



Justin J. Marks
T (202) 772-0916
F +12027720919
Email:jjmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue N.W.
Suite 1300 South
Washington, DC 20004
T (202) 772-0909
F (202) 772-0919

June 28, 2023

Ms. Danielle Gosselin
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: STB Docket No. FD 36406, Port Authority of Kansas City, Missouri – Construction and Operation Exemption – in Jackson and Clay Counties, MO.; Supplemental Voluntary Mitigation Measures

Dear Ms. Gosselin:

The Port Authority of Kansas City, Missouri ("Port KC") proposes the following voluntary mitigation measures to be incorporated into the Draft Environmental Assessment currently under development by the Board's Office of Environmental Analysis. These voluntary mitigation measures are a supplement to Port KC's April 19, 2023, voluntary mitigation letter.

Transportation and Safety

- Port KC will follow all applicable federal Occupational Safety and Health Administration, Federal Railroad Administration, and operational safety regulations to minimize the potential for accidents and incidents during project-related construction and operation.
- Prior to and during construction and operation of the project, Port KC will work with the local agencies to facilitate the development of cooperative agreements with other emergency service providers to share services areas and emergency call response.

Additionally, Port KC offered the following voluntary mitigation in its April 19 letter:

- Port KC shall comply with all applicable Federal Railroad Administration rail operations safety requirements at 49 C.F.R. Parts 200-299.
- Port KC shall limit the speed of trains operating over the Proposed Line to 10 miles per hour.

Air Quality and Climate Change

- In accordance with Jackson and/or Clay Counties dust control permitting requirements, Port KC's contractor(s) will implement appropriate dust control measures to reduce

fugitive dust emissions created during project-related construction. Port KC will require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

- Port KC will work with its contractor(s) to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air pollutant emissions.

Noise and Vibration

- Port KC will comply with Federal Railroad Administration regulations (49 C.F.R. Part 210) establishing decibel limits for train operation.
- Port KC will work with its contractor(s) to make sure that project-related construction and maintenance vehicles are maintained in good working order with properly functioning mufflers to control noise.

Hazardous Materials and Waste Sites

- Prior to initiating any project-related construction, Port KC's contractor(s) will prepare a hazardous waste management plan detailing the manner in which hazardous wastes, if any, will be managed and describing the types and volumes of hazardous wastes, if any, anticipated to be managed. In such case, the hazardous waste management plan will address both onsite and offsite hazardous waste management and include the following: description of the methods to be used to ensure accurate piece counts or weights of shipments; waste minimization methods; facilities to be used for treatment, storage, and disposal; onsite areas designated where hazardous wastes are to be handled; identify whether transfer facilities are to be used, and if so, how the wastes will be tracked to ultimate disposal. Additionally, if applicable, Port KC's contractor(s) will document hazardous waste inspections on a weekly basis.
- In accordance with Port KC contractor's hazardous waste management plan and emergency management plan, and in the event of a spill over the applicable reportable quantity, if any, Port KC's contractor(s) will comply with its spill prevention, control, and countermeasures plan and applicable federal, state, and local regulations pertaining to spill containment, appropriate clean-up, and notifications.
- Port KC will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous materials, if any, are encountered during construction. Port KC will document all activities associated with hazardous material spill sites and hazardous waste sites, if any, and will notify the appropriate state and local agencies according to applicable regulations. The goal of the measures is to ensure the proper handling and disposal of contaminated materials, including contaminated soil, groundwater, and stormwater, if such materials are encountered. PORTKC will use disposal methods that comply with applicable solid and hazardous waste regulations.
- Port KC's contractor(s) will responsibly handle and store gasoline, diesel fuel, oil, lubricants, and other petroleum products to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs in the project limits as a result of project-related

construction, operation, or maintenance and exceeds specific quantities or enters a waterbody, Port KC's contractor(s) will be responsible for promptly cleaning the spill and notifying responsible agencies in accordance with federal and state regulations.

- Port KC will prepare a hazardous materials emergency response plan, if applicable, to address potential derailments or spills. This plan will address the requirements of the Pipeline and Hazardous Materials Safety Administration and Federal Railroad Administration requirements for comprehensive oil spill response plans. Port KC will distribute the plan to federal, state, and local emergency response agencies. This plan shall include a roster of agencies and people to be contacted for specific types of emergencies during project-related construction, operation and maintenance activities, procedures to be followed by particular rail employees, emergency routes for vehicles, and the location of emergency equipment.
- In the event of a reportable hazardous materials release, if any, Port KC will notify appropriate federal and state environmental agencies as required under federal and state law.
- Port KC will comply with applicable Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, and Transportation Security Administration regulations for the safe and secure transportation of hazardous materials, if any.

Additionally, Port KC offered the following voluntary mitigation in its April 19 letter:

- Port KC shall ensure that any herbicides used during track maintenance are registered with the U.S. Environmental Protection Agency and applied by licensed individuals with experience in using best practices to minimize any environmental and safety risks to the extent necessary for rail operations.

Biological Resources

- Port KC will comply with any conditions and mitigation commitments contained in this Environmental Assessment, recommended by the Missouri Department of Natural Resources and/or the U.S. Fish and Wildlife Service, for sensitive species, including plants, that could potentially be impacted by the project.
- Port KC will require its contractor(s) to comply with the requirements of the Migratory Bird Treaty Act as applicable. The following measures will be taken by Port KC and/or its contractor(s):
 - o Where practical, any ground-disturbing, ground-clearing activities or vegetation treatments will be performed before migratory birds begin nesting or after all young have fledged.
 - o If such activities must be scheduled to start during the migratory bird breeding season, Port KC will not take steps to prevent migratory birds from establishing nests in the potential impact area. Port KC or its agents will not haze or exclude nest access for migratory birds and other sensitive avian species.

- o If such activities must be scheduled during the migratory bird breeding season, a qualified biologist will perform a site-specific survey for nesting birds starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young will not be hazed, and nests with eggs or young will not be moved until the young are no longer dependent on the nest.
- o If nesting birds are found during the survey, Port KC will establish appropriate seasonal or spatial buffers around nests. Vegetation treatments or ground-disturbing activities within the buffer areas will be postponed, where feasible, until the birds have left the nest. A qualified biologist will confirm that all young have fledged.

Water Resources

- Port KC's contractor(s) will submit a Notice of Intent to request permit coverage under Missouri Pollutant Discharge Elimination System Area-Wide Land Disturbance Stormwater General Permit (MO-R100xxx) or Missouri Land Disturbance Stormwater General Permit (MO-RAxxxxx), as applicable, for construction stormwater management.
- Port KC's contractor(s) will develop a stormwater pollution prevention plan, as applicable, which will include construction best management practices to control erosion and reduce the amount of sediment and pollutants entering surface waters, groundwater, and waters of the United States. Port KC will require its construction contractor(s) to follow all water quality control conditions identified in all permits, including the Section 404 permit from the U.S. Army Corps of Engineers and the Section 401 Water Quality Certification from the Missouri Department of Natural Resources.
- Port KC will obtain a permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act before initiating project-related construction in wetlands and other jurisdictional waters of the United States, if any. Port KC will comply with all conditions of the Section 404 permit.
- Port KC will obtain a Section 401 Water Quality Certification from the Missouri Department of Environmental Quality. Port KC will incorporate the conditions of the Section 401 Water Quality Certification, as applicable, into its construction contract specifications and will monitor the project for compliance.
- Port KC will minimize impacts to wetlands to the extent practicable in the final design. After all practicable steps have been taken to minimize impacts to wetlands, PORTKC agrees to prepare a mitigation plan for any remaining wetland impacts in consultation with the U.S. Army Corps of Engineers, where applicable.
- Port KC's contractor(s) will construct stream crossings, as applicable, during low-flow periods, when practical.
- When practical and in consultation with the Flood Control District of Jackson and/or Clay Counties and the U.S. Army Corps of Engineers (Corps), Port KC's contractor(s) will minimize impacts to streams where impacts are unavoidable, where applicable. After all practicable steps have been taken to minimize impacts to streams, Port KC agrees to

prepare a mitigation plan for any remaining stream impacts in consultation with the Corps, where applicable.

- For streams and rivers within a floodplain regulated by the Flood Control District of Jackson and/or Clay Counties, as applicable, Port KC will design the stream crossing with the goal of not impeding floodwaters and not raising water surface elevations to levels that would change the regulated floodplain boundary. If flood elevations change, Port KC will coordinate with the Federal Emergency Management Agency and/or local floodplain managers to obtain a Letter of Map Revision where construction of bridges, culverts or embankments results in an unavoidable increase greater than 1 foot to the 100-year water surface elevations.
- Port KC will obtain a permit from Flood Control District of Jackson and/or Clay Counties, as applicable, before initiating project-related construction in a floodplain regulated by Federal Emergency Management Agency. Port KC will comply with all conditions of the floodplain permit.

Geology and Soils

- During project-related earth-moving activities, Port KC's contractors(s) will remove topsoil and excess earthen material for safe and legal disposal to an offsite location and in accordance with the applicable excavation restrictions.
- Port KC's contractor(s) will stockpile excavated soil, if any, in areas away from environmentally or culturally sensitive areas and will use appropriate erosion control measures to prevent or contain erosion.
- Port KC's contractors(s) will perform finish grading and surface disturbed areas with appropriate best management practices, where practical.

Additionally, Port KC offered the following voluntary mitigation measures in its April 19, 2023 letter:

- Port KC shall implement the following best management practices to minimize potential erosion and sedimentation impacts during project construction of the Proposed Line:
 - o Minimize earth-clearing activities to the greatest extent practicable by disturbing only the area needed to physically construct the proposed rail line, required infrastructure, and staging area.
 - o Prior to initiating site clearing, install erosion and sediment control measures such as silt fencing, silt socks, mulch blankets, or a similar erosion-control measure along the limit of disturbance and at the inlet of any storm drain structures within the construction zone.
 - o Stabilize any disturbed areas outside the rail corridor (i.e., temporary staging equipment storage/material stockpiling areas) with an appropriate permanent vegetative cover after the completion of construction activities.

Land Use and Farmland

- Prior to project-related construction, Port KC will secure agreements with utility owners to establish responsibility for protecting or relocating existing utilities, if impacted by construction.

Socioeconomics

- Port KC and its contractor(s) will consult, as necessary, with appropriate adjacent landowners for coordination of construction schedules and temporary access during project-related construction.

Visual Quality

Port KC has no voluntary mitigation measures to offer.

Archaeological and Historic Resources

- If required, Port KC and Port KC's contractor(s) will comply with the requirements of the memorandum of agreement and the historic properties treatment plan developed by OEA, Missouri State Historic Preservation Office, Native American tribal representatives, and other federal and state agencies in consultation with other consulting parties.

Thank you,



Justin J. Marks
Counsel to the Port Authority of Kansas City,
Missouri