

E0-2287



RE: FD 35523: CSX's Proposed Joint Use of an L&I Railroad Line 

David Navecky to: Keeton, Burcum (Heritage Council)

09/11/2013 10:34 AM

Good morning, Burcum -

As we discussed yesterday, please find attached a PDF document (3 pages) that shows the Kentucky portion (i.e., Louisville) of this project. My suggestion is to use the "Proposed 70 dBA Contour" (orange line) as the limit of the APE. These figures are insufficient in scale to show the total width of the right-of-way of the rail line in Louisville, but it is approximately 75 feet wide in most areas.

My rationale for the 70 dBA contour is that it is one of the thresholds the Surface Transportation Board (STB) uses to identify noise sensitive receptors that might be eligible for mitigation of project-related noise increases. The STB defines noise-sensitive receptors to include residences, schools, libraries, hospitals and nursing homes.

I have also attached the Executive Summary of the Draft EA, which was issued August 30, 2013. It contains some information about the project that you might find useful.

If you could, please acknowledge receipt of this email out of concern that delivery of the email could be blocked because of the size of the file attachments.

Thanks,

