

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
February 23, 2017
Part of
Public Record

STB Docket FD 36075

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – PETITION FOR
DECLARATORY ORDER**

**REPLY STATEMENT OF THE
SOO LINE RAILROAD COMPANY
d/b/a CANADIAN PACIFIC**

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TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	4
I. Procedural Background.....	4
II. Factual Background	6
A. The EOWA Project	6
B. The Intended Western Interchange Takings at Bryn Mawr.....	9
C. The Intended Takings at Bensenville Yard.....	10
D. Bensenville Yard is Crucial to CP's Network and the National Rail Network	11
E. CP's Right of Way is No Ordinary Rail Right of Way.....	13
F. The Parties Never Agreed on the Proposed Takings Due to CP's Longstanding Concerns Regarding Impact on Current and Future Rail Operations	15
G. The Tollway Refuses to Consider Options That Would Not Burden Interstate Rail Transportation	16
ARGUMENT	16
I. Federal Law Preempts the Use of State Law to Condemn Railroad Property for Conflicting Use	16
A. ICCTA Preemption is Express and Far Reaching.....	16
B. The Tollway's Proposed Takings Would Prevent or Unreasonably Interfere with CP's Use of its Property for Rail Operations.....	21
1. Proposed Temporary and Permanent Takings for the Western Interchange Would Unreasonably Interfere with Rail Transportation	22
2. The Tollway's Evidence as to the Degree of Interference with Rail Operations is Both Irrelevant and Incorrect.....	24
3. The Proposed Takings of Bensenville Yard to Complete the Tollway Would Unreasonably Interfere with Rail Transportation	26
C. The Public Benefits of the Tollway are Not Relevant to the Preemption Analysis.....	28
D. That CP Might Have Entertained the Possibility of Accommodating the Tollway Does Not Mean it Must Do So	30
E. Construction of the Western Interchange Would Set Up A Battle In the Future That would be Harmful to the Rail Industry	33
CONCLUSION.....	34

VERIFIED STATEMENT OF JAMES CLEMENTS

VERIFIED STATEMENT OF THOMAS C. ALBANESE

VERIFIED STATEMENT OF DANIEL SABATKA, P.E.

VERIFIED STATEMENT OF THOMAS J. PHELAN, P.E.

EXHIBIT A (Notice of Intent to Acquire with Railyard Modifications)

EXHIBIT B (Tollway's proposed Right of Way map)

EXHIBIT C (Tollway's proposed Route through Bensenville Yard)

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Pursuant to the Board’s January 17, 2017 Decision in the above-captioned proceeding, Soo Line Railroad Company d/b/a Canadian Pacific (“CP”)¹ submits this reply in opposition to The Illinois State Toll Highway Authority’s (the “Tollway”) Petition for a Declaratory Order (the “Petition”) filed November 23, 2016.

This Reply Statement is supported by the verified statements of James Clements, Tom Albanese, Daniel Sabatka, P.E, and Thomas J. Phelan, P.E.

INTRODUCTION

In this proceeding, the Tollway seeks a declaratory order that federal law would not preempt its proposed takings of portions of CP’s active rail operating property in order to make way for a roadway. In seeking this declaration, the Tollway ignores a deep and wide well of authority holding that takings of rail operating property for a conflicting use are preempted. Much of that precedent involves proposed takings of smaller amounts of property and property

¹ Canadian Pacific (CP) is a trade name under which Canadian Pacific Railway Company’s United States subsidiaries, Soo Line Railroad Company, Dakota, Minnesota and Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. operate. Bensenville Yard and the tracks referred to herein are owned and operated by Soo Line Railroad Company.

of far less importance to the national rail network than the property the Tollway seeks to take by condemnation here.

The property at issue, Bensenville Yard (the “Yard”) and the Bryn Mawr Right of Way are two of the most important rail operating properties in CP’s entire system. Both properties are located in Chicago, the fragile and already congested heart of the national rail network. Bensenville Yard is CP’s only major rail yard in the Chicago Terminal, is one of CP’s busiest yards, and is in use 24 hours per day, 7 days per week, and 365 days per year. The adjacent Bryn Mawr Right of Way, on which CP’s active mainline tracks are located, is a critical segment of the Chicago-Milwaukee corridor and points beyond. Like Bensenville Yard, the Bryn Mawr Right of Way is one of CP’s few operating properties in the Chicago Terminal and it too is in continuous use. The Bryn Mawr Right of Way’s proximity to the Yard makes it especially valuable real estate for capacity expansion to meet future demand for rail service and for relieving congestion in the Yard. These properties are crucial to maintaining fluidity and efficiency on both CP’s network and in the national rail network, and are irreplaceable. The proposed takings would indisputably interfere with current rail operations and that interference could prove disastrous to CP, its customers, and to the national rail network as a whole.

Notwithstanding the importance of these properties to the health of CP’s network and the national rail network now and into the future, the Tollway proposes to take portions of both properties to build two segments of the Elgin O’Hare Western Access tollway (“EOWA”). First, the Tollway proposes to take more than 6 acres of CP’s Bryn Mawr Right of Way for the Western Interchange which includes 5 overpasses in and across CP and Union Pacific Railroad’s (“UP”) parallel mainlines north of the Yard. Those takings would include temporary takings of 6.613 acres during the Tollway’s estimated 5 years of construction and 2.85 acres of permanent

takings for bridge piers and decks. Bridge construction would require shutting down CP's mainline track repeatedly for up to 14 hours at a time over an extended period, which would be enormously disruptive to interstate rail operations and would jeopardize the fluidity of an already congested Chicago rail network. Moreover, the takings would prevent CP from adding capacity in the Right of Way to meet demand for rail service during the 5-year construction period and would permanently and substantially limit CP's ability to add capacity after construction ends.

Importantly, once the Western Interchange is completed, the Tollway would be locked into an alignment through CP's Bensenville Yard for the southern leg of the Western Bypass, a tollway connecting the Western Interchange to I-294 south of Bensenville Yard. Completing the Western Bypass would require that the Tollway acquire 35 to 40 acres of Bensenville Yard which would disrupt CP's operations at this critical yard. The proposed takings would require significant reconfiguration of track and rail facilities, disrupt current yard operations, deprive CP of precious rail operating property needed to meet demand for rail service, and restrict CP's ability to reconfigure the property in the future to adapt to changes in rail operations. As a matter of both fact and law, the proposed takings would both prevent rail operations and unreasonably interfere with rail transportation and are categorically preempted.

In its Petition, the Tollway claims that it might decide not to complete the Western Bypass through Bensenville Yard as planned and, notwithstanding the billions of dollars it intends to otherwise spend on the roadway. The Tollway's claim is not plausible; nor is such an option provided for anywhere in the Record of Decision and Environmental Impact Statement. The claim is nothing more than a thinly-veiled strategy to place CP (and the Board) in an untenable position by completing construction on either side of the Yard. Indeed, the Tollway is at this moment constructing along the southern edge of the Yard, tightening the vise.

Moreover, the Tollway's "stop-short" scenario fails to take into account the environmental impact on the Yard. Approximately 900 to 1,000 intermodal trucks access Bensenville Yard daily using the already congested roads that serve the area. If the Tollway constructs the Western Interchange, but not the connection through the Yard to I-294, tollway traffic will be deposited on either side of the Yard, further overburdening the local roads and inhibiting truck ingress and egress at the Yard. Yet the Tollway, which bears the burden of proof, presents no evidence regarding the impact of the increased traffic on the Yard's operations.

Although the planned takings would be bad enough if the Tollway had no other alternatives, other options that would not burden interstate rail transportation do in fact exist, but the Tollway refuses to consider them, evidently due to local politics. Thus, while the Tollway seeks to portray CP as standing in the way of construction of a project of regional and national significance, the reality is that this dispute is a matter of the Tollway placing local interests over national interests in a sound rail system.

The Board should deny the Tollway's Petition and declare that the proposed takings in both the Bryn Mawr Right of Way and Bensenville Yard are federally preempted under the Interstate Commerce Commission Termination Act (ICCTA) 49 U.S.C. §10501(b).

BACKGROUND

I. Procedural Background

In November 2015, CP filed an action in the U.S. District Court for the Northern District of Illinois seeking declaratory judgment that efforts to take rail property for the EOWA project via state regulatory power are preempted by the federal transportation scheme. *See Soo Line R.R. Co. v. Ill. State Toll Highway Auth.*, No. 15-C-10328 (N.D. Ill.). CP filed its action following receipt of the Tollway's Notice of Intent to Acquire with Railyard Modifications, a total of 36.43

acres of CP's Bensenville Yard for a future roadway. (See Notice of Intent to Acquire with Railyard Modifications attached hereto as Exhibit A). The Tollway fought to forestall judgment on the federal preemption issue, moving to dismiss on the grounds that it had not yet initiated a condemnation action and, therefore, the action was not ripe. The district court granted the motion to dismiss and CP appealed the dismissal to the U.S. Court of Appeals for the Seventh Circuit. See *Soo Line R.R. Co. v. Ill. State Toll Highway Auth.*, No. 15-C-10328 (N.D. Ill. Mar. 29, 2016); *Soo Line R.R. Co. v. Ill. State Toll Highway Auth.*, No. 16-2911 (7th Cir.). Again, the Tollway sought to forestall resolution of whether its proposed takings were subject to federal preemption by seeking repeated delays in the appellate briefing schedule. On November 23, 2016, while seeking to delay the appellate proceeding, the Tollway filed its Petition with the Board seeking a declaratory order that the proposed takings to construct the Western Interchange would not be subject to federal preemption and asked the Board for expedited consideration.²

Although construction of the Western Interchange would lock the Tollway into an alignment under, through, and across Bensenville Yard in order to complete the EOWA project, the Tollway sought to cabin this proceeding to the proposed takings for construction of the Western Interchange. The Tollway argued in its Petition that the Board should ignore the implications for Bensenville Yard because the Tollway might decide not to complete the project. On December 9, 2016, CP filed a Limited Reply which, *inter alia*, asked the Board to confirm that it would consider the impact on the Yard.³ See Limited Reply at 3. On January 17, 2017, the Board instituted a proceeding and confirmed that it would address both the proposed takings

² The briefing schedule on the appellate action has since been suspended pending the outcome of this proceeding.

³ In addition to clarification of the scope of the proceeding, CP sought limited discovery. On December 21, 2016, the Tollway filed a surreply opposing the relief sought in CP's Limited Reply including CP's request for limited discovery. The Board denied discovery.

for the Western Interchange and the implications for Bensenville Yard, and established a procedural schedule. Slip op. at 3.

II. Factual Background

A. The EOWA Project

The Petition concerns one stage of the Elgin-O'Hare Western Access ("EOWA") Project, a multi-stage tollway construction project to build an east-west tollway that approaches O'Hare International Airport ("O'Hare" or the "Airport") from the west (the "Western Access Tollway") and divides into a northern leg that would connect to I-90 north of O'Hare and a southern leg that would proceed through and across the Yard to connect to I-294 south of O'Hare. The two legs comprise the "Western Bypass." (See The Tollway's proposed Right of Way map attached hereto as Exhibit B). The two legs would connect at the Airport via four bridges over York Road, CP's double mainline track, and UP's parallel mainline track north of the Yard. Each bridge would be supported by a pier built in CP's right of way (the "Western Interchange"). A fifth bridge over CP's mainline would provide access to future development on the western side of the Airport.⁴ It too would be supported by a pier built in CP's Right of Way. As part of the construction of the Western Interchange, the Tollway would construct a section of the southern leg of the Western Bypass to Irving Park Road just north of CP's Bensenville Yard.

CP has refused to sell the Tollway the property rights necessary to perform this construction as currently planned due to the disruption to, and undue interference with, rail operations and CP's ability to add capacity in the Right of Way during and after construction. Additionally, CP is concerned that once the Tollway crosses CP's mainline at York Road, the Tollway is locked into an alignment through Bensenville Yard to connect to I-294. CP has urged

⁴ At this time, there are no immediate plans for development on the western side of O'Hare.

the Tollway to consider alternatives, but the Tollway has refused and forged ahead with its construction plans.

All of the plans the Tollway submitted to CP to date as well as the Environmental Impact Statement and the Record of Decision call for the roadway to proceed south of the Western Interchange, over Irving Park Road and through the Bensenville Yard to connect to I-294. As the litigation developed, however, the Tollway now suggests that it may stub the southern leg of the Western Bypass at Irving Park Road south of the bridges and before it reaches the Yard. This claim is not believable, contradicts the administrative record and requirements, and is belied by the Tollway's current construction activities along the southern edge of the Yard which construction lines-up precisely with the Tollway's alignment through and across the Yard.

In its brief, the Tollway recites the long history of the development of the EOWA Project. That history includes a multi-year, multi-agency regulatory review, ultimately culminating in an Environmental Impact Statement (EIS) and Record of Decision (ROD) approving the Selected Alternative. The Western Interchange and planned route through Bensenville Yard are both included in the Selected Alternative.⁵ However, the Tollway apparently now proposes to end the southern end of the Western Bypass at Irving Park Road, diverting traffic onto local roadways to connect to I-294 either at Irving Park Road or York Street to the Green Road ramp also being constructed at the southern boundary of Bensenville Yard. Completing the Western Bypass through the road is, according to the Tollway, merely "aspirational." Petition at 16. But as Thomas J. Phelan, P.E. explains in his Verified Statement, terminating the Western Interchange at Irving Park Road is simply not an option described in the

⁵ Contrary to Tollway's assertions that CP somehow failed to object or comment during the EIS process, CP's concerns and objections were made plain in correspondence dating back to 2009 and made part of the administrative record, as well as during meetings.

ROD adopting alternatives for the EOWA Project and appears to contradict the EIS documents and the ROD. Phelan VS, ¶ III.B.⁶ Importantly, the change that the Tollway is suggesting would require preparation of a supplemental EIS which the Tollway has not done.⁷

The simple fact is that the Western Interchange (including the toll road segment terminating at Irving Park Road) is indivisible from the Bensenville Yard portion of the EOWA Project.⁸ As Mr Phelan confirms, once the Western Interchange is constructed, the Bypass can only be completed by crossing the Yard. Phelan VS, ¶ III.F. Without Bensenville Yard, the Western Interchange makes no sense and does not work.

With the proposed Western Interchange plan terminating at Irving Park Road, traffic traveling southbound must exit onto Irving Park Road, which borders the Bensenville Yard and eventually ramps onto I-294. This new plan contradicts the ROD which sought to relieve the congestion that “overwhelmed the roadway system in the study area.” *Tier Two Final EIS*, Page

⁶ For example, Figure 6 referenced in the Petition appears nowhere in the EIS or in the ROD. Mr. Phelan identifies several other significant differences in the Tollway’s proposed plan and what was actually approved in the ROD. Phelan VS, ¶ III.B.

⁷ Section 102(2)(C) of the National Environmental Protection Act (NEPA) requires federal agencies to prepare an environmental impact statement in conjunction with major federal actions that significantly affect the quality of the human environment. *See* 42 U.S.C. § 4332(C). The duty to supplement an EIS is required in the regulations promulgated by both the Council on Environmental Quality (*see* 40 C.F.R. § 1502.9(c)(1)) and Federal Highway Administration (*see* 23 C.F.R. § 771.130(a)). *See Price Road Neighborhood Ass’n, Inc. v. United States Dep’t of Transp.*, 113 F.3d 1505, 1508–09 (9th Cir. 1997). Eliminating an entire segment and using local roads to connect the Toll Road to I-294 is a substantial change to the Selected Alternative approved in the ROD. Phelan VS, ¶¶ III.D, I. Such change requires a supplemental EIS. *See Essex County Preservation Ass’n v. Campbell*, 399 F. Supp. 208, (D. Mass. 1975), *aff’d*, 536 F.2d 956 (1st Cir. 1976) (moratorium on construction of part of highway project that would affect traffic forecast of remaining portion of project required supplemental EIS).

⁸ The Tollway has made several revisions to the phasing of construction. Phelan VS, ¶¶ II.35-37. The proposed interchange and construction through Bensenville Yard were originally combined into one segment in both the Initial Construction Plan approved by the Federal Highway Administration and the full completed project. Phelan VS, ¶ II.40. However, these changes to the construction phasing do not make the project divisible; nor should the changes distract the Board from the very real issue of the Tollway’s improper threat of condemnation of the Yard.

1-4. Phelan VS, ¶ II.17. Those roads include the roads that serve and bound the Yard, which the EIS categorizes as “Extreme Congestion.” Phelan VS, ¶¶ II.33-34.

Mr. Phelan also explains that the EIS had rejected alternatives which included sections of freeways that attract short distance trips, thereby impairing long distance travel continuity on the system. Phelan VS, ¶ II.28. The Tollway’s new alternate plan does exactly that by diverting traffic to existing local roadways. There are financial implications as well which are not addressed by the Tollway in any environmental review. Phelan VS, ¶ III.C.

B. The Intended Western Interchange Takings at Bryn Mawr

The proposed takings in CP’s Bryn Mawr mainline right of way consist of temporary takings of 6.613 acres during the Tollway’s estimated 5 years of construction and 2.85 acres of permanent takings for bridge piers and decks. The Tollway plans to construct the Western Interchange in 6 stages over an estimated 5-year period. Petition, Exh. A at 20. In each of these stages, the Tollway intends to perform work, store equipment and materials and erect physical structures within CP’s active right of way. In Stage I, the Tollway would prepare several 35 by 35 foot sites within CP’s right of way for crane setup and operation and install temporary crossings of CP’s mainline to provide contractor access. *Id.* at 20. The work performed during this period would require an unspecified amount of track outages. *Id.* at 21. In Stage II, the Tollway would erect several temporary shoring towers straddling the existing mainline track in CP’s right of way, erect bridge piers in CP’s right of way and install bridge pier caps overhanging CP’s right of way. *Id.* at 17, 22. Stage II is projected to begin in the first year and continue into the second year. *Id.* at 22. In Stage III, the Tollway would erect temporary girder shoring towers in CP’s right of way. *Id.* at 23. Then, in Stage IV, the Tollway would install steel girders for the five bridge decks over CP’s right of way. *Id.* at 24. That process would begin by placing two large cranes and staging girders within CP’s right of way. *Id.* The girders would be

lifted into place over a 6-month period, which would shut down rail operations on the CP and/or UP mainlines an estimated 31 times. *Id.* Nineteen of those outages would involve the shutdown of CP's mainlines. Several of the outages would last as long as 14 hours. *Id.* In Stage V, the Tollway will pour the concrete for the decks which, according to the Tollway, "will require an agreement . . . to allow deck pouring operations uninhibited by train traffic." *Id.* at 25. Finally, in Stage VI, the Tollway states it will perform work within CP's right of way to restore railroad property to final proposed condition. *Id.* at 25–26.

C. The Intended Takings at Bensenville Yard

Following completion of the Western Interchange, the Tollway intends to construct the southern leg of the Western Bypass across and through the Yard to complete the roadway. In fact, the Tollway has already commenced construction on this portion of the new roadway immediately south of the Yard. *Albanese VS*, ¶ 18.

The Tollway's plans call for a tunnel under the CP/Metra mainlines⁹ before emerging above ground within the Yard (where the turntable and other facilities are currently located). (See detailed map of the proposed route through Bensenville Yard attached hereto as Exhibit C.) The roadway would then shift to the east running next to CP's tracks over land currently occupied by CP's transload facility, all within the bounds of the Yard. The Tollway also intends to build a new secondary road—Taft Road which would bisect the Yard at its midpoint and would occupy land currently used by CP for its mechanical shop, repair tracks, and related facilities. These plans demand that the Tollway acquire between 35 and 40 acres of Bensenville Yard for the Tollway's permanent exclusive use. *Albanese VS*, ¶ 12. The plans would also force CP to undertake a substantial reconfiguration of the Yard within the remaining footprint

⁹ The mainlines in Bensenville Yard are owned by Metra. CP and Metra both operate over the lines.

which, in addition to inevitable disruption during many years of construction, would reduce the available current capacity. *Id.* at ¶¶ 13-17. The Tollway's plans would also permanently deprive CP of the use of property that is critical to CP's ability to meet future capacity needs, and would significantly constrain CP's ability to reconfigure the Yard in the future to address changes in the industry. *Id.*

D. Bensenville Yard is Crucial to CP's Network and the National Rail Network

As CP's Vice President Strategic Planning and Transportation Services, James Clements explains, Chicago is the heart of the North American rail network. Six of the 7 Class I freight railroads and 3 intermediate switch carriers operate in Chicago. Clements VS, at 2. Approximately 25% of all U.S. rail freight touches Chicago. In 2014, 15,000 cars each day were reportedly processed in yards in the greater Chicago Terminal. *Id.* Daily, 500 freight trains and 800 passenger trains operate into and out of Chicago. *Id.* The ability of rail carriers to handle the large amount of freight moving through Chicago efficiently is critical to the national economy as well as to the local and regional economy.¹⁰ *Id.* While the health of the rail

¹⁰ The EOWA Tier 1 EIS, described the importance of Chicago as follows:

The Chicago region is a major junction for transcontinental freight systems, and a critical element of the continental land bridge connecting the Pacific and Atlantic coasts. Freight movement plays a substantial role in the economic vitality of the region and to local industries. Within the study area, eastern and western railroads meet and transfer loads, with a large concentration of freight facilities located near O'Hare Airport. Three freight rail carriers operate in the area: CPRR; Canadian National Railway (CN); and UPRR. Also, Metra operates commuter rail service along the Milwaukee West, Union Pacific Northwest, and the North Central Service corridors. The area accommodates a high volume and frequency of freight traffic and is also the location of many intermodal facilities, where trucks collect to deliver, receive, and distribute freight containers. Retaining the region's preeminence as the nation's rail exchange is important to the Chicago area's economy; failure to provide for the necessary facilities may, over the long term, result in railroads relocating many of their operations to other metro centers that can accommodate their needs.

§ 5.4.7.

network depends on the health of the Chicago Terminal, this is particularly true for CP's network. *Id.* In 2016, roughly 20% of all CP traffic touched Chicago and CP interchanged in Chicago 48% of all CP interchange traffic. *Id.*

The Chicago Terminal is perennially congested and vulnerable to disruption. *See U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 6 (STB served Dec. 30, 2014). Despite significant efforts by stakeholders, including by the Board, to ease the problem, and the investment of billions of dollars in public and private money, Chicago remains fragile. Even a small disruption to operations at a major Chicago rail yard can have significant consequences that cascade throughout the network.¹¹ This fragility was on display during the winter of 2013–14 when severe winter weather combined with a bumper crop to produce gridlock in Chicago that disrupted rail service across North America. *Id.* Recovery was a long and difficult process lasting well into 2014. *See U.S. Rail Serv. Issues*, EP 724, slip op. at 4 (STB served Aug. 18, 2014).

CP's Bensenville Yard, which sits immediately south of O'Hare, is one of the largest rail yards in the greater Chicago Terminal. Bensenville Yard is also CP's only major rail yard in the Chicago Terminal and one of CP's busiest. *Clements VS*, at 5. The Yard operates 24 hours a day, 7 days a week, 365 days a year, includes 119 tracks, an intermodal terminal, a bulk goods transfer facility, a mechanical shop, repair tracks, a locomotive turntable, and various other

¹¹ The newly elected Senator from Illinois, the Honorable Tammy Duckworth, in calling for improving rail infrastructure in Chicago, described the Chicago and East St. Louis rail terminals "like the arteries in your body when it comes to the railways, and if you just have one artery that gets clogged the entire nation does suffer." Hearing of Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security, Feb. 15, 2017, *Moving America: Stakeholder Perspectives on our Multimodal Transportation System*, available at <http://www.commerce.senate.gov/public/index.cfm/2017/2/moving-america-stakeholder-perspectives-on-our-multimodal-transportation-system> (video: portion beginning approximately at 1:39:38).

facilities. Albanese VS, ¶ 6. Several million tons of freight passes through Bensenville Yard each year. The mainline through the Yard is owned by Metra which operates 58 commuter trains through the Yard each weekday, adding an extra challenge and capacity constraints to Yard operations. *Id.* at ¶ 7. CP only has 16 hours a day to use or cross the mainline through the Yard due to the Metra windows. *Id.* Fluidity of the Bensenville Yard is crucial to the health of CP's network and the freight rail network as a whole, and is already limited. Clements VS, at 5.

E. CP's Right of Way is No Ordinary Rail Right of Way

In addition to Bensenville Yard, CP owns the double mainline track and right of way running parallel to the western perimeter of O'Hare. Sabatka VS, ¶ 4. CP's rail right of way and its mainline extend from the western end of the Yard 1.8 miles to the junction with UP at Bryn Mawr Junction (the "Bryn Mawr Right of Way"). The Bryn Mawr Right of Way is bounded by York Road to the west and the UP's mainline to the east. From Bryn Mawr Junction north, CP operates over the UP's mainline via trackage rights as CP does not own property beyond that point. Albanese VS, ¶ 4. The Bryn Mawr Right of Way and the Yard are among the limited rail operating properties available to CP for capacity expansion in the Chicago Terminal. Sabatka VS, ¶ 4. Given the near impossibility of acquiring additional property for rail operations in the area, these properties are crucial to CP's ability to meet future demand. Clements VS, at 5. The proximity to the Yard makes the Right of Way particularly valuable to CP and irreplaceable. Sabatka VS, ¶ 4; Albanese VS, ¶ 17. With freight volumes expected to increase substantially—by some estimates, to double—over the next 25 years,¹² CP reasonably expects that it will eventually utilize every square inch of these properties.

¹² See Rail, 2014 Report Card for Illinois's Infrastructure, available at <http://www.isasce.org/wp-content/uploads/2014/04/2014-Illinois-Rail-Final-Report.pdf>.

CP is considering potential improvements for the Bryn Mawr Right of Way which would ease congestion in Bensenville Yard. These include adding two 7,000 foot staging/inspection tracks parallel to the mainline trackage or a bulk transfer facility. As CP engineer Dan Sabatka explains, were the Tollway to take CP's property rights in its Right of Way as planned, CP's ability to utilize this operating property for either option would be foreclosed, or severely restricted. Sabatka VS, ¶¶ 5-11. CP needs the entire width of its Right of Way to accommodate and safely operate two staging/inspection tracks which would alleviate congestion in the Yard, and in turn the larger Terminal. *Id.*; Albanese VS, ¶ 10. The encroachment of the bridge piers in CP's Right of Way would foreclose this option. Sabatka VS, ¶¶ 5-11. Likewise, the presence of the bridge piers and bridge decks overhead would interfere with optimum placement of the bulk transfer facility due to height, and limit or foreclose that option. *Id.* Further, the Tollway estimates that construction of the Western Interchange will take five years. Until construction is completed, CP's ability to add tracks or make other improvements on its Right of Way would be foreclosed entirely. *Id.* at ¶ 13.

Additionally, during construction, CP's operations on the mainline would be subject to significant disruptions. The Tollway currently estimates that there would be 31 mainline outages including 19 CP track outages. Some outages will last up to 14 hours. As the Tollway observes, however, CP's use of the mainline coming north from Bensenville is already constrained 8 hours a day by Metra, particularly during morning and evening rush hour. Petition, Exh. B at 15. *See also* Albanese VS, ¶ 7. Thus, CP's operating window in and out of Bensenville is already narrow. Narrowing it further would be enormously disruptive and costly. Given the fragility of the Chicago Terminal the impact of such disruption could be far-reaching. *Id.* at ¶ 9.

F. The Parties Never Agreed on the Proposed Takings Due to CP's Longstanding Concerns Regarding Impact on Current and Future Rail Operations

In 2009, CP agreed to discuss with the Tollway the possibility of accommodating an alignment through Bensenville Yard. However, those discussions were expressly premised on the ability of the Tollway to satisfy CP that the project would have “zero” impact on existing rail operations and would not interfere with CP’s ability to meet future demand for rail service. Sabatka VS, ¶ 11. The 2012 Tier 2 Environmental Impact Statement (EIS) acknowledged CP’s “numerous concerns and conditions” including CP’s need to have “the ability to expand in the future” and “maintain[] full operation of the yard . . . during the construction of the proposed roadway.” Elgin O’Hare-West Bypass Study: Tier Two Final Environmental Impact Statement, § 3.4.2 (Tier Two EIS).¹³ The Tier Two EIS also states the Tollway’s intent to execute a Memorandum of Understanding (“MOU”) with CP. *Id.* at § 2.3.2.6. While the Tollway presented CP with a draft MOU in 2012, “no agreement on an [MOU] or otherwise was ever reached . . . because the impacts to rail operations and rail capacity were too great.” Sabatka VS, ¶ 11. CP’s concerns have only become more acute in the wake of the 2014 service disruptions and its experience in trying to add capacity in urban areas. Clements VS, at 4-5.

Ignoring its lack of agreement with CP, the Tollway commenced construction on the EOWA and, today is closing in on the Yard and the Bryn Mawr Right of Way. As shown in recent photographs, the Tollway is engaged in site preparation including demolition and construction of earthworks along the Yard’s southern perimeter and adjacent to the Bryn Mawr Right of Way in preparation to enter those properties. Albanese VS, ¶ 18 and Exhibits B1-11.

¹³ The Tier Two EIS is available at <http://apps.dot.illinois.gov/fileexplorer/?search=environment\Elgin-Ohare%20Final%20EIS>.

