segment and one site (Site #3) was on Conrail's Cloggsville to Short Line line segment. A comparison was made between the measured L_{dn} noise value and the calculated L_{dn} noise value using Thornton Acoustics' noise model. Thornton Acoustics' noise model predicted noise values 2.2 to 6.1 dBA higher than the measured noise values. The train noise levels were subtracted out of the 24 hour L_{dn} noise measurement to obtain the background noise levels. Background noise values from non-railroad sources ranged from 58 to 61.5 dBA.

In Bellevue, Wyle Laboratories performed noise measurements for three sites on an existing Norfolk Southern rail segment. The Bellevue noise measurements were taken over a three hour period. Three train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise values using the Thornton Acoustics' noise model. It is evident from the train pass-by noise measurements that horn noise affects the noise SEL values. Thornton Acoustics measured a noise SEL for a standard train at grade crossings to be 108.5 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 106.2 dB. The lowest measured SEL value was 90 dBA. Thornton Acoustics determined a 4.8 dB spreading rate. At location 2,230 feet from the track, the highest measured SEL was 98.4 dBA. Thornton Acoustics' model predicts a 102.9 dBA SEL. At the third location, 650 feet from the track, the highest measured SEL was 88.9 dBA SEL while the modeled SEL value was 95.5 dBA. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Clyde, Ohio, along Norfolk Southern's Oak Harbor to Bellevue line segment. Wyle Laboratories performed SEL noise measurements at three locations. Two train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. It is evident from the train pass-by noise measurements that horn noise affects the noise SEL values. Thornton Acoustics' measured a noise SEL for a standard train at 108.5 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 106.0 dB. The lowest measured SEL value was 97.4 dBA. Thornton Acoustic determined a 4.8 dB spreading rate. At location 2,330 feet from the track, the highest measured SEL was 95.0 dBA. Thornton Acoustics' model predicts a 100.2 dBA SEL. At the third location, 545 feet from the track , the highest measured SEL was 93.4 dBA SEL while the modeled SEL value was 96.7 dBA. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Fort Wayne along an existing Norfolk Southern line segment. Wyle Laboratories performed SEL noise measurements for two locations. Two train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. All crossings within the measurement area are separated. Thornton Acoustics measured a noise SEL for a standard train at 98.4 dBA at 100 feet from the track centerline. Thornton Acoustics determined a 4.8 dB spreading rate. For a location 200 feet from the track centerline, Thornton Acoustics' model predicts a 93.6 dBA SEL. The highest measured SEL value at 200 feet from the track centerline was 89.6 dB. The lowest measured SEL value was 75.8 dBA. At location 2,130 feet from the track, the highest measured SEL was 88.4 dBA. Thornton Acoustics' model predicts a 96.6 dBA SEL. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Lafayette along an existing Norfolk Southern line segment. Wyle Laboratories performed SEL noise measurements for two locations. One train pass-by noise measurement was made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. All crossings within the measurement area are at grade. However, horn noise was not heard during the train

pass-by. It was noted that bell noise was heard during the pass-by. Thornton Acoustics measured a noise SEL for a standard train at 98.4 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 93.8 dBA. Thornton Acoustics determined a 4.8 dB spreading rate. At location 2,250 feet from the track, the highest measured SEL was 86.8 dBA. Thornton Acoustics' model predicts a 92.0 dBA SEL. Thornton Acoustics' noise model over predicts the noise values for each site and train pass-by.

The comparisons between Wyle Laboratories noise measurements and Thornton Acoustics' noise model predictions show that in all cases, the Thornton Acoustics' noise model overestimates the L_{dn} 65 dBA contour at grade crossings and for wayside noise. It is evident in areas with a significant amount of structures, that shielding is an important consideration to determine actual noise impacts. The data consistently shows that the difference between Wyle Laboratories noise measurements and Thornton Acoustics' noise model is greatest where the building structure are most densely populated. Also, in areas with high background noise , the change in the total noise level is not necessarily equal to the change in the rail traffic only due to the logarithmic nature of the dB. For example, at Cleveland site #1, the background noise level is 61.5 dB. The measured L_{dn} from the rail traffic is 63.2 dB. The total measured L_{dn} was 65.4 dB. Assuming a 181 percent increase in rail traffic along this line as a result of the acquisition, the rail L_{dn} will increase by 4.5 dB. The post-acquisition rail L_{dn} will then be 67.7 dB and the total L_{dn} will be 68.6 dB. The total L_{dn} will increase by 3.2 dB due to the acquisition, not the 4.5 dB increase predicted by the noise model.

The Thornton Acoustics' noise model used in the ER is conservative compared to all noise measurements made by Wyle Laboratories. The model used to predict noise contours and levels in the DEIS further overestimates noise impacts and should be amended to adopt the Thornton Acoustics' predicted SELs for NS trains. The model would also be improved by application of additional acoustic shielding where justified by the presence of structures. Finally, it is apparent that noise models should be used only as a screening tool and that further local analysis needs to performed in areas where the STB is considering mitigation.

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CSX CORPORATION AND CSX TRANSPORTATION, INC. AND
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

CSX CORPORATION AND
CSX TRANSPORTATION, INC.'S
COMMENTS

ON

THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

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INTRODUCTION

CSX Corporation and CSX Transportation, Inc. hereby submit the following comments on the Draft Environmental Impact Statement ("DEIS") prepared by the Board's Section of Environmental Analysis ("SEA"), served December 12, 1997.

The present case represents the first occasion on which the Board (or its predecessor) has determined to prepare an EIS in a rail combination case. One of the basic purposes of an EIS is to identify all of the significant environmental impacts that may arise from a proposed federal agency action. The basic philosophy of the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA"), is that federal agency actions that have significant environmental impacts should not be effected in ignorance of those environmental impacts. The potential impacts must be called clearly and plainly to the attention of the decision-maker(s) of the agency before the final decision is made, so that the agency may, in reviewing the action in question, balance the public interest and the performance of its statutory mandate against the environmental impacts that will arise from it.

The DEIS is clearly successful in this regard, as it fully identifies the potential environmental impacts of the proposed Transaction. The SEA and its consultants prepared a detailed, six-volume DEIS that carefully analyzes every potential significant environmental impact that could result from Board approval of the proposed Transaction. In addition, the DEIS offers preliminary recommendations for Board-imposed mitigation of adverse impacts. The comprehensiveness of the DEIS leaves little doubt that the Final EIS ("FEIS") will fully satisfy the requirements of NEPA.

Pursuant to the mandate of NEPA, the Board has exposed the DEIS to public comment. The public comments will doubtless call to the attention of the Board and its staff other possible methods of addressing the environmental impacts of the Transaction. The public comment period, and, indeed, the period throughout the preparation and exposure of the FEIS, should permit the Applicants and other interested parties to suggest the appropriate weighing of the benefits that flow from the Transaction as proposed -- both on environmental issues and on the basic public interest factors considered by the Board under its statutory authority -- against any adverse environmental impacts. It also should permit the Board to weigh and consider the extent to which any of the mitigation alternatives proposed in the DEIS might, on balance, cut too deeply into or even eliminate the benefits -- environmental and non-environmental -- of the Transaction. Such balancing will require the Board's consideration of whether other, more targeted mitigation approaches might be taken, or perhaps a realization reached that in some areas no mitigation is appropriate given the countervailing considerations, such as the broader impacts on the region or significant impacts that the mitigation would have on the transportation system.

Comments will no doubt be filed by numerous persons with concerns about various local impacts. Some local communities, understandably concerned only with their local interests, might request that the Board impose solutions that would effectively require redesigning CSX and NS's operating plans or postponing their implementation (effectively nullifying the Transaction). An example of this is the greater Cleveland area where the City of Cleveland has offered a plan requiring a redesign of the CSX/NS systems that would disrupt East-West traffic flows, as well as have significant adverse impacts on other local communities. If indulged, such requests would have catastrophic consequences for the CSX and NS rail networks, and indeed the national

transportation system, and would thwart the public and private benefits flowing from the Transaction.

It is important to note now that the DEIS concludes that the proposed Transaction will create important system-wide environmental benefits. Those positive impacts are in a number of areas including enhanced safety, improved air quality and reduced energy consumption. For example, the DEIS predicts a decline in the likelihood of rail accidents and the release of hazardous materials, a decline in truck accidents and emissions due to the projected diversion of approximately one million intermodal units to the CSX and NS rail systems, a significant decline in energy use resulting from those diversions and a general improvement in the efficiency of rail operations. Further, no systemwide significant adverse environmental impacts are noted in the DEIS.

Because of the fact that the local and particular requires more explication and description than the general and the systemic, the DEIS inevitably devotes considerable attention to a discussion of particular local impacts and less attention to a discussion of the overall, systemwide benefits and other effects of the Transaction. This is entirely appropriate -- indeed necessary under NEPA -- as any discussion of numerous, unique local impacts will inevitably require more lengthy discussion. But it is important that the Board not lose sight of a crucial conclusion of the DEIS, namely, that the substantial systemwide beneficial environmental effects of the Transaction overshadow the far more limited local impacts discussed in such considerable detail. The FEIS should clearly reflect this.

While the DEIS does not discuss in any detail non-environmental benefits of the Transaction, since these are analyzed by other elements of the Board's staff and are to be, with

the environmental impacts, the material of the ultimate resolution and decision by the Board itself, the FEIS should nonetheless recognize them. It is also worthwhile to note them at this stage. The Transaction brings, to a large segment of the Northeastern United States, rail-to-rail competition between Class I rail carriers for the first time in a generation. The Transaction enhances Class I rail-to-rail competition in a number of major markets in the Northeastern United States. The Transaction also extends the systems of two strong Class I railroads considerably and brings single-line rail service between many markets in the Southeastern United States and the Northeastern United States. These effects not only strengthen rail movements as a competitor against truck movements, thus producing more efficient railroads and many of the systemwide environmental benefits already mentioned, but also bring economic benefits to businesses, consumers and communities throughout the entire Eastern United States and indeed throughout the country at large. Strong railroads offer opportunities for growth and jobs in communities, including in lower-income communities where they are most needed.

The DEIS has well fulfilled its mission of identifying all of the significant environmental impacts that could flow from the proposed Transaction. However, there are two items of unfinished business which must be undertaken in preparing an FEIS.

First, the SEA, in taking its work and the vast work of its consultants from the DEIS stage to the FEIS stage, must permit the Board to fulfill its statutory charge of balancing the economic and other nonenvironmental benefits and the systemwide environmental benefits, against localized environmental impacts that may attend the Transaction, and of balancing possible remediation of those local impacts against the achievement of the great benefits of the Transaction. The DEIS, perhaps understandably, does not do this nor does it suggest how or when that balancing process

is going to be conducted. As we develop below, it is this balancing process which distinguishes the EIS process from the Environmental Assessment ("EA") process, which has previously been employed in rail combinations by the Board and its predecessor. Just as the Board is not to single-mindedly devote itself to its transportation mission in ignorance of the environmental consequences -- which the process employed by the SEA clearly guarantees it will not -- the Board is not to devote itself single-mindedly to avoiding localized environmental impacts at the price of sacrificing its basic statutory mission. Thus, where the effect of a recommended remediation might be to reduce materially the overall public benefits of the Transaction, the FEIS should provide the Board with a broader menu of remediation alternatives. It should, as far as the SEA's expertise permits, provide some suggestions as to the relative weight of the local environmental concerns and the systemwide environmental benefits, and the weight of the transportation policy benefits which the Transaction involves.

Second, while identifying localized environmental impacts and their optimum "freestanding" mitigation, (that is, mitigation not balanced against other factors), the DEIS in a number of cases overlooks the basic constraints under which the Board operates, in the environmental as well as other areas. Respectfully, CSX suggests that the DEIS has recommended environmental mitigation in situations where the Board's established policies and precedents (even where an EA has been prepared) do not require -- or permit -- the imposition of conditions. Moreover, in some areas, the mitigation proposed by the DEIS would inappropriately extend the Board's reach into areas reserved exclusively or primarily to other federal and state agencies.

Accordingly, CSX believes that in a number of areas the recommended mitigation measures which are set forth in the DEIS should be withdrawn, should be modified, or should be supplemented with alternative recommendations, in each case for ultimate resolution by the Board. Among the areas discussed in detail below where CSX believes the proposed mitigation measures set forth in the DEIS go beyond an appropriate use of the Board's conditioning authority are the following:

- the proposed 30-minute separation window around passenger trains in relation to freight trains;
- the proposed upgrading of certain grade crossings or construction of grade separations at CSX's expense;
- the proposed conduct of emergency response drills every two years on certain line segments that may experience more hazardous materials traffic;
- the proposed Failure Mode and Effects Analysis for hazardous materials incidents at yards;
- the proposed environmental justice mitigation; and
- the proposed mitigation for "unique" communities with pre-existing conditions (Newark and the Four Cities).

As to each of these measures, and others, it appears to CSX that one or more of the following conditions is present:

(1) the recommended mitigation will unreasonably, and sometimes drastically, interfere with CSX's ability to run a viable and efficient freight railroad;

(2) the recommended mitigation will unreasonably reduce the public benefits that the proposed Transaction was designed to create;

(3) the recommended mitigation is unnecessary as alternative remedies are available;

(4) the recommended mitigation attempts to cure environmental impacts that are unrelated to the Transaction;

(5) the recommended mitigation is overbroad and reaches beyond any potential harm caused by the Transaction;

(6) the recommended mitigation is not a feasible strategy for curing the identified environmental impact; and

(7) the recommended mitigation would infringe on the jurisdiction of other bodies.

The DEIS is, by definition, a preliminary document. The comment process provides interested parties with the opportunity to assist the SEA in shaping the FEIS. CSX submits that, by addressing its concerns in the manner discussed in the subsequent sections of these comments, the SEA can provide the Board with a tool of environmental analysis that is best suited for enabling the Board to weigh the environmental costs of the proposed Transaction against the Transaction's environmental and other public benefits and to decide if, how, and to what extent, it will exercise its conditioning authority.

I. General Comments

A. The Purpose of an EIS Is Not To Resolve Every Identified Environmental Impact. An EIS Is Simply A Tool to Bring Environmental Considerations to the Decision-Maker's Attention

The DEIS represents an impressive undertaking by the SEA to identify and analyze every potential significant environmental impact that could result from Board approval of the proposed Transaction. The enormous effort and millions of dollars committed to the preparation of the DEIS are unparalleled in the history of the Board or Interstate Commerce Commission ("ICC") and reflect the seriousness with which the SEA approaches its environmental review process. While CSX respectfully disagrees with certain limited portions of this analysis, CSX, on the whole, agrees with and applauds the analytical process. However, upon completion of this analytical process, the FEIS should address the unfinished task that the authors of NEPA intended: to provide a finished document permitting the balancing process to be effected by the Board, without resolving every environmental impact identified by SEA's analytical process. Although well-intentioned, DEIS's attempt to devise a Board-controlled mediation for every identified environmental impact not only goes beyond that which is legally required by NEPA but also (1) does not facilitate the balancing test that the Board will ultimately apply and (2) runs the very real danger of intruding into the regulatory jurisdiction of other federal and state agencies and unnecessarily provoking conflicts with those agencies.

Federal law is quite clear as to what Congress intended, and what it did not intend, when, in 1969, it required all federal agencies to prepare an EIS before undertaking "a major Federal action" that would "significantly affect [ ] the quality of the human environment." 42 U.S.C. § 4332(2)(c). Congress intended to create a mandatory process that would ensure that federal

agencies would take a "hard look" at all significant environmental impacts of a proposed action and that the results of this "hard look" would be made available to the public. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349-50 (1989); Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (1983) (citing Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553 (1978)).

Congress, however, did not intend the EIS process to "require agencies to elevate environmental concerns over other appropriate considerations." Baltimore Gas and Electric Co., 462 U.S. at 97 (citing Stryckers' Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227 (1980)). Rather, the EIS process mandates that federal agencies, prior to undertaking major federal actions, "balance a project's economic benefits against its adverse environmental effects." Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996); see Idaho v. Interstate Commerce Comm'n, 35 F.3d 585, 595 (D.C. Cir. 1994); Calvert Cliffs Coordinating Comm., Inc. v. United States Atomic Energy Comm'n, 449 F.2d 1109, 1113 (D.C. Cir. 1971). Once a federal agency identifies and evaluates the adverse environmental effects of a proposed transaction, NEPA's goals are satisfied. See Simmons v. United States Army Corps of Engineers, 120 F.3d 664, 666 (7th Cir. 1997) ("[I]f a federal agency has heard all the objections to a plan and considered all the sensible options before it, the agency has fulfilled its duty."). The agency is then free to conclude that the benefits of the proposed action outweigh the environmental costs and that the proposed action should go forward. Robertson, 490 U.S. at 350-51.

As part of the process of weighing the benefits and costs of a proposed action, a federal agency must include in its EIS a discussion of possible measures that can be taken to mitigate the identified adverse environmental impacts. See Robertson, 490 U.S. at 351-52. However, because NEPA mandates a process and not a result, the Supreme Court has made clear that NEPA does not require an agency to mitigate all (or indeed any) of the identified adverse environmental impacts. See id. at 352 & n.16. If an agency determines that, given the benefits of the proposed action, the identified impact need not be mitigated, the agency may approve the action without mitigation, even if the imposition of mitigation would fully remedy the identified harm. The weighing of the costs and benefits that go into this decision is left to the discretion of the agency.

The DEIS's attempt to remedy every identified potentially significant impact goes far beyond what is required in the EIS process and is more consistent with the abbreviated Environmental Assessment ("EA") process followed by the Board and the ICC in prior rail consolidation proceedings. However, the purpose of preparing an EA is to determine whether the action contemplated will have a significant adverse environmental effect requiring the preparation of an EIS. If an EA reveals that the proposed action will have a significant adverse environmental effect, the agency must either completely mitigate all significant impacts or prepare a full EIS. See Idaho, 35 F.3d at 595 (citing Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 682 (D.C. Cir. 1982)); Roanoke River Basin Ass'n v. North Carolina, 940 F.2d 58, 62 (4th Cir. 1991). In stark contrast to the shorter EA process, where as here, the STB prepares an EIS, it has no corresponding obligation to mitigate every (or any) environmental impact, because the preparation and consideration of a legally sufficient EIS satisfies NEPA's procedural mandate. As the Supreme Court has explained, "[i]f the adverse environmental effects of the proposed action

are adequately identified and evaluated, the agency is not constrained by NEPA from deciding other values outweigh the environmental costs." Robertson, 490 U.S. at 350.

While reciting the differences between the two processes, the DEIS also recommends some form of mitigation for every significant local environmental impact. This approach should now be complemented with a further balancing of the environmental impacts of the proposed Transaction against the Transaction's public benefits. By performing this balancing process, the Board will determine what weight the local environmental impacts will carry in its ultimate decision as to whether to approve the pending application. The Board may decide that (1) the public benefits of the proposed Transaction so outweigh the local environmental impacts that the Transaction should be approved without any environmental conditions, or (2) the public benefits of the proposed Transaction outweigh the local environmental impacts but that certain mitigation of environmental impacts, which will not reduce the public benefits, should be imposed.

Where the DEIS presently recommends a mitigation measure that would require Applicants to modify their respective Operating Plans, either permanently or pending implementation of the mitigation measure, or would otherwise significantly reduce the overall public benefits of the Transaction, CSX urges that the FEIS provide the Board with one or more alternative mitigation measures which would not significantly reduce the overall public benefits of the Transaction. The Board will thus be able to balance the local environmental impact and the costs of mitigating it in various ways against both the local and overall public benefits of the Transaction in deciding if, and how, it will exercise its conditioning authority.

The DEIS's preference for "[illegible]" mitigation -- through remedies created and administered by the Board alone -- for every identified environmental impact also runs the risk of

intruding into the exclusive or primary jurisdiction of other federal and state agencies. NEPA was not enacted to expand an agency's substantive jurisdiction. The DEIS puts the Board into the role of regulator of passenger train safety (a role which Congress has given exclusively to the Federal Railroad Administration ("FRA")), at-grade crossing safety (a role which Congress has given jointly to the FRA, the Federal Highway Administration ("FHWA"), and the states), and hazardous material safety (a role which Congress again has given exclusively to other federal agencies, including the Department of Transportation's Research and Special Programs Administration).[1]

Any such intrusion into the regulatory jurisdiction of other federal agencies could result in the creation of unique and potentially conflicting new safety requirements outside the prescribed federal rulemaking process. Likewise, the intrusion into the regulatory jurisdiction of state agencies could result in an interference with state law and ignore established state-government procedures and priorities. Moreover, such intrusion is entirely unnecessary under NEPA. A lead agency, where it has identified environmental impacts for which it does not possess the necessary jurisdiction to impose mandatory mitigation measures, can satisfy its NEPA obligations by discussing the identified impacts and possible mitigation measures and leaving the decision as to whether to impose any mandatory mitigation to the agency with the proper jurisdiction. The Council on Environmental Quality addressed this precise issue in its "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations":

> Q. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or

[1] The processes of these authorities in administering their responsibilities are described in Sections II.2.A.1 and II.8.B.2.

> cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency.
>
> A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

46 Fed. Reg. 18026, 18031-32 (Mar. 23, 1983) ("CEQ Notice"). So long as the lead agency presents its mitigation recommendations for consideration by the agency possessing the appropriate substantive jurisdiction,[2] the lead agency may approve the proposed action and need not wait for the agency with jurisdiction to decide whether to implement the recommended mitigation. Robertson, 490 U.S. at 352-53.[3]

B. The DEIS Contains Many Mitigation Recommendations That Are Beyond the Scope of the Board's Policies as to the Use of Its Conditioning Power

[2] It is important to understand that CSX is not suggesting that the Board abdicate its environmental review responsibilities to another agency. This would clearly be improper. See Idaho, 35 F.3d at 595. What CSX is suggesting is that the Board can and should satisfy its environmental review responsibilities by analyzing all significant environmental impacts and, where appropriate, leaving the imposition of mitigation to those agencies with the requisite authority to do so.

[3] In other contexts, the ICC deferred to other federal and state agencies that have jurisdiction to regulate a matter relating to transportation. See, e.g., No. 40853, Yellow Freight System, Inc. of Indiana -- Petition for Declaratory Order -- Weighing Shipments (served Jan. 20, 1995) (deferring to jurisdiction of National Institute of Standards and Technology and states over truck weighing practices).

Even if the SEA concludes that the DEIS's attempt to mitigate every identified environmental impact is proper, the DEIS nonetheless recommends numerous mitigation measures that transcend, if not the Board's powers, its traditional approach to exercising those powers. The exercise of the Board's power to require mitigation is constrained by well-established limitations. The Board will not invoke its conditioning power where (1) no causal connection links the transaction and the alleged environmental harm, e.g., the alleged environmental harm is a pre-existing condition; (2) the mitigation is not narrowly tailored to remedy the alleged harm; (3) alternative remedies are available; (4) the mitigation would put the affected community in a better position than before the transaction; or (5) the mitigation, although potentially remedying a specific environmental harm, would reduce the overall public benefits of the transaction.[4] See Union Pacific Corp., Union Pacific R.R. Co. & Missouri Pacific R.R. Co. -- Control and Merger -- Southern Pacific Transportation Co., St. Louis Southwestern Ry. Co., SPCSC Corp., & the Denver & Rio Grande Western R.R. Co., Decision No. 44, Finance Docket No. 32760 at 144 (1996) (hereinafter "UP/SP"); Burlington Northern, Inc., & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka and Santa Fe Ry., Decision No. 38, Finance Docket 32549 (1995) (hereinafter "BN/SF"); DEIS, Vol. 1 at 1-10.

While the DEIS acknowledges these established limitations on the Board's imposition of environmental conditions, it fails to apply these standards in a number of critical respects. For example, the DEIS proposes that Applicants are required to (1) comply with various laws,

[4] The Board has applied these factors even in cases where it relies solely on an EA to meet its NEPA obligations.

regulations and private agreements that would be independently binding on them (measures that, by definition, are not necessary and for which alternative remedies exist), (2) install, with or without otherwise required state and federal funding, costly upgrades at highway/rail at-grade crossings that would more than rectify the claimed transaction-related adverse impacts on accident rates and highway traffic movements, and (3) commit enormous funds to the installation of new rail facilities, limit the number of trains moving over certain line segments and implement new operating procedures and other measures that would disproportionately and drastically undermine the public benefits of the Transaction, and actually reduce the level of transportation services to the public. In all of these respects, the proposed mitigation measures should be narrowed and/or eliminated, or alternative approaches laid before the Board, in the issuance of the FEIS.[5]

In addition, the NEPA process and the Board's conditioning power is not properly used to re-write industry-wide regulations and operating practices related to railway safety and operations. Just as the Board has recognized that its conditioning power may not be used to effectuate broad restructuring of the rail industry and the competitive balance among carriers, see, e.g., BN/SF at 55-56, so too it would be an inappropriate exercise of the Board's responsibility to consider environmental impacts of the Transaction as a predicate to impose conditions that fashion broad new safety and operating rules to which other major railroads are not subject and that fall within the regulatory responsibility of other federal and/or state agencies. The DEIS itself recognizes this limitation in its proposal not to impose noise-impact abatement measures falling within the FRA's regulatory jurisdiction over the sounding of train horns, see Vol. 1 at 3-36, but

[5] For specific applications, see Sections II.2, II.8, II.10 and II.11.

it has not conformed to this standard in several other respects, including its proposals to require Applicants to (1) comply with a proposed industry-wide FRA regulation governing rail inspections, (2) construct at-grade crossing protection devices at certain locations notwithstanding the existing regulatory regime governing selection and funding of grade crossing improvements, (3) maintain 15-minute separations between passenger and freight trains on certain line segments without regard to the prevailing industry standards and operating practices on similar rail lines, and (4) comply with various newly fashioned operating requirements and procedures governing the transportation of hazardous materials, again without regard to prevailing industry standards and operating practices in the handling of that traffic.

C. The Board Should Not Impose the Terms of Voluntary Agreements as Formal Conditions of Approval of the Transaction

The DEIS has suggested that the SEA intends to recommend that the Board impose as a condition of its approval of the proposed Transaction any negotiated settlement agreements or other mutually acceptable binding agreements pertaining to the Transaction that CSX and NS enter into with non-Applicants. Some parties have even suggested that all such agreements completed prior to the publication of the FEIS be imposed as environmental conditions to any decision approving the Transaction. Vol. 4 at 7-4. The SEA and the Board should, however, give serious consideration to whether the imposition of voluntary agreements as formal conditions is a prudent and necessary step.

