

247621

April 29, 2019

BY E-FILING

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 29, 2019
Part of
Public Record

**Re: *Canadian National Railway Company and Grand Trunk Corporation – Control –
EJ&E West Company [Barrington Petition for Mitigation] (Docket No. FD 35087
(Sub-No. 8))***

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find CN's Reply to
Barrington's Petition to Reopen Based on Materially Changed Circumstances Pursuant to the
Board's Governing Regulations.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh
Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosure

cc: Richard H. Streeter

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087 (Sub-No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION — CONTROL — EJ&E WEST COMPANY**

[Barrington Petition for Mitigation]

**CN'S REPLY TO BARRINGTON'S
PETITION TO REOPEN BASED ON MATERIALLY CHANGED CIRCUMSTANCES
PURSUANT TO THE BOARD'S GOVERNING REGULATIONS**

Kathryn J. Gainey
CN
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 347-7840

David A. Hirsh
Matthew W. Ludwig
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500

Counsel for Canadian National Railway Company and Grand Trunk Corporation

April 29, 2019

TABLE OF CONTENTS

BACKGROUND	2
1. CN Is Investing In Its Network.....	2
2. CN’s 2016 Capacity Review.....	3
3. Barrington’s 2017 Petition to Reopen and Petition for Reconsideration.....	3
4. CN’s Renewed Focus on Capital Investment After Winter 2017-2018	5
5. USACE Permitting for the Sutton Project	6
APPLICABLE LEGAL STANDARD	7
ARGUMENT	8
I. THE BOARD ALREADY RULED THAT SPECULATION ABOUT CN’S FUTURE RAIL OPERATIONS IS NOT A BASIS FOR REOPENING.....	9
II. IN ANY EVENT, MERE CHANGES IN TRAFFIC VOLUME, ESPECIALLY COMING MORE THAN TEN YEARS AFTER THE TRANSACTION, DO NOT JUSTIFY REOPENING.	10
CONCLUSION.....	12
Exhibit A Verified Statement of Daniel Krause	
Exhibit B Verified Statement of Greg Hartley	
Exhibit C March 29, 2019 letter from Mayor Karen Darch to Soren Hall	

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087 (Sub-No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION — CONTROL — EJ&E WEST COMPANY**

[Barrington Petition for Mitigation]

**CN’S REPLY TO BARRINGTON’S
PETITION TO REOPEN BASED ON MATERIALLY CHANGED CIRCUMSTANCES
PURSUANT TO THE BOARD’S GOVERNING REGULATIONS**

Canadian National Railway Company and Grand Trunk Corporation (collectively, “CN”) respectfully reply to the “Petition Seeking Reopening & Imposition of Additional Mitigation Pursuant to the Board’s Governing Regulations” (“Petition”) filed by the Village of Barrington, IL (“Barrington”) on April 8, 2019, and to the supplements to that Petition Barrington filed on April 10 and April 17, 2019. Attached in support of this reply are verified statements of Daniel Krause, Field Engineer, who is the Project Manager for the Sutton Project discussed below (attached as Exhibit A), and Greg Hartley, Director Asset Planning and Quality, who is responsible for planning track and crew investment to expand and enhance CN’s network (attached as Exhibit B) (respectively, “VS Krause” and “VS Hartley”).

The Board should deny Barrington’s Petition to Reopen the Board’s 2008 decision approving CN’s acquisition of the former EJ&E line (“the Transaction”).¹ Barrington speculates that CN’s planned track extension on the Leighton Subdivision will lead to future increases in

¹ *Canadian Nat’l Ry. – Control – EJ&E W. Co.*, STB Docket No. FD 35087, Decision No. 16, at 41 (STB served Dec. 24, 2008) (“Approval Decision”).

train volumes through Barrington. But reopening requires actual material changes (in the sense that they would mandate a different result in the underlying decision), not speculation. The Board has already concluded that speculation by Barrington about a possible future change in train volumes cannot meet that standard. Further, as the Board has repeatedly explained in denying Barrington's prior petitions, train volumes evolve and fluctuate over time for many reasons. Changes in train volumes more than ten years after the Transaction cannot be attributed to the Transaction, are not material to the Approval Decision, and thus provide no basis for reopening.

Barrington's latest Petition is its tenth attempt to re-litigate, before the Board and federal appellate courts, the 2008 Approval Decision.² The Board has twice denied reopening based on nearly identical allegations by Barrington that CN's planned investment in its network would lead to future train volume increases through Barrington.³ CN respectfully requests that the Board deny Barrington's latest Petition.

BACKGROUND

1. CN Is Investing In Its Network

CN invests heavily to maintain and enhance its network in order to provide safe and efficient service to its customers. It makes its capital investment decisions based on regular reviews of network capacity, potential future traffic levels, pinch points, and the expected impact

² See *Village of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2011) ("*Barrington I*"); Decision served Nov. 8, 2012 ("2012 Decision"); *Village of Barrington v. STB*, 758 F.3d 326 (D.C. Cir. 2014) ("*Barrington II*"); Decision served May 15, 2015 ("May 2015 Decision"); Decision served Nov. 4, 2015 ("November 2015 Decision"); Decision served Apr. 26, 2017 ("April 2017 Decision"); Decision served Oct. 30, 2017 ("October 2017 Decision"); *Village of Barrington v. STB*, 892 F.3d 252 (7th Cir. 2018) ("*Barrington III*"); Decision served December 21, 2018.

³ See November 2015 Decision at 5; April 2017 Decision at 6-7.

of specific potential projects to increase capacity at that location in CN's network. In 2019, CN announced a second year of record setting capital investment, including over \$190 million in Illinois.⁴

2. CN's 2016 Capacity Review

In 2016, as part of its normal planning process, CN reviewed the capacity of its network between Winnipeg and Chicago.⁵ CN obtained cost estimates for double tracking various portions of that corridor, which it used in conjunction with computer modeling and simulations to identify its highest priority projects.⁶ As part of that process, CN issued an RFP in August 2016 for a high-level estimate of engineering and construction costs to double track portions of the Leithton Subdivision.⁷ CN concluded, however, that those projects were not needed or justified, and it notified respondents to the RFP on September 16, 2016 that it would not proceed with that project.⁸

3. Barrington's 2017 Petition to Reopen and Petition for Reconsideration

Barrington cited the August 2016 RFP in its January 2017 petition to reopen, claiming that it proved there would soon be large increases in train volumes through Barrington.⁹ John Orr, who at the time was CN's Senior Vice-President, Southern Region, explained that CN had decided in September 2016 not to proceed with double tracking on the Leithton Subdivision, and

⁴ [https://www.cn.ca/en/news/2019/04/cn-investing-us\\$190-million-to-expand-and-strengthen-illinois-r/](https://www.cn.ca/en/news/2019/04/cn-investing-us$190-million-to-expand-and-strengthen-illinois-r/).