Notably, the Tollway contracted for much of this work after CP filed its declaratory judgment in federal court in November 2015. *See* Illinois Tollway, Construction Contract Tracker.¹⁴

G. The Tollway Refuses to Consider Options That Would Not Burden Interstate Rail Transportation

The Tollway has other alignment options that avoid Bensenville Yard and much of the Bryn Mawr Right of Way. If the Tollway were to shift the Western Interchange and Western Bypass a few hundred feet to the west, it could avoid Bensenville Yard altogether. A tunnel beneath the Bryn Mawr Right of Way is a potential option for providing western access to O'Hare while preserving CP's ability to use the full width of its right of way. Although CP has repeatedly advised the Tollway that its property is not for sale and recommended that the Tollway pursue other alignment options, the Tollway refuses to consider an alternative alignment.

ARGUMENT

I. Federal Law Preempts the Use of State Law to Condemn Railroad Property for Conflicting Use

A. ICCTA Preemption is Express and Far Reaching

The Interstate Commerce Act, as revised by the Interstate Commerce Commission Termination Act of 1995 (ICCTA), confers on the Board broad and exclusive jurisdiction over interstate rail "transportation." *See* 49 U.S.C. § 10501(b).¹⁵ "Transportation" is defined

¹⁴ Available at <https://www.illinoistollway.com/projects/construction-tracker>.

¹⁵ 49 U.S.C. § 10501(b) provides as follows:

The jurisdiction of the Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers; and

expansively by the statute to include any “locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail” and any related services. 49 U.S.C. § 10102(9). Likewise, “railroad” is defined broadly to include “a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” 49 U.S.C. § 10102(6). Thus, Section 10501(b) extends the STB’s “jurisdiction” over railroad operations, activities and all rail transportation facilities and expressly preempts remedies and regulation provided under state law. The Board and the courts have consistently held that this broad grant of authority “prevents application of state law claims that would take rail property for another, conflicting use.” *14500 Limited LLC-Pet. for Declaratory Order*, FD 35788, slip op. at 4 (STB served June 5, 2014) (adverse possession claim and claim for exclusive prescriptive easement involving 0.44 acres of CSX rail yard federally preempted).

Under the analytical framework for disputes regarding the use of eminent domain to acquire rail property, courts and the Board distinguish between proposed takings of rail property for non-conflicting uses and proposed takings for another conflicting use. *See e.g. CSX Transportation Inc.,--Petition for Declaratory Order*, FD 34662, slip op. at 3 (STB served May 3, 2005). Takings for non-conflicting uses are subject to an “as applied” analysis, requiring “a factual assessment of whether [the taking] would have the effect of preventing or unreasonably interfering with rail transportation.” *Id.* In the context of proposed takings, the “as applied” analysis typically arises when a local governmental unit seeks to take a non-exclusive property

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law. 49 U.S.C. §10501(b).

interest for a grade rail crossing. *See e.g., Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 414 (5th Cir. 2010) (en banc) (holding that proposed takings for routine railroad crossings did not unreasonably interfere with rail transportation and therefore not preempted). Even seemingly routine railroad crossing cases are subject to preemption if they unreasonably burden or interfere with rail transportation. *See Tri-City R.R. Co.—Pet. for Declaratory Order*, FD 35915 (STB served Sep. 14, 2016) (holding proposed taking for grade crossing preempted that would interfere with carrier’s use of its only siding between its yard and UP and BNSF yards and segment of mainline that was one of the only track locations that could be used to stage unit trains); *Wichita Terminal Ass’n, BNSF Rwy. Co. & Union Pac. R.R. Co.—Pet. for Declaratory Order*, FD 35765 (STB served June 23, 2015) (holding preempted a state court’s order to allow rail grade crossing where crossing would interfere with rail operations and reduce capacity on the line).

Takings of rail operating property for another conflicting use generally are categorically preempted. *See, e.g., Soo Line R.R. Co. v. City of St. Paul*, 827 F.Supp.2d 1017, 1021–22 (D. Minn. 2010) (City’s effort to condemn portion of CP’s right of way for a bike path *per se* preempted and therefore “the City’s factual ‘as applied’ arguments concerning whether the proposed easement would unreasonably interfere with CP’s activities are not relevant”). *See also Union Pac. R.R. Co. v. Chicago Transit Auth.*, 647 F.3d 675 (7th Cir. 2011) (proposed takings of freight rail property for passenger rail service preempted notwithstanding transit agency already used property under voluntary agreement with UP); *City of Lincoln v. STB*, 414 F.3d 858, 861 (8th Cir. 2005) (proposed takings of 20-foot strip of railroad right of way that might interfere with storage of materials by railroad on remainder of right of way was preempted); *CSX Transp.*, FD No. 34662 (including state law condemnation of rail property for conflicting use as among

the types of actions that are categorically preempted). *But see State of Texas, Dep. of Transp.—Pet. For Declaratory Order Regarding Highway Construction in Tarrant County, TX*, FD 32589 (ICC served Feb. 7, 1995) (allowing a permanent taking of a segment of a railroad right of way where the right of way could be relocated to an adjacent property and the relocation could be accomplished with no interference to, or disruption of, rail service and at no cost to the rail carrier).

In order to ensure that rail carriers are able to meet future demand for rail service, the Courts and the Board have consistently held that federal preemption bars taking of rail operating property for another conflicting use, even if the property at issue is not currently being used for rail operations. *See e.g., Lincoln*, 414 F.3d at 862 (stating that the “Board can consider the railway’s future plans . . . [because] [c]ondemnation is a permanent action, and ‘it can never be stated with certainty at what time any particular part of a right-of-way may become necessary for railroad uses’”) (citation omitted). Thus, in *14500 Limited*, the Board held that preemption barred an adverse possession claim of just 0.44 acres of CSX’s rail yard. Docket No. FD 35788, slip op. at 4–5. The property at issue was not being used for rail operations at the time and CSX presented no concrete plans to use it in the future. *Id.* Nevertheless, based on CSX’s assertion that it would need the property to meet future demand, the Board found the proposed takings preempted. *Id.* at 5. Similarly, the Board held preempted a claim for adverse possession of a portion of a rail-banked right of way because the taking would have interfered with future rail operations should the line be reactivated in the future. *Jie Ao and Xin Zhou—Pet. for Declaratory Order*, FD 35539, slip op. at 4 (STB served June 6, 2012).

Furthermore, the Board has recognized the importance of protecting a rail carrier’s entire right of way from encroachments. As the Board has previously explained,

Many railroad lines have a wider ROW than might appear to be used, but that does not mean that all of the property is not needed for rail operations. As noted by D&RGHF and AAR, extra width on the sides of the track allows room to maintain or upgrade the track, to provide access to the line, to serve as a safety buffer, and to ensure that sufficient space is left available for more tracks and other rail facilities to be added, as needed, as rail traffic changes and grows, among other uses. *Thus, it cannot be said that property at the edge of a railroad's ROW is "not needed for railroad transportation" just because tracks or facilities are not physically located there now.*

City of Creede, Co. —Pet. for Declaratory Order, FD 34376, slip op. at 15 (STB served May 3, 2005) (quoting *Midland Valley R.R. Co. v. Jarvis*, 29 F.2d 539, 541 (8th Cir. 1928)) (emphasis added).

The courts' and the Board's decisions reflect "the strong federal policy in favor of retaining rail property in the national rail network, where possible." *Ao-Zhou*, slip op. at 4 (citing 49 U.S.C. §§ 10904, 10907 and 16 U.S.C. § 1247(d)). The critical importance of this policy cannot be overstated. The rail industry is a dynamic, constantly evolving industry. In just the past few decades, changes in traffic volumes, traffic mix, technology and safety, environmental and economic regulation, among other things have significantly impacted how railroads operate, and how they use and invest in their properties. For example, more powerful locomotives and the introduction of distributed power have made it possible for railroads to increase train lengths. Increased train lengths have required extension of yard tracks and sidings to accommodate the longer trains. Likewise, growth in rail volumes have required double tracking and triple tracking in existing rail right of ways. Growth and shifts in flow of intermodal traffic has required investment in intermodal transfer facilities and reconfiguration of yards to accommodate such facilities. Over the long term, volumes are projected to increase significantly and the need to add capacity to meet that growth is a virtual certainty. In the short

term, railroads need the flexibility to be able to respond to both expected and unexpected changes in volumes and operating practices.

Railroads have limited options in adding capacity to meet future needs. As James Clements explains, acquiring new property, particularly in dense urban environments such as Chicago, is difficult, if not impossible. *Clements VS*, at 4. Efforts to acquire even a small amount of real estate to be used to add rail capacity and improve network fluidity have run into extraordinary opposition from state and local interests, even as those same voices demand better rail service. For example, during the 2014 service disruptions, Minnesota state and federal elected representatives demanded that BNSF and CP improve service through the Twin Cities. But, after BNSF announced its plans to construct approximately 1,000 feet of connecting track in the Minneapolis suburb of Crystal in order to add capacity and increase fluidity, those same voices united with local interests to thwart BNSF's acquisition of the required property. Likewise, CP continues to run into efforts by local and state authorities to use environmental pre-clearance permitting requirements to delay and prevent rail projects despite established precedent holding such actions categorically preempted by federal law. *See e.g., Soo Line R.R. Co.—Pet. for Declaratory Order*, FD 35850 (STB served Dec. 23, 2014). In light of the great difficulties in adding rail property, nearly all future capacity gains, particularly in urban areas, will come from railroads making more and better use of their existing properties.

B. The Tollway's Proposed Takings Would Prevent or Unreasonably Interfere with CP's Use of its Property for Rail Operations

Here, the Tollway proposes to take by condemnation 6.613 acres of CP's active right of way and then between 35 and 40 acres of CP's major rail yard in the critical Chicago Terminal for a clearly conflicting use. Accordingly, the proposed takings are categorically preempted. *See, e.g. City of St. Paul*, 827 F.Supp.2d at 1021-22; *B & S Holdings, LLC v. BNSF Ry. Co.*, 889

F.Supp.2d 1252, 1257–58 (E.D. Wash. 2012) (ICCTA completely preempts adverse possession claim involving building and fenced parking area that encroached on BNSF property). But even under an “as applied” analysis the proposed takings, which would prevent, unreasonably burden and interfere with rail operations, are preempted.

1. Proposed Temporary and Permanent Takings for the Western Interchange Would Unreasonably Interfere with Rail Transportation

As to the Western Interchange, the Tollway’s proposed “temporary” easements would deprive CP of the use of portions of its right of way for an estimated 5 years. During this time, CP would be precluded from adding any additional track or other facilities in the right of way, or using its right of way for staging/inspecting trains or any other rail related activity. *Sabatka VS*, ¶ 13. Additionally, the Tollway will disrupt rail operations by shutting down CP’s mainline 19 times, for 4 to 14 hours at a time. These outages would require CP to hold trains short of destination and in the Yard, which would consume needed capacity and create congestion in the Yard. *Albanese VS*, ¶ 9. Staging trains may result in the need to bring in additional crews to replace crews that reach their hours of service limits, which would be costly, and erode the available crew base. *Id.* As inbound locomotives are scheduled for outbound trains, CP may need to bring in additional locomotives if trains do not arrive as scheduled which is also costly. *Id.* Depending on volumes and other factors, the disruption may be severe and far reaching. *Id.* There can be no dispute that the proposed temporary takings will prevent, unreasonably burden and interfere with rail operations. As a result, the temporary takings are preempted.

Likewise, the proposed permanent takings will limit current and future rail capacity in the Bryn Mawr Right of Way. *Id.* at ¶¶ 9-11. CP is considering construction of two 7,000 foot

staging/inspection tracks in the right of way parallel to CP's mainline tracks¹⁶ or a bulk transfer facility. But as CP's Senior Director of Engineering Works, Dan Sabatka, explains, the Tollway's planned bridge piers, each of which would encroach into CP's right of way, will not leave sufficient width to safely add two inspection/staging tracks. Sabatka VS, ¶¶ 5-9. The bridge decks and piers would interfere with the optimum placement of the bulk transfer facility. *Id.* at ¶ 11. These are but two examples of how the proposed takings would unreasonably burden and interfere with future use of the right of way. While CP cannot say with certainty how it will use the right of way in the future, it is certain that the proposed takings will limit CP's rail transportation options. *Id.* at ¶ 12.

Significantly, the Tollway completely overlooks the impact of the Western Interchange and terminus at Irving Park Road on rail operations at Bensenville Yard. By focusing solely on the footprint and duration of the proposed construction, the Tollway ignores the increased traffic volumes exiting the toll road and flooding onto local roadways, including and especially those roads integral to CP's intermodal operations at Bensenville Yard. Phelan VS at ¶ III.E-H.

Ingress and egress at Bensenville Yard's intermodal facility is a single road onto Franklin Avenue between Wolf Road and the I-294 overpass. There is a westbound turn lane but no, signal, or other improvement at this intersection. Trucks serving Bensenville Yard use Irving Park Road and Franklin Avenue to Mannheim Road to access I-294. The Tollway's plan to divert traffic onto Irving Park Road and the new Franklin Avenue exit at the southern boundary of the Bensenville Yard will flood those roads with trucks, and other vehicles, making it difficult

¹⁶ These tracks would allow CP to receive, inspect and depart bulk trains without bringing them into the Yard, thereby easing congestion in the Yard. Albanese VS, ¶ 10.

for the typical 900 to 1,000 truck movements per day at Bensenville Yard.¹⁷ Phelan VS, ¶ III.H. This would cause congestion both in the Yard, as trucks wait to exit the Yard, and on Franklin Avenue as trucks wait to turn into the Yard. The Tollway makes no mention of the increased volume of traffic, its direction, flow, or impact on businesses on Irving Park Road, Green Street, Franklin Avenue, adjacent residences or Bensenville Yard operations.

2. The Tollway’s Evidence as to the Degree of Interference with Rail Operations is Both Irrelevant and Incorrect

The Board and the courts have wisely avoided straying into the perilous thicket of attempting to determine how much interference resulting from takings of rail property for another conflicting use would be too much or trying to divine a railroad’s future needs. *See e.g., Ao-Zhou*, slip op. at 7. Yet that is exactly what the Tollway asks the Board to do here. Based on a “video observation” of CP operations on the Bryn Mawr Right of Way, the Tollway contends that the disruption to rail operations caused by the numerous mainline track outages and by the proposed temporary and permanent takings of portions of the right of way would be “de minimis.” Petition at 35-37. Because the proposed takings are for a conflicting use, categorical preemption applies; the Tollway’s purported evidence as to the magnitude of the interference is not relevant.

Even assuming the magnitude of the interference were relevant, the Tollway’s purported evidence does not support the conclusion that the interference with rail operations would be de minimis. Among other problems, the video observations, which were taken over a 12-day period in June 2016 provide nothing more than a brief snapshot in time of how CP used the Bryn Mawr

¹⁷ According to the Tollway’s estimates in the EIS, the projected traffic on the southern connection of Selected Alternative ranges from 2,300 to 2,560 vehicles per hour at peak periods. Phelan VS, ¶ II.39. Additionally, traffic projections on the northern segment of the Bypass exceed 7,000 vehicles per hour during peak periods. Phelan VS, ¶ III.G. If the Bypass is not completed, then this traffic would be diverted to the already congested local roadways.

Right of Way during those few days. It is not representative of operations and volumes before or after the observation period and is unlikely to be representative of the future. Due to changes in demand for rail service and other factors, the nature and volume of CP's operations on this track segment vary significantly. As compared to the 11.7 trains the Tollway observed and on which its conclusions are based, historically, CP has moved daily over this segment 25 or more trains. It currently moves 16 to 18 trains daily. Albanese VS, ¶ 6. Moreover, as discussed above and detailed in Albanese Verified Statement, "even under ideal operating conditions and low traffic volumes, a track outage of 4 to 14 hours would disrupt train operations and be costly. If conditions are not ideal the disruption may be severe and far reaching." *Id.* at ¶ 9.

In *Ao-Zhou*, the STB rejected a similar argument to the Tollway's, i.e., that the takings of a strip of the railroad's right of way would not interfere with current rail operations and therefore would not be subject to preemption. FD 35539, slip op. at 4. In that case, the right of way at issue was rail-banked so it was not in use at all. *Id.* Nevertheless, the Board recognized the importance of applying preemption to bar such takings in order to preserve the right of way for potential future rail use:

Moreover, assuming arguendo, that *Ao-Zhou* is correct that the application of state adverse possession law here might have little actual, practical effect on current plans for active railroad operations, *circumstances can change*. *Ao-Zhou's* approach to preemption would permit landowners to carve off strips of railroad ROW all over the country for non-rail use, even though the Board has not authorized the ROW to be permanently removed from the nation's rail system under Title 49. *That untenable result would undermine interstate commerce and the strong federal policy in favor of retaining rail property in the national rail network, where possible.*

Id. (citing 49 U.S.C. §§ 10904, 10907 and 16 U.S.C. § 1247(d)) (emphasis added). Here, the right of way is used for active rail operations in a critical and space constrained location. As compared to the rail banked property in *Ao-Zhou*, the need to protect and preserve CP's ability to

utilize its full right of way and the threat posed to interstate commerce by the proposed takings are significantly more concrete, immediate, and substantial.

Additionally, the Tollway suggests that UP's apparent willingness to agree to the Tollway's Western Interchange plans supports its claim that the proposed takings will not unduly interfere with CP's rail operations. However, CP and UP are not similarly situated and the impact on operations and future ability to meet demand for service are not comparable. The railroads have very different footprints and operations within the Chicago Terminal, and are impacted differently by the Tollway's proposed takings. For instance, the UP viaduct is not constrained by Metra at this location, and the UP's staging, inspection, and capacity enhancement needs are different given the distance from Proviso Yard and UP's particular route structure. Most notably, the proposed takings do not trigger a taking of UP's yard property. Further, the fact that a railroad might voluntarily agree to allow a third party to use its property for a conflicting use does not open the door to the use of state law to take that property. See *Chicago Transit*, 647 F.3d at 675.

3. The Proposed Takings of Bensenville Yard to Complete the Tollway Would Unreasonably Interfere with Rail Transportation

The Board has held that preemption barred the takings of rail yard property under circumstances where the proposed takings involved a far smaller amount of land and the potential impact on rail operations more remote and theoretical than is being proposed here. In *14500 Limited*, a trucking company sought to take just 0.44 acres of CSX's rail yard that the trucking company had been using for decades. FD 35788, slip op. at 1. On the testimony of CSX's Vice President of Network Strategy that "CSX needed to retain the land to accommodate projected traffic growth" both a federal district court and then the Board on referral from the

court, held that federal preemption barred application of state law to take the yard property. *Id.* at 5-6.

Here, the Tollway proposes to take 36.43 acres of the Yard, or 83 times the amount of yard property than was at issue in *14500 Limited*. Unlike in *14500 Limited*, much of the Yard property that the Tollway would take is property that CP actively uses today and the proposed takings would require CP to undertake a massive reconfiguration of the Yard. Albanese VS, ¶¶ 13-14. Additionally, the Tollway's proposed permanent structures within the Yard would further reduce efficiency and CP's ability to make changes in the future. The eastern side of the Yard is already home to several bridge piers which support Interstate-294 overpass. These permanent structures might have a small base footprint within the Yard, but they have significant consequences. They constrain CP from making changes to the track angles between the bridge piers or from utilizing the eastern part of the Yard differently. Albanese VS, ¶ 13. The Tollway's plans call for additional bridge piers and other physical structures that would further interfere with CP's already constrained ability to meet current and future demand for rail service.

Moreover, the Yard at issue is not just any rail yard. Its importance to CP's rail network and to the national network cannot be overstated. The Yard is not merely an integral part of CP's main rail corridors between Chicago and the rest of its rail network; it is the main terminus for those corridors. It is also CP's only classification yard in the Chicago Terminal, the heart of the national network. The need to preserve and protect this particular Yard property against encroachment is of paramount importance to the health of both CP's network and the national rail network. As such, the proposed takings are unquestionably preempted.

C. The Public Benefits of the Tollway are Not Relevant to the Preemption Analysis

The Tollway argues that the Board should find the proposed takings would not be preempted because the public benefits of the Tollway outweigh the allegedly “de minimis imposition on CPR during construction.” Petition at 35. This argument is both factually and legally incorrect.

As discussed above, the “imposition on CPR” is demonstrably not de minimis, nor is it limited to construction. The takings would significantly disrupt rail operations with potentially disastrous consequences. Construction of the Western Interchange will shut down CP’s mainline operations repeatedly for as much as 14 hours at a time. It will prevent CP from utilizing the Bryn Mawr Right of Way to expand capacity and relieve Yard congestion. Even after construction ends, CP’s ability to add capacity on the right of way will be limited by the proposed takings. The proposed takings of between 35 and 40 acres of Bensenville Yard would disrupt current operations, requiring CP to undergo a massive yard reconfiguration and would deprive CP of crucial yard capacity and the flexibility needed to meet current and future demand. Far from de minimis, the disruption and interference are perhaps more significant than those of any proposed taking previously held preempted by either the courts or the Board.

Moreover, the Tollway’s contention is built on the flawed premise that the takings are necessary to complete the EOWA. The Tollway has other options to complete the project that would not require the proposed takings of railroad property but refuses to consider those options, evidently due to local political considerations. But once it constructs the Western Interchange, the Tollway’s only option will be through Bensenville Yard. *Phelan VS*, ¶ III.F.

Most importantly, the approach the Tollway advocates here, like the approach the Board rejected in *Ao-Zhou*, would set a dangerous precedent. It would open the door to carving off

pieces of rail property for other public works projects without STB authority, “undermin[ing] interstate commerce and the strong federal policy in favor of retaining rail property in the national rail network, where possible.” *Ao-Zhou*, slip op. at 4 (citing 49 U.S.C. §§ 10904, 10907 and 16 U.S.C. § 1247(d)). Indeed, public entities will in most, if not all, cases be able to point to worthwhile public benefits, such as highway safety, to justify a proposed condemnation of rail property. See e.g., *Wisconsin Cent. Ltd. v. City of Marshfield*, 160 F.Supp.2d 1009 (W.D. Wis. 2000). However, as the federal district court explained in *City of Marshfield*, the purported public benefits of the project are “irrelevant” to the preemption analysis:

The City is impermissibly attempting to subject to state law property that Congress specifically put out of reach. Congress’ preemptive language and intent is paramount, and the nature of the preempted state regulation is irrelevant.

Id. at 1013-14.

The Tollway primarily relies on *State of Texas*, which it erroneously asserts is “analogous” and supports a public benefits versus harm to the railroad balancing test. Petition at 36-38. The Board and U.S. Court of Appeals for the Eighth Circuit rejected a similar assertion in a case that is on all fours with this proceeding. See *City of Lincoln—Pet. for Declaratory Order*, FD No. 34425, slip op. at 4 (served August 12, 2004); *Lincoln*, 414 F.3d 858. Lincoln, relying primarily on *State of Texas*, asked the Board to allow the takings of actively used rail right of way for a public works project—a request that the Board characterized as “extraordinary.” Slip op. at 5. In holding the proposed taking preempted, the Board explained that *State of Texas* is distinguishable from a case that would leave the railroad with less property than it previously had:

In *State of Texas*, the state provided funding to relocate the rail right-of-way being taken and did not actually take any property until the relocation was completed. This case, on the other hand, involves a narrowing, not a relocation, of rail right-of-way. Instead of being no better or worse off than

it was before the taking, as the railroad in State of Texas was, LLC would be left with less than it previously had, and less than it states it requires in connection with its rail operations, if the northernmost 20 feet of its right-of-way were taken from it.

Id. As in *City of Lincoln*, simple relocation is not contemplated here. Rather, as in *City of Lincoln*, the Tollway proposes to take portions of actively used railroad property, and operating property necessary for future capacity, leaving CP “with less than it previously had.” *Id.* The relocation of the turntable, the mechanical facilities and the repair tracks that the Tollway’s plan requires would result in “result in permanent shrinkage of A, D, C, and F classification yards (within the larger Yard facility) as well as permanent shrinkage of our intermodal capacity, bulk transfer capacity, and ability to take and inspect bulk trains.” *Albanese VS*, ¶14. Further, the Tollway also proposes to repeatedly shut down CP’s mainline operations during construction and the property at issue is some of the most important in the national rail network. Accordingly, as in *City of Lincoln*, the proposed takings are preempted.

D. That CP Might Have Entertained the Possibility of Accommodating the Tollway Does Not Mean it Must Do So

The Tollway suggests that by engaging in discussions with the Tollway, CP has somehow waived its right to assert federal preemption or that such discussions should be construed as acknowledgment that the proposed takings would not unduly interfere with rail operations. The Tollway’s position is wrong and has troubling implications.

As a matter of law, a railroad does not waive the protection of federal preemption by engaging in negotiations. *See Chicago Transit*, 647 F.3d 675 (CTA’s attempt to secure use of railroad property by condemnation subject to preemption notwithstanding the parties’ discussions but inability to reach an agreement). A rail carrier may consider or even agree voluntarily to sell or lease property interests. However, doing so does not render federal preemption inapplicable to a subsequent effort to acquire the property rights at issue by

condemnation. *See City of Lincoln*, FD 34452, slip op. at 1 (preemption applied to proposed taking of portion of right of way for trail notwithstanding that the carrier “originally was agreeable to [the proposed] trail”).

Chicago Transit is instructive. The Chicago Transit Authority (CTA) leased a portion of UP’s right of way in Chicago to provide passenger transportation. *Chicago Transit*, 647 F.3d at 676. Under the lease, every ten years the parties set “the monthly rent for the next ten-year period based on a formula specified in the lease and the appraised fair market value of the Right of Way.” *Id.* at 677. During discussions regarding the monthly rent amount for the 2002-2012 lease term, “the parties discussed the possibility of negotiating a one-time payment in exchange for a permanent easement over the Right of Way instead of maintaining the current rental arrangement,” but did not reach agreement to do so. *Id.* Subsequently, the CTA sought to acquire the permanent easement by condemnation. *Id.* UP successfully sought to enjoin the condemnation action on federal preemption grounds. On appeal to the Seventh Circuit, the CTA argued that federal preemption was inapplicable because the proposed takings would not change how the parties used the right of way and therefore would not interfere with rail transportation. The court disagreed, observing that the CTA’s current use of the right of way,

has a significant impact on railroad transportation ...[but] this presents no federal preemption issue because UP has agreed to this significant impact through its lease with the CTA. But with the condemnation, the CTA is seeking, by regulation and not by agreement, to use Union Pacific’s property in a way that has a significant impact on railroad transportation. And a regulation (instead of an agreement or contract) that prevents or unreasonably interferes with railroad transportation is preempted by the Act. Therefore this condemnation is preempted.

Id. at 682.

Here, the Tollway seeks Board permission to take by condemnation the property interests that CP has not and cannot agree to part with voluntarily. Unlike in *Chicago Transit*, the

Tollway cannot even point to a prior agreement between CP and the Tollway. Rather, it seeks to justify the proposed takings based on the mere fact that CP engaged in discussions and may have entertained the possibility of an agreement at one point. Such discussions have no bearing on the fact that the proposed takings are subject to federal preemption.

Moreover, the fact that CP considered accommodating the Tollway does not support the conclusion that the proposed takings would not unreasonably interfere with rail transportation. For a variety of reasons, rail carriers frequently and voluntarily enter into discussions with state and local governmental entities and other third parties regarding proposed projects even though the projects might negatively impact rail operations. Each case is fact specific. Indeed, the Board encourages rail carriers to work cooperatively with such entities. Consistent with the Board's position, CP tried to work with the Tollway. Notably, throughout discussions with the Tollway, CP expressed concern about the interference with current and future rail operations. As Dan Sabatka explains in his Verified Statement and as reflected in the EIS, CP advised the Tollway that before the parties could reach an agreement, the Tollway would need to address CP's concerns regarding interference with rail operations and future capacity expansion. Sabatka VS, ¶¶ 15-16. The Tollway's proposals never satisfied CP on these issues. Accordingly, the parties never reached an agreement or even a memorandum of understanding. *Id.*

Lastly, it would be poor public policy to penalize CP for engaging in discussions with the Tollway. It would discourage rail carriers from engaging in discussions regarding potential accommodation of other public projects for fear of being found to have forfeited federal preemption protection.

E. Construction of the Western Interchange Would Set Up A Battle In the Future That would be Harmful to the Rail Industry

According to the Tollway, construction of the Western Interchange has independent value, namely providing western access to Airport property in order to access future development including the future Western Terminal called for in the 2001 O'Hare Modernization Program. Currently, however, there is no Western Terminal or other facilities and there are no plans to build a Western Terminal anytime soon. In fact, the most recent modernization plan, which was announced by the City of Chicago on July 15, 2016, includes no plans to build a Western Terminal.¹⁸ Moreover, only one of the five bridges provides Airport access. The other four bridges provide exit and egress from the southern and northern legs of the Western Bypass. Thus, the Tollway's emphasis on the western airport access as an independent justification for moving forward with the construction of the Western Interchange is highly suspect, and appears to be pretext.