First and foremost, the existence of a bilateral agreement between an applicant and an affected third party is an alternative mechanism for remediating an identified harm that obviates the need for the imposition of a formal condition. As the Board noted in UP/SP, the Board

expects Applicants to honor all representations and agreements. UP/SP at 12 n.14. Furthermore, the Board will have continuing oversight following any decision to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required. Accordingly, no reason exists to impose the terms of voluntary agreements as formal conditions to approval of the Transaction.

While it is true that the Board has in several instances involving railroad mergers and other consolidations conditioned its approval of the transaction in question upon the parties' compliance with various environmental mitigation measures, there is no basis in NEPA for requiring in all instances that negotiated agreements pertaining to mitigation of environmental impacts be made formal conditions of Board approval. As bilaterally-negotiated settlements, those agreements contain undertakings that go beyond the Board's standards for imposing conditions. Again, NEPA mandates a process, not a result. Moreover, where, as here, the Board has prepared an EIS rather than an EA, it is not necessary that the Board itself resolve each and every potential environmental impact that can be identified. A "process" resolution leaving the issue to private resolution or referring the issue to other regulatory agencies, federal or state, with expertise in the matter and established procedures and practices, may be the most desirable result. Not only is the DEIS's proposal for imposing conditions unnecessary in the context of an EIS (which requires that the Board balance the identified significant adverse environmental impacts with the identified systemwide environmental and commercial benefits of the proposed Transaction), it fails to heed clear limits in the practices applied by the Board as to the imposition of conditions.

Because of the amorphous nature of some of the perceived environmental impacts that may become the subject of negotiations between CSX and affected entities, it can be expected that some of the negotiated solutions to the impacts will fall outside the practices of the Board in imposing mitigation measures. Moreover, any insistence that the terms of a negotiated agreement be converted into a Board-imposed condition would have an obvious dampening effect on the ability of CSX to consider and agree to innovative, creative solutions to community concerns. The Applicants would likely be less willing to negotiate such agreements with the prospect hanging over their heads of the Board turning a voluntary, uniquely-tailored solution in a specific instance into a formal condition that could later be argued to have precedential effect because of the Board's imposition of the agreement as a condition of approval. The need to so limit its conditioning authority have long been recognized by the Board and the ICC which often favorably commented on settlement agreements but declined to impose them as conditions.

D. The Inability of Applicants and Third Parties to Enter Voluntary Agreements by the Date of the Board's Decision Does Not Necessarily Require the Imposition of Formal Conditions

Just as the Board should not impose the terms of voluntary agreements as formal conditions, the SEA and the Board should not presume that the lack of a voluntary agreement at the time of the issuance of the FEIS and/or at the time of the voting conference necessitates the imposition of a formal condition. As the DEIS itself recognizes, the consultation process is a far superior means for developing and implementing creative, mutually-beneficial solutions to local environmental impacts than is the formal conditioning process. The consultation process allows the parties to share responsibilities and costs in a manner that the Board could not impose

unilaterally. However, the consultative process cannot be expected to produce across-the-board agreements over the course of a mere few months. Creative solutions with public entities require many levels of review and approval before the public entity can commit itself to a binding agreement. Given these realities, the SEA and the Board should allow the consultative process to continue beyond either issuance of the FEIS, the voting conference or the implementation of the Transaction. Applicants propose that they report the status of the consultations to the Board as consultations are concluded or as otherwise appropriate. What the SEA and the Board should not do, and need not do to satisfy NEPA, is to cut short the consultation process and impose rigid conditions before the consultation process has had a full opportunity to produce optimal results.

E. The SEA Should Not Recommend the Imposition of Any Environmental Conditions that Require Applicants to Modify or Refrain from Implementing Their Respective Operating Plans Pending Implementation of Mitigation

Well-established Board and ICC precedent teaches that the Board will only impose a condition where the condition "will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits produced by the merger." BN/SF at 56, see UP/SP at 144. The approach of NEPA and the rulings of the courts as to the function of an EIS confirm the applicability of this balancing approach. The proposed Transaction is designed to produce a more efficient and competitive rail network. Key to the realization of these benefits is implementation on Day One (the day that the CSX and NS Operating Plans become effective) of those Operating Plans.

The projections of train traffic in Applicants' Operating Plans were not arrived at randomly. Quite to the contrary, the Operating Plans reflect the considered judgment of the respective applicants as to their best use of the two competing networks that will emerge from Board approval of the proposed Transaction. If the Board imposes a condition modifying Applicants' Operating Plans pending implementation of mitigation, neither Applicants nor shippers nor the American public will realize the competitive and other benefits of the Transaction on Day One. Instead, one or both of the Applicants will be required to operate their respective networks in a less than optimally efficient and competitive manner. The effects of such an impediment on competition may be long-lasting. The costs of not realizing the benefits of the proposed Transaction on Day One far outweigh the benefits of reducing a modest, temporary, and local environmental impact pending the implementation of mitigation. While Applicants have been and remain willing to work with affected communities to develop mutually beneficial mitigation measures, that mitigation should not come at the expense of the prompt, effective and enduring enjoyment of the overall public benefits that will result from Board approval of the proposed Transaction.

The situation here is readily distinguishable from UP/SP, where the Board imposed a condition [illegible] the UP Operating Plan until mitigation was implemented. In UP/SP, the SEA, after preparing an EA, found that the proposed transaction would have significant adverse effects in Reno, Nevada and Wichita, Kansas. Furthermore, the SEA concluded that additional studies were needed to identify adequate mitigation measures for these communities. Rather than delaying implementation of the entire transaction to prepare an EIS to take a "hard look" at the environmental impacts identified in the EA, the SEA chose to comply with NEPA by

recommending the complete and immediate prevention of any adverse environmental impacts. As the SEA had not yet recommended specific mitigation measures for Reno and Wichita, the SEA recommended, and the Board adopted, the only available option for avoiding the adverse impacts in the absence of an EIS: Prohibit the applicants from increasing traffic in Reno and Wichita until the completion of mitigation studies and the implementation of that mitigation.

Here, the SEA has chosen a different means of complying with NEPA, namely the preparation of an EIS, and does not have to recommend the elimination of every significant environmental impact, either immediately, or indeed, at all, as it was required to do in UP/SP. The SEA, therefore, should not use UP/SP as a model for developing its recommended environmental conditions. Instead, the SEA should recognize, when making its final mitigation recommendations, that the Board will only impose mitigation where the benefits of the mitigation outweigh any reduction to the public benefits to be realized by approval of the Transaction, and should provide the Board with the necessary tools to make this determination.

The Board, under an EIS, can weigh the benefits obtained from a constructive restructuring of freight rail transportation incident to a transaction within its jurisdiction against the necessary environmental impacts in determining whether mitigation should be ordered or the extent of mitigation. Likewise, it can and should weigh the benefits of the immediate systemwide efficiencies inherent in commencing execution of the Applicants' Operating Plans at once, rather than delaying the implementation of one or both of the plans in a specific area (which is apt to have impacts on transportation in other parts of the system) against permitting the environmental impacts to go unmodified for a period of time until plans for the remediation are finalized and/or the remediation put into effect.

Furthermore, it is essential that the SEA and the Board not allow a third party to impede approval of the Transaction by demanding that Applicants modify their Operating Plans either permanently or pending mitigation. Although Congress abolished the Interstate Commerce Commission in 1995, the Commerce Clause of the United States Constitution is still alive and well. The Commerce Clause grants Congress the power to regulate interstate commerce and where it has acted (and in some cases where it has not) prohibits the states from interfering with interstate commerce. Using its powers under the Commerce Clause, Congress has given the Surface Transportation Board, not any individual state or locality, the exclusive and plenary power to regulate railroad operations subject to Board jurisdiction, as well as railroad consolidations. See 49 U.S.C. §10501 (providing that the Board has "exclusive" jurisdiction over rail operations); Kings County, WA – Petition For Declaratory Order – Burlington Northern R.R.Co. – Stampede Pass Line, F.D. No. 33095 (served Sept. 25, 1996) (Board's exclusive jurisdiction with respect to operations over rail line preempts local statutes). Thus, so long as the Board finds that the proposed Transaction is consistent with the public interest, the Board should approve the Transaction, even if a state or locality protests loudly that it deems the local environmental impact unacceptable. Simply put, the national interest in interstate commerce must take priority over a local environmental impact, if the only feasible remediation of that local impact would deprive the public of competitive or efficient transportation.

F. The Proposed Transaction Will Result in Numerous Systemwide Environmental Benefits and No Systemwide Significant Adverse Environmental Impacts

The DEIS concludes that there are numerous positive, systemwide environmental impacts that would flow from approval of the Transaction. CSX recognizes that, because positive impacts

do not require extended discussion of potential mitigation approaches and measures, the amount of text devoted to a discussion of positive impacts in the DEIS is small in comparison to the discussion addressing certain localized adverse impacts that SEA has preliminarily determined warrant mitigation. The positive impacts are, however, substantial and should be addressed in the FEIS in a manner consistent with their significance. These positive impacts of the Transaction are manifest in every major area of environmental analysis: safety, transportation, air quality, and energy.

Safety: The DEIS observes that predicted decreases in rail activities "would result in a small overall decrease in likelihood of freight rail accidents and derailments." Chapter 4 at 4-10. The DEIS also correctly notes that the Transaction will reduce the opportunity for release of hazardous materials, resulting in "a slight safety improvement for rail transportation of hazardous materials and no significant systemwide adverse impacts related to hazardous materials transport." Executive Summary at ES-19. This predicted decrease in the likelihood of accidents and derailments tells only part of the safety benefits that will accrue from the Transaction.

The October 21, 1997 comments submitted by the Department of Transportation and Federal Railroad Administration in this proceeding correctly observed that, "CSX and NS have had the two best safety records among large U.S. railroads for the last six years." (DOT-3 at 17). In terms of the accidents/train miles measure used by DOT to assess rail safety performance, CSX has achieved the best record among all of the Class I railroads, with an accident rate that is one-half that of Conrail's. While Conrail's safety record has been commendable, the better record achieved by both CSX and NS offers a strong indicator that the Transaction will result in a net improvement of rail safety in the Eastern United States. The safety records of both CSX and NS

also stand in contrast to those of UP and SP. According to the DOT data described above, both of those Western railroads have had consistently higher accident rates than CSX or NS.

The level of safety planning, as reflected in the detailed Safety Integration Plans ("SIPs") submitted by CSX and NS, further underscore the positive aspects of the Transaction. CSX has been engaged in detailed planning for the safe integration of Conrail since the spring of 1997, and this planning will have consumed well over one year by the time a decision is due to be issued in this proceeding. That level of planning effort, and CSX's consultations with FRA concerning the integration of the railroads, is unprecedented in rail merger proceedings and underscores the importance that has been assigned to the achievement of a safe integration of the portions of the Conrail system allocated to the use of CSX. One important consequence of these planning efforts is that the best safety practices of CSX and Conrail will be identified and implemented on the expanded CSX system.

The Transaction will also significantly benefit highway safety. The truck diversion studies presented to the Board by CSX and NS indicate that a total of approximately 1 million intermodal units (trailers or containers) will be diverted from highway transport to the rail system. This diversion will result in a substantial net safety benefit. As noted in the DEIS, the associated reduction in truck-miles "could result in 1,600 fewer annual highway accidents," including 31 crashes involving one or more fatalities. This projected savings in human lives deserves substantial weight in the environmental analysis of this Transaction.

Transportation. The transportation benefits associated with the Transaction -- enhanced rail competition, more efficient routings, new single-line rail opportunities and an improved infrastructure -- are uncontested in this proceeding. The DEIS does not address these benefits at

any length, but correctly concludes that the proposed Transaction "would positively contribute to a net overall improvement in both rail and highway transportation systems." Vol 4 at p. 4-73. Among the positive impacts identified in the DEIS are a more efficient use of rail system resources, a shift of freight from publicly funded highways to privately funded rail lines, and enhanced competitiveness of the rail system with highway carriage. As the DEIS correctly states, the "reduction in truck miles traveled would result in beneficial effects on air quality, energy consumption and the use and associated safety concerns of the interstate highway system." Vol. 1 at 4-44.

The CSX Operating Plan describes, at some length the new intermodal transportation opportunities that will be made possible by the Conrail acquisition, resulting from new single-line services linking, e.g., the northeast and the southeast, and the upper midwest with the southeast. These and other new single line routes will allow an expanded CSX system to compete for the transportation of cargo that has long been dominated by motor carriers, resulting in significant diversions to cleaner, safer and more fuel efficient rail transport. In addition, CSX is investing in substantial infrastructure improvements to its rail system, including improvements to intermodal terminals and to rail lines that will carry substantial amounts of freight projected to be diverted from highway carriage. The DEIS thus correctly concludes that the Transaction will benefit the highway system, result in reduced traffic and provide many shippers with more efficient routings. Executive Summary at ES-21. Highway maintenance costs will also decline.

The DEIS also correctly concludes that the Transaction "will have no significant effect on commuter rail." Vol. 1 at 4-74. SEA properly determined that no transportation-related mitigation is required to address increased freight traffic on certain lines also used by New Jersey

Transit, Southeastern Pennsylvania Transportation Authority, the Maryland Rail Commuter System, Virginia Railway Express, or Amtrak.* As the DEIS states, "there is sufficient capacity on all of these rail line segments [used by Amtrak] to accommodate the [projected] increases in freight trains," and "[e]ach of the rail-line segments with commuter trains can accommodate the proposed Acquisition-related increase in freight traffic." Chapter 4 at 4-30 and Executive Summary at ES-20.

Air Quality. The DEIS properly recognizes that the Transaction will result in "an overall improvement in air quality." Chapter 4 at 4-70. SEA found that virtually all major emission components (including nitrogen oxides, breathable particulate matter, volatile organic compounds and carbon monoxide) will decrease as a consequence of the Transaction. These decreases are in large measure associated with the environmentally-friendly diversion of freight from highway to rail.

The DEIS also properly found another air quality benefit: "a reduction in the potential for accidental release of ozone-depleting materials . . ." Vol. 1 at 4-62. This reduction is the result of a projected Transaction-related decrease in total car-miles and in freight handling at yards.

Energy. As in each of the other major areas of environmental concern, the Transaction will result in a net benefit to energy resources. This benefit will be realized in part because of reduced fuel consumption associated with truck diversions and more efficient rail routings. The annual reduction in fuel consumption resulting from truck to rail diversions would amount to 133.6 million gallons. See Vol. 1 at 4-47. As a result, SEA concluded that the Transaction

* SEA did propose safety-related mitigation with respect to commuter and Amtrak operations on certain lines. This proposal is addressed in Section II.2 of these comments.

"would positively contribute to an overall net reduction in energy consumption." Vol. 1 at 4-73. (The DEIS, however, erroneously reduces the predicted fuel savings by 53.5 million gallons, an amount of fuel attributed to increased rail operations. What the DEIS overlooks is that this increased fuel use by CSX and NS will be largely offset by decreased fuel use by other railroads and transportation modes.) SEA also correctly recognizes that the Transaction provides opportunities for more competitive routings and transportation alternatives for energy resources and for recyclable commodities.

* * *

As noted above, it is easy to lose the forest for the trees in an environmental review process that focuses on areas where mitigation may be appropriate and necessarily addresses general, environmental benefits relatively briefly. In this case, the over-arching fact that should not be obscured in the FEIS is that this Transaction presents an opportunity to achieve an important, and very significant, net plus for the environment in the areas of safety, transportation, air quality and energy. These benefits enhance the public interest. The FEIS should categorically so conclude. That conclusion and the non-environmental benefits of the Transaction are the benchmark against which local impacts and their appropriate remediation, if any, are to be measured.

II. Comments on Specific Mitigation Recommendations

CSX submits the following specific comments on the preliminary mitigation recommendations set forth in Volume 4, Chapter 7 of the DEIS.

1. Installation of Emergency Information Signs at At-Grade Crossings

The DEIS recommends that CSX and NS install emergency information signs that prominently display a toll-free telephone number and a unique crossing number at all at-grade crossings with active warning device signals. In addition, the SEA recommends that CSX and NS provide 24-hour, seven-day-a-week staffing to respond to calls to the toll-free telephone number.

Independently of the proposed Transaction, after consultation with the FRA, CSX has already begun installing emergency information signs meeting the SEA's specifications at at-grade crossings throughout the current CSX network. CSX anticipates that installation will be completed in the spring of 1998. CSX plans to expand this program to the Conrail lines which will be allocated to CSX if the Board approves the Transaction. CSX plans to assign crossing numbers to the at-grade crossings on the Conrail system, install the emergency information signs, and include the Conrail crossings in its database as soon as possible but in no case later than two years after the control date. Further, CSX and NS will coordinate with the Conrail Shared Assets Operator to ensure that a similar program is implemented within the Shared Assets Areas within that same time frame.

CSX will stipulate that it will voluntarily implement the safety measures described above. That stipulation accordingly may appropriately be included in the FEIS for consideration by the Board in evaluating the overall environmental effects of the Transaction. However, it would not

be appropriate for the Board to make any such voluntary program a condition of Board approval of the Transaction because it is not directly related to any effect from the Transaction. The recommendation applies to all at-grade crossings -- including those at which traffic will not increase significantly and those at which traffic will decrease as a result of the Transaction. Nevertheless, because CSX believes that the recommendation will have safety benefits apart from the Transaction, CSX has already commenced to implement the program on its own system and will voluntarily expand the program to the Conrail lines which will be operated by it if the Transaction is approved.

2. Safety: Passenger Rail Operations

The DEIS includes the most detailed analysis of effects on passenger rail services ever undertaken in the review of a railroad control transaction. The DEIS analyzes in detail all of the line segments shared by passenger trains and freight trains and appropriately concludes that there is adequate capacity on the lines for both the passenger traffic and the projected levels of post-Transaction freight traffic. Vol. 1 at 4-22 to 4-40. The DEIS concludes, however, based on a detailed statistical analysis, that Transaction-related traffic changes will significantly increase the risk of accidents between freight trains and passenger trains on about 15% of the miles (531 of 3,573 miles) shared by passenger and freight trains, and that these segments may thus warrant special safety mitigation measures. Vol. 1 at 4-12.

CSX strongly disagrees with the conclusion of the DEIS that the Transaction will have any adverse effect on the safety of passenger rail operations. Both CSX and NS are experienced in safely handling passenger operations on their systems and in working cooperatively with Amtrak and passenger agencies to enhance safety. Both railroads have achieved outstanding safety records, and both will continue after the Transaction to work proactively with passenger operators to ensure continued safety.

The DEIS proposes that CSX establish passenger trains as "superior," and maintain 30 minute windows around passenger trains in relation to freight trains, on five CSX line segments over which there are both freight and passenger operations and where freight train operations are

expected to increase, albeit modestly.[7] Although the DEIS never explains the purpose of the rule which was not suggested by FRA, Amtrak or any commuter agency, the recommendation appears to be designed to prevent head-on collisions with freight trains and to prevent freight trains from running into the back of passenger trains operating on the same track. Proposed Mitigation Measure No. 2(A), Chapter 7 at 7.2.2.[8] In fact, the proposed mitigation would not enhance safety and would conflict with the FRA's exclusive right to regulate passenger train safety.

The CSX segments, identified in Table 7-3 for this mitigation, are:

Washington, D.C. to Point of Rocks, MD (C-003)
Savannah, GA to Jesup, GA (C-346)
Weldon, NC to Rocky Mount, NC (C-334)
Fredericksburg, VA to Potomac Yard, VA (C-101)
South Richmond, VA to Weldon, NC (C-103)

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[7] The DEIS is not internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See section 3.3.2, 3.3.3. Further, Chapters 5 and 7 are not consistent in their description of the proposed mitigation. The proposed superior train/train separation mitigation described in Chapter 7 of the DEIS contemplates that freight trains moving in the same or opposite direction on the same track on any of these line segments would need to be clear of the track at least 15 minutes before and 15 minutes after the expected arrival of a passenger train at any point. This proposed measure would thereby establish a 30 minute separation window around passenger trains moving on that track. See section 7.2.2 at p. 7-12.

By contrast, the discussion of mitigation of the individual line segments found in the state-by-state sections of Chapter 5 of the DEIS does not use the term "superior trains." Rather, Chapter 5 contemplates a proposed separation window under which freight trains, both opposing and moving in the same direction, would need to be clear of a point on the same track at least 15 minutes prior to the estimated arrival of a passenger train, no 15 minute window after a passenger train is proposed in Chapter 5. See sections 5-GA.4 at p. GA-5, 5-MD-5.1 At p. MD-9, 5-NC.4.1 at p. NC-4, 5-VA.5 at p. VA-8 and 5-DC.5.1 at p. DC-7. Further, whereas the mitigation proposed in Chapter 7 contemplates that the separation requirements would not apply when the freight train is moving in the opposite direction away from the passenger train, there is no similar qualification in the Chapter 5 description of the proposed mitigation.

[8] Identical mitigation is proposed for four NS line segments and, subject to possible trackage rights for CP, a fifth NS segment.

Amtrak operates on each of these segments. In addition, CSX-operated MARC trains provide commuter services on the Washington/Point of Rocks line segment ("Point of Rocks" line) and Amtrak-operated VRE trains provide commuter services on the Fredericksburg /Potomac Yard segment ("Fredericksburg line") All but the Point of Rocks line form part of the north-south CSX corridor described in the CSX Operating Plan as the Atlantic Coast Service Route, a planned major traffic lane for transporting intermodal and general merchandise traffic between New England, the Middle Atlantic states, the Southeast and Florida.

CSX will show here as follows:

First, no passenger safety mitigation is warranted because, by any standard, operations on these line segments -- which are already subject to FRA safety oversight -- are exceptionally safe and will remain equally as safe following the Transaction. The statistical analysis conducted by SEA to ascertain whether mitigation is warranted relied on data and assumptions that overstated the Transaction-related impacts of modestly increased freight traffic. For example, in conducting its statistical review of passenger/freight train collisions, the DEIS utilized a passenger train/freight train collision rate that was derived from collisions of a type that are unrelated to increased freight operations and that would not be addressed by the proposed mitigation, i.e., collisions resulting from freight trains and passenger trains operating on different tracks or from passenger trains hitting parked freight cars. The actual rate of passenger trains being hit head-on or from behind by freight trains operating on the same track, or vice-versa, is closer to zero, a fact that underscores that the mitigation proposal addresses an unlikely safety risk.

Second, even assuming that some mitigation might be warranted on certain line segments, modern signaling systems and other safety controls offer the highest levels of safety without the cumbersome procedures and efficiency sacrifices inherent in the proposed mitigation procedures. Train superiority and temporal separation practices of the type proposed in the DEIS, which are not even listed among the potential safety mitigation measures identified in Chapter 3 of the DEIS, have been outdated for decades, and their re-introduction on CSX now could well detract from safety.

Third, the proposed 15/30 minute separations would effectively curtail or significantly delay freight service on two of the five CSX line segments (Point of Rocks and Fredericksburg) during key daytime periods, imposing a substantial burden on commerce or forcing a reduction in the number of currently scheduled passenger trains on these lines. The proposed separations would not only result in CSX's inability to accommodate additional passenger service on these lines, but could well impair CSX's ability to divert time-sensitive traffic from highways to its rail system, thereby undermining important Transaction-related efficiency and safety benefits.

Fourth, to the extent that any mitigation might be appropriate, such mitigation should be in the form of a requirement that CSX consult with the FRA and the passenger agencies concerning safety enhancements that might be considered for these line segments. A consultation requirement would fully comport with the Board's obligation under NEPA to identify matters that other agencies might more appropriately address.

A. No Mitigation is Warranted on These Line Segments.

1. The Board Should Not Adopt Mitigation Measures That Interfere

With the FRA's Exclusive Authority to Regulate the Safety of Passenger Operations.

The Board should tread cautiously before imposing any special safety condition applicable to train operations, particularly passenger train operations. While CSX does not question the Board's right to identify legitimate, Transaction-related safety concerns through the NEPA process, the propriety of any proposed condition in the passenger safety area must be measured against the FRA's "plenary authority over the safety of the railroad industry."[9] Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. 20101, grants the FRA the power to regulate "every area of railroad safety." The FRA has exercised that authority extensively, and as discussed further below is currently reviewing a variety of passenger train safety issues.

Congress has made clear that the FRA's role in regulating passenger train safety is exclusive. In explaining the 1973 deletion of language from section 801 of the Rail Passenger Service Act of 1970 that allowed the ICC to prescribe regulations "necessary to provide safe . . . service," the Conference Report on the Amtrak Improvement Act of 1973 stated as follows:

> The Conference substitute rewrites Section 801 of existing law to clarify the jurisdiction of the Department of Transportation and the Interstate Commerce Commission over safety related and service related issues. First, this provision resolves a possible legislative inconsistency which results from the fact that Section 801 of existing law, as presently worded, authorizes the ICC to "prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service." The Federal Railroad Safety Act of 1970, enacted only two weeks prior to the rail passenger Service Act, defined the Secretary of Transportation's jurisdiction over railroad safety to include "all areas of railroad safety." It is the intent of the committee of

[9] DEIS, Vol. 5 App. B at B-2.

> conference to make clear that the Secretary's jurisdiction over railroad safety is exclusive. The ICC, in prescribing its own regulations with respect to the adequacy of service, should take account of safety regulations prescribed by the Secretary of Transportation.

H.R. Conf. Rep. No. 93-587, at 12 (1973), reprinted in 1973 U.S.C.C.A.N. 2331, 2342 (emphasis added).

Congress's message was unambiguous -- the FRA has the sole authority to regulate rail safety. Moreover, nothing in the ICC Termination Act changes that fact. To the contrary, that statute curtailed the Board's limited authority with respect to commuter operations. See 49 U.S.C. 10501(c)(2)(providing that the Board does not have jurisdiction over commuter agencies other than with respect to access to facilities).[10] In view of the Board's lack of authority to regulate with respect to passenger carrier safety matters, and FRA's exclusive jurisdiction and ongoing activity in the area of passenger carriage safety, the Board should defer to its sister agency before adopting any passenger safety conditions, particularly a condition as far-reaching as that proposed in DEIS mitigation measure 2(a).[11]

[10] See H. Rep. 104-422, 104th Cong., 1st Sess. at 167 (Board jurisdiction modified to "reflect curtailment of regulatory jurisdiction in areas such as passenger transportation.")