⁵ Verified Statement of John Orr, filed Jan. 30, 2017 (attached to CN-7) ("2017 VS Orr") at 8-9; VS Krause at 3.

⁶ 2017 VS Orr at 9.

⁷ 2017 VS Orr at 9; VS Krause at 3.

⁸ 2017 VS Orr at 9; VS Krause at 3.

⁹ Petition to Reopen, filed Jan. 10, 2017 by the Village of Barrington at 22-26.

that CN did not have plans to install double track in or near Barrington.¹⁰ Mr. Orr's statements, made in January and March 2017, were accurate.¹¹

Barrington also asserted in its January 2017 petition that future traffic moving to and from the Port of Prince Rupert in Canada would "massively impact" train volumes through Barrington.¹² Keith Reardon, who at the time was CN's Vice-President, Intermodal Services, explained in response that, assuming the planned expansion of the Port of Prince Rupert was completed, CN's best estimate was that an additional 0.5 trains per day would move through Barrington.¹³ So far that estimate has proven to be high. Traffic volumes to and from the Port of Prince Rupert moving through Barrington have remained essentially flat. In 2017, they averaged 3.5 trains per day; in 2018, 3.4 trains per day.¹⁴

By decision served April 26, 2017, the Board denied Barrington's January 2017 petition. It found that Barrington had failed to provide material new evidence or demonstrate substantially changed circumstances. It explained that, more than 8 years after the Transaction, increases and fluctuations in train volumes through Barrington were unlikely to be attributable to the Transaction.¹⁵ The Board reiterated that conclusion in its decision served October 27, 2017, which denied Barrington's petition for reconsideration.¹⁶

¹⁰ 2017 VS Orr at 8-9; Reply Verified Statement of John Orr, filed Mar. 15, 2017 (attached to CN-8) at 2.

¹¹ VS Krause at 3.

¹² Petition to Reopen, filed Jan. 10, 2017 by the Village of Barrington ("2017 Barrington Petition") at 20-22.

¹³ Verified Statement of Keith Reardon, filed Jan. 30, 2017 (attached to CN-67) at 1-2.

¹⁴ VS Hartley at 3.

¹⁵ April 2017 Decision at 7.

¹⁶ October 2017 Decision at 10.

4. CN's Renewed Focus on Capital Investment After Winter 2017-2018

During the winter of 2017-2018, CN experienced service challenges. This experience led CN to commit record amounts of capital to improve the reliability and fluidity of its network. Against this backdrop, in early 2018, CN again analyzed potential infrastructure investments throughout its network, including on the Leithton Subdivision.¹⁷

One project that was identified for further consideration was the addition of 4 miles of new track to the siding on the Leithton Subdivision at Sutton (the “Sutton Project”). The Sutton Project would improve the fluidity and resiliency of the Leithton Subdivision by improving meets, train staging, and CN’s ability to make crew changes. Improved fluidity for northbound and southbound traffic flows would also reduce vehicular delays at the grade crossing at Shoe Factory Road and reduce potential interference with commuter rail traffic on the Metra Milwaukee District West line that crosses the Leithton Subdivision near the southern end of the Sutton Project.

In order to evaluate the potential costs of the Sutton Project, CN issued a design RFP on March 14, 2018.¹⁸ Later, after reviewing responses, CN’s operating department decided to seek internal funding approval for pre-construction work through its Authorization for Expenditure (“AFE”) process. The AFE was approved on July 6, 2018, authorizing expenditures on pre-construction work.¹⁹ Before construction can proceed on the Sutton Project, CN will need to

¹⁷ VS Krause at 4.

¹⁸ *Id.*

¹⁹ *Id.*

obtain a permit from the U.S. Army Corps of Engineers (“USACE”) and secure further internal approval.²⁰

5. USACE Permitting for the Sutton Project

The proposed Sutton Project will be constructed adjacent to the existing active rail line in Hoffman Estates, Elgin, and unincorporated portions of Cook County, Illinois.²¹ In July 2018, CN and its contractors examined the Sutton Project site.²² Based on information derived from that examination, USACE determined in late October 2018 that the Project requires a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, because the project will require excavation and filling of 1.24 acres of wetlands.²³ On December 21, 2018, CN filed its application for the USACE permit (“USACE Permit Application”).²⁴

The USACE permit process has been transparent and well-publicized.²⁵ USACE provided public notice of CN’s USACE Permit Application by mail and on its website on February 27, 2019, and has invited public comments through April 30, 2019.²⁶ CN has met with representatives and citizens of Hoffman Estates and Hanover Township. In addition, CN will host a public town hall meeting after the close of the comment period to discuss and answer

²⁰ *Id.* at 5.

²¹ *Id.* at 1.

²² *Id.* at 4.

²³ *Id.*

²⁴ Attachment A to Barrington’s Petition is a copy of CN’s USACE Permit Application.

²⁵ See, e.g., <http://www.hoffmanestates.org/government/development-services/transportation-engineering/cn-ej-e-railroad> (Hoffman Estates webpage dedicated to informing the public about the Project and the process for submitting comments to USACE).