The more important issue is that the construction of the Western Interchange commits the Western Bypass to an alignment through Bensenville Yard. Phelan VS, ¶ III.F. Notwithstanding the Tollway's hollow representations that it might not ever complete the Western Bypass, its current plan is to do so consistent with the EIS and the ROD, and there is no rational basis to believe that the Tollway will not pursue that plan.

Stopping construction at the front and back gates of Bensenville Yard is neither plausible nor does the Tollway have legal authority change the project in a material way without a supplemental EIS. Rather, the Tollway's plan is to generate sufficient political pressure on CP (and the Board) that will force CP to cede portions of the national rail network to the Tollway.

¹⁸ See

<https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2016/July/7.15.16Terminal5Expansion.pdf>.

The Board is already hearing from politicians at the Tollway's behest. This is but a taste of things to come if the Tollway is allowed to build the Western Interchange, locking itself into the Bensenville Yard alignment. The alternative -- the Tollway builds the Western Interchange but is unable to complete construction through the Yard -- means it will have wasted millions, if not billions, of dollars building sections of the Western Bypass that serve little or no purpose and are unlikely to generate the toll revenue on which the Project is premised. Thus, once the Tollway builds the Western Interchange, it will attempt to complete construction through the Yard, at enormous cost to CP and its customers, the rail network, railroad industry, the Chicago Terminal and the national economy. This prospect provides yet another reason for the Board to draw the line at the Western Interchange; specifically west of York Road.

Directing the Tollway to pursue an alternative alignment would be consistent with the Rail Transportation Policy ("RTP") established by Congress. The RTP directs the Board to "promote a safe and efficient rail transportation system" and "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." 49 U.S.C. § 10101(3),(4). Allowing the Tollway to tighten the vise on either side of Bensenville Yard would threaten, not ensure, "the development and continuation of a sound rail transportation system."

CONCLUSION

For the reasons stated above, CP requests that the Board enter an order denying the Tollway's request to sanction acquisition of permanent and temporary easements for the construction of highway bridges over and on railroad right of way owned and operated by Soo Line Railroad Company d/b/a Canadian Pacific (CP) at York Road and Thorndale Avenue in DuPage County, Illinois, and declaring that the Tollway's state law eminent domain authority to

acquire such permanent and temporary easements as well as to acquire permanent and temporary easements to construct a highway under, on and through CP's Bensenville Yard, are preempted by federal law under 49 U.S.C. §10501(b), and for all further relief proper in the premises.

Dated: February 23, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2017, I served the foregoing Reply Statement of the Soo Line Railroad Company d/b/a Canadian Pacific by first class mail, postage-prepaid, on the following:

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David F. Rifkind

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket FD 36075

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – PETITION FOR
DECLARATORY ORDER**

VERIFIED STATEMENT OF JAMES D. CLEMENTS

My name is James D. Clements. I am the Vice President Strategic Planning and Transportation Services for Canadian Pacific (“CP”). My office is in Calgary, Alberta. I have been employed by CP since 1994 and have occupied my present position since 2014. During my employment with CP, I have served in a variety of planning, operating, commercial, and administrative roles, including Financial Analyst, Director – US Grain Marketing and Sales, Director – Mines, Metals and Aggregates and General Manager – Car Management. Since 2014, I have served on the Board of the Indiana Harbor Belt Railroad Company. As a result, I am familiar with CP operations in the United States including in the Chicago Terminal and am familiar with rail operations in the Terminal generally.

The purpose of my statement is to describe the importance of the Chicago Terminal to the national rail network generally, and specifically its importance to CP. I also describe the fragility of the Chicago Terminal, its capacity limitations, and the concerted efforts by railroad and government stakeholders to alleviate congestion in the Terminal. Next, I address the dynamic nature of the rail industry and the need to preserve capacity and flexibility to adapt to

changes. Lastly, I describe the difficulties that railroads face expanding capacity using existing properties and the near impossibility for rail carriers to expand capacity by acquiring property in urban areas such as Chicago.

The Importance of Chicago to the Rail Network

Chicago is the heart of the North American rail network. Six of the seven Class I rail carriers and three intermediate switch carriers operate in Chicago. *Trains* magazine reported that in 2014, 15,000 rail cars were processed in Chicago's rail yards and another 50,000 were heading towards Chicago every day. 500 freight trains and 800 passenger trains operate through Chicago, often sharing the same track. *Trains* (July 2015, p.31) (available at http://www.createprogram.org/in_news/7-2015.pdf). Given the amount of freight moving to, from, and through Chicago, the ability of railroads in Chicago to handle this freight efficiently is critical to the operational health of the rail network and to the nation's economy. The health of the national rail network depends on the health of the Chicago Terminal.

Chicago is particularly important to CP. In 2016, roughly 20% of all CP traffic touched Chicago and 48% of all CP interchange traffic, interchanged at Chicago. As a result, CP's operational performance is tied directly to the fluidity of the Chicago Terminal. If there is a disruption in Chicago, it is likely to negatively impact CP operations well beyond Chicago.

The problem is that on the whole, the Chicago Terminal is congested and vulnerable to disruption. This was on display most recently in the winter of 2013 and 2014 when strong freight volumes driven in large part by a bumper crop, coupled with severe winter weather plunged the Chicago Terminal into gridlock. The impact was felt across the national rail network and particularly on CP. The service disruption prompted complaints from customers, particularly grain customers who were eager to get their grain to market and take delivery of

fertilizer for the next planting season. It also generated considerable political pressure. The STB held hearings on the service disruption, instituted new service performance data reporting requirements, and pressured carriers to work collaboratively to normalize rail operations. Notwithstanding substantial efforts of the carriers and their employees, recovery was difficult and slow, taking the better part of a year.

The congestion issues at Chicago predate the winter of 2013-2014 and have been the subject of several studies and reports, and initiatives. Chicago freight, commuter and passenger railroads operating in the Chicago Terminal, including CP, work together through the Chicago Planning Group, the Chicago Transportation Coordination Office, and the Chicago Integrated Rail Operations Center to facilitate the flow of traffic across the terminal. As a result, the Class I railroads have invested millions of dollars in infrastructure improvements and thousands of hours in operational coordination. Further, the United States Department of Transportation, the State of Illinois, City of Chicago, Metra, Amtrak and have through the auspices of the Chicago Region Environmental and Transportation Efficiency (“CREATE”) project have invested billions more dollars to improve rail infrastructure in Chicago. Nevertheless, Chicago remains fragile.

The Need to Preserve Capacity to Adapt to Changes in the Rail Industry

The rail industry is a dynamic industry. In just the past few decades, changes in traffic volumes, traffic mix, technology and safety, environmental and economic regulation, among other things have significantly transformed how railroads operate, and how they use and invest in their properties. For example, more powerful locomotives and the introduction of distributed power have made it possible for railroads to increase train lengths. Increased train lengths have required extension of yard tracks and sidings to accommodate the longer trains. Likewise, growth in rail volumes have required double tracking and triple tracking in existing rail right of

ways. Growth and shifts in flow of intermodal traffic have required investment in intermodal facilities and reconfiguration of yards to accommodate such facilities. Over the long term volumes are projected to increase significantly and, the need to add capacity to meet that growth is a virtual certainty. In the short term, railroads need the flexibility to be able to respond to both expected and unexpected changes in volumes and operating practices.

The Near Impossibility of Acquiring or Expanding Rail Operating Capacity

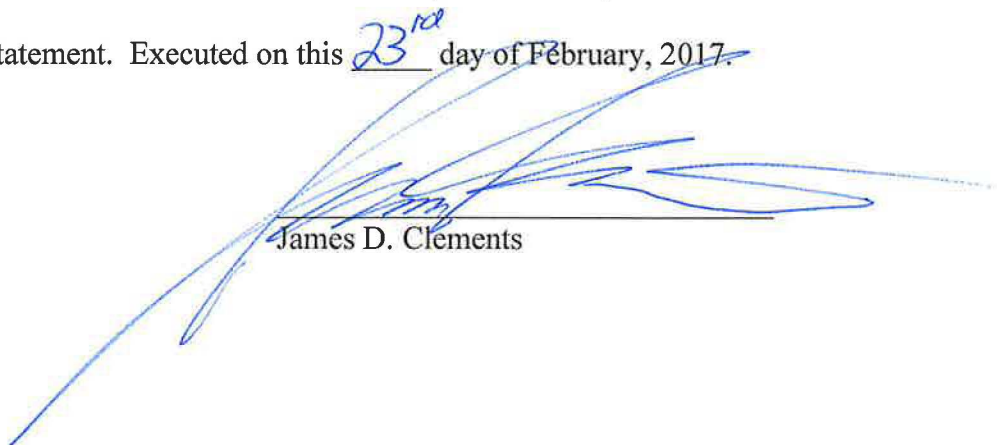
CP has made several changes in an effort to increase capacity and fluidity in the Chicago Terminal and throughout its system. However, it cannot add rail operating property in such a dense urban area as Chicago. Indeed, CP has found it difficult to even add capacity within an existing footprint due to local opposition. When we lengthened yard track in our St. Paul Yard in order to increase capacity for CP and BNSF in the busy St. Paul – Chicago corridor, the City of St. Paul sought to thwart and delay that project by requiring pre-clearance environmental permits. In our experience, expanding the existing footprint of operating property to add capacity in an urban area is near impossible. When BNSF tried to purchase land in the Minneapolis suburb of Crystal for a short connecting track that would have facilitated more efficient CP and BNSF operations in the corridor, a unit of local government moved quickly to purchase the property that BNSF needed for the track. The State of Minnesota then enacted legislation that purports to prohibit railroads from exercising the power of eminent domain specifically in the county in which Crystal is located. The lesson of these experiences is that additional rail operating property is nearly impossible to acquire in urban environments, and existing rail operating property is extremely difficult to expand. As a result, once rail operating property is given up, it cannot be replaced.

In the Chicago Terminal, CP owns limited rail operating property. Bensenville Yard is our only major yard in the Terminal. It is also one of CP's busiest yards in its system. But it does not even own the mainline through the Yard. Metra owns the line. CP owns the right of way and mainline from the western end of the Yard north to the Bryn Mawr Junction at which point CP's right of way ends. CP operates beyond Bryn Mawr Junction using trackage rights over Union Pacific. These two properties are crucial to CP's ability to meet current demand for rail service and to add capacity to meet future demand.

The proposed takings of portions of these critical CP properties for the Elgin O'Hare Western Access tollway project would interfere with current rail operations and undermine CP's ability to meet future demand for rail service. Worse, the disruptions could upset an already fragile Chicago rail network with potentially disastrous consequences for CP and the Chicago Terminal, the national rail network, rail customers and the national economy.

VERIFICATION

I, James D. Clements, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this 23rd day of February, 2017.



James D. Clements

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36075

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – PETITION FOR DECLARATORY ORDER

Verified Statement of Thomas C. Albanese

1. My name is Tom Albanese. I am employed by Soo Line Railroad Company d/b/a Canadian Pacific (CP) in the capacity of General Manager Operations, US East. I have held this position since April 2016. Prior to CP, I worked for BNSF Railway and its predecessors for twenty-two years in various rail operations capacities. I am a graduate of the United States Military Academy at West Point.

2. My responsibilities as General Manager include supervision of all rail transportation operations of CP in the greater Chicago Terminal, and specifically Bensenville Yard (the “Yard”) and the trackage to and from the Yard.

3. The purpose of my statement is to describe CP’s rail operations and capacity and how the Tollway’s proposed takings both in the Bryn Mawr Right of Way and in Bensenville Yard would prevent or unreasonably interfere with our using these strategic properties to meet customer demand for rail service currently and in the future. I also explain how fragile the Chicago Terminal is, how limited rail capacity is already, and why we must preserve that capacity.

The Bryn Mawr Right of Way

4. CP owns and operates double mainline track and right of way that proceeds from the west end of the Yard (near Tower B17) over the Metra main line, and then north past the intersection of York Road and Thorndale Avenue to a junction with the Union Pacific Railroad (UP) at Bryn Mawr (the “Bryn Mawr Right of Way”). (See attached drawing marked Exhibit A.) From Bryn Mawr Junction north, CP operates over the UP’s mainline via trackage rights to a junction at Shermer (Tower A20) with the

mainline of CP's Chicago & Milwaukee Subdivision. This trackage, specifically the trackage between the Yard and Bryn Mawr, is a vital part of CP's core network from Chicago to Milwaukee and points beyond.

5. As part of my responsibilities, I am personally familiar with plans and proposals advanced by the Illinois State Tollway Authority (the "Tollway") to construct a new toll road on and over our main line right of way on the Bryn Mawr track segment near York Road and Thorndale Avenue, and proceeding in a southerly direction from there to run under, on, and through the Yard.

Operations over the Bryn Mawr Right of Way

6. Currently, not including bulk trains, we operate ten scheduled trains a day, seven days a week into and out of the Yard over the B17 to Bryn Mawr track segment (train nos. 470, 484, 280, 198, 199, 288, 289, 471, 287, 281). In addition, we operate approximately 4-6 bulk trains (ethanol, crude, grain, potash or sand) per day over this same track, and the Chicago Terminal Railroad operates a local switcher in and out the Yard over the track (train nos. G46 and G48). The approximate total of this traffic is 16-18 trains per day. In the past, we have operated 25 or more trains per day on the Bryn Mawr corridor. The number of trains we can handle at this location is limited only by volume demands of our business, the Metra windows, and any operating exigencies that may occur on the UP.

7. Operation of our traffic into and out of the Yard over the Bryn Mawr trackage is restricted by Metra's peak periods in the morning (3.25 hours) and the evening (2.25 hours), and at various intervals throughout the day (2.5 hours). Metra operates approximately 58 weekday trains on the east west mainline we both share in the Yard. As a result, we only have approximately 16 hours a day, sometimes less, available to dispatch and manage freight trains over this trackage. This restriction is compounded by other operational events and/or the weather.

8. Although rail volumes were lower in 2016, rail volumes are expected to increase over the long term throughout the Chicago Terminal, and specifically into and out of Bensenville Yard on our railroad.

Impact of the Tollway's Proposed Takings of Bryn Mawr Right of Way

9. The Tollway's proposed "temporary" takings of portions of CP's Bryn Mawr Right of Way, in order to construct five bridges on and over the right of way would cause unacceptable disruptions to rail service. To accommodate each of the 19, 4 to 14-hour mainline track outages planned by the Tollway, we would have to hold outbound trains in Bensenville Yard and stage inbound trains short of destination. Holding trains in the Yard would cause congestion, and reduce efficiency and fluidity. Likewise, holding trains short of destination consumes needed capacity on passing and mainline track on our railroad and could impact rail operations within the Chicago Terminal and points beyond. Holding trains also creates crew and locomotive power issues. Crews are subject to federal hours of service limits. If trains are held several hours, their crews may expire on hours which would require bringing in a fresh crew. This in turn would erode the crew base. Re-crewing creates additional costs and can create further delay depending on crew availability. With respect to locomotive power, CP runs a tightly scheduled railroad. Locomotives on inbound trains are needed for outbound trains. If locomotives are out of their scheduled slot, we must bring in additional locomotives online or incur further delay. In either case, additional costs and reduced efficiency and fluidity are the result.

Even under ideal operating conditions and low traffic volumes, a track outage of 4 to 14 hours would disrupt train operations and be costly. If conditions are not ideal the disruption may be severe and far reaching, affecting not just CP but rail operations in the Chicago Terminal and points beyond.

10. The Bryn Mawr Right of Way has particular strategic value to CP because of its proximity and connection to the Yard. To maintain fluidity at the Yard and the greater Chicago Terminal, we have planned the addition of two 7,000+ staging/inspection tracks adjacent to our mainline on the Bryn Mawr segment. Currently, bulk trains are received and inspected in Bensenville Yard where they take up track space and affect Yard operations. The planned staging/inspection tracks will allow us to relieve congestion at the Yard, and in turn the greater Chicago Terminal, by receiving, inspecting, and departing

bulk trains without having to bring those trains into the Yard. Additionally, if the Yard were to become congested, as happened in the winter of 2014, these inspection/staging tracks will provide much needed trackage to stage trains and alleviate congestion. The addition of the two staging/inspection tracks together with the existing double main line would take up all of our right of way at this location. The “temporary” takings and the permanent bridge piers on our right of way would prevent this capacity improvement.

11. We are also considering locating an overhead bulk transfer facility on the Bryn Mawr segment to support future growth. This type of operation entails a fixed overhead hopper by which aggregate type commodities are conveyed up and into hopper cars. We currently operate a similar facility in the west end of the Yard. The current bulk transfer facility has two towers, one is 81 feet in height, and the other is 63 feet high. The Tollway’s overpasses and bridge piers would preclude or unduly restrict such a facility due to its height and vertical requirements.

The Impact of the Proposed Takings on Bensenville Yard

12. Every plan or proposal that the Tollway has advanced to connect the new tollway to I-294 involves the taking of approximately 35 to 40 acres of Bensenville Yard property, or about 1/10th of the acreage of the Yard.

13. The Tollway’s intended taking would significantly interfere with current operations in the Yard. For example, the Tollway’s plans call for the acquisition of a large portion of the west end of the Yard which would necessitate removal and re-location of our locomotive turntable, a large and indispensable facility that allows us to re-position locomotives for use on outbound trains. We use the turntable virtually every day. We also use acreage on the west end of the Yard in connection with our intermodal operations and for an existing bulk transfer facility and associated trackage. Additionally, property that the Tollway intends to take in the middle of the Yard for construction of Taft Avenue is

now used for a rail car repair shop, repair in place tracks, and facilities for storage of heavy mechanical equipment used in connection with these repair activities.

14. The Tollway's intended taking would substantially reduce the size of the Yard and impose significant constraints on future operations. Were the Tollway's intended taking allowed to go forward, it would force us to relocate and reconfigure the facilities outlined above which in turn would result in permanent shrinkage of A, D, C, and F classification yards (within the larger Yard facility) as well as permanent shrinkage of our intermodal capacity, bulk transfer capacity, and ability to take and inspect bulk trains. It would also require us to adjust our existing operations to accommodate the necessary bridge piers, walls, and tunnel entrances of the Tollway's new highway through the Yard. In fact, our ability to reconfigure Bensenville Yard to adapt to changes in the industry and to maximize efficiency is already constrained by permanent physical structures in the Yard. Bridge piers for the I-294 overpass on the eastern side of the Yard restrict us from making changes to the track angles between the bridge piers or from utilizing the eastern part of the Yard differently. The UP viaduct through the center of the Yard likewise restricts flexibility. Such structures balkanize the Yard which creates inefficiencies in operations and prevent us from making changes that would add capacity and increase efficiency. Adding new permanent physical structures for the Tollway would further and permanently compromise our ability to utilize the existing footprint of the Yard, and would permanently restrict our ability to configure trackage and facilities in the future to accommodate changes in the business. The scope of the Tollway's planned take of the Yard would prevent us from meeting current customer demand, as well as future demand.

15. The permanent impacts notwithstanding, the construction phase of the project contemplated by the Tollway would in itself severely interfere with and restrict rail operations in the Yard for years. The impact on the Yard, as well as the larger Chicago Terminal, would be massive.

16. Railroading is a dynamic business that changes constantly. In recent months, for example, our intermodal train volume has increased and now requires classification of intermodal cars (the break-up and building of blocks of intermodal cars) in the west end of the Yard to alleviate congestion and optimize efficiency at the principal intermodal facilities located in the east end of the Yard. This sort of operational change is not unique or an isolated event, but rather occurs from time to time as volumes and traffic mix change.

17. Bensenville Yard is CP's only major yard facility in the Chicago Terminal, the hub of the entire North American rail network. Rail yards cannot be picked up and moved, nor can they be replaced in urban locations. Once that capacity is given up, it is gone forever. The experience of the winter of 2013/2014, and the cascading gridlock which lingered into summer proved to us how fragile the Chicago Terminal is and how limited rail capacity is already. We must preserve our capacity to meet current and future demands for rail service. Limited as they are, the Yard and the Bryn Mawr right of way are in constant use.

18. Currently, the Tollway is demolishing buildings and clearing property adjacent to Bensenville Yard along the Yard's southern perimeter on Franklin Avenue and Green Streets. Attached hereto are a series of photographs that were taken February 10, 2017 which show this demolition activity. (See the photographs marked Exhibit B1-10.) Additionally, the photograph marked Exhibit B-11 shows a large mound of soil constructed by the Tollway east of the Union Pacific viaduct and south of Franklin Ave. The demolition activity and the location of the large mound of dirt are consistent with the Tollway's intended alignment through the Yard, and over the UP viaduct to connect with I-294 to the south. The extent and depth of this construction activity along Green Street (between the street and our property line) indicate a purpose of coming through the Yard rather than a mere improvement of the street. Similarly, the Tollway is actively engaged in construction and site preparation activities at York Road and Thorndale Avenue adjacent to the Bryn Mawr trackage to the north of the Yard.

VERIFICATION

I, Thomas C. Albanese, verify under penalty of perjury that the forgoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this 20 day of February, 2017.

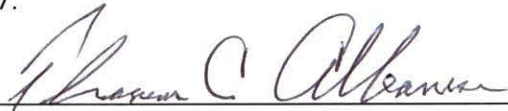

Thomas C. Albanese

EXHIBIT A

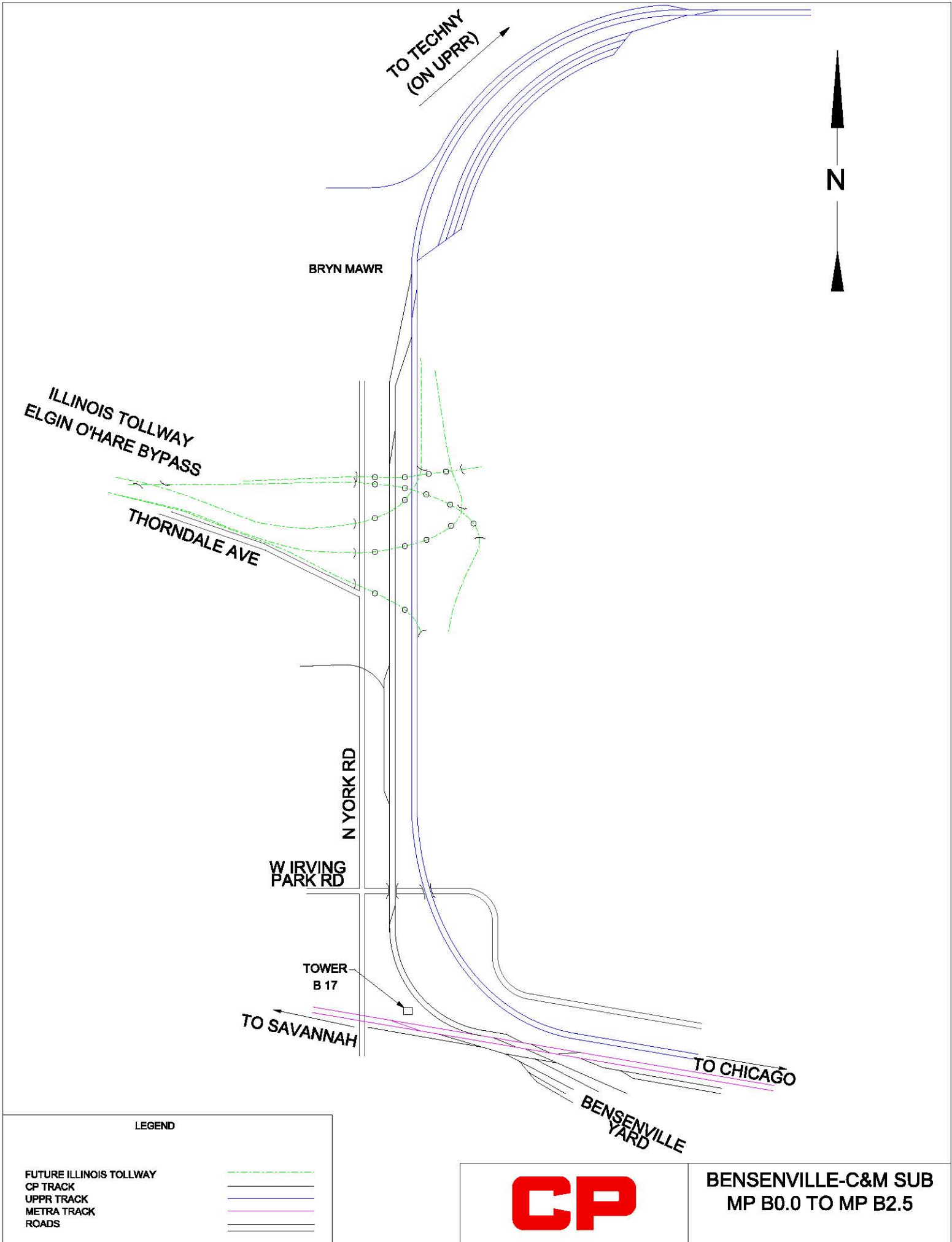


EXHIBIT B



Exhibit B-1



Exhibit B-2



Exhibit B-3

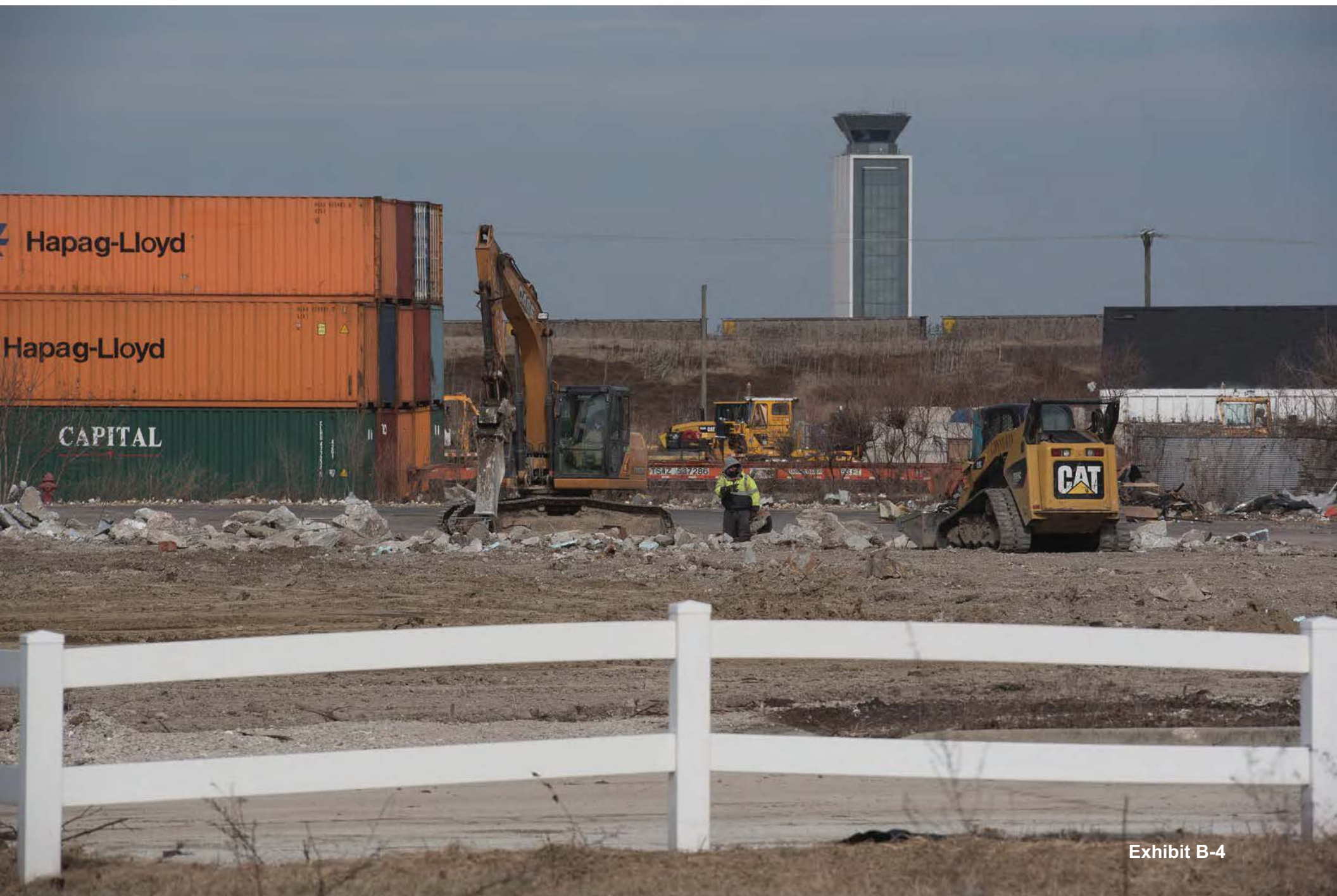


Exhibit B-4



Exhibit B-5



Exhibit B-6



Exhibit B-7



Exhibit B-8



Exhibit B-9



Exhibit B-10



Exhibit B-11

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36075

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – PETITION FOR DECLARATORY ORDER

Verified Statement of Daniel Sabatka, P.E.

1. My name is Daniel Sabatka. I am a licensed Professional Engineer, registered in the State of Minnesota, employed by Soo Line Railroad Company d/b/a Canadian Pacific (“CP”). I have worked for CP in various engineering capacities since 2011, and am currently Senior Director Engineering Works. I hold a civil engineering degree from the University of Minnesota.