[11] In fact, were the STB to impose the type of superiority/temporal separation proposed in the DEIS, such a condition could conflict with CSX's statutory right under section 402(a) of the Rail Passenger Service Act of 1976, 49 U.S.C. 24318, to petition for relief from the preference rule for Amtrak operations. The proposed freight passenger train separation condition is entirely unlike the preference for Amtrak trains that is contemplated by that statute or the CSX/Amtrak contract. Section 402(a) provides that except in an emergency, "Amtrak has preference over freight transportation in using a rail line, junction or crossing unless the Secretary of Transportation orders otherwise under this subsection." Neither this statute nor the Amtrak contract require any temporal separation between Amtrak and freight trains. The purpose of the statutory preference for Amtrak, in fact, has nothing to do with safety, but rather was designed to address on-time performance issues that arose in the 1970's. See Hearings before the Senate Committee on Commerce on S. 1763, 93rd Cong., 1st Sess. at 46, 105 (1973).

The FRA in fact has several pending rulemaking proceedings and other projects underway in connection with passenger safety. These include Passenger Equipment Safety Standards (FRA Docket No. PCSS-1), 62 Fed. Reg. 49728 (Sept. 23, 1997) and Passenger Train Emergency Preparedness (FRA Docket No. PTEP-1), 62 Fed. Reg. 8330 (Feb. 24, 1997). It is noteworthy that FRA has acknowledged the breadth of its interest in this area in its September 23, 1997 rulemaking notice in the Passenger Equipment proceeding:

> rail passenger safety does involve the safety of the railroad system as a whole, including the track structure, signal and train control systems, operating procedures, and station- and platform-to-train interface design -- in addition to passenger equipment safety. To that end, FRA has active rulemaking and research projects in a variety of contexts that address non-equipment aspects of passenger railroad safety, including signal and train control systems.

62 Fed. Reg. 49732.

The proposed separation measure could well intrude upon, or conflict with, pending or future FRA proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activities of more than one safety regulator should be scrupulously avoided.

The Board should also take note of the fact that neither the FRA nor any participant in the rail safety community known to CSX has proposed a temporal separation rule as a means of enhancing passenger train safety. Neither Amtrak, VRE nor MARC (nor any other commuter agency) has requested the proposed mitigation -- or any safety mitigation on any line segments -- in their filings with the Board. CSX works closely with these agencies on safety issues, and at no

point in CSX's safety-related dealings with any of these agencies have the notions of passenger train superiority or mandated temporal separations of trains as a means of ensuring safety been raised by any of these parties.

While Amtrak and VRE have filed comments with the Board requesting that certain conditions be imposed in connection with the Conrail acquisition (and MARC, through the State of Maryland, has supported the Transaction without requesting any conditions) none of these agencies have claimed that the Transaction will serve any detrimental impact on the safety of their operations on any CSX lines. Nor have any passenger groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any CSX lines, including the five lines identified by SEA for mitigation.

As a matter of sound public policy and deference to its sister agency, the Board should not intrude into a passenger safety area reserved for another agency that is already active on these matters. Nothing in NEPA requires that it do so. Rather, in addressing passenger safety mitigation, the Board appropriately fulfils its NEPA role by identifying potential safety issues for the FRA, leaving it to the agency to address those issues as it best sees fit. See Robertson, 490 U.S. at 352-353 (NEPA "imposes no substantive requirement that mitigation measures actually be taken," agency preparing NEPA document fulfils its duty by identifying and evaluating environmental consequences that can be addressed only by another agency).

2. The DEIS Fails to Justify the Conclusion that Any Mitigation is Warranted on the Identified Line Segments.

In determining the significance of impacts on passenger train safety, the DEIS first identified an annual rate at which passenger/freight train accidents occur. The DEIS then

identified the line segments shared by passenger and freight trains on which there would be an increase of at least one freight train/day as a result of the Transaction. Using the accident rate data, the DEIS then determined for each of the identified line segments (a) whether the Transaction-related change in the projected accident rate on each line segment would be greater than a presumed annual fluctuation of 25% and (b) whether the accident frequency was less than one accident in 150 years. CSX has several comments to offer on the DEIS methodology and the significance factors used in the DEIS as follows.

Appendix B of the DEIS explains that one element of the calculation of accident potential on the line segments that were reviewed in connection with the DEIS was a factor that assumed a passenger/freight train collision rate of 1.25 annually for Amtrak trains and 0.25 annually for commuter trains. See Vol. 5A, App. B at B-16. CSX understands that these accident rates were determined based on a review of freight/passenger collisions over a four year period, 1993 through 1996, inclusive.

Several points emerge from a review of the collisions that were considered in the preparation of the DEIS. First, there have been very few passenger/freight collisions in recent years. Second, an analysis of the collisions considered in the DEIS analysis shows that the proposed mitigation addresses a "problem" of passenger/freight train separation distances that does not justify the type of radical mitigation proposed, much less any mitigation.

Passenger/freight train collisions are very rare. Six passenger/freight collisions that occurred between 1993 and 1996 were considered in the calculation of the accident rates used in the DEIS analysis. There have in fact been only five such collisions during that four year period, all but two of which occurred on the lines of Western railroads.

The DEIS assumed that there were five Amtrak/freight train collisions and one commuter/freight train collision during the four year period studied, thus explaining the 1.25 and 0.25 annual accident rates. However, the one collision involving a commuter train was not properly considered because it was not a commuter/freight train collision. Rather, that one accident was an Amtrak/MARC collision in Silver Spring, Maryland in February 1996. Because this was a collision between two passenger trains, with no freight train involved, it should not have been counted in determining the rate of freight/passenger collisions. Accordingly, the actual annual rate of commuter/freight collisions during the four year study period was zero, not 0.25.

Further, a closer analysis of the considered Amtrak accidents shows that the proposed separation rules are designed to address a situation that experience shows is highly unusual. At least four of the five considered Amtrak collisions occurred in circumstances that would not be addressed by the proposed mitigation measure, i.e., circumstances other than passenger and freight trains sharing the same track and traveling under power too closely to one another. The September 1993 collision that was considered in calculating accident rates occurred when an Amtrak train hit parked freight cars on a siding that was not long enough to accommodate the freight and passenger cars. The May 16, 1994 accident involving a CSX and Amtrak train occurred when the Amtrak train was struck by a trailer that had become unfastened from its mooring on a flat car that was part of a CSX train on an adjacent track and protruded over the track on which the Amtrak train was moving.[12] Similarly, the February 1995 incident involving an

[12] The CSX train was operating on an adjacent track, and because it was on a different track would not have been subject to a separation rule. CSX has taken several steps to prevent the recurrence of this type of accident, including improved securement of intermodal trailers.

Amtrak and a UP train occurred when the Amtrak train struck a load of steel that was projecting from a UP train located on an adjacent siding. A fourth collision that was considered occurred on BN's lines in March 1995, and was caused when the brakes on several parked BN freight cars failed, causing those cars to hit an Amtrak train. The freight cars were not connected to a locomotive at the time of the accident.

This review shows that at least four of the five collisions from which the 1.25 annual accident rate involving Amtrak trains was calculated occurred in circumstances that the proposed train separation mitigation rule would not have addressed, i.e., circumstances that are unrelated to the level of freight train traffic on the same track as the passenger train traffic. These accidents did not involve freight and passenger trains moving under power and operating on the same track, and thus a separation rule designed to address freight and passenger trains sharing the same track would not have prevented the accidents. The appropriate annual accident rate that should have been used was thus 0.25 for Amtrack accidents, not 1.25.[13]

Had the appropriate (lower) accident rates for the type of accident of concern (i.e., "head-on" and "hit from behind" accidents related to increased levels of freight operations) been used in the calculation of post-Transaction impacts, the predicted annual increases in accident rates shown on Attachment B-2 of Appendix B to the DEIS would have been markedly different.

[13] The remaining collision considered in calculating the 1.25 annual accident rate was a March 1995 accident involving an Amtrak train operating on the BN system. In that incident, the Amtrak train, using a wye connection not normally used by passenger trains, backed into a BN locomotive located on the connection. It is not clear from the available facts that the proposed mitigation would have addressed this type of incident.

The expected post-Transaction passenger accident rate increase would have been much lower, underscoring that no mitigation is warranted on any of the identified line segments.

In fact, the proposed mitigation also would not address the causes of any of the few major collisions involving passenger trains colliding with other trains over the last several years. A summary of these collisions is set forth in an FRA rulemaking notice on Passenger Equipment Safety Standards, 62 Fed. Reg. at 49730 (Sept. 23, 1997). Not one of the major collisions involved a passenger train colliding with a freight train operating on the same track. The one collision involving a freight and passenger train that ended up on the same track was the 1987 collision in Chase, MD between a Conrail and an Amtrak train. However, that collision resulted when the Conrail engineer chose to ignore signals and occupy a track without permission. A separation rule of the sort proposed here would not have prevented a collision resulting from such actions by an engineer, who may have been disabled by drug use.[14]

The rate of passenger/freight collisions involving freight trains hitting passenger trains from behind or vice-versa on the same track is thus near zero. The facts thus show that passenger train safety mitigation designed to address an increase in the level of freight train operations is simply not warranted.

In addition, the 25% accident variability rate and 150 year accident occurrence factor used in the DEIS to assess significance appear to have be arbitrarily chosen, and the use of these factors would overstate Transaction impacts. The criteria used in the DEIS to assess the significance of safety impacts on passenger train operations was based on an assessment of

[14] The DOT/FRA drug testing rules were not in effect at the time. Neither were the rules regarding engineer certification, which impose penalties for abuse of prohibited substances.

(1) post-Transaction accident variability and (2) a prediction of post-Transaction accident frequency. The DEIS identified for mitigation those line segments that, post-Transaction, would have a passenger/freight train accident variability rate of 25% or more and experience such an accident every 150 years or less.

A 25% accident variability criteria was chosen as a conservative proxy for the 30% annual accident variability rate that the DEIS reports for passenger train accidents over the last several years. See Volume 5A, App. B at B-17-B-18. However, the DEIS erred in using an annual accident variability rate as a "significance" factor -- if accidents varied 30% from some level before the Transaction, they can also be expected to vary 30% annually post-Transaction.

Instead of using the annual accident variability rate (or a "conservative" variation of it) as a measure of significance, the DEIS should have analyzed anticipated percentage increases in passenger train accidents that are Transaction-related in determining an appropriate measure of significance. CSX has undertaken such an analysis based on the post-Transaction accident percentage increases shown on Attachment B-2 of Appendix B. This analysis is reflected in the histogram of percentage changes in passenger accident rates set forth as Exhibit 1 and on the distribution chart of post-Transaction accident percentage increases set forth as Exhibit 2. Both of these exhibits are based on the data in Attachment B-2, which as shown above overstates the anticipated post-Transaction accident rates. A review of the distribution percentage changes based on post-Transaction increases in passenger accidents reveals that accident percentage increases of 39% or greater lie outside the expected range of the rate increases. The DEIS could appropriately have used a "conservative" factor of a "greater than 32%" increase in the post-Transaction accident rate as a measure of significance. This is because 32% is the end point of

the observed range of observations that are not "outliers," i.e., that are part of the contiguous distribution of observations as shown on both exhibits. Had this more appropriate factor been used, four of the five CSX line segments would have dropped out of the mitigation pool-- Point of Rocks (29%), Weldon – Rocky Mount (30%), South Richmond – Weldon (25%) and Savannah - Jesup (32%).

As to the 150 year accident frequency factor, as discussed in greater detail below in connection with freight train safety (Mitigation Measure 7), the actual accident rate for each rail route mile is one accident every 49 years. Thus, a 70 year frequency factor would be quite conservative. That standard is met with respect to all of the CSX line segments identified for mitigation, except South Richmond-Weldon. However, the accident variability rate on that line segment is only 25%, which is lower than the significance threshold that CSX submits SEA should have used.

B. The Proposed Mitigation Relies on Archaic Notions of Train Operation That Overlook the Existence of Modern Signaling

Even assuming that some passenger safety mitigation were warranted, the proposed assignment of "superior" status to one type of train over another, and the proposed temporal separation of trains (e.g., the 15/30 minute separation rule proposed in the DEIS) would re-introduce into railroading operating procedures whose days have long since come – and are now long since gone. The proposed mitigation is outdated in concept and would detract from safety. While train superiority and temporal separation rules played a role in ordering train operations in the era prior to the introduction of modern train signals and communications, these procedures

were rendered obsolete beginning in the early part of this century, upon the advent of modern signals. Today, neither FRA rules nor rail operational rulebooks utilize the concepts of train superiority or temporal separation. Even when such rules were in effect -- decades ago and prior to the advent of modern signals -- rail rulebooks provided for a train to clear 5 minutes ahead of a passenger train schedule. On non-signaled main tracks, trains followed with a ten minute interval. Trains were never required to remain clear of the track after passage of a train, merely to follow according to signal rules or the "dark territory" (no signals) separation prescribed. A 30 minute "balloon" around each passenger train was unheard of, even in the 1940's. Further in the era when separation rules were in effect, such "superiority" rules were not designed as a safety measure at all, but as a means of enhancing the opportunity for trains to maintain on-time schedules.

Each of the five CSX line segments identified for mitigation is fully signaled with the modern signals used in large portions of the CSX system. Each line is equipped with Traffic Control System signals ("TCS"). TCS is a remote, dispatcher-controlled centralized traffic control system that provides the train engineer with substantial information about authority for movement including speed at control points, in addition to the "train or broken rail in block" information provided by intermediate block signals.

These signals and traffic control systems allow CSX trains and passenger trains to operate over the same track with safe headways of approximately four to five minutes between the trains. Such signals and systems provide tolerances that allow all trains, both freight and passenger, to safely share the same tracks. These systems are designed to prevent train collisions, while enhancing track capacity and service efficiency. The systems are recognized as safe by the FRA

and are in use throughout the rail industry. The analysis of the collisions discussed above underscores the fact that signals are in fact working to prevent trains from being hit in the rear.

In addition, the Point of Rocks and Fredericksburg line segments are double tracked and the latter segment is, in sections, triple tracked. Also, none of these line segments will experience a significant increase in the level of freight train operations -- those increases will range between 4.6 and 7.1 trains/day. These added frequencies can be accommodated with no compromise in safety. There are in fact several other line segments identified at Attachment B-2 to Appendix B of the DEIS on which both freight and passenger service levels are today much higher -- with no safety problem.

Modern signals and centralized traffic control provide a uniform and proven method of achieving the safe separation of trains that the DEIS seeks. By contrast, the temporal separation that is envisioned in the DEIS would not enhance safety beyond the levels achieved through these modern signal and traffic control systems, but could well detract from the safety of rail operations. The proposed mitigation measures would effectively undermine the utility and consistency of these safety systems on five line segments, in favor of an unconventional, non-technological approach for those segments of the type that pre-dates modern railroad operations. The introduction of this type of unusual operating rule on five line segments would undermine the safety that is achieved through the use of the uniform rules now in effect, introducing a "wild card" into CSX train operations. From a safety perspective, the introduction of such non-uniform rules enhances the possibility of confusion and human error -- thereby resulting in the real potential for a net reduction in safety.

Moreover, as noted above, the proposed mitigation is also not consistent with the DEIS description of appropriate passenger train safety mitigation, as set forth in Chapter 3 of the DEIS. Section 3.2.3 lists a series of potential passenger/freight train safety mitigation measures that the DEIS deemed appropriate to consider in connection with its analysis of acquisition-related safety impacts, but does not include passenger train superiority or temporal separations on the list.

The measures that are identified in section 3.2.3 (and incorporated for passenger trains by section 3.3.3) offer a more appropriate series of potential approaches to the enhancement of operating safety on lines over which both freight and passenger operations are conducted. As described in Exhibit 3 to these Comments, CSX already adheres to each of the pertinent safety mitigation measures that are identified in Chapter 3 of the DEIS with respect to the five line segments at issue. These measures provide a formidable, uniform and consistent measure of safety for those five line segments, consistent with modern procedures and technologies. The Conrail acquisition will not undermine, or change in any way, the utility of any these safety measures, and thus no mitigation is required.

C. The Proposed Mitigation Would Significantly Impair Operations on the CSX Lines, Lead to More Truck Traffic and Eliminate Important Transaction-Related Benefits

Were the proposed mitigation rule adopted, it would cause huge disruptions to CSX's north-south operations, effectively disabling CSX's use of the Fredericksburg line segment for freight movements and eliminating significant Transaction-related safety and transportation benefits resulting from improved intermodal service. In these circumstances, the absence of any demonstrable safety benefit offered by the proposal, and the absence of any evidence that the

modestly increased level of freight operations poses a risk to passenger safety, strongly argues against adoption of the proposed mitigation.

A 15/30 minute separation rule on the CSX system would make it impossible for freight trains and passenger trains to share the same tracks during periods of significant passenger use of the tracks on the Fredericksburg and Point of Rocks line segments, over which both commuter and Amtrak operations are conducted. Both freight and passenger service would suffer as a consequence.

Simulations undertaken by CSX have shown that the 30 minute separation balloon would have the effect of terminating or severely curtailing and delaying freight service on the Fredericksburg line (and thus on CSX's Atlantic Coast Service Route) for several blocks of daytime hours, particularly in the morning, late afternoon and early evening, or conversely, sharply reducing passenger service during those key hours. Assuming the current level of passenger service was maintained, CSX would have to radically alter its train operations and would be unable to meet its goals of providing enhanced service to time-sensitive intermodal freight moving on the Atlantic Coast Service Lanes. Alternatively, CSX might not be able to continue to accommodate the high level of passenger use of this line segment, which now accommodates 21 Amtrak trains and 12 VRE trains daily. While the level of impacts would not be quite as dramatic on the Point of Rocks line (which now accommodates 8 Amtrak and 17 MARC trains), it would be considerable and interfere significantly with freight operations on that line segment as well.

The massive interference with CSX's major north-south line would not only impair efficient rail operations, but would disable CSX's efforts to divert time-sensitive intermodal

freight from less safe, and less environmentally friendly, highway carriage to the national rail system. Indeed, one of the major public benefits of the CSX/NS acquisition of Conrail is the substantial improvement of intermodal transit times on the major "I-95" corridor between the Northeast and Southeast and the consequent projected diversion of large volumes of truck traffic to new Boston-Florida single-line rail service provided along the Atlantic Coast Service Lane. Four of the five CSX line segments on which the proposed mitigation would apply (all but the Point of Rocks segment) are vital links in the new north-south intermodal service that CSX proposes to initiate. The transportation benefits of that service would be sacrificed as a consequence of this proposed mitigation measure.

Safety would also suffer if the diversions are not achieved. According to DOT statistics, in 1993 (which is representative) the accident rate per ton mile was 0.4382 for trucks and 0.0015 for rail.[13] Rail diversions thus offer a safety enhancement, as the approximately 300% lower rail accident rate illustrates. (The Environmental Report submitted with the Application reports that projected highway to rail diversions would result in a total of over 1,690 fewer annual truck crashes, including 429 crashes involving injuries and 21 crashes involving one or more fatalities.) A large number of projected diversions to the CSX Atlantic Coast Service Route are predicated on the diversion of freight off of the "I-95" Corridor -- over 26,000 truckloads annually. See Application, Volume 2A, Verified Statement of Joseph [illegible] at 257. The safety benefit associated with this large number of diversions will obviously be sacrificed in whole or large part were the proposed mitigation adopted.

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[13] Source: DOT: 1993 Commodity Flow Survey.

Further, the availability of passenger transportation could also suffer. If the proposed separation windows were adopted, CSX would be unable to entertain any proposals from commuter agencies to expand their services on these line segments, and would need to carefully re-evaluate its options with respect to continued passenger operations on certain segments. The proposed mitigation would effectively destroy the operational basis on which CSX is able to accommodate extensive Amtrak and commuter services on its lines, and hinder CSX's ability to work cooperatively with these passenger service providers with respect to future passenger service enhancements.

D. Any Additional Safety Measures Should Be Carefully Considered in Coordination with the FRA and the Passenger Agencies

For all of the reasons stated above, CSX does not believe that any special mitigation measures are called for in connection with the five line segments identified for mitigation in the DEIS. However, if any mitigation were to be imposed, the Board could appropriately consider a provision for consultations by CSX with the FRA and other relevant parties over possible further passenger train safety enhancements that may be appropriate for these line segments. Such a mitigation approach would be consistent with the settled proposition that where other governmental agencies have jurisdiction over matters that might warrant mitigation, the Board, lacking such jurisdiction, satisfies its NEPA obligations by identifying the issues that those agencies might address. See Robertson, 490 U.S. at 352-353; CEQ Notice, 46 Fed. Reg. 18031-32 (an EIS can appropriately identify matters outside the lead agency's jurisdiction so as to alert appropriate officials of other agencies).

CSX already retains an open dialogue on safety issues with the FRA and the passenger agencies. It is prepared to engage in careful and considered deliberation and study of safety issues on these line segments with all interested parties, specifically, FRA, Amtrak, VRE and MARC. Such considered rail industry and FRA safety consultations offer the appropriate response to any significant safety concerns involving passenger operations that may be identified.

3-6. Safety: Hazardous Materials Transportation

The DEIS includes the most detailed analysis of hazardous materials transportation ever undertaken in the environmental review of a control transaction. For the first time, the SEA required Applicants to isolate the hazardous materials component of their projected post-Transaction traffic so that potential changes in hazardous materials flows could be separately analyzed. The total volume of hazardous materials transported by rail is not expected to change materially as a result of the Transaction. However, because of changes in traffic patterns, some line segments will experience an increase in annual carloads of hazardous materials while other line segments will experience no change or a decrease. The DEIS proposes a series of measures designed to address the safe transportation of hazardous materials. As discussed further below, some of these measures overlap with existing CSX and industry practices, while others are not Transaction-related. Although CSX does not believe that any special mitigation measures are required, CSX does not object to a number of the recommendations, as explained below.

Any proposed measures should be considered in light of the fact that the DEIS concludes that the Transaction "should result in a slight safety improvement for rail transportation of hazardous materials and no significant systemwide impacts relating to hazardous materials transport." Executive Summary at ES-19. Any proposals should also consider that CSX has an

extraordinarily successful record in the safe transportation of hazardous materials -- e.g., only 5 cars transporting hazardous materials experienced a release in 1996 even though 338,000 hazardous materials carloads were transported that year by CSX. CSX's pro-active efforts to enhance the safety of hazardous materials transportation are described at length in the Environmental Report that accompanied the Application (Volume 6A at 121-125) and in the CSX Safety Integration Plan at 168-177. CSX will not describe here all of the programs that it has in place with respect to the safe transportation of hazardous materials (several of which are described below), but encourages SEA to make note of these measures and programs in the FEIS.

The proposed series of mitigation measures concerning the transportation of hazardous materials would apply to line segments that would, based on three year traffic projections presented by CSX and NS, become so-called "key routes" and "major key routes."[14] As the DEIS reports, CSX determined just prior to the publication of the DEIS, that the data that CSX supplied to SEA overstated the extent of post-acquisition hazardous materials transportation. CSX has now supplied corrected data to SEA.

The key route concept comes from voluntary industry guidelines developed by the Association of American Railroads ("AAR"), to which CSX, NS and Conrail all subscribe. AAR's Key Route Guidelines are set forth in AAR Circular No. OT-55-B, "Recommended Railroad Operating Practices for Transportation of Hazardous Materials." According to the AAR definition, "key routes" are those line segments "with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 car loadings of

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[14] As discussed further below, the term "major key route" does not comport with accepted industry terminology and CSX recommends not using this terminology.

PIH (Hazard Zone A or B), flammable gas, Class 1.1 or 1.2 explosives (Class A), and environmentally sensitive chemicals, over a period of one year."

A table showing the 18 current or allocated CSX line segments and Shared Assets segments that CSX has determined (based on traffic projections) might become key routes post-Transaction is attached to this submission as Exhibit 4. Seven of the line segments would become new key routes based on traffic projections. These are shown in Part B of Exhibit 4.[17] An additional 11 line segments, nine of which are today key routes, are projected to experience a doubling in hazardous material traffic and carry hazardous materials volumes in excess of 20,000 carloads annually. These routes, shown on Part A of the Exhibit, are addressed in connection with proposed Mitigation Measures 4(A) and 4(B).

Mitigation Measure 3(A). This measure would require that CSX comply with the OT-55-B guidelines before increasing the number of cars carrying hazardous materials on the line segments that are projected to experience increased hazardous materials traffic. This measure would apparently apply even if those line segments do not actually meet the key route thresholds.

CSX does not believe that any condition is warranted because it adheres as a matter of long-standing practice to the industry-standard key route safety procedures set forth in the AAR Circular. Thus, to the extent that any line segments meet the key route volume thresholds, CSX would apply the key route safety measures. Further, as Exhibit 4 shows, several of the line

[17] An analysis of the CSX hazardous materials traffic plan data identifies six additional segments on which traffic projections indicate that the key route thresholds might be met. Those are segments C-766, C-767, C-768, C-769, S-232 and S-233, all currently on the Conrail system. No mitigation is warranted with respect to these line segments because Conrail already adheres to the Circular OT-55-B measures on these segments and CSX will continue that practice.

segments at issue are already key routes. No mitigation of the sort proposed in measure 3(A) is required for these line segments.

In the event that the Board imposes a condition, however, CSX recommends that the condition be structured so that CSX may retain the flexibility to adhere to any new industry standard that replaces, modifies or supplements the existing requirements in Circular OT-55-B. Those standards were developed in 1993, and could well be revised in future years. CSX should have the flexibility to adhere to any revised version of these standards that may be adopted in the future without the need to seek Board approval to modify a condition that requires adherence to the Circular OT-55-B requirements.

CSX also notes that the statement in the DEIS (Vol. 4 at 7-13) that the AAR's key route guidelines include "measures for visual rail defect inspections at least twice per week" is incorrect. Section II, paragraph B(2) of Circular OT-55-B states that main track on key routes "must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times each year; and sidings must be similarly inspected no less than one time each year." FRA guidelines dictate minimum standards for track inspections.