²⁶ <https://www.lrc.usace.army.mil/Missions/Regulatory/Public-Notices/Article/1769802/lrc-2018-651/>.

questions from the public about the Sutton Project’s purpose, need, construction, and impacts to wetlands.²⁷ Barrington has submitted comments to USACE regarding the project.²⁸

CN’s USACE Permit Application included the statement that “[c]urrently forecasted capacity for 2020 includes a growth of approximately nine (9) trains per day along this [Leithton] Subdivision.” That statement was referring to a projection of future traffic volumes from third quarter (Q3) 2018 to fourth quarter (Q4) 2020.²⁹ That projection relied on general indexed volume growth that has so far not been realized.³⁰ CN’s more recent forecasts of future traffic volumes in Q4 2020 on the Leithton Subdivision are shorter term and do not rely on the same general indexing method.³¹ They project growth from Q3 2018 to Q4 2020 of only 4-5 trains per day.³²

APPLICABLE LEGAL STANDARD

The Board may reopen a final decision only if it finds that “material error, new evidence or substantially changed circumstances” warrant reopening.³³ Barrington does not allege material error in its Petition; instead, it alleges “new evidence of substantially changed circumstances.”³⁴ To support reopening based on new evidence or changed circumstances, Barrington must produce evidence that is (1) genuinely new, in the sense that it could not reasonably have been gathered and produced before a prior decision of the Board in the same

²⁷ VS Krause at 5.

²⁸ March 29, 2019 letter from Mayor Karen Darch to Soren Hall (attached as Exhibit C).

²⁹ VS Hartley at 2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.4.

³⁴ Petition at 4.

proceeding,³⁵ and (2) material, in the sense that it would “mandate a different result” in the underlying decision — here, the Board’s 2008 Approval Decision.³⁶ Like Barrington’s four prior petitions to reopen, the Petition fails to meet this standard.

In considering petitions to reopen consummated mergers or acquisitions, the Board “also recognizes that new conditions become increasingly inconsistent with notions of commercial certainty and fairness once a merger has been consummated, given that the carrier can no longer choose to walk away from it.”³⁷ In 2017, the Board found that principle “particularly relevant” in this proceeding, given that “th[e] merger was consummated nearly 10 years ago, and that this is the fourth time in that period that Barrington has sought to revisit the Board’s (twice) judicially affirmed decisions.”³⁸ That is even more true now. CN consummated its acquisition **more than** 10 years ago; this is Barrington’s **fifth** petition to reopen, and Barrington’s challenges to the Board have been rejected by **three** federal court of appeals decisions.

ARGUMENT

Barrington’s Petition is premised on its claim that 9 more trains can be expected to run through Barrington by the 4th quarter of 2020. That claim in turn is based on the Sutton Project and a projection of 9 more trains on the Leithton Subdivision in the 4th quarter of 2020, which

³⁵ See, e.g., October 2017 Decision at 8-9; *Toledo, Peoria & W. Ry. v. STB*, 462 F.3d 734, 753 (7th Cir. 2006); *Tex. Mun. Power Agency v. Burlington, N. & S.F. R.R.*, STB Docket No. 42056, 2004 WL 2619767, at *5 (Sept. 24, 2004) (STB served Sept. 27, 2004).

³⁶ See, e.g., *Barrington III*, 892 F.3d at 267; October 2017 Decision at 5, 9; April 2017 Decision at 4; *Montezuma Grain Co. v. STB*, 339 F.3d 535, 541-42 (7th Cir. 2003).

³⁷ See, e.g., October 2017 Decision, at 5 (citing *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 3 S.T.B. 1030, 1033 (1998)).

³⁸ October 2017 Decision at 5.

was included in CN's December 2018 USACE Permit Application.³⁹ Its argument seeking reopening fails for two reasons.

I. THE BOARD ALREADY RULED THAT SPECULATION ABOUT CN'S FUTURE RAIL OPERATIONS IS NOT A BASIS FOR REOPENING.

Barrington's claims rest on speculation about future traffic levels. However, the Board has already concluded that such speculation cannot warrant reopening. Barrington's January 2017 petition to reopen relied in large part on speculation about anticipated Port of Prince Rupert and other traffic increases.⁴⁰ The Board rejected Barrington's argument and explained, "general observations about CN's current operations and speculation about possible future operations" are insufficient to warrant reopening.⁴¹ The Board reached the same conclusion twice in 2015, when Barrington sought reopening and later reconsideration of reopening based on allegations of unanticipated increases in energy-related traffic,⁴² and claims about potential future double-tracking.⁴³ The Board explained that Barrington's "speculation about what might occur in the future"⁴⁴ and generalized concerns about future volumes of traffic⁴⁵ do not justify reopening. Reopening requires "new evidence" that is "material" (in the sense that it would mandate a different result in the underlying decision) and reflects actual "changed circumstances."

³⁹ Barrington also cites as "new evidence" (i) a petition CN filed before the Illinois Commerce Commission in 2010 ("ICC petition"), and (ii) two recent CN press releases that discuss in general terms CN's plans for investment in Illinois and elsewhere. A public filing in 2010 is not "new evidence" in 2019. CN's general investment plans are good news for CN's customers and the U.S. economy, but not material to the Board's 2008 Approval Decision.

⁴⁰ 2017 Barrington Petition at 21-23.

⁴¹ April 2017 Decision at 5.

⁴² Petition to Reopen, filed Nov. 26, 2014 by the Village of Barrington at 6-7.

⁴³ Petition Seeking Reconsideration, filed Jun. 4, 2015 by the Village of Barrington at 11.

⁴⁴ November 2015 Decision at 5.

⁴⁵ May 2015 Decision at 7.

Projections about future changes in train volumes are “inherently imprecise”⁴⁶ and are not actual changes.

Barrington’s current Petition should be denied for the same reason. Barrington relies on a capacity forecast in CN’s USACE Permit Application. In 2018, CN staff projected the future traffic levels for the Leithton Subdivision for the fourth quarter of 2020. As explained by Mr. Hartley in his verified statement, that projection relied on general indexed volume growth that has not been realized thus far.⁴⁷ CN’s more recent forecasts for the Leithton Subdivision project smaller future traffic volume increases.⁴⁸ Train volumes vary unpredictably over time for many reasons, and speculative projections about them do not provide a basis for reopening.

II. IN ANY EVENT, MERE CHANGES IN TRAFFIC VOLUME, ESPECIALLY COMING MORE THAN TEN YEARS AFTER THE TRANSACTION, DO NOT JUSTIFY REOPENING.

The Board imposes mitigation conditions to address the reasonably foreseeable effects of transactions. The Board found that in this proceeding the outer boundary of reasonably foreseeable effects was 2015.⁴⁹ As the Board has recognized, the monthly train volume reports submitted by CN demonstrated that actual train volumes through 2016 were slightly below the projections used by the Board through 2015.⁵⁰

As the Board explained in October 2017, in denying Barrington’s petition for reconsideration, over time, “the causal relationship between CN’s acquisition of the EJ&E line

⁴⁶ April 2017 Decision at 7.

