by the earlier of the effective control date as authorized by the Surface Transportation Board in Finance Docket No. 33888 or 12 months from the date of issuance by the PUCO of its order adopting this agreement, except as provided below. In the event of closure of any B&O corridor crossing as referenced in Section I of this Agreement, the completion date for installation of active warning devices at a crossing substituted therefor shall be negotiated by the parties but shall, in no event, exceed 12 months from the date on which the closure is finalized unless otherwise agreed by the Parties.

III. RECORD KEEPING REQUIREMENTS

The Railroad shall make all records, plans, correspondence and other materials associated with any safety improvement performed under this Agreement available for examination and reproduction by authorized representatives of the U.S. Government, the State of Ohio and/or their agents. All project records shall be maintained by the Railroad for three years after final acceptance of the project or three years after the resolution of any disputes that may arise as part of any project.

The Railroad will make available to the U.S. Government, State of Ohio, or their authorized agents, their books, records, papers and materials pertaining to the Railroad costs of performing improvements.

IV. TERMINATION

In the event the STB fails to approve the pending application in Finance Docket No. 33388, CSXT reserves the right to terminate further performance under this agreement upon terms mutually agreeable to the parties hereto. This Agreement shall otherwise terminate at the end of the next biennium, June 30, 1999. If the safety upgrades covered under this Agreement are not completed by that date, it is the expressed intention of the parties to renew this Agreement for a successive biennium period until such time as all work contemplated herein has been satisfactorily completed

Any renewal thereof is subject to the determination by PUCO/ORDC that sufficient funds and the authority to spend funds have been provided by the Ohio General Assembly to ORDC for the purposes of this Agreement and to the certification of funds by the Office of Budget and Management as required by the Ohio Revised Code, Section 126.07. If PUCO/ORDC determines that sufficient funds have not been appropriated for the purposes of this Stipulation, of it the Office of Budget and Management fails to certify the availability of funds, this Agreement will be terminated.

V. OHIO ETHICS LAW REQUIREMENTS

The Railroad agrees to adhere to the requirements of Ohio Ethics Law as provided by Section 102.04 of the Ohio Revised Code. O.R.C. Section 102.04 (A) prohib-

its a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case proceeding, application, or other matters before any state agency. O.R.C. Section 102.04 (B) prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

It is understood by the parties that non-elected state officials and employees may qualify for an exemption under O.R.C. Section 102.04 (D), if (1) the agency with which the officials or employee seeks to do business is an agency other than the one with which he services; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files and O.R.C. Section 102.04 (D) settlement with the Ohio Ethics Commission, the agency with which he serves, and must include a declaration that the person disqualifies himself for a period of two (2) years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

It is expressly understood and agreed to by the parties that a failure by the Railroad to file a declaration statement is required under O.R.C. Section 102.04 (D), may be considered by PUCO/ORDC to constitute a breach of material condition of this contract and the State may, if it so elects, void this contract.

VI. EQUAL EMPLOYMENT OPPORTUNITY

In carrying out this Agreement, the Railroad shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, handicap, age, or Vietnam-era veteran status. The Railroad will ensure that applicants are hired and that employees are treated during employment without regard to the aforementioned factors.

Such action shall include, but not be limited, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff to Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

The Railroad agrees to conspicuously post for employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Railroad will, in all solicitations or advertisements for employees placed by or on behalf of the Railroads, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, handicap, age, or Vietnam-era veteran statues. The Railroads shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

VII. DRUG FREE WORKPLACE

The Railroad agrees to comply with all applicable statutes and federal laws regarding a drug-free workplace. The Railroad shall make a good faith effort to ensure that all Railroad employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

VIII. HOLD HARMLESS PROVISION

The Railroad covenants and agrees to indemnify and hold, the PUCO/ORDC and their agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, within limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from work negligently performed pursuant to this Agreement. In case any action involving any work covered by this Agreement is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

This Agreement does not represent any admission of liability on the part of any party hereto. If the PUCO rejects all or any part of this Agreement, any party may, in writing submitted within ten days of the PUCO's order, elect to withdraw its consent to this Agreement, in which event this Railroad Corridor Safety Subsidy Agreement shall be deemed a nullity, and shall not constitute any part of the record in this proceeding.

The undersigned respectfully join in recommending that the PUCO issue an Order approving and adopting this Agreement in accordance with the terms set forth herein.

Schedule C-At Cost Crossings

XING #	COUNTY	CITY_CD	HIGHWAY	STREET
142119N	HURON	GREENWICH		KNIFFIN ST
142129U	HURON	GREENWICH	CR 150	NEW STATE RD.
142238X	SENECA	FOSTORIA	CITY	COUNTY LINE ST
142241F	HANCOCK	FOSTORIA	CITY	ADAMS ST
142242M	HANCOCK	FOSTORIA	CITY	CLEVELAND ST
142246P	HANCOCK	FOSTORIA	TWP 261	
142265U	WOOD	N BALTIMORE	TWP 138	GALATEA ROAD
142309S	HENRY	HAMLER	CR 7	
142312A	HENRY	HAMLER	CR 88	
142313G	HENRY	HAMLER		MAIN ST.
142314N	HENRY	HAMLER		MARION ST.
142328W	HENRY	HOLGATE		WILHELM
142345M	DEFIANCE	DEFIANCE	TWP 188	HARRIS

XING #	COUNTY	CITY	HIGHWAY	STREET
142125S	HURON	GREENWICH	TWP 74	EDWARDS
142126Y	HURON	GREENWICH	TWP 52	OLD STATE RD.
142149F	SENECA	WILLARD	TWP 104	
142155J	SENECA	WILLARD	TWP 81	
142160F	SENECA	WILLARD	CR 106	
142161M	SENECA	WILLARD	TWP 79	
142164H	SENECA	REPUBLIC	CR23	
142172A	SENECA	REPUBLIC	CR 43	
142185B	SENECA	TIFFIN		CLINTON AVENUE
142210G	SENECA	BASCOM	TWP 101	
142213C	SENECA	BASCOM	CR 5	
142217E	SENECA	FOSTORIA	TWP 47	YOCHUM ROAD
142251L	HANCOCK	BLOOMDALE	CR257	PURSELL ROAD
142256V	WOOD	BLOOMDALE	TWP 73	CLOVERDALE ROAD
142258J	WOOD	BLOOMDALE	TWP 72	LONG ROAD
142261S	WOOD	BAIRDSTOWN		SIMON STREET
142272E	WOOD	N BALTIMORE		SECOND STREET
142288B	WOOD	HOYTVILLE	TWP 42	WESTON ROAD
142297A	HENRY	DESHLER	CR 1	
142321Y	HENRY	HOLGATE	CR F	
142328W	HENRY	HOLGATE		WILHELM
142338C	HENRY	HOLGATE	CR 18	
142352X	DEFIANCE	DEFIANCE		SQUIER ST
142374X	DEFIANCE	DEFIANCE	TWP 144	ASHWOOD RD
142381H	DEFIANCE	SHERWOOD	CR 134	THE BEND ROAD
142390G	DEFIANCE	SHERWOOD	TWP 122	FARMER MARK RD
142394J	DEFIANCE	SHERWOOD	TWP 119	BREININER

Schedule A - All Project Xings

XING #	COUNTY	CITY	HIGHWAY	STREET
142119N	HURON	GREENWICH		KNIFFIN ST
142125S	HURON	GREENWICH	TWP 74	EDWARDS
142126Y	HURON	GREENWICH	TWP 52	OLD STATE RD.
142129U	HURON	GREENWICH	CR 150	NEW STATE RD.
142149F	SENECA	WILLARD	TWP 1046	
142155J	SENECA	WILLARD	TWP 81	
142160F	SENECA	WILLARD	CR36	
142161M	SENECA	WILLARD	TWP 79	
142164H	SENECA	REPUBLIC	CR23	
142172A	SENECA	REPUBLIC	CR 43	
142185B	SENECA	TIFFIN		CLINTON AVENUE
142210G	SENECA	BASCOM	TWP 101	
142213C	SENECA	BASCOM	CR 5	
142217E	SENECA	FOSTORIA	TWP 47	YOCHUM ROAD
142238X	SENECA	FOSTORIA		COUNTY LINE ST
142241F	HANCOCK	FOSTORIA		ADAMS ST
142242M	HANCOCK	FOSTORIA		CLEVELAND ST
142246P	HANCOCK	FOSTORIA	TWP 261	
142251L	HANCOCK	BLOOMDALE	CR 257	PURSELL ROAD
142256V	WOOD	BLOOMDALE	TWP 73	CLOVERDALE ROAD
142258J	WOOD	BLOOMDALE	TWP 72	LONG ROAD
142261S	WOOD	BAIRDSTOWN		SIMON STREET
142265U	WOOD	N BALTIMORE	TWP 138	GALATEA STREET
142272E	WOOD	N BALTIMORE		SECOND STREET
142288B	WOOD	HOYTVILLE	TWP 42	WESTON ROAD
142297A	HENRY	DESHLER	CR 1	
142309S	HENRY	HAMLER	CR 7	
142312A	HENRY	HAMLER	CR 88	
142313G	HENRY	HAMLER		MAIN ST.
142314N	HENRY	HAMLER		MARION ST.
142321Y	HENRY	HOLGATE	CR F	
142328W	HENRY	HOLGATE		WILHELM
142338C	HENRY	HOLGATE	CR 18	
142345M	DEFIANCE	DEFIANCE	TWP 188	HARRIS
142352X	DEFIANCE	DEFIANCE		SQUIER ST
142374X	DEFIANCE	DEFIANCE	TWP 144	ASHWOOD RD
142381H	DEFIANCE	SHERWOOD	CR134	THE BEND RD
142390G	DEFIANCE	SHERWOOD	TWP 122	FARMER MARK RD
142394J	DEFIANCE	SHERWOOD	TWP 119	BREININER

This Railroad Corridor Safety Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall be deemed to constitute a single Agreement. This Agreement shall become effective upon its adoption by the PUCO.

CSX TRANSPORTATION, INC.

By _____

Title Senior VP - Technology

Date November 19, 1997

PUBLIC UTILITIES COMMISSION OF OHIO

By _____

Title DIR., TRANS. DEPT.

Date 11/21/97

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Title EX. DIRECTOR

Date 11/21/97

OhioEPA
State of Ohio Environmental Protection Agency

STREET ADDRESS:
1800 WaterMark Drive
Columbus, OH 43215-1099

TELE: (614) 644-3020 FAX: (614) 644-2329

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

To: Susan Ashbrook, AGO

From: Bob Hodanbosi, Chief, DAPC

Subject: Conrail Merger EIS

Date: February 2, 1998

Attached is a summary of the EIS performed by a member of the DAPC staff. The more important points that should be considered are:

1. There will be a statewide increase of emissions of nitrogen oxides (NO_x) of over 7000 tons per year. This is a significant amount, although it is distributed throughout a number of counties in the state. However, U.S. EPA has proposed a statewide budget for NO_x to reduce the impacts of transport on downwind states. These emission increases from the merger will need to be offset by decreases from other source categories (e.g. utilities).

2. The EIS examined emissions in relative percentages to existing emissions from a county. For carbon monoxide and NO_x, if there was a significant increase in emissions, additional air quality impacts were performed. The report indicates that there will be no adverse impacts due to these pollutants. However, carbon monoxide increases in Cuyahoga County remain a particular concern due to the county's former nonattainment status.

3. There is no analysis of the air quality impact on the former one-hour ozone standard. Due to the increases in NO_x, there will be local and regional affects on ozone air quality. The draft EIS did not examine the effect of the merger on the one-hour ozone standard.

4. There is no analysis with respect to the new air quality standard for ozone. During the summer of 1997, U.S. EPA promulgated a new eight-hour standard for ozone. Much of Ohio does not conform to this new standard and it can not be determined what impact of the merger will be on the new standard.

5. In the summer of 1997, U.S. EPA promulgated a new ambient air quality standard for $PM_{2.5}$. There is no quantification of $PM_{2.5}$ emissions from the increased train traffic. It is expected that many areas of the state will not comply with the new standard, and the increased diesel particulates will exacerbate the problem, but it is impossible to quantify by how much, since this pollutant was not addressed.

Please contact me at 644-2270 if you have any question.

EXHIBIT 3

OhioEPA
Ohio Environmental Protection Agency
Division of Air Pollution Control

INTER-OFFICE COMMUNICATION

TO: Bob Hodanbosi, DAPC

FROM: Harry Judson, DAPC

DATE: February 2, 1998

RE: Proposed Conrail Acquisition EIS

The proposed Conrail acquisition will result in expanded rail lines in Ohio, upgraded routes and new connectors, and new construction of rail yards and intermodal facilities.

The acquisition will increase rail emissions as a result of expanded railway systems and increased traffic. Some of these increased emissions will be offset by truck to rail diversions resulting in less highway truck traffic and congestion.

Additional rail routes and improvements in signal systems will result in more efficient rail movement, faster trains, and less auto idling at grade crossings.

A new intermodal facility in Columbus will increase ADT by 4%. This is considered insignificant and will have no impact on air quality in Franklin County.

In evaluating specific air pollutants, only NOx and CO show exceedances of the "screening threshold." Diesel emissions, unlike auto emissions, are low in hydrocarbon emissions.

Increased county emissions as a result of increased rail activity were evaluated for each county in Ohio. Three of Ohio's "moderate" counties exceed a 1% increase in total county emissions for Nox. Again this increase will not affect ambient air quality levels. In modeling analyses, a threshold level of 100 additional tons/year was looked at since this is the size of a major stationary source. In corridors where CO levels are projected to exceed 100 tons/year, the dispersion effects of CO from a moving source will significantly reduce the impact of CO from rail traffic. Based on the draft EIS, the increases in emissions will "not affect compliance with air quality standards."

The total Statewide increase in NOx emissions from this project (obtained by adding the increases for the individual counties) amounts to 20.17 tons/day. In 1990, statewide point source emissions of NOx were estimated to be 1777 tons/day. Assuming point source emissions amount to approximately 30% of the total point, area and moble source inventory, the proposed project will increase statewide NOx emissions by 0.378%. When comparing the impact to existing point source NOx emissions, a 1.13% increase would occur.

Although mention is made of new NOx reduction requirements for train engines, no analysis or estimate of impact is presented.

No mention is made of the impact of NOx increases on the stricter new ozone standard to be implemented in 2003 (NOx being a precursor), nor the impact on the OTAG SIP call requiring Ohio to reduce utility NOx emissions by 85%.

CONRAIL ACQUISITION
FOSTORIA REMEDIATION STUDY

Prepared for: Ohio Rail Development Commission
City of Fostoria, Ohio

Prepared by: ***PARSONS BRINCKERHOFF***
Cleveland, Ohio
January 31, 1998

BACKGROUND INFORMATION

The City of Fostoria is located in Northwest Ohio, and has a population of approximately 15,000. It is predominately a manufacturing community with major ties to auto manufacturing and agricultural industries. A major rail junction, the community currently has twenty-two (22) at-grade crossings because of the 45,000 feet (8.6 route miles) of main line rail corridors within the city. These crossings have a major impact on both vehicular and pedestrian traffic.

Three grade separations exist in the community, and are located on the designated state highway system. The location of these grade-separated crossings, in conjunction with motorists' tendency to avoid potential delays at grade crossings, has a channeling effect on vehicular traffic causing congestion in the downtown area.
Fostoria is located at the junction of three distinct rail lines:

- Norfolk Southern Lake Division Fostoria District (oriented generally east-west, connecting Bellevue to Chicago). Traffic includes a wide range of commodities, including coal, general merchandise, and some intermodal traffic.

- CSX former B&O (oriented generally east-west, connecting Pittsburgh to Chicago. Traffic includes all types, with significant intermodal traffic.

- CSX former C&O Columbus subdivision (oriented generally north-south, connecting Columbus and Toledo). Traffic is primarily coal south of Fostoria, with significant other traffic north of Fostoria.

The lines and the current/projected traffic levels are shown on the attached Figure 1. Each line is double track within the City, and the lines cross each other at grade in the southern portion of the City. Because of this arrangement, rail traffic can generally pass through the City on only one line at any given time, although it is possible for two trains (one on each of the two tracks) on the same line to operate simultaneously. A limited number of other simultaneous movements are also possible. According to the CSX/NS Operating Plan as filed with the Surface Transportation Board (STB), about 84 daily trains pass through the city, including both through movements and movements using connecting tracks.

The rail configuration is complicated by active connection tracks joining the lines, especially those joining the two CSX lines. Currently, a significant amount of rail traffic changes direction in Fostoria via the four CSX connection tracks, which are designated by physical location (northeast, southeast, etc.) relative to the B&O/C&O crossing. This crossing is also the location of the building housing the operating control point for the area, called "F" Tower. Although dispatching on all lines is handled remotely from central offices, the crossings and connections themselves remain under the control of an operator at "F" Tower, who takes

direction and input from the individual dispatchers.

These connections and their common uses are described as follows:

- Northeast Connection: Heavily used by Willard-Toledo/Michigan trains, including significant automobile industry traffic.
- Southeast Connection: Used by Willard-Columbus merchandise and coal trains.
- Southwest Connection: Used by local freight movements and unknown, but likely limited, number of through trains.
- Northwest Connection: Previously heavily used by Cincinnati-Deshler-Fostoria-Toledo trains. Traffic on this connection has assumed to decrease as a result of CSX's increasing use of the direct Deshler-Toledo line.
- NS Connections: Join both former B&O and former C&O to NS in the northeast quadrant of the crossing. Traffic is relatively light, consisting of transfer movements between the two railroads.

Movements on these connection tracks require significantly longer time to pass through the city, since speeds are generally limited to 10 to 15 mph over the connections themselves because of high curvature (order-of-magnitude 15 degrees) and short-length turnouts. Trains must slow to this speed while approaching the area, and cannot begin to accelerate until the entire train has traversed the connection.

It is important to note that neither the proposed Operating Plan nor other data available to date includes information regarding the number of movements on the respective connecting tracks. This data is critical to the accurate estimation of merger-related impacts on the city. For this analysis, assumptions regarding the distribution of traffic were made based on observation and a general understanding of northern Ohio traffic patterns.

CONRAIL ACQUISITION

As noted previously, the number of daily trains passing through Fostoria will increase from about 84 to 108 as a result of the acquisition. The STB has the obligation to review environmental and other impacts of traffic changes resulting from the acquisition. The city of Fostoria experiences numerous problems because of the existing rail traffic levels, but these impacts will increase following the merger. The State of Ohio and city take the position that these merger-related impacts be acknowledged and addressed as a condition to any approval of the acquisition.

PROBLEM DEFINITION

With all three major rail lines receiving increased traffic, there will be significant negative impacts on the safety, movement of vehicular traffic, economic development, and overall quality of life issues for the citizens of Fostoria. Perhaps the most critical impact is safety and emergency response time.

Two areas of the community, one to the east and one to the west, have been dubbed "Iron Triangles" by emergency response forces. This is because of the difficulties in reaching the areas quickly and reliably as a result of the at-grade crossings being blocked by trains. The location of the police, fire, and ambulance services and the hospital are shown on Figure 2.

The West Triangle area is defined as the area south and west of the CSX (formerly Baltimore & Ohio) line crossing West Tiffin Street, and north of the NS line crossing Findlay Road. It currently includes 198 homes, 3 businesses (one of which maintains chlorine on the premises), and 1 power substation. This area is detailed in Figure 3.

The East Triangle area is south and east of the NS line and north and east of the CSX (B&O) line. CSX also has a switching yard immediately east of the Columbus Avenue grade crossing, which generates additional train movements. This is compounded by slow moving rail traffic diverging onto the former C&O lines. The East triangle has 98 households, 8 businesses, and 1 church. The area is shown in Figure 4.

Based on observation and past practice, east-west trains awaiting clearance to proceed through Fostoria typically are held west of Findlay Street and east of Columbus Avenue, which helps keep these two roadways open to provide access to the two sectors. However, moving trains (some at slow speeds) and trains stopped clear of the crossings but within the limits of the electronic crossing circuit detection systems (thereby activating crossing warning systems including gates) can still block access for emergency vehicles. The proposed increase in rail traffic volume will be expected to heighten this risk following the merger.

Train delays at Fostoria as a result of the acquisition will also have effects on the northern Ohio rail network and on other cities in the Fostoria area. Following the Conrail acquisition, according to the proposed Operating Plan both CSX and NS will each have a primary and a secondary Chicago-East Coast route traversing northern Ohio. This is a total of four main lines, two of which cross at Fostoria. Similarly, northwest Ohio will have four main north-south (Cincinnati/Columbus-Toledo) routes, one of which crosses at Fostoria, while a second (CSX via Deshler) is operationally related to Fostoria. A third, the Conrail (to become CSX) Toledo Line via Findlay, will be significantly downgraded. The fourth is NS via Bellevue.

This means that operating conflicts and congestion at Fostoria are likely to have significant spill-over effects on the rail network in northern Ohio. This will affect numerous stakeholders in terms of environment impacts, safety hazards, and competitive issues.

DRAFT EIS

The SEA's Draft Environmental Impact Statement almost completely ignores impacts on Fostoria as a result of the acquisition, and is grossly inadequate. Although segment C-070 (Marion-Fostoria) and C-075 (Willard-Fostoria) are identified as meeting the threshold for analysis by the SEA, neither the individual nor the cumulative impacts of the increased traffic are considered on safety and grade crossing delays.

In fact, the rail system configuration in Fostoria, with three major rail/rail crossings, will cause impacts far in excess of the sum of the traffic increases on the three individual rail lines because:

- crossing delays will be compounded by stopped trains and trains moving at speeds far below maximum or reasonably-expected speeds while awaiting other trains to clear at-grade rail crossings
- a significant number of trains will diverge from former B&O to former C&O trackage, requiring the use of slow speed connection tracks. These tracks and associated turnouts are not, and in most cases cannot be, configured for speeds in excess of 15 mph. Typical speeds are likely closer to 10 mph. For the proposed 6200 foot typical CSX post-acquisition train, this will result in a blocked crossing time per diverging train of 7.5 minutes.

It can only be assumed that the Columbus Avenue and Tiffin Street crossings are not evaluated for impact because of low traffic volumes. While documented traffic volumes are not currently available (and could in fact be below the SEA threshold of 5000 ADT), the arterial nature of the roadways and the potential for the two areas to be completely isolated by rail traffic, warrant that the roadways be considered for mitigation.