As to the timing of implementation of any condition that may be adopted, CSX notes that a determination of whether a route is a key route or not is generally made based on an assessment of the level of hazardous materials traffic on the route during the previous twelve months. CSX is nonetheless prepared to comply with existing Key Route requirements in Circular OT-55-B for the identified line segments as of "Day One" (the date on which CSX and NS will implement their separate operating plans). However, any such condition should expire at the end of three years following Day One, at which time the determination of whether a line segment should be treated

as a key route should be made in the same manner that it is made throughout the rest of the CSX system (and the national rail system generally), i.e., on the basis of the actual level of hazardous materials carried. If the key route criteria are met, the key route obligations would attach to the specific line segment.

A three-year time frame for any mitigation measure concerning these line segments is appropriate because the traffic projections on which the mitigation has been proposed are three-year projections. If the projections prove accurate with respect to these line segments, then the key route test will have been met and CSX would apply the key route measures identified in the AAR Circular. On the other hand, CSX should not be bound to adhere to the key route obligations on line segments as to which the projections for increased hazardous material traffic in excess of the key route criteria are not met.

Proposed Mitigation Measure 3(A) also contemplates preparation of a Hazardous Materials Emergency Response Plan ("HMERP") for each local emergency response organization along the identified line segments. CSX understands that such organizations are the Local Emergency Planning Committees ("LEPC's"). CSX notes that under the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§11001 et seq., LEPC's are already required by law to develop hazardous materials emergency response plans. While this statute imposes no obligations on railroads, CSX will comply with the proposed mitigation measure, which it intends to implement by preparing and distributing an HMERP to appropriate county officials for distribution to the LEPC's. This HMERP -- which would supplement the plans already developed by the LEPC's -- would embrace information that CSX already makes available to local planning officials today, such as dispatcher phone numbers, an emergency response book

that contains information on how to address hazardous materials incidents, information on tank cars, and certain traffic flow information.

Mitigation Measure 3(B). Under this proposed mitigation measure, CSX would be obligated to comply with the AAR "Key Train" requirements before increasing the number of rail cars carrying hazardous materials on any train. These requirements are also set forth in AAR Circular No. OT-55-B, which defines a "key train" as one "with five or more tank car loads of poison inhalation hazard (Hazard Zone A or B) or 20 cars loads or intermodal portable tank loads of a combination of PIH (Hazard Zone A or B), flammable gas, Class 1.1 or 1.2 explosives (Class A), and environmentally sensitive chemicals."

CSX agrees to adhere to this mitigation proposal, subject to the same caveat discussed above concerning possible future revisions or supplements to the standards currently described in Circular No. OT-55-B. CSX assumes that the intent of SEA is to require, as of Day One, that whenever CSX operates a train that, by virtue of the number of hazardous materials cars on the train and nature of those materials, meets the definition of a Key Train as set forth in the AAR Circular, CSX must comply with the Key Train requirements as to that train.

Mitigation Measure 3(C). This proposed measure would provide that if CSX has more stringent requirements than the provisions of the AAR "Key Route" or "Key Train" guidelines, it must comply with those requirements. CSX believes that it should have the flexibility to devise additional requirements and to modify those requirements based on experience. Thus, CSX does not believe that it would serve the public's interest in safety for it to be tied to any specific requirements that may be in place today, but may be determined not to be justified tomorrow. Nor would it be fair to CSX to impose a requirement that effectively requires it to maintain

practices that no other railroad in similar circumstances would be obligated to maintain. This type of condition might serve, counter-productively, to stifle safety advancements.

As noted above, CSX agrees to adhere to the current industry safety standards for key routes for the identified line segments and key trains as set forth in Circular OT-55-B, or in any future modification of, or supplement to, those requirements. Adherence to these requirements offers a full and sound measure of safety. To the extent that CSX might do more, that choice should not be fettered by a condition obligating it to continue any additional practices where, for example, such additional practices are determined not to meaningfully enhance safety. For these reasons, CSX submits that this proposed mitigation measure should not be adopted.

Mitigation Measure 4(A). This proposed measure would apply to certain key routes which are defined in the DEIS to be those line segments on which hazardous materials traffic is projected to double and to exceed 20,000 carloads annually. Part A of Exhibit 4, which is based on the revised CSX data, indicates that there will be ten such key routes on the CSX system and one in the North Jersey Shared Assets Area. The additional mitigation proposed in 4(A) for these key routes is the preparation of HMERP's (as proposed for key routes in 3(A)) for local emergency response organizations along these segments. CSX agrees to this proposed mitigation measure.

CSX appreciates that SEA intends to impose a somewhat greater level of mitigation for routes that may carry a higher volume of hazardous materials than are transported on those lines currently. However, CSX does not believe that it is constructive, and that it could be confusing, to assign new terminology to such routes by calling them "major key routes," as the DEIS does. This terminology is not used or known in the rail or chemical industries or to hazardous materials

regulators and, in CSX's view, there is no need to introduce such terminology – the proposed mitigation can be imposed merely with reference to the hazardous materials volume on specific line segments without calling them "major key routes."

Mitigation Measure 4(B). This proposed measure would obligate CSX to conduct real time or desktop emergency response drills at least once every two years with local emergency response officials on the line segments subject to the measure 4(A) proposed mitigation. CSX notes that this recommendation does not have a "sunset" provision and would not apply to other rail line segments, which currently carry as much or more hazardous materials traffic. As such, its implementation would create a double-standard.

CSX agrees that it would be useful to conduct one real-time or desktop emergency response simulation drill with local emergency response personnel within one year after Day One with respect to those routes projected to experience a doubling of hazardous materials traffic and carry in excess of 20,000 hazardous materials cars/year. Such a drill would be useful in familiarizing the local personnel with the HMERP's. Following the conduct of this drill, CSX proposes that it adhere to the requirements of Circular OT-55-B, as it may be amended in the future, with respect to these key routes. Such adherence is designed to ensure the continued safety of such routes. To the extent that local communities desire to conduct additional safety drills or to coordinate planning efforts with CSX, CSX is prepared to cooperate in such efforts, as it does today. However, the need for an emergency drill every two years has not been demonstrated for these line segments any more than it has been demonstrated for line segments that today (unrelated to the Transaction) carry even larger volumes of hazardous materials.

The impact that justifies a one-time drill is the projected Transaction-related increase of hazardous materials on these line segments. Once that drill has been conducted with the local emergency response officials, there is simply no Transaction-related justification for differentiating between these line segments and others that transport similar or even larger volumes of hazardous materials.

Mitigation Measure 5. This proposed measure would require CSX to provide a toll-free telephone number to local emergency response organizations on the line segments to which measures 3(A) and 4(A) would apply. The number would allow these personnel prompt access to the information about the nature of the hazardous materials cargoes on a particular train and appropriate response procedures in the event of a spill.

CSX does not oppose this proposal. CSX would provide this telephone number in the HMERP and would not otherwise make the number public.

Mitigation Measure 6. This proposal would require CSX to establish a so-called "Failure Mode and Effects Analysis" ("FMEA") program for all CSX and Shared Assets Area rail yards and intermodal facilities to address sources and consequences of spills of hazardous materials that are stored or transported. The goal of this program would be to identify potential causes for spills and eliminate them prior to any possible incident.

CSX does not concur in this mitigation proposal for two fundamental reasons. First, the proposal does not address any Transaction-related impacts, but would apply to all rail yards and facilities, including those that will experience no change as a result of the Transaction or a decrease in activity. To that extent, the proposed mitigation exceeds the proper scope of mitigation as SEA itself has described that scope: "[t]he environmental mitigation condition . . .

must be directly related to the impact caused by the Acquisition." Vol. 1 at 3-3. In fact, the DEIS acknowledges that the Transaction will result in a systemwide decline in yard activity and a consequent increase in the safety of hazardous materials transportation. Executive Summary at ES-19. The DEIS also concludes, at the same page, that CSX has procedures in place for handling hazardous materials storage and spills at its yards.

Imposition of a new condition of this type is thus directly contrary to SEA's own stated standard for imposition of conditions. The recommendation is clearly targeted at an existing condition -- one which the DEIS acknowledges that CSX has procedures for handling. The measure should thus be rejected.

The second reason that proposed Mitigation Measure 6 should be rejected is that CSX has in place numerous programs that are the functional equivalent of an FMEA program. The proposed mitigation measure would impose a redundant, and thus pointless, requirement. The rail industry has for many years been actively engaged in identifying the causes of hazardous materials incidents and in eliminating those causes through a variety of programs in which CSX is an active participant. These efforts have resulted in a dramatic decline in hazardous materials releases over the last several years -- FRA statistics show that rail accidents involving hazardous materials releases decreased from 139 in 1978 to 34 in 1996. As noted above, at CSX, in 1996 out of 338,000 carloads carrying hazardous materials transported, there were only four derailments, involving five cars that resulted in the release of hazardous materials. Further, the number of CSX derailments with hazardous materials releases has declined dramatically and consistently over the last several years, from 15 in 1990 to only 3 in 1997. The success of several on-going

programs -- which are as effective for yard safety as line-haul safety -- renders the proposed mitigation redundant and therefore unnecessary.

Among the on-going industry programs designed to determine and eliminate the causes for hazardous materials spills is the R... oad Tank Car Safety Research and Test Project of the Railway Progress Institute and AAR. This Project, which has been active since 1970, is responsible for numerous studies and programs that have led to safer tank car transportation, including programs that have identified the vulnerabilities of tank cars and have led to improvements to tank car head protection, couplers, thermal protection standards and tank car bottom outlet protection. The Project has several on-going studies to further identify tank car vulnerabilities and develop improvements.

Another industry risk mitigation measure in which CSX participates is the AAR derailment prevention program that is designed to review accidents, assess their causes and consider prevention techniques. This program involves regular meetings/teleconferences involving CSX and other rail officials at which a variety of accident assessment/prevention issues are addressed.

In addition, as described in greater detail at pages 174-175 of the CSX SIP, CSX is a participant in CMA's Responsible Care program. One of the conditions of participation in that program is that CSX undertake risk assessments with respect to the transportation of hazardous materials. CSX does so in a variety of ways. These include the following:

1. CSX uses a Track Management Program model to assess the gross tonnage of freight moving over particular line segments, the characteristics of the traffic (including the extent to which hazardous materials and passengers are carried on the line segment) and the information

obtained from track inspections. This data is input into the model to allow CSX to assess where and how to devote capital to track upgrades, thereby reducing the level of risk on particular line segments.

2. CSX also does a risk assessment on chemical traffic that it transports to determine, based on flammability, toxicity, environmental impacts, and other relevant factors, whether a particular chemical poses a high, medium or low risk. Emergency training programs involving local emergency response personnel are geared to line segments based on the results of this analysis.

3. CSX reviews where non-accidental releases ("NAR's") occur on its system and works to identify trends in terms of types of cars, sources of cargo, and other factors. This process allows for risk-management planning to address causes of such incidents. This program has been successful. In 1997, CSX experienced the lowest number of NAR's of any recent year to date on the CSX system.

4. CSX implements a Train Accident Prevention program known as the TAP5 program. This program consists of a series of committees -- a headquarters committee and separate committees for each service route, hump yard and satellite facility. The purpose of these committees is to analyze train accidents that occur on lines or at yards and other facilities (including accidents that result in the release of hazardous materials), determine the causes of these accidents and develop action plans to avoid repetition of such accidents.

In addition to these formal risk assessment and analysis programs, CSX's SIP, at pages 183 through 184, also discusses a variety of hazardous materials safety programs that are implemented by CSX. These include inspection and training programs and emergency notification

programs. In addition, as the SIP indicates, CSX intends to carefully review the Conrail hazardous materials program (which is similar in most major respects to the CSX program) and to retain those elements of the Conrail program that reflect the best industry practices.

Further, in addition to rail industry programs and CSX's own programs, CSX adheres to the requirements imposed by federal regulations adopted by DOT's Research and Special Programs Administration ("RSPA") for the transportation of hazardous materials. See 49 CFR at Sections 171 through 174. These detailed regulations of a sister agency of the Board govern virtually every phase of the safety of hazardous materials while they are in the possession of CSX.

In light of the substantial risk prevention efforts and safety regulations that are already in place, the need for any further mitigation in the nature of a mandatory new FMEA program has not been demonstrated. CSX already has active programs to address the sources and consequences of hazardous materials spills on its lines and facilities. Establishing a new FMEA program of the sort described in Mitigation Measure 6 would do no more than divert resources and energies from proven, existing programs to a redundant new program, the need for which has not been shown.

Finally, as a practical matter, the Board has neither the resources nor the expertise to draft regulations for, and enforce, a new safety program which would apply to hundreds of rail yards and intermodal facilities. The Board is not a safety regulatory agency. Any such effort would also present a serious risk of intruding on the jurisdiction of another federal agency and imposing requirements which would conflict with other federal regulations. Nothing in NEPA obligates the Board to pro-actively require the adoption of new programs that would neither enhance safety

beyond the level achieved by other programs and the regulations of other agencies nor address any Transaction-related impacts. The Board should accordingly not do so.

7. Safety: Freight Rail Operations

The DEIS includes the most detailed analysis of freight rail safety ever undertaken in the environmental review of a control transaction. For the first time, the SEA undertook a statistical analysis of the accident risk on a segment-by-segment basis. Although the DEIS concludes that there will be "a small overall decrease in the likelihood of freight rail accidents and derailments" as a consequence of the Transaction. (Vol. 1 at 4-10), the DEIS concludes on the basis of the statistical analysis that there will be a significantly increased risk of accident on a limited number of line segments. In proposed Mitigation Measure 7(A), SEA has proposed that CSX comply on three identified line segments with the FRA's proposed rule, and any final rule that may eventually be issued by the FRA, in Docket No. RST-90-1, which contemplates "ton-mile based" inspections. Under the proposed rule, such inspections would have to be conducted at least once every 40 million gross ton miles of traffic on the line, or annually, whichever is more frequent. Proposed Mitigation Measure 7(B) would require annual training of CSX mechanical and track inspectors that dispatch trains, or check track, respectively, on the three identified line segments. These mitigation measures would apply over the following three line segments:

Berea to Greenwich, Ohio (C-061);

Greenwich to Willard, Ohio (C-068); and

Willard to Fostoria, Ohio (C-075).

The first of these segments is part of Conrail's system today; the latter two are part of CSX's current system. CSX does not agree that there would be any increased risk of accident on these three line segments warranting special safety mitigation for two reasons.

First, the Transaction will have no detrimental impact on the safety practices of CSX. CSX has achieved one of the highest levels of safety in the rail industry through its safety and operating practices. These practices will not change as a consequence of the Transaction. CSX has carefully planned for the Transaction so that there will be no compromise on safety -- track maintenance and inspection standards, signal and communication systems and workforce training will not be reduced or compromised in any way. In fact, CSX's safety practices will be extended to the portion of the Conrail system to be allocated for CSX's use. Because CSX's safety record is better than Conrail's (as reported by DOT in its October 21, 1997 comments, DOT-3 at 17), the accident risk on the Conrail line segments to be allocated to CSX should decrease.

Second, CSX's Operating Plan was designed with full consideration of the existing capacities of the rail infrastructure and on planned capital improvements. The opportunity to acquire Conrail spurred CSX to undertake an unprecedented capital program to make improvements to its tracks, signaling systems and equipment, all of which promote safety as well as service to customers. Chief among these improvements is the double-tracking and associated signal upgrading (to bidirectional TCS signals) of CSX's B&O line from Chicago to Greenwich, Ohio and improvements to the Conrail line from Greenwich through Cleveland. See Application, Vol. 3A at 260. All three CSX segments identified in the DEIS as having a significantly increased risk of accident are on this line. This approximately $200 million project, already underway and due to be completed by Day One, will result in these segments being among the most up-to-date on the entire CSX system. They will form part of the high-speed east-west corridor that CSX intends to use for the transportation of time-sensitive intermodal freight. It appears that the DEIS's statistical methodology did not factor in the upgrading of these line segments.

In addition, the significance criteria used by SEA for freight rail safety overstated the actual safety risk on these line segments. The DEIS included as part of its criteria a determination of whether the line segments at issue could experience an accident more frequently than every 100 years. The 100 year threshold was based on the proposition that in 1996 there were 1,078 freight and passenger train accidents on 126,482 miles of main line track, yielding an accident rate of one accident every 117 years on each rail mile. The DEIS then applied a more conservative figure of one accident every 100 years on each rail mile to assess significance.

However, FRA statistics indicate that there were actually 2,584 train accidents in 1996, not 1,078. See 1996 FRA Accident/Incident Bulletin. This means that on each mile of the rail system, an accident may occur every 49 years, not once every 117 years as reported in the DEIS. According to the DEIS, each of the three CSX line segments has a far lower post-Transaction accident rate than 49 years -- Berea to Greenwich (94 years); Greenwich to Willard (93 years) and Willard to Fostoria (95 years). See Attachment B-1 in Volume 5A. Accordingly, no mitigation is warranted on these segments for this additional reason.

Notwithstanding that the case for mitigation on the identified segments appears open to question, CSX's current annual track inspection and training programs with respect to these line segments, and associated personnel, already cover the requirements that are proposed as mitigation. While CSX does not believe that any mitigation is warranted, and opposes imposition of a condition that would constrain its ability to adopt equally effective alternative inspection and training programs, it would not change its current practices if these mitigation measures were imposed.

8. Safety: Highway/Rail At-Grade Crossings

In Table 7-4, the DEIS identifies 118 highway/rail at-grade crossings where improvements might be required. These recommendations are the result of an in-depth analysis by the SEA as to existing traffic at these crossings and the projected increases in traffic following the Transaction. As the basis for its analysis, the DEIS relies on DOT's Accident and Severity Prediction Formula to identify areas of potential mitigation. This formula is used to rank and identify potentially dangerous crossings. Although the result of this examination was the list of crossings mentioned above, this list should not constitute the final recommendation to the Board. The formula is appropriate for the DEIS because it identifies potential environmental safety concerns and highlights them for responsible state agencies. Further analysis, however, reveals that many of the crossings in Table 7-4 already have the suggested mitigation in place or that the recommended improvements have been funded and scheduled for installation. In other cases, more recent information reveals that mitigation is not necessary.

As discussed below, the FEIS should recognize the important state role in evaluating grade crossing safety. Although the Federal Highway Administration ("FHWA"), and to a lesser extent the Federal Railroad Administration ("FRA"), provide oversight and guidance in this area, the state agencies with jurisdiction over highways are in the best position to determine the proper level of warning device required at the highway/rail crossings. If the Board were to direct CSX to consult with state authorities, the Board would fully and properly fulfill its NEPA role. Specifically, it would be appropriate for the FEIS to recommend (1) an appropriate methodology to identify crossings that may sustain a Transaction-related impact thereby warranting some form of crossing improvement, and (2) a requirement that Applicants bring these crossings to the

attention of the state agencies that have jurisdiction over highway/rail crossings. Where, as here, there are other governmental agencies responsible for representing the interests of the constituencies at issue, the Board can appropriately rely on those agencies to address any crossing safety or delay issues that the final EIS identifies. See Robertson, 490 U.S. at 352-53; C.E.Q. Notice, 46 Fed. Reg. 18026, 18031-32 (Mar. 23, 1983). Thus, it is entirely proper for the FEIS to recommend further consultation with appropriate state agencies. Once the relevant crossings are identified, the state agencies can review the individual circumstances at each crossing, recommend whether improvements are warranted, and work with the FHWA to install appropriate warning devices.

A. The DOT Accident and Severity Prediction Formula Should Not Be the Sole Basis for Requiring an Upgrade

The DEIS relies on the DOT Accident and Severity Prediction Formula to identify crossings that it believes should be upgraded. However, the formula's primary function is to rank and identify potentially dangerous crossings. Once potential sites are so identified, a state diagnostic team usually performs an in-depth on-site review to determine if an upgrade is warranted. It does not appear that this important on-site review was incorporated into the recommendations in the DEIS. Such a review would reveal that for some crossings, improvements already have been installed or that mitigation is otherwise not necessary. More importantly, by relying solely on the DOT formula for its recommendations, the DEIS does not take advantage of the lead role played by each state in deciding the appropriate warning device that should be placed at each crossing.

The DOT formula alone was not designed to result in a recommendation for a particular type of warning device. Ordinarily, the FHWA and FRA rely on the expertise of state highway

officials for this information. Indeed, the DOT User's Guide, which contains the DOT Formula used in the DEIS, acknowledges that "the judgment of state and local officials should all be considered before final improvement decisions are made." See Rail-Highway Crossing Resource Allocation Procedure - User's Guide, Third Edition, August 1987." The reason for state involvement is that the DOT formula does not incorporate crucial factors into its ranking such as sight-distance, roadway geometrics, highway congestion, local topography, frequency of high-occupancy vehicles, and frequency of hazardous material transport vehicles. This information is obtained from on-site state diagnostic teams. Moreover, data that are applied to the DOT formula are obtained from FRA's crossing grade inventory and collision files, which are subject to keypunch and submission errors.

Not only did the DEIS fail to consider site-specific circumstances, but the DEIS has proposed the installation of certain devices, such as four-quadrant gates and median barriers, that are not approved either by the FRA or the FHWA's Manual of Uniform Traffic Control Devices ("MUTCD"). The MUTCD places responsibility for design, placement, operation, and maintenance of warning devices with the governmental body or official having jurisdiction. See MUTCD at 8A-1. In most states, warning devices at highway/rail crossing are required by statute to conform substantially to the MUTCD. Experimental devices such as four-quadrant gates and median barriers usually require specific permission from the state agency or toll facility responsible for the operation of the road where the experiment would take place.

Moreover, four-quadrant gates are best suited for roadway facilities more than 45 feet wide and median barriers are appropriate where there are no road or driveway connections within 70 to 100 feet of the crossing. Thus, even if such improvements were appropriate, without on-

site reviews it cannot be determined whether conditions exist that would allow installation of these measures.

The above points underscore that the appropriate recommendation for the FEIS would be for Applicants to consult with appropriate state officials under the established regulatory scheme. This would allow for consideration of all relevant facts and the installation of appropriate warning devices at all crossings.

B. The Established Regulatory Scheme Provides a Comprehensive Approach to Grade Crossing Safety

The DEIS's proposed mitigation measures, requiring the upgrading of certain crossings and the construction of grade separations at other crossings, interject the Board into an established and well-functioning federal-state regulatory regime. Although the DEIS properly identifies areas of concern, the final decisions on improvements should be left to the state agencies with the most knowledge and expertise in this area. Without such a give and take with FHWA, FRA, and the states, the Board would, in effect, be intruding on the funding and safety jurisdiction of its sister DOT agencies (FHWA and FRA), while also assuming a role reserved to the states of prioritizing and determining the appropriate warning device that should be installed at each crossing.

This is not a role that the Board should play. Nothing in NEPA suggests or requires that the Board, through its environmental-conditioning process, venture into areas where Congress has established a very sophisticated funding mechanism and assigned specific safety and funding roles to other federal agencies within DOT. It is perfectly acceptable for the Board to rely on these state and federal agencies to make crossing decisions.

1. The Established Federal Role

The FHWA, with assistance from the FRA, works with the respective state representatives to regulate safety and fund improvements at highway/rail crossings. These responsibilities began in 1970 with the passage of the Highway Safety Act ("HSA") and the Federal Railroad Safety Act ("FRSA"). Section 205 (a) of the HSA called for ". . . a full and complete investigation and study of the problem of providing increased highway safety at public and private ground-level rail highway crossings. . . ." See Pub. L. 91-605, 84 Stat. 1714. Similarly, the FRSA directed the Secretary of Transportation to undertake ". . . a comprehensive study of the problem of eliminating and protecting railroad grade crossings and to provide recommendations for appropriate action." See Pub. L. 91-458, 84 Stat. 971.

In response to Congress's direction, the Department of Transportation ("DOT") prepared a two-part study. Part I, which DOT submitted to Congress in 1971, addressed the crossing safety problem. In 1972, DOT submitted Part II of the study, which provided various recommendations, including a federal spending program to improve grade crossing safety.

One year later, Congress passed the Highway Safety Act of 1973. Pub. L. 93-87, 87 Stat. 250 (1973). As amended, the HSA governs the distribution of funds to states for the elimination of hazards at rail-highway grade crossings. To be eligible for funding, the Act requires the states to survey and analyze crossings and establish a schedule for improving those found to present the highest hazard levels.

The primary federal role in grade crossing improvements is one of funding. FHWA funds are apportioned to the states in the following manner: fifty (50) percent of the money is apportioned according to the ratio of the number of public crossings in each state to the total

number of public crossings in the entire country. 23 U.S.C. § 130(f). The remainder is apportioned on the basis of area, population and road mileage. See 23 U.S.C. §§ 104, 130. Federal funds may be used for improvements to any public highway/rail crossing, whether on or off the federal-aid highway system. 23 U.S.C. § 130.

When it was enacted, the federal funding statute, at Section 130(b), presented the Secretary of Transportation with the option of requiring the railroads to pay a small share (up to ten percent) of the costs of improvements that represented a "net benefit to the railroad." When the Secretary promulgated implementing regulations for Section 130, however, these regulations explicitly recognized that the railroads derived no ascertainable benefit from grade crossing improvements:

> (1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

23 C.F.R. § 646.210(b) (emphasis added). Indeed, these regulations reaffirmed existing policy at the ICC. In the early 1960's, the ICC authorized a comprehensive investigation of train/motor vehicle accidents at highway/rail crossings. The finding that resulted from the investigation was that:

> highway users are the principal recipients of the benefits flowing from rail-highway grade separations and from special protection at rail-highway grade crossings. For this reason, the cost of installing and maintaining such separations and protective devices is a public responsibility and should be financed with public funds the same as highway traffic devices.

Interstate Commerce Commission Report No. 33440, Prevention of Rail-Highway Grade Crossing Accidents Involving Railway Trains and Motor Vehicles, 322 I.C.C. 1, 87 (Jan. 22, 1964).

Despite these well-established funding responsibilities, the DEIS can be read to suggest that CSX and NS should bear full responsibility for the costs of proposed mitigation at the crossings identified in Table 7-4. Simply because a crossing has been identified in a NEPA review of a railroad control transaction, however, does not mean that the established regulatory and funding system should be ignored. Requiring CSX and NS to bear the full costs of these improvements would be inconsistent with federal regulations and the spirit of the national grade crossing safety program.