⁴⁷ VS Hartley at 2.

⁴⁸ *Id.*

⁴⁹ Approval Decision at 41.

⁵⁰ April 2017 Decision at 6.

and the traffic conditions in Barrington, both current and future, has become more attenuated.”⁵¹ Potential train traffic increases in 2020 have such an “attenuated” connection to the January 2009 Transaction that they cannot be considered “Transaction-related” in any meaningful way, so they provide no basis for imposing new conditions on the Transaction. Absent the Transaction, the EJ&E line’s former owner might have responded to the same market forces affecting CN’s operations by increasing traffic on the line, and could have done so without any regulatory oversight.⁵²

Moreover, potential traffic levels in 2020 are not material to the Board’s 2008 Approval Decision. They would not change the outcome of that decision, given that the Board used traffic projections only through 2015. Further, the Board did not cap traffic levels or set traffic levels that would trigger further conditions.⁵³ Instead, the Board recognized that having authorization to acquire the former EJ&E line, CN should operate it in a manner like its other lines to serve its customers and the public, without artificial constraints on traffic levels.

Barrington’s Petition also fails because the Board has repeatedly held that meeting or exceeding a certain level of traffic does not automatically warrant mitigation, let alone requiring CN to fund a grade separation at US Route 14.⁵⁴ Meeting or exceeding a certain threshold of vehicle delay was only one factor the Board considered in determining whether a crossing was eligible for mitigation.⁵⁵ In Barrington’s case, the Board repeatedly concluded that it was not

⁵¹ October 2017 Decision at 10; *see also* April 2017 Decision at 7.

⁵² *See* Approval Decision at 38.

⁵³ *Id.* at 41.

⁵⁴ October 2017 Decision at 9; April 2017 Decision at 4-5; October 2015 Decision at 4; May 2015 Decision at 5; November 2012 Decision at 10; FEIS 4-8, 4-12.

⁵⁵ October 2017 Decision at 9; April 2017 Decision at 5; November 2012 Decision at 10-11; *see also Barrington II*, 758 F.3d at 329.

appropriate to require CN to fund a grade separation at US Route 14 because Barrington's vehicle delays were primarily attributable to preexisting traffic conditions and roadway capacity constraints that would not be remediated by a grade separation.⁵⁶

Barrington has adduced no new evidence that would materially change the outcome the Board reached in 2008 that CN is not required to fund a grade separation at US Route 14. Barrington and the State of Illinois may construct a grade separation at US Route 14 if they secure the necessary funding. Like any other railroad, CN would be responsible for 5% of the costs of such a grade separation under 23 C.F.R. § 646.210. However, Barrington is not entitled to the order it seeks compelling CN to pay a larger share of the costs.

CONCLUSION

CN respectfully requests the Board deny Barrington's Petition.

Respectfully submitted,

Kathryn J. Gainey
CN
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 347-7840

/s/ David A. Hirsh
David A. Hirsh
Matthew W. Ludwig
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500

Counsel for Canadian National Railway Company and Grand Trunk Corporation

April 29, 2019

⁵⁶ October 2017 Decision at 9; May 2015 Decision at 6; November 2012 Decision at 12-13, *aff'd*, *Barrington II*, 758 F.3d 326; 2008 Final Decision at 45 & n.101, *aff'd*, *Barrington I*, 636 F.3d 650.

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087 (Sub-No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION — CONTROL — EJ&E WEST COMPANY**

[Barrington Petition for Mitigation]

VERIFIED STATEMENT OF DANIEL KRAUSE

My name is Daniel Krause. I am a Field Engineer for Illinois Central Railroad Company. I have held my current position since April 2014. I am also the CN Project Manager for the Sutton project (the “Sutton Project”). The Sutton Project refers to the construction of approximately 4 miles of new track immediately adjacent to CN’s existing active rail line in Hoffman Estates, Elgin, and unincorporated portions of Cook County, Illinois, from MP 37.59 to MP 41.86 of the Leithton Subdivision. The Sutton Project is not in the Village of Barrington and is over 8 miles away from US Highway 14. The Sutton Project would add track to the Sutton siding southward, away from Barrington. The Sutton Project will stop at a point north of the existing interlocking where CN’s single track is crossed by two lines of Metra and a Canadian Pacific (“CP”) line. The new track would approach, but not connect with, the separate siding that is located south of that interlocking. A map of the Sutton Project area is attached to my statement.

As Project Manager, I am responsible for coordinating communications between internal CN operating departments and the firms engaged to supply specific deliverables for the planned Sutton Project. I have been closely involved with the process for CN pre-construction approval

of the Sutton Project. CN has asked me to describe its process for identifying, planning, and approving funding for capacity enhancements and other capital projects on its network, as well as how the Sutton Project has progressed to this stage. My statement also underscores that, contrary to assertions by Barrington in its Petition to Reopen, dated April 8, 2019 (“Petition”), John Orr, then CN’s Senior Vice President, Southern Region, was correct when he stated in early 2017 that CN had no current plans to install double track in or near Barrington.

1. CN’s Infrastructure Project Approval Process

CN makes significant investments in its network each year in order to maintain and add to its existing infrastructure to meet the immediate and anticipated needs of its customers. Forecasting those needs is necessarily imprecise and challenging, given the many unpredictable factors that can affect future traffic volumes. To guide its infrastructure investments, CN regularly reviews network capacity, projections of possible future traffic flows, pinch points, and infrastructure projects that may address existing and potential future needs. CN develops a projected return on investment (“ROI”) for potential projects, and prioritizes projects within regions. Priorities can and do change over time based on factors including shifting needs, forecasts, and available funding.

Infrastructure projects require review and approval from multiple departments within CN, including Finance and Operations, as well as CN’s senior executives. If there appears to be a sufficient business case for a project, CN’s Finance department will prepare an Authorization for Expenditure (“AFE”). The AFE describes the business case for the project, including the costs and expected ROI, and seeks funding authorization for all or part the project. Once the AFE is prepared, it is reviewed by the operating department and ultimately CN’s senior executives for approval to fund the project. An AFE must be approved for a project to proceed.