CRITERIA OF SIGNIFICANCE FOR TRANSPORTATION EFFECTS

The SEA identifies crossing delay per vehicle and average delay for all vehicles as key criteria for transportation (convenience) effects at crossings. Fostoria presents a challenge in evaluating these effects because of multiple at-grade crossings that may be encountered in a typical auto journey, and because of inter-relationships involved in rail operating patterns. However, to illustrate the approximate effects of the acquisition, sample analyses were performed for major roadway access routes in the east and west triangles.

For the sample analysis of the east triangle, assumptions were made for the southerly Columbus Avenue crossing (east triangle) of the former B&O. This is a key emergency response route because of the ability to reach the south side of this crossing via the underpass roadways. An ADT of 5000 (no traffic data is available) was assumed. Train movements assumed include the passage of 18 diverging-movement trains at 10 mph (estimated, not provided by available Applicant data) and the passage of 36 through trains at 40 mph (assumes an increase in allowable speed resulting from CSX's improvements to the line). This totals 54 trains as shown in the Operating Plan. This would result in a Level of Service for the crossing far below the threshold for level "F", with an average delay per vehicle of about 100 seconds. Even if diverging rail movements and vehicular traffic levels are less than assumed, conditions at the crossing are likely to fall below the acceptable threshold level of service.

Alternative routes into the east triangle are Columbus Avenue from the north, which crosses both CSX (C&O) and NS, which makes delays a significant risk. Town Street is only affected by NS, and may experience a lower increase in delay as a result of the acquisition, but it is located at the west end of a yard and of the distribution center lead track, increasing potential delays from switching movements.

A similar analysis for the Tiffin Street B&O crossing results in an average delay per vehicle of about 35 seconds. Although this may not meet the SEA threshold criteria for "significant impact", which is a value over 40 seconds, especially considering potential inaccuracies in traffic volume assumptions, the isolated nature of the area must be considered on the basis of unacceptable emergency response time. The only alternative for access to this area is CR 262 west of town, a detour of over three miles. Vine Street and Findlay Street include NS crossings, and do not provide access tot he major portion of the triangle.

Even if the assumptions used in the analyses are somewhat inaccurate, based on the Columbus Avenue analysis, it appears likely that the east triangle area will violate the threshold levels. The justification for the west triangle area may be less strong on a transportation basis, but will be further supported by emergency response issues. By any measurable standards, it is difficult to suggest that conditions in these two areas are acceptable, and will remain acceptable under post-acquisition traffic levels.

CRITERIA FOR EMERGENCY VEHICLE RESPONSE

To determine the delays encountered by emergency vehicles at at-grade crossings, the Surface Transportation Board's Section of Environmental Analysis (SEA) used a formula to calculate the Total Daily Blocked Crossing Time. The Total Daily Blocked Crossing Time is an indicator of the risk of delay since it indirectly

measures the probability that an at-grade crossing will be blocked at the time that an emergency vehicle would need to cross the tracks.

It is found by multiplying the blocked crossing time per train by the number of daily trains. This formula assumes the train is moving at a constant speed, slightly less than the maximum allowable speed. It does not include the additional startup or slow down time required for trains stopping near crossings, nor does it include time for trains to stop and allow other trains to pass or switch tracks.

Detailed analyses will be provided in a following section. A simple review of Table C-6 in the DEIS Appendix, however, shows that the increase in total daily blocked crossing time is over 50% for increases in train frequency of 32.5 to 54, as will be experienced on the south crossing of Columbus Avenue regardless of assumed operating speed. The additional diverging-movement trains will increase this further.

The increase in total blocked crossing time in the west triangle at Tiffin Street is less substantial, because rail traffic will increase only from 34 to 37.9 daily trains. Again, however, because of the potential isolation of the area, mitigation is warranted as described in the following section. Additionally, even the SEA does not establish criteria as to the threshold levels for acceptable emergency response time effects.

CURRENT EMERGENCY RESPONSE PRACTICES

The procedure for responding to police or fire emergency situations in the two triangle areas is to dispatch two vehicles along separate paths, increasing chances of successfully entering the triangles. In the event that both vehicles are able to cross the tracks, the first crew determines whether to enter the scene immediately, possibly compromising their own safety, or wait until a second vehicle arrives with backup. This additional time is critical, because experts claim that each additional minute a fire burns, a fire can double in its size and intensity.

Table 1 below compares approximate response times for police, fire, and ambulance services along various reasonable existing routes into the Iron Triangles. Each of the routes includes only one at-grade crossing, and it is assumed that no train or vehicular traffic delays are encountered. With the large volume of trains passing through Fostoria, the likelihood of encountering this "perfect condition" is dangerously low.

RAIL CROSSING	POLICE	FIRE	AMBULANCE
TO WEST TRIANGLE			
Tiffin Street	2.11	1.96	4.95

Twp. Road 262	8.80	8.48	12.89
Independence	2.56	2.44	5.15
Adams Street	2.34	2.22	4.93
TO EAST TRIANGLE			
Town Street	1.96	2.41	6.07
Columbus Ave.S	3.38	3.13	7.47

Table 1 – Existing Emergency Response Times (minutes)
Assumes No Delays at Rail Crossings

Table 2 below shows the response times of each emergency service into the Iron Triangles assuming that only one moving train impedes the emergency vehicle's progress and that each vehicle arrives just as the gates are being lowered. It was assumed that CSX trains were 6200' long and traveled at 15 miles per hour (mph) when using a connection to another track. While this appears to represent the worst case scenario, train speed could well be lower. NS trains were assumed to be 5000' long and travel at speeds of 35 mph.

RAIL CROSSING	POLICE	FIRE	AMBULANCE
TO WEST TRIANGLE			
Tiffin Street	7.31	7.16	10.15
Twp. Road 262	10.92	10.6	15.01
IndependenceSt	4.68	4.56	7.27
Adams Street	7.54	7.42	10.13
TO EAST TRIANGLE			
Town Street	4.08	4.53	8.19
Columbus Ave.S	8.58	8.33	12.67

Table 2 – Emergency Response Times (minutes)
With Delay Resulting from Encountering One Moving Train

Although few firm standards exist, it is understood that fire professionals recognize 3 minutes or less as good, acceptable response times, depending on local conditions. Seven minutes is often considered to be beyond the acceptable threshold. Some of the response times in Table 2 are within the acceptable limits, however as mentioned earlier, they do not take into account stopped trains blocking a crossing or those starting up from or slowing down to a stopped position. If any of those situations occur, the response time will be far longer.

Comparing Tables 1 and 2, in the event that no train is blocking the tracks the shortest response time into the west triangle is via Tiffin Street. If a train is blocking Tiffin, Independence Street becomes a more favorable route whether or not a moving train also blocks it. This makes the route choice even more confusing to emergency personnel who have no reliable way of predicting which crossings will be blocked at a particular time of day.

According to the SEA's formula, under current volume levels a train is blocking one or more at-grade crossings in Fostoria more than four and one half hours (4.6) hours out of each twenty-four hour day. That equates to 19% of the day that rail traffic will affect emergency vehicles directly. The knowledge of this risk also has an indirect affect as emergency response forces attempt to predict crossing conditions. With the increased train volumes resulting from the acquisition, a crossing will be blocked over six hours, which is over 25% of the day. It is apparent that some alternate provision must be made for the safety of residents within the Iron Triangles.

JONES ROAD CROSSING IMPACTS

A third area of Fostoria was analyzed to identify impacts of the acquisition. Jones Road, near the north city line, is the most highly traveled roadway in the county. It handles high volumes of industrial transport for which there is no nearby parallel route. Train delays at the CSX (C&O) crossing are common as trains await clearance to proceed through Fostoria and to switch cars for local industries. A part of the problem is the location of absolute signals at the east end of the Fostoria Center Siding, just south of the crossing. Trains often proceed up to this signal, when traffic delays would be minimized if trains waited north of the crossing. Stopped trains often trigger the crossing gates for extended periods of time, physically blocking vehicles from crossing the tracks.

In addition to the safety concerns associated with increased rail traffic further blocking the at-grade rail crossings, Fostoria has concerns about its future economic viability and overall livability. Fostoria recently supported the opening of a new intermodal auto mixing plant on the NS route south of Jones Road and east of town. Severe delays in vehicular transport will discourage other new business and industry ventures from wanting to locate their facilities in the City thereby hindering economic growth. With the additional trains generated from both the Conrail acquisition and the new mixing plant, the delays could become so lengthy, that other existing businesses would be forced to relocate.

Crossing delays at Jones Road also have safety implications. There is the potential for the east half of the city to be cut off from ambulance services, or at minimum, experience long delays because of circuitous detour routings. With the next parallel road to Jones being relatively far to the south, a blocked crossing

could add an extra 3.6 minutes to an ambulance's response time to an incident just east of the tracks on Jones Road.

MITIGATION ALTERNATIVES

Three general approaches to minimize or mitigate the effects of rail congestion in Fostoria appear worthy of further consideration. These are:

- the re-routing of rail traffic onto other rail lines in the region,
- the minimization of travel time for rail traffic through Fostoria, and
- local roadway access and safety-related improvements in Fostoria.

Regional Re-routing

The Operating Plan dramatically reduces traffic levels (from about 12 to fewer than 2) on the Conrail (to become CSX) Columbus-Toledo Toledo Line, even though this is a relatively direct through route. It is suggested that impacts on Fostoria could be minimized by diverting some traffic from the CSX Columbus Subdivision to the Toledo Line.

Other re-routing possibilities is noted in the following section.

Minimize Travel Time through Fostoria

The number of trains operating through Fostoria is proposed to increase from about 84 to about 108, depending on the distribution of trains using the various connection tracks. While this increase is of concern, the relative distribution of traffic on the connection tracks will have a particularly significant effect on the amount of rail congestion and thereby roadway congestion and delays at crossings.

This is because at maximum speeds of 15 mph through the connection tracks, the amount of time required for a CSX train to pass a crossing in Fostoria is a maximum of 5.2 minutes, is more likely 7.5 minutes, and could easily exceed 10 minutes. However, a through train traveling at 40 mph could pass within about three minutes. This example is intended to be illustrative, and may not accurately reflect current average travel times. Regardless, it is apparent that the total travel time for all trains through Fostoria is likely to decrease as the number of CSX trains using the connection tracks is minimized.

This could be accomplished by:

- routing Chicago-Toledo or Cincinnati-Deshler-Toledo traffic via the line north from Deshler, minimizing traffic on the northwest connection.
- routing some Willard-Toledo traffic via Deshler, decreasing traffic on the

northeast connection.

- routing some Columbus-Willard traffic via Greenwich, decreasing traffic on the southeast connection (depending on the need re-classify trains at Willard).

Local Access Improvements including Grade Separated Crossings

SEA established criteria for the identification of locations requiring grade separation. These are:

- Post acquisition traffic levels must decrease one LOS grade and be "E" or "F" following the acquisition. Based on the previous analysis, the Columbus Avenue/east triangle meets this criteria. The Tiffin Street/west triangle likely does not meet this criteria.

- Acquisition-related rail traffic must increase by at least eight daily trains. The east triangle meets this criteria based on the former B&O alone. The west triangle meets this criteria when considering cumulative impacts of a 3.9 increase in B&O traffic in addition to a 4.6 increase in NS traffic.

- Increased train speeds are infeasible or insufficient. Because of the uncertainties and inter-relationships involved in rail operating patterns in Fostoria, increased train speeds will provide only a partial, and relatively insignificant, mitigation of impacts.

The east triangle very likely meets these criteria. The west triangle may meet this criteria, but certainly approaches these criteria. Additionally, however, the potential for these two areas to become isolated by rail movements is very high, and the unreliability and unpredictability of direct emergency service routes is very dangerous. These conditions must be considered in addition to the above criteria. It is strongly recommended that measures for mitigation be required, including the construction of grade separations in both areas.

SPECIFIC ALTERNATIVE IMPROVEMENTS

Alternatives were developed based on the previous analysis, a brief analysis of alternatives, field visits to the sites, review of City/CSX correspondence, and personal interviews, and conceptual engineering design of three potential grade separations.

East Triangle

Alternative solutions for this area include:

- Grade separation of Columbus Avenue at B&O. Limited available distance for

approaches and significant impacts on adjacent properties.

- Grade separation of Columbus Avenue at NS, C&O, and connection tracks. Existence of multiple tracks complicates this approach.
- Grade separation of Town Street. Railroad already higher than roadway.
- Grade separation of Lewis Street at B&O. Narrow road with poor alignment.
- Grade separation of B&O at new location east of city. Costly because of significant new connector roadways required, and requires detour of at least one mile.
- Grade separation of TR 43 at B&O east of city. Same as new location above, with detour of as much as three miles.
- Grade separation of CR 60 at NS east of city. Same as above, with detour of almost three miles even if NS access road is used.

A preliminary review suggests that a separation at Town Street under the NS main line and connection track is the most beneficial alternative, with a relatively low cost. Although this involves construction on the NS line, while it may be that CSX operations directly cause a disproportionate delay and blockage of roadways to the east triangle, it is important to consider that the acquisition of Conrail is a joint undertaking by both NS and CSX. Both companies must be held responsible to mitigate impacts, and solutions should be global in nature.

Conceptual design was performed, with sketches following this report. A 25 mph design speed was used. The project will require relocation of 24" sanitary sewer and 6" water lines. A pump station for storm water will be needed with a suitable outlet point, which has not been researched at this time. Impacts on adjacent properties include minor takings on the north side, with a commercial business and four residences on the south side taken. The construction of retaining walls would decrease this impact, but increase costs.

The project is estimated to cost about $6.2 million.

West Triangle

Alternative solutions for this area include:

- Grade separation of Tiffin Street. Crossing is at a skew angle, requiring roadway alignment changes.
- Grade separation of Adams Street. Extremely limited distance for approach roadways.

- Grade separation of Findlay Street over either NS or B&O. Would require construction of a connector road through industrial properties parallel to NS siding trackage in the Mennel Mill.

- Grade separation of TR 262 west of town. Would involve detour of over three miles.

The overpass of Tiffin Street over CSX (B&O) appears to be the best solution to serve the west triangle. To guarantee access to industries on Vine and Findlay Street, the improvement of access through industrial facilities, at least for emergency use, is required. Unless new information becomes available, we do not agree with CSX's October 10, 1997 assessment that this site is not feasible for a separation.

As shown in sketches following this report, conceptual design used a 25 mph design speed, but a 35 mph version could likely be considered. A over pass was selected to minimize impact on the 36" raw water line that crosses the site on a north-south line, but the overpass must also be designed to avoid impacts. The design would require the closing intersections of Tiffin with Watson, Elwood, and south Independence. Rail at-grade crossings would be eliminated at Tiffin, and could be considered at Cleveland and Adams. A major issue to further research involves environmental impacts on the property require north of the existing right-of-way. Property impacts include taking one residence (total) and other land takes.

The project is estimated to costs about $2.1 million, if no significant environmental remediation is necessary.

Jones Road

Alternatives for mitigation of impacts at Jones Road were:

- Grade separation of Jones Road over CSX

- Rail operational changes that could minimize the amount of time the crossing is blocked or signals are activated

A grade separation was evaluated, as shown in the sketches following this report. Design parameters included a 45 mph design speed (w/ min. K factor for vertical curves), relocation of existing sanitary and waterlines because of excessive fill heights, and the use of retaining walls along the north side of Jones Street to lessen the impact to the existing commercial properties. Access to those sites located in the northwest quadrant would require agreements with adjoining owners. The business located in the southwest quadrant would lose access to the north end of the building.

The project is estimated to cost about $4.5 million. The overall amount of work, length of project and total cost could be reduced by lowering the design and posted speed to 35 mph.

Alternatively, crossing delays can be minimized by:

- Ensuring that the crossing protection systems are operating correctly.
- Upgrade of crossing protection systems to motion-detection systems. This would minimize the time that signals are activated when trains are not blocking the crossing.
- Implementation and enforcement by CSX of prohibitions on trains entering the crossing until clearance is available through town.

Design Note

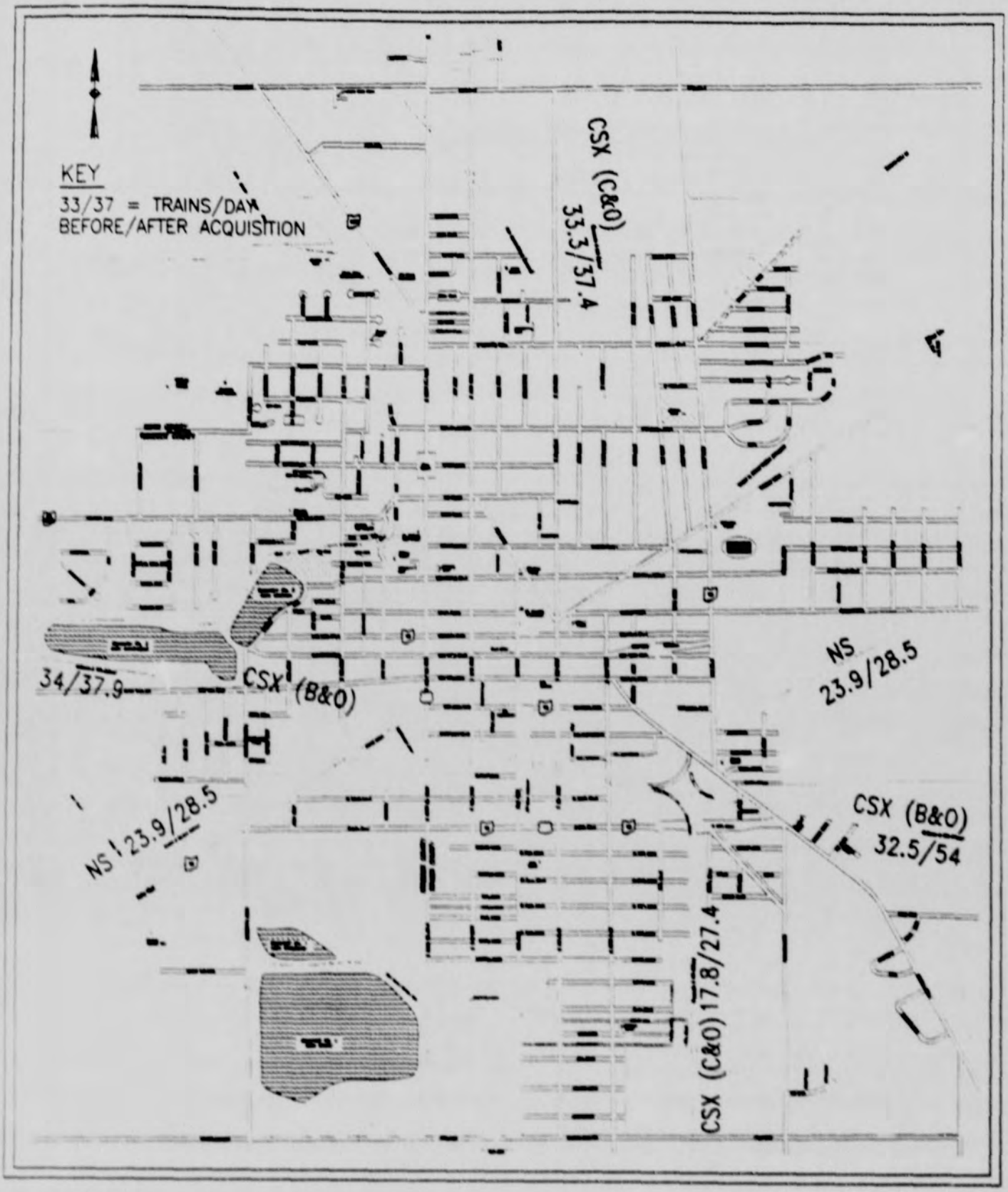
All grade separation designs described here are conceptual, and do not address all aspects of the proposed solution in detail. However, in our opinion all are determined to be feasible, and are recommended for consideration.

RECOMMENDATIONS

In order to mitigate the impacts resulting from increased rail traffic resulting from the Conrail acquisition, a number of remediation measures were considered including rerouting rail traffic outside Fostoria, providing grade separations, and improving various aspects of the rail operations. The following improvements appear feasible and justified:

- A grade separation for Town Street under the NS is recommended to mitigate east triangle impacts.
- A grade separation for Tiffin Street over CSX (B&O) is recommended to mitigate west triangle impacts.
- A grade separation for Jones Road over CSX (C&O) should be considered, but may not be warranted solely by the acquisition's relatively minor increase in rail traffic from 33.3 to 37.4. At minimum, additional measures that should be implemented include the upgrading of grade crossing circuitry to state-of-the-art motion detection systems to minimize the time the crossing is blocked without the presence of trains on the crossing itself.

Additional information follows this document.