2. The Role of the States

According to DOT, "[j]urisdiction over highway/rail grade crossings resides primarily with the States." Department of Transportation "Railroad-Highway Grade Crossing Handbook" at 19 (FHWA-TS-86-215) (2d. Ed.) (1988). While the FHWA and FRA provide federal oversight, funding and guidance, in most instances, it is the states that are most familiar with the needs and dangers posed by a particular crossing. It is the states, therefore, that perform the on-site inspections and it is the states that are charged with protecting the health and welfare of its citizens. The federal government's role is one of funding and approval of state determinations.

In the majority of the states, the overall authority for highway/rail crossing safety and consolidation lies with the state agency that oversees and regulates transportation. In a limited number of states, the responsibility for crossing safety and consolidation is vested in regulatory bodies with a broader scope, such as the Public Utilities Commission or the Public Service Commission. A few states apportion the responsibility among the state transportation agencies and other state agencies.

Regardless of the administrative structure, to qualify for federal funding, each State must "conduct and systematically maintain a survey of all highways to identify those railroad crossings that may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose." 23 U.S.C. § 130(d). Pursuant to FHWA regulations, each state receiving federal aid also is required to develop a "highway improvement program" that establishes priorities to address highway hazards and provides guidance as to the evaluation and implementation of remedial measures. 23 C.F.R. § 924. In developing those priorities, the states are directed to consider and rank the dangers posed by grade crossings. 23 C.F.R. § 924.9(a)(4). Having developed this program, each state must evaluate its effectiveness and costs, § 924.12, and file yearly reports with the FHWA. 23 C.F.R. § 924.15.

Using the DOT's Accident and Severity Prediction Formula, the FHWA calculates the accident risk at each crossing for all states based upon the characteristics of the grade crossing and statistical information on historic accident experience. The states, however, supplement this information with more recent data, (e.g., average daily traffic and accidents), and conduct site visits before deciding whether to upgrade highway/rail crossings. Under this approach, the individual needs of the local community can be considered along with any unique safety concerns for a particular crossing.

The DEIS recommends grade crossing mitigation in four states involving CSX lines: Indiana, Kentucky, Michigan and Ohio. As is discussed below, each of these states has developed an in-depth process for analyzing the type of warning devices that should be installed at highway/rail crossings. The states are in a unique position to assess the current status and

circumstances associated with a particular crossing. A state brings this information to the table when seeking FHWA approval of its plan for warning device protection.

Indiana begins with the federal accident data for each at-grade crossing in the state. The federal data also is used to evaluate the cost/benefit ratio of various improvement alternatives at a crossing, such as installing flashers or gates. This federal data, however, cannot incorporate every possible factor that influences the number of accidents at a crossing, and the data available is not always completely accurate. To compensate for this, Indiana adds to its analysis by performing a diagnostic site review, using actual accident history, and reviewing other pertinent factors. This analysis forms the basis for selecting and prioritizing safety improvement projects. Cost/benefit analyses are used in determining the final priority list. Thus, the crossings with the highest accident risk are not necessarily included in the final upgrade program.

Ohio and Kentucky use a methodology similar to Indiana's approach. These states use FHWA/FRA data to determine a preliminary crossing safety ranking, and then perform a diagnostic survey of each site that considers vehicle traffic and recent accident history. In Ohio, the survey team consists of the local highway authority, the Ohio Rail Development Corporation, the railroads, the FHWA and the Public Utilities Commission of Ohio. The states "update" the FHWA/FRA-method results before completing their final priority lists if changes in rail crossings (e.g. improved safety measures) recently have been performed. The states also consider field observations for their final listing.

Recently, Michigan proposed a four-factor methodology for prioritizing crossing upgrades: (1) a Five Year Car-Train Crash Frequency; (2) FHWA/FRA Top 100 Crossings in Michigan based on the FHWA/FRA Accident Prediction Equation; (3) Calculated Exposure

Reduction Potential Through Conventional Treatment (e.g. adding flashing-light signals to a crossing with passive warning, adding gates to a crossing with flashing-light signals, and adding gates to a crossing with flashing-light signals which are suspended on cantilever arms) ; and (4) An identification of crossing needs based on field observations. After considering these factors, the state will decide on appropriate rail crossing upgrades.

3. The FEIS Should Recommend Consultation with Appropriate State Agencies

By directing mitigation at certain highway/rail crossings, the SEA has stepped into the shoes of the states and the FHWA as the final arbitrator of the type of warning device required at each affected highway/rail crossing. Although the SEA has undertaken the responsibility of determining the appropriate level of warning devices, it has not done so in a manner consistent with the established regulatory process. Most importantly, the SEA has not obtained the type of information upon which states rely in making grade crossing decisions. As a result, the DEIS's recommendations are over-inclusive. For example, many of the improvements identified in the DEIS already are in place or are scheduled to be put in place in the near future. In other instances, more recent information indicates that mitigation is not warranted.

CSX's consultation with the state of Ohio demonstrates how the system should function. CSX has been working with the Public Utilities Commission of Ohio ("PUCO") and the Ohio Rail Development Corporation ("ORDC") to perform several rail corridor studies in northwest Ohio. In these studies, the parties placed particular emphasis on improving the consolidation of vehicular traffic at crossings, thereby reducing the number of crossings with a lower level of signal protection. Following joint field studies by CSX, PUCO, and ORDC, recommendations for signal

upgrades and improvements were developed and suggestions were made for closure of certain crossings.

One of the results of these outreach and consultation efforts was an agreement between CSX and PUCO/ORDC as to the proper level of crossing safety improvements needed for CSX's track improvements on the line segment from Greenwich, Ohio in Huron County to the Ohio/Indiana border at a point in Defiance County ("the B&O Corridor"). The DEIS examines crossings on the B&O Corridor and arrives at the same conclusions as PUCO and ORDC for three crossings -- 142 366F, 142 178R and 142 179X.[18] PUCO and ORDC, however, recommended improvements at a number of additional crossings in the B&O Corridor that are not addressed in the DEIS. Thus, if the FEIS's final recommendation is for the Applicants to consult with appropriate state agencies, it is likely that the state mitigation will equal or exceed that currently in the DEIS.

Another area where the DEIS recommends mitigation involves crossings on the Toledo to Dunbar line segment (segment C-055). Although the DEIS identifies fifteen crossings on this segment as requiring mitigation, CSX does not believe that mitigation is appropriate because any impacts from increased traffic are independent of the Transaction. The CSX Operating Plan, which provides the basis for the traffic figures in the DEIS, provides 1995 base figures and post-Transaction projected figures. The 1995 base for the CSX Toledo to Dunbar line segment is 0.6 trains per day, and the projected post-Transaction traffic is 14.2 trains per day, for an increase of 13.6 trains per day on average. This increase led to the conclusion in the DEIS that the Transaction would result in certain impacts (including increased traffic) on this 36-mile line

[18] For these crossings, the mitigation recommended in the DEIS already has been installed or is funded and scheduled for installation.

segment. However, in May, 1997, CSX resumed through train operations over the this line segment for reasons unrelated to the Transaction. Present traffic on the line is about 14 trains per day. Thus, there is no significant Transaction-related impacts on this line segment and no grade crossing mitigation would be appropriate in connection with this proceeding.

CSX has, however, worked with the state authorities to determine if traffic increases on the Toledo-Dunbar line warranted any grade crossings upgrades. Of the fifteen crossings identified in the DEIS for this segment, PUCO already has determined that no improvements are warranted at eight crossings.[19] For the remaining seven crossings in the DEIS, improvements that meet or exceed the DEIS requirements have been funded and scheduled for installation at five of the crossings.[20] Another crossing, 155 798S, does not trigger mitigation thresholds when 1992-96 data are applied to the DOT formula. Only as to one crossing on this line segment, 155 821J, would further consultation be appropriate if the increased traffic were indeed Transaction- related.

CSX is required to consult with the states regardless of whether the Board so orders. By ordering specific mitigation at a particular crossing, however, the Board runs the risk of inconsistent treatments at different crossings. A better approach would be to direct Applicants to consult with the party with the most expertise in this area, the state, to determine the appropriate level of improvement that may be warranted. This approach has worked successfully in the past and should be allowed to continue here.

[19] These crossings are 155 789T, 155 799Y, 155 812K, 155 814Y, 155 819H, 155 820C, 155 839U, and 155 840N.

[20] These crossings are 155 755Y, 155 794P, 155 804T, 155 818B, and 155 838M.

C. The DEIS Overstates the Problem

Not only should the SEA allow the established regulatory process to address the potential safety issues identified in the DEIS, but a review of the DEIS reveals that only a few of the CSX crossings at issue actually may require additional mitigation.

First, as noted above, the fifteen crossings on the Toledo to Dunbar line segment are not experiencing any traffic increases because of the Transaction. Thus, these fifteen crossings should not be subject to any mitigation.

In addition to these non-Transaction related crossings, CSX's consultant, ICF Kaiser, reviewed the DEIS methodology to determine whether the sixty-two (62) CSX rail crossings identified in the DEIS, including the fifteen on the Toledo to Dunbar segment, were appropriately categorized. The results of ICF Kaiser's review are presented at Exhibit 5. This Exhibit has four components: (1) a report from ICF Kaiser summarizing its findings, (2) an appendix[21] with a description of the current status at each crossing, (3) a summary table that highlights crossings where the DEIS incorrectly applies its own criteria and where mitigation would not be triggered if the most recent accident data (1992-96) were applied to the DEIS methodology, and (4) a table that contains ICF Kaiser's analysis as to all the CSX crossings. An explanation of the results of ICF Kaiser's review follows.

The DEIS separates highway/rail crossings into two categories. Category A consists of highway/rail crossings with an accident frequency rate of at least one accident every seven years (0.15 or higher accident frequency rate). The DEIS considers a projected accident frequency

[21] For twenty-two of the crossings, the DEIS apparently lists an incorrect city, street or DOT crossing number. This information has been corrected in the Appendix prepared by ICF Kaiser. Crossings where information has been corrected are noted with an asterisk.

increase of 0.1 or greater for these crossings to be significant. Category B consists of highway/rail crossings with accident frequency rates of less than 0.15. For these crossings, a projected increase in accidents of 0.01 (an accident every 20 years), is viewed as significant.

ICF Kaiser identified eight (8) crossings that do not meet the DEIS Category A or Category B significance criteria. See Table 1 at Exhibit 5. It appears that the DEIS relies on the post-Transaction accident rates to determine whether a threshold was reached. If the correct pre-Transaction threshold is used, then no mitigation is required. Consequently, these crossings should be eliminated from further consideration. The crossings in this category are as follows:

342 417R	155 484V
155 632M	155 615W
155 496P	228 774H
155 391B	228 [illegible]0L

ICF Kaiser's review also identified twenty-three (23) crossings where the state agency with jurisdictional authority already has reviewed the crossing, independent of the Transaction. These crossings already have in place, or are funded and scheduled to have in place, improvements that meet or exceed the recommendations in the DEIS. Consequently, these crossing should be eliminated from further consideration. The crossings in this category are:

142 179X	502 682Y
345 318D	155 755Y
345 329R	155 794P
342 470C	155 804T
342 481P	155 818B
342 416J	155 838M
342 425H	155 372W
342 850J	142 366F

155 645N	518 456X
518 507F	518 476J
532 688W	518 382H
142 178R	

For one crossing, 155 392H, the Indiana Department of Transportation already has reviewed the crossing and determined that the appropriate upgrade would be additional gates and improved control circuitry. The DEIS recommends a four-quadrant gate or a median barrier. As noted above, state transportation agencies are in the best position to determine the appropriate level of warning device that should be installed at each crossing in its jurisdiction. Thus, the decision of Indiana's DOT should be afforded deference. Consequently, this crossing should be eliminated from further consideration in the FEIS.

One crossing, 342 473X, was closed on May 22, 1996. Consequently, this crossing should be eliminated from further consideration.

ICF Kaiser identified another nine (9) crossings where the state agency with jurisdictional authority has begun analyzing the crossing. As of this date, however, final decisions have not been made and funding has not been approved. These state reviews should be permitted to continue. CSX will inform the appropriate state agency of the information in the DEIS relevant to each of these crossings. The crossings in this category are:

342 493J	155 465R
342 413N	155 476D
155 633U	155 380N
155 419P	511 027V
155 394W	

For the remaining twenty (20) crossings, ICF Kaiser reapplied the DEIS formula using more current accident history data than was available to the SEA. The FRA recommends that the accident data applied to the DOT formula be limited to the most recent five[32] years. The DEIS relies on data from 1991-95 in its analysis. Since the completion of the DEIS, however, data from 1996 has become available. ICF Kaiser applied the more current data from 1992-96 to the DEIS methodology and found that sixteen (16) of these crossings[33] no longer triggered the DEIS category A or B significance criteria. These crossings are:

518 391G	155 799Y
342 829D	155 812K
155 637W	155 814Y
232 122V	155 819H
155 789T	155 820C
155 840N	155 839U
155 760V	155 395D
155 798S	345 269J

For the four (4) crossings not eliminated by the 1992-96 data, one is on the Toledo to Deshler line segment and should not be subject to any Transaction-related impacts (155 821J). For the three (3) remaining crossings, CSX agrees that further consultation with state officials may be appropriate to determine whether an upgrade is warranted. These crossings are:

345 246C	345 362R

[32] See DOT/FRA Railroad-Highway Grade Crossing Handbook (FHWA-TS-86-215) (2d. Ed.) (Sept. 1986) at 73 (stating that "[a]ccident history information older than five years may be misleading because of changes that occur to crossing characteristics over time.")

[33] As is noted on Table 1, all eight (8) crossings that the DEIS incorrectly identified as triggering a threshold also would not require mitigation using the 1992-96 data.

345 331S

9-11 Transportation Highway/Rail At-Grade Crossing Delay

9 Increased Train Timetable Speeds

This recommended mitigation measure was deleted in the Supplemental Errata to the DEIS.

10 Highway/Rail At-Grade Crossing Delay: Grade Separation Recommended The DEIS identifies Randolph Street in Garrett, Indiana as an at-grade crossing which meets the significance criteria for traffic delay mitigation, including for construction of a grade separation. This determination does not come as a surprise, as CSX has been in discussions with the City of Garrett and the Indiana Department of Transportation since 1995 regarding the possibility of a separation. There appears to be general agreement that the project has merit. Preliminary designs have been completed.

The unresolved question has been whether and when the project will receive priority for funding by the Indiana DOT. A railroad typically contributes five percent (5%) toward the construction of a grade separation where, as here, the separation will allow a grade crossing to be closed. CSX has offered to contribute more than the typical share because of the operational benefits of this separation. However, the Indiana Department of Transportation has not to date allocated funding for the balance. Discussions are ongoing and CSX is optimistic that the project will be funded and constructed.

The DEIS has served the purpose of identifying a crossing with a potential vehicle delay problem to the appropriate authorities -- the City of Garrett and the Indiana Department of Transportation. In this case, as explained above, the appropriate authorities were already aware of the situation, independent of the Transaction. There is no reason why the FEIS must recommend any further action with respect to this matter.

Moreover, the suggestion of a binding arbitration procedure in the event that agreement is not reached by the time the Final EIS is issued is problematic. CSX cannot find any statutory authorization by which the Board could compel the Indiana Department of Transportation to

enter into binding arbitration against its will, and it appears that Constitutional limitations would prohibit such a compelled arbitration. Perhaps the Indiana Department of Transportation would agree to such an arbitration (provided that state law would permit it to arbitrate a matter involving expenditure of public funds) as a condition on its availing itself of the Board's condemning power, but it is far from clear why it would choose to do so. An arbitration is not a free-for-all. Like more formal legal proceedings, an arbitration proceeds through the application of rules to facts. The DEIS does not suggest any rules to determine the appropriate share of a grade separation at Randolph Street to be paid by CSX. CSX submits that the controlling precedent for determining CSX's share is set forth in the decisions of the Board's predecessor and in the Highway Safety Act of 1973 and regulations promulgated thereunder by the Secretary of Transportation, as explained below. The law is clear -- CSX's share of the cost of building a grade separation at Randolph Road should be 5 percent.

After a comprehensive investigation of train/motor vehicle accidents at rail-highway grade crossings, the ICC made the following finding:

> (13) That highway users are the principal recipients of the benefits flowing from rail-highway grade separations and from special protection at rail-highway grade crossings. For this reason, the cost of installing and maintaining such separations and protective devices is a public responsibility and should be financed with public funds the same as highway traffic devices.

Interstate Commerce Commission Report No. 33440, Prevention of Rail-Highway Grade-Crossing Accidents Involving Railway Trains and Motor Vehicles, supra, 322 I.C.C. at 87.

The same policy consideration underlies 23 U.S.C. § 130(b), which governs the use of federal funding for the elimination of hazards of rail-highway crossings, including construction of

grade separations. Section 130(b) provides that the Secretary may require a railroad to pay for that share of a grade separation which represents the "net benefit to the railroad," but in no case greater than 10 percent. The Secretary has exercised his statutory authority under this provision through regulation at 23 C.F.R. § 646.210(b) and capped the railroad share at 5 percent:

> (1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.
>
> * * *
>
> (3) On projects for the elimination of existing grade crossings at which active warning devices are in place or ordered to be installed by a State regulatory agency, the railroad share of the project costs shall be 5 percent.
>
> (4) On projects for the elimination of existing grade crossings at which active warning devices are not in place and have not been ordered installed by a State regulatory agency, or on projects which do not eliminate an existing crossing, there shall be no required railroad share of the project cost.

There is no apparent reason why the unanimous conclusion of the Board's predecessor, Congress and the Secretary of Transportation as to the appropriate share of railroad funding for a grade separation should be liable to be set aside by an arbitrator (or set aside by the Board) simply because attention has been drawn to a grade crossing through the NEPA review of a control transaction. There is no basis in any of this authority for penalizing a railroad by requiring a greater share from it on the ground that it has increased train traffic through a grade crossing, either by growing its business or because it has decided to reroute trains to provide more efficient service, whether in the context of a control transaction or otherwise.

CSX respectfully submits that the Board need not venture into these waters fraught with such legal uncertainty. As with grade crossing protection, there are well-established federal and

state programs and procedures for identifying and funding grade separations. The persons responsible for those programs will evaluate Randolph Street in light of the train traffic levels predicted in the CSX Operating Plan, and will balance the needs in the City of Garrett against the needs in other cities and towns in Indiana which may be as great or greater but which do not happen to be affected by the Transaction. Because the Board has chosen to undertake an EIS, it does not need to mitigate every potentially significant impact prior to approval of the Transaction.

11. Highway/Rail At-Grade Crossing Delay: Consultation Recommended

The DEIS (Supplemental Errata) identifies seven at-grade crossings on the CSX system which meet the significance criteria for traffic delay mitigation, but which do not meet the criteria for construction of a grade separation. The DEIS recommends that CSX consult with appropriate agencies to address potential traffic delay at these crossings. In the event that these consultations do not result in binding agreements, the DEIS suggests that the FEIS may recommend that CSX participate in the implementation of specified traffic delay mitigation. The seven crossings are as follows:

Dixie Hwy., Blue Island, IL
Broadway-135th St., Blue Island, IL
95th St., Evergreen Park, IL
E. 9th St., Hopkinsville, KY
W. Noel Ave., Madisonville, KY
Vine St, Hamilton, OH
Township Ave., Cincinnati, OH

A. The DEIS Performed Its Function As a Screening Tool

The DEIS identified these crossings for potential mitigation based on application of the Highway Capacity Manual Level of Service criteria for signalized intersections to the railroad grade-crossing context. This is the first time SEA has utilized this approach in assessing vehicle delay at grade crossings. CSX might have selected a somewhat different model. See the report of ICF Kaiser at Exhibit 6. However any model which includes only a limited number of factors can only be used as an initial screening tool for more detailed analysis.[*] CSX thus does not recommend using a different model in the FEIS.

[*] The DEIS formula is based on the following six factors: length of train, train speed, number of trains per day, average daily vehicle traffic, vehicle flow rate and number of road lanes.

CSX believes that it is the appropriate function of the EIS in this context to perform an initial screening analysis. This analysis provides a basis for the Board to determine whether the Transaction will cause widespread traffic delay problems. In light of the relatively limited number of crossings identified through this screening analysis, the Board can be confident that the Transaction will not produce this adverse effect.

Before mitigation is determined to be appropriate at a particular crossing, however, the screening analysis must be followed by much more detailed analysis. That detailed analysis requires site-specific information. CSX does not believe that this site-specific analysis should be undertaken by the Board through the environmental review process. That is the province of state and local transportation agencies. Those agencies have both the expertise regarding local conditions and the ability to prioritize local needs which the Board lacks. The appropriate recommendation with respect to the seven crossings identified as raising vehicle delay concerns is for CSX to consult with state agencies. It should then be entirely up to the state agencies to determine whether anything, and if so what, should be done.

B. Evaluation of the Seven Crossings Recommended for Consultation

With respect to three of the seven crossings, it appears that the significance criterion of the screening assessment (decrease to a post-Transaction level of service ("LOS") of D) would not be met if the best available information were used. These crossings are:

Dixie Hwy., Blue Island, IL
Broadway-135th St., Blue Island, IL
E. 9th St., Hopkinsville, KY

Therefore, these crossings should be deleted in the FEIS.

The Blue Island crossings are both on the Barr Yard to Blue Island line segment in the Chicago area. Based on the increased train traffic on the line, the DEIS predicts a decrease in LOS from B to D. In fact, however, ICF Kaiser has determined that LOS, as measured in the DEIS, will actually increase from a present level of E to C. See Exhibit 6, Table 1. The DEIS assumes a train speed of 20 mph both before and after the Transaction. In fact, however, average train speeds at these crossings are presently closer to 10 mph than 20 mph because of movements in and out of Barr Yard. Average train speeds after the Transaction are expected to average about 25 mph. This segment will benefit from the capital improvements planned for the Chicago area in connection with the Transaction and the implementation of the CSX Operating Plan which will allow for more fluid movements through Chicago, including in and out of Barr Yard. Accordingly, CSX expects that vehicle delays at the Dixie Highway and Broadway-135th St. crossings will decrease as a result of the Transaction even though more trains will operate through the crossings. CSX does not believe that any further mitigation is appropriate.

The DEIS also predicts a decrease to a post-Transaction LOS of D at the East 9th Street crossing in Hopkinsville, KY, based on an ADT of 16,000. The most current information from the Kentucky Transportation Cabinet, however, puts the ADT at 9,040. ICF Kaiser has computed the post-Transaction LOS using the more recent ADT as C, which does not warrant mitigation under the criterion of the DEIS. See Exhibit 6, Table 1. CSX therefore does not believe that consultation is required with respect to this crossing.

The DEIS should not be faulted; it could not reasonably take into account such specific information in the case of all the grade crossings to be examined on a 44,000-mile rail system. The DEIS has well performed its function as an initial screening tool.

CSX believes that it is appropriate to undertake consultation with respect to the remaining four crossings. It should be noted, however, that three of the remaining crossings are expected to experience increases of only three trains/day. These crossings are:

95th St., Evergreen Park, IL
Vine St, Hamilton, OH
Township Ave., Cincinnati, OH

With such a small predicted increase in train traffic, it is very difficult to determine in advance the actual effect of the Transaction on traffic delay. An increase in train traffic may not even occur on Day One. In addition, the daily operating time schedule of all the trains on these segments, which can make a material difference in vehicle delay, is not presently known. Moreover, a slight increase in average speed could effectively cancel out any increased vehicle delay from the few additional trains. With respect to 95th Street in Evergreen Park, IL, for example, the improvements in traffic flows in the Chicago area as a result of the implementation of the CSX Operating Plan might increase average speeds through this crossing such that vehicle delays might actually decrease at the crossing. It would thus not be surprising if the state agencies thought it prudent to take a "wait-and-see" approach with respect to these crossings.

With respect to the final crossing identified in the DEIS -- West Noel Ave. in Madisonville, KY -- it is worthy of note that this crossing will have a post-Transaction LOS of D, as measured in the DEIS, only because CSX defers to a local ordinance and operates through town at 20 mph. The track would permit speeds up to 50 mph. CSX would only have to operate at 25 mph to bring the LOS to C under the formula used in the DEIS. It would not be appropriate to require CSX to undertake any mitigation for vehicle traffic delay under these circumstances. Moreover, the City of Madisonville informed the Board by letter dated

January 20, 1998 that it did not believe any mitigation was warranted at the crossing.

It should be clear from this discussion that the final determination whether there is in fact a vehicle delay problem at these crossings and, if so, what mitigation might be appropriate, should be left to the state and local agencies which ordinarily handle these matters. There is no reason why the Board should intervene in this process.

12. Noise

A. The DEIS Indicates That There Are Not Widespread Significant Noise Impacts.

The DEIS provides a comprehensive analysis of potential noise impacts and concludes that communities on only seven line segments (five CSX, one NS, and one in a Shared Assets Area) may have significant adverse noise impacts. In light of this analysis, the Board can be confident that the Transaction will not produce widespread unacceptable noise impacts.

The DEIS correctly reports that noise levels on some line segments will increase with increases in train traffic as a result of rerouting and diversions of traffic from other rail carriers and trucks. Where there is a rerouting or a diversion from another rail carrier, there will be commensurate decreases in noise impacts along other rail line segments. Where there is a diversion from trucks, there will be a commensurate decrease in noise impacts along the highways from which the freight was diverted. These decreases in noise levels were not specifically documented in the DEIS given the enormity of the task and the absence of a need for such particularized information. However, the FEIS should clearly acknowledge that there will be reduced noise levels along some line segments and highways in order to place in context the documented increases in noise.

The DEIS appropriately concludes that no mitigation can be imposed for horn noise, the dominant form of railroad noise, because FRA regulations require horns to be sounded at grade crossings for safety reasons. The DEIS concludes that mitigation for wayside noise is warranted where the wayside noise level exceeds 70 dBA L_{eq} and where the increase in wayside noise level as a result of the Transaction is 5 dBA L_{eq} or greater.

CSX will undertake field investigation of noise impacts on the identified line segments to better define the impacts. The DEIS employs a conservative screening methodology which is not designed to fully account for the effects of shielding, topography and background noise levels. The screening methodology thus overstates the actual noise impacts. Relevant local conditions will be identified during the field investigation. If it appears that the mitigation threshold criteria of the DEIS are met in a particular area, CSX will evaluate potential mitigation strategies.