Projects often proceed in two steps. First, they may receive funding approval for design and other pre-construction work. Once that work is complete, the project is ready to proceed to construction only when separate funding for its construction is approved. Projects are often bifurcated this way, particularly if a U.S. Army Corps of Engineers (“USACE”) permit may be required. The amount of time to obtain a USACE permit can be uncertain, and priorities can change between the time the USACE permit is sought and obtained. Some projects, even after receiving a USACE permit, are not constructed.

2. Infrastructure Projects for the Leithton Subdivision

During 2016, CN undertook a capacity assessment of the Winnipeg to Chicago corridor in order to identify constraints and develop potential options for mitigating those constraints. As part of this assessment, in August 2016, I issued an RFP for the design and high level estimate of construction costs for several projects that could enhance capacity and fluidity on portions of the Leithton Subdivision. One of those projects was for an extension and connection of the Sutton and Spaulding sidings.¹ I received responses to the RFP on September 6, 2016. However, CN determined at that time that it had sufficient capacity on the Leithton Subdivision. On September 16, 2016, I notified the bidders that CN would not be awarding contracts for any of these projects. After I cancelled the RFP, CN issued no new RFP’s and no new AFEs were sought for new infrastructure projects on the Leithton Subdivision for the remainder of 2016 or during 2017. Contrary to Barrington’s claims (Petition at 5-7), Mr. Orr’s statements in early 2017 that CN had no current plans to install double track in or near Barrington were correct.

¹ The 2016 project would have extended the new track south over the diamonds at the Metra and CP lines and connected with the existing Spaulding siding. In contrast, the Sutton Project would stop short of both the Metra and CP diamonds and the north end of the separate existing Spaulding siding.

In early 2018, CN reassessed the potential need for added capacity on the Leithton Subdivision. This reassessment was consistent with CN's broader commitment to increase investment in infrastructure, equipment, and personnel after the service challenges it experienced during the winter season from 2017-2018. The Sutton Project was identified as a potential project. Accordingly, on March 14, 2018, I issued an RFP for the design and coordination necessary to advance the Sutton Project to the point where it would be ready for construction. I received responses to the RFP on April 6, 2018. Based on the information developed about the Sutton Project, CN's Finance department submitted an AFE for design and permitting work on May 14, 2018. It was approved on July 6, 2018.

In early July 2018, CN's consultant investigated the project site to determine the presence, extent, and quality of any wetlands or other areas that might be subject to the jurisdiction of the USACE. A permit issued by the USACE pursuant to Section 404 of the Clean Water Act is required when a project requires filling in a jurisdictional wetland. USACE issued a Jurisdictional Determination on October 6, 2018, confirming the presence of jurisdictional wetlands and the need to obtain a USACE permit. CN submitted its USACE permit application on December 21, 2018.

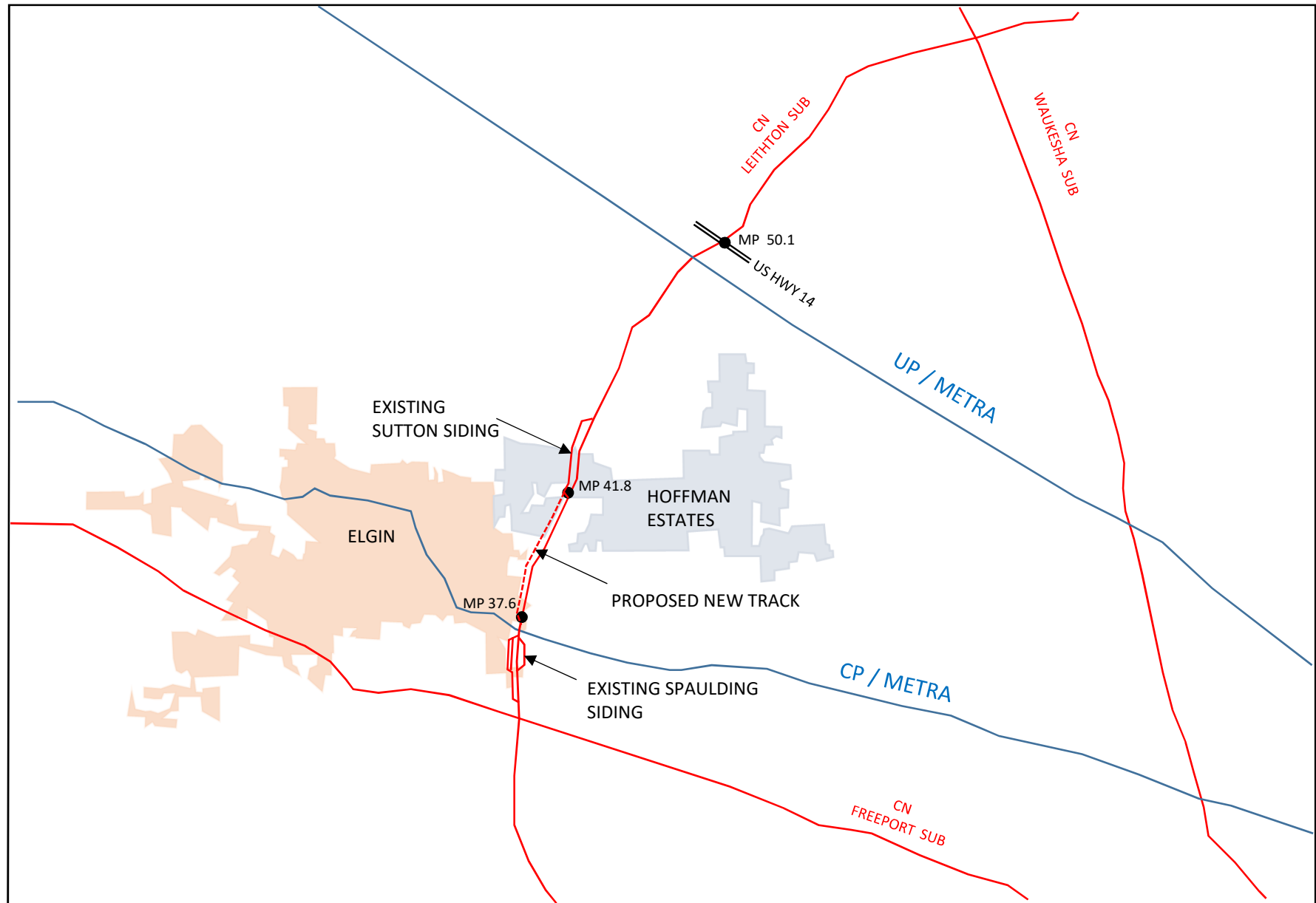
The Sutton Project will result in unavoidable impacts to 1.24 acres of wetlands due to both filling (0.59 acres) and excavation (0.65 acres). The impacted wetlands are low quality wetlands, meaning that they lack floristic diversity and do not qualify as high quality aquatic resources. As mitigation, CN has proposed to purchase 1.86 acres of wetland mitigation credits from an USACE-approved wetland mitigation bank (150% of the 1.24 acres of impacted wetlands).