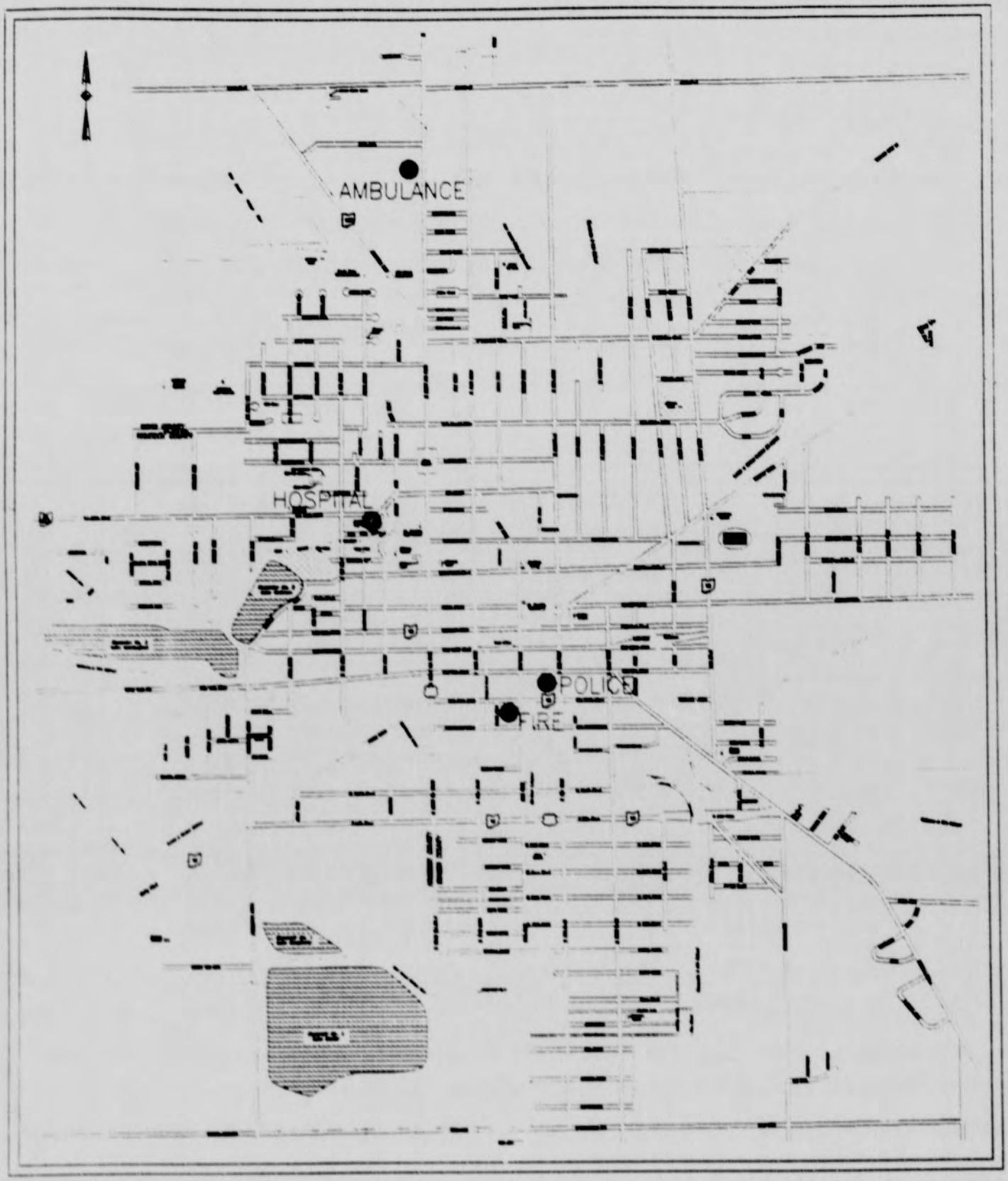


PB

FOSTORIA RAIL
TRAFFIC INCREASES

FIG. 1

PAGE X



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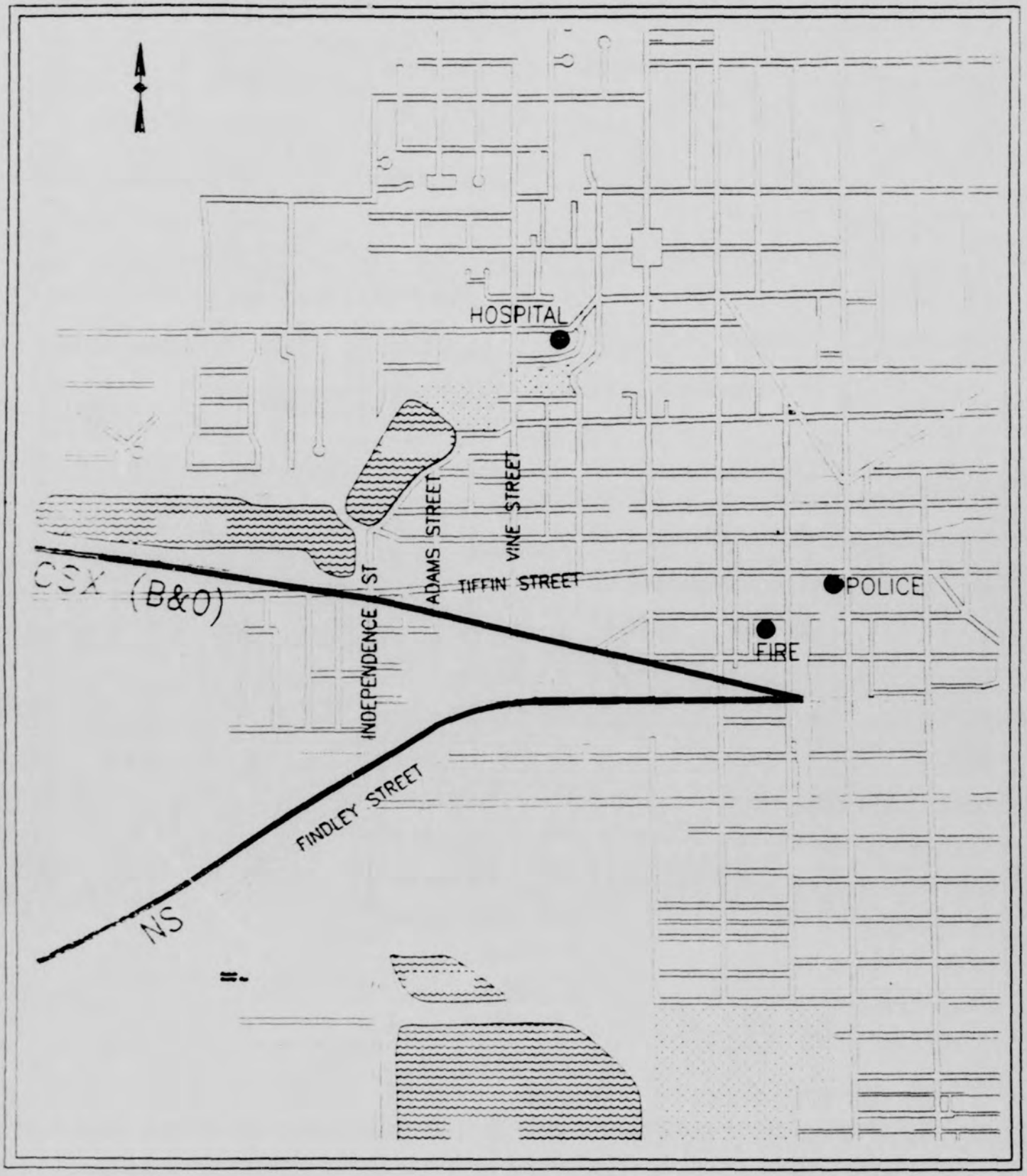
EMERGENCY SERVICES LOCATIONS

FIG. 2

PAGE X



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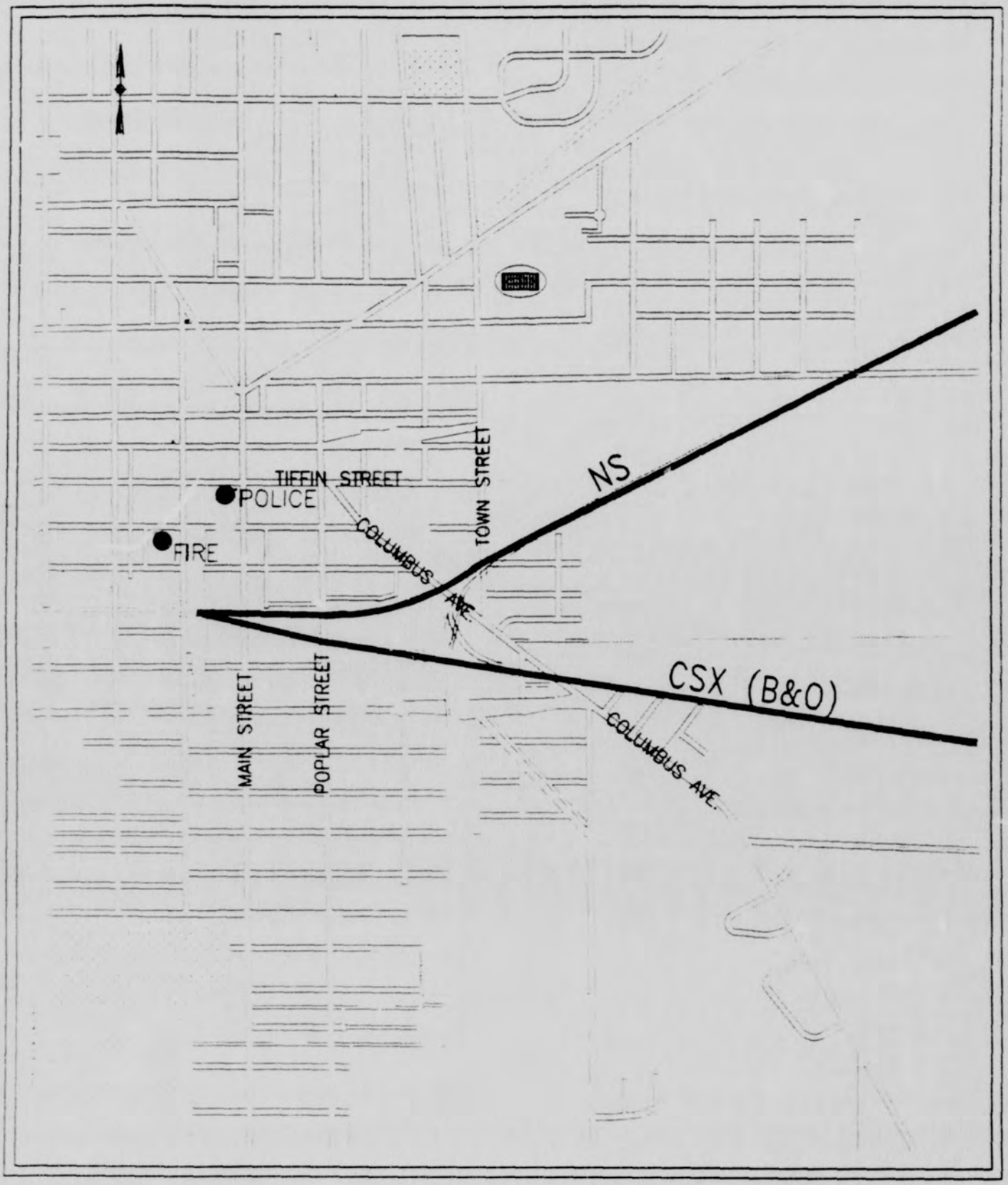
"IRON TRIANGLE" WEST

FIG. 3

PAGE X



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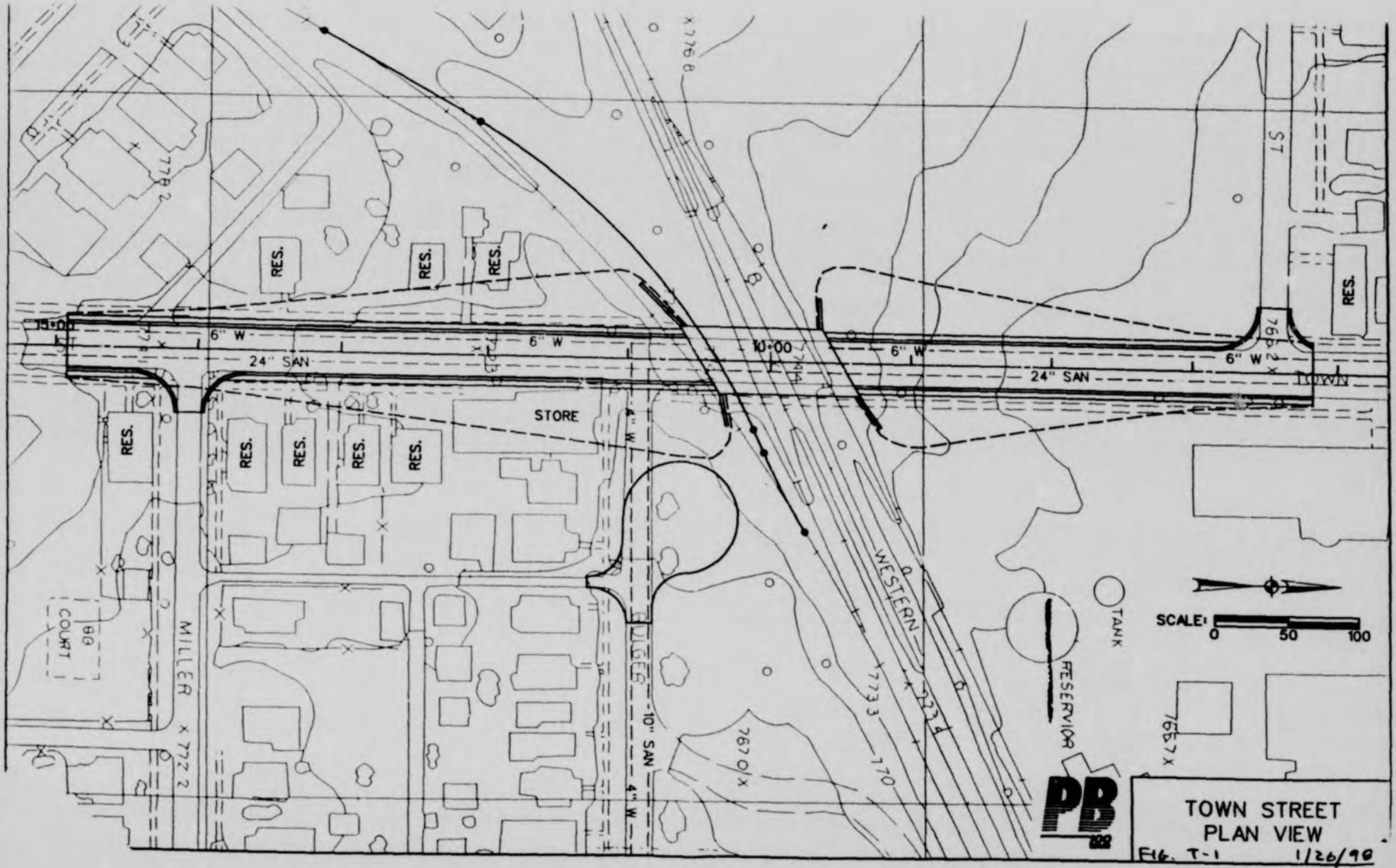
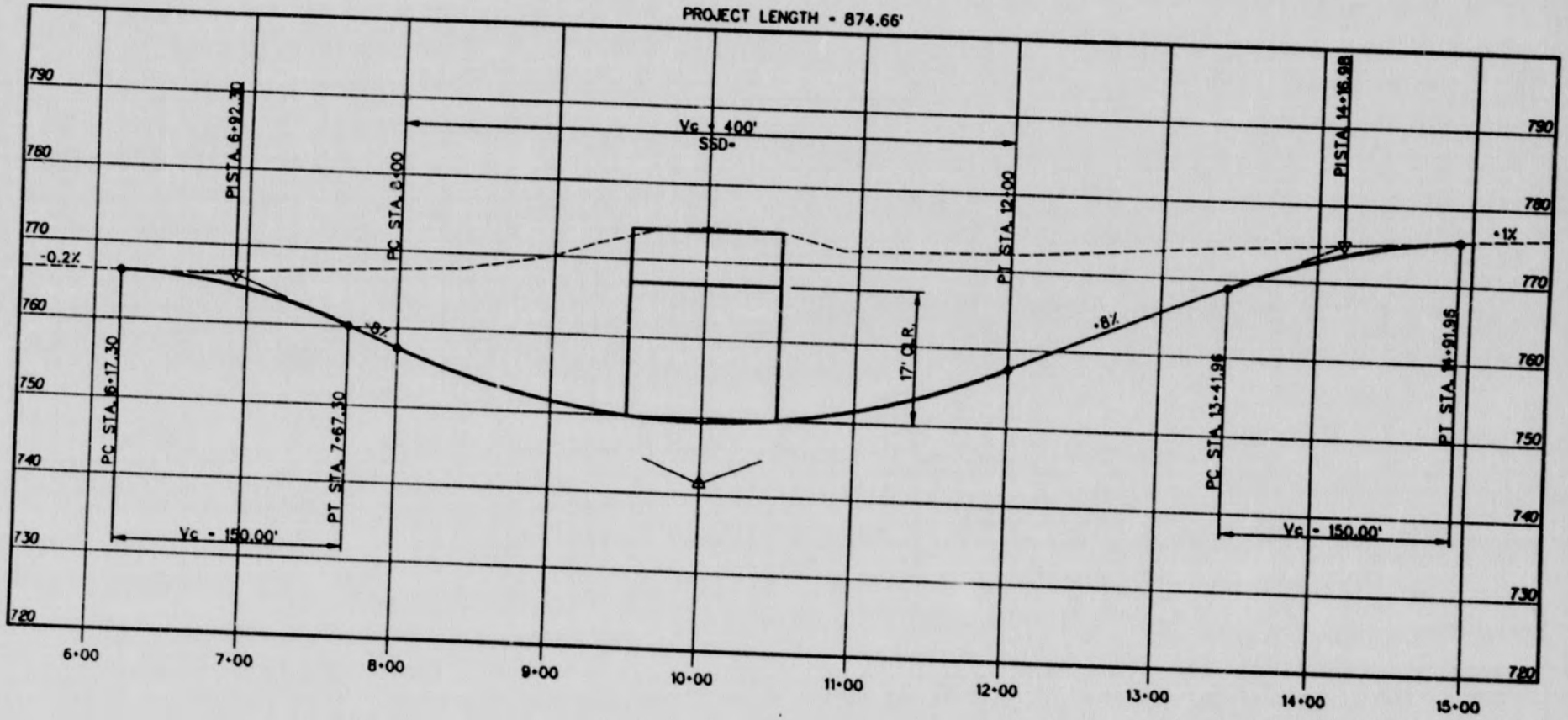
"IRON TRIANGLE"
EAST

FIG. 4

PAGE X


RES.
STORE
6" W
24" SAN
10" SAN
4" W
MILLER
COURT
WESTERN
TANK
RESERVOIR
SCALE: 0 50 100
PB
TOWN STREET
PLAN VIEW
FIG. T-1
1/26/90



TOWN ST. PROFILE

FIG. T-2

PB PARSONS BRINCKERHOFF COMPUTATION SHEET

Subject CITY OF FOSTORIA - TOWN ST.
TYPICAL SECTIONS

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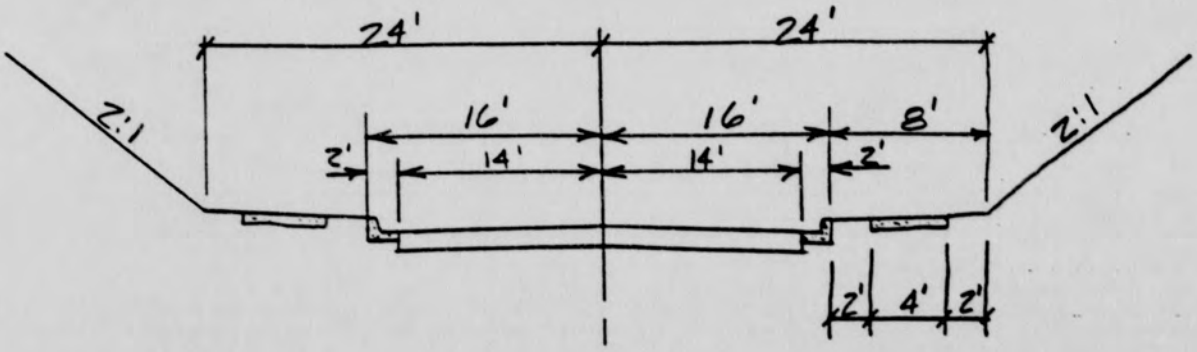
Made by EJC
Date 1-22-98
Checked by .....
Date .....