B. SEA Should Exercise Caution in Imposing Noise Mitigation Measures Beyond Those Required by EPA

To our knowledge, this is the first time that significance criteria for wayside noise impacts have been suggested in a Board environmental review process. CSX believes that the significance criteria of 70 dBA and a 5 dBA increase set forth in the DEIS are reasonable. However, any form of Board-imposed mitigation for wayside noise is problematic for a number of reasons.

First, as stated above, horn noise predominates over wayside noise, but horn noise cannot legally be curtailed. Thus, the persons who experience the highest levels of railroad noise are those who live near grade crossings where the horns are sounded, but those residences are not in the areas proposed for mitigation. Horn noise levels drop as one moves away from grade crossings until at some point the wayside noise predominates. The areas which are candidates for mitigation under the DEIS criteria typically include a few houses at the edges of towns. Although the mitigation criteria make sense from a logical perspective, from a practical perspective it might seem odd to the residents of New London, Ohio, for example, that CSX might propose, or the

Board might require, the construction of a noise barrier for a handful of residents on the outskirts of town who experience lower noise levels than the other residents of the town.[35]

Second, the issue of railroad noise has not, of course, arisen for the first time in this proceeding. The Environmental Protection Agency ("EPA"), in consultation with the Department of Transportation, regulates noise emissions from railroad equipment and facilities pursuant to Section 17 of the Noise Control Act of 1972, 42 U.S.C. § 4916. EPA has chosen to regulate by controlling the noise emissions at the source (locomotives and rail cars) and has rejected the approach of shielding receptors by noise barriers.[36] Inconsistent state and local regulation is expressly preempted. 42 U.S.C. § 4916(c). The areas proposed for mitigation were identified because of Transaction-related changes in train traffic (and thus noise levels) on the line segments. The absolute noise levels expected in these areas after the Transaction, however, are comparable to those experienced and to be experienced in many other communities at present and post-Transaction. In setting its noise emission standards, EPA has determined that these noise levels are acceptable. The Board should thus consider carefully whether it is prudent to impose additional noise mitigation measures as conditions in this proceeding.

As stated above, CSX is in the process of field investigation of the areas identified as potentially warranting mitigation and evaluation of possible mitigation strategies. Based on this analysis, CSX will determine whether consultation is appropriate with certain local governments.

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[35] This concern does not apply in Cleveland and East Cleveland where the line through the residential areas is entirely grade separated and therefore horn noise is not an issue. CSX has already undertaken field investigation on the Mayfield to Marcy, OH and Quaker to Mayfield, OH line segments and has recently presented a proposed noise mitigation plan to the Cities of Cleveland and East Cleveland.

[36] EPA's regulations are described more fully in the comments of NS.

As noted above, CSX has already proposed a noise mitigation plan to Cleveland and East Cleveland and will continue to consult with those jurisdictions about that proposal.

C. There Are No Transaction-related Impacts on the Deshler to Toledo Line Segment

With respect to the Deshler to Toledo line segment, CSX does not believe that any mitigation is appropriate in connection with Finance Docket No. 33388 because any impacts (noise or other) are not related to the Transaction. The CSX Operating Plan, which provides the basis for the traffic figures in the DEIS, provides 1995 base figures and post-Transaction projected figures. The 1995 base for the CSX Deshler to Toledo line segment is 0.6 trains per day, and the projected post-Transaction traffic is 14.2 trains per day, for an increase of 13.6 trains per day on average. This increase led to the conclusion in the DEIS that the Transaction would result in certain impacts (including noise impacts) on this 36-mile line segment. However, in May, 1997, CSX resumed through train operations over the Deshler to Toledo line segment for reasons unrelated to the Transaction. Present traffic on the line is about 14 trains per day. There will thus be no significant Transaction-related impacts on this line segment and that no mitigation would be appropriate in connection with this proceeding.

14, 16, 17. Cultural and Historic Resources.

14. Exermont, IL

The DEIS recommends that CSX undertake no construction or modification of a new rail line connection in Exermont, Illinois until completion of the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) (the "Section 106 process").

CSX will comply with this condition. On January 28, 1998, CSX provided the latest set of construction drawings to SEA and its contractors so that a Phase II archeological survey of the area in question could be completed by SEA's contractors.

16. 75th Street Interlocking Tower

The DEIS recommends that CSX maintain its interest in and take no steps to alter the historic integrity of the 75th Street Interlocking Tower in Chicago, IL until completion of the Section 106 process.

The proposed demolition of the 75th Street Interlocking tower is in no way related to this Transaction. The proposed connection at 75th Street will not affect the tower. CSX automated the 75th Street Interlocking in the fall of 1997 to improve operations through the interlocking. The tower is slated for demolition because it is no longer needed to control the interlocking.

Nonetheless, CSX has agreed to work with SEA and the Illinois State Historic Preservation Officer to document the tower before it is demolished.

17. Collinwood Rail Yard, Cleveland, OH

The DEIS recommends that CSX complete cultural and historic resource documentation for the Lake Shore and Michigan Southern (New York Central) Shops District at the Collinwood rail yard in Cleveland, Ohio no later than 180 days following the effective date of a final written

decision by the Board. Based on CSX's understanding of the documentation required, CSX will comply with this condition. CSX would like this work to commence as soon as possible to ensure that there is adequate time to complete it before construction planned for the yard begins. The Collinwood Yard will play a major role in CSX's planned intermodal services between the Eastern U.S. and Chicago, and its expansion will facilitate the environmentally-beneficial truck diversions that are projected.

19 Environmental Justice

In Finance Docket No. 33388, SEA is undertaking for the first time a specific analysis of the "environmental justice" effects of a proposed railroad control transaction. The DEIS presents the minority and low-income percentage of the population residing in the area potentially affected (as defined in the DEIS) by increases in traffic on rail line segments, increases in activity at rail yards, increases in truck traffic to intermodal facilities, and construction of new connections. Vol. 5A, App. K. The DEIS then recommends that CSX consult with communities having a certain percentage of minority and low-income individuals (often less than 50%) regarding mitigation of certain effects the DEIS says are "high and adverse." If that consultation does not result in binding agreements to implement mitigation measures, the DEIS indicates that the FEIS may recommend that such measures be imposed as conditions.

CSX strongly believes that the procedures used by the Board in all prior control transactions were adequate to ensure nondiscrimination in those proceedings and are adequate to ensure nondiscrimination in this proceeding. Demographic analysis is not required to protect against discrimination because the Board's implementation of the NEPA process applies neutral criteria to identify potential impacts and recommend mitigation throughout the entirety of the rail systems involved in the control proceeding. The DEIS improperly applies an analytical framework developed in the very different context of facility siting decisions to the analysis of operational changes on a fixed rail infrastructure. The proper analysis in this context requires a systemwide approach. Systemwide, this Transaction does not disproportionately affect minority or low-income populations.

In Executive Order No. 12898, dated February 11, 1994, President Clinton directed federal executive branch agencies to examine the effects of their actions on minority and low-income communities. Specifically, the Executive Order (Section 1-101) provides:

> To the greatest extent practicable and permitted by law, . . . 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 . . . and the District of Columbia . . . .

The Executive Order requests that independent agencies, like the STB, comply with the Order. Section 6-604. The DEIS acknowledges that the STB is not bound by the terms of Executive Order 12898. Vol. 1 at 3-46. To the extent that the Order requires that the Board undertake a special demographic analysis, the Board should exercise its discretion not to do so. However, CSX believes that the Board may fully comply with the Executive Order through its existing regulations and procedures.

A. The Board's Traditional Environmental Review Process Adequately Protects Against Discrimination

Without expressly stating that it was conducting an "environmental justice" analysis, the Board has always applied the principles of the Executive Order through its existing environmental review process as set forth in its regulations (49 C.F.R. Part 1105). The effort reflected in the DEIS to develop new procedures to achieve those objectives is unnecessary. The DOT, for example, has made it clear that the Executive Order does not necessarily require any new process at all:

> The Department does not intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making.

62 Fed. Reg. 18377, 18378 (April 15, 1997). To date, the Board has not published an environmental justice strategy or other guidance document on implementation of the Executive Order. If the Board believes that it should adopt new procedures to comply with the Executive Order, the Board should initiate a rulemaking. CSX respectfully submits that it is not appropriate to launch a major new requirement in the environmental review process of this proceeding without prior public notice and comment.

It is not necessary for the Board to undertake special demographic analyses of the particular action presented here -- the approval of a railroad control application. The Board correctly decided that such an analysis was not required in its review of the Burlington Northern/Santa Fe and Union Pacific/Southern Pacific railroad control proceedings, both of which post-dated Executive Order 12898.

1. This Railroad Control Proceeding Does Not Present An Opportunity for Discrimination By the Board

The federal action at issue here -- the Board's decision whether to approve this Transaction -- does not present the potential for discrimination that the Executive Order was designed to protect against. Section 2-2 of the Executive Order sets forth the Order's substantive standard:

> Each federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

As with prior control applications, SEA has undertaken a comprehensive analysis of potential environmental impacts from this Transaction, independent of demographic considerations. This is not a situation in which an impact on minority or low income individuals might be overlooked, as the same analytical methods to identify potentially significant impacts were applied to all line segments, yards and intermodal facilities. Similarly, this is not a situation in which impacts on minority or low income persons could be dismissed or treated as less serious than impacts on others, because criteria for recommending mitigation were applied neutrally. Even making the unwarranted assumption that the Board might have some desire to discriminate (which it most assuredly does not), it did not have readily available demographic data to include or exclude impact areas on this basis. Given the lack of data, if for no other reason, everyone had to be treated equally.

Moreover, this is not a situation in which certain communities might be excluded from participating in the environmental review process. Notice of the proceeding and relevant information were widely circulated -- through distribution of Applicants' Environmental Report, the draft and final scoping notices, information packages from SEA, the DEIS and other means -- to more than 2,000 federal, state and local agencies everywhere where there could be environmental impacts from the Transaction throughout the eastern United States and the

Midwest. Moreover, the DEIS was translated into Spanish, and CSX understands that SEA is undertaking various outreach efforts in minority and low-income areas.

Thus, a demographic analysis is not necessary to ensure nondiscrimination. Where neutral criteria are plainly applied across the board, and no persons are excluded from the process, the Board can complete its environmental review without special consideration of race, national origin and income status.

Furthermore, CSX does not read the Executive Order to require preferential treatment of minority and low-income persons, so demographic information need not be considered for this purpose. Nothing in the Executive Order requires mitigation for safety concerns, noise, or traffic delay in one community but not a second community similarly situated with respect to the expected level of impacts, the only difference being the demographic composition of the communities. That is not to say, however, that where the Board determines that mitigation is warranted in a community based on neutral criteria, consultation about the most effective implementation of the mitigation is inappropriate. As discussed above, the Board uses screening assessment tools to identify problem areas, but the resolution of problems will often be more effective if specific local conditions are taken into account.

2. This Railroad Control Proceeding Does Not Present An Opportunity for Discrimination By CSX or NS

Similarly, application of the Order to this railroad control proceeding is not necessary to protect against any potential discrimination by CSX or NS. CSX and NS must take Conrail's rail network as it is; they propose to build a few short connections between existing lines, but are not building new routes. There were thus no significant decisions to be made regarding where to site

new facilities, the classic situation in which special environmental justice analyses have been undertaken.

Moreover, neither CSX nor NS had any reason either to favor or disfavor minority or low income populations in deciding how to route their trains after the Transaction. The factors which were taken into account in routing trains were transportation-related, and are discussed in the Operating Plans.[27]

As the verified statements of John W. Orrison and D. Michael Molnar (Application Vols. 3A and 3B) attest, the Operating Plans for the expanded CSX and NS systems and for the Shared Assets Areas were devised to route freight traffic so as to provide the quickest, safest and most cost-effective rail transportation possible east of the Mississippi River, to the benefit of persons of every racial and income group. Some lines, yards and intermodal facilities will experience increased traffic under the Operating Plans, and some will experience decreased traffic.[28] Because minority and income status of populations in the vicinity of rail lines were not factors in the decision how to route the trains, it is to be expected that the increases and decreases in traffic over the 44,000 miles of rail lines at issue in the Transaction will be borne by minority and nonminority groups and persons of various income levels in reasonable proportion to their

[27] The primary factors are the origin and destination points for the expected freight shipments, geographic factors such as route distances and terrain, and the capacity of the tracks, yards and intermodal facilities.

[28] Systemwide, the total volume of rail freight traffic is predicted to increase because of the Transaction, with corresponding environmental benefits from decreased truck traffic. Systemwide, the total amount of activity in rail yards is expected to decrease because the expanded systems will allow for longer hauls and better blocking opportunities, with associated environmental benefits.

presence along the rail lines. As explained in NS' comments on the DEIS, that is what a statistical analysis conducted in response to the DEIS in fact demonstrates.

Thus, because of the fundamental nature of a major railroad control application and the standard environmental review thereof under NEPA, there is no significant risk of discrimination against minority and low-income populations. The Board should conclude that its existing procedures for control transactions fully satisfy Executive Order 12898. To the extent that the Board believes that the Order requires something more than its existing procedures in control transactions, the Board should exercise its discretion not to apply Executive Order 12898 in this proceeding. The appropriate procedure would be to initiate a notice and comment rulemaking for application to future Board proceedings. Such a procedure would allow for a full and open exploration of the criteria to be used in any environmental justice analysis to be undertaken in future cases.

B. If the Board Chooses to Apply a Demographic Analysis, It Must Employ a Methodology That is Consistent With the Executive Order

As is apparent from SEA's discussion of environmental justice (Vol. 1 at 3-46 to 3-52; Vol. 5A at K-1 to K-12), neither the Executive Order nor any guidance promulgated to implement the Order directly addresses the type of federal action presented here -- approval of a major railroad control transaction. The Department of Transportation's final order establishing procedures for applying the Executive Order to DOT programs, dated April 15, 1997, provides the most relevant guidance as it was drafted with transportation systems in mind, but even it stops far short of setting forth any directly applicable methodology. Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 Fed. Reg. 18377 (Apr. 15, 1997). Accordingly, SEA was faced with the challenging task of devising an analysis for this Transaction without any precedent and with very little guidance.

1. The Scope of Review is Too Broad

The Board should have limited the scope of its environmental justice review to new construction, projects, and perhaps abandonments, related to the Transaction. The situation presented here is quite different from the situation which typically gives rise to an environmental justice concern -- the siting of a new facility. The railroad rights-of-way presently owned by CSX, NS and Conrail were established beginning in the mid-nineteenth century and were largely determined by the early twentieth century. Land was developed along the railroad tracks with full

knowledge that freight trains moved over the tracks.[*] It is, therefore, not appropriate to apply environmental justice methodologies developed in the context of choosing a site for a new facility.

In the draft scoping notice for the EIS, SEA had proposed to apply environmental justice analysis only to the proposed new construction projects and abandonments, which was consistent with the usual application of the concept. In the final scoping notice, SEA expanded the scope of its environmental justice analysis to include traffic and activity changes on existing infrastructure. SEA had it right the first time.

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[*] The level of freight traffic on any given rail line varies through the years, sometimes greatly, with shifts in the origin and destination of shipments, the overall level of economic activity, plant closings and openings, competition from other railroads, development of substitute products for those shipped by existing rail customers, competition from trucks, and other factors. Moreover, a railroad's decision to change the level of traffic on a line is not ordinarily subject to review by any federal agency. Accordingly, it would not be reasonable for any individual or community along a rail line to expect that the level of traffic which existed in 1995 or any other year would never change.

What persons living along a rail line can expect, however, is that railroads will operate through their communities in compliance with company policies, railroad industry standards, and federal regulations designed to protect their health and welfare. Railroads are, of course, subject to comprehensive legal requirements imposed by the Federal Railroad Administration, Environmental Protection Agency, and other agencies. CSX, NS and Conrail also have adopted a host of industry standards and have implemented their own company-specific programs, particularly in the area of safety, which go beyond federal regulation. The company policies, industry standards and regulations are designed to promote safety and protect the environment whether one train or one hundred trains per day use a line. And it should go without saying that the company policies, industry standards and regulations are designed to provide the same high level of protection to all persons living in proximity to rail lines, regardless of their race, national origin or annual income.

2. The DEIS Fails to Determine Whether the Proposed Action Will Have a Disproportionate Effect on Minority and Low-Income Populations

Executive Order 12898 quite purposefully did not direct federal agencies to identify and address all "high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations." Section 1-101. Rather, the Order directed federal agencies, where "practicable" and "appropriate," to identify and address "disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations." Id. (emphasis added).

The DEIS writes the critical disproportionality requirement out of the Order. Although the DEIS acknowledges the disproportionality requirement several times (Vol. 1 at 3-47, Step 4; Vol. 5A, App. K at K-3 and K-10), it is never applied.

The DOT Order defines the disproportionality requirement as follows:

> g. Disproportionately high and adverse effect on minority and low income populations means an adverse effect that:
>
> (1) is predominately borne by a minority population and/or a low-income population, or
>
> (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

62 Fed. Reg. at 18381. The DEIS adopted the first part of the definition at Vol. 5A, page K-10. Significantly, however, it improperly truncated the second part of the definition to omit the

reference to the comparative effects suffered by non-minority and non-low-income populations. Id.

As explained below, CSX believes that analysis of disproportionality requires a statistical analysis of all the persons affected by the Transaction. The DEIS did not present any such statistical analysis. It did not present any analysis which compared the impacts on non-minority and non-low-income persons to those on minority and low-income persons. The DEIS states the following as its sole explanation of the methodology for determining whether adverse effects disproportionately affect minority or low-income communities:

> SEA used qualitative analysis approach which included review of several different factual circumstances, including cumulative effects of exposure to health and environmental impacts from many sources, to determine the significance levels on a local case-by-case basis. A determination of a significant environmental justice impact specifically included SEA's consultation with affected communities.

Vol. 5A at K-10 to K-11. With all due respect, this analysis is relevant only to the question whether certain effects are "high and adverse," not whether they disproportionately affect certain populations. The answer to the question whether an impact is disproportionate cannot come from consultation with minority and low-income populations, who presumably have little knowledge of how other communities are being affected by the Transaction. The answer must come from statistical analysis to determine whether similar impacts occur in other communities which are not predominately minority or low income.

In order to determine whether the Transaction would have disproportionate effects on minority or low-income populations, one would need to assess the systemwide effects of the

proposed train traffic patterns on the populations along the 44,000 miles of rail line presently owned by CSX, NS and Conrail which are at issue in this Transaction.[*]

The DEIS may have sought to avoid analysis of the disproportionality requirement because a rigorous application of that requirement to a rail transaction involving 44,000 miles of rail line would have been more difficult by many orders of magnitude than any such analysis performed under the Executive Order to date. The correct response, however, to this problem is for the Board to conclude that the type of demographic analysis in this context is not "practicable" and not "appropriate" (Executive Order Section 1-101), particularly because the Board is not even required to comply with the Executive Order. What is not permissible is for the DEIS simply to ignore this critical element of the analysis.

The DEIS compares the demographic composition of the population living in proximity to some of the rail line segments to that of the surrounding counties as a whole, but this is not an appropriate comparison group for purposes of analysis of disproportionality with respect to a fixed infrastructure such as a rail line system extending throughout the eastern United States. The DEIS may have been misapplying CEQ's formulation of disproportionality in taking this approach:

> SEA used the following process to define whether an impact is disproportionately high and adverse on the affected population: 1) "determine whether environmental effects are significant, as employed by NEPA, and 2) determine whether these impacts are or may be having an adverse impact on minority populations or low-income populations that appreciably exceeds or is likely to exceed

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[*] It is notable that the DEIS's summary of systemwide impacts did not even include environmental justice. Vol. 1 at 4-6. Environmental justice is improperly identified as only a "site-specific environmental issue."

those on the general population or other appropriate comparison group (CEQ Guidelines)."

Vol. 5A, App. K at K-3.

The DEIS analyzed the community around each individual rail segment as a separate population. While there may be some appropriate uses for a segment-by-segment analysis, a rail segment is not the equivalent of an individual facility, the typical subject of an environmental justice analysis. Segment end points are places where the level of train traffic changes, either because there is an origin or destination point, a rail yard or intermodal facility, or a junction point between rail lines. Rail segments vary greatly in length, from a minimum of one mile to a maximum of about 250 miles. The rail facility at issue in this Transaction is the entirety of the CSX, NS and Conrail systems. One should thus analyze the impacts on a systemwide basis. NS has undertaken a systemwide analysis of all CSX, NS and Conrail line segments using demographic information sorted by zip code which demonstrates that the Transaction will not have a disproportionate impact on minority or low income persons. The NS analysis is presented in its comments.

NS's analysis determined that the population in proximity to the rail lines involved in the Transaction is approximately 25% minority and 15% low-income.[31] Of course, the composition of the individual communities along the rail lines varies from one end of the percentage scale to the other. CSX and NS do not control land use patterns, and cannot move their infrastructure. Therefore, any comparison of rail impacts can only be among the communities residing in proximity to the rail lines, not to persons residing elsewhere. Executive Order 12898 cannot

[31] These figures are only very slightly higher than the composition of the United States as a whole, which is approximately 24% minority and 13% low-income.

prohibit rail transportation, or require mitigation which would be so extensive as to make rail transportation uneconomic, simply because some communities along rail lines have a higher percentage of minority and low-income persons than the rail population as a whole or the nation as a whole.[32]

The NS analysis shows that the impact of the Transaction is not disproportionate because it is not "predominately borne by a minority population and/or a low income population." 62 Fed. Reg. At 18381. About 75% of the impact is borne by the non-minority population and about 85% of the impact is borne by the non-low-income population. In addition, the impact on minority and low-income persons is consistent with their proportions in the rail population as a whole.

Moreover, the adverse effect suffered by the minority population and/or low-income population will not be "appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population," the second criterion in DOT's definition of disproportionality. See id. The nature of the impacts are the same throughout the system, primarily safety concerns, noise and traffic delay. Using neutral criteria, the DEIS identifies the communities that are expected to experience significant impacts as a result of the Transaction. Some of these communities are predominately minority or low-income, and others are not. These are the segments to which mitigation is targeted. The

[32] Taking the Executive Order to the extreme also points out how difficult it is in the context of a Transaction of this nature to account for the offsetting benefits to minority individuals and populations from rail traffic in terms of reduced truck traffic, improved employment opportunities supported by rail transportation, and other effects.

DEIS's "environmental justice" analysis is not necessary to ensure that these communities are not excluded from the benefits of mitigation.

C. Specific Recommendations for Consultation with Communities with Significant Minority or Low-Income Populations

The DEIS directs CSX to "consult with elected officials, appropriate local agencies, and community representatives" in the cities and towns listed on Table 7-9 to address the particular environmental impacts identified in Table 7-9, to the extent that those impacts are disproportionate. As explained above, this Transaction will not have a disproportionate impact on minority or low-income populations. There is thus no basis for directing CSX to embark upon special "environmental justice" consultations.

To the extent that (1) the application of neutral criteria has identified impacts potentially warranting mitigation, and (2) the crafting of the mitigation is properly informed by local considerations, CSX has undertaken and will continue to undertake consultations with appropriate officials regardless of the demographic composition of the community. With respect to the first point, because the Executive Order does not require a lower threshold for requiring mitigation in communities which are predominately minority or low income, there is no basis for directing CSX to consult with any communities in addition to those which have been identified for potential mitigation through application of SEA's neutral criteria.[33] With respect to the second

[33] Specifically, as explained below, SEA identified noise impacts on the Barr Yard-Blue Island, IL, Willow Creek-Pine Junction, IN, and Marion-Ridgeway, OH line segments, and at the 59th Street Chicago Intermodal Yard, even though the impacts do not meet SEA's neutral criteria for noise impacts. The DEIS states that although noise mitigation is not warranted "at this time," "noise effects have been included to consider potential cumulative effects." Vol. 4 at 7-48. CSX objects to any attempt to apply a cumulative effects analysis in this specific context. The DEIS includes no methodology for weighting and then cumulating the various adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.). And of course there is no quantification in

point, there are some impacts which by their nature must be addressed through uniform, systemwide (if not nationwide) standards and are thus not the appropriate subjects of consultations with cities and towns designed to fine-tune mitigation in light of local conditions. Freight rail safety issues, including transportation of hazardous materials, fall into this category. Freight rail safety issues are comprehensively regulated by federal agencies, primarily the Federal Railroad Administration. State regulation is preempted by the federal regulatory scheme and by the Commerce Clause of the United States Constitution. Accordingly, it would not be consistent with sound transportation policy for CSX to undertake consultation with cities and towns regarding the design of special mitigation of any potential freight rail safety impacts identified in the DEIS. CSX will adhere to freight rail safety conditions proposed in the DEIS with respect to specific line segments that meet the DEIS' neutral tests of "significant impact." Further, CSX routinely meets with communities along its rail lines to discuss a wide variety of issues of interest to the communities. CSX will continue its community relations efforts. What CSX objects to is a discussion for the purpose of designing a special mitigation strategy for freight rail safety and hazardous materials transportation that would apply only in certain communities because of their demographic composition.

the DEIS of the benefits of the Transaction on a localized basis -- reduction of truck traffic, positive economic effects, and the like. It would be impossibly complicated to attempt such a cumulative impacts analysis in every community along the 44,000 miles of rail lines involved in this Transaction. NEPA does not require the impossible, nor does anything in the Executive Order on environmental justice require SEA to devise such a complex analysis specifically for minority and low-income populations. Independent evaluation of the neutral criteria for each of the impact areas SEA has devised and applied is sufficient.

The potential impacts which may be appropriate for consultation are thus grade crossing safety, traffic delay, and noise. The identification of the appropriate entity to consult with regarding appropriate mitigation measures depends on the nature of the issue.

The DEIS strongly encourages CSX to enter into "mutually-acceptable binding agreement[s] on the implementation of appropriate mitigation measures." Vol. 4 at 7-18. It must be noted, however, that whereas it might be appropriate to consult with a particular official about mitigation, it might not be appropriate to enter into an agreement with that particular official. For example, a local official might desire a grade separation, but the state would normally vest the decision whether to undertake a grade separation in a state official. Any agreement regarding the separation would have to be between CSX and the state official, not the local official.