2. I am personally familiar with plans and proposals advanced by the Illinois State Toll Highway Authority (the “Tollway”) to construct a new toll road on and over our main line right of way on the Bryn Mawr segment near York Road and Thorndale Avenue in DuPage County, Illinois, and proceeding from there to run under, on, and through our Bensenville Yard (the “Yard”) which lies to the south. As part of my responsibilities, I have served as the CP contact with the Tollway’s engineering and consulting staff for the last four years. I have reviewed and am familiar with engineering plans that have been submitted by the Tollway in the discussions about this proposed project.

3. The purpose of my statement is to explain how the Tollway’s proposed takings both in the Bryn Mawr Right of Way and in Bensenville Yard would prevent or unreasonably interfere with CP using these strategic properties to expand capacity to meet customer demand for rail service. Additionally, I provide background regarding discussions between CP and the Tollway regarding the Tollway’s planned alignment impacting CP’s properties.

CP’s Bryn Mawr Right of Way

4. Currently CP owns and operates double main line tracks within a right of way that

proceeds north from the west end of the Yard past the intersection of York Road and Thorndale Avenue to a junction with the Union Pacific Railroad (UP) at Bryn Mawr (the "Bryn Mawr Right of Way"). (See attached drawing marked Exhibit A.) This operating property is particularly well suited for capacity expansion in order to alleviate congestion and accommodate future growth because of its proximity to Bensenville Yard. It is also one of the only properties available to us for such capacity improvement expansion given traffic flows in the greater Chicago Terminal, our connections to other railroads, and our limited footprint in the Terminal.

5. We have examined various options for capacity growth on the Bryn Mawr Right of Way. At this time, the two most likely options are the addition of two 7,000+ staging/inspection tracks adjacent to our mainline on this Bryn Mawr segment (see attached drawing marked Exhibit B), or an overhead bulk transfer facility. The addition of staging/inspection tracks will allow us to free up track space in the Yard by receiving, inspecting, and departing bulk trains without having to bring those trains into the Yard which is the current practice. This capacity improvement will have the added benefit of maintaining fluidity in the larger Chicago Terminal.

6. As I explain below, the addition of the two staging/inspection tracks and the necessary access roadways between and along the tracks for inspection vehicles and maintenance, together with the existing double main line, will take up all of the available right of way on the Bryn Mawr segment.

7. The Tollway's east-west alignment is over Thorndale Avenue. At this location, centering on Thorndale and extending approximately 700 feet north and south, our useable right of way is 90 feet wide. (See attached drawing marked Exhibit C). Elsewhere along the Bryn Mawr track segment our right of way is 100 feet wide. (Id.)

8. The minimum horizontal clearance requirement for mainline track in Illinois is 8 feet, per the 2016 Manual for Railway Engineering published by the American Railway Engineering and Maintenance of Way Association (AREMA) and shown in the attached Exhibit D. Looking at the plan view

of the staging/inspection and mainline tracks from east to west (right to left), see the drawing attached hereto and marked Exhibit E, we show the eastern aspect of the easternmost main line track with a 10' center. This allows for the minimum 8' clearance and two feet for a retaining wall to accommodate the sloping grade at that location. Next, we show a main to main clearance of 14' on center, which is consistent with our minimum main to main clearance policy (the minimum Illinois standard clearance between main tracks is 13'-6" per AREMA and is shown in Exhibit D). Moving west, we show 24' on center between main 1 and the inspection/staging track, which is minimum 8' for clearance on each track and 8' for a necessary roadway for inspection vehicles to perform operating rule and Safety Appliance Act inspections of trains. Likewise, we show 24' on center between the two inspection/staging tracks to meet the same two minimum 8' track clearance windows and an 8' roadway between those two tracks. Next, we show 18' on center for the western aspect of the westernmost inspection/staging track, 8' for the minimum track clearance and 10' for a roadway. Safety and good practice would require a 10' roadway at this location to allow for a small 2' wide shoulder adjacent to the existing drainage ditch (the 10' grading and slope easement here is an easement held by the County of DuPage). Roadways are required on both sides of the inspection tracks because trains must be inspected on both sides.

9. In both the 90' and the 100' right of way situations all the available property is necessary to accommodate the two inspection/staging tracks, the necessary roadways, the two main line tracks, the necessary minimum clearances, drainage, and safe practice requirements. In the 90' situation we are forced to drain storm water onto the adjacent 10' grading and slope easement or capture it with storm sewer within the proposed roadway. In the 100' situation we would install a drainage ditch in the westerly 10' to capture and convey storm water. In either instance, all of the right of way is required. The Tollway's "temporary" takings and the permanent bridge piers on our right of way would prevent, or severely limit, the inspection/staging track capacity improvement.

10. We are also considering locating an overhead bulk transfer facility on the Bryn Mawr Right of Way to support future growth. This type of operation, which is similar to the existing bulk transfer facility in the west end of the Yard, entails a fixed overhead hopper by which aggregate type commodities are conveyed up and into hopper cars. The vertical height requirements of the overhead hopper structure range from 45 to 80 feet. The Tollway's proposed overpasses, which range from 24'-1 $\frac{3}{8}$ " to 36'-6" feet of clearance above the rail, and concrete bridge piers would preclude placement of this facility beneath the bridge decks due to its height requirements. (See attached drawing marked Exhibit F.)

11. To optimize the capacity and efficiency of an overhead bulk transfer facility, the overhead hopper structure should be centered (from a north south perspective) on a new transload track between existing fixed assets (a crossover to the north and an industrial switch to the south). The proposed overpasses would preclude CP from properly centering the overhead hopper. (See attached drawing marked Exhibit G.)

12. The inspection/staging tracks and bulk transfer facility are but two options for expanding capacity in the Bryn Mawr Right of Way. As CP operations evolve and traffic mix, volumes and flows change, CP is likely to identify other, additional uses for this property. Permanent physical structures such as the proposed bridge piers jutting into the right of way, and the overhead bridge decks restricting the right of way, could interfere with and even preclude CP from using its remaining right of way to meet future needs.

13. The Tollway estimates that it would take five years to construct its overpasses. During this time, the Tollway proposes to occupy portions of CP's right of way "temporarily" for construction activities, storage, and the placement of shoring structures. The Tollway's presence and activities in the Bryn Mawr Right of Way would preclude us from making any capacity improvements or changes on this property.

The Tollway's Insistence on an Alignment Through Bensenville Yard

14. I have reviewed the plans in our files that the Tollway has submitted to CP for the proposed tollway, participated in discussions with the Tollway, and am familiar with correspondence between CP and the Tollway. Every plan or proposal that the Tollway has submitted to the railroad calls for an alignment through the west end of the Yard and for a secondary road, Taft Avenue, running in the middle of the Yard. The acreage involved and roadway alignment for each of these plans remain materially unchanged from 2008 concepts, through the 2012 Environmental Study and the Land Acquisition Plans of 2013 and 2014. To the best of my knowledge, the Tollway has never offered an alternative to the alignment through the Yard, although we have asked them to do so.

15. There have been suggestions that CP agreed previously to accommodate the Tollway's project as currently proposed. That is not true. While CP engaged in discussions with the Tollway about the Tollway's planned project, and even presented its own proposals and ideas, these have been discussions only. CP made no commitments or agreements with the Tollway regarding any particular design or proposal, and CP took steps from the start to ensure that the Tollway would not misconstrue CP's participation in those discussions as such. As early as January 2009, CP wrote it would consider, "[o]n a preliminary basis," several of the Illinois Department of Transportation's (the Tollway's predecessor on the project) proposed options on the condition that:

construction results in zero impact to railway operations and all CP property impacted is replaced, relocated, or otherwise compensated for.

(See attached letter, dated January 23, 2009 marked Exhibit H.)

16. Similarly, in April of 2010, CP wrote:

This letter shall in no way represent an agreement between I-DOT and CP. All information provided is for the purpose of providing a negotiation platform with which to begin. Further, any concepts agreed upon during preliminary discussions that are deemed reasonable by CP's representative shall be recommended to railroad management and shall be entirely dependent upon railroad management's potential approval.

(See attached letter, dated April 21, 2010 marked Exhibit I). In addition, we have repeatedly expressed serious concerns regarding the impact of the Tollway's plans on our ability to meet current and future demand for rail service. In 2012, the Tollway presented CP with a draft Memorandum of Understanding. No agreement on a Memorandum of Understanding or otherwise was ever reached, however, because the impacts to rail operations and rail capacity were too great.

VERIFICATION

I, Daniel Sabatka, verify under penalty of perjury that the forgoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this 23 day of February, 2017.

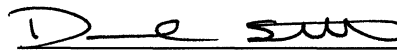

Daniel Sabatka, P.E.

EXHIBIT A

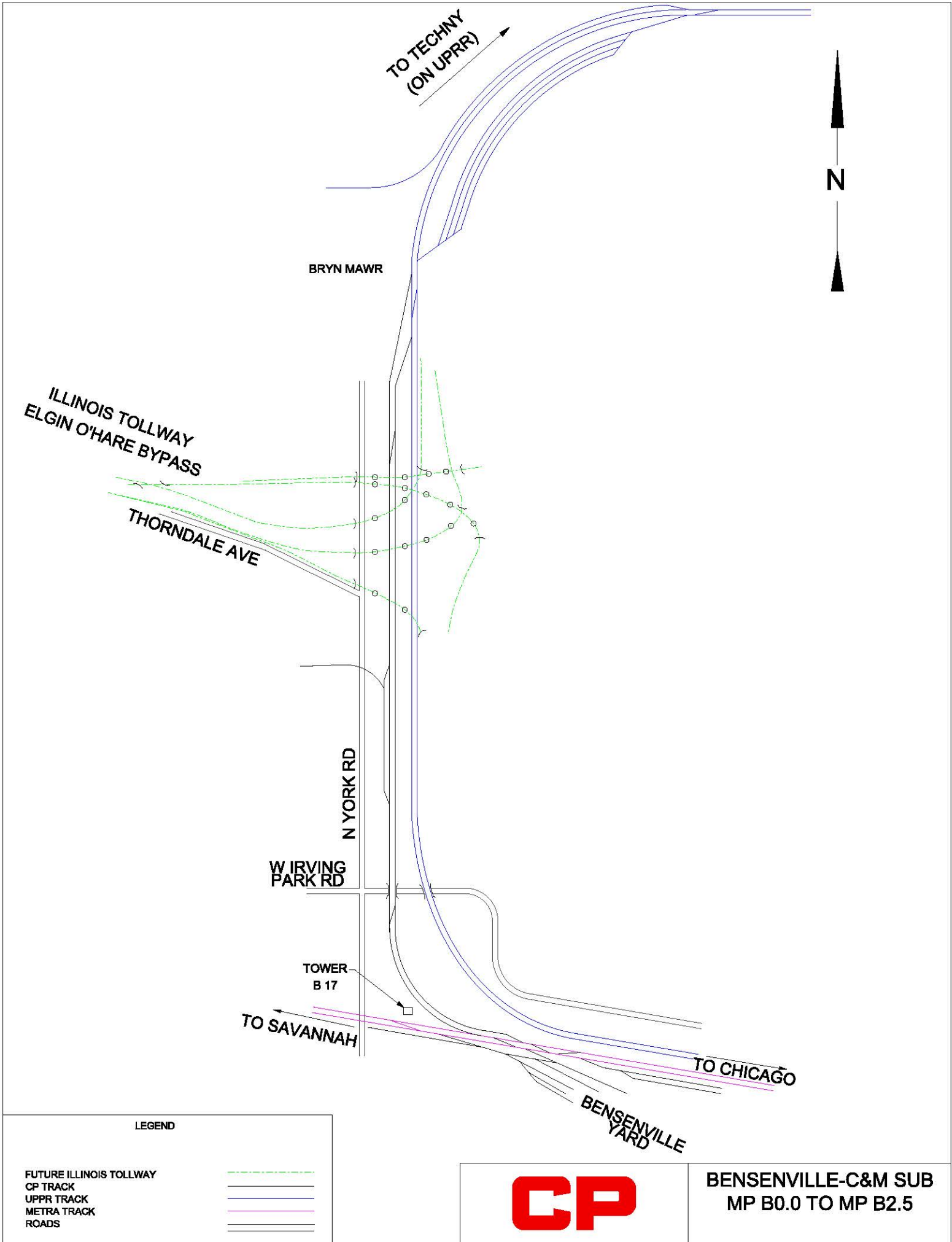


EXHIBIT B

- LEGEND
- EXISTING RIGHT OF WAY
 - EXISTING TRACK
 - EXISTING UPRR MAIN TRACK
 - EXISTING ABUTMENT/WINGWALL
 - REMOVAL TRACK
 - PROPOSED CP TRACK
 - PROPOSED RETAINING WALL
 - PROPOSED ROAD REALIGNMENT
 - PROPOSED RIGHT OF WAY

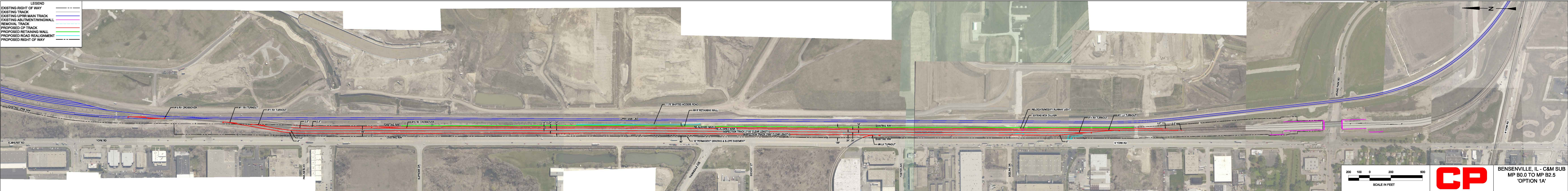


EXHIBIT C

TOPO LEGEND

- HYDRANT
- GUY WIRE
- GUARD POST
- HANDHOLE (HH)
- LIGHT POLE (LP)
- MANHOLE (MH)
- POWER POLE (PP)
- SIGN
- WATER VALVE
- TELEPHONE SPLICE BOX
- DECIDUOUS TREE
- EVERGREEN TREE
- INLET
- FLARED END SECTION
- TRAFFIC SIGNAL (TS)
- BACK OF CURB
- EDGE OF PAVEMENT
- AERIAL LINES

PARCEL PLAT

ELGIN - O'HARE EXPRESSWAY
NORTHWEST QUARTER OF SECTION 12, TWP. 40 NORTH, RANGE 11 EAST, 3RD P.M.
DUPAGE COUNTY, ILLINOIS
PIN: 03-12-509-001

PARCEL	AREA		TYPE OF TAKE			
	ACRES	SQ.FT.	FEE	PERM. ESMT.	TEMP. ESMT.	PURPOSE
TOTAL HOLDING	4.267 ±	185,885 ±				
WA-2D-12-191.01T	0.062 ±	2,687 ±			X	CONSTR.
WA-2D-12-191.01P	0.422 ±	18,365 ±		X		BRIDGE/RAMP
WA-2D-12-191.02T	0.804 ±	35,039 ±			X	CONSTR.
WA-2D-12-191.02P	0.333 ±	14,525 ±		X		BRIDGE/RAMP
WA-2D-12-191.03T	0.786 ±	34,258 ±			X	CONSTR.
WA-2D-12-191.03P	0.902 ±	39,269 ±		X		BRIDGE/RAMP
WA-2D-12-191.04T	0.878 ±	38,242 ±			X	CONSTR.
WA-2D-12-191.04P	0.080 ±	3,500 ±		X		BRIDGE/RAMP
REMAINDER	4.267 ±	185,885 ±				

LEGEND



SECTION CORNER



QUARTER SECTION CORNER



CENTER OF SECTION

- EXISTING CENTERLINE
- EXISTING PUBLIC RIGHT OF WAY LINE
- EXISTING ISTHA PERMANENT EASEMENT LINE
- PROPOSED CENTERLINE
- PROPOSED RIGHT OF WAY AND ACCESS CONTROL LINE
- PROPOSED ISTHA TEMPORARY EASEMENT LINE
- PROPOSED ISTHA PERMANENT EASEMENT LINE
- SECTION LINE
- QUARTER SECTION LINE
- QUARTER QUARTER SECTION LINE
- PLATTED LOT LINE
- PROPERTY (DEED) LINE
- APPARENT PROPERTY LINE
- FENCE LINE
- MEASURED DIMENSION
- CALCULATED DIMENSION
- RECORD DATA
- FOUND IRON PIPE (IP) OR IRON ROD (IR)
- SET 3/8 INCH IRON ROD WITH RED "ISTHA R.O.W." CAP
- FOUND PERMANENT SURVEY MARKER
- FOUND CONCRETE RIGHT-OF-WAY MARKER
- CUT CROSS FOUND OR SET

SAME OWNERSHIP

EXISTING ISTHA PARCEL NUMBER

PROPOSED ISTHA PARCEL NUMBER

STATE OF ILLINOIS)

COUNTY OF COOK)

THIS IS TO CERTIFY THAT I, REBECCA Y. POPECK, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HAVE SURVEYED THE PARCEL PLAT SHOWN HEREON, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PLAT CORRECTLY REPRESENTS SAID SURVEY, THAT ALL MONUMENTS FOUND AND ESTABLISHED ARE OF PERMANENT QUALITY AND OCCUPY THE POSITIONS SHOWN THEREON AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. MADE FOR THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY.

FIELD WORK COMPLETED ON DECEMBER 18, 2014.

DATED AT ROSEMONT, ILLINOIS THIS 27th DAY OF MARCH, 2015.

Rebecca Y. Popeck
REBECCA Y. POPECK
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-3642
LICENSE EXPIRATION DATE 11/30/2016

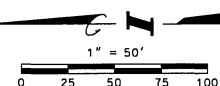


THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

ALL DIMENSIONS ARE MEASURED UNLESS OTHERWISE SPECIFIED

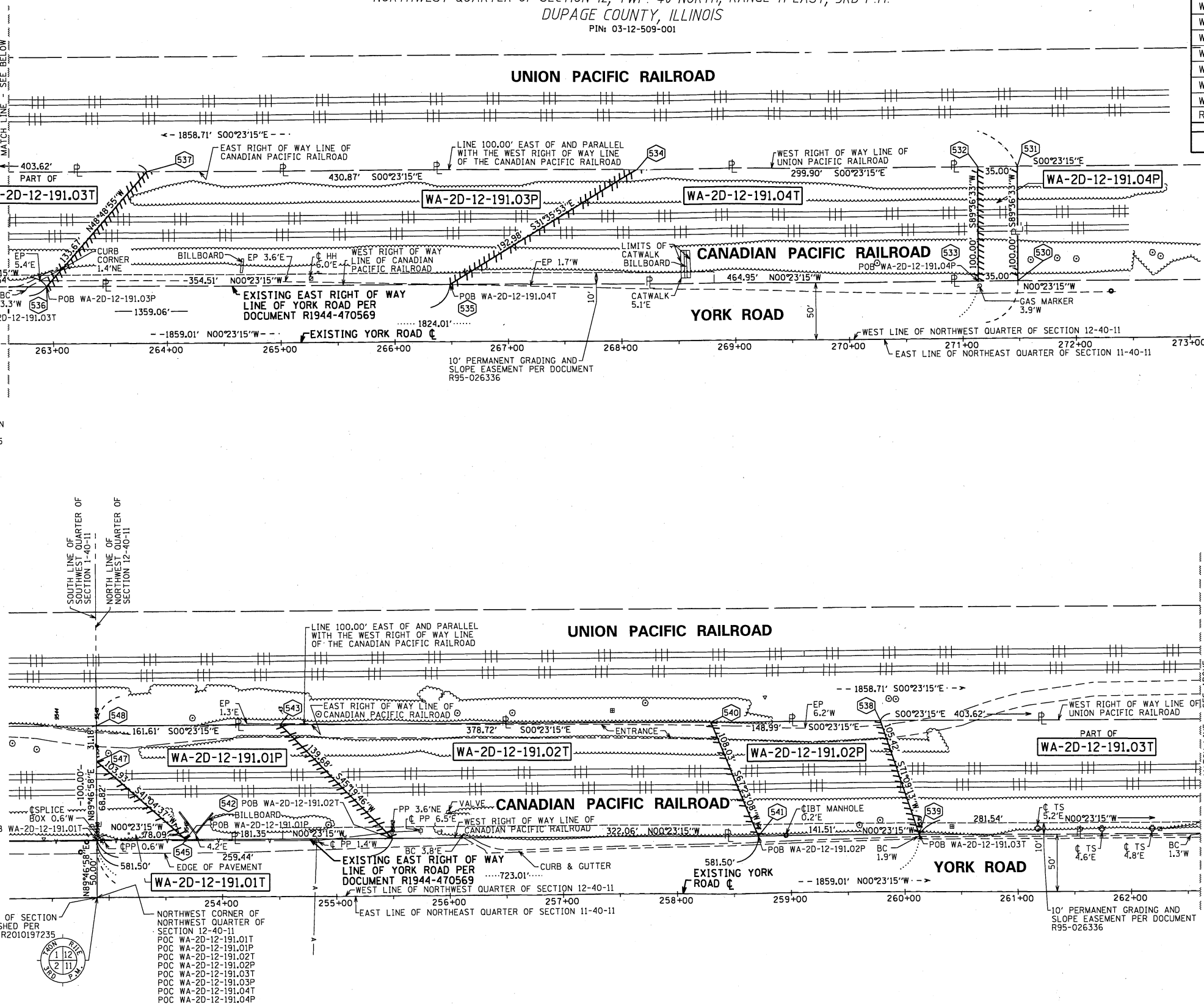
BEARINGS AND DISTANCES SHOWN HEREON REFERENCE THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983. ADJUSTMENT - 2007 (CORS). ALL MEASURED AND CALCULATED VALUES ARE "GRID" NOT "GROUND". TO OBTAIN GROUND DISTANCES, DIVIDE GRID DISTANCES SHOWN, BY THE COMBINATION FACTOR OF 0.99998917358.

AREAS SHOWN ON THIS PLAT ARE GROUND. TO CONVERT AN AREA SHOWN ON THIS PLAT TO AN EQUIVALENT AREA AS MEASURED USING THE GRID BASED DISTANCES, MULTIPLY THE GROUND AREA BY THE SQUARE OF THE COMBINATION FACTOR (CF²)

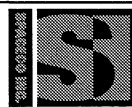


STATION/OFFSET TABLE
(WEST BYPASS CENTERLINE)

Point	Station	Offset	
530	253+51.27	50.20	R
531	253+51.27	150.20	R
532	253+86.27	150.20	R
533	253+86.27	50.20	R
534	256+86.16	150.22	R
535	258+51.22	50.23	R
536	262+05.73	50.25	R
537	261+17.03	150.24	R
538	265+20.65	150.27	R
539	264+87.27	50.27	R
540	266+69.64	150.28	R
541	266+28.78	50.27	R
542	269+50.84	50.29	R
543	270+48.36	150.30	R
545	271+32.19	50.30	R
546	272+10.28	50.31	R
547	272+10.07	119.13	R
548	272+09.97	150.31	R



CAD DRAFTING BY: CCG
CALCULATIONS BY: RYP
CHECKED BY: RYP
APPROVED BY: RYP



CONSULTING ENGINEERS
SITE DEVELOPMENT ENGINEERS
LAND SURVEYORS
9575 W. Higgins Road, Suite 700,
Rosemont, Illinois 60018
Phone: (847) 696-4040 Fax: (847) 696-4065
Illinois Professional Design Firm No. 184-001157



ILLINOIS STATE TOLL HIGHWAY AUTHORITY
2700 OGDEN AVENUE
DOWNERS GROVE, ILLINOIS 60515

REVISIONS		
NO.	DATE	DESCRIPTION
1		
2		
3		

ELGIN - O'HARE EXPRESSWAY
STA. 253+51 TO STA. 272+10
DUPAGE COUNTY, ILLINOIS
PARCEL WA-2D-12-191
OWNER: SGO LINE RAILROAD COMPANY, A MINNESOTA CORPORATION A
SUBSIDIARY OF, AND DOING BUSINESS AS CANADIAN PACIFIC RAILWAY

CONTRACT NO.
I-12-4058
DRAWING NO.
1 OF 2

EXHIBIT D

Table 28-3-3. Legal Clearance Requirements by State (English Units)

States	Regulation Reference		Track Centers							
			Main Tracks	Any Two Subsidiary Tracks	Adjacent Subsidiary Track to Any Main Track	Ladder Track Adjacent to Any Parallel Track	Two Adjacent Parallel Ladder Tracks	Lead, Repair and Caboose Tracks	Team Tracks in Pairs	Unloading Tracks at Platforms
1	2	3	4	5	6	7	8	9	10	11
ALABAMA	23CFR 646B									
ALASKA	Note 1									
ARIZONA	R14-5-110	06-30-92	14-0	14-0	15-0	20-0	20-0	14-0	13-0	13-0
ARKANSAS	CASE R-1012	01-01-56	14-0	14-0	14-0	17-0	20-0	14-0	13-0	13-0
CALIFORNIA	G.O. 26-D	01-25-77	14-0	14-0	15-0	20-0	20-0	14-0	13-0	13-0
CANADA	SRRC	05-14-92	13-0	13-6	14-0	15-0	18-0	13-6	12-0	12-0
COLORADO	DEC. 55621	01-10-61	14-0	14-0	15-0	17-0	20-0	14-0	13-0	13-0
CONNECTICUT	TITLE 13b	10-03-79	13-0	13-0	15-0	18-0	19-0	14-0	13-0	13-0
DELAWARE	Note 22	03-22-83								
DIST COLUMBIA	TITLE 24	Oct. 83	14-0	14-0	15-0	18-0	19-0	14-0	13-0	13-0
FLORIDA	CHPTR. 14-57	01-27-81	13-6	13-6	13-6	19-0	19-0	13-6	13-0	13-0
GEORGIA	Note 1	07-01-89								
IDAHO	31.71.01	07-01-93	14-0	14-0	15-0	20-0	20-0	14-0	13-0	13-0
ILLINOIS	TITLE 92 I.A.C.	10-01-87	13-6 (Note15)	13-6 (Note15)	15-0	17-0 (Note16)	19-0 (Note17)		13-6	13-6
INDIANA	STATUTES	07-01-89								
IOWA	Note 1	09-15-82								
KANSAS	KSA 66-141	05-01-81	14-0	14-0	14-0	17-0	20-0	14-0	13-0	13-0
KENTUCKY	277.240	01-01-42								
LOUISIANA	Note 1									
MAINE	CHPTR. 501	05-15-79								
MARYLAND	COMAR 09.12.91.04	02-14-86	14-0	13-6	15-0	18-0	19-0	13-6	13-0	13-0
MASSACHUSETTS	CHPTR. 160	04-22-71	13-0	13-0	13-0	17-0	17-0	17-0	13-0	13-0
MICHIGAN	PA 254.3399 402 1993	1993	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0
MINNESOTA	219.46	01-01-80	14-0	14-0	14-0	17-0	19-0	14-0	14-0	14-0
MISSISSIPPI	Note 1	09-30-01								
MISSOURI	4CSR 265.8.060	06-30-86	14-0	14-0	14-0	17-0	19-0	14-0	14-0	13-6

Montana through Wyoming, see Page 28-3-34 through 28-3-37

Alabama through Missouri continued on next page

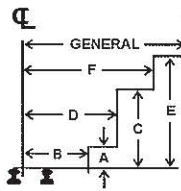
Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Vertical						Horizontal		
	General	Thru Bridges	Highway Bridges	Tunnels	Building Doors	In Buildings	General	Thru Bridges	Highway Bridges
1	12	13	14	15	16	17	18	19	20
ALABAMA			23-0					9-0	9-0
ALASKA									
ARIZONA	22-0	22-0	23-0	22-0	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
ARKANSAS	22-0	22-0	22-0	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
CALIFORNIA	22-6	22-6	22-6	22-6	18-0	18-0 (Note 4)	8-6	8-0	8-6
CANADA	22-0	22-0	22-0	22-0	22-0	22-0	8-4¼	8-0	8-4¼
COLORADO	22-6	22-0	22-6	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
CONNECTICUT	22-6	22-6	22-6	22-6	22-6	22-6	8-6	8-0	8-6
DELAWARE									
DIST COLUMBIA	22-0	22-0	22-0	22-0	18-0 (Note 3)	18-0 (Note 3)	8-6	8-0	8-6
FLORIDA	22-0	22-0 (Note 2)	22-0	22-0	17-0	17-0	8-0 (Note 21)	8-0 (Note 2)	8-0
GEORGIA									
IDAHO	22-6	22-6	22-6	22-6	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
ILLINOIS	23-0	23-0	23-0	23-0 (Note 2)	H		8-0	8-0	8-0
INDIANA	22-0	22-0	22-0	22-0	22-0	22-0	8-0	8-0	8-0
IOWA									
KANSAS	22-6	22-0	22-6	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
KENTUCKY			22-0						
LOUISIANA									
MAINE	22-0	22-0 (Note 2)	22-0	22-0 (Note 2)	17-0 (Note 3)	17-0 (Note 3)	8-0	8-0	8-0
MARYLAND	22-0	22-0	22-0	22-0	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
MASSACHUSETTS	22-6	22-6 (Note 2)	22-6	22-6 (Note 2)	22-6	22-6	8-6	8-6 (Note 2)	8-6
MICHIGAN	22-6	E	E	22-6 (Note 2)	22-6	22-6	9-0 (Note 25)	E	E
MINNESOTA	22-0	22-0	22-0	22-0	22-0 (Note 3)	22-0	8-6	8-6	8-6
MISSISSIPPI									
MISSOURI	22-0	22-0 (Note 2)	22-0	22-0	22-0	22-0	8-6 (Note 3)	8-0 (Note 2)	8-6 (Note 2)