The USACE permit process is open and public. On February 27, 2019, USACE provided notice of CN's application to the public by mail and on its website.² The public has an opportunity to comment on the USACE permit application, and the comment period runs through April 30, 2019. CN met with Hoffman Estates on March 18, 2019 and Hanover Township on April 22, 2019. After the comment period closes, CN will hold a town hall meeting with the public to review the project purpose and need and answer the public's questions about construction of the proposed Sutton Project and impacts to the wetlands.

Assuming the USACE permit is obtained, construction of the Sutton Project would still require further internal approval and funding by CN.

² <https://www.lrc.usace.army.mil/Missions/Regulatory/Public-Notices/Article/1769802/lrc-2018-651/>

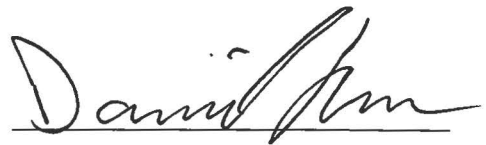
Attachment 1 - Sutton Project Map



VERIFICATION

I, Daniel Krause, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified to and authorized to submit this statement in this proceeding.

Executed on April 29, 2019.

A handwritten signature in black ink, appearing to read "Daniel Krause", is written over a horizontal line.

Daniel Krause

EXHIBIT B

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087 (Sub-No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION — CONTROL — EJ&E WEST COMPANY**

[Barrington Petition for Mitigation]

VERIFIED STATEMENT OF GREG HARTLEY

My name is Greg Hartley. I am Director, Asset Planning and Quality for Canadian National Railway Company and its operating subsidiaries (together, “CN”). I have held my current position since January 2019. In this role, I am responsible for planning, expanding, and enhancing CN’s network capacity. Prior to my current position, I was Senior Manager Quality and Analysis, where I was responsible for overseeing CN’s operating metrics and systems performance, and I have been involved in CN’s forecasting and service design since 2011.

CN has asked me to respond to certain statements in Barrington’s Petition to Reopen, dated April 8, 2019 (“Petition”), regarding the construction of approximately 4 miles of new track within CN’s existing right of way from MP 37.59 to MP 41.86 of the Leithton Subdivision (the “Sutton Project”). I am familiar with the Sutton Project, the forecasts of train volumes submitted in the permit application to the Army Corps of Engineers for that project, and train volumes and forecasts more generally, including for the Leithton Subdivision.

The purpose of the Sutton Project is to improve meets, train staging, and our ability to make crew changes on the Leithton Subdivision. This, in turn, will help improve fluidity and resilience for northbound and southbound traffic flows. It could also reduce delays to vehicles at

the grade crossing at Shoe Factory Road and reduce potential interference with commuter rail traffic on the Metra Milwaukee District West line that crosses the Leithton Subdivision near the southern end of the Sutton Project.

CN's Network Operations group uses forecasts to estimate future capacity needs. Because forecasts rely on market conditions, customer demand, assumptions and variables that change frequently, projections of future volumes over individual network segments vary over time – even month to month. Similarly, the actual volumes of rail traffic over particular track segments often vary from forecasts – even recent forecasts. The uncertainty of predicting future train volumes over a particular network segment is compounded the longer a forecast attempts to project into the future.

The forecasted traffic growth in CN's permit application to United States Army Corps of Engineers for the Sutton Project illustrates the difficulty and limits of forecasting volumes over a particular segment. The application, dated December 20, 2018 estimates that “[c]urrently forecasted capacity for 2020 includes a growth of approximately nine (9) trains per day” along the Leithton Subdivision. CN was projecting growth from Q3 2018 to fourth quarter (Q4) 2020. That projection to Q4 2020 relied on general indexed volume growth that has not been realized to date. Our more recent forecasts to Q4 2020 (including forecasts prior to the Petition) are shorter term and do not rely on the same general indexing method. They project growth from Q3 2018 to Q4 2020 of 4-5 trains per day, which is considerably less than the previous forecasted growth of 9 trains per day.

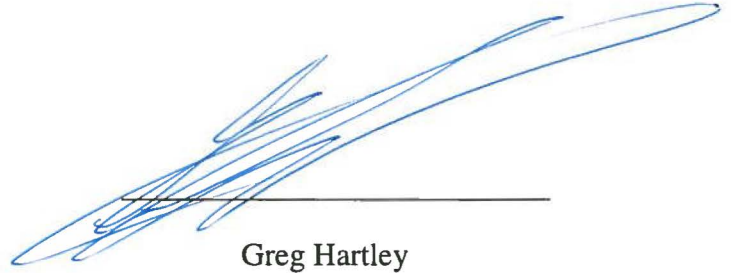
I have also been asked to respond to claims by Barrington regarding the growth of intermodal traffic due to the Phase II expansion of the Fairview Container Terminal at the Port of Prince Rupert. Petition at 10-13. Barrington challenges a statement by Keith Reardon, then

CN's Vice-President Intermodal Services, which estimated in January, 2017, that growth due to the Phase II expansion would amount to approximately 0.5 trains per day through Barrington. Barrington claims that the estimate was "baseless" and that actual growth has been 9 trains per day of intermodal traffic to or from the Port of Prince Rupert. *Id.* at 11. Barrington's claims regarding intermodal volumes are incorrect. In 2017, an average of 3.5 trains per day moved to or from Prince Rupert through Barrington. In 2018, that average was approximately 3.4 trains per day. That volume is slightly lower to date in 2019.

VERIFICATION

I, Greg Hartley, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified to and authorized to submit this statement in this proceeding.

Executed on April 29, 2019.