CSX does not believe that agreements are appropriate with "community representatives" who are not representatives of duly-constituted state or local government agencies. SEA has conducted "outreach" to educate and solicit the views of community groups about the Transaction. Those community groups can make their views known to their governmental representatives. If the view of a particular group does not persuade their governmental representatives, however, there is no basis for an agreement between the group and CSX. In its draft order on environmental justice, DOT had proposed "an agreement . . . with the potentially affected protected populations" as one option for addressing disproportionately high and adverse effects." 60 Fed. Reg. 33899, 33901 (June 29, 1995). Numerous commentors opposed the provision as unworkable and subject to abuse. DOT agreed, and deleted the proposal from its final order on environmental justice. 62 Fed. Reg. 18377, 18378 (April 15, 1997). CSX agrees as well, and does not plan to enter into any such agreements.

Having stated these general points, we will now address the DEIS's specific directions.

1. Barr Yard to Blue Island, IL

The DEIS directs CSX to consult with Blue Island with respect to traffic delay. Two crossings are identified which may warrant mitigation for vehicle delay impacts -- Dixie Highway and Broadway-135th St. These crossings were included in Mitigation Measure 11. As explained above in connection with Mitigation Measure 11, CSX expects that capital improvements planned in connection with the Transaction and the implementation of CSX's Operating Plan will greatly improve traffic flow through Blue Island. Accordingly, it does not appear that any additional mitigation is required. CSX will consult with the City of Blue Island about these operational improvements.

2. 59th Street Chicago Intermodal Yard

The DEIS directs CSX to consult with Chicago with respect to noise from truck traffic to the 59th Street intermodal facility even though the noise level does not meet the DEIS's criteria for mitigation. CSX's proposed intermodal facility at 59th Street is addressed below in connection with Mitigation Measure 24. As explained below, CSX has already consulted with the Chicago City Council in connection with CSX's rezoning application for the facility and has reached agreement on mitigation measures for the facility as conditions to the approval of the rezoning application.

3. Willow Creek to Pine Junction

SEA has directed CSX to consult with Gary, Indiana with respect to a number of impact categories. Gary is a member of the Four Cities Consortium. As explained below in connection

with Mitigation Measure 27, CSX is presently consulting with Gary about these issues as part of its consultation with the Four Cities.

4. Alexandria Junction to Washington, DC

SEA has directed CSX to consult with Bladensburg, MD and Washington, DC with respect to hazardous materials transport because this route is expected to become a key route after the Transaction. As explained above, CSX does not believe that consultation is appropriate with local communities regarding the design of special mitigation measures related to transportation of hazardous materials through their communities. However, CSX will coordinate with Washington, DC and Prince George's County, MD regarding the Hazardous Materials Emergency Response Plans recommended in Mitigation Measure 3.

5. Quaker to Mayfield, Mayfield to Marcy, OH

CSX is in the process of consulting with Cleveland and East Cleveland with respect to a number of impact categories, as explained below in connection with recommended Mitigation Measure 21.

6. Marion to Ridgeway, Ohio

In the errata to the DEIS, SEA directed CSX to consult with respect to mitigation of noise impacts in Marion, Ohio. For the reasons set forth below, CSX respectfully suggests there is no basis for any noise mitigation in Marion.

First, SEA's stated concern in Marion, Ohio is noise impacts, but this segment does not meet the SEA's criteria for noise mitigation. Nor can noise be considered as a cumulative impact in Marion, because no other impacts have been identified that warrant mitigation. The objective of the Executive Order is nondiscrimination, not preferential treatment.

Second, it is not clear that any noise mitigation in Marion would even benefit minority or low-income persons. As stated in Appendix K (Vol. 5A at K-43), the population along the Marion-Ridgeway line segment, a 23.2-mile-long line segment in Marion and Hardin Counties, is 5.3% minority and 24.2% low-income. This segment was identified as raising environmental justice concerns because the low-income percentage is reportedly more than 10% higher than the low-income population of Marion and Hardin Counties as a whole. As explained above, this is not a permissible application of the disproportionality requirement of the Executive Order. Disproportionality can only be determined on a systemwide basis. Presumably the DEIS was seeking to identify those communities that might have less political influence than their wealthier, nonminority neighbors in the county. Relative power within the county might be an appropriate concern if the Board were deciding whether to approve the construction of a new rail line through Marion and was looking at two different routes, but the approach makes no sense in the context of the action actually before the Board.

The problem with the DEIS's approach becomes more apparent when one focuses on the precise area of the noise impacts. A maximum of about 50 residences within Marion on the Marion-Ridgeway segment would likely experience a perceptible increase in noise from increased traffic on the line.[36] If a noise barrier were built along the rail line in the vicinity of these affected residences, for example, it would benefit only the occupants of these homes. It would not benefit anyone else in Marion. The relevant population for purposes of an environmental justice analysis is thus the residents of these 50 or fewer houses. CSX cannot readily determine the race, national

[36] If shielding were fully taken into account (the model is not designed to do so), it is likely that many fewer residences would actually be affected.

origin or income level of this small population. Thus, it is far from clear that any noise mitigation in Marion would benefit the persons the Executive Order was issued to protect.

21, 24, 25, 27. Communities with Unique Circumstances

21. Cleveland

The DEIS directs CSX and NS jointly and/or separately to "continue to consult with the City of Cleveland, the City of East Cleveland, the Ohio Department of Transportation, elected representatives for Cleveland and other appropriate parties to address concerns about train traffic increases on the CSX's Quaker to Mayfield and Mayfield to Marcy rail line segments and NS's Cleveland to White and Cleveland to Ashtabula rail line segments." It further directs CSX and NS to "negotiate a mutually acceptable binding agreement on train routing through Cleveland and mitigation measures for those routes that could experience potential significant environmental impacts."

The major rail routes of Conrail being allocated to CSX and NS in the Transaction form an "X", one leg of which is the Conrail lines from Boston and New York City (via Albany) to St. Louis and the other is the lines from New York (via Philadelphia) to Chicago. The cross-point of the Conrail "X" is in the Greater Cleveland area. One of the core concepts of the Transaction's allocation of the Conrail routes is that CSX will take the first-named leg of the "X", and NS will take the other leg. The "X" will no longer be operated as part of a single system, but the two legs of the "X" will be operated on a competitive basis by the two carriers.

Collectively, on the two branches of the "X", approximately 80-90 trains per day will be operated through Cleveland under the two carriers' operating plans. It should be noted that the Transaction will not materially change the number of trains traversing Cleveland on Day One (although traffic may ultimately increase in Cleveland as elsewhere on the CSX and NS systems as the benefits of the Transaction induce the diversion of freight from truck to rail). However,

instead of operations at the center point of the "X" being coordinated by a single railroad operating in its overall best economic interest, two rivals will operate their competitive services. The two railroads have proposed operating plans and allocations of routes in the Cleveland area that will permit each of the two to operate without interference with the other -- interference which could, of course, potentially lead to a "Houston" situation such as was encountered after the *UP/SP* combination and potentially one that would be more difficult to cure. Exhibit 7 shows the general layout of Conrail's lines through Cleveland, known locally as the "Lake Shore Line" and the "Short Line." CSX will principally operate over the Short Line and NS will principally operate over the Lake Shore Line. The end points of the CSX line segments as defined in the CSX Operating Plan are shown on Exhibit 7 for reference.

A. CSX Consultation Efforts to Date

Prior to the directive in the DEIS, CSX began meeting with appropriate state and local authorities throughout Ohio to consider creative options for addressing local concerns. Over the past eight months, CSX has met with PUCO and ORDC officials, and has cooperated with them in rail line studies to determine the need for improved rail grade crossing protection on certain line segments, among other things. CSX also has participated in many other public and private meetings. A variety of issues have been addressed, including economic development opportunities, safety at grade crossings, hazardous materials transport, commuter rail service, and other issues.

With respect to the Greater Cleveland area, CSX for several months has had meetings and conducted similar discussions with the Mayor of Cleveland and other City of Cleveland officials,

and the Mayors and officials of the Cities of East Cleveland, Brook Park, Berea, Olmsted Falls, and of Cuyahoga County.

Such meetings include:

- August 2[illegible], 1997 - Meeting with the Chairman of the Transportation Task Force of the Cleveland Growth Association ("CGA") to present the CSX operating plan and discuss the compatibility of routing plans with future development plans of the area;
- October 22, 1997 - Meeting with City of Cleveland's planning, law, and safety directors to discuss routing issues;
- October 28, 1997 - Meeting between CSX President John Snow and the Mayor of Cleveland to discuss that City's opposition to the CSX operating plan;
- November 6, 1997 - Meeting with East Shore Development Corporation to discuss the expansion at Collinwood Yard;
- November 7, 1997 - Meeting with commuter rail representatives, Cleveland Port Authority and the Director of the County Planning Commission to brief them on the Transaction;
- November 13, 1997 - Meeting with Collinwood area city councilman to discuss intermodal expansion;
- November 13, 1997 - Meeting with CGA staff member to discuss acquisition plan and commuter rail options;
- November 13, 1997 - Meeting with RTA to discuss commuter rail planning status;
- November 19, 1997 - Meeting with the Mayor of Berea to explain the acquisition and operating plan;
- December 5, 1997 - Meeting with the Mayor of Cleveland's staff to explain the rationale for the operating plan;
- January 12, 1998 - Meeting with the Mayor of Brook Park to discuss the operating plan and mitigation issues;

- January 14, 1998 - Meeting with City of East Cleveland officials, including the Mayor's Chief of Staff, the Police and Fire Chiefs, EMS Director and city councilmen to discuss the acquisition, noise mitigation, neighborhood beautification, job training and training and equipment for emergency responders,
- January 16, 1998 - Field inspection of Chicago intermodal facilities by City of Cleveland councilmen and other Cleveland officials to demonstrate improvements proposed for Collinwood Yard.
- January 21, 1998 - Joint CSX/NS meeting with the Mayor of Cleveland and his staff to discuss alternative routing proposals,
- January 21, 1998 - Joint CSX/NS meeting with the Mayor of Berea and the Mayor of Olmstad Falls to discuss alternative routings,
- January 22, 1998 - Train trip for the Mayor of Cleveland and other Cleveland officials, City of East Cleveland officials, and Cleveland area business associations to present the operating plan, Collinwood expansion plan, economic impact report, noise mitigation plan and CSX hazardous materials safety program,
- January 26, 1998 - Meeting with the Mayor of East Cleveland to discuss mitigation,
- January 27, 1998 - Joint CSX/NS meeting with the City of Cleveland Mayor and his staff to evaluate alternative routing proposals,
- January 30, 1998 - Meeting with clergy association leadership to discuss the operating plan and hazardous materials safety, and
- January 31, 1998 - Public meeting held by clergy association to discuss the operating plan and hazardous materials safety.

In dealings with most of the authorities contacted, substantial progress has been made. However, as of the date of these comments, the City of Cleveland remains opposed to the Transaction's allocation of lines and routing of traffic through Cleveland. Mayor White recently proposed to "flip" the allocation and have CSX operate over the "Lake Shore Line" between

Berea and Collinwood Yard through downtown Cleveland and have NS operate over the "Short Line" between Berea and the Harvard connection (near Marcy) to the Conrail line to Pittsburgh and between Berea and Mayfield to NS's line to Buffalo.

CSX and NS have carefully analyzed alternative routing options, but no alternative routings for CSX and NS traffic through Cleveland have been found that would not involve (a) significant disruption and delay of East-West traffic flows, (b) substantial construction-related environmental impacts and enormous construction expenses, (c) delay and/or disruption of the implementation of competitive service under the Transaction, and (d) adverse environmental impacts both in the City of Cleveland and in other parts of Greater Cleveland. In fact, CSX and NS continue to believe that Applicants' allocation of lines and the routing of traffic through the Greater Cleveland area represent the most effective means of achieving the objectives of the Transaction and maximizing the public benefits for both national and local interests. The rail line allocations and proposed routings set forth in the Application:

- are consistent with the historical use of these lines;
- promote effective competition between CSX and NS and efficient, reliable service for East-West traffic moving through Cleveland;
- are cost-effective and make efficient and beneficial use of existing railroad infrastructures, and
- do not cause significantly different environmental impacts than alternative routings.

B. Applicants' Proposed Routing is Consistent with the Historical Use of the Lines.

Cleveland historically has been a major hub for East-West railroad traffic. All of the Ohio predecessors of Conrail as well as the predecessors of CSX and NS have had major rail presences

in Cleveland for decades. More significantly, Conrail has designed its system so that both of its major routes cross in Cleveland, making Cleveland the center of its system. As a result, Cleveland is the most direct and efficient routing for traffic between Chicago and eastern points and, as detailed in Applicants' Rebuttal, rerouting traffic away from Cleveland is neither commercially nor operationally feasible and would substantially diminish the quality and competitiveness of East-West rail transportation. Rebuttal Verified Statement of John W. Orrison, Rebuttal Vol. 2A at HC-79 to HC-85.

Likewise, no viable alternatives have been identified for reallocating lines or rerouting rail traffic within Cleveland. Conrail presently uses two routes through Cleveland, the "Lake Shore Line" and the "Short Line." Both lines connect the Collinwood Yard on the northeast side of Cleveland with Berea to the southwest of Cleveland. Each line is approximately 20 miles long. As a result of the Transaction, NS will operate over the Lake Shore Line and CSX over the Short Line.

Both lines have carried substantial freight traffic since they were built. The Lake Shore Line was built in the mid 1800's by a predecessor of the Lake Shore and Michigan Southern Railway ("LS&MS"). At the turn of the century, the LS&MS was the western main line of the New York Central and Hudson River Railroad extending from Buffalo, NY through Cleveland to Chicago. Increasing amounts of passenger and freight traffic made it necessary to complete a four-main-track line from Buffalo to Toledo and farther West. In 1902, LS&MS created a subsidiary, the Cleveland Short Line Railway Company, to construct a belt line of railroad around the City of Cleveland and provide facilities for interchange between the eight railroads then serving Cleveland.

The Short Line was designed for high volume freight traffic. It is entirely grade separated through Cleveland and East Cleveland, in some places running on elevated track and in others through cuts below grade. The Short Line became an integral part of the expansion to four main tracks, and upon its completion in 1912, it became the bypass for freight traffic. By 1915, the line consisted of 19.64 miles of main track, 19.17 miles of second (main) track and 22.23 miles of sidings, making it well suited for handling heavy volumes of freight traffic.

Inter-yard pulleys as well as through freight trains were scheduled across the Short Line for many years, averaging 30-40 freight trains per day. As the Lake Shore Line carried a heavy volume of regular passenger service as well as freight trains, the Short Line provided an efficient route for handling freight trains. The opening of the Cleveland Union Terminal in 1930 and its associated passenger route reduced some of the traffic on the Lake Shore Line by relocating a substantial amount of passenger train traffic to the Short Line. Nonetheless, even with the decrease in passenger traffic on the Lake Shore Line, the Short Line continued to carry between 25-30 freight trains per day throughout the 30's, 40's and 50's.

In connection with the construction of the Cleveland Union Terminal, the New York Central ("NYC") constructed a new alignment for its passenger trains from the Lake Shore Line at Collinwood and along the Short Line between Collinwood and University Circle (near Mayfield on Ex. 7). At University Circle, the passenger route diverted from the Short Line to reach the terminal. This line is now used by the RTA. This part of the Short Line -- the part that Cleveland says will be unacceptably affected by the passage of 40 freight trains per day -- had a multiple track right of way, with two tracks for passenger trains and two tracks for freight trains. All NYC passenger trains serving Cleveland moved over this line. As a result, regularly scheduled

passenger trains on this line averaged between 20 and 30 trains per day during the 1940's and 1950's and about 10 trains per day during the 1960's.[27] In addition, mail and express trains (including mail-carrying through passenger trains that did not have passenger stops in Cleveland) used this route to access the Union Terminal complex. As stated above, the RTA continues to operate along or near the Short Line in Cleveland and East Cleveland.

Conrail continues to route traffic over the Short Line to relieve congestion on the Lake Shore Line as needed, particularly during periods of heavy maintenance on the Lake Shore Line. During these times, an average 30-40 trains per day traverse the line.

It should be emphasized, therefore, that CSX's proposal to operate approximately 40 trains per day over the Short Line is not a deviation from the historical use of this line, but a resumption of the service for which the line is particularly well suited.

C. The Proposed Allocation Promotes Competitive, Efficient and Reliable Rail Service

The Applicants' plan for allocating lines and routing traffic through Cleveland is an important part of the overall plan to provide more efficient, cost-effective, reliable and competitive interstate rail transportation between the East Coast and points West. Allocating the Lake Shore Line to NS and the Short Line to CSX gives each carrier a direct through route through and beyond Cleveland that does not require the difficult task of sharing track or crossing the other's line anywhere at grade -- which with 80-90 trains a day planned could lead to chaos. Applicants identified no other way to accomplish this. Having parallel and non-interfering routes eliminates the very real problem of a bottleneck at Berea where the two Conrail lines cross. The

[27] It should be noted that most of the homes in this area were built in the 1920's and 1930's during the years of heaviest train traffic.

elimination of the bottleneck results in improved transit time for CSX and NS East-West trains. In addition, the ability of CSX and NS each to fully control the movements of its trains (and particularly time-sensitive intermodal trains which compete with trucks) unimpeded by the movements of the other carrier promotes more efficient and reliable East-West service.

Applicants' proposed allocation and routing enable CSX and NS to achieve their objective of each having a high quality, two-main-track route through Cleveland with the expenditure of reasonable sums to improve the existing rail infrastructure. CSX plans to spend about $40 million to improve the Short Line and Collinwood Yard, including restoring double tracking to all but about one-and-a-half miles of the line, upgrading the signal system to install TCS on the newly constructed track, installing continuous welded rail, installing a defect detector at Marcy, and upgrading the intermodal facility at Collinwood Yard.[28] These investment decisions have been based on practical assessments of the costs and benefits of the proposed improvements.

D. Potential Alternatives for Reallocating Lines and Rerouting Traffic Entail Disproportionate Expense and Inefficiency Compared to Applicants' Proposed Routings

The City of Cleveland's proposal for reallocating lines and rerouting traffic through that City would entail disproportionate expense and pose operating problems that significantly undermine any purported benefits of such proposals. In order to avoid an increase of traffic on the CSX Quaker to Mayfield and Mayfield to Marcy segments, the City of Cleveland has proposed that the allocation of lines be "flipped," assigning the Short Line to NS and the Lake Shore Line to CSX. The proposed alternative would result in NS traffic moving over the Short

[28] CSX's investment in capital improvements in the Greater Cleveland area will total about $75 million.

Line between Berea and the Harvard connection (near Marcy) and then onto its acquired Pittsburgh line or between Berea and Mayfield and onto its own Buffalo line. CSX traffic would move between Berea and Collinwood over the Lake Shore Line to its newly acquired routes to New York City/Northern, New Jersey via Buffalo and upstate New York.

This alternative would result in CSX and NS having to cross each other's lines at grade at Berea, creating either a major bottleneck at the crossing point or the need for an extensive and costly separation. It would also make it extremely difficult for NS to reach several facilities that it will serve, without substantial additional investment. In fact, the proposal would require several major construction projects, beyond those now contemplated, including:

- Construction of a flyover at Berea to enable the unrestricted crossover of CSX and NS trains to and from their connecting routes. An unrestricted crossover with about a 0.5% gradient and clearance for future improvements would be approximately 10,000-11,000 feet long and take at least 2 years to construct. Construction would necessitate the disturbance of existing residential and commercial structures, and would dramatically alter the existing character of the impacted area. In addition, the construction could potentially affect Berea's existing subterranean infrastructure, including sewer lines, water lines and utility and communication lines. Finally, the potential noise impacts of an elevated superstructure would require additional assessment and potentially significant mitigation efforts;

- Construction of a second track at the Harvard Connection in order for NS to operate. The construction of the track would necessitate the building of a bulkhead in the adjacent creek basin and could adversely affect the environmentally sensitive waterfall located in Mill Creek;

- Construction of substantial additional track required for NS to access Rockport Yard (where it maintains an operating base) and Ford Motor Company; and

- Initiation of a project to facilitate NS's efficient access to Whiskey Island, where iron for use in local steel production is transloaded from lake cargo vessels.

The costs of this proposal are unrealistically disproportionate to the benefits. Construction of the mammoth superstructure of the flyover alone could cost in excess of $100 million, without even considering the costs and impacts of relocating utilities, or the costs of related environmental mitigation.[29] But the true costs associated with this proposal go far beyond the capital needed to construct the additional projects. They also include the high public and private costs of entirely postponing and/or disrupting implementation of the Transaction,[30] risks of very serious environmental impacts in Berea, and serious on-going operational and customer service issues when construction is completed. Such detriments fly in the face of the railroad transportation policy goals of promoting sound, economical, competitive and efficient service.

Any suggestion that CSX and NS could share the Lake Shore Line is equally impractical. There is not sufficient right-of-way to accommodate new separate tracks. Sharing the same tracks would not give the shippers the benefit of two efficient, reliable East-West routes offered by two strong competitors. Like the "flip" alternative, it would create in Cleveland a bottleneck for the two competing routes, resulting in decreased efficiency and the unreliability of East-West movements. Similar problems of crossing at ground level, as in the "flip" alternative, would be created.

[29] Cleveland's consultant Parsons Brinckerhoff has estimated the cost of Cleveland's alternatives at $148 to $171 million, a significant item of which is the flyover structure at Berea. CSX has not yet developed its own estimates of the cost of the structure.

[30] Cleveland is not what Reno and Wichita were to the UP/SP combination -- points where operations could be frozen without systemwide damage. Cleveland is the central point on the Conrail route system and is central to the new long-haul operations of both CSX and NS.

Another proposal has been made to have a "neutral terminal operator" in Cleveland, presumably with operations conducted similarly to those of the unitary Conrail. But that would not resolve the problem, if there is to be coordination of the movements of CSX and NS through Cleveland, the coordination has to extend systemwide, since the trains that will move through Cleveland will be in large part trains making long-haul runs over most of the extended systems, East and West, of the two carriers upon the implementation of the Conrail route allocation. Thus, what is at issue is not the management of local traffic moving through Cleveland, but the efficient operation of interstate and even transcontinental traffic. While it is true that Conrail could economically and efficiently progress trains through Cleveland without the need for separations, the situation here is different. Unlike Conrail, a terminal operator would not have control over the scheduling and operation of all pertinent train movements from origin to destination. It may be expected that for competitive reasons CSX and NS would tend to schedule origination and arrival times for their long-haul movements that would put the competitive movements in Cleveland at about the same time of day. The terminal operator, therefore, would not be in a position to coordinate and facilitate the efficient movement of interstate rail traffic converging on Cleveland from all directions.

These proposed tinkerings with the allocation of Conrail routes through Cleveland would have the most serious consequences. They would either entirely prevent the implementation of the CSX and NS operating plans (effectively sundering the Transaction), postpone their implementation while the necessary construction work was completed, or compromise them by greatly reducing capacity while construction proceeds at the critical throat of the system.

Rather than providing the benefits of more efficient and competitive rail service, the alternatives would create impediments to such service and thus be a disservice to the nation and to the City of Cleveland.

E. **Rerouting Trains from the Lake Shore Line to the Short Line Will Have Significant Benefits for Cleveland Itself**

CSX's Operating Plan will not only benefit the national transportation system, but will also benefit the City of Cleveland itself in a number of ways.

First, the Short Line is entirely grade separated through the City of Cleveland. A significant number of trains will be rerouted onto the Short Line, decreasing the number of trains traversing at-grade crossings on the Lake Shore Line. This will promote greater safety, decrease delays at crossings and promote improved vehicular traffic flows. Indeed, CSX's efforts to move traffic away from downtown Cleveland and onto the Short Line is consistent with the City of Cleveland's own prior proposals to do the same.

Second, the proposed upgrading of the Short Line will increase the speed at which trains traverse the line, thus shortening the overall "presence" of trains over line segments traversing Cleveland neighborhoods, and will also promote safe transport of freight through Cleveland.

Third, use of the Short Line will decrease the number of trains affected by the drawbridge on the Lake Shore Line. The drawbridge is opened, on average, 6,000 times a year. During the peak period in the summer, the bridge is opened approximately 3,000 times, primarily to permit passage of pleasure boats. Decreasing the number of trains crossing the drawbridge promotes smoother, more efficient operations for both vessels and trains through Cleveland.

Fourth, the implementation of the Operating Plan will allow Cuyahoga County (which includes Cleveland) to realize a net savings of over 1.9 million truck miles in truck diversions, which means a reduction of 4.15 truck accidents annually (1.06 of which would involve injuries) and net savings of about $230,000 in annual highway maintenance costs. These benefits will be lost if the CSX and NS Operating Plans are not fully implemented.

Moreover, the impacts that will be experienced on the Short Line will be no different in nature or greater in magnitude than the impacts currently being experienced on the Lake Shore Line. Cleveland has described the impacts from CSX train traffic on residents living in proximity to the Short Line, without acknowledging that there are about the same number of residents in Cleveland along the Lake Shore Line. Both the Lake Shore Line and the Short Line pass through a mix of industrial, commercial and residential areas. Under the CSX Operating Plan approximately 40 CSX trains will pass through Cleveland each day. Whether they traverse Cleveland on the Lake Shore Line or on the Short Line they will unavoidably create some noise. The significant noise impacts are largely restricted to the first row of structures along the tracks. The number of Cleveland residents living along the Short Line is roughly comparable to the number of residents living along the Lake Shore Line.

The residents along the Lake Shore Line have been living their lives without serious adverse effects with higher levels of Conrail traffic on the Lake Shore Line than CSX is proposing to route over the Short Line. There are numerous locations throughout the eastern United States, including its major metropolitan centers, where rail traffic exceeds 40 trains per day. Comprehensive federal regulation, along with industry standards and company practices, ensure that rail freight transport will perform its important function in the economy without unacceptably

affecting the communities through which it passes, in terms of noise, safety or issues of public inconvenience such as traffic delay. Compared to other communities which do not have the benefit of a grade-separated rail corridor (including that portion of the Lake Shore Line in Cleveland near Kirtland Park where there are grade crossings), train traffic over the Short Line will have relatively less adverse effect because horns will not sound at grade crossings, there will be no risk of accidents at grade crossings, and vehicles will not be delayed at grade crossings.