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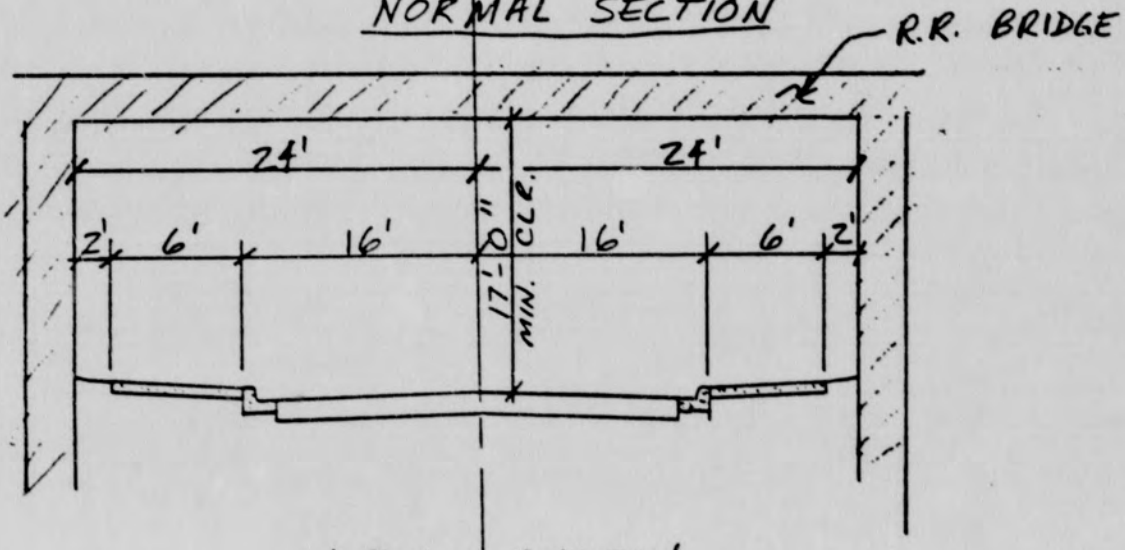
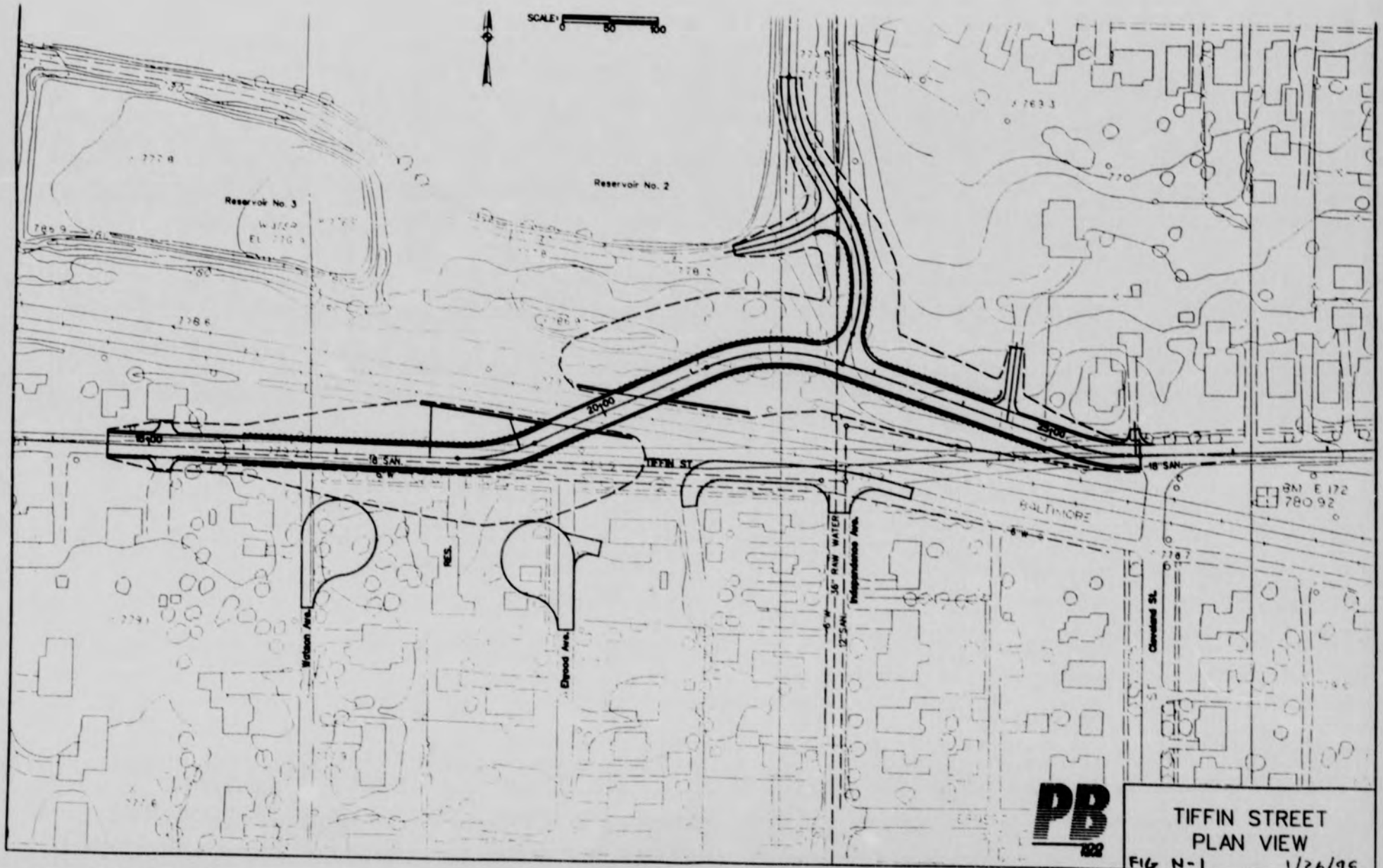
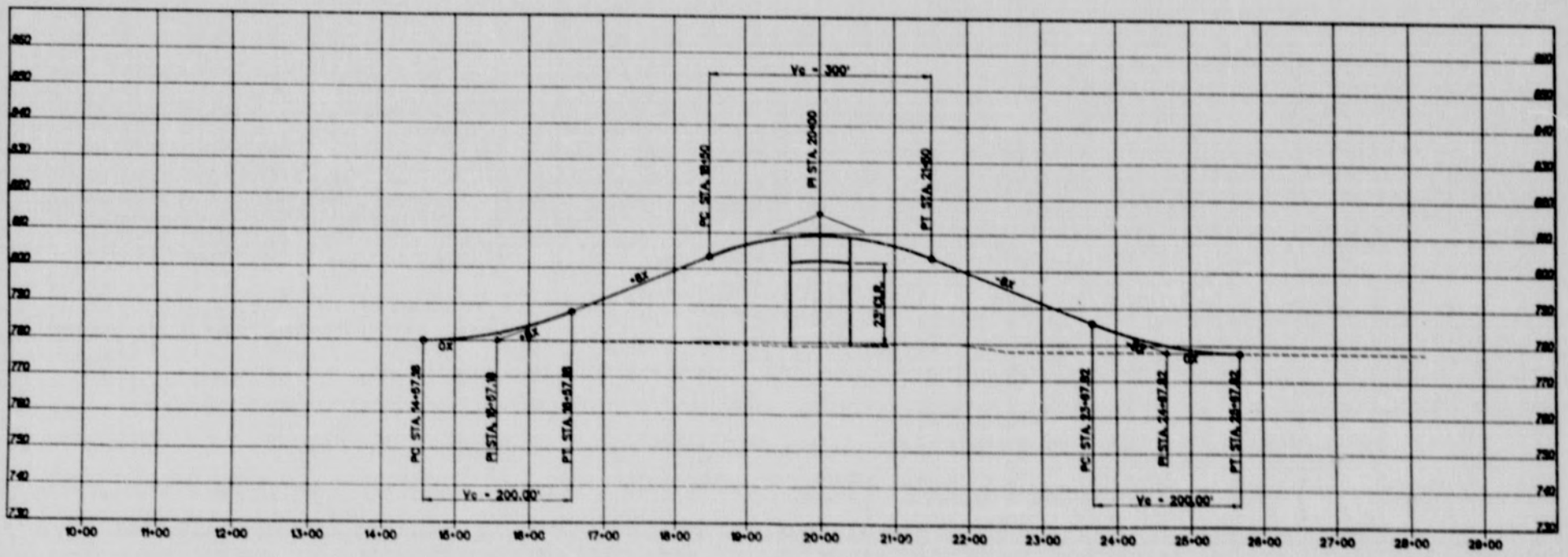


NORMAL SECTION
(UNDER R.R. BRIDGE)

FIGURE T-3


SCALE: 0 50 100
Reservoir No. 3
Reservoir No. 2
TIFFIN ST.
18" SAN.
20"W
36" RAW WATER
12" SAN.
Watson Ave.
Elwood Ave.
Independence Ave.
Cleveland St.
BALTIMORE
RES.
SN E 172
780 92
PB
TIFFIN STREET
PLAN VIEW
FIG N-1
1/26/96



TIFFIN ST. PROFILE

FIG. N-2
PE
1/26/96

PB PARSONS BRINCKERHOFF COMPUTATION SHEET

Subject: TIFFIN ST. TYPICAL SECTIONS
CITY OF FOSTORIA

Page 1 of 1
Made by EJC
Date 1-22-98
Checked by
Date

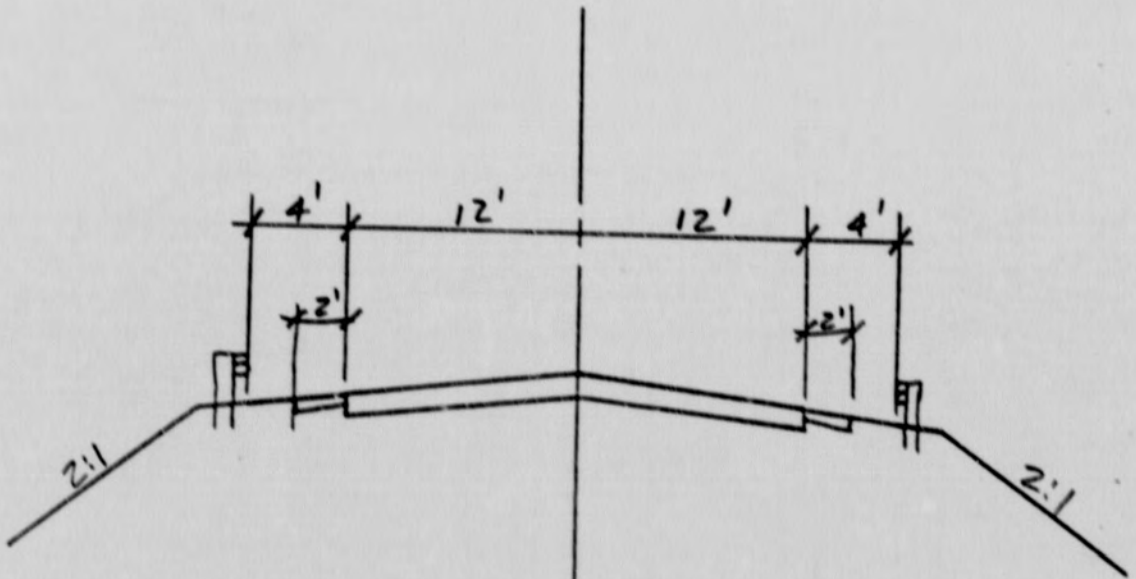
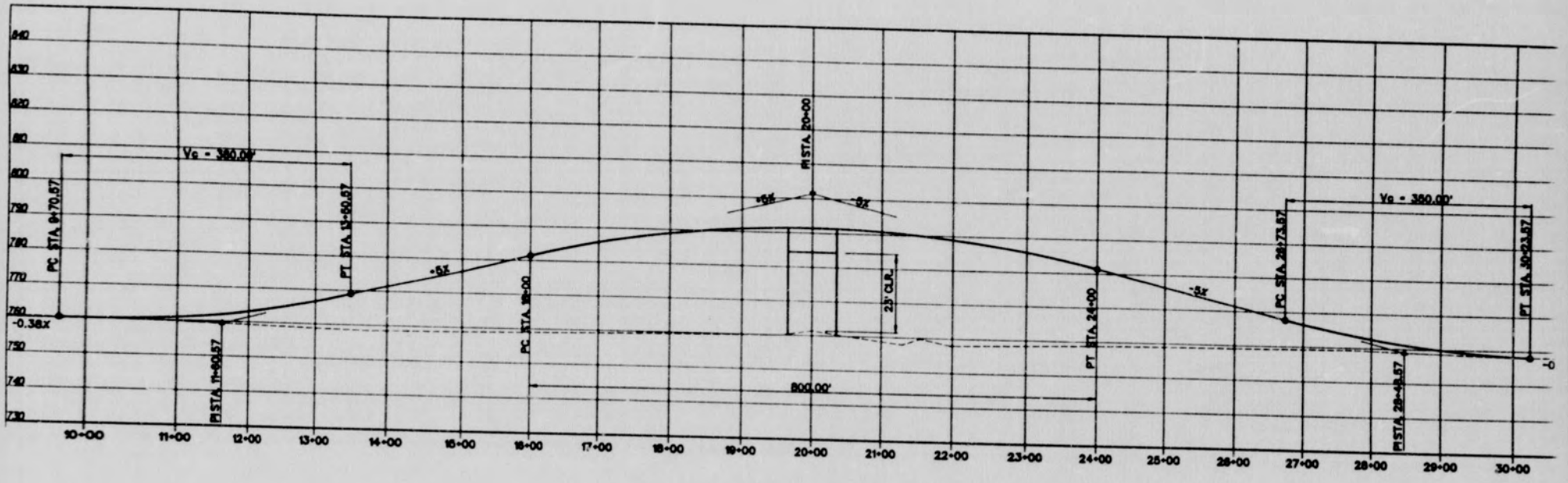
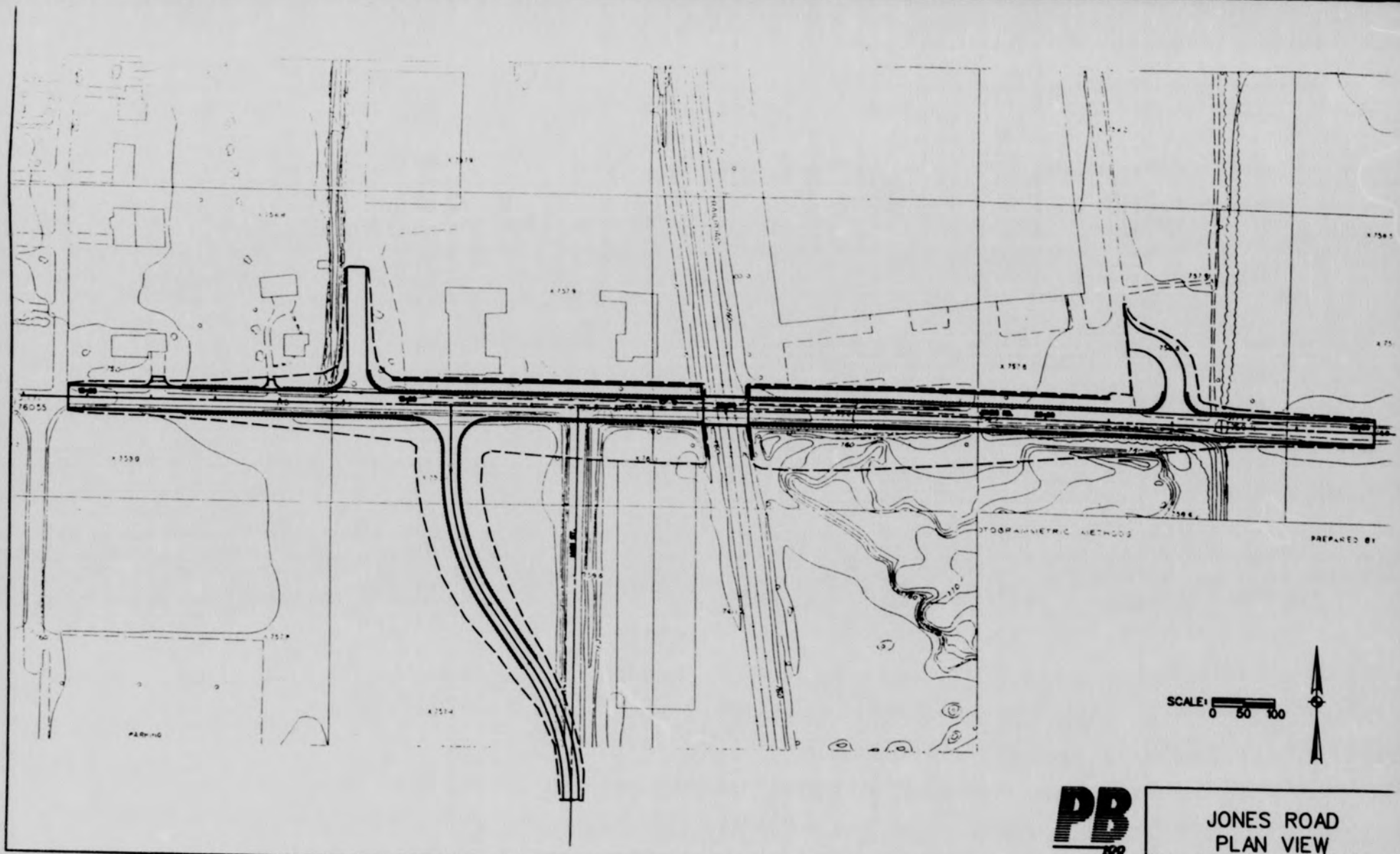


FIGURE N-3



JONES RD. PROFILE

FIG J-2
1/26/98



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JONES ROAD
PLAN VIEW
FIG. J-1 1/26/98

PB PARSONS BRINCKERHOFF COMPUTATION SHEET

Subject: JONES RD. TYPICAL SECTIONS
CITY OF FOSTORIA

Page 1 of 1
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Date 1-22-98
Checked by
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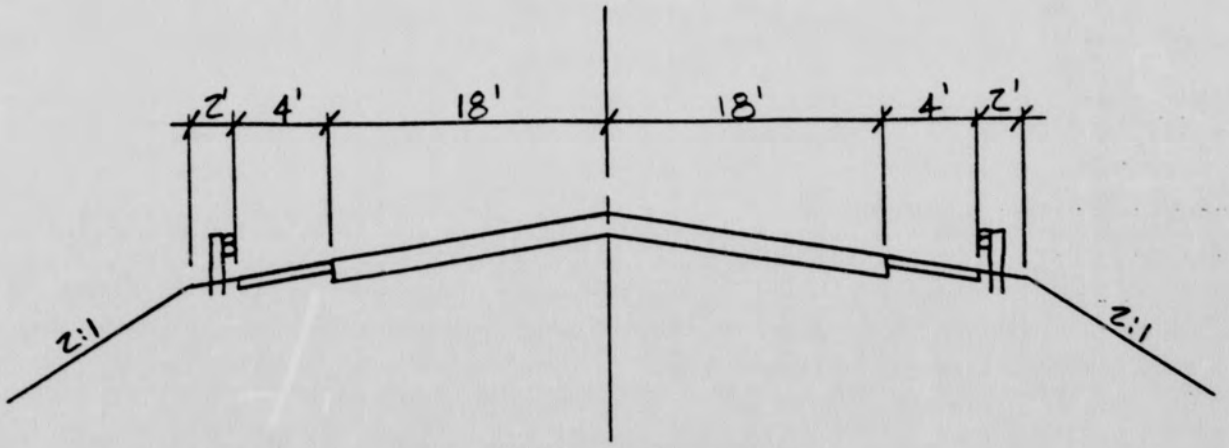
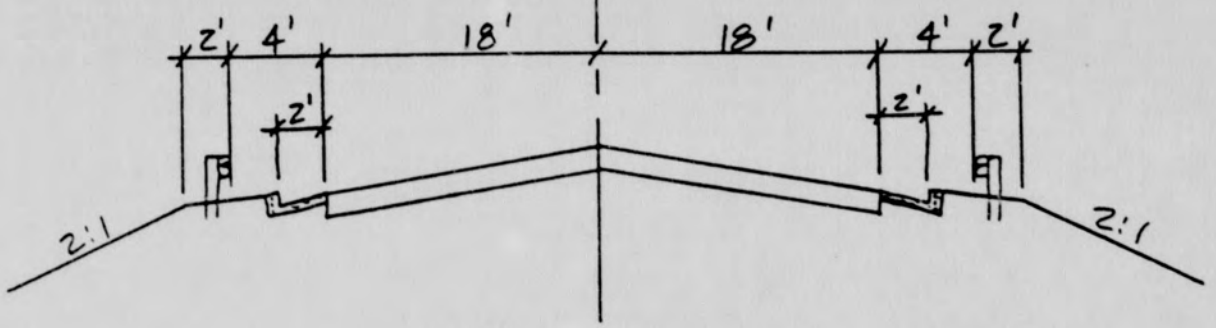


NORMAL SECTION
(EAST OF R.R. TRACKS)



NORMAL SECTION
(WEST OF R.R. TRACKS)

FIGURE J-3

C-228

7.000/29.002

33.3/37.4

Proposed Grade Separation
(Overpass)

The City of FOSTORIA Ohio

SCALE IN FEET

WOOD COUNTY
HANCOCK COUNTY

C-228

7.000/29.000

33.3/37.4

Proposed Grade Separation
(Overpass)