Greg Hartley

EXHIBIT C



BARRINGTON

Be Inspired

March 29, 2019

Mr. Soren Hall
Project Manager
ATTN: LRC-2018-00651
U.S. Army Corps of Engineers
Chicago District, Regulatory Branch
231 S. LaSalle Street, Suite 1500
Chicago, IL 60604-1437

Dear Mr. Hall:

As the Village President of Barrington, Illinois, I am writing to share my deep concerns regarding the request by the Wisconsin Central Ltd. Railroad to doubletrack its main line for 4.27 miles between Shoe Factory Road and Spaulding Road in northwest suburban Chicagoland.

This railroad was formerly known as the EJ&E and was purchased by Canadian National Railway (CN) in January 2009 after a NEPA review process in 2008. The Surface Transportation Board (STB) approved the transaction and ordered accompanying mitigation based on the fact that the rail line was a single track, and as such, would constrain CN's operations.

The project description for the above-referenced permit application states that "the forecasted capacity for 2020 includes a growth of approximately 9 trains per day along this stretch of track." As you can see from the attached maps of the rail line, the additional trains per day will also come through our community, Barrington, as the intersecting CN subdivisions are Munger, south of Spaulding, and Leithton, north of Barrington. This would represent a substantial 50% increase in the number of trains travelling through our Village. All four of our roads that cross the rail line fall within a span of just 5,918 feet (shorter than most CN freight trains) and cross the rail at grade level. Two of these crossings (U.S. Highway 14 and Illinois Route 59 / Hough Street) are strategic regional arterial roadways carrying thousands of travelers per day. The purchase of the rail line in 2009 by CN has increased freight traffic from 5 to 20 trains per day. This has gravely impacted vehicular traffic conditions in our community and in the region, but more importantly, it has caused emergency response delays for ambulances attempting to take patients to the area's closest hospital (Advocate Good Shepherd Hospital). (See map 2 attached). An additional 9 trains per day will terrifically exacerbate an already terrible situation.

While the project location for the application is indicated as the 4.27 miles between Spaulding Road and Shoe Factory Road, Barrington and other communities to the north on the rail line will certainly be severely impacted if the application is approved, as we will all experience this dramatic increase in train traffic.

A thorough review of the impact to the natural and human environment must be conducted of course in the area where the new track would be installed, and a review

VILLAGE HALL
200 S. HOUGH ST.
BARRINGTON, IL 60010
(847) 304-3400

VILLAGE PRESIDENT &
VILLAGE MANAGER'S OFFICE
T. (847) 304-3444
F. (847) 304-3490

FINANCIAL SERVICES
T. (847) 304-3400
F. (847) 381-7506

DEVELOPMENT SERVICES
T. (847) 304-3460
F. (847) 381-1056

PUBLIC WORKS
300 N. RAYMOND AVE.
BARRINGTON, IL 60010
T. (847) 381-7903
F. (847) 382-3030

PUBLIC SAFETY
400 N. NORTHWEST HWY.
BARRINGTON, IL 60010

POLICE
T. (847) 304-3300
F. (847-) 381-2165

FIRE
T. (847) 304-3600
F. (847) 381-1889

BARRINGTON-IL.GOV

of the impacts to the areas which will also experience a significant increase in train traffic as a result of this permit's approval must also be undertaken.

This review must include the impact of the vibration from nine additional daily trains on the environment and buildings along the single and double track; the increased risk to the natural and human environment of additional trains carrying hazmat, such as ethanol and heavy crude oil from Alberta; the impact on area economics and safety with additional daily vehicular and public safety delays caused by the additional trains and traffic; and the cumulative impact on what will now be almost 30 CN/EJ&E/WCL daily freight trains crossing another rail line (Union Pacific) carrying almost 70 daily commuter and freight trains in the center of a community which has no grade separations at any crossing – let alone at the one crossing not also crossed by the commuter line – U.S. Route 14.

I would respectfully request that notice be sent to all communities and individuals along the line who will also experience the impact of additional trains if the permit is approved, that a public hearing be held to assess the scope of these impacts, and that a complete and thorough review of the environmental impact of this request be completed.

Please feel free to contact me if you have any questions or if I can provide any assistance at this time.