CSX analyzed the noise impacts from its proposed operations over the Short Line in Cleveland and East Cleveland.[39] CSX identified about 250 residences on the Quaker to Mayfield and Mayfield to Marcy line segments which meet the DEIS's criteria for significant impact (70 dBA L_{dn} and an increase of 5 dBA L_{dn}). These residences are all in the first row of structures adjacent to the rail line. CSX proposed mitigation for 235 of the residences. The proposed mitigation is low noise barriers to shield the wheel/rail noise. High noise walls to block locomotive noise were determined not to be feasible. Although locomotive noise is louder than the wheel/rail noise, it is experienced for a much shorter time period. Because CSX recognized that the low barriers would not shield all rail noise, CSX proposed in addition to provide an offsetting benefit -- landscaping -- to provide a visual barrier and generally improve the appearance of the rail corridor.

To the extent that transport of hazardous materials has been raised as a concern, existing regulations and programs already ensure that the risk of a release of hazardous materials is

[39] TranSystems Corporation, "Evaluation of Noise Impacts From Proposed CSX Operations in Cleveland and East Cleveland, Ohio" (Jan. 1998).

extremely low. CSX will also comply with proposed Mitigation Measure 4 with respect to the Short Line, and provide enhanced emergency response training in Cleveland and East Cleveland.[40]

CSX offered its noise mitigation plan as the most direct response to increased noise levels on the Short Line, and CSX is willing to consult with Cleveland and East Cleveland regarding other forms of offsetting benefits as well.[41]

Thus, looking solely at the interests of the residents of Cleveland itself, CSX does not believe that routing trains over the Short Line creates greater adverse effects than routing trains over the Lake Shore Line, as Cleveland has proposed. Indeed, the rerouting will provide a number of important benefits to Cleveland. To the extent that a significant change in traffic patterns will result from the Transaction, however, CSX has pledged to mitigate the effects of the change, either directly through measures such as noise barriers or indirectly by providing some offsetting benefits. Moreover, when one looks more broadly at the interests of the residents of the Greater Cleveland area, Mayor White's proposal is even less desirable because it seeks to impose on its neighbor to the southwest, Berea, a mammoth rail flyover structure which would have serious adverse effects in that community, both during the construction period and thereafter.

F. Conclusion

Consistent with the national rail transportation policy, the rail allocation and routing plan proposed by Applicants promotes "a safe and efficient rail transportation system," "ensure[s] the

[40] The routing choice between the Lake Shore Line and the Short Line will not affect the volume of hazardous materials moving through Cleveland, just the precise location.

[41] Some programs of general benefit to the community which have been suggested and will be considered by CSX include capital improvement programs, commercial renovation rebate programs, housing renovation allowances, and employment training and preference programs.

development and continuation of a sound rail transportation with effective competition among rail carriers and other modes," and "foster[s] sound economic conditions in transportation and ensure[s] effective competition and coordination between rail carriers." 49 U.S.C. § 10101(3), (4) and (5). No alternative plan and no mitigation that would change the routing plan would be consistent with this standard.

The rail lines through Cleveland, given the basic geography of the Conrail system, will constitute a throat of commerce for the two carriers in their separate operation of the allocated parts of the Conrail system. For them to operate competitively, without interference with one another, the plan proposed by them is the only realistic plan. Effecting any of the alternative solutions would cause years of disruption and postponement of the implementation of a beneficial transaction that has been very long in its achievement already. Local opposition based on noise impacts -- which CSX has pledged to mitigate -- should not be permitted to cut this throat of commerce or choke it for a lengthy period of time. No mitigation involving route relocation in Cleveland ought to be proposed in the FEIS. If proposed, it should be rejected by the Board.

The only significant environmental impacts arising from use of the Short Line are noise impacts. The appropriate mitigation for this impact is not to throw out the Applicants' operating plans, but to implement a noise mitigation plan including noise barriers and offsetting benefits as CSX has offered to implement. The balancing that an EIS process involves is particularly important in a situation such as this.

24. Chicago, Illinois

The DEIS describes CSX's proposed construction of a new intermodal facility at 59th Street in Chicago, Illinois. The DEIS directs CSX to consult and reach a mutually-acceptable binding agreement with respect to traffic and noise mitigation measures for this facility.

As the DEIS reports, CSX filed a rezoning application with the City of Chicago which was supported by detailed reports documenting both potential benefits and adverse effects from the 59th Street facility (including increased traffic and noise). The application was thoroughly considered by the Chicago City Council and its staff. CSX engaged in extensive consultations with the communities surrounding the 59th Street facility, including with the City Council Members in Ward 15 and Ward 16, who supported the application.

On December 10, 1997, just after the DEIS went to print, the City Council approved the rezoning application. The approval included conditions designed to address adverse effects of the facility. CSX will submit documentation of the approval to SEA. CSX believes that this approval fully satisfies the recommendation in the DEIS, and that the FEIS should report that this matter has been resolved. Accordingly, no condition is warranted.

25. Newark, Delaware

CSX currently operates an average of 26.9 trains per day through Newark, Delaware (the Wilmington-Baltimore line segment of the CSX Operating Plan). The CSX Operating Plan projects that traffic on this line segment will increase only 1.9 trains per day. As the DEIS acknowledges, this minor increase in traffic does not exceed the Board's thresholds for environmental analysis. Vol. 3A at DE-16 to DE-17. CSX agrees with the conclusion in the DEIS that the "minor increase in train traffic would have only a minor incremental effect on the community." Vol. 3A at DE-17. The concerns raised by Newark in Finance Docket No. 33388 relate to pre-existing conditions. Id.

Despite these conclusions, the DEIS recommends that CSX consult with local agencies, the University of Delaware and the Delaware Department of Transportation regarding pedestrian safety issues. Vol. 4 at 7-21. The DEIS suggests that SEA might recommend mitigation in the FEIS if CSX does not enter into a binding agreement regarding mitigation measures.

CSX voluntarily commenced consultation with the University of Delaware and local agencies regarding pedestrian safety in Newark before SEA issued the DEIS. These discussions have been very productive to date and CSX is optimistic that an agreement will be reached regarding a variety of measures that will enhance pedestrian safety in Newark. CSX will inform SEA if it reaches agreement with one or more parties regarding pedestrian safety in Newark, and SEA can document that agreement in the FEIS for consideration by the Board in evaluating the overall environmental effects of the Transaction.

However, it would not be appropriate for the Board to condition approval of the Transaction on any such voluntary agreement relating to what is clearly a pre-existing (non-

Transaction-related) situation in Newark. Nor would it be appropriate for the Board to impose any mitigation in the event that an agreement is not reached. The Board has repeatedly held that it will not impose conditions to address pre-existing matters. See UP/SP at 145; BN/SF at 56. This limitation is recognized in the DEIS itself. Vol. 1 at 1-10, 3-3. It is sufficient that the FEIS simply document any voluntary agreement that may be reached with respect to the pre-existing situation under discussion or, in the absence of such an agreement at the time of the FEIS, report that the parties are consulting.

27. The Four Cities Consortium

CSX, NS and Conrail currently operate freight rail service on a number of line segments through the cities of East Chicago, Hammond, Gary, and Whiting, Indiana (collectively referred to as the "Four Cities"). The DEIS analyzed the effect of traffic increases on vehicle delay at nine grade crossings in the Four Cities. The DEIS acknowledges that there is an existing problem with vehicle delay in the Four Cities. The DEIS concludes that the slightly increased delays resulting from Transaction-related traffic increases do not meet the DEIS's criteria for mitigation. Vol. 3A at IN-84.[42]

Despite these conclusions, the DEIS recommends that CSX consult with representatives of the Four Cities, the Indiana Department of Transportation, and other appropriate parties regarding at-grade crossing delay and safety issues. Vol. 4 at 7-21. The DEIS suggests that SEA might recommend mitigation in the FEIS if CSX does not enter into a binding agreement regarding mitigation measures.

CSX notes at the outset that the traffic delay calculations in the DEIS for the nine crossings overstate the post-Transaction traffic delay. The calculations do not take into account the increased average speed on the Pine Junction to Burr Yard Line segment which will result from the capital improvements and operational improvements planned for the line and the Chicago area as a whole. When the increased speed is taken into account, CSX expects that traffic delays at the nine crossings will actually decrease as a result of the Transaction. See Joint Rebuttal

[42] The DEIS also analyzed the effects of traffic increases on grade crossing safety throughout the Four Cities and concludes that traffic increases on the Willow Creek to Pine Junction line segment warrant grade crossing protection upgrades at four grade crossings on this segment. This recommendation is addressed in connection with recommended Mitigation Measure 8 above.

Verified Statement of James C. Rooney and T. Stephen O'Connor, Rebuttal Vol. 2 B at HC-277 to HC-317.

CSX voluntarily commenced consultation with the Four Cities and the Indiana Department of Transportation before the DEIS was issued. Those discussions have been very productive to date and CSX is optimistic that an agreement will be reached regarding a variety of measures in the Four Cities. CSX will inform the SEA if it reaches agreement with respect to the Four Cities, and the SEA can document that agreement in the Final EIS for consideration by the Board in evaluating the overall environmental effects of the Transaction.

However, it would not be appropriate for the Board to make any such voluntary agreement relating to what is clearly a pre-existing condition in the Four Cities a condition of Board approval of the Transaction. Nor would it be appropriate for the Board to impose its own condition in the event that an agreement is not reached. The Board has repeatedly held that it will not impose conditions to address pre-existing matters. See UP/SP at 145; BN/SF at 56. This limitation is recognized in the DEIS itself. See DEIS, Vol. 1 at 1-10, 3-3. It is sufficient that the FEIS simply document any voluntary agreement that may be reached with respect to the pre-existing situation under discussion or, if no agreement is reached by the time of the FEIS, report that the parties are consulting.

28-41. Recommended General Mitigation for Proposed Construction Projects and Abandonments

The DEIS recommends that CSX comply with fourteen specified mitigation measures in all construction and abandonment activities described in the DEIS. CSX will do so.

45. Cultural and Historic Resources Review of Paris to Danville, IL Abandonment

The DEIS recommends that CSX retain its interest in and take no steps to alter the historic integrity of the line segment proposed for abandonment between Paris and Danville, IL until the Section 106 process is completed. CSX understands from a letter from the Illinois Historic Preservation Agency to Elaine Kaiser, dated January 13, 1998, that the Section 106 process is completed with respect to this line segment. CSX will contact the Illinois SHPO if archeological resources are found during the course of salvage activities, as recommended in the DEIS.

47, 48, 49. Operations over Four CSX Connections

The DEIS recommends that CSX comply with three specified mitigation measures in its operations over its connections at Crestline, Ohio, Willow Creek, Indiana, Greenwich, Ohio and Sidney, Ohio. CSX will do so.

III. Miscellaneous Comments

The DEIS notes that certain comments and requests for conditions ("CRCs") filed on October 21, 1997 "raise environmental issues that SEA is considering" and that these issues will be considered "until the Final EIS is published." Vol. 1 at 2-36. The DEIS also observes that it did not consider the Applicants' December 15, 1997 rebuttal evidence and argument, which was filed three days after the DEIS was served. The 89 CRCs that requested conditions are listed in Appendix U of Volume 5C of the DEIS. That list also sets forth in very summary form what the DEIS describes as "the potential environmental effects of the conditions requested." Vol. 1 at 2-36. In this section of its comments, CSX will briefly respond to two of the descriptions of potential environmental effects found in Appendix U -- specifically, the description of the environmental impacts of the conditions requested by certain members of the U.S. House of Representatives from New York and Connecticut and by Stark Development Board.

In addition, CSX will briefly respond to suggestions found in Chapter 5 of the DEIS with respect to the New Jersey Department of Transportation and New Jersey Transit Corporation, Southeastern Pennsylvania Transportation Authority, proposed Rockland County, NY commuter service and Amtrak service at Dunkirk, NY. With the exception of the Rockland County matter (which was not the subject of any filing with the Board of which CSX is aware), CSX has responded fully to each of the parties in its December 15 rebuttal. Specific references to the relevant portion of that rebuttal are set forth below.

1. Stark Development Board

The Stark Development Board ("SDB"), an economic development entity based in Stark County Ohio, has filed comments with the Board that request that CSX and NS offer special conditions with respect to an intermodal terminal (known as the Neomodal Terminal) located in that county on the lines of Wheeling & Lake Erie ("W&LE") Railroad. Specifically, SDB requests a series of broad conditions that would require CSX and NS to (1) provide competitive pricing, schedules, market access and reliability to Neomodal, (2) work with W&LE to assure competitive rates, (3) integrate Neomodal into the CSX and NS systems and market it as if it were their own terminal, and (4) enter into long-term lift contracts to repay the loans used to pay for the Terminal's construction. Alternatively, SDB asks that CSX and/or NS be required to purchase the Neomodal Terminal at fair market value and integrate it into their systems.

While the DEIS does not, and has no reason to, evaluate the merits of SDB's requested conditions, the "DEIS does note that the closing of the Neomodal Terminal might result in the "loss of environmental benefits like reduced highway congestion and air pollution." DEIS, Appendix U at U-19. CSX briefly responds to this remark in the DEIS to ensure that the SEA does not confuse the general environmental benefits of intermodal rail transportation -- of which there are many -- with the merits of SDB's requested condition -- of which there are none.

Simply put, the failure of the Neomodal Terminal to attract business is entirely unrelated to the proposed Transaction. The primary problem facing the Terminal is the Terminal's location -- it is not located on or near either CSX's or NS' mainlines and is distant from major population and commercial centers. In an intermodal market where most freight is time sensitive, and where

competition with the door-to-door services offered by motor carriers is keen, SDB's decision to locate its Neomodal terminal far from CSX or NS mainlines places that terminal at a distinct disadvantage. All freight moving to or from the Terminal must be switched with W&LE at the nearest CSX and NS yards, an operation that adds both time and expense to the interchange of intermodal units.

For these reasons, the Neomodal terminal is not a financial success today -- a situation having nothing to do with the Transaction. Moreover, the Transaction will not reduce the level of intermodal service available to shippers or the area served by Neomodal. CSX respectfully refers the SEA to pages HC-471 through HC-477 of Volume 1 of Applicants' Rebuttal and to the Rebuttal Verified Statement of Peter Rutski of Volume 2 of Applicants' Rebuttal, for a detailed discussion of why the Board should deny SDB's request for conditions.

In sum, CSX is a firm believer in the economic and environmental benefits of intermodal rail transportation. As the truck diversion studies presented to the Board by CSX and NS indicate, approximately one million intermodal units (trailers or containers) will be diverted from highway transport to the rail system as a result of the proposed Transaction, thereby reducing highway congestion, air pollution, and highway accidents. Indeed, NS and CSX continue to serve Neomodal and to market that facility. However, the overall benefits of intermodal rail transportation do not justify a Board-imposed condition that requires Applicants to provide special treatment to, and indeed to finance or purchase, an intermodal facility of uncertain economic viability for whose creation they were not responsible.

2. East Side of Hudson Issues

Several commenators, including the Tri-State Transportation Campaign (TSTC) and Congressman Nadler, have requested that the Board require CSX and NS to take over the car float service across New York Harbor, currently operated by the New York Cross Harbor Railroad (NYCH). The common element uniting these requests for conditions is the long absence of a rail crossing over the Hudson River south of Albany. This is not a result of the Transaction. While the DEIS does not, and has no reason to, evaluate the feasibility or the merits of a Board-imposed takeover of NYCH, which is suggested by some commentors, the DEIS does note that a "[f]loat operation could reduce congestion on some segments by cutting 300 miles off shipments from New York to New Jersey." DEIS, Vol. 5C at U-12. CSX briefly responds to this remark in the DEIS to make the point that the Board should not conscript CSX and NS to operate the NYCH's existing car float service.

CSX welcomes all studies and analyses that consider methods for connecting rail lines on opposite sides of the river. The New York City Economic Development Corporation ("NYCEDC") has recently launched a two year, $5 million study, to commence this Spring, to consider alternatives to cross harbor freight movement. CSX has stated its willingness to participate as a resource in this study. If the NYCEDC or any other entity successfully develops a new Hudson River rail crossing, CSX will carefully analyze the merits of the new crossing to take advantage of it.

However, there is a significant difference between recognizing the limits of the current Hudson River crossings and requiring CSX and NS to operate NYCH's car float service -- a

takeover that NYCH has not requested. In their December 15 filing with the Board, CSX and NS argued that TSTC and Congressman Nadler and his colleagues are attempting to use this forum to address a geographical reality that is wholly unrelated to the Transaction. See Applicants' Rebuttal, Vol. 1 at HC-133-36. The question of how to best carry rail traffic from one side of the Hudson River to the other existed well before the proposed Transaction. The Board should permit CSX and NS to utilize existing facilities and should certainly not attempt to address environmental or other consequences of a long-standing geographical reality by unilaterally requiring CSX and NS to purchase an operation which neither railroad desires to conduct. Neither should the Board impose any condition related to this matter while a study is underway to review the usefulness and feasibility of cross-harbor operations.

The DEIS also states that, "SEA has determined that the desired access improvement to the east side of the Hudson River would facilitates freight transport for lower New England." Chapter 5 at NY-42. To the extent that this statement is a reference to the car float operation, it has been addressed above. To the extent that it may also refer to proposals to operate freight trains through Hudson River passenger train tunnels, those proposals are addressed in Applicants' Rebuttal, Vol. 1 at HC-124-33 and in Vol. 2, Rebuttal Verified Statement of R. Paul Carey at HC-37-9 and Rebuttal Verified Statement of John W. Orrison at HC-597. As shown in the referenced portions of Applicants' Rebuttal, freight train operations through existing tunnels under the Hudson River and midtown Manhattan are not feasible due to clearance and operational constraints, as well as a local ordinance that would preclude such operations even if they even possible.

3. New Jersey Department of Transportation and New Jersey Transit Corporation

The New Jersey Department of Transportation, the New Jersey Transit Corporation, and New Jersey Transit Rail Operations, Inc. (collectively referred to as "NJT") have requested that the Board require Applicants to cooperate with NJT in its efforts to initiate light rail transit service on Conrail's Bordentown Secondary between Trenton and Camden. The Bordentown Secondary will become part of the South Jersey/Philadelphia Shared Assets Area upon Board approval of the proposed Transaction. The DEIS does not recommend any mitigation with regard to the NJT's proposed light rail transit service. However, the DEIS "encourages" Applicants "to contact New Jersey Transit to ensure that the proposed Acquisition would not adversely affect any planned activities." Vol. 3B at NJ-38.

The DEIS was issued before Applicants filed their Rebuttal on December 15, 1997. Applicants' opposition to NJT's requested condition regarding its light rail project on Conrail's Bordentown Secondary was fully addressed in that document and will not be repeated herein. See Applicants' Rebuttal, Vol. 1 at HC-245 to 56, Rebuttal Verified Statement of R. Paul Carey, Vol. 2A at HC-34; Rebuttal Verified Statement of Paul Reistrup, Vol. 2B at HC-225.

Discussions are continuing with NJT on a variety of issues. CSX will inform SEA if it reaches agreement with NJT, and SEA can document that agreement in the FEIS for consideration by the Board in evaluating the overall environmental effects of the Transaction. However, it would not be appropriate for the Board to make any such voluntary agreement relating to the agreement a condition of Board approval of the Transaction. Nor would it be

appropriate for the Board to impose its own condition in the event that an agreement is not reached, for the reasons stated in Applicant's Rebuttal.

4. Southeastern Pennsylvania Transportation Authority

The Southeastern Pennsylvania Transportation Authority ("SEPTA") has requested that the Board require Applicants to cooperate with SEPTA in its efforts to initiate light rail transit service on Conrail's Morrisville and Harrisburg lines. Use of these lines will be allocated to NS, although CSX will have trackage rights over the Morrisville line. The DEIS does not recommend any mitigation with regard to SEPTA's proposed light rail transit service. However, the DEIS "encourages" Applicants "to meet SEPTA . . . to ensure that the proposed Acquisition can be accomplished without adversely affecting commuter rail plans." Vol. 3B at PA-52.

The DEIS was issued before Applicants filed their Rebuttal on December 15, 1997. Applicants' opposition to SEPTA's requested condition regarding its light rail project on Conrail's Morrisville and Harrisburg lines was fully addressed in that document and will not be repeated herein. See Applicants' Rebuttal, Vol. 1 at HC-260-63; Rebuttal Verified Statement of R. Paul Carey, Vol. 2A at HC-34; Rebuttal Verified Statement of Paul Reistrup, Vol. 2B at HC-225.

Discussions are continuing with SEPTA on a variety of issues. CSX will inform SEA if it reaches agreement with SEPTA, and SEA can document that agreement in the FEIS for consideration by the Board in evaluating the overall environmental effects of the Transaction. However, it would not be appropriate for the Board to make any such voluntary agreement relating to the agreement a condition of Board approval of the Transaction. Nor would it be appropriate for the Board to impose its own condition in the event that an agreement is not reached, for the reasons stated in Applicant's Rebuttal.

5. New York Rail Passenger Service

The DEIS notes that Rockland County, New York is studying the possibility of restoring commuter service on Conrail's River Line. The River Line would be allocated to CSX if the Transaction is approved, and would be part of CSX's main route between New York and Selkirk and from Selkirk east to Boston and west to Chicago. Because Rockland County never informed CSX of its study, CSX first learned of Rockland County's intentions when reading the DEIS. CSX will be willing to evaluate Rockland County's proposal if and when Rockland County's study receives the endorsement of a public agency authorized by the State of New York to operate commuter rail services.

The DEIS states that the City of Dunkirk, NY desires to have Amtrak's Lake Shore Limited stop there and reports that the "City and CSX reached a service agreement, but a dispute developed over the need to refurbish the existing station, which is owned by Conrail." Vol. 3B at NY-15. The DEIS has not accurately reported the facts. There is no agreement between CSX and the City with respect to such service. Amtrak has previously considered a Dunkirk stop, but has no plans to add a stop at Dunkirk for its Lake Shore Limited. That train -- the only Amtrak train to traverse Dunkirk -- passes through the city at about [illegible] a.m. on its eastbound and westbound trip, an hour that is not particularly conducive to a successful passenger operation. See Rebuttal, Vol. 1 at HC-279-80. Further, new passenger service at Dunkirk has nothing to do

with this Transaction. Whether such service is to be provided is a matter properly left for consideration by Amtrak, the City and Conrail or CSX in due course. It is not a matter that the Board should consider here.

Respectfully submitted,

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February 2, 1998

Exhibit 1
Histogram of Percentage Changes in Freight Passenger Accident Rate, Post-Transaction
(DEIS Data)

* Based on data in Attachment B-2 of Appendix B of DEIS

Exhibit 2
Partial Distribution of Post-Transaction Accident Percentage Increases

* Based on data in Attachment B-2 of Appendix B of DEIS

EXHIBIT 3

DESCRIPTION OF CSX COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

Chapter 3 of the DEIS, sections 3.2.3 and 3.3.3, describe a variety of potential mitigation measures for passenger rail safety as follows:

- Enhanced rail-safety programs, such as closer spacing of rail car defect detectors along rail lines.
- Increased frequency of track inspections, tank car inspections, and highway/rail at-grade crossing signal inspections.
- Toll-free numbers for use by emergency response forces in communities to contact railroad authorities.
- Training programs for community and emergency response personnel to enhance their abilities to respond to rail-related emergency incidents.
- Head-hardened rail-on-track curves in mountainous territory to reduce the risk of track breakage and serious derailments.
- Centralized train traffic control systems for safer rail operations.
- Replacement of old rails to reduce the risk of derailment.
- New track installation to increase the capacity of the rail line segment, which reduces the potential for train collisions.
- Improved rail signal system to make more efficient and safer use of track.

In this exhibit, CSX will describe its existing compliance, on the five line segments identified for passenger train safety mitigation, with each of the nine measures described above.

1. Rail Safety Programs/Defect Detectors -- On each of the five CSX line segments at issue, and in fact on each line segment on which passenger operations are conducted on the CSX system, CSX applies special safety measures to enhance passenger safety. These measures are described below.

With respect to rail car defect detectors, these are already in place on each of the identified CSX segments. The industry standard is the placement of detectors approximately 40 miles apart. CSX has exceeded this standard on all of these line segments. The 42 mile Point of Rocks line segment thus has four detectors, with a fifth located just west of the Point of Rocks

terminus of this segment. The approximately 50 mile Fredericksburg line segment has five detectors, with a fifth located just north of Potomac Yard. The 45 mile Savannah-Jesup segment has three detectors. The 33 mile Weldon-Rocky Mount segment has 3 detectors, while the 65 mile South Richmond-Weldon segment has 4 detectors. These detectors are strategically located at appropriate distances and at points of ingress and egress from each of the segments.

2. Regular Inspection of Track -- CSX already has in place a program to inspect these segments at least twice per week, consistent with FRA requirements.

3. Toll Free Telephone Number -- The third potential mitigation measure identified in Chapter 3 is the establishment of toll free telephone numbers for use by emergency response forces to contact railroad authorities. This measure is already in place.

4. Emergency Response Training -- The fourth listed potential mitigation measure is training programs for local emergency response organizations. Such programs are already available to communities. As described at pages 218-219 of CSX's Safety Integration Plan, CSX has undertaken a variety of emergency safety activities in connection with MARC operations. CSX has worked closely with MARC officials to assist and instruct Emergency Responder Training classes for fire departments and medical teams along the Point of Rocks line. CSX also developed a complete training program for its crews operating MARC trains. That program keeps crews abreast emergency equipment and passenger evacuation instructions. In conjunction with Amtrak and Maryland commuter officials, CSX has prepared an emergency training video which it shows to all such crews. Crews are also periodically tested to ensure compliance with collision prevention and response procedures.

Similar training is undertaken in coordination with VRE and Amtrak. Further, crews operating VRE and MARC trains have been equipped with cellular phones for emergency use in the event that radio communications cannot be used for any reason. These phones have been pre-programmed with all pertinent numbers that the conductor needs.

5. Head-Hardened Curves -- The fifth potential mitigation measure identified in Chapter 3 is head-hardened rail-on-track curves in mountainous territory. None of the CSX line segments identified for mitigation traverses mountainous territory and therefore these measures are not relevant.

6. Centralized Traffic Control -- The sixth potential mitigation measure is centralized traffic control. As discussed above, each of the five segments at issue here already has an operational traffic control system. These systems offer a significant safety enhancement, eliminating the possibility of two trains receiving conflicting signals.

7. Replacement of Old Rails -- CSX adheres fully to FRA requirements in terms of track replacement.