Montana through Wyoming, see Page 28-3-34 through 28-3-37

Alabama through Missouri continued on next page

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Horizontal (Continued)								
	Tunnels	Building Doors	In Buildings	Platforms					
									
				A	B	C	D	E	F
1	21	22	23	24	25	26	27	28	29
ALABAMA									
ALASKA									
ARIZONA	8-0	8-6 (Note 3)	8-6	0-8	4-8			4-0	7-3 (Note 10)
ARKANSAS	8-0	7-0 (Note 3,5)	7-0 (Note 6)	0-8	5-0	4-0	5-9 (Note 7)	4-0	8-0
CALIFORNIA	8-0	8-6	8-6	0-8	4-8			4-0	7-6 (Note 10)
CANADA	8-0	8-0	8-0	0-5	3-10			4-0	6-0
COLORADO	8-0	7-0	8-0 (Note 6)	0-8	5-0	4-0	5-9 (Note 7)	4-0	8-6
CONNECTICUT	8-0	8-0 (Note 3)	8-0	0-8	5-2			4-0	8-6 (Note 8, 10)
DELAWARE									
DIST COLUMBIA	8-0	8-0 (Note 3)	8-0 (Note 3)	0-8	4-8	4-0	5-7 (Note 7,23)		
FLORIDA	8-0 (Note 2)	8-0	8-0	0-8	4-8	CFH	5-9		
GEORGIA									
IDAHO	8-0	8-6 (Note 3)	8-6 (Note 3)	0-8	4-8	4-0	7-3	4-6	8-6
ILLINOIS	8-0 (Note 2)	7-0 (Note 3)	8-0	0-4	4-6	0-8	5-1 (Note 9)	CFH	6-2
INDIANA	8-0	8-0	8-0						
IOWA									
KANSAS	8-0	7-0 (Note 19)	7-0 (Note 20)	0-8	5-0	4-0	6-2 (Note 7)	4-0	8-6
KENTUCKY									
LOUISIANA									
MAINE	8-0 (Note 2)	7-0 (Note 3)	8-0	0-12	5-4	4-0	5-9 (Note 7)		(Note 10, 24)
MARYLAND	8-0	8-0 (Note 3)	8-0	0-8	5-1	4-0	5-7 (Note 9)	4-0	8-6 (Note 8, 10)
MASSACHUSETTS	8-6 (Note 2)	8-6					5-9 (Note 7)		
MICHIGAN	8-6 (Note 2)	8-6	8-6						
MINNESOTA	8-6	8-6 (Note 3)	8-6						
MISSISSIPPI									
MISSOURI	8-6	8-6 (Note 3)	8-6 (Note 3)	0-4	4-6	0-8	5-1 (Note 9)	CFH	5-9

Montana through Wyoming, see Page 28-3-34 through 28-3-37 Alabama through Missouri continued on next page

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Horizontal (Continued)											
	Signals					Poles	Mail Cranes	Icing Docks	Ore And Coal Docks	Cattle Chutes	Wires	Pipelines
	High	Low, Between Tracks		Switch Boxes, Etc.								
		Height	Clearance	Height	Clearance							
1	30	31	32	33	34	35	36	37	38	39	40	41
ALABAMA												
ALASKA												
ARIZONA	8-6	3-0	6-0	0-5	3-0	8-6	E	7-8	8-6	8-6		
ARKANSAS	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6		
CALIFORNIA	8-6	3-0	6-0	0-4	3-0	8-6	6-5 (Note 11)	7-8	8-6	8-6	22-06 8-06	22-06 8-06
CANADA	8-4¼	4-0	5-9	0-5	3-10	8-4¼	8-4¼	8-4¼	8-4¼	8-4¼	22-0	22-0
COLORADO	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6		
CONNECTICUT	8-6	3-0	6-0	0-4	3-0	8-6	6-5 (Note 11)	8-6	8-0	8-6		
DELAWARE												
DIST COLUMBIA	8-6	3-0	6-0	0-4	3-0	10-0	8-6	8-6	8-6	8-6		
FLORIDA	8-0	3-0	6-0	0-4	3-0	10-0	6-5 (Note 11)	7-8	8-0	8-0		
GEORGIA												
IDAHO	8-0	3-0	6-0	0-4	3-0	10-0	8-6	6-8 (Note 12)	8-6	8-6	Note 24	22-06 8-06
ILLINOIS	8-6	2-10	8-0			9-0	8-0	8-0	8-0	8-0		
INDIANA	8-0					8-0	8-0	8-0	8-0	8-0	8-0	8-0
IOWA												
KANSAS	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6		
KENTUCKY												
LOUISIANA												
MAINE	8-0	3-2	5-5	0-4	3-0	8-0	6-1 (Note 11)	6-0	6-0	8-0	(Note 24)	
MARYLAND	8-6	3-0	6-0	0-4	3-0	8-6	6-5 (Note 11)	7-8	E	8-6		
MASSACHUSETTS	8-6	3-0	6-6			8-6	8-6	8-6	8-6	8-6		
MICHIGAN	E	E	E	E	E	8-6	E	E	E	E		
MINNESOTA	8-6					8-6	8-6	8-6	8-6	8-6		
MISSISSIPPI												
MISSOURI	8-6 (Note 2)	4-0	5-0 to 8-0	0-3	4-2	8-6 (Note 2)	6-5 (Note 11)	8-6	8-6	5-9	(Note 24)	

Montana through Wyoming, see Page 28-3-34 through 28-3-37

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Regulation Reference		Track Centers							
			Main Tracks	Any Two Subsidiary Tracks	Adjacent Subsidiary Track to Any Main Track	Ladder Track Adjacent to Any Parallel Track	Two Adjacent Parallel Ladder Tracks	Lead, Repair and Caboose Tracks	Team Tracks in Pairs	Unloading Tracks at Platforms
1	2	3	4	5	6	7	8	9	10	11
MONTANA	ARM.38.4.401	10-27-78	14-0	14-0	15-0	20-0	20-0	14-0	13-0	13-0
NEBRASKA	REGULATIONS	02-11-97	14-0	14-0	15-0	17-0	20-0	14-0	13-0	13-0
NEVADA	G.O. No. 11 & 13	12-17-01	14-0	14-0	15-0	20-0	20-0	14-0	11-6	13-0
NEW HAMPSHIRE	RSA 373:39	1957	14-0	14-0	15-0 C	18-0	18-0	14-0 (Note 18)	13-0	13-0
NEW JERSEY	NJDOT	03-19-84								
NEW MEXICO	ORDER 2202	1953	14-0	14-0	15-0	17-0	20-0	14-0	13-0	13-0
NEW YORK	NYS Law 51-a	12-19-86	13-6	13-6	15-0	18-0	19-0	13-6	13-6	13-6
NORTH CAROLINA	Note 1									
NORTH DAKOTA	SECT. 49-10.1-13	01-01-81								
OHIO	ORDER 4963.42-43	01-02-63	14-0	14-0	15-0	15-0	18-0	14-0		
OKLAHOMA	OAC 165:32-5-3	12-03-56	14-0	14-0	14-0	17-0	20-0	14-0	13-0	13-0
OREGON	ORDER 83-313	06-09-83	15-0	14-0	15-0	20-0	20-0	14-0	14-0	14-0
PENNSYLVANIA	TITLE 52.33C	05-01-75	13-6	13-6	15-0	18-0	19-0	13-6	13-6	
RHODE ISLAND	DOCK 608	11-14-55	13-0	14-0	15-0	18-0	19-0	14-0	13-0	14-0
SOUTH CAROLINA	DMO 189	02-28-89								
SOUTH DAKOTA	ORDER F-2465	07-02-57								
TENNESSEE	RULE 1220-3-1-.12	02-01-70	14-0	13-0	14-0	18-0	18-0	14-0	13-0	13-0
TEXAS	CSA 6559.A-F	07-01-83								
UTAH	G.O. 66	08-31-53	14-0	14-0	15-0	17-0	18-0	14-0	11-6	11-6
VERMONT	TITLE 30	03-01-61								
VIRGINIA	Note 1									
WASHINGTON	CHPTR. 480-60	10-09-69	14-0	14-0	15-0	20-0	20-0	14-0	13-0	13-0
WEST VIRGINIA	G.O. No. 189.3	12-20-83	14-0	14-0	15-0	15-0	18-0	14-0	13-0	13-0
WISCONSIN	SECT 192.31 & 192.53	12-31-93	14-0	14-0	14-0	14-0	14-0	14-0	14-0	14-0
WYOMING	CHPTR. XIII	09-04-79	14-0	14-0	15-0	17-0	20-0	14-0	13-0	13-0

Alabama through Missouri, see Page 28-3-30 through 28-3-33

Montana through Wyoming continued on next page

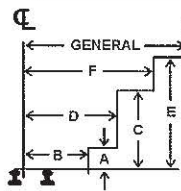
Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Vertical						Horizontal		
	General	Thru Bridges	Highway Bridges	Tunnels	Building Doors	In Buildings	General	Thru Bridges	Highway Bridges
1	12	13	14	15	16	17	18	19	20
MONTANA	22-6	22-6	22-6	22-6	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
NEBRASKA	22-6	22-6	23-0	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
NEVADA	22-0	22-0	23-0	22-0	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
NEW HAMPSHIRE	22-0	22-0	22-0	22-0	17-0 (Note 3)	17-0	8-0 (Note 14)	8-0 (Note 14)	8-0 (Note 14)
NEW JERSEY		23-0	23-0	23-0					
NEW MEXICO	22-6	22-0	22-6	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
NEW YORK	22-0	22-0	22-0	22-0	18-0 (Note 3)	18-0	8-6	8-0	8-6
NORTH CAROLINA									
NORTH DAKOTA	21-0	21-0 (Note 2)	21-0 (Note 2)	21-0 (Note 2)	21-0	21-0	8-0 (Note 2)	8-0 (Note 2)	8-0 (Note 2)
OHIO	21-0	21-0 (Note 2)	21-0	21-0 (Note 2)	21-0	21-0	8-0	8-0 (Note 2)	8-0
OKLAHOMA	23-0	23-0	23-0	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
OREGON	20-9	20-9	20-9	20-9	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
PENNSYLVANIA	22-0	22-0	22-0	22-0	18-0 (Note 3)	18-0	12-0	8-0	12-0
RHODE ISLAND	18-0	18-0	18-0	18-0	18-0 (Note 3)	18-0	8-6	8-0	8-6
SOUTH CAROLINA		22-6	23-0					8-0	25-0
SOUTH DAKOTA	22-6	22-6	22-6 (Note 2)	22-6	17-0	22-6	8-6	8-0	8-0 (Note 2)
TENNESSEE	22-0	22-0	22-0	22-0	17-0	17-0 (Note 4)	8-0	8-0	8-0
TEXAS	22-0	22-0	22-0	22-0 (Note 2)	22-0 (Note 3)	22-0	8-6	7-6	8-6
UTAH	22-6	22-6	23-0	22-6	18-0 (Note 3)	18-0	8-6	8-0	8-6
VERMONT		22-0	22-0				8-0	8-0	8-0
VIRGINIA									
WASHINGTON	22-6	22-6	22-6	22-6	18-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6
WEST VIRGINIA	22-0	22-0	22-0	22-0	22-0	18-0	8-0	8-0	8-0
WISCONSIN	23-0	23-0	23-0	23-0	23-0	23-0	8-6	E	8-6
WYOMING	22-6	22-0	23-6	23-0	17-0 (Note 3)	18-0 (Note 4)	8-6	8-0	8-6

Alabama through Missouri, see Page 28-3-30 through 28-3-33

Montana through Wyoming continued on next page

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

States	Horizontal (Continued)								
	Tunnels	Building Doors	In Buildings	Platforms					
									
1	21	22	23	A	B	C	D	E	F
24	25	26	27	28	29				
MONTANA	8-0	8-6 (Note 3)	8-6	0-8	4-8	4-0	5-9 (Note 7)	4-0	8-6 (Note 10)
NEBRASKA	8-0	7-0 (Note 3)	7-0 (Note 6)	0-8	5-0	4-0	5-9 (Note 6)	4-0	8-6
NEVADA	8-0	8-6 (Note 3)	8-6	0-8	4-8	4-0	7-8	4-6	8-0
NEW HAMPSHIRE	8-0 (Note 14)	7-0 (Note 3)	8-0	0-12	5-4	4-0	5-9 (Note 7)		(Note 10)
NEW JERSEY									
NEW MEXICO	8-0	7-0 (Note 5)	7-0 (Note 6)	0-8	4-8	4-0	5-9 (Note 7)	4-0	8-0
NEW YORK	8-0	8-0 (Note 3)	8-0	0-8	5-1	4-0	5-7 (Note 9)	4-0	8-6 (Note 8, 10)
NORTH CAROLINA									
NORTH DAKOTA	8-0 (Note 2)	8-0	8-0					4-0	8-0
OHIO	8-0 (Note 2)	8-0	8-0						
OKLAHOMA	9-0	7-0 (Note 3, 5)	7-0 (Note 6)	0-8	5-0	4-0	5-9	4-0	8-0
OREGON	8-0	8-6	8-6	0-8	4-8			4-0	7-3 (Note 10)
PENNSYLVANIA	8-0	8-0 (Note 3)	8-0	0-8	5-1	4-0	5-7 (Note 9)	4-0	8-6 (Note 8, 10)
RHODE ISLAND	8-0	8-0 (Note 3)	8-0	0-8	5-2			4-0	8-6 (Note 8, 10)
SOUTH CAROLINA									
SOUTH DAKOTA	8-6	7-0	8-6	0-8	4-8	CFH	5-9 (Note 7)		
TENNESSEE	8-0	8-0	8-0	0-8	4-8	4-0	5-9	4-0	7-6
TEXAS	8-6 (Note 2)	8-6 (Note 3)	8-6	0-12	4-6				
UTAH	8-0	8-6 (Note 3)	8-6	0-8	4-8	1-9	5-8 (Note 9)	4-0	7-3 (Note 10)
VERMONT	8-0	8-0	8-0	0-8	8-0				
VIRGINIA									
WASHINGTON	8-0	8-6 (Note 3)	8-6	0-8	4-8 (Note 7)	4-0	7-3 (Note 7)	4-6	8-6 (Note 10)
WEST VIRGINIA	8-0	8-0	8-0	0-8	5-0	4-0	6-4		
WISCONSIN	8-6 (Note 2)	8-6	8-6	0-4 0-8	4-6 5-1	1-9	6-0 (Note 9)	5-0	6-4
WYOMING	8-0	7-0 (Note 3, 5)	7-0 (Note 6)	0-8	5-0	4-0	5-9 (Note 7)	4-0	8-6

Alabama through Missouri, see Page 28-3-30 through 28-3-33

Montana through Wyoming continued on next page

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

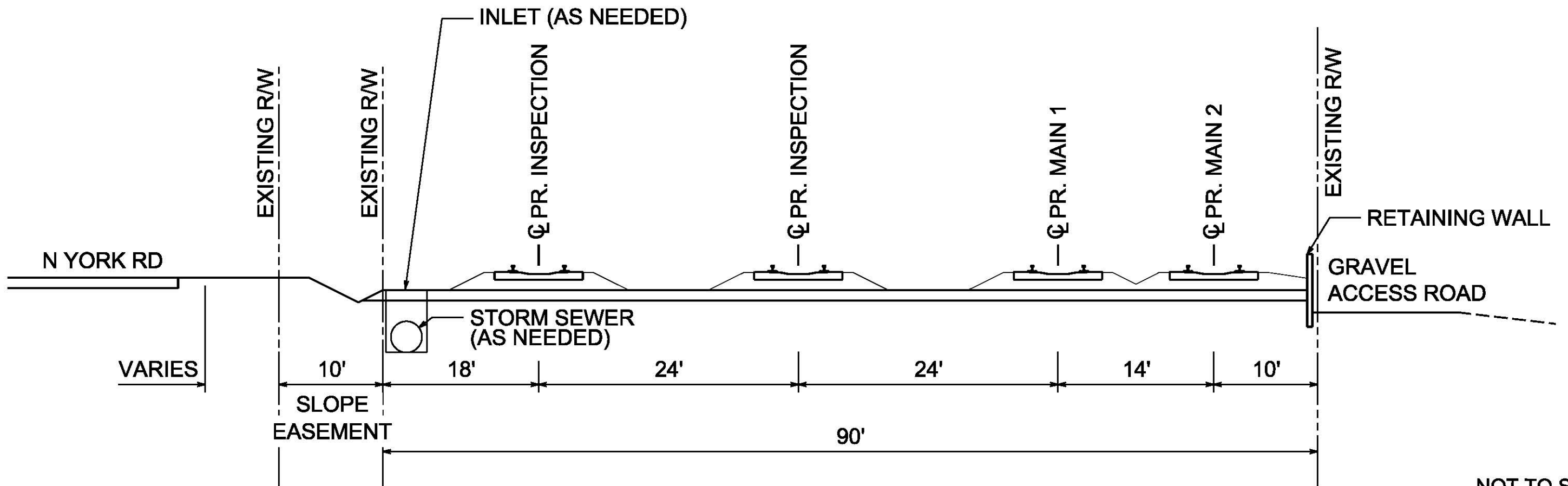
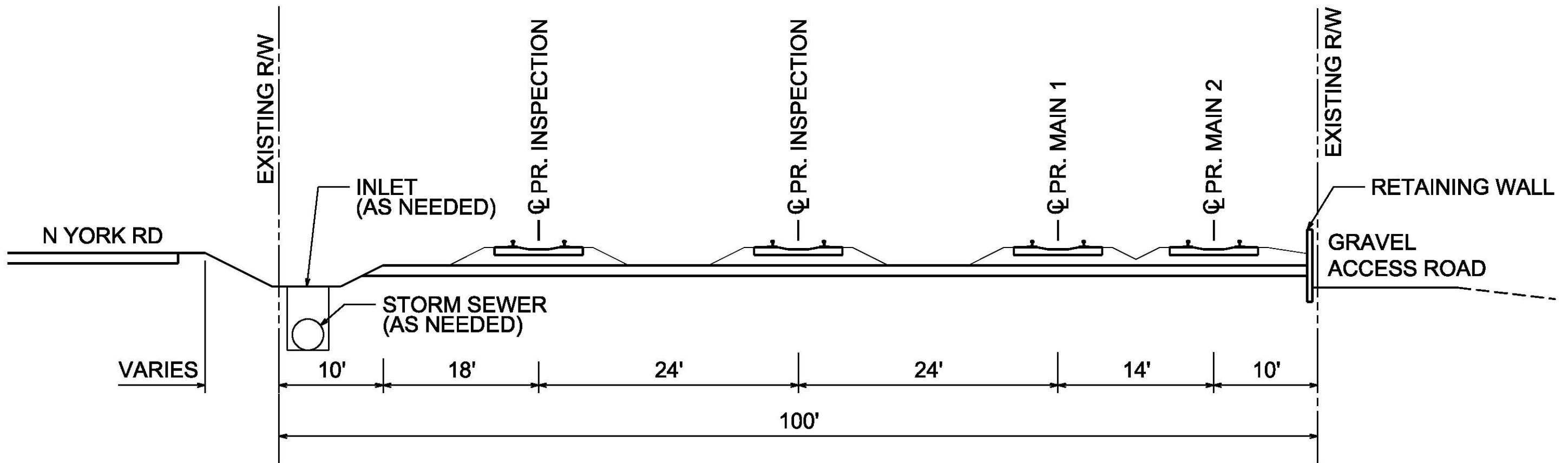
States	Horizontal (Continued)											
	Signals					Poles	Mail Cranes	Icing Docks	Ore And Coal Docks	Cattle Chutes	Wires	Pipelines
	High	Low, Between Tracks		Switch Boxes, Etc.								
		Height	Clearance	Height	Clearance							
1	30	31	32	33	34	35	36	37	38	39	40	41
MONTANA	8-0	3-0	6-0	0-4	3-0	8-6	8-6	5-9	8-6	8-0	Note 24	22-06 8-06
NEBRASKA	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6	Note 24	22-6
NEVADA	8-6	3-0	6-0	0-4	3-0	8-6	E	8-6	8-6	8-6		22-0
NEW HAMPSHIRE	8-6	3-2	5-5	0-4	3-0	8-6	6-1 (Note 11)	6-0	6-0	8-6		
NEW JERSEY												
NEW MEXICO	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6	22-06 8-06 (Note 24)	22-06 8-06
NEW YORK	8-6	3-0	6-0	0-4	3-0	8-6	6-5 (Note 11)	8-0	E	8-0		
NORTH CAROLINA												
NORTH DAKOTA	8-0					8-0	8-0	8-0	8-0	8-0		
OHIO	8-0					8-0	8-0	8-0	8-0	8-0		
OKLAHOMA	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6		
OREGON	8-6	3-0	6-0	0-4	3-0	8-6	8-6	7-8	8-6	8-6	20-09	20-09
PENNSYLVANIA	12-0	3-0	6-0	0-4	3-0	12-0	6-5 (Note 11)	8-0	E	8-6		
RHODE ISLAND	8-6	3-0	6-0	0-4	3-0	8-6	6-5 (Note 11)	8-6	8-0	8-6		
SOUTH CAROLINA												
SOUTH DAKOTA	8-0			0-4	3-0	8-6	8-6	8-6	8-6	8-6	Note 24	
TENNESSEE	8-0		6-6	0-4	3-0	8-0	6-5 (Note 11)	7-0	8-0	8-0		
TEXAS	8-6	2-6	5-6	0-6	4-0	8-6	E	E	8-6	8-6	22-0	22-0
UTAH	8-6	3-0	6-0	0-4	3-0	8-6	E	7-8	8-6	8-6		22-6
VERMONT								E				
VIRGINIA												
WASHINGTON	8-0	3-0	6-0	0-4	3-0	8-6	8-6	7-3 (Note 7)	8-6	8-0		22-6 8-6
WEST VIRGINIA	8-0	3-0	6-0	0-4	3-0	10-0	6-5	7-8	8-0	8-0		
WISCONSIN	8-6	E	E	E	E	12-0	E	8-6	8-6	8-6		
WYOMING	8-6	3-0	6-0	0-4	3-0	8-6	8-6	6-8 (Note 12)	8-6	8-6	Note 24	22-6

Alabama through Missouri, see Page 28-3-30 through 28-3-33

Table 28-3-3. Legal Clearance Requirements by State (English Units) (Continued)

THIS CHART FOR INFORMATION ONLY. NO LIABILITY CAN BE ASSUMED - CONSULT INDIVIDUAL STATE REGULATIONS FOR MORE DETAILED INFORMATION.	
Architects, Contractors, etc., should check with railroad involved.	
Dimensions:	• shown in feet and inches. • are for tangent track - most laws specify increases for curved and superelevated track. • Vertical - measured from top of rail. • Horizontal - measured from centerline of track. • apply to new construction, some reconstruction, and some extensions. • some can be varied upon approval of application by governing body. • are based on maximum car size for Arizona, California, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, Washington, and West Virginia. • all are minimum except columns 24, 26, 28, 31, and 33 which are maximum.
Hawaii omitted - No common carrier railroads.	
C = Conditional - See specific regulation	
CFH = Car Floor Height	
E = Exempt	
H = Height of Cars Governs	
Columns:	2 - Shows basic regulation. 3 - Shows effective date or date of latest amendment. 7 and 8 - Apply to hand- and mechanically-operated switches except as noted. 12 and 18 - Prevails for all items not otherwise provided for. 13 and 19 - Bridges supporting tracks. 14 and 20 - Bridges spanning tracks. 24 and 25 - Passenger platforms. 26 and 27 - Freight platforms on side tracks except as noted. 28 and 29 - Freight platforms on side tracks / stepped platforms are not generally allowed. 35 - Other than trolley contact poles. 36 - To center of stand except as noted. 37 - Applies to both supports and platforms except as noted.
Note 1:	No current regulation. Check with railroad involved.
Note 2:	Lesser clearances not permitted in quadrants.
Note 3:	Engine houses, shop buildings, tipples, and loading facilities permitted lesser dimensions.
Note 4:	Only if tracks end within buildings.
Note 5:	May be reduced to 5-9 if 8-3 (8-6 for Wyoming) provided on opposite side.
Note 6:	May be reduced to 5-9 if 8-0 (8-6 for Nebraska and Wyoming) provided on opposite side.
Note 7:	Only if 8-0 (7-3 for Montana and Wyoming; 8-6 for District of Columbia, Washington, Massachusetts and South Dakota) provided on opposite side.
Note 8:	May be less on one side if full general (Column 18) provided on opposite side.
Note 9:	Passenger platforms only.
Note 10:	May be 8-0 at 4-6 for refrigerator car platforms only.
Note 11:	To ends of arms in operating position.
Note 12:	For platforms at car eave height - supports to be 8-0 (8-6 for Texas & Idaho).
Note 13:	For main tracks - all others 22-0.
Note 14:	8-6 for main and passing tracks.
Note 15:	For freight tracks - can be 13-0 for passenger tracks.
Note 16:	For hand-operated switches - may be 15-0 for mechanically-operated switches.
Note 17:	For hand-operated switches - may be 17-0 for mechanically-operated switches.
Note 18:	Parallel lead tracks: 18-0.
Note 19:	May be reduced to 6-2 if 8-3 provided on opposite side.
Note 20:	May be reduced to 6-2 if 8-0 provided on opposite side.
Note 21:	Must have additional side clearance of one-inch per 30 minutes of degree of curvature.
Note 22:	State regulations conform to AREMA Standards. See Chapter 14, Yards and Terminals and Chapter 28, Clearances for specifics.
Note 23:	Only if 8-6 clearance and 14-0 track centers provided on opposite side.
Note 24:	State regulations conform to National Electrical Safety Code.
Note 25:	Applies for up to 400 foot radius, 9 feet required for over 400 foot radius.