The City of
FOSTORIA
Ohio

SCALE IN FEET

FOSTORIA METROPOLITAN AIRPORT

MUNICIPAL AIRPORT ROAD

CHESAPEAKE & OHIO RAILROAD

NORFOLK & WESTERN RAILROAD

abandoned

CORPORATION LINE

COUNTY ROAD 592

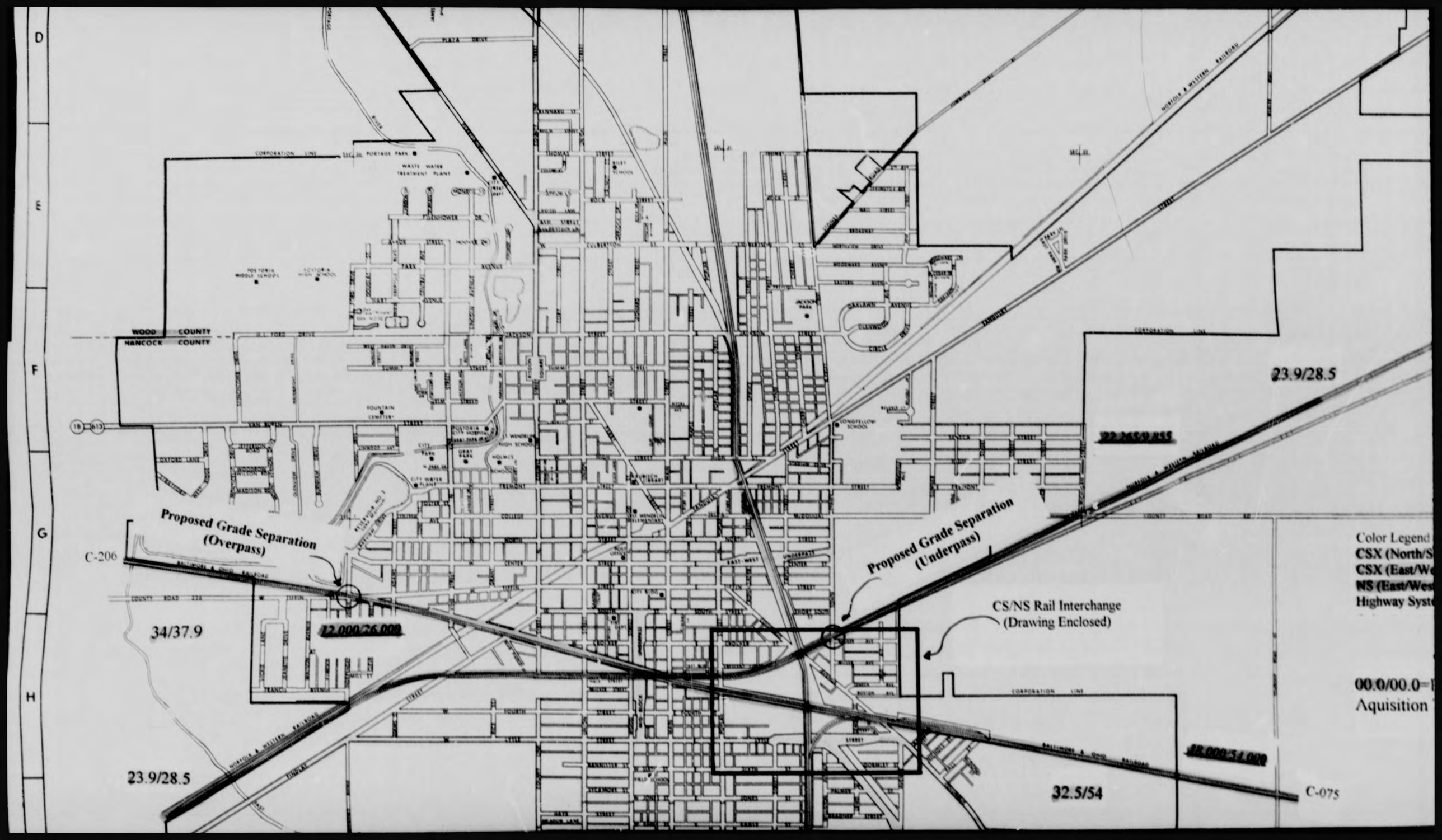
SEC. 29

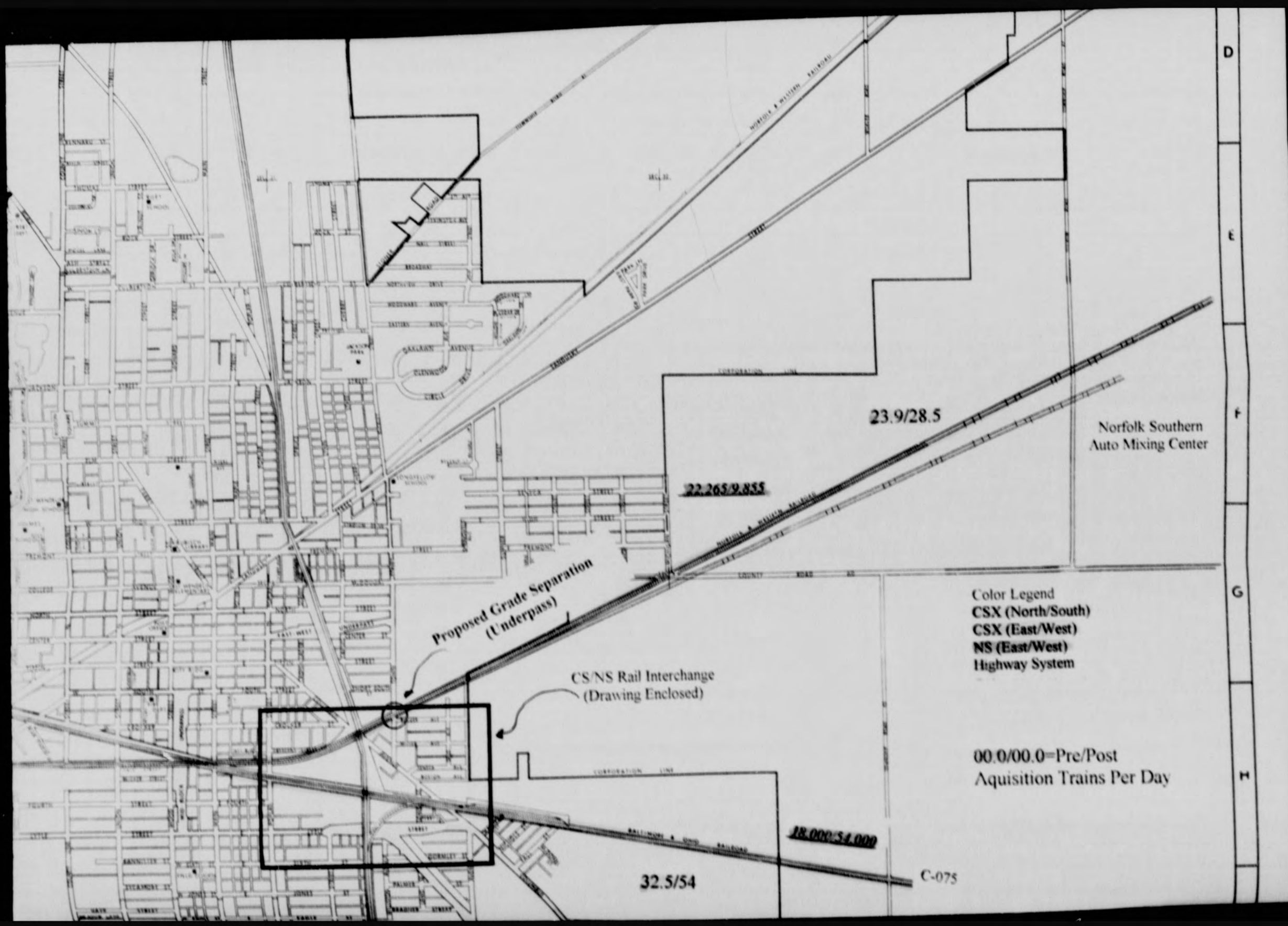
SEC. 32

4 5 6 7 8 9

A B C D E

12


D
E
F
G
H
WOOD COUNTY
HANCOCK COUNTY
PLAZA DRIVE
CORPORATION LINE
SEC. 26
PORTAGE PARK
WASTE WATER TREATMENT PLANT
EISENHOWER DR.
HOOVER DR.
PARK AVENUE
FOSTORIA MIDDLE SCHOOL
FOSTORIA HIGH SCHOOL
WEST TORO DRIVE
VAN BUREN
FOUNTAIN CEMETERY
CITY PARK
GRAY PARK
CITY WATER PLANT
HOLMES SCHOOL
FREMONT
COLLEGE
CENTER
EAST-WEST UNDERPASS
FRANCIS AVENUE
COUNTY ROAD 226
W. TIFFIN
OAKLAWN AVENUE
OLDWOOD
JACKSON PARK
LONGFELLOW SCHOOL
CORPORATION LINE
FRYE SCHOOL
SEC. 32
SEC. 33
NORFOLK & WESTERN RAILROAD
BALTIMORE & OHIO RAILROAD
C-206
C-075
Proposed Grade Separation (Overpass)
Proposed Grade Separation (Underpass)
CS/NS Rail Interchange (Drawing Enclosed)
34/37.9
12.000/26.000
23.9/28.5
32.5/54
48.000/54.000
Color Legend
CSX (North/S
CSX (East/We
NS (East/West
Highway Syste
00.0/00.0=
Aquisition


D
E
F
G
H
23.9/28.5
Norfolk Southern
Auto Mixing Center
22.265/9.855
Proposed Grade Separation
(Underpass)
CS/NS Rail Interchange
(Drawing Enclosed)
Color Legend
CSX (North/South)
CSX (East/West)
NS (East/West)
Highway System
00.0/00.0=Pre/Post
Aquisition Trains Per Day
18.000/54.000
32.5/54
C-075

Proposed Grade Separation (Overpass)

C-206

Proposed Grade Separation (Underpass)

CS/NS Rail Interchange (Drawing Enclosed)

23.9/28.5

22.265/9.855

34/37.9

23.9/28.5

32.5/54

C-075

C-070

47.8/27.4

Color Legend
CSX (North/So
CSX (East/Wes
NS (East/West)
Highway Systen

00.0/00.0=Pr
Aquisition Tr

2.000/00.000 = Pr
HazMat Car Load

BALTIMORE & OHIO RAILROAD

NORFOLK & WESTERN RAILROAD

CHESAPEAKE & OHIO RAILROAD

CORPORATION LINE

RESERVOIR NO 3 Lake Fostoria

RESERVOIR NO 4 Lake Meiser

MEADOWLARK PARK

FOUNTAIN CEMETERY

FOSTORIA CITY HOSPITAL

LONGFELLOW SCHOOL

HOLMES SCHOOL

CITY PARK

GRAY PARK

CITY WATER PLANT

CITY BLDG.

POST OFFICE

FIRE DEPT.

FIELD SCHOOL

RAUBISCH LIBRARY

ST WENDELIN HIGH SCHOOL

ST WENDELIN ELEMENTARY

NANCOCK COUNTY
SENECA COUNTY

CITY OF FOSTORIA STATE OF OHIO

F G H I

1 3 4 5 6 7 8

23.9/28.5

Norfolk Southern
Auto Mixing Center

22.265/9.855

Proposed Grade Separation
(Underpass)

CS/NS Rail Interchange
(Drawing Enclosed)

Color Legend
CSX (North/South)
CSX (East/West)
NS (East/West)
Highway System

00.0/00.0=Pre/Post
Aquisition Trains Per Day

18.003/54.008

32.5/54

C-075

= Pre/Post Aquisition
HazMat Car Loads Per Year

1.000/32.000

17.8/27.4

C-070

1995
1992
1989

F G H I J K

3 4 5 6 7 8 9

CROCKER STREET

CROCKER STREET

POPLAR STREET

COLUMBUS AVE.

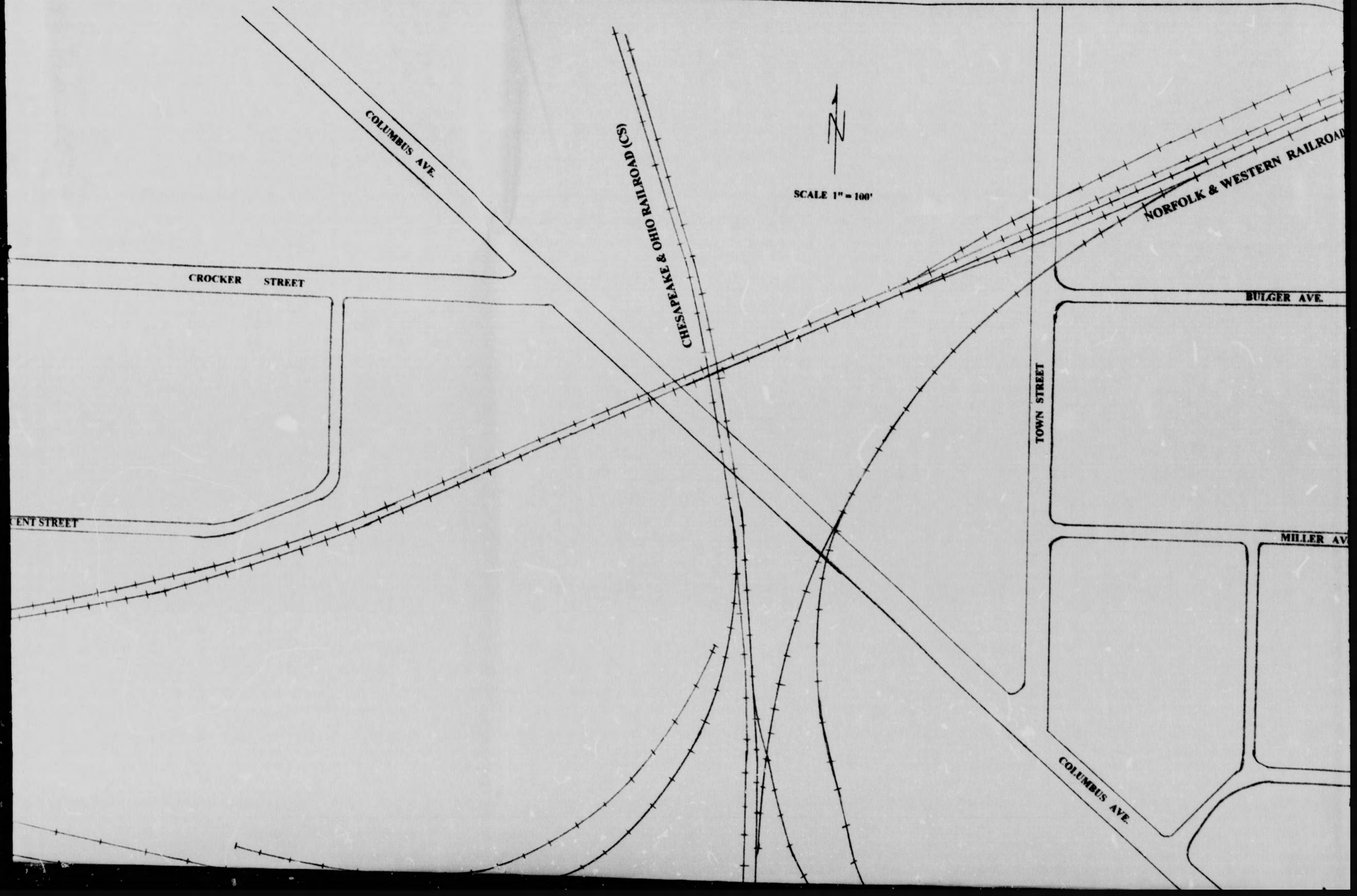
CHESAPEAKE & OHIO RAILROAD (CS)

CRESCENT STREET

TAFT BLVD.

NORFOLK & WESTERN RAILROAD (NS)

BALTIMORE & OHIO RAILROAD (CS)


COLUMBUS AVE.
CHESAPEAKE & OHIO RAILROAD (CS)
SCALE 1" = 100'
NORFOLK & WESTERN RAILROAD
CROCKER STREET
BULGER AVE.
TOWN STREET
MILLER AVE.
COLUMBUS AVE.

FOSTORIA, OHIO

CS/NS RAIL INTERC

N

SCALE 1" = 100'

CHESAPEAKE & OHIO RAILROAD (CS)

NORFOLK & WESTERN RAILROAD (NS)

NS FREIGHT YARD

TOWN STREET

BULGER AVE.

MILLER AVE.

OHIO AVE.

SENECA AVE.

COLUMBUS AVE.

NS FREIGHT YARD

NORFOLK & WESTERN RAILROAD (NS)

FOSTORIA, OHIO

CS/NS RAIL INTERCHANGE

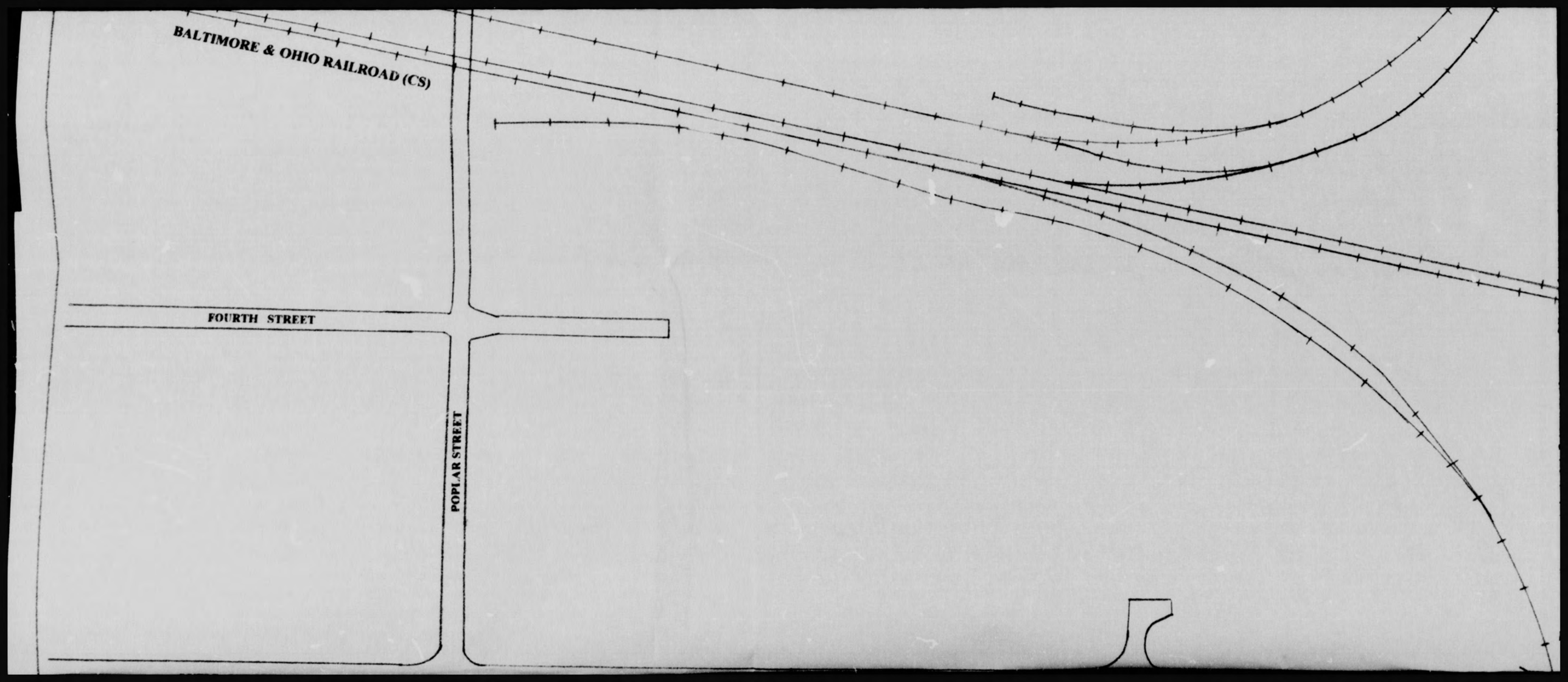
BULGER AVE.

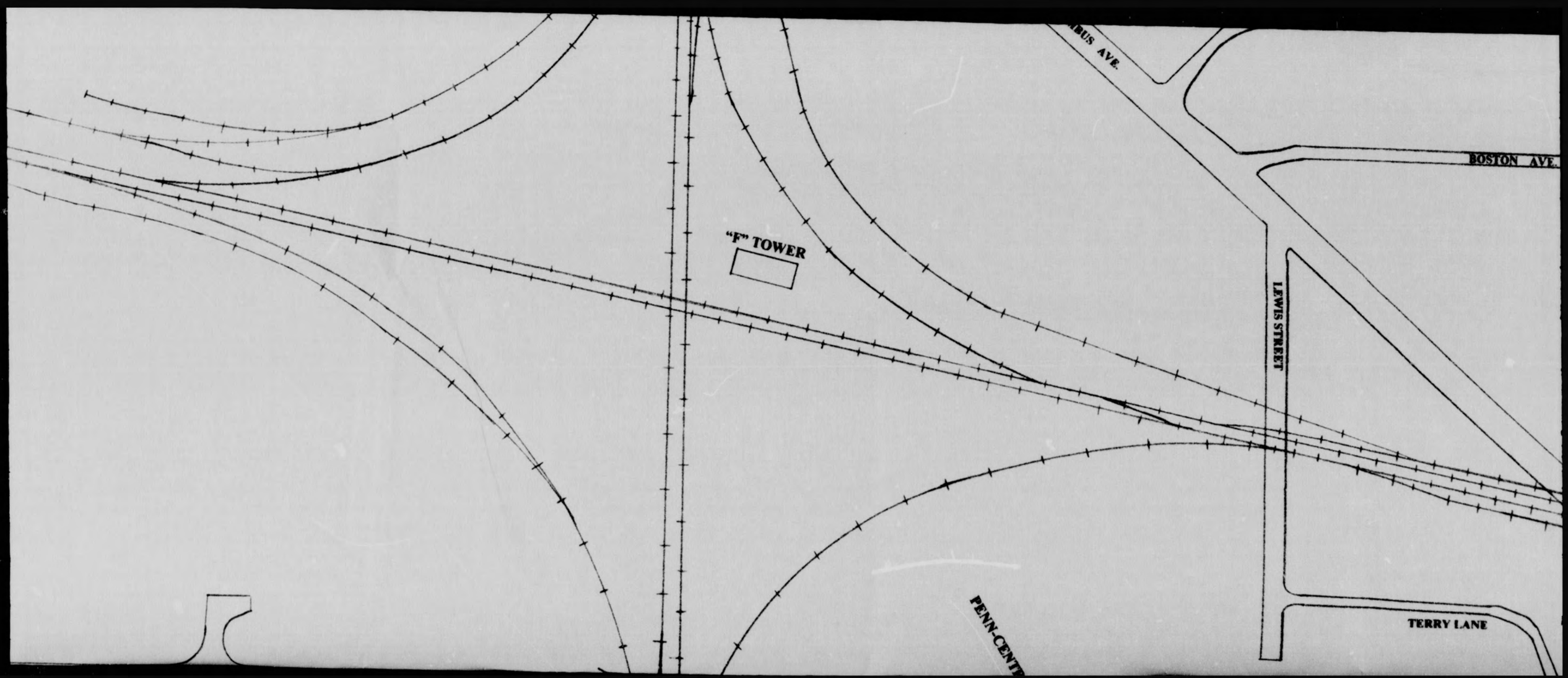
OHIO AVE.

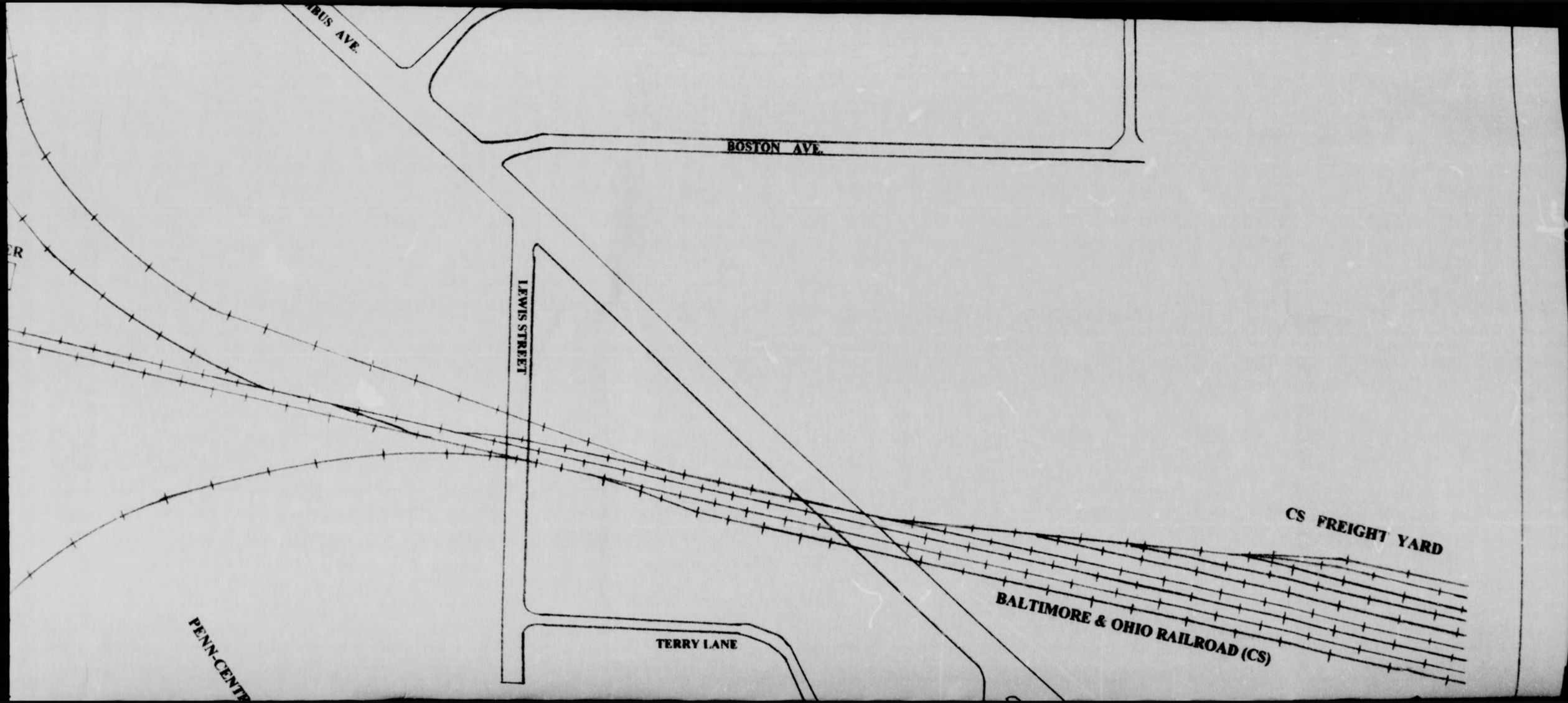
MILLER AVE.