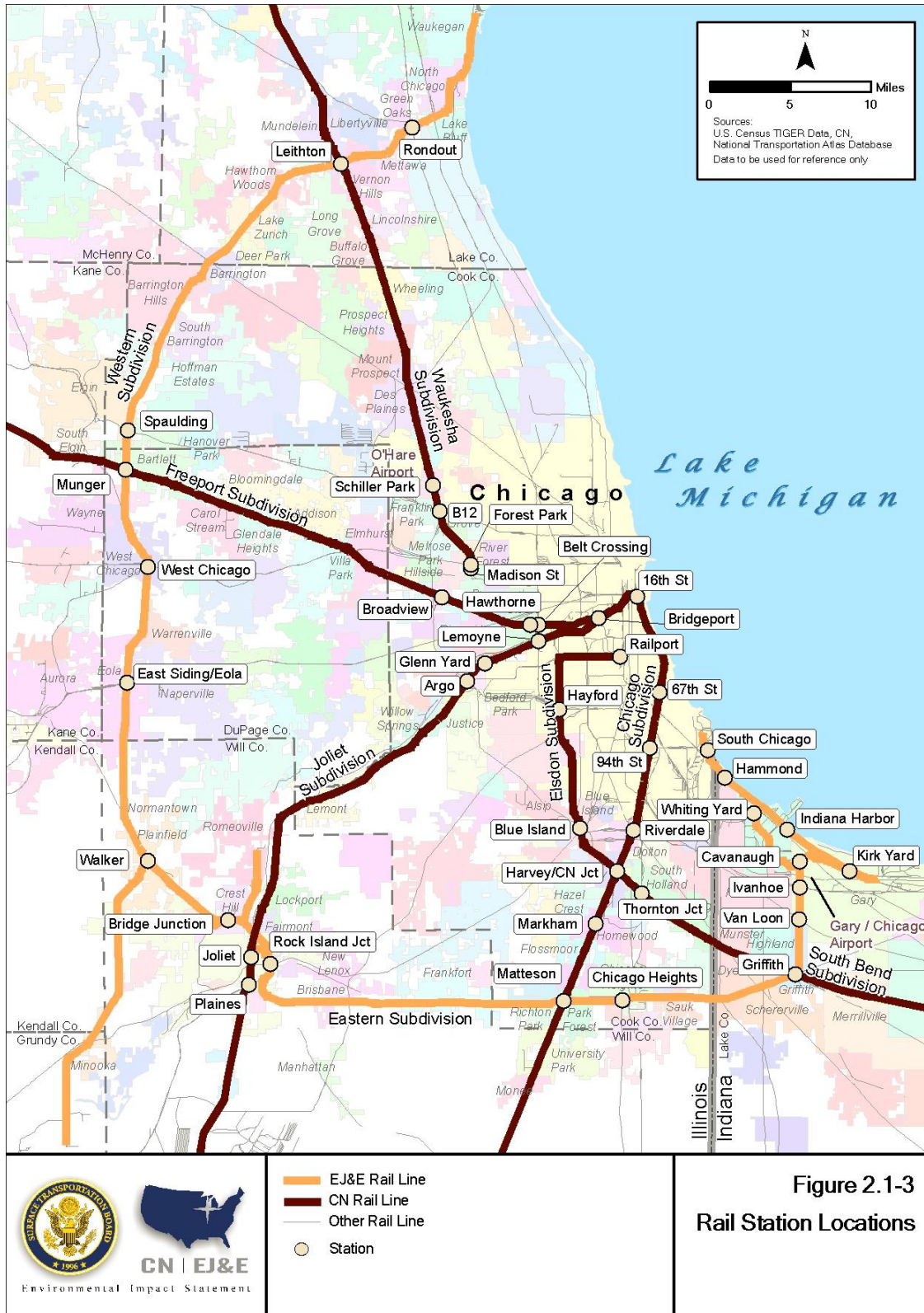
Sincerely,

Karen Darch
President, Village of Barrington, IL
Village Hall
200 S. Hough St.
Barrington, IL 60010
847.304.3445
kdarch@barrington-il.gov

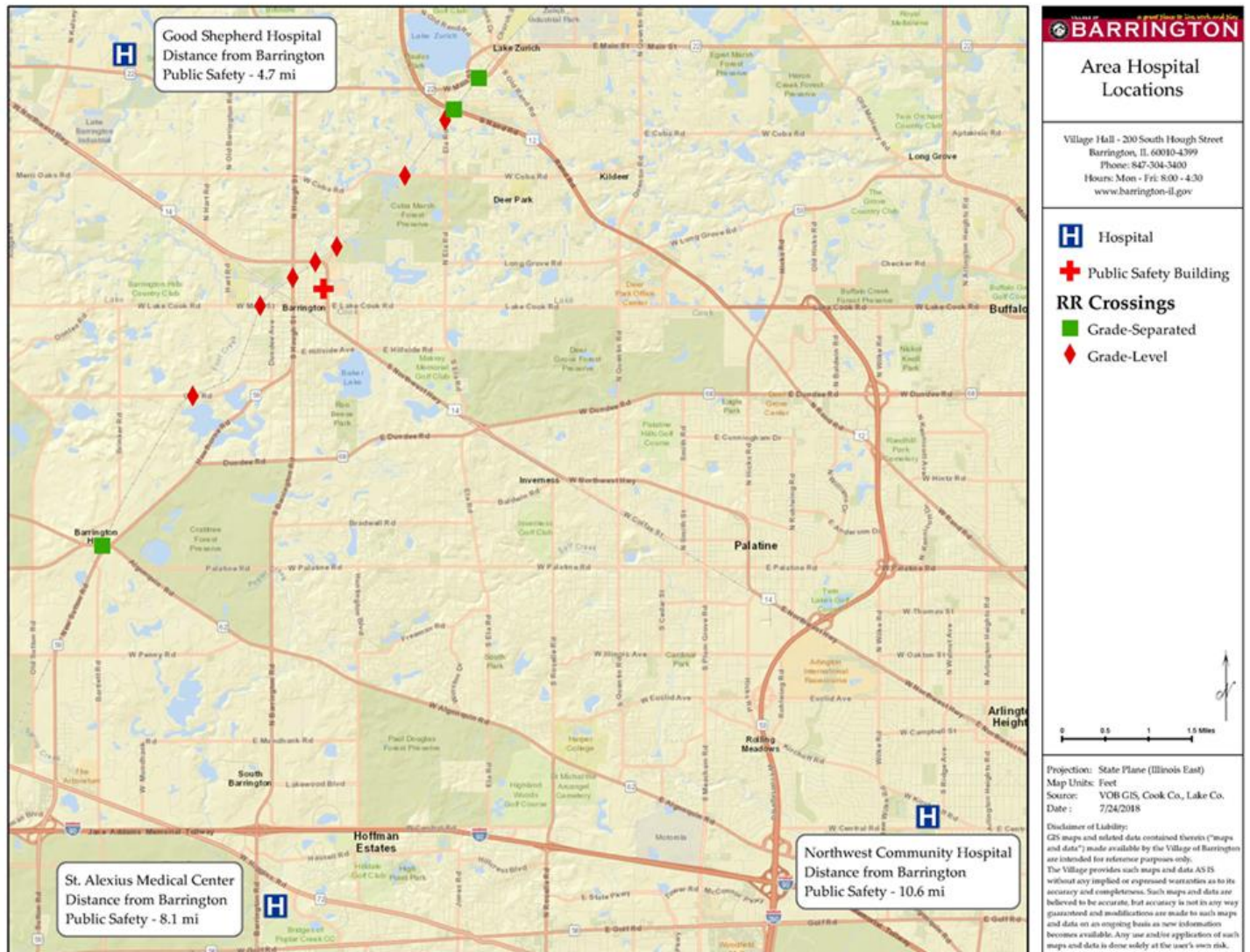
cc: Village of Hoffman Estates
Village of Bartlett
City of Elgin
Village of South Barrington
Village of Barrington Hills
Village of Deer Park
Village of Lake Zurich
Village of Hawthorn Woods
Village of Mundelin
Barrington Area Council of Governments

ATTACHMENTS

EJ&E Rail Line Map 1:



Map 2:



CERTIFICATE OF SERVICE

I certify that I have this 29th day of April, 2019, caused a true copy of the foregoing Reply to Barrington's Petition to Reopen Based on Materially Changed Circumstances Pursuant to the Board's Governing Regulation to be served by e-mail upon all known parties of record in this proceeding.

/s/ Matthew W. Ludwig