EXHIBIT E



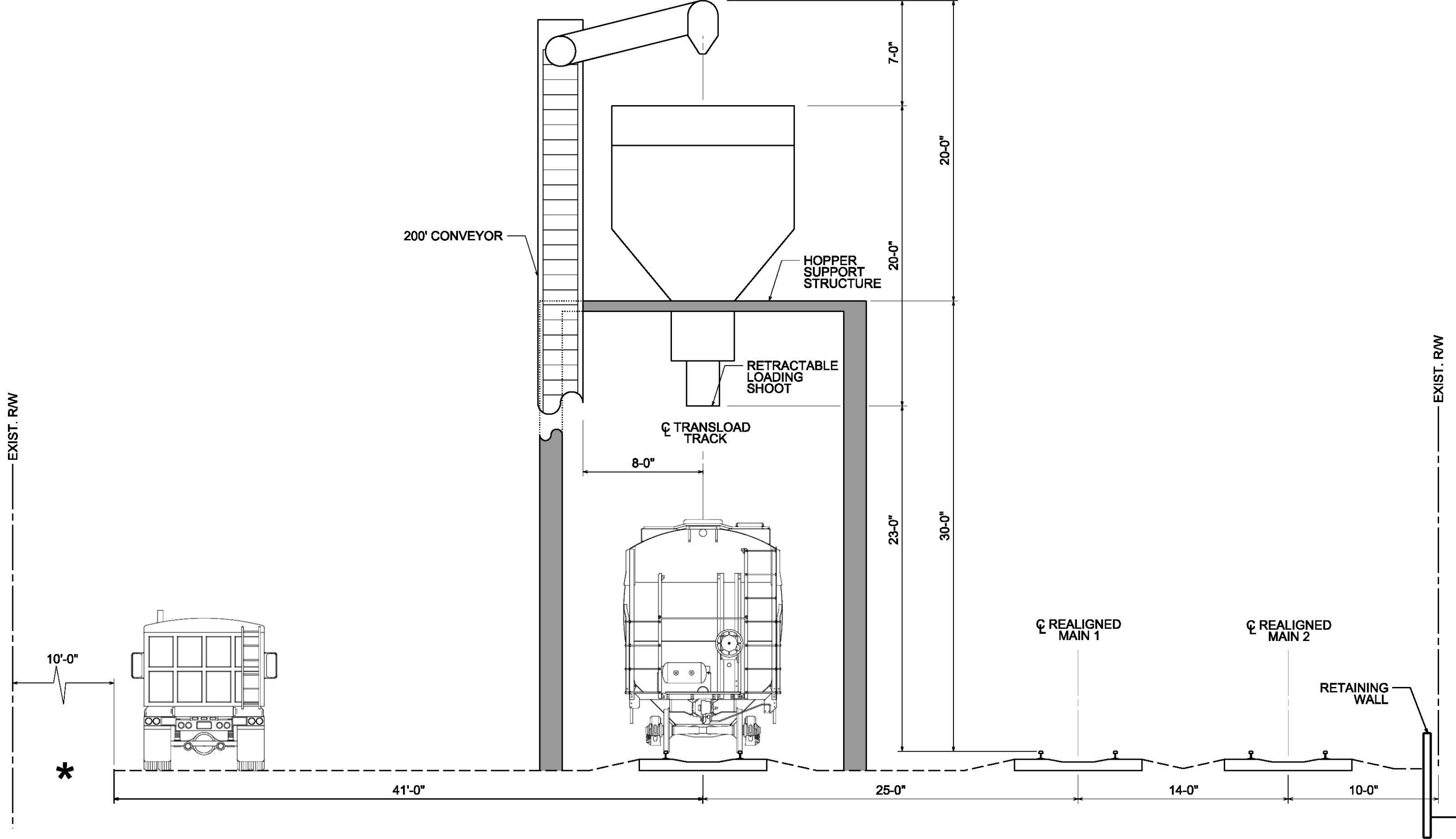
NOT TO SCALE

OPTION 1
TYPICAL SECTION
LOOKING NORTH



BENSENVILLE, IL - C&M SUB
MP B0.0 TO MP B2.5

EXHIBIT F



* SEE TYPICAL SECTION FOR GRADING

	MOBILE TRANSLOAD CROSS SECTION A-A
---	---------------------------------------

EXHIBIT G

- LEGEND
- EXISTING RIGHT OF WAY
 - EXISTING TRACK
 - EXISTING UPRR MAIN TRACK
 - REMOVAL TRACK
 - PROPOSED CP TRACK
 - PROPOSED RETAINING WALL
 - PROPOSED ROAD REALIGNMENT
 - TRANSLOAD EQUIPMENT

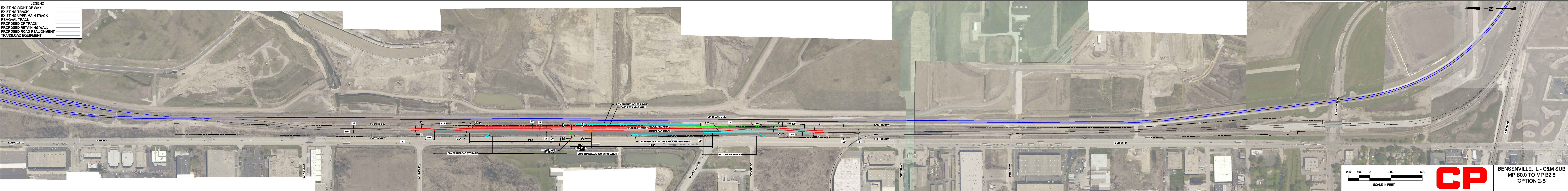


EXHIBIT H



**CANADIAN
PACIFIC
RAILWAY**

January 23rd 2009

Larry Martin
CH2M Hill
8501 W. Higgins Rd.
Chicago IL 60631

Mr. Martin,

Attached are revised minutes from the meeting of December 10th, 2008. While Canadian Pacific (CP) is in general agreement with the revised minutes, nothing contained herein shall be construed as explicit endorsement or acceptance of any of the proposed alignments or associated work.

As currently proposed, Alignments E, F, and G are unacceptable to CP. These alignments would result in severe disruption to railway operations and are therefore not acceptable to CP.

Proposed Options A, B, C, and D may be considered by CP provided construction results in zero impact to railway operations and all CP property impacted is replaced, relocated, or otherwise compensated for. Any consideration of these options must be reviewed by all departments within CP and may include additional requirements not otherwise noted.

On a preliminary basis, CP encourages IDOT to pursue Options A-D. When IDOT has selected a preferred alignment the following individuals should be contacted to develop formal agreements:

David S. Drach
Director, Real Estate Marketing, U.S.
Canadian Pacific
501 Marquette Ave. S., Suite 1525
Minneapolis, MN 55402
612-904-6139

James H. Krieger
Engineer, Public Works
Canadian Pacific
501 Marquette Ave. S., Ste 1510
Minneapolis, MN 55402
612-904-5994

If you have any questions or comments please contact me.

Sincerely,

Nate Schutte, P.E. (MN)
Project Engineer
Canadian Pacific
501 Marquette Ave. S., Suite 1510
Minneapolis, MN 55402
612-904-5945

ENC: CP Notes - 081210_MM_CPRRConfMtg_D.doc

EXHIBIT I



April 21, 2010

Mr. Ron Krall
Illinois Department of Transportation
Division of Highways/ Region 1 / District 1
201 West Center Court
Schaumburg, IL 60196-1096

Re: Elgin O'Hare – West Bypass; Response to letter dated September 21, 2009

Dear Mr. Kroll:

This is in reply to a letter from Diane O'Keefe dated September 21, 2009, a copy of which is attached. Canadian Pacific ("CP") looks forward to working closely with the I-DOT to proceed in a mutually beneficial manner for the implementation of the EO-WB project.

In consideration of potentially displaced improvements as a result of the proposed EO-WB project, CP requests the following accommodations (ref attached Exhibit A):

- 1) I-DOT shall include remnant parcel in taking
- 2) Turntable relocation
 - a. I-DOT shall replace existing turntable in like-kind
 - b. I-DOT shall install low-profile turntable (approx location)
- 3) I-DOT shall relocate mechanic shop facilities in like-kind (work / storage space & employee stations)
- 4) I-DOT shall reimburse CP for all environmental monitoring equipment removed for project purposes (detailed locations: Inset Item 4)
- 5) I-DOT shall design / build a single-span overpass at the junction of the easterly and westerly Bensenville Yard
- 6) Land swap
 - a. I-DOT shall purchase property shown on Exhibit A as Item 6.a.
 - b. Item 6.a. property shall be granted to CP along with already planned purchased property shown on Exhibit A as Item 6.b.

- c. Property granted to CP (Item 6.a & 6.b) shall be swapped (acre for acre) for currently CP owned, EO-WB required property
- 7) Remnant parcel (see Item 6) shall be level and clear of all improvements
- 8) I-DOT shall compensate CP for any remaining acreage required for the EO-WB project not swapped (reference Item 6) in addition to property located in the southwesterly portion of easterly Bensenville Yard (Item 8)
- 9) Compensation referenced in Item 8 shall be determined by a third-party appraiser of CP's choosing at I-DOT's cost
- 10) I-DOT shall relocate access to the westerly Bensenville Yard to a location determined through cooperation with the CP Engineering Department
- 11) I-DOT shall release CP of all environmental liability

This letter shall in no way represent an agreement between I-DOT and CP. All information provided is for the purpose of providing a negotiation platform with which to begin. Further, any concepts agreed upon during preliminary discussions that are deemed reasonable by CP's representative shall be recommended to railroad management and shall be entirely dependent upon railroad management's potential approval.

If you would like to arrange a conference call or in-person meeting to discuss any or all of the points addressed, feel free to contact me at your earliest opportunity.

I look forward to your response,

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles D. Weise', with a long horizontal line extending to the right.

Charles D. Weise
Area Manager, Real Estate Marketing
(612) 904-6143
e-mail: charles_weise@cpr.ca

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36075

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – PETITION FOR
DECLARATORY ORDER**

Verified Statement of Thomas J. Phelan, P.E.

I. Introduction

i. I, Thomas J. Phelan, P.E., am the undersigned sponsor and author of this verified statement submitted in support of the Reply Statement of Soo Line Railroad Company d/b/a Canadian Pacific in the above-captioned proceeding before the Surface Transportation Board. I am a licensed professional engineer, and the President of the consulting firm, BHX Engineering & Planning, LLC. I have more than 25 years of experience in the management and performance of traffic and transportation consulting services in the U.S. and Canada. I have managed a variety of highway, transit, freight facility and land development projects, and specialize in regional transportation planning and industrial development. I earned my Master of Science and Bachelor of Science in Civil Engineering at the New Jersey Institute of Technology, and am a member of the American Society of Civil Engineers and the Institute of Transportation Engineers.

ii. My areas of expertise include traffic engineering and design, transportation planning, freight planning and operations, and industrial land use planning and truck/rail access for freight terminals and industrial sites. Over my career I have been responsible for leading roadway design and traffic operations aspects of transportation projects for clients including the

Federal Highway Administration, state departments of transportation, municipal and county governments, metropolitan planning organizations, and private real estate developers. A copy of my current curriculum vitae is attached hereto as **Exhibit A**.

iii. The purpose of this statement is to provide my preliminary assessment of the various documents prepared by the Illinois Tollway and its consultant team for the mainline roadway alignment and related interchange improvements of the West Bypass element of the Elgin O'Hare-West Bypass project west of O'Hare Airport in Chicago, Illinois. The focus of this report is the feasibility and design aspects of the Tollway's proposed approach to constructing the West Bypass along the Canadian Pacific (CP) alignment west of O'Hare Airport and north from I-294 in the south, but without completing the Bypass along the alignment under CP's Bensenville Yard.

iv. The Elgin O'Hare-West Bypass project has been subject to extensive study in recent years, culminating with the publication of the Elgin O'Hare-West Bypass (EOWB) Study Tier Two Final Environmental Impact Statement (FEIS) in 2012. The Preferred Alternative identified in the FEIS includes two major new roadway alignments: (a) an extension of the existing Elgin-O'Hare Expressway eastward to the western border of O'Hare Airport (this roadway will hereafter be referred to as "Route IL-390" or "IL-390" in this document); and (b) a new O'Hare West Bypass that would connect I-90 in the north to I-294 in the south, with a system interchange with IL-390 along the western border of O'Hare Airport (this roadway will be referred to as "the Bypass" in this document).

v. My preliminary review of the relevant items contained in the Petition and the associated documents is contained in the numbered paragraphs below. A summary of my initial findings is contained in the final section of this document.

II. Discussion

A. Tollway STB Petition and Ongoing Design/Construction Activities

1. The Tollway's STB Petition contains a series of statements of fact related to the ongoing design and proposed construction of the highway improvements incorporated in the overall Elgin-O'Hare West Bypass (EOWB) initiative.¹

2. In its STB Petition, the Tollway outlines its intention to construct a new roadway segment and interchanges west of O'Hare Airport from the IL-390/Bypass southward to a termination point at Irving Park Road (IL-19).

3. The proposed interchange between the Bypass and IL-390 depicted in Figure 5 of the Tollway's STB petition (the "Western Access Interchange") is designed primarily to serve vehicular traffic movements between the two connecting roadways in all directions (i.e., eastbound IL-390 to the northbound and southbound Bypass, the northbound Bypass to westbound IL-390, and the southbound Bypass to westbound IL-390).

4. The directional movements between IL-390 and the Bypass shown in Figure 5 are consistent with a three-leg directional interchange under current roadway design standards.² This basic interchange layout is intended to serve two limited-access roadways, with an uninterrupted flow of traffic at high speeds.

5. The interchange depicted in Figure 5 also shows additional ramp connections to/from York Road and future connections to a "Future West Terminal" at O'Hare Airport.

¹ The acronym "EOWB" will be used in this document to describe the overall Elgin-O'Hare West Bypass initiative and its accompanying transportation improvements. In various documents related to this work, the acronym "EOWA" (Elgin-O'Hare West Access) is used to describe the overall initiative or various elements of the program involving improvements west of O'Hare Airport.

² *A Policy on Geometric Design of Highways and Streets*, 6th Edition (2011), American Association of State Highway and Transportation Officials (AASHTO).

6. Exhibit D of the Tollway's Petition includes a number of design drawings of the proposed IL-390/Bypass interchange and accompanying bridge structures, prepared by Stanley Consultants and/or Globetrotters Engineering Corporation and/or URS on behalf of the Tollway in 2016. A full engineering review of these design drawings for technical accuracy and conformity with applicable engineering and design standards is beyond the scope of this statement. For the purpose of this analysis, it is assumed that all of the design standards related to the interchange configuration, roadway geometry, curve data, cross slope transitions, and other design parameters will be accepted at face value.

7. Among other things, Exhibit D contains varying levels of detail in the layout and design of four key proposed bridge structures that would carry ramps at the proposed IL-390/Bypass interchange. These include the following:

- Northbound Bypass to westbound IL-390 – Bridge #450388E (FRA), #1653 (Tollway), #022-9507 (IDOT)
- Southbound Bypass to westbound IL-390 – Bridge #450398L (FRA), #1650 (Tollway), #022-9506 (IDOT)
- Eastbound IL-390 to northbound Bypass – Bridge #450390F (FRA), #1652 (Tollway), #022-9508 (IDOT)
- Eastbound IL-390 to southbound Bypass – Bridge #450392U (FRA), #1651 (Tollway), #022-9505 (IDOT)

8. Of particular note in these design drawings is the “Highway Classification” information provided for two of the proposed interchange ramps. For the bridge described above as Tollway #1651, these specifications indicate that the ramp is designated as “Functional Class: Non-Interstate Expressway Ramp,” with a design speed of 50 miles per hour and a posted speed of 45 miles per hour.³ For the bridge described above as Tollway #1652, these specifications indicate that the ramp is designated as “Functional Class: Non-Interstate Expressway Ramp,”

³ Tollway STB Petition, Exhibit D, Page 150.

with a design speed of 45 miles per hour and a posted speed of 40 miles per hour.⁴ For both of these bridges, these design parameters are consistent with the directional interchange configuration described previously in Paragraph 4.

9. The design drawings included in Exhibit D indicate that they are part of a larger set of drawings that numbers 281 sheets. The information provided by the Tollway in Exhibit D does not include all 281 of these sheets.

10. In the Petition, it is indicated that “the Tollway divided the \$4.3 billion project into ten separate phases”⁵ (as shown in Figure 6 of the Petition). It is understood that the “\$4.3 billion project” refers to the full range of improvements as documented in the EOWB EIS, but the title for Figure 6 shows “EOWA Projects and Status.” It is unclear if the distinctions between “projects” and “phases” in this document is meaningful.

11. The Western Access Interchange and short segments of the Bypass to the north and south are shown as “Phase 4” in the aforementioned Figure 6. The southern leg of this segment terminates at Irving Park Road (IL-19).

12. The segment of the Bypass south of IL-19 is shown in Figure 6 as “Phase 9” of the EOWB action, with anticipated construction in 2020-2025.

13. In its petition, the Tollway states that it has “only recently awarded engineering contracts to advance the conceptual layout plans [for Phase 9] to the 30% design stage, in part to determine feasibility.”⁶ The Tollway also states that construction on Phase 9 would begin in 2020 at the earliest “[i]f the Tollway were to determine Phase 9 is viable from an economic,

⁴ Tollway STB Petition, Exhibit D, Page 216.

⁵ Tollway STB Petition, Page 14.

⁶ Tollway STB Petition, Pages 16-17.

engineering and political standpoint.”⁷ The Tollway also describes Phase 9 as “aspirational”⁸ in its Petition.

14. A schematic layout for a section of the Bypass was obtained from the “Elgin O’Hare Western Access (EOWA) Project Overview” page on the Tollway’s website for the project. This layout is attached hereto as **Exhibit B**. Notable features of the layout shown here are as follows:

- The Bypass configuration shown is a four-lane cross section (two lanes per direction), with an auxiliary lane in each direction along the short segment between the I-390/Bypass interchange and the Bypass/IL-19 interchange to accommodate weaving movements.
- Exhibit B shows a continuous alignment of limited-access roadway along the entire length of the Bypass route from the area of Elmhurst Road (west of O’Hare Airport) to a new connection with the Tri-State Tollway (I-294) to the south. This alignment and access control is consistent with the EOWB initiative that has been studied extensively and documented in the Tier One and Tier Two EIS reports.
- The Bypass/IL-19 interchange configuration in this figure shows IL-19 passing beneath the Bypass. This is consistent with the general intersecting configuration for these two roadways shown in the EOWB Tier One and Tier Two EIS documents.
- The configuration shown for the Bypass/IL-19 interchange is a partial diamond interchange that accommodates the following movements: (a) southbound Bypass to eastbound and westbound IL-19 via an exit ramp in the northwest quadrant of the interchange; (b) westbound IL-19 to northbound Bypass via an entrance ramp in the northeast quadrant; and (c) eastbound IL-19 to northbound Bypass via a loop ramp in the southeast quadrant. This configuration appears to be a modification of the single-point diamond interchange shown in EOWB Tier One and Tier Two EIS documents, and does not match the partial diamond interchange shown in the Interim Construction Plan (ICP) described later in this report.
- Exhibit B shows a gantry system for a toll plaza on the north side of the Bypass/IL-19 interchange, covering the Bypass mainline roadway and the ramps to and from IL-19. A similar toll plaza is shown to the south at the

⁷ Tollway STB Petition, Page 17.

⁸ Tollway STB Petition, Page 16.

connection between the Bypass and IL-294, including the proposed ramps to and from Franklin Avenue.

15. The layout shown in Exhibit B does not indicate any interim configuration for the Bypass or any of its interchanges under the Phase 4 or Phase 9 scenarios described previously.

B. Elgin-O'Hare West Bypass (EOWB) Tier Two Record of Decision

16. Exhibit I of the Tollway's Petition is the Record of Decision (ROD) for the EOWB Tier Two EIS, with the FHWA and FAA listed as the issuing agencies. The information in the ROD is consistent with the description of the EOWB action documented below in the "Elgin-O'Hare West Bypass (EOWB) Tier Two FEIS" section of this document. Items of note in the ROD include the following:

- The West Bypass Corridor is shown in its entirety in Figure 1 of Exhibit I (attached hereto as **Exhibit C**), with a system interchange at the junction of IL-390 and the West Bypass and a full local access interchange at Irving Park Road (IL-19). The term "full local access" indicates that all directions of travel would be accommodated at this interchange (northbound Bypass to eastbound and westbound IL-19, eastbound IL-19 to northbound and southbound Bypass, etc.).
- The ROD describes the cross-section of the West Bypass corridor as having "two basic lanes in each direction with added auxiliary lanes in high traffic areas."⁹ This configuration reflects the cross-section documented in the proposed geometry for the Preferred Alternative in the Tier Two EIS.¹⁰
- Route IL-19 is one of the arterial roadways where capacity improvements are proposed in the vicinity of the proposed Bypass and at the roadway's nearby intersections with Wise Road and Barrington Road.

⁹ USDOT/FHWA and USDOT/FAA, *Elgin O'Hare-West Bypass, Cook and DuPage Counties, Illinois: Tier Two Record of Decision*, December 2012, Page 6.

¹⁰ State of Illinois Department of Transportation, "Tier Two Preferred Alternative Geometry (Final Submittal)" 7/16/2012.

17. The ROD lists a number of benefits of the Build Alternative from the Tier Two Draft EIS.¹¹ From the standpoint of roadway operations, some of these are as follows:

- “The proposed Build Alternative would produce the desired travel characteristics – more traffic on access-controlled facilities and less traffic on the secondary roads.”
- “The proposed improvements decrease travel (i.e., vehicle miles of travel [VMT]) on primary and secondary roads by almost 18 percent and shift longer trips to access controlled facilities – the right type of trip on the right type of facility. These traffic shifts reduce travel delays by 24 percent on the primary and secondary arterial roadway system, increasing the overall travel efficiency.”
- “Similar to secondary roads, collector roads would also experience a substantial reduction in vehicles hours of delay of 21.6 percent.”
- According to Table 1 (Comparison of Percent of Daily Congested Vehicle Miles of Travel for No-Build and Build Alternatives) of the ROD, the Build Alternative would be projected to see 60.4% of the total vehicle-miles traveled (VMT) in the study area operating under congested conditions in 2040, compared to 63.4% of the total VMT under the No-Build Alternative.

18. A full review of the EOWB Tier Two documentation and related Record of Decision for technical accuracy and compliance with all legal and engineering standards is beyond the scope of this statement. For the purpose of this analysis, all of the underlying assumptions, analytical processes and findings outlined in the EIS documentation and the Record of Decision related to the preferred alternative (the Tier Two Selected Alternative, which is the Build Alternative as described in the Tier Two Final EIS) will be accepted as reasonable and accurate as they are published in these documents.

¹¹ The Build Alternative in the Tier Two EIS is a refined version of the Selected Alternative (Alternative 203) from the Tier One EIS. The evaluation and environmental review process for the EOWB followed a standard approach in which the proposed Build Alternative is compared to a No-Build Alternative to document changes or improvements according to the metrics used in the Purpose and Need statement (reducing congestion, improving travel efficiency, improving access to O’Hare Airport from the west, and improving modal opportunities/connections) and for the proposed action to measure the feasibility and impacts of the Build Alternative.

19. As indicated in the second bullet under Paragraph 17, one of the primary benefits of the EOWB Build Alternative documented in the ROD is an overall improvement in mobility throughout the study area – which would be accomplished primarily through the diversion of longer vehicle trips in the area from arterials and secondary roads to the new limited-access roadways (IL-390 and the Bypass). These benefits relate directly to two of the four needs identified in the EIS development process, as documented below in Paragraph 24: (a) improve regional and local travel, and (b) improve overall travel efficiency.

C. Elgin-O’Hare West Bypass (EOWB) Tier Two FEIS

20. The Elgin O’Hare-West Bypass (EOWB) Study Tier Two Final Environmental Impact Statement (FEIS) was published in October 2012. The four agencies that submitted the EIS included the USDOT Federal Highway Administration, the USDOT Federal Aviation Administration, the Illinois Department of Transportation and the Illinois State Tollway Authority.

21. The methodology for measuring transportation performance and mobility benefits for the alternatives studied in the Tier Two FEIS is similar to the process documented in the Tier One FEIS. One notable exception is that the 2030 future horizon year in the Tier One process was extended to 2040 for Tier Two. This was done to ensure consistency between the Tier Two FEIS and the GO TO 2040 Comprehensive Regional Plan for the Chicago region that was adopted in 2010 after the Tier One FEIS was completed.

22. The proposed action includes three elements: roadway, transit and bicycle/pedestrian improvements. The Illinois State Tollway Authority is designated in the EIS as the implementing agency for the design and construction of the proposed roadway improvements.

23. The proposed roadway improvements would be developed as a toll road that is comprised of nearly 25 miles of mainline improvements (14 miles of existing roadways and 11 miles of new roadways). The roadway improvements include four system interchanges (connecting limited-access roadways)¹², 16 service interchanges (connecting a limited-access roadway to an arterial or local roadway), and some improvements to arterial roadways at service interchanges to facilitate traffic movements to and from the mainline.

24. The proposed action would address four needs identified in the EIS development process. These include: (a) improve regional and local travel; (b) improve overall travel efficiency; (c) improve western access to O'Hare Airport; and (d) improve modal options and connectivity.

25. The Tier Two Final EIS contains the refinement of the Tier One alternative selection process, and includes additional engineering detail and operational considerations (freeway vs. tollway, additional arterial improvements, etc.) for the Selected Alternative along with a construction sequencing plan. There were nine separate alternate facility types proposed, with each alternate containing a different combination of freeway and tollway segments for the new proposed roadway alignments.

26. Financial considerations were of paramount importance in the EOWB Tier Two screening process. According to the FEIS, "financial viability was the primary factor used for the initial screening of the alternates, and in ultimately selecting a facility type as a feature of the Build Alternative."¹³

27. Five of the nine alternates were dismissed from further consideration due to financial considerations, including Alternates 1, 5, 6, 8 and 9. Alternates 2, 3, 4 and 7 were

¹² The term "system interchange" is used in many of the EIS documents. This describes an interchange configuration often known as a "directional interchange" in roadway design nomenclature.

¹³ *EOWB Tier Two FEIS*, Page 2-4.

retained for further study due to the feasibility of financing these options with the anticipated toll revenues.

28. Alternate 2, the all-toll road alternate, “was considered the only alternate that would be financially and operationally viable.”¹⁴ Importantly, the Tier Two EIS states that “three of the four remaining alternates include sections of freeways that attract short distance trips thereby impairing long distance travel continuity on the system.”¹⁵

29. The operating/financing plan for Alternate 2 included tolling for the mainline facilities through a fully automated toll collection system. No tolls would be collected for the off-system improvements on arterial roadways.

30. The Selected Alternative identified in the Tier Two Final EIS included a number of improvements along key arterials and secondary roads in the study area, which would be done in conjunction with the larger elements of the Alternative (the access-controlled major highways).¹⁶

31. The methodology used for identifying arterial roadway improvement needs is documented in the Tier Two FEIS documents in “Appendix D: Off-System Arterial Capacity Requirements.” This document indicates that capacity improvements would be needed along Franklin Avenue between County Line Road and Wolf Road, and that no capacity improvements would be needed along Irving Park Road between York Road and Taft Avenue.¹⁷

32. A full review of the EOWB Tier Two documentation for technical accuracy and compliance with all legal and engineering standards is beyond the scope of this statement. For the purpose of this analysis, all of the underlying assumptions, analytical processes and findings

¹⁴ Tollway Petition, Exhibit G, Page 6 – from *EOWB Tier One FEIS: Executive Summary*, Page ES-6.

¹⁵ Tollway Petition, Exhibit G, Page 6 – from *EOWB Tier One FEIS: Executive Summary*, Page ES-6.

¹⁶ *EOWB Tier Two FEIS*, Table 2-1.

¹⁷ *EOWB Tier Two FEIS*, Appendix D, Page D-4.

outlined in the EIS will be accepted as reasonable and accurate as they are published in these documents.

D. Elgin O'Hare West Bypass (EOWB) Tier One FEIS

33. Baseline (2007) and projected (2030) traffic conditions documented in the Tier One FEIS indicated that many of the roadways in the study area currently experience moderate to severe to extreme congestion,¹⁸ which is expected to worsen in the future due to growth in population and employment and an accompanying increase in travel on the region's roadways.

34. Of particular note in this report is that two key roadway segments in the study area that are of critical importance to trucks accessing Bensenville Yard – Irving Park Road (north of the yard) and East Green Street/Franklin Avenue (south of the yard) are shown as “extremely congested” in both the baseline (2007) and future (2030) scenarios.

E. EOWB Initial Construction Plan (ICP) Documents

35. CH2M Hill prepared a technical memorandum to document the operational independence of an Initial Construction Phase (ICP) of the EOWB Selected Alternative. This was likely done to ensure the Tollway's compliance with NEPA requirements for operational independence of a phased implementation for a major project.¹⁹ A copy of this CH2M memorandum, dated 6/21/2012, is attached hereto as **Exhibit D**. A copy of the FHWA's concurrence with the findings of this report, dated 8/2/2012, is attached hereto as **Exhibit E**.

36. Figures 3, 4 and 5 in the CH2M Hill document illustrate the ICP and Future improvements for the length of the Bypass corridor from the IL-390 interchange south to the connection with I-294. The entire length of this Bypass is shown as part of the ICP.

¹⁸ *EOWB Tier One FEIS*, Exhibits 1-2 (2007) and 1-3 (2030).

¹⁹ https://www.fhwa.dot.gov/planning/tpr_and_nepa/tprandnepasupplement.cfm, Questions #28 and #29 (as of 2/16/2017).

37. The ICP and Future improvements seem to have no relationship to the staged construction sequence described above in Paragraphs 10 through 13. This itself does not suggest that either the ICP or the phased construction plan submitted by the Tollway in its STB petition is flawed, but are relevant the findings of this report as documented below in the “Conclusions” section.

38. Appendix A to the CH2M Hill memorandum contains a description of the methodology used to develop traffic forecasts and identify mainline and ramp lane requirements and levels of service with the ICP in place for an interim build year. The introductory paragraph in Appendix A notes that “the proposed improvements will provide acceptable operations for at least 5 years following completion of construction (year 2025) of the entire EOWB ICP.”²⁰

39. Appendix A contains a series of figures and tables summarizing the interim horizon year analysis for the ICP. This information indicates that the projected one-way peak hourly volumes on the segment of the Bypass between the IL-390 and IL-19 interchanges would range from 3,490 to 3,670 vehicles per hour during the morning and evening peak periods.²¹ Similarly, the interim horizon year analysis for the ICP shows projected one-way peak (AM and PM) hourly volumes on the segment of the Bypass north of the I-294 connection to the south ranging from 2,300 and 2,560 vehicles per hour.²²

40. Exhibit A of the Tollway’s STB Petition is a technical report on the Western Access Interchange, prepared by CH2M for the Tollway in 2016.²³ Page 7 of Exhibit A references the “phased plan for the Selected Alternative, whereby the Illinois Tollway would first

²⁰ ICP Operational Independence Memorandum, Appendix A: Elgin O’Hare-West Bypass Initial Construction Plan Traffic Analysis Procedures and Findings, CH2M Hill.

²¹ ICP Operational Independence Memorandum, Appendix A, Exhibit 2B.

²² ICP Operational Independence Memorandum, Appendix A, Exhibit 2C.

²³ *Western Access Interchange Ramp Bridges over Canadian Pacific Railway and Union Pacific Railroad*, CH2M, 9/15/2016.

construct the Initial Construction Plan, a scaled-down version of the overall Selected Alternative, and pursue remaining improvements in the future based on needs and priorities.” *It appears that the Tollway is representing the “phased plan” for construction of the Selected Alternative in its STB Petition as the “Initial Construction Plan” documented by CH2M Hill and approved by the FHWA in 2012.*

F. Forecasting Tools and Methodologies Used in EOWB Alternative Evaluation Process

41. The Chicago Metropolitan Agency for Planning (CMAP) is the Metropolitan Planning Organization (MPO) responsible for long-range planning in Cook, DuPage, Kane, Kendall, Lake, McHenry and Will counties in northeastern Illinois.

42. CMAP’s GO TO 2040 Comprehensive Regional Plan, which was adopted in 2010, documents baseline conditions and future horizon year (2040) forecasts for a number of parameters that are integral to the planning process for major transportation improvements in the Chicago region. These forecasts include population, employment and socioeconomic changes in the region that will drive changes in future demand on the region’s transportation network.

43. CMAP has developed a set of "trip-based" transportation models that are used to evaluate impacts and benefits of long-range planning initiatives, including infrastructure improvements such as the EOWB. These models are based on the current and future transportation networks, along with the population, employment and socioeconomic forecasts described in Paragraph 42. The CMAP modeling process supports several the core functions of an MPO under Federal law, including metropolitan travel forecasting and regional air quality analysis.

44. I have conducted a review of the current CMAP travel model documentation²⁴ to determine its applicability to the EOWB and this engagement related to the Tollway STB Petition. A full review of the processes, procedures and methodologies for technical accuracy is beyond the scope of this statement. To the extent that the 2014 documentation reflects the critical features of these models as they were applied to the analytical processes in the Tier One and/or Tier Two EIS reports, these models will be accepted as reasonable and accurate. The CMAP transportation models are based on a traditional four-step modeling approach of trip generation, trip distribution, mode choice, and trip assignment on the regional transportation system. It is assumed that these tools have been subject to appropriate levels of review to confirm their validity to support the requirements of the Illinois Environmental Protection Agency and the U.S. Environmental Protection Agency as they relate to air quality conformity analysis in the transportation planning process.

III. Conclusions

A. The EOWB EIS (Tiers One and Two) and Records of Decision are based on an extensive process of screening alternatives based on operational and financial metrics. Some examples of these are given in Paragraph 17. The Tollway's STB Petition contains no information that quantifies any of these aforementioned benefits for the West Bypass under a "Phase 4" scenario where the Bypass terminates at Irving Park Road (IL-19) instead of connecting to I-294 to the south.

B. The characterization of Phase 9 of the Bypass as "aspirational," or an optional element of the overall Elgin O'Hare-West Bypass initiative appears to contradict the findings of

²⁴ CMAP, *GO TO 2040 Update Appendix: Travel Model Documentation* (October 2014).

the various EOWB EIS documents, which were based on an action (a “Selected Alternative”) that included the IL-390 extension and a full West Bypass connecting I-90 to I-294.

C. Of particular note is the fact that the Tier Two EIS screening process resulted in alternatives being screened out specifically because they did not provide sufficient toll revenue to make the EOWB project financially feasible. Constructing the Bypass without a tolled segment of roadway (Phase 9), and diverting the Bypass traffic onto (non-tolled) local roadways in the process, may make the entire project infeasible based on the parameters used in the Tier Two screening process.

D. In 2012, the Tollway went through a formal process to document an Initial Construction Phase (ICP) of the overall EOWB project that would include construction of the full West Bypass alignment but would not include all of the local access interchange ramps along the access-controlled roadways (IL-390 and the Bypass). The “phases” documented in the Tollway’s STB Petition may represent sound, defensible construction staging for the full EOWB action, but they do not appear to have independent utility as stand-alone actions under the terms of the project EIS documents or even the Initial Construction Plan approved in 2012. A partial completion of the Bypass without the Phase 9 segment described as “aspirational” in Tollway’s STB Petition should be subject to at least the same level of review and analysis as the ICP that was studied in 2012.

E. There are several items of critical importance in the evaluation of the proposed Phase 4 construction as a stand-alone project without the completed West Bypass in place. One major concern would be the projected operation of the roadway segment of the Bypass between the proposed IL-390/Bypass interchange and the termination of the Phase 4 segment of the Bypass to the south at IL-19. At a minimum, these would include the following:

- Projected traffic volumes for this segment of the Bypass, consistent with the planning horizon year(s) of the original EOWB EIS documents.
- Projected traffic volumes for Irving Park Road (IL-19) in the vicinity of the proposed termination of the Bypass roadway.
- Proposed roadway alignments, lane configuration, and traffic control for the intersection of the Bypass with IL-19 under a Phase 4 scenario with the Bypass terminating at grade at IL-19. Does the Tollway intend to construct the interchange ramps as shown in the attached Exhibit B, with IL-19 passing under an overpass that will not serve any traffic unless Phase 9 is completed, or does the Tollway intend to construct a T-intersection at this location that would be upgraded to a grade-separated interchange if and when Phase 9 is constructed?
- The toll collection infrastructure and operating plan for this “Phase 4” Bypass scenario. Would the gantry system shown in the attached Exhibit B – or some variation of it – be operational before Phase 9 is completed?
- Traffic operating characteristics and performance measures for this Phase 4 scenario – for the entire study area roadway network that was the basis of the performance measures for the alternative evaluation process – using the methodology for traffic engineering described in the EIS documentation.²⁵

F. The Phase 4 construction of the IL-390/Bypass ramp system and the segment of the Bypass between IL-390 and IL-19 will fix the alignment of the Bypass in a location that makes a crossing of the western end of CP’s Bensenville Yard inevitable when Phase 9 of the EOWB project is ultimately completed. Geometric requirements will dictate that a controlled-access freeway along the alignment of Phase 9 from the south along the County Line Road right-of-way can only be connected to the Phase 4 alignment by crossing the yard.

G. The arterial and secondary road network in the vicinity of Bensenville Yard is already operating under heavily congested conditions, and these conditions are expected to worsen in the future. A thorough evaluation of a scenario where the EOWB projected did not include the Phase 9 segment would require CMAP transportation model runs with the incomplete

²⁵ Operating conditions and other performance measures for freeways and arterials were calculated in the EOWB process using the procedures published in the *Highway Capacity Manual (2000)*.

access-controlled road network in place. The ICP documents prepared by CH2M Hill in 2012 indicate that the combined two-way volume on the segment of the Bypass between IL-390 and IL-19 would exceed 7,000 vehicles per hour during both the morning and evening peak periods. These documents also show a combined two-way volume on the segment of the Bypass north of I-294 of around 5,000 vehicles per hour during peak periods. Would these volumes change if the segment of the Bypass between IL-19 and I-294 is not completed?

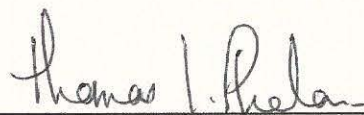
H. The roadway access to the CP Rail intermodal facility at Bensenville Yard is a critical link in the National Highway System (NHS). A mile-long segment incorporating several roadways is designated as Intermodal Connector IL3R on the NHS.²⁶ Recent data from CP indicates that the intermodal Bensenville Yard handles approximately 900-1,000 (450-500 inbound and outbound) truck movements in a typical day. There are serious concerns about additional traffic from a partially-completed Bypass to Irving Park Road and Franklin Avenue, both of which serve the CP Rail intermodal facility at Bensenville Yard.

I. It appears that the Tollway, in various formal proceedings related to the NEPA process and the ongoing litigation and STB Petition, is attempting to provide different definitions of the overall EOWB action and the construction phasing of the ongoing project. The EOWB action was described, analyzed extensively, and justified in its entirety in the NEPA process, while some of its critical elements are described in this STB petition and accompanying Federal court proceedings as optional (“aspirational”) elements of the overall project.

²⁶ This link runs from the Bensenville Yard gate on Franklin Avenue to Williams Drive (Cenco Parkway) to Belmont Avenue to Route US-45.

VERIFICATION

I, Thomas J. Phelan, verify under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed
on this 22nd day of February, 2017.



Thomas J. Phelan

Thomas J. Phelan, PE

President & Transportation Practice Leader



Tom Phelan has more than 20 years of experience in the management and performance of traffic and transportation consulting services in New York, New Jersey, Pennsylvania, Ohio, and Canada.

Education

MS, Civil Engineering, New Jersey Institute of Technology, 1998

BS, Civil Engineering, New Jersey Institute of Technology, 1993

Certificate of Training, National Highway Institute, 2006, *Multimodal Freight Forecasting in Transportation Planning*

Freight Transportation Leadership Academy, University of Memphis Intermodal Freight Transportation Institute, 2014

Registration

Professional Engineer: New Jersey, 1998

Employment History

BHX Engineering & Planning, Parsippany, NJ, 2016-Present

VHB, Newark, NJ, 2011-2016

Eng-Wong, Taub & Associates, Newark, NJ, 2001-2011

Reid Crowther & Partners, Calgary, Canada, 2000-2001

Eng-Wong, Taub & Associates, New York, NY, 1993-2000

Professional Affiliations

Institute of Transportation Engineers, Member

American Society of Civil Engineers, Member

New Jersey Institute of Technology Center for Pre-College Programs, Industry Advisory Board, 2010-Present (Board Chairman, 2015)

Morris County Economic Development Corporation, Board of Directors (2014-Present)

TransOptions, Board of Directors (2016-Present)

Eno Center for Transportation, Freight Funding Working Group, Member (2014-2015)

Institute of Transportation Engineers / National Association of Industrial & Office Properties, Industrial Land Use Trip Generation Expert Panel, 2015-2016

United States / European Commission Twinning Partnership, Urban Freight Roundtable Member (2016)

Institute of Transportation Engineers, Freight Mobility Standing Committee of the ITE Management & Operations/ITS Council, Member

Presentations & Publications

Freight Demand Modeling and Data Improvement, Transportation Research Board (TRB), Second Strategic Highway Research Program (SHRP2) Report #S2-C20-RR-1 (Co-Author)

BHX Engineering & Planning, LLC

Jason's Law Truck Parking Survey Results and Comparative Analysis (MAP-21 Section 1401), FHWA Office of Freight Management, August 2015 (Lead Author)

Panel Moderator, "Jason's Law: Moving Toward Solutions," Mid-America Trucking Show, Louisville, KY, 2016

Panel Moderator, "Morris In Motion: Morris County's Transportation Plan," Morris County Economic Development Corporation, May 2015

Panel Moderator & Presenter, "Impact of New Truck Hours of Service Regulations," TransAction Conference, Atlantic City, NJ, 2014

Presenter, "MAP-21 and Truck Parking Requirements under Jason's Law," 95th Annual Meeting, AASHTO Subcommittee on Highway Transport, 2014

Presenter, "Integrating Land Use and Transportation Planning," Montclair State University Sustainability Seminar, 2011

Panel Moderator, "Morris County's Freight Infrastructure and Land Use Analysis," TransAction Conference, Atlantic City, NJ, 2010

Presenter, "Commercial Vehicle Operations for Special Events: A National Perspective," ITS America Annual Meeting & Expo, National Harbor, MD, 2009

Presenter, "Night and Day: Impact of Extended Hours on Truck Operations," TransAction Conference, Atlantic City, NJ, 2009

Presenter, "Truck Parking and ITS Applications," Florida DOT CVO Workshop, Tampa, FL, 2009

Presenter, "Traffic Planning for Special Events," ITE/ASCE Transportation and Planning Symposium, Albany, NY, 2009

Presenter, "Truck Operations for Planned Special Events," Florida Department of Transportation CVO Workshop, Tampa, FL, 2007

"Truck Parking: The Stories, Issues and Solutions," *New Jersey Municipalities*, June 2007 (Co-Author)

Presenter, "Addressing Freight in Statewide Long Range Plan Development & Implementation: A PennDOT Perspective," TransAction Conference, Atlantic City, NJ, 2006

Representative Projects

FHWA Truck Parking & Safety Coalition Program Support (AASHTO)

JFK Airport Air Cargo and Truck Access Study (New York City Economic Development Corp.)

Morris County Freight Transportation & Land Use Study (Morris County, NJ)

SHRP2/C20 Freight Modeling and Data Improvement Strategic Plan (TRB)

SHRP2/C43 Freight Modeling & Data Symposium (TRB)

Newark International Airport Terminals A&B Truck Access & Operations Study (Port Authority of New York & New Jersey)

North Jersey Truck Rest Stop Study (NJTPA)

Jason's Law Truck Parking Study for MAP-21 Section 1401 (FHWA Office of Freight Management)

Ontario County Freight & Land Use Study (Ontario County, NY)

New York City Commercial Waste Study (New York City Department of Sanitation)

PANYNJ Truck Origin/Destination Surveys (Port Authority of New York & New Jersey)

Pittsburgh MOVEPGH Transportation Plan (City of Pittsburgh, PA)

Staten Island Marine Development (SIMD)

Newark Master Plan Mobility Element (City of Newark, NJ)

New York City Metropolitan Region Freight System Qualitative Research (Port Authority of NY & NJ)

Newark Traffic Engineering Services for Morristown (NJ) Planning & Zoning Boards

Union County Transportation Plan (Union County, NJ)

PANYNJ Long-Term Regional Goods Movement Plan (Port Authority of NY & NJ)

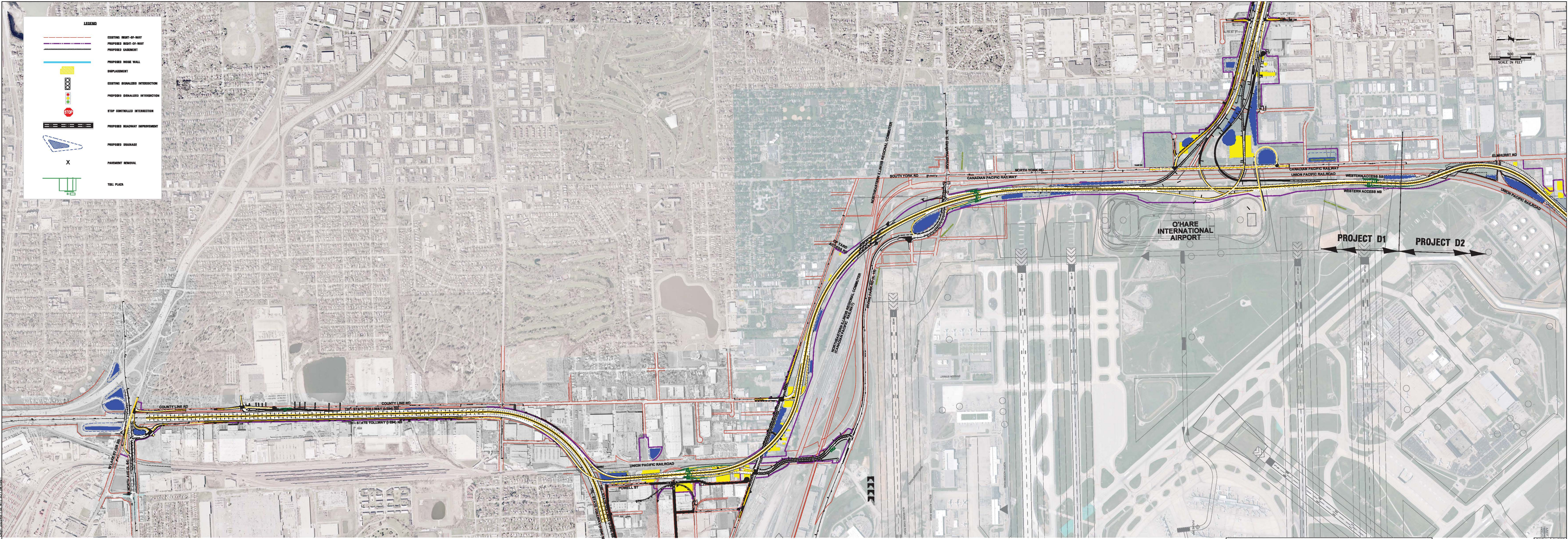
Morris County Circulation Element (Morris County, NJ)

Thomas J. Phelan, P.E.

Biographical Profile

Tom Phelan has more than 20 years of experience in the management and performance of traffic and transportation consulting services in New York, New Jersey, Pennsylvania, Ohio, and Canada. He has managed a variety of highway, transit, freight facility and land development projects, and specializes in regional freight transportation planning and industrial development. A licensed professional engineer in the State of New Jersey, he earned his Master of Science and Bachelor of Science in Civil Engineering at the New Jersey Institute of Technology. Tom is a member of the American Society of Civil Engineers and the Institute of Transportation Engineers. He is a member of the MCEDC Board of Directors, the TransOptions Board of Directors, and the Industry Advisory Board for the Center for Pre-College Programs at the New Jersey Institute of Technology.

Mr. Phelan's areas of expertise include transportation planning, freight planning and operations, and industrial land use planning and truck/rail access. His work in truck operations and truck access to industrial sites and freight terminals is highly regarded among Federal, State, and MPO representatives. His ongoing work with FHWA Office of Operations involves ongoing consultation with national trucking industry leaders to address industry needs and regulatory challenges. He brings a keen understanding of all aspects of freight transportation to regional, local, and facility-specific analyses at various points in a supply chain. His work on the NYCEDC's JFK Airport Air Cargo and Truck Access Study supported a critical amendment of the New York State Vehicle & Traffic Law to allow 53-foot trailer access to the major air cargo hub at JFK International Airport in New York City. He also led a comprehensive study of trucking activity at the passenger terminal loading docks at Newark Liberty International Airport and developed a series of recommendations for improving dock operations and maintaining secure truck access under enhanced post-9/11 security measures.



EOWA PROJECT CONCEPT DESIGN
WESTERN ACCESS AND
I-294 AT ILLINOIS ROUTE 64

PREPARED BY:
CH2MHILL.

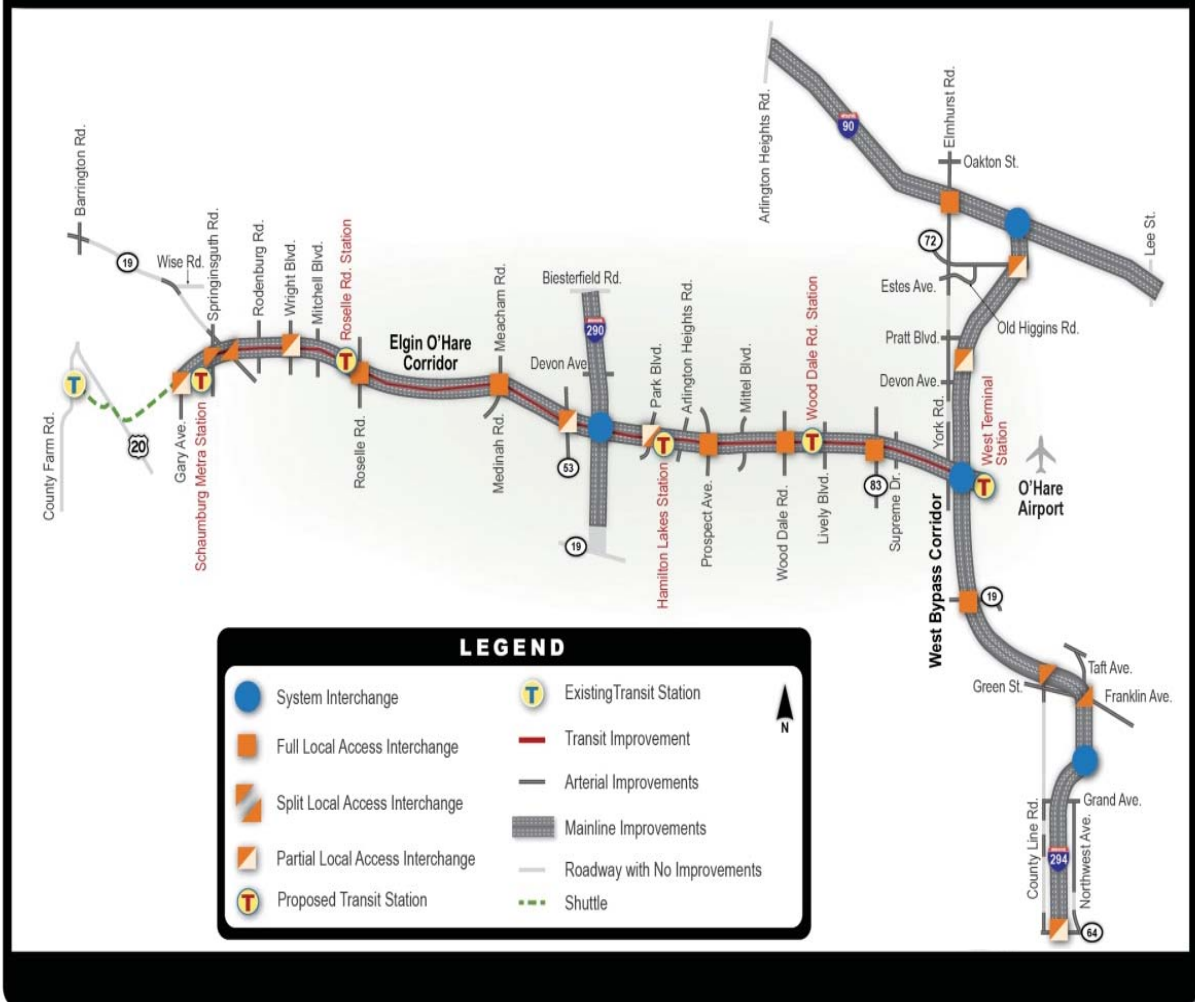
Phelan VS - Exhibit B

TOTAL SHEETS	SHEET NO.
6	5

socioeconomic considerations, design and traffic operations, as well as input provided from the public and agencies.

The project would be developed as a fully access-controlled highway that would be tolled. It consists of 16 miles of new toll road, about nine miles of improvements to existing toll roads (i.e., I-294 and I-90) and freeway (i.e., I-290), and 16 miles of supporting arterial improvements (see Figure 1). The project has two main components, the east-west component known as the Elgin O'Hare corridor, and the north-south component known as the West Bypass corridor.

FIGURE 1
SELECTED ALTERNATIVE



The Elgin O'Hare corridor is about 10 miles in length, extending from Gary Avenue on the west to the western edge of O'Hare Airport on the east. The West Bypass corridor would extend from I-90 near the Elmhurst Road interchange on the north to I-294 on the south, a distance of about 6.2 miles. Approximately 3.6 miles of the West Bypass corridor would be located on about 195 acres of O'Hare Airport (City of Chicago) property.

Elgin O'Hare-West Bypass: Initial Construction Plan – Operational Independence

PREPARED FOR: Illinois Department of Transportation (IDOT)/Illinois Tollway/ Federal Highway Administration (FHWA)
PREPARED BY: CH2M HILL
DATE: June 21, 2012

This memorandum serves as a request for approval of operational independence for the Initial Construction Plan of the Elgin O'Hare – West Bypass (EOWB) project.

The EOWB project proposes extensive improvements to the transportation system in DuPage and Cook counties, Illinois. Proposed improvements include widening the existing Elgin-O'Hare Expressway, extending the expressway from its eastern terminus at Rohlwing Road (IL 53) east along Thorndale Avenue to O'Hare International Airport, and constructing a West Bypass connecting I-90 (Jane Addams Memorial Tollway) with I-294 (Tri-State Tollway). The EOWB is proposed as a tolled facility to be implemented, operated and maintained by the Illinois Tollway.

Initial and Future Phase Improvement Features and Costs

A phased approach is recommended for implementation of the EOWB project. The Build Alternative, as identified in the *Tier Two Draft Environmental Impact Statement* [Tier Two Draft EIS] (FHWA and IDOT, 2012), is designed to accommodate long-term (year 2040) travel demand. Features of the overall improvements include constructing approximately 11 miles of new toll roads (Elgin O'Hare Extension and West Bypass), widening 5 miles of the existing Elgin O'Hare Expressway, constructing four new system interchanges and 16 local access interchanges, and improving 9 miles of adjacent toll roads and freeways (I-290, I-90 and I-294). While the overall Build Alternative addresses long-term travel needs in the area, it comes at a relatively high cost of \$3.6 billion (2011 dollars).

An Initial Construction Plan (ICP) was developed with the goal of being a more financially attainable first phase of the project. The ICP maintains the integrity of the full project and serves the area's travel needs through an interim design period of year 2030. When compared to the overall Build Alternative, the ICP provides fewer travel lanes, fewer interchanges, and (in some cases) interim layouts for new interchanges. The ICP estimated cost is \$2.724 billion (2011 dollars).

Features of the ICP and the additional improvements of the Tier Two Build Alternative (future improvements) are shown and described in Figures 1 through 6.

FIGURE 1
Initial and Future Phase Improvements

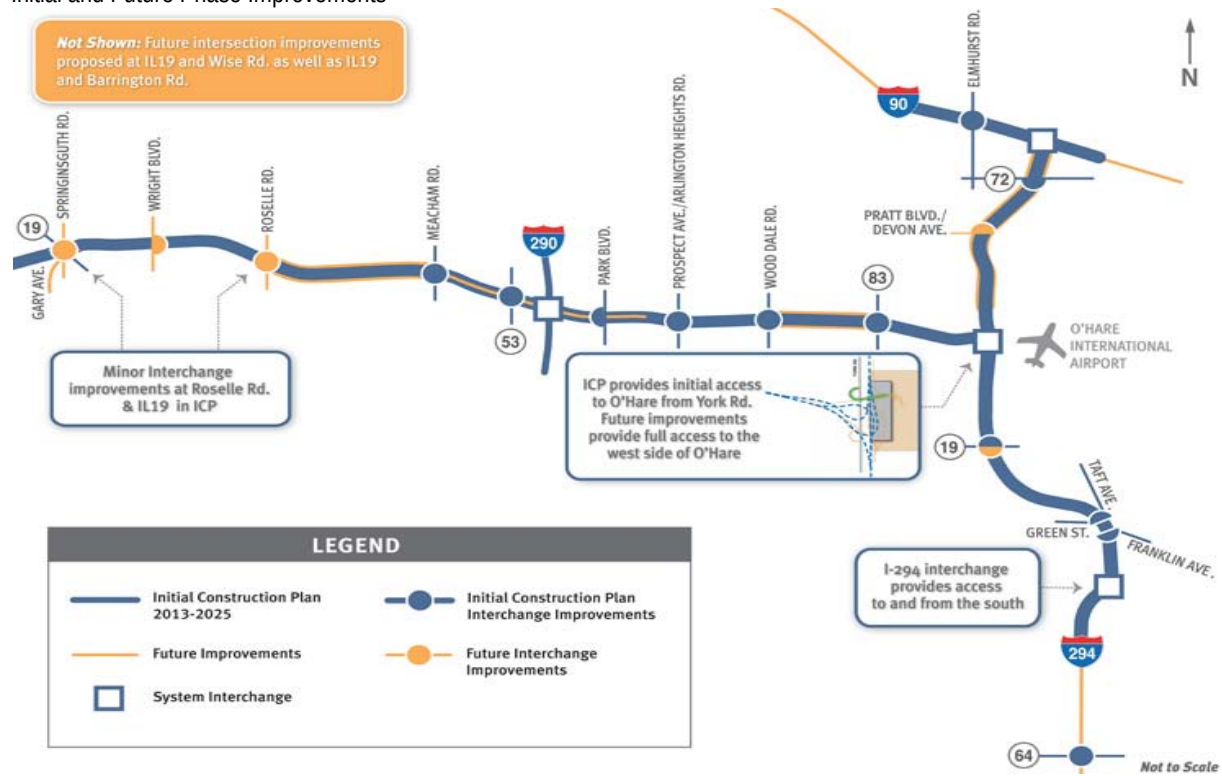
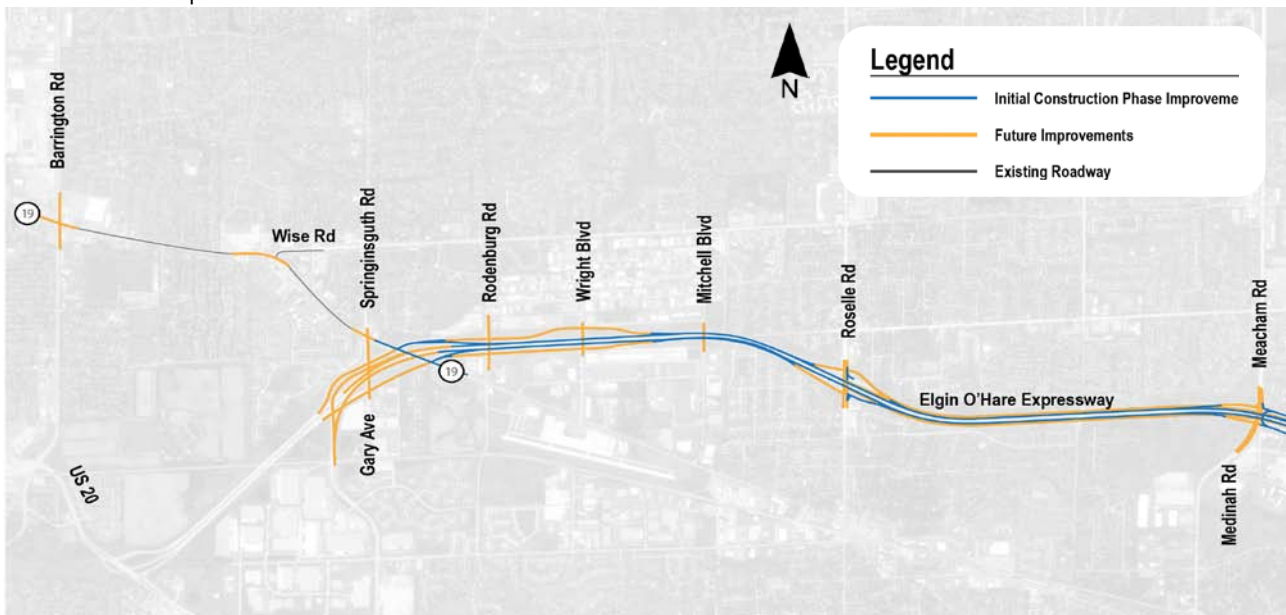


FIGURE 2
ICP and Future Improvements – West Section



ICP Improvements: Mainline widening and resurfacing from IL 19 to Meacham Road/Medinah Road; interchange improvements at IL 19 and Roselle Road

Future Improvements: Mainline widening and pavement reconstruction; interchange improvements at Gary Avenue/Springinguth Road, Wright Boulevard, Roselle Road

FIGURE 3
ICP and Future Improvements – Central Section



ICP Improvements: Mainline widening and resurfacing from Meacham Road/Medinah Road to IL 53 and new mainline construction from IL 53 to Salt Creek; interchange improvements/construction at Meacham Road/Medinah Road, IL 53, I-290, Park Boulevard, and Arlington Heights Road/Prospect Avenue; improvements to connecting roadways

Future Improvements: Mainline widening; interchange improvements at Meacham Road/Medinah Road, I-290 and Park Boulevard; connecting roadway improvements along I-290 south of Biesterfield Road and along Arlington Heights Road

FIGURE 4
ICP and Future Improvements – East Section

ICP Improvements: New mainline construction from Salt Creek to O'Hare Airport and portion of South Leg of the West Bypass through IL 19; interchange construction at Wood Dale Road, IL 83, Elgin O'Hare/West Bypass, and IL 19; improvements to connecting roadways

Future Improvements: Mainline widening; additional access from Elgin O'Hare and West Bypass to O'Hare Airport; interchange improvement at IL 19

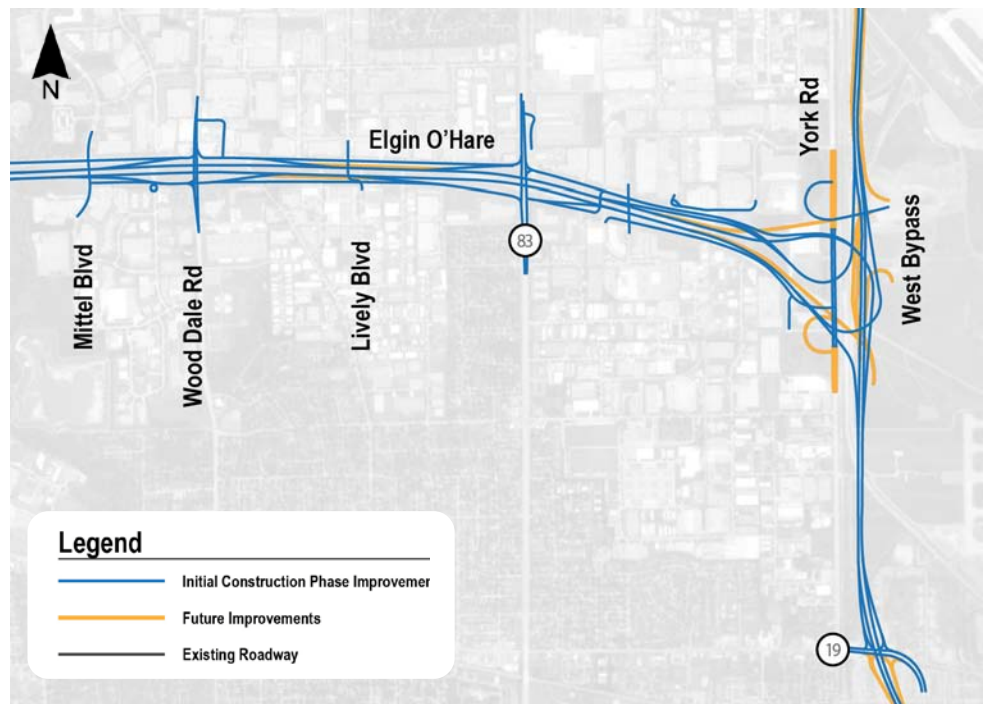
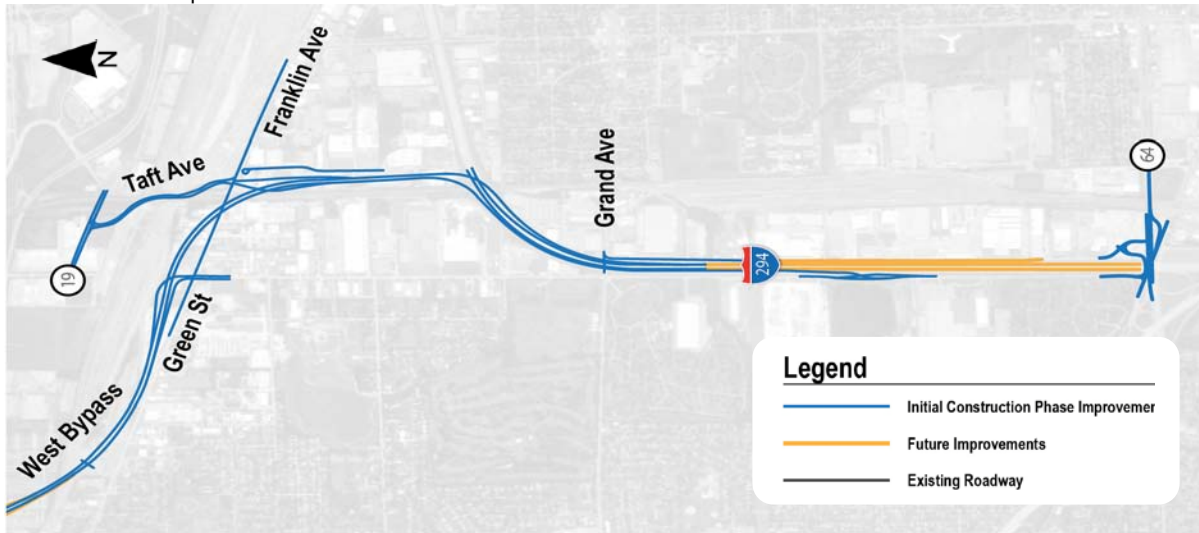


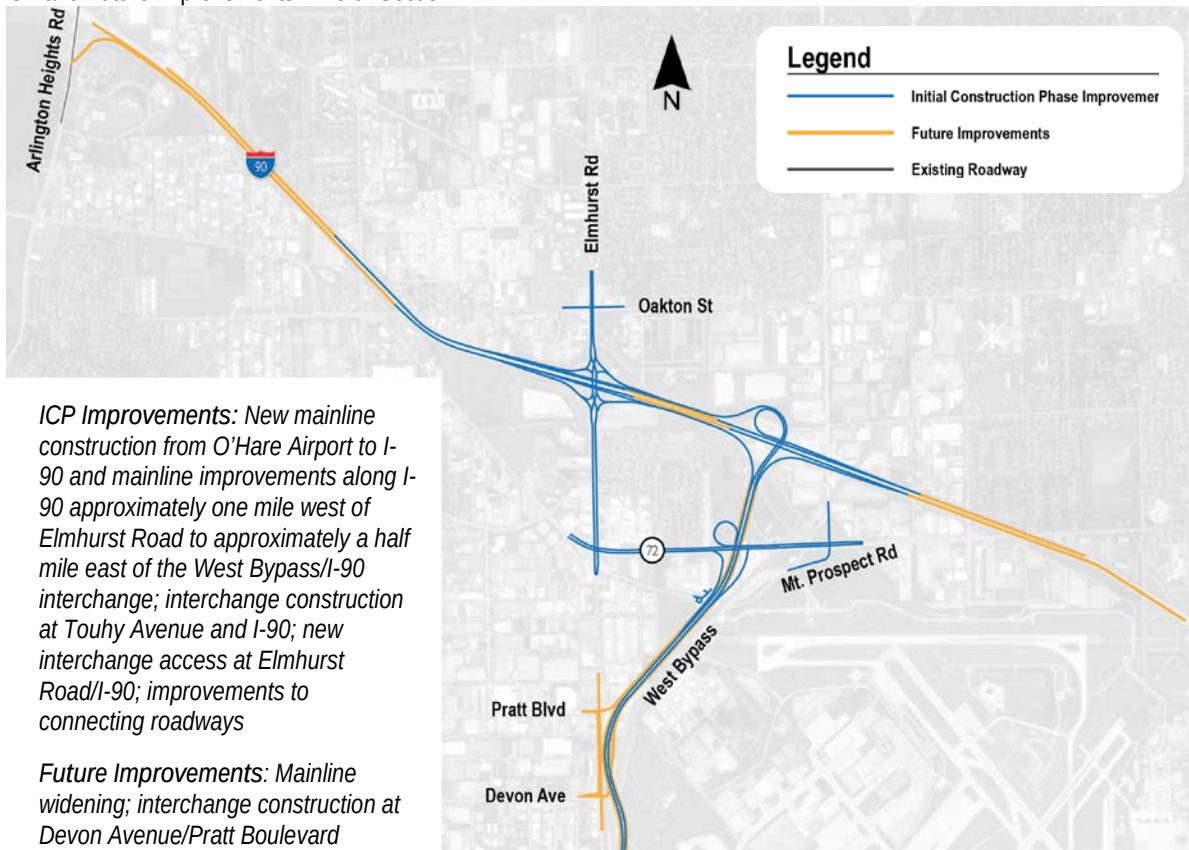
FIGURE 5
ICP and Future Improvements – South Section



ICP Improvements: New mainline construction from IL 19 to I-294 and mainline improvements along I-294 from West Bypass to North Avenue (IL 64); interchange construction at Franklin Avenue/Green Street and I-294; new interchange access at I-294/IL 64; improvements to connecting roadways and construction of Taft Avenue connector

Future Improvements: Mainline widening

FIGURE 6
ICP and Future Improvements – North Section



ICP Improvements: New mainline construction from O'Hare Airport to I-90 and mainline improvements along I-90 approximately one mile west of Elmhurst Road to approximately a half mile east of the West Bypass/I-90 interchange; interchange construction at Touhy Avenue and I-90; new interchange access at Elmhurst Road/I-90; improvements to connecting roadways

Future Improvements: Mainline widening; interchange construction at Devon Avenue/Pratt Boulevard

The ICP is proposed to be constructed by the Illinois Tollway as part of their recently announced capital improvement program, *Move Illinois: The Illinois Tollway Driving the Future* (Illinois Tollway, 2011). Construction of the ICP is expected to begin in 2013 and continue through 2025. Estimated costs of the ICP are \$3.462 billion in year of expenditure (YOE) terms escalated to construction midpoint.

Remaining improvements included in the Tier Two Build Alternative would be considered in the future based on need, funding availability, and system-wide priorities. No improvements are anticipated within the project limits for a minimum of 5 years following completion of construction of the ICP. Given the inherent uncertainties of long-range planning, a precise schedule for construction of the remaining EOWB improvements cannot be identified at this time.

For illustrative purposes, two potential schedule scenarios were identified for the remaining improvements. Estimated costs for these improvements range from \$2.360 billion to \$2.865 billion in year of expenditure (YOE) terms escalated to construction midpoint.

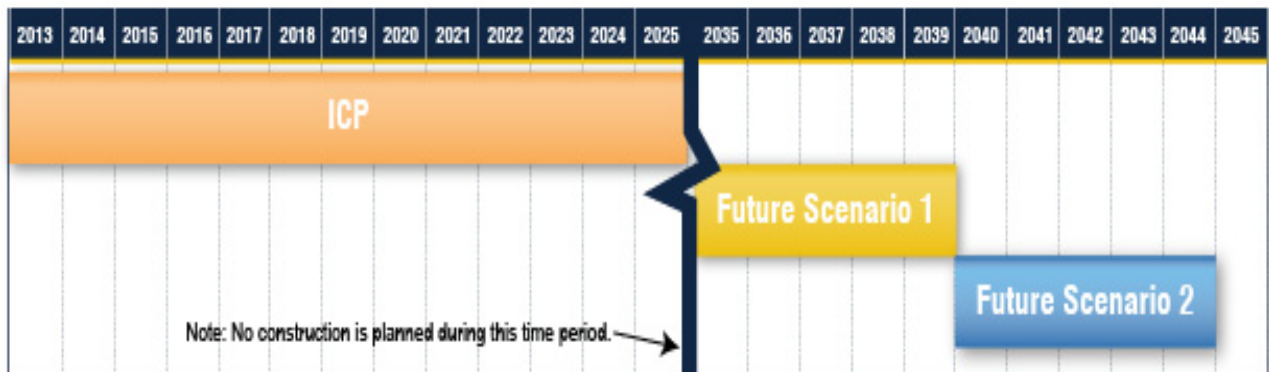
The anticipated implementation schedule for the ICP and future phase (remaining improvements) is shown in Figure 7. Costs of the ICP and future phase improvements are summarized in Table 1.

TABLE 1
EOWB Phased Improvement Estimated Costs

Phase	Construction Start and End	Cost (2012 \$)	Cost (YOE \$)
ICP	2013 to 2025	\$2.724 B	\$3.462 B
Future	Scenario 1 (2035 to 2039)	\$0.876 B	\$2.360 B
	Scenario 2 (2040 to 2044)	\$0.876 B	\$2.865 B
Total Estimated Cost	Scenario 1 (2035 to 2039)	\$3.600 B	\$5.822 B
	Scenario 2 (2040 to 2044)		\$6.327 B

1. The ICP 2012 estimate is consistent with the adjusted baseline estimate established through May 2012 FHWA Cost Estimate Review (CER).
2. ICP projected YOE costs are consistent with the May 2012 FHWA CER review findings based on the current implementation schedule identified in the Illinois Tollway's *Move Illinois: The Illinois Tollway Driving the Future* (Illinois Tollway, 2011).
3. Future phase improvement costs were derived from the preliminary estimate of cost for the Tier Two Build Alternative. The estimated range of costs for future phase improvements assumes 4 percent annual cost escalation for construction, 3 percent annual cost escalation for engineering, and 4 percent annual cost escalation for right-of-way.

FIGURE 7
EOWB Construction Schedule



The ICP addresses the four principal transportation needs identified in the Tier Two Draft EIS by: improving local and regional travel; improving travel efficiency; improving access to O'Hare International Airport from the west; and improving modal opportunities and connections. It is broadly supported by local governments and represents a fiscally responsible approach to addressing the area's diverse travel needs.

NEPA and Major Projects Documentation Status

In 2005, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) identified the EOWB project as one of national and regional significance, resulting in a planning process that has advanced in two parts, or tiers.

Tier One focused on identifying a preferred multimodal transportation system alternative for the study area and disclosed the potential beneficial and adverse impacts of proposed system alternatives. It was completed in June 2010 with the issuance of the *Tier One Final Environmental Impact Statement* (FHWA and IDOT, 2010) and *Elgin O'Hare - West Bypass Project Tier One Record of Decision* (FHWA, 2010). The Record of Decision approved the selection of the preferred type of improvement (a set of roadway, transit, and bicycle/pedestrian improvements) and the preferred corridor (location).

Tier Two studies are under way and focus on traditional levels of detail for Phase I engineering and environmental studies, including further defining design elements of the Tier Two Build Alternative. The Tier Two Draft EIS, completed in March 2012, identified features and environmental consequences of two alternatives considered in detail – the No-Build Alternative and the Build Alternative. The Tier Two Draft EIS also described the anticipated project implementation sequence, where the ICP was identified as the proposed construction sequencing strategy. The remaining added travel lanes and interchange improvements included in the overall Tier Two Build Alternative were indicated to be pursued as travel demand warrants and future funding becomes available. Completion of the Tier Two Final EIS and Record of Decision are anticipated in December 2012.

In accordance with FHWA requirements for major projects, an Initial Financial Plan and Project Management Plan are being developed for the ICP as part of the Tier Two process. The FHWA conducted an independent Cost Estimate Review (CER) in May, 2012 to verify the accuracy and reasonableness of the total project estimated cost and to establish a probability range of year of implementation costs. The CER was performed on the basis of partially completed preliminary engineering plans for the ICP. Findings of the CER identified an estimated cost of \$3.462 billion for the ICP (YOE terms) with a 70 percent level of confidence. An additional CER will be conducted in early 2013 following availability of more detailed preliminary engineering.

Initial Construction Plan Operational Independence Analysis Summary

Detailed traffic analyses were performed to confirm the ability of the ICP to address the area's travel needs through the interim year 2030 design period. Analyses confirm that the ICP will provide acceptable performance along the EOWB and adjoining roadways through the year 2030.

The travel forecasting process for the 2030 ICP design year used the procedures employed in the development of the EOWB travel demand model. The travel demand model and processes of the Chicago Metropolitan Agency for Planning (CMAP) were used as the basis

for the development of the EOWB sub-area travel demand model. Travel forecasts were also reviewed for consistency with the Illinois Tollway's toll diversion model. Year 2030 forecasts were generated on the basis of both the 2010 existing year and the 2040 Tier Two Build Alternative design year forecasts, where the 2030 volumes interpolated from the 2040 Tier Two Build Alternative forecasts. Travel forecasts reveal that travel on area freeways and toll roads will grow from approximately 9.8 million (2011) to 12.2 million (2030) vehicle miles of travel, an increase of approximately 20 percent. Travel on area freeways and toll roads is projected to further increase to approximately 14.2 million (2040) vehicle miles of travel by the year 2040, an additional increase of approximately 14 percent. The phased approach for implementing EOWB capacity improvements is consistent with the projected traffic growth trend.

Traffic operational analyses confirm that the ICP mainline and interchange geometry will provide acceptable performance for the interim year 2030 design period. Procedures for determining level of service (LOS) for the EOWB project are consistent with *TRB Special Report 209* and the *2010 Highway Capacity Manual* (HCM, 2010). VISSIM microsimulation analyses were also performed in the vicinity of the complex I-290 system interchange, and SYNCHRO traffic operational software was used to evaluate traffic operations along crossroads. Analyses confirm that the Elgin O'Hare and West Bypass corridors, as well as adjoining segments of I-90 and I-294 will operate at an acceptable LOS D or better in year 2030, with spot LOS E operations along portions of the toll road corridors. This level of performance is consistent with Illinois Tollway design criteria. I-290, in the vicinity of the Elgin O'Hare system interchange, will operate at LOS D or better, with the exception of the southbound I-290 weaving section between Biesterfield Road and the Elgin O'Hare, which would operate at LOS E. While weaving operations are below the LOS D design criteria, analyses reveal that the ICP provides a 50 percent reduction in travel times and improves the average speed by 50 percent as compared to the No-Build Alternative.

Implementation of the EOWB will affect traffic distribution and demand on proximate arterials and secondary roadways. In general, the Elgin O'Hare and West Bypass corridors will result in a reduction of traffic along parallel arterials, as longer-distance regional trips divert to the new facilities, and a moderate increase in traffic along crossroads near proposed service interchanges. Sketch-level traffic analyses were conducted to identify the location and nature of required improvements to existing arterials and secondary roadways as a result of implementation of the 2030 ICP. These analyses revealed that three segments of the arterial/secondary roadway system will require capacity improvements as a result of traffic impacts related to the 2030 ICP: Franklin Avenue from County Line Road to Taft Avenue; Franklin Avenue from Taft Avenue to Wolf Road; and Elmhurst Road from Oakton Street to I-90. Localized improvements are also required within the influence area of proposed interchanges. The ICP includes these required improvements to arterial and secondary roadways.

A detailed description of the ICP operational analyses is presented in Appendix A, *EOWB ICP Traffic Analysis Procedures and Findings*.

Summary and Next Steps

This memorandum serves as a request for approval of operational independence for the ICP of the EOWB project. The ICP represents a functionally complete project that addresses diverse travel needs in the study area. The ICP design provides a project with logical

improvement limits (project termini). Further, the ICP includes design features that will provide acceptable traffic operations in the 2030 ICP design year, including required improvements to adjacent highways (freeways, toll roads, arterials, secondary roadways), thus demonstrating its operational independence.

Detailed analyses of the proposed access modifications at the I-290 interchange will be presented in the *Access Justification Report: I-290 and Elgin O'Hare Expressway/Thorndale Avenue Interchange* [AJR] (IDOT, 2012). Approval of the I-290 AJR is scheduled for December 2012. Further, refined traffic analyses will be performed as part of the ICP concept design effort. Appropriate refinements to the scope and limits of required improvements will be incorporated through the design development process.

Sent: _____ [<mailto:Mike.Hine@dot.gov>]

Sent: Thursday, August 02, 2012 9:07 AM

To: Krall, Ronald D

Subject: FW: Elgin O'Hare West Bypass Project - Concurrence of Operational Independence and Non-Concurrent Construction Exception

The email below is our approval of the Operational Independence.

From: Nelson, Thomas (FHWA)

Sent: Thursday, August 02, 2012 9:03 AM

To: Hine, Mike (FHWA)

Cc: Sinnette, James (FHWA)

Subject: Elgin O'Hare West Bypass Project - Concurrence of Operational Independence and Non-Concurrent Construction Exception

Mike,

The Illinois Division has requested concurrence on Illinois Department of Transportation's (IDOT) request for an Operational Independence and Non-Concurrent Construction exception for Elgin O'Hare West Bypass project. This exception is noted in the Final Major Project Guidance, dated January 19, 2007; and the Operational Independence and Non-Concurrent Guidance, dated December 30, 2009.

This project proposes extensive improvements to the transportation system in DuPage and Cook counties, Illinois. The proposed improvements include widening the existing Elgin-O'Hare Expressway, extending the expressway from its eastern terminus at Rohlwing Road (IL 53) east along Thorndale Avenue to O'Hare International Airport, and constructing a West Bypass connecting I-90 (Jane Addams Memorial Tollway) with I-294 (Tri-State Tollway).

IDOT has recommended a phased approach in implementation of this project. Phase 1 is known as the Initial Construction Phase (ICP) and was developed with the goal of being a more financially attainable first phase of the project. The ICP maintains the integrity of the full project and serves the area's travel

needs through an interim design period of year 2030. Construction of the ICP is expected to begin in 2013 and continue through 2025. The estimated cost of the ICP is \$3.46 billion in year of expenditure (YOE) dollars escalated to the mid-point of construction. The remaining improvements would be delivered as part of the Future Phase which is scheduled to begin construction in 2035. The estimated cost of the Future Phase is \$2.36 billion in YOE dollars escalated to the mid-point of construction. Additionally, there is a five year separation from the end of construction of the ICP and the start of the Future Phase. A separate Cost Estimate Review was completed for the ICP in May 2012 and confirmed the YOE costs.

The Project Delivery Team concurs with IDOT's assessment that the ICP is an operationally independent section and is a non-concurrent phases of construction. The ICP will be considered a separate Major Project for the purposes of applying Major Project Requirements. Additionally, the Future Phase (as shown in the attached document) is no longer considered part of the overall project. However, the Future Phase with a total YOE cost of \$2.36 billion will also be considered a separate Major Project, and all Major Project Requirements will apply.

If you have any questions please feel free to give me a call.

Thanks. Thomas.

Thomas L. Nelson, Jr., P.E.
Major Projects Engineer
Federal Highway Administration
Innovative Program Delivery Office
1200 New Jersey Avenue, SE - Rm E64-411
Washington, D.C. 20590
(202) 366-5041 - Office

thomas.nelson@dot.gov

☐ *Please consider the environment before printing this email*

EXHIBIT A



September 15, 2015

Mr. Robert A. Johnson
 Vice President of Operations
 Canadian Pacific Railroad\Soo Line Railroad
 120 South 6th Street
 Minneapolis, MN 55402

Re: Notice of Intent to Acquire with Railyard Modifications
 Project: Elgin O'Hare Western Access

<u>Parcel Number</u>	<u>County</u>	<u>PIN</u>	<u>Acquisition Type</u>
WA-1D-12-004	Cook	12-19-400-078	Full Fee
WA-1D-12-009	Cook	12-19-400-063	Partial Fee & TE
WA-1D-12-046	DuPage	12-19-400-019 03-12-509-003	Partial Fee, PE, TE & AC
WA-1D-12-066	Cook	12-19-200-002 12-18-501-001 12-18-400-015-6001 12-18-400-019 12-19-201-015 12-20-100-028	Partial Fee, PE, TE & AC
WA-2D-12-191	DuPage	03-12-509-001	PE & TE
WA-2D-12-195	DuPage	03-01-509-002	PE & TE

Dear Mr. Johnson:

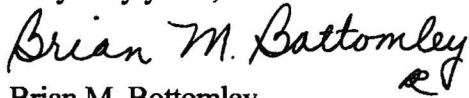
As previously indicated, the Illinois Tollway determined that the above land parcels were required for the construction of the Elgin O'Hare Western Access (EOWA) roadway project. Attached is the Tollway's April 1, 2015 letter. Subsequently, we have worked to appraise these land parcels and have also undertaken an extensive effort to address the current and future rail yard plans noted by the Canadian Pacific Railroad. Through these efforts, we were able to refashion some of the parcels after modifying our roadway design to ensure that only the land essential for the construction will be purchased. In addition to the real estate values, the Tollway intends to compensate or reimburse the railroad for its necessary intra-yard modifications, including the Canadian Pacific turntable.

We would like to meet with you in the near future to share our updated EOWA design plans, including the scaled back real estate take, and also to present our purchase offer. Mr. Mark Mathewson will lead the discussions for the Tollway. He will be contacting you within the next few days to arrange a meeting wherein we can discuss Canadian Pacific's needs and requirements, review the project updates, and present our formal offer to purchase.

Regarding the specific negotiation for the real estate, the Canadian Pacific Railroad, like any property owner in Illinois, has the right to submit counter offers and present material that it believes is relevant to determining the value of the property. I have enclosed a copy of the Illinois Attorney General's pamphlet on property owner's rights; it contains a more detailed explanation of your rights and the acquisition processes.

I am glad that we have been able to work closely through the development of this project; I know that a continuation of that cooperative effort will be mutually beneficial now and in the future. If you have any questions feel free to contact me directly at (630) 241-6800. Ext. 3949.

Very truly yours,



Brian M. Bottomley
Senior Project Engineer &
Acting Land Acquisition Manager

Enclosures:

Plats
Attorney General pamphlet
April 10th 2015 letter

EXHIBIT B

EXHIBIT C



Elgin O'Hare
Western Access

LEGEND

- Project Footprint
- County Boundary
- Canadian Pacific Soo Line
- Land Acquisition Type
 - Fee Simple
 - Permanent Easement
 - Temporary Easement

IL 390/I-490 Interchange Parcels

Area A	Acquisition Type (Acres)			
Tollway ID	Fee	Permanent Easement	Temporary Easement	Grand Total
WA-2D-12-191.P	0.00	1.74	2.53	4.27
WA-2D-12-195.P	0.00	1.24	0.68	1.92
Grand Total	0.00	2.98	3.21	6.19

Yard Parcels

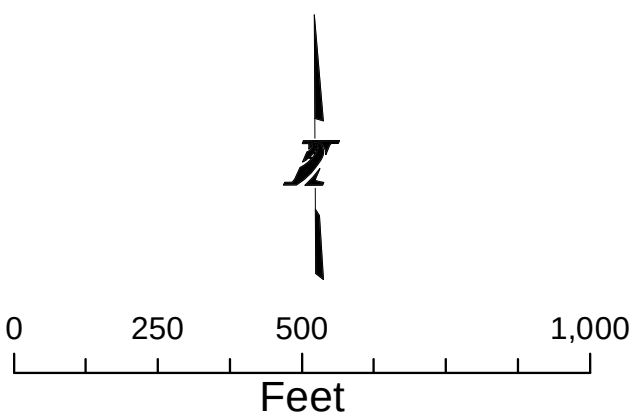
Area B	Acquisition Type (Acres)			
Tollway ID	Fee	Permanent Easement	Temporary Easement	Grand Total
WA-1D-12-046	16.91	2.08	1.72	20.71
WA-1D-12-066	2.22	1.33	2.71	6.26
Grand Total	19.13	3.41	4.43	26.97

Spur Track Parcels

Area C	Acquisition Type (Acres)			
Tollway ID	Fee	Permanent Easement	Temporary Easement	Grand Total
WA-1D-12-004	0.59	0.00	0.00	0.59
WA-1D-12-009	1.74	0.00	0.94	2.68
Grand Total	2.33	0.00	0.94	3.27

SUMMARY

	Acquisition Type Acres)			
Area	Fee	Permanent Easement	Temporary Easement	Grand Total
IL 390/I-490 Interchange				
Parcels	0.00	2.98	3.21	6.19
Yard Parcels	19.13	3.41	4.43	26.97
Spur Track				
Parcels	2.33	0.00	0.94	3.27
Grand Total	21.46	6.39	8.58	36.43



Basis for
IL Tollway Appraisal
September 24, 2015