COLUMBUS AVE.

SENECA AVE.


BALTIMORE & OHIO RAILROAD (CS)
FOURTH STREET
POPLAR STREET


BUS AVE.
BOSTON AVE.
"F" TOWER
LEWIS STREET
TERRY LANE
PENN-CENT


BUS AVE.
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CS FREIGHT YARD
BALTIMORE & OHIO RAILROAD (CS)
PENN-CENTR

FOURTH STREET

POPLAR STREET

LYTLE STREET

US 23

SR 199

SR 18

POPLAR STREET

STATE STREET

SIXTH STREET

SIXTH STREET

SIXTH STREET

CS FREIGHT YARD

BOSTON AV

"F" TOWER

LEWIS STREET

TERRY LANE

PENN-CENTRAL RAILROAD (ABANDONED)

SR 18

UNDERPASS

STATE ROUTE 18

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STATE ROUTE 199

STATE STREET

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SIXTH STREET

CS FREIGHT YARD

CHESAPEAKE & OHIO RAILROAD (CS)

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BOSTON AVE.

"F" TOWER

LEWIS STREET

CS FREIGHT YARD

BALTIMORE & OHIO RAILROAD (CS)

TERRY LANE

PENN-CENTRAL RAILROAD (ABANDONED)

UNDERPASS

STATE ROUTE 18

LYTLE STREET

OLMSTEAD STREET

COLUMBUS AVE.

US ROUTE 23

SPRINGVILLE AVE.

STATE ROUTE 199

SR 18

GORMLEY STREET

CITY of FOSTORIA

P. O. Drawer 1007
FOSTORIA, OHIO 44830

JAMES E. BAILEY
Mayor
(419) 435-8282

DIANE L. LIND
Secretary
Mayor and Director Offices

RONALD L. REINHARD
Safety-Service Director
(419) 435-2561

January 28, 1998

Mr. Thomas M. O'Leary, Director
Ohio Rail Development Commission
50 West Broad Street, 15th Floor
Columbus, Ohio 43215

Dear Mr. O'Leary:

Subject: Environmental and Safety Issues: Conrail Acquisition by CSX and Norfolk Southern

The acquisition of Conrail by CSX and Norfolk Southern will have significant impacts on the City of Fostoria. The City of Fostoria is alarmed that its safety concerns about the effect of the increased traffic are almost completely ignored and inadequately addressed in the Draft Environmental Impact Statement. In fact, the lack of comments would leave one to wonder if the City's comments, submitted with the State of Ohio during the Preliminary Safety and Environmental Comment Period, were considered.

Three rail lines cross in Fostoria, each will see an increase in traffic following the acquisition. Although segments C-070 (Marion-Fostoria) and C-075 (Willard-Fostoria) are identified as meeting the threshold for analysis by the SEA, neither the individual nor the cumulative impacts of the increased rail traffic are considered on a community wide basis for safety and grade crossing delays.

The City has participated in the preparation of the recommendations being submitted herewith by the State of Ohio and fully concur with them.

Emergency Response: The Draft EIS does not address the ingress/egress issues raised during the preliminary safety and environmental comment period. In addressing the delay issue in other communities, the EIS states "no national standards exist for measuring levels of significance of delay specifically for emergency vehicles. Obviously, time is critical for these vehicles to reach the scene of an accident, fire, or other emergency." We would submit that a delay for emergency responders is measurerable to the degree that experts claim that each additional minute a fire burns, the fire typically doubles in its size and intensity, therefore potentially increasing the severity of injury to persons or pets who may be in the structure, the dollar amount of damage to the structure(s) and the risk of increased injury to the responders. All of these are factors

affecting the Fire Rating of a community which in turn effects its economic development capabilities. Measurable effects of delay in medical treatment can be assessed simply by evaluating the chain of survival, for instance, of all patients who collapse with sudden cardiac arrest, those in ventricular fibrillation, 70%-90%, have the greatest chance of survival. A patient's chance of survival is dependent on a strong "chain of survival" in their community. Missing links in this chain result in less than optimal programs and unnecessary deaths. The chain of survival is defined as **Early Access**: The Emergency Medical System must be activated immediately to reduce total response time. **Early CPR:** CPR initiated immediately (within 1-4 minutes) maintains oxygenation of vital organs, such as the brain and heart. This is essential if later defibrillation and medications are to be effective. **Early Defibrillation:** If the victim receives CPR within 4 minutes and defibrillation within 8-12 minutes, there is a significantly improved chance of survival. **Early Advanced Cardiac Life Support:** Definitive treatment such as administration of medications and airway stabilization, increases the chances of survival from 0% for no treatment to 30-40% with Early ACLS employed.

Due to our unique conflicts between our rail and road system, the City of Fostoria has required its contract EMS to provided the community with a certified Advanced Life Support Unit at all times.

Our problems with projecting emergency police, fire and medical services to where they are needed will be severely aggravated with the significant increase of rail traffic that will occur under the proposed merger, our community is entitled to essential mitigation.

Mitigation recommendation: That CSX and NS provide for grade separations at Town Street, W. Tiffin Street and Jones Road. Once the grade separations are completed, the City and Railroads could than consider closing a number of existing at grade crossing within the community. In addition to providing essential access for emergency services the necessary grade separations should also enable the railroads to improve their train traffic congestion problems associated with the three rail intersections and interchange capabilities within the community.

Hazardous Materials: As a result of the acquisition Fostoria stands to be significantly impacted in the amount of Hazardous Material quantities on a yearly basis. The Draft EIS indicates an increase of forty (40%) percent, 85,530 car loads per year to 119,710. The cumulative increase in hazardous materials volume exceeds the 20,000 car loads volume that results from the three lines the EIS deems very significant.

Mitigation recommendation: That CSX and NS provide funding for training and equipment for the Fostoria emergency service providers, who will, as a result, provide HazMat response not only in the City limits but also outside its corporation (as Mutual Aid) within a definable geographic area. CSX and NS should conduct hazardous material accident simulations (training) with the participation of emergency service providers at least once every two years. Participants in these exercises will include county and municipal government, fire, police and emergency response teams.

Rail capabilities: The Draft EIS does not clearly indicate the local rail conditions. Figures 5-OH-1a & 1b depicting rail segments in Ohio clearly misleads one when looking at the NS system. Figure 5-OH-1b fails to indicate the Fostoria interchange with CSX. Submitted herewith are the appropriate drawings depicting the actual conditions. As is evident, Fostoria includes the intersection of three rail lines, but also provides an interchange capability. As is evident, the interchange capability requires a significant reduction in train speed to negotiate, therefore increasing the delay at grade crossing times considerably. This in turn creates delays at the remaining crossings throughout the community as other train traffic waits.

Unemployment: December 1997 unemployment figures indicate that the area unemployment numbers are above State and National percentages as follows: National 4.4%, State of Ohio 4.6% and Fostoria Area (Seneca County) at 6.1%.

Low to Moderate Income Status: The City of Fostoria currently utilizes the Community Development Block Grant (CDBG) programs whenever it can. The community as a whole has been classified as "Low to Moderate Income" in regards to utilizing these funds. The community is also designated as a full-authority, distress-based Enterprise Zone based in part on the distress criterion requiring that a prevalence of the commercial or industrial structures in the designated zone are either vacant or demolished or vacant and tax delinquent. The program, through the State of Ohio Department of Development, allows the community to offer Tax Abatements for Real and Personal Property Taxes to industries as an Economic Development tool.

The City entertains prospective new industries on a regular basis, however, even with a utility infrastructure in place and capable of meeting their needs, the community has been plagued by inadequacies with its road transportation capabilities, therefore resulting in removal from consideration by the prospective industry.

New NS Auto Mixing Center: The new auto mixing center, located on the East side of the community, owned by Norfolk Southern is an example of the communities commitment to growth

and cooperate atmosphere with the railroads. The addition on the sanitary sewer system to accommodate the facility is a $512,000.00 (all local monies) investment by Fostoria for the growth potential of the area as a whole. In conjunction with the increased rail traffic for the facility, a trucking facility is currently under construction to serve the mixing center with over the road capabilities. We understand that the trucking requirements will be in the range of 100 truck loads per day leaving the facility thereby increasing the congestion on an already overloaded road system.

Your assistance and cooperation is appreciated.

Sincerely,

James E. Bailey

James E. Bailey
Mayor
City of Fostoria, Ohio

JEB/cld

CITY of FOSTORIA

P. O. Drawer H
FOSTORIA, OHIO 44830

January 28, 1998

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

Board Members:

The City of Fostoria is concerned that its safety concerns are almost completely ignored and inadequately addressed in the Draft Environmental Impact Statement, in fact, the lack of comments would leave one to wonder if the City's comments, submitted with the State of Ohio during the Preliminary Safety and Environmental Comment Period, were considered.

Although segments C-070 (Marion-Fostoria) and C-075 (Willard-Fostoria) are identified as meeting the threshold for analysis by the SEA neither the individual nor the cumulative impacts of the increased rail traffic are considered on a community wide basis for safety and grade crossing delays.

The foremost item of concern remains the ingress/egress issues raised in the Preliminary Safety and Environmental Comment Period. The measurable delay for emergency responders will be dramatically increased as a result of the acquisition. Our estimates indicate that with nearly a 30% increase in rail traffic throughout the community, utilizing the SEA's formula, a at-grade crossing will be blocked over 12 of the 24 hours, which is over 50% of the day. Under the existing current volume levels, a train is blocking one or more at-grade crossing in Fostoria nine and one quarter (9.25) hours out of each twenty-four hour day.

We agree that not all of the crossing will be blocked at the same time, however an emergency vehicle has no schedule as to what time of day the crossing it needs will be blocked. With any given rail crossing blocked over half of the day, it becomes apparent that some alternative provision needs to be made for the safety of the residents within the Iron Triangles in particular.

It is strongly recommended that the potential for these two areas to become isolated by rail movements, and the unreliability and unpredictability of direct emergency service routes, be

EXHIBIT
6

considered in addition to the established SEA criteria. The construction of grade separations in both areas is highly recommended.

As a result of the acquisition, the City of Fostoria stands to be significantly impacted in the amount of Hazardous Material rail car loads on an annual basis. The Draft EIS indicates an increase of forty (40%) percent, from 85,530 car loads per year to 119,710 when evaluating the cumulative impacts of all three rail lines within the community. Mitigation recommendations are included within the State of Ohio filing.

Additional evaluation by SEA is necessary to totally realize the impact within Fostoria, the Draft EIS fails to recognize that the rail systems not only intersect in the center of the community, but also have a interchange capability, both having a negative impact when considering Emergency Responders.

The City has participated in the preparation of the recommendations being submitted by the State of Ohio and fully concur with them.

Your consideration is greatly appreciated.

Sincerely,

James E. Bailey
Mayor
City of Fostoria, Ohio

Joseph E. Droll
President
Fostoria City Council

Ronald L. Reinhard
Safety-Service Director
City of Fostoria, Ohio

Charles L. Dodge
Administrative Assistant to the Mayor
City of Fostoria, Ohio

News Release

Office of Mayor Michael R. White

Cleveland City Hall
Room 237
Cleveland, Ohio 44114
216/664-2239 • Fax 216/664-3570

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MIKE MARCELLINO, (216) 664-2405
JOE SKRABEC, (216) 664-4529

January 27, 1998

MAYOR WHITE INTRODUCES "GLOBAL FIX" TO MINIMIZE TRAIN TRAFFIC IMPACT ON CLEVELAND AND REGION

CSX plans for railroad ties and earthen berms will not resolve significant damage to neighborhoods from increased traffic; Mayor says Cleveland will not act at the expense of its neighbors

Cleveland Mayor Michael R. White and City Planning Director Hunter Morrison today outlined two alternative route configurations that route most of the rail traffic resulting for the CSX and Norfolk Southern (NS) corporations' acquisition of Conrail through Cleveland's (and its neighbors') industrial corridors – thereby minimizing the impact on residential neighbors, reducing safety hazards and preserving the quality of life.

The City's plans were developed to prevent the potentially devastating impact of the dramatic increase in freight train traffic that will result from the CSX/NS route proposal. Collectively, the two railroads propose a three-fold increase in train traffic through affected Cleveland neighborhoods. The unveiled plans, Mayor White said, while substantially reducing the adverse impacts of the increased traffic on thousands of Clevelanders who live near the railroads, will also provide a long-term solution to the railroads' need to move cross country train traffic through Cleveland, a key junction in their national systems.

Last week, CSX publicly announced their "noise abatement" and "beautification" program that they claimed would address many of the problems created by the new train traffic. The CSX plan proposes a low railroad tie wall, earthen berms and trees to mitigate the impact of the increased traffic and noise. Mayor White today said that CSX plans were "inadequate and a band aide approach. We expect the railroads to find realistic and permanent solutions to the problems they are creating. Serious health, safety and quality of life concerns cannot be addressed by some railroad ties, trees and mounds of dirt. The noise abatement program would have little impact on the tripling of the noise level which residents will experience."

-more-

EXHIBIT 7

Philip Pasterak of the national transportation, planning and engineering consulting firm Parsons Brinckerhoff said the CSX plans will have little impact on reducing the increased noise level. He equated the tripling of the noise level with the difference between the noise of an average car with a heavy truck. He also indicated that a significant portion of CSX's increase in operations will occur at night while people are trying to sleep.

Mayor White appointed a task force of City representatives, along with Pasterak, to review the CSX/NS proposal, hear residents' concerns and work with the CSX and NS to reach a settlement. The mayor and the task force believe the City's alternative routes represent a realistic approach and a real solution to both community concerns and the railroads' economic interests.

"These alternative plans are viewed as a 'global fix' because they not only benefit City of Cleveland neighborhoods, but also other cities including west shore communities, East Cleveland, Euclid, Berea and others," Mayor White said. "The new traffic patterns would maintain the railroads' ability to provide efficient and competitive freight service, preserve the future ability to operate commuter rail passenger service and enhance regional economic development."

The City's alternative route plans, Mayor White said, greatly improve upon the current joint proposal of the railroads by:

- Redirecting freight traffic from residential areas to industrial corridors;
- Substantially reducing the adverse impacts on minority and low income populations;
- Providing grade separations to minimize emergency response times and improve traffic flow.
- Minimizing changes in noise levels
- Decreasing the need to spend money on mitigation measures with limited effectiveness; Providing railroads' the ability to offer efficient and competitive freight service, and enhancing regional economic development.

Mayor White said that although the City's alternative routes would cost more, that increase is dwarfed by the enormous increases in revenues and savings the railroads will experience three years after they acquire the Conrail assets. Together, CSX and Norfolk Southern will realize *an addition of nearly one billion annually* (CSX - $435.8 million and Norfolk Southern -- $553 million). Preliminary estimates, according to Parsons Brinckerhoff, indicate the cost of the two alternatives to be in the range of $148 to $171 million. A significant cost item under both City proposals is the need to invest in improvements in Berea. This includes over pass structures for both rail lines and roadways.

The current CSX/NS proposal is estimated to cost $72 million but fails to mitigate numerous noise, hazardous materials, safety and roadway crossing delay concerns. The actual cost of the railroad proposal with additional mitigation is estimated to be $107 million, with significant impacts remaining unresolved, according to Parsons Brinckerhoff.

CSX/NS Alternative - p. 3

Thomas O'Leary, Executive Director of the Ohio Rail Development Commission, said the alternative proposals would avoid potential mitigation, such as train limits, grade separations, appropriate hazardous materials and safety precautions and noise and vibration abatement. "This mitigation will directly affect the revenues expected by the railroads after the acquisition of Conrail. For this reason the estimated cost of the alternatives advanced today by the City of Cleveland are appropriate and reasonable for a real fix," he said.

The current CSX/NS route plan would collectively increase freight train traffic three fold in the City of Cleveland, according to City studies. The impact on individual neighborhoods is even greater. For instance, in the Kinsman/South Broadway neighborhood, CSX proposes increasing trains from 3 to 44 per day, an increase of over 1000%.

More than 64,000 residents in eight neighborhoods live within 1,000 feet of the routes. The negative impact of the increased train traffic includes safety haz. rds, noise, vibration, odor, dust, congestion and decreases in access, property values and overall quality of life for residents along the railroad corridor. Among the harmful impacts, emergency response times are jeopardized as trains block crossings anywhere from two to 10 minutes and hazardous waste transport would increase from zero to 44,000 carloads in east side neighborhoods and from 7,000 to 81,000 car loads in University Circle.

The City today also said that CSX claims of economic benefits resulting from the Conrail acquisition are vague, ambiguous and misleading. For instance, CSX claims their proposal will support 25,036 jobs in the region. "When you look at the fine print," the Mayor remarked, "you discover that they count one job ten times by using the confusing term 'worker/years'." For instance, their employment projections for industrial development are for 12,000 worker/years, which really translates into 1,200 jobs over 10 years. In addition, their economic impact summary did not distinguish between existing jobs and new jobs. CSX does not pinpoint overall economic benefits for the City of Cleveland, but instead cites region-wide projections. "The current CSX/NS routing proposal disproportionately harms Cleveland neighborhoods. The negative impacts in Cleveland caused by the proposed routing system were not considered by CSX," Mayor White added.

FACTS ON CITY OF CLEVELAND ALTERNATIVE ROUTES FOR CXS/NS RAIL TRAFFIC

The City of Cleveland has developed two alternative route configurations that route most rail traffic through industrial corridors, minimize impact on residential neighborhoods, reduce safety hazards and preserve the quality of life.

CSX traffic from Greenwich would continue to enter the region in Berea, but would use the Lakeshore route via the Cleveland lakefront to Collinwood. This line is currently heavily used by rail traffic. NS traffic bound for Pittsburgh and beyond would continue to enter the area at Olmsted Falls/Berea but would use the Short Line to the Broadway-Harvard area, then diverge southeast through Bedford.

The two alternative routes differ in the routing of NS traffic to Buffalo. Both, however, minimize rail traffic in the west shore communities by routing this traffic via Berea. One alternative would route this traffic via the Flats Industrial Track corridor as proposed by NS, while the other would have this traffic continue east on the Short Line, diverging north at Broadway/Harvard to Euclid. In Berea, the two lines would be grade separated by construction of a rail/rail overpass. Both existing Front Street at-grade crossings would be eliminated by construction of an overpass and underpass. In Collinwood, grade crossings at Diffe and London roads would be replaced by underpasses.

The plans are viewed as a "global fix" because they not only benefit City of Cleveland neighborhoods, but also other cities, including the west shore communities, East Cleveland, Berea and others. The positive impact of these two alternative routes include:

- **Routing traffic through industrial corridors and minimizes rail traffic through residential neighborhoods, therefore enhancing the quality of life.**
- **Minimizing changes in noise levels.**
- **Not disproportionately affecting minorities and low-income residents.**
- **Providing grade separations to minimize emergency response times and improve traffic flow.**
- **Minimizing rail traffic on several key future commuter rail routes.**
- **Providing grade separation of highway/rail crossings in Berea.**
- **Providing railroads' with the ability to offer efficient and competitive freight service and enhances regional economic development.**

FACTS ON CSX/NS PROPOSED ROUTES

The plan for the acquisition of Conrail submitted by CSX and Norfolk Southern significantly affects rail traffic densities in Cleveland and Northeast Ohio. Numerous parties, including the City of Cleveland and many other public agencies and municipalities, have identified harmful impacts which include:

- **Significantly increased rail traffic through residential neighborhoods would have a devastating impact on the quality of life in communities.**
- **More than 64,000 Cleveland residents live within 1,000 feet of the routes affected. Collectively, rail traffic through residential neighborhoods would increase by three-fold. The impacts on individual neighborhoods are even greater. In Kinsman-South Broadway, CSX proposes increasing trains from 3 to 44 per day, an increase of over a 1,000%.**
- **Noise levels would triple -- the difference between a car and heavy truck. Neighborhoods would also experience increased dust, odor and vibration.**
- **Emergency response times by police, fire and Emergency Medical Service would increase; Trains block crossings anywhere from two to 10 minutes. The chance of survival of a person in cardiac arrest decreases 50% with a 2 minute delay, 75% with a 3 minute delay and beyond 3 minutes survivability is 0%.**
- **Hazardous waste transport would dramatically increase -- from zero to 44,000 carloads a year on the Short Line and from 7,000 to 81,000 car loads in University Circle.**
- **Property values would decrease, as would overall quality of life.**
- **Minorities and low-income residents are disproportionately affected.**
- **Costs to railroads are minimized with little consideration for public impacts.**
- **Rail traffic on the west shore is minimized only in NS's proposal, also requiring public funding.**
- **Grade separation of road crossing in Berea is provided only in NS's proposal, also requiring public funding.**

NEIGHBORHOOD IMPACTS OF FREIGHT RAIL TRAFFIC INCREASES
Comparison of Alternatives

ALTERNATIVE	TRAINS per DAY current → proposed (on lines with proposed increases)	RESIDENTS LIVING WITHIN 1,000 FEET OF RAIL LINES PROPOSED FOR INCREASED FREIGHT RAIL TRAFFIC						IMPACT INDEX*
		POP.	% NON-WHITE	% HISPANIC	% BELOW POVERTY	MEDIAN INCOME	GRADE CROSSINGS	
NS/CSX Original Proposal	42 → 115 174% increase	67,847	52.3% (35,489 persons)	5.3% (3,598 persons)	37.0% (25,132 persons)	$14,868	13	22.4
NS/CSX Revised Proposal (12/5/97)	42 → 115 174% increase	58,317	51.6% (30,260 persons)	4.7% (3,277 persons)	33.9% (23,150 persons)	$16,282	7	21.4
Alternative 1: Lakeshore/ West Side	46 → 67 46% increase	49,547	37.1% (18,359 persons)	6.0% (2,955 persons)	29.2% (14458 persons)	$17,456	4	8.1
Alternative 2: Lakeshore/ Short Line	46 → 67 46% increase	32,625	54.5% (17,794 persons)	1.0% (317 persons)	28.7% (10,361 persons)	$16,175	4	5.2

* These "Impact Index" numbers were determined on the basis of the following calculation:

additional trains per day on *each* rail line segment x population within 1,000 feet of tracks on *each* rail line segment

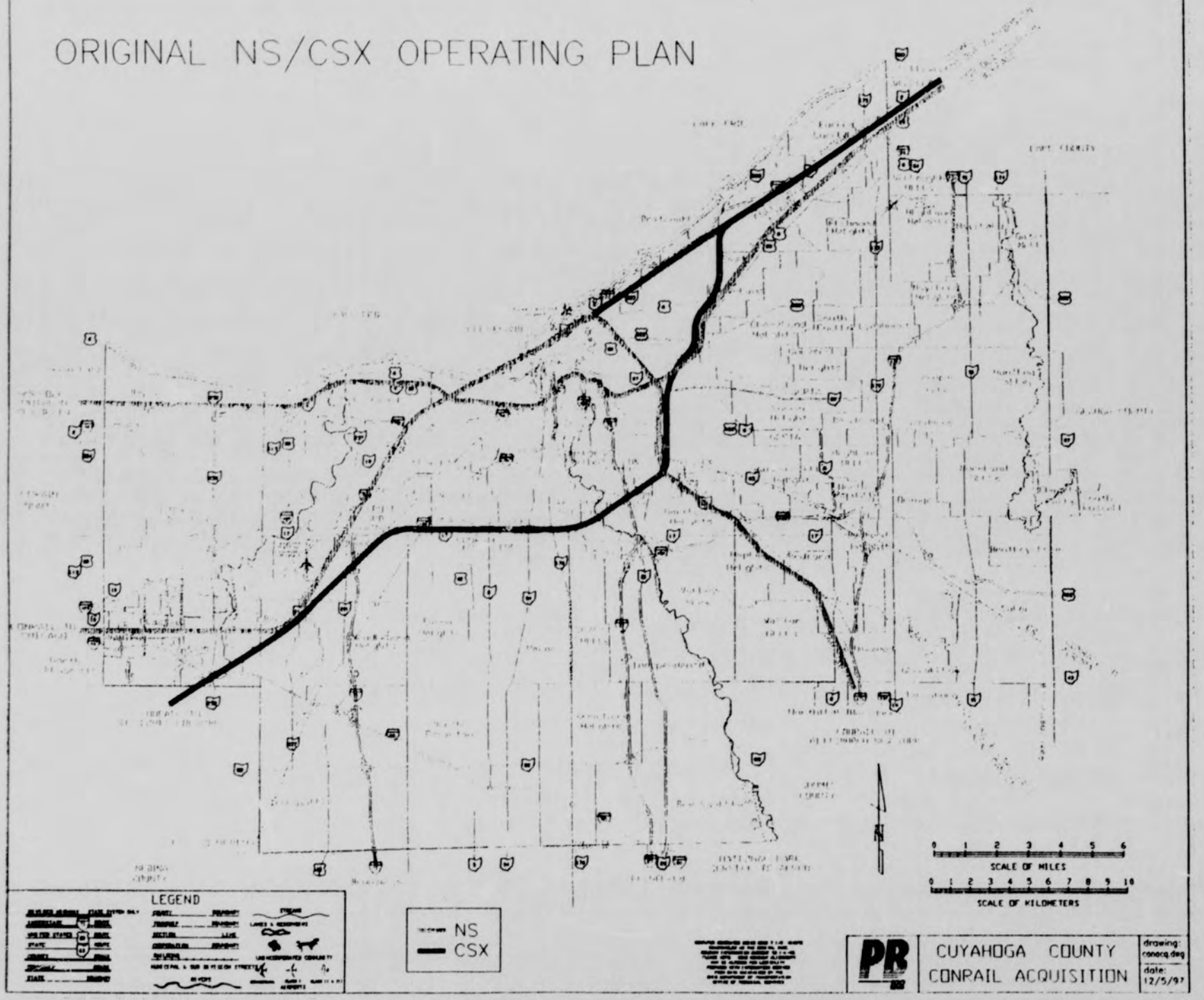
÷ 100,000 = Impact Index

These rail line segments and the associated neighborhoods are identified on the maps and tables which show the neighborhood impacts of increased freight rail traffic.

Higher impact numbers indicate *greater impacts* on neighborhoods. *Lower impact numbers* indicate *lesser impacts* on neighborhoods.

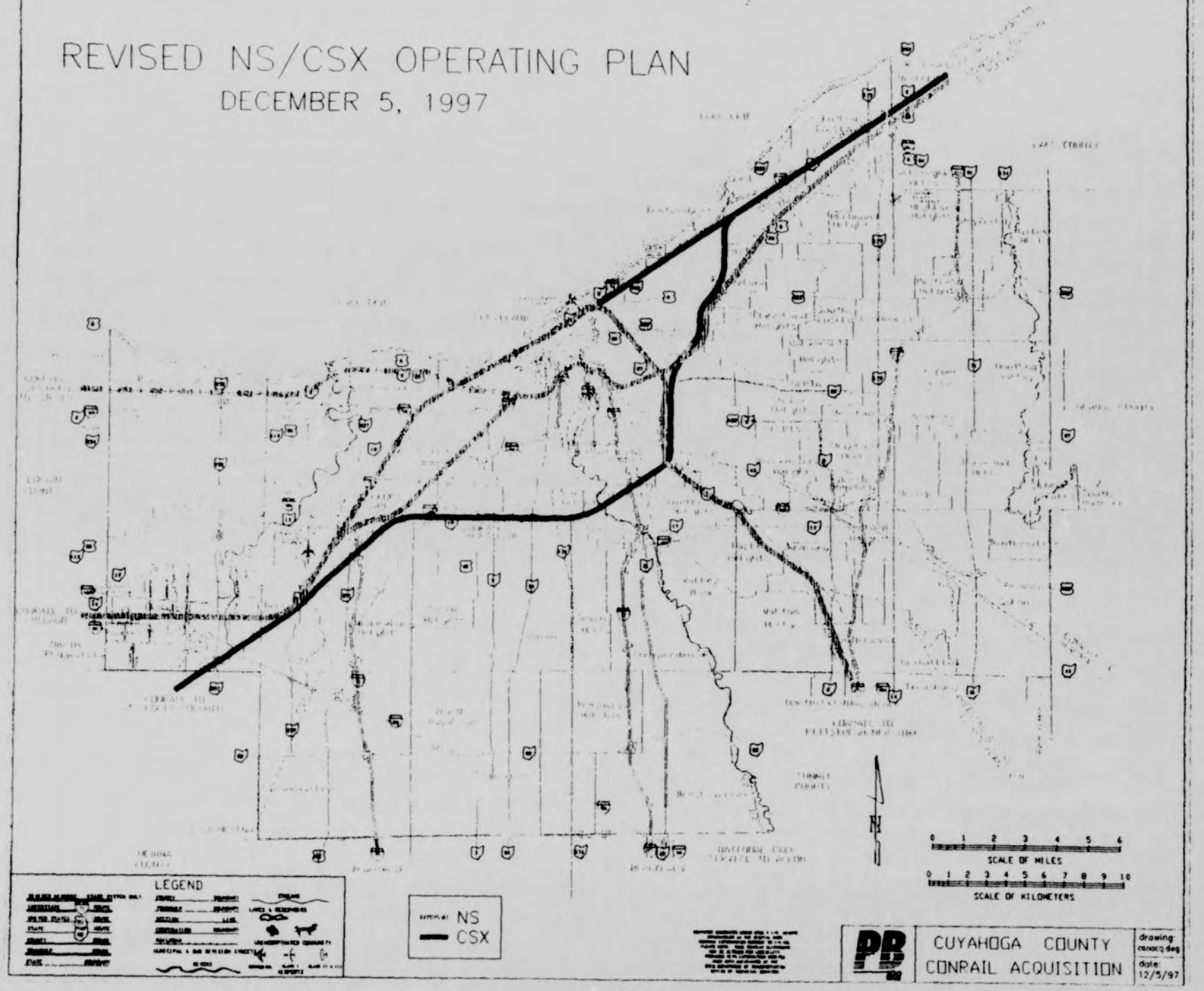
Revised 1/9/98

ORIGINAL NS/CSX OPERATING PLAN

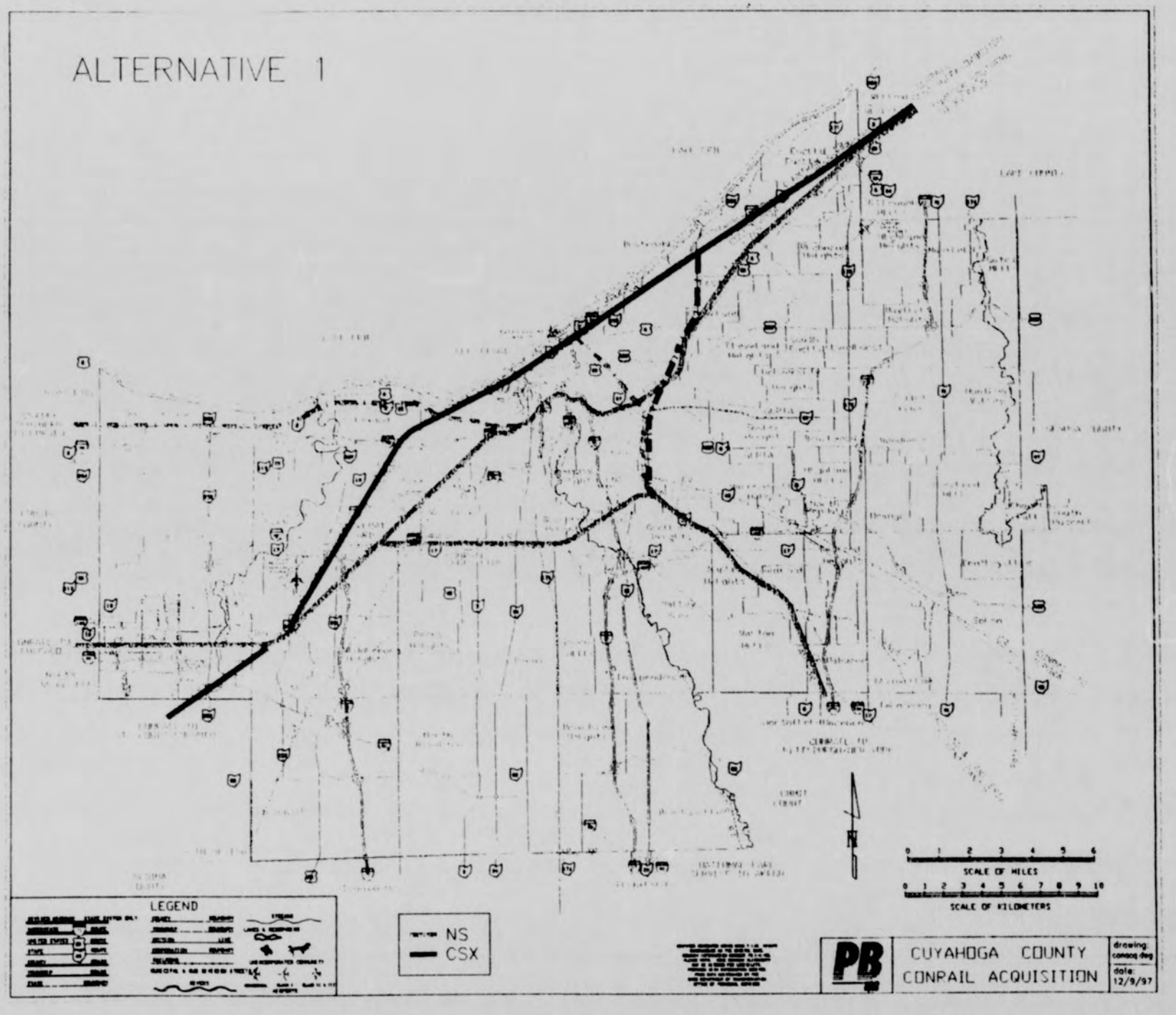


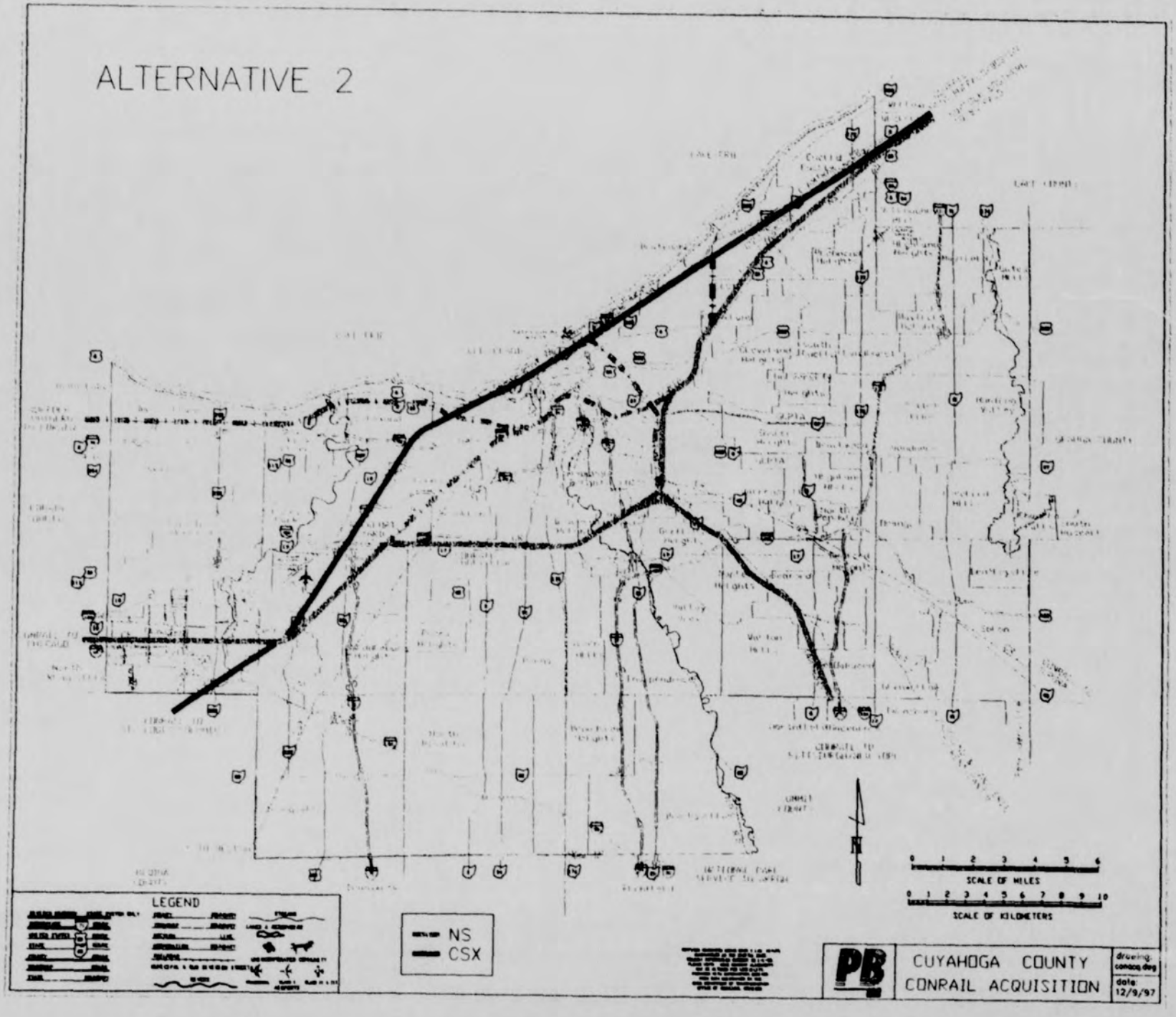
REVISED NS/CSX OPERATING PLAN

DECEMBER 5, 1997



ALTERNATIVE 1




ALTERNATIVE 2
LEGEND
NS
CSX
SCALE OF MILES
SCALE OF KILOMETERS
PB
CUYAHOGA COUNTY
CONRAIL ACQUISITION
drawing: conacq.dwg
date: 12/9/97

STB FD 33388 2-2-98 K 185505

185305

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PETER A. PFOHL

202-347-7170

February 2, 1998

By Hand

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

ENVIRONMENTAL DOCUMENT

K

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

Dear Ms. Kaiser:

Enclosed for filing in the above-referenced proceeding, please find an original and ten (10) copies of **NRPC-11**, the Comments of the National Railroad Passenger Corporation ("Amtrak") on the Draft Environmental Impact Statement in this proceeding.

We have included an extra copy of the filing. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Thank you for your attention to this matter.

Sincerely,

Donald G. Avery

Donald G. Avery
An Attorney for the
National Railroad Passenger
Corporation

cc: Applicants

ORIGINAL

ENVIRONMENTAL
DOCUMENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/ AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION	)	Finance Docket No. 33388

COMMENTS OF THE
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
ON THE BOARD'S DRAFT ENVIRONMENTAL IMPACT STATEMENT
AND ON THE APPLICANTS' SAFETY INTEGRATION PLANS

NATIONAL RAILROAD PASSENGER
CORPORATION

Richard G. Slattery
60 Massachusetts Avenue, NE
Washington, DC 20002
(202) 906-3987

OF COUNSEL:

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1224 Seventeenth St., NW
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Donald G. Avery
Christopher A. Mills
Frank J. Pergolizzi
SLOVER & LOFTUS
1224 Seventeenth Street, NW
Washington, DC 20036
(202) 347-7170

Date: February 2, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/ AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION	)	Finance Docket No. 33388

COMMENTS OF THE
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
ON THE BOARD'S DRAFT ENVIRONMENTAL IMPACT STATEMENT
AND ON THE APPLICANTS' SAFETY INTEGRATION PLANS

The National Railroad Passenger Corporation ("NRPC" or "Amtrak") appreciates this opportunity to comment on the Draft Environmental Impact Statement ("DEIS") published by the Section of Environmental Analysis ("SEA") in these proceedings on December 12, 1997, as well as on the "Safety Integration Plans" submitted by the Applicants and included by SEA in the December 12 issuance.

In its comments, Amtrak will naturally focus on those portions of the DEIS that examine the impact of the proposed transaction on passenger rail operations -- and especially on those passages and preliminary conclusions in the DEIS that, we believe, should be modified in the final EIS. While Amtrak's comments will necessarily focus on those aspects of the DEIS to which it takes exception, Amtrak recognizes the very difficult task that SEA has faced in attempting, under very tight dead-

lines, to assess the impacts of a transaction that, if approved by the Board, will lead to changes in rail operations of far greater magnitude than have resulted from any prior rail merger.

As requested by SEA, these comments are divided into two parts: Part I, immediately following this introduction, addresses SEA's own conclusions regarding potential adverse impacts on commuter and intercity passenger service from the proposed transaction. Part II, which begins on page 18, comments separately on the "Safety Integration Plans" previously filed by NS and CSX, covering both their respective separate post-transaction operations and their proposed "Shared Assets Area" operations.

PART I
COMMENTS ON THE DEIS

I. INTRODUCTION

The DEIS preliminarily finds that, in general, the proposed transaction (the "Conrail Acquisition") will not adversely affect either the operations or safety of Amtrak's passenger services. The DEIS concludes, among other things, that all of the lines used for passenger service have adequate capacity to handle proposed increases in freight operations without forcing reductions in present Amtrak train frequencies. The one exception relates to safety on nine line segments, eight of which are owned by freight railroads,[1] over which Amtrak operates and

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[1] The ninth segment is the rail line between Kalamazoo, MI and Porter, IN which is owned by Amtrak. The DEIS identifies a similar risk on a tenth line segment, shared by freight and

that will experience increases in freight traffic as a result of the Acquisition. The DEIS preliminarily concludes that the Acquisition will unacceptably increase the risk of passenger-freight train collisions on these line segments, and proposes mitigation in the form of a 30-minute "window" for each passenger train.

Amtrak respectfully disagrees with the DEIS's conclusion that the merger is unlikely to cause capacity problems, and resulting deterioration in Amtrak's on-time performance, on any of the CSX, NS and Conrail-owned lines over which Amtrak operates. Amtrak also disagrees with the DEIS's conclusion that the merger will create appreciably increased safety risks on the nine line segments identified for mitigation measures, and with the efficacy and wisdom of the 30-minute window proposed to mitigate those perceived risks. In both cases, Amtrak believes that these preliminary conclusions result from shortcomings in the methodologies and data relied upon that, if corrected, would yield very different conclusions.

We discuss these points in greater detail below.[2]

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commuter trains, over which Amtrak does not operate.

[2]In addition to the points discussed below, there are also three minor factual errors in the DEIS relating to Amtrak that SEA may wish to correct in the final DEIS. Page 4-28 of Volume 1 of the DEIS erroneously states that Canadian Pacific Railway has filed a responsive application for trackage rights between Detroit and Chicago, including rights over the Amtrak-owned line between Porter, IN and Kalamazoo, MI. Page 4-39 of the same volume incorrectly states that Amtrak operates through the Virginia Avenue Tunnel in Southeast Washington that CSX intends to improve. Finally, the summary of requests for conditions in Volume 5C of the DEIS at page U-13 states that the on-time

Consistent with the framework employed in Amtrak's October 21 Comments, we first discuss the DEIS's conclusions regarding the transaction's impact on passenger service safety and operations on the Amtrak-owned Northeast Corridor ("NEC") between Washington and New York, and then turn to its analysis of impacts on passenger service on other lines over which Amtrak operates.[3]

II. THE NORTHEAST CORRIDOR

The DEIS concludes that the Conrail Acquisition will have no adverse effects on passenger service on the NEC, both because of Amtrak's ownership and control of the NEC and because there is substantial excess capacity on the NEC during the nighttime hours to accommodate the increases in NEC freight train operations planned by the Applicants.

Amtrak agrees with SEA that Amtrak's ownership and control of the NEC is an important safeguard in ensuring that neither Amtrak nor commuter train services on the NEC will be harmed by the Acquisition. However, as discussed below, the DEIS appears to significantly overestimate the available capacity on the NEC for additional nighttime freight operations, and thus the NEC's ability to accommodate (i) all of Applicants' planned increases in freight operations on the schedules Applicants have proposed, and (ii) Applicants' plans to replace Conrail's freight

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performance oversight condition Amtrak is seeking would apply only to Amtrak trains that will be operated by CSX, whereas it would actually apply to trains operated by NS as well.

[3]For convenience we discuss the Kalamazoo, MI to Porter, IN line in the latter context, even though it is owned by Amtrak.

operations between New York and Philadelphia with those of three separate entities (NS, CSX, and the Conrail Shared Assets Organization), and to have both NS and CSX share Conrail's operating rights between Philadelphia and Washington.[4]

A. **Safety**

The DEIS's analytic framework for identifying any adverse effects on the safety of rail passenger operations from the proposed transaction's changes in freight operations found no such problems on the NEC, and therefore proposed no mitigation conditions.

As indicated above, Amtrak agrees that safety will not be compromised on the NEC (for the reason, among others, that Amtrak will require strict compliance with its safety regulations and will not permit operations that might compromise safety). We therefore defer our discussion of the flaws in the DEIS's methodology for quantifying safety impacts and its proposed mitigation measures to the discussion of non-NEC effects in Section III, below.

A. **Capacity**

The DEIS concludes generally that there is substantial excess capacity to handle more freight traffic on the NEC during late night and early morning hours, despite several acknowledged bottlenecks, and that Amtrak can control the timing of freight

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[4]Amtrak remains hopeful that its ongoing negotiations with the Applicants will produce a mutually satisfactory agreement on accommodation of Applicants' planned changes in NEC freight operations and operating rights.

access to preclude any operations that would interfere with passenger service.

Amtrak believes that the DEIS seriously underestimates the capacity constraints Amtrak faces on the NEC, even during the 10:00 p.m. - 6:00 a.m. period during which there are relatively few passenger trains operating. Comparisons of current and proposed freight levels to those that prevailed when Amtrak took over the Corridor in 1976 are meaningless, because passenger operations -- and especially commuter operations -- have grown exponentially since then, even during the late night and early morning hours. (*See* Amtrak's October 21 Comments, Verified Statement of James L. Larson ("Larson V.S."), at 9-10.) Track maintenance operations, which must be conducted almost entirely during the nighttime hours, typically entail temporary outages that further limit the NEC's capacity for significantly-increased freight service. Planned improvements to the Corridor -- both those planned for enhancing intercity passenger operations and bringing the NEC to a state of good repair, and those proposed by Applicant NS -- will cause still more restrictions on available capacity, especially at night. (*Id.*)

Amtrak takes particular exception to the DEIS's assumption that any capacity constraints on the most heavily-used portion of the Corridor, between Newark and Trenton, NJ, could be alleviated through assignment of nighttime freight trains to the two inside tracks while assigning off-hours passenger trains to the outside tracks. In the first place, as indicated in Amtrak's

comments (Larson V.S., at 7), the inside tracks are maintained to especially stringent standards to accommodate high-speed Metroliners, and Amtrak tries to minimize freight use of those tracks because such operations cause significantly-increased track degradation and higher track maintenance expense. Second, because of operational and maintenance requirements, it is not possible to segregate passenger and freight operations in the manner that the DEIS assumes,[5] even on portions of the NEC that have four tracks.[6]

This is not to say that some additional freight operations cannot be accommodated on this segment or elsewhere on the NEC. Rather, it is to emphasize that there are no easy "fixes". Thus, any determination of where, at what times, and in what numbers additional through freight trains can be handled, can only be made through a detailed, line-segment-specific analysis of the available track infrastructure, actual passenger and

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[5]Because of operating and maintenance requirements, freight trains cannot be kept off the inside tracks altogether between Newark and Trenton or elsewhere. For example, Conrail's principal yards in the Newark and Trenton areas -- Oak Island and Morrisville -- can only be accessed via one of the inside tracks, and portions of the "clearance" route between Newark and Trenton for freight trains carrying high loads are via the inside tracks. Conversely, Conrail's Linden and Metutchen Yards in Northern New Jersey can only be accessed from track 1, an outside track that must also accommodate virtually all nighttime northbound Amtrak and commuter trains (because the northbound platforms at most commuter train stations, and the Metropark station where nearly all nighttime Amtrak trains stop, can only be accessed from track 1).

[6]Between Baltimore and Perryville, MD, which according to Applicants' operating plans will continue to have the highest density of freight traffic following the Acquisition, portions of the line have only two tracks.

freight train schedules and operating characteristics, maintenance of way track occupancy requirements, etc. Understandably, the DEIS preparation has not entailed any such comprehensive study of the NEC; but the necessary corollary is that the DEIS's preliminary conclusions and observations regarding the NEC capacity situation are ill-founded, and should not be retained in the final EIS.

III. PASSENGER OPERATIONS ON FREIGHT LINES

A. Safety

Amtrak applauds SEA's recognition of the critical need to protect the safety of passenger train operations from any adverse effects of the proposed transaction. While rail passenger service has traditionally been among the very safest modes of transportation, as the DEIS acknowledged, there is no room for "good enough" where safety is at issue. Even a single accident that results in the death or injury of an Amtrak passenger or employee is one too many.

Unfortunately, the DEIS's attempt to identify potential safety effects with an elaborate statistical analysis, although clearly well-intentioned and the product of much thought and effort, is fatally flawed, and as a consequence it has produced seriously misleading results. Moreover, the DEIS's recommended mitigation condition -- a 15-minute "window" before and after each passenger train on certain lines, during which freight trains would have to be cleared from the track the passenger train is using -- would do nothing to enhance safety, while

making it much more difficult, if not outright impossible, for passenger and freight services to co-exist efficiently on the affected lines.

At the outset, it is important to understand that collisions between freight trains and passenger trains occupying the same track -- the only type of accident that the thirty-minute window is intended to prevent -- are extraordinarily rare. Indeed, in Amtrak's nearly 27 years of existence, during which time it has operated over two million trains on lines shared with freight service, there has been only one such incident that resulted in fatalities to Amtrak passengers or employees: the tragic 1987 collision at Chase, Maryland, on the Northeast Corridor that resulted in the deaths of 16 Amtrak passengers and crew members. That collision was caused by a speeding Conrail "light engine" consist that was operated in blatant disregard of applicable safety rules and ultimately ignored a series of slow and stop signals to enter the path of a high speed Amtrak train.[7]

It is quite unlikely the addition of more safety rules would have prevented a collision that was caused by the Conrail crew's total disregard of the rules that were already in place.

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[7]The Conrail locomotives were operated by Conrail employees who had recently used marijuana, and had cab signals and audible warning devices that had been intentionally disabled or otherwise rendered inoperable. The Conrail engineer, who subsequently pled guilty to manslaughter, admitted that he had violated numerous other safety rules, including failing to call out signals and failing to maintain a proper lookout.

The manner in which SEA calculated the frequency of collisions between Amtrak and freight trains results in a vast overstatement of the risk of such collisions. First, in concluding that there would be an average of 1.25 such collisions per year, SEA relied upon data from a period of just four years (1993-96) during which it identified a total of five such collisions. Given the rarity of such incidents, reliance upon data derived from only a very short period is likely to produce a result that is not representative of long term trends. Second, it appears that the five collisions SEA identified include all collisions between Amtrak and freight trains during this period, including those that resulted from an Amtrak train striking a load projecting from a freight train on an adjacent track and those that occurred on wyes and sidings (to which the 15-minute rule presumably would not apply). As a result, all of the calculations of passenger-freight train collision risks contained in the DEIS, including those for lines as to which SEA concluded that no mitigation was required, dramatically overstate the risk of the only type of collision -- a collision between a passenger train and a freight train occupying the same main line track -- that the mitigation condition is intended to prevent. Indeed, Amtrak is not aware of a single such collision that occurred during the four-year period (1993-96) from which SEA derived its accident frequency rate.

Another significant flaw in the methodology employed by the DEIS is its failure to give adequate recognition to the

advanced safety systems Amtrak has installed on the NEC. While the DEIS assumed that the existence of an Automatic Train Stop ("ATS") or Automatic Train Protection ("ATP") system would reduce the risk of a collision by 30%, when compared to a line equipped with signals but no other safety enhancements, Amtrak believes that the 30% figure understates the safety benefits of the ATS and speed control systems installed on the NEC, to say nothing of the more advanced "Advanced Civil Speed Enforcement System" ("ACSES") that Amtrak is presently developing for installation on portions of the NEC.[8] While the failure to take account of the advanced safety systems on the NEC had no effect on the DEIS's recommended mitigation measures (since, even under SEA's methodology, mitigation was not deemed necessary on any portion of the NEC), the DEIS suggested that mitigation might be required on the Amtrak-owned Kalamazoo, MI to Porter, IN line without giving any consideration to the safety benefits of the Positive Train Control ("PTC") system presently being installed on the majority of this line segment as the result of a project in which FRA is participating.

Far from enhancing safety, a 30-minute separation rule might actually create risks of its own. It could induce a false sense of security on the part of affected crew members that in turn would lead to reduced vigilance, and even a willingness to "cheat" a bit on restrictions that all involved would realize are

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[8]SEA's methodology also appears to have assumed that cab signal systems unaccompanied by ATS or ATP systems conferred no additional safety benefits, which obviously is not the case.

unduly harsh. Moreover, all of the lines for which the DEIS proposes the 30-minute separation rule have not only Automatic Block Signals (ABS) but also TCS (Traffic Control System) signal and switch operation, which provides an additional layer of human supervision and control to catch and forestall any mistakes that might be made by train crews. The proposed rule would have the perverse effect of requiring train crews to ignore the signals provided by these systems if they conflicted with the 15-minute rule, e.g., to stop and wait at a signal which otherwise would have allowed the train to proceed.

For the foregoing reasons, Amtrak urges SEA not to recommend the proposed 30-minute separation rule as a condition on any of the Applicants' rail lines. While Amtrak remains concerned that the increased freight usage on these and other lines following the merger that has prompted SEA to consider this rule will adversely affect the on-time performance of Amtrak's trains, it does not believe that this additional freight traffic will have an appreciable impact on safety.

B. **Capacity and On-Time Performance**

The DEIS concludes that all of the Applicants' lines that are shared by passenger service, including the CSX and Conrail lines about which Amtrak expressed particular concern in its October 21 Comments, can readily accommodate planned increases in freight service without preventing Applicants from meeting their contractual obligations to Amtrak. Amtrak is compelled to disagree, both with the apparent standards the DEIS used in

assessing passenger impacts, and with its conclusion that no adverse effects requiring mitigation are threatened.

The first and most pervasive flaw in the DEIS's approach is its failure to take account of actual and projected freight train schedules in determining whether increases in post-merger freight traffic would exceed a line's capacity. Instead, SEA assumed that the freight trains operated on each line following the Acquisition would be spread in a perfectly even fashion throughout the day, seven days a week, 365 days a year. Needless to say, this "perfect world" assumption does not comport with reality. Most rail lines experience numerous peaks and valleys in freight traffic in a single day because, among other things, intermodal trains tend to depart terminals in the evening and arrive very early in the morning, local freight service tends to be concentrated in the daylight hours, and trains moving in the same direction have a tendency to bunch up in "fleets", particularly on congested or single track lines. Volumes on most lines are higher during the week than on weekends, and there are also significant seasonal variations in freight traffic.[9] Assuming that the Acquisition will create no capacity problems because freight trains will spread themselves out in a perfectly optimal fashion is like concluding that a highway with a capacity of 1,000 cars per hour will have adequate capacity as long as its

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[9] *See* STB Service Order No. 1518, *Joint Petition for Service Order*, Decision served Oct. 31, 1997, at 6 (noting that seasonal increases in freight traffic would exacerbate the congestion problems that occurred after the Board's approval of the UP/SP merger).

total usage does not exceed 24,000 cars a day. As any rush hour commuter can attest, the reality will be otherwise.

It is particularly surprising that the DEIS reached its sweeping preliminary conclusions about post-merger capacities on passenger-train carrying lines without any apparent consideration of whether yards and terminal facilities accessed by those lines would have enough capacity to absorb merger-related increases in traffic. The need to utilize main line tracks and passing sidings to "hold" numerous trains that cannot be accommodated in overcrowded yards and intermodal terminals has been a principal cause of the unprecedented delays to both freight and Amtrak trains that have occurred on the Union Pacific and Southern Pacific Railroads following the Board's approval of their merger.[10]

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[10]While the DEIS provided few details about how rail line capacities were calculated, and no information about the assumptions used or the capacities calculated for specific line segments, the information provided suggests other flaws in the methodology employed that would have contributed to overestimations of available capacity. For example, there is no indication that the methodology took into account, among many other things, the need to take tracks out of service for maintenance; the extended occupancy of main line tracks by local trains performing switching; or the fact that the average speed of some freight trains is considerably slower than the maximum permissible speeds that SEA apparently assumed to be the norm, which results in longer track occupancy that reduces capacity.

With respect to the Amtrak-owned portion of the Michigan Line between Porter, IN and Kalamazoo, MI the DEIS suggests that the line will be able to absorb all additional freight traffic that may result from haulage operations of Canadian Pacific Railway between Detroit and Chicago because it has "frequent sidings". (DEIS, vol. 1, p. 4-28). In actuality, additional and/or lengthened sidings may be required on both the Amtrak and Conrail-owned segments of the Michigan line in order to accommodate the (presently unquantified) number of CP haulage trains that will operate over this line, given that (i) the

Another major flaw is the DEIS's equation of adverse effect with a need to eliminate at least one passenger train outright. In fact, however, as Amtrak explained in its October 21 Comments, the most common effect of increased freight congestion on passenger operations is a material decrease in the on-time performance of the passenger trains. Amtrak's witness Larson described the serious problems Amtrak has been experiencing for some time with excessive train delays on certain of CSX lines slated for increased freight traffic after the Acquisition. There is every reason to believe that adding additional freight traffic to these lines will exacerbate the on-time performance problems that Amtrak already faces.

It is beyond cavil that intercity passenger trains must operate on schedule with a high degree of consistency if they are to meet the needs of the traveling public. The Board and its predecessor have recognized this on many occasions, beginning as far back as 1969.[11] Congress itself emphasized the importance of ensuring on-time Amtrak operations when it gave Amtrak trains

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Amtrak-owned segment is being upgraded for higher speed service (something the DEIS does not mention), and (ii) the number and length of the sidings on the Michigan Line is based upon present passenger train requirements and the (minimal) volume of freight traffic that presently operates over the line, and not on the number and size of the freight trains that will utilize this line if the Acquisition is approved.

[11] *See Adequacies -- Passenger Service -- Southern Pacific Co. Between California and Louisiana*, 335 I.C.C. 415, 434 (1969).

statutory priority over freights for dispatching purposes. *See* 49 U.S.C. § 24308(c).[12]

In sum, the methodology SEA used in its preliminary examination of adverse passenger service impacts is seriously flawed, as is the DEIS's assumption that the only such adverse impact worthy of consideration is the outright exclusion of passenger trains. The final EIS should acknowledge the limitations and shortcomings of the methodology the DEIS employed to quantify line capacities. It should also recognize that reductions in the on-time performance of Amtrak trains, caused by proposed freight service changes, would constitute adverse impacts on the quality of the human environment, and that such impacts must, if possible, be appropriately mitigated through the conditioning process.

The five-year on-time performance oversight condition that Amtrak has proposed is a reasonable and measured response to this problem. It will allow the Board to take into account the <u>actual</u> impact of the Acquisition on Amtrak's passenger service on specific lines, as opposed to the theoretical impact that will occur if (i) the hundreds of line capacity measurements SEA has calculated are all correct, (ii) Applicants' freight train operations are unerringly conducted in a manner that optimizes use of each line segment's capacity, and (iii) Applicants experience none of the yard and terminal congestion problems, and the

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[12] *See also* 49 U.S.C. § 24101(c), requiring Amtrak trains to reach stations within 15 minutes of scheduled times "to the maximum extent feasible".

resulting spillover effects on main lines, that have followed the Board's approval of the UP/SP merger.

Amtrak's proposed condition also avoids the need for the Board to decide now, based on theoretical studies rather than actual experience, whether conditions should be imposed requiring Applicants to make capacity-enhancing improvements like those that SEA states it would have recommended if it had found that increases in freight traffic would adversely impact Amtrak's operations. It gives the Applicants the flexibility to address such problems by rescheduling their own operations, modifying dispatching procedures, or taking other steps that minimize or avoid the need for significant capital expenditures. Amtrak urges SEA to recommend the adoption of Amtrak's proposed condition in its final EIS.

IV. CONCLUSION

Amtrak recommends that, in the Final EIS, SEA not recommend that the Board impose the DEIS's proposed 30-minute separation rule, which is not necessary for safety reasons, and which could seriously hinder efficient passenger and freight operations on the affected rail lines. However, the final EIS should recognize the adverse impact that projected increases in freight operations over certain CSX and Conrail lines is likely to have on the on-time operation of Amtrak's trains, and should recommend that the Board impose the five-year oversight condition that Amtrak has recommended.

PART II

COMMENTS ON THE SIPS

Amtrak safety personnel have reviewed the "Safety Integration Plans" ("SIPs") filed by NS and CSX and incorporated in the DEIS and have the following comments:

Continued Use of NORAC Rules: As Amtrak has indicated in its prior filings, and as the Applicants have confirmed in their SIPs, all post-Acquisition operations over the NEC will be governed by the NORAC rules utilized by Amtrak, Conrail, and virtually all freight railroads and commuter authorities in the Northeast. In addition, the Applicants have represented that post-Acquisition operations over lines NS and CSX will acquire from Conrail, including those in the "Shared Assets" areas, will initially be conducted under NORAC rules. However, Applicants have also indicated that, over the longer term, they are considering adopting different sets of operating rules, including perhaps the rules NS and CSX currently use on their own lines, to govern lines acquired from Conrail.

The development of the NORAC rules was encouraged by the FRA. Those rules have been in effect for nearly ten years, and the Conrail operating employees who will be employed by Applicants if the Acquisition is approved are well acquainted with them. The principle behind the NORAC rules is that the adoption of a unified set of operating rules that apply on all railroads operating in a region enhances safety, particularly where there

are numerous trackage rights operations and extensive passenger services. Therefore, the possibility that Applicants will choose to adopt operating rules for properties acquired from Conrail that are different from the NORAC rules utilized on adjacent rail lines owned by Amtrak and commuter rail authorities that are traversed by the same trains operating over the former Conrail lines is a cause for some concern.[13] Amtrak urges the Board to impose a condition specifying that the Board's prior approval shall be required before NS and CSX may adopt operating rules other than the NORAC rules for operations over lines to be acquired from Conrail.

Conversion of Cab Signal System on CSX Washington-Richmond Line: In response to DOT's concerns that the merger could result in a shortage of locomotives equipped with the 100HZ cab signal system utilized on the NEC and Conrail, CSX has represented that it will modify the cab signal system on its Washington to Richmond, VA line from 60HZ to 100HZ. As CSX notes, this will allow locomotives equipped with cab signals to be utilized on any line that requires them in the Northeast, and thus eliminate the incompatibility problems that could result in shortages of locomotives equipped with NEC-compatible cab signals. Amtrak

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[13]For example, were Applicants to adopt operating rules for former Conrail lines other than NORAC rules, commuter trains that operate over both Amtrak-owned and former Conrail lines in the Boston area, and virtually all local freight trains that operate over the NEC, would be subject to two, and possibly three, different sets of operating rules that would change during their relatively short journeys depending upon which railroad they were operating over.

believes that CSX's plans for conversion of the Washington-to-Richmond line's cab signal system address DOT's concerns, and should be imposed as a condition of the Acquisition.

ACSES System: While CSX's SIP expressly states that CSX will cooperate with Amtrak in the development of the advanced ACSES train control system being developed for the NEC, the NS and CSAO SIPs do not specifically mention ACSES. Amtrak will, of course, require all railroads operating over the NEC to operate ACSES-compatible equipment after that system is installed. It assumes that the general representations in the NS and CSAO SIPs that operations over the NEC will conform to all applicable Amtrak operating rules encompass both ACSES and other safety-related modifications to its NEC operating rules that Amtrak may in the future adopt.

Respectfully submitted,

NATIONAL RAILROAD PASSENGER CORPORATION

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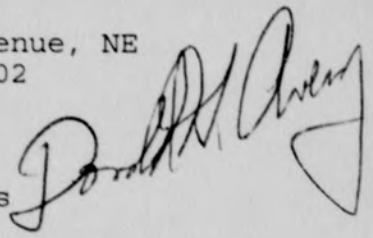

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Date: February 2, 1998

VERIFICATION

I, Lee Williams, declare, under penalty of perjury, that I am General Manager - Safety and Environmental Control of the Northeast Corridor Strategic Business Unit of the National Railroad Passenger Corporation (Amtrak), that I have read Part II of the foregoing Comments, that the facts stated therein are true and correct to the best of my knowledge, and that I am qualified and authorized to submit this verification.

Executed on February 2, 1998.

Lee Williams

VERIFICATION

I, James L. Larson, declare, under penalty of perjury, that I am Assistant Vice President - Operations of the National Railroad Passenger Corporation (Amtrak), that I have read Part I of the foregoing Comments, that the facts stated therein are true and correct to the best of my knowledge, and that I am qualified and authorized to submit this verification.

Executed on February 2, 1998.

James L. Larson

James L. Larson

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served this 2nd day of February, 1998, by hand delivery upon:

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185504

U.S. Department of Transportation
Office of the Secretary of Transportation

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ENVIRONMENTAL DOCUMENT

February 2, 1998

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

Attention: Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Re: Finance Docket No. 33388

Dear Ms. Kaiser:

Enclosed herewith are the required original and ten copies of the Comments of the United States Department of Transportation on the Draft Environmental Impact Statement (DOT-5) in the above-referenced proceeding. I have also enclosed an additional copy that I request be date-stamped and returned to the messenger.

Respectfully submitted,

Paul Samuel Smith

Paul Samuel Smith
Senior Trial Attorney

Enclosures

DOT-5

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]

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[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:

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[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 contiue 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

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[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]

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[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.

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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

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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.

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[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

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[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

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[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

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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

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[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,

Nancy E. McFadden

NANCY E. MCFADDEN
General Counsel

February 2, 1998

EXHIBIT 1

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 1 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

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

EXHIBIT 2

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

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.

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.

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.

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.

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 280,000 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.

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.

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.

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.

EXHIBIT 3

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 M. Fine

Dennis C. Judycki

Attachments

CORRIDOR ANALYSIS GUIDE

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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

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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)

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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
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February 2, 1998

VIA HAND DELIVERY

Elaine K. Kaiser, Environmental Project Director
Section of Environmental Analysis
C/O Office of the Secretary
Case Control Unit
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Ms. Kaiser:

Enclosed are the original and 10 copies of CSX Corporation and CSX Transportation, Inc.'s Comments on the Draft Environmental Impact Statement for filing in the above-referenced proceeding.

Very truly yours,

Mary Gay Sprague

Mary Gabrielle Sprague

Counsel for CSX Corporation
and CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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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EXHIBITS

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 "in-house" 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

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[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

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[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,

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[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

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[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 experience 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 teachings 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 modifying 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.[6] 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

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[6] 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, albrit 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 on-going 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]

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[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(e) 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(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." 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 have 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 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 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

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[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.

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[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

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[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 in 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 these 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 rail 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.[15] 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 Bryan 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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[15] 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."[16] 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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[16] 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

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[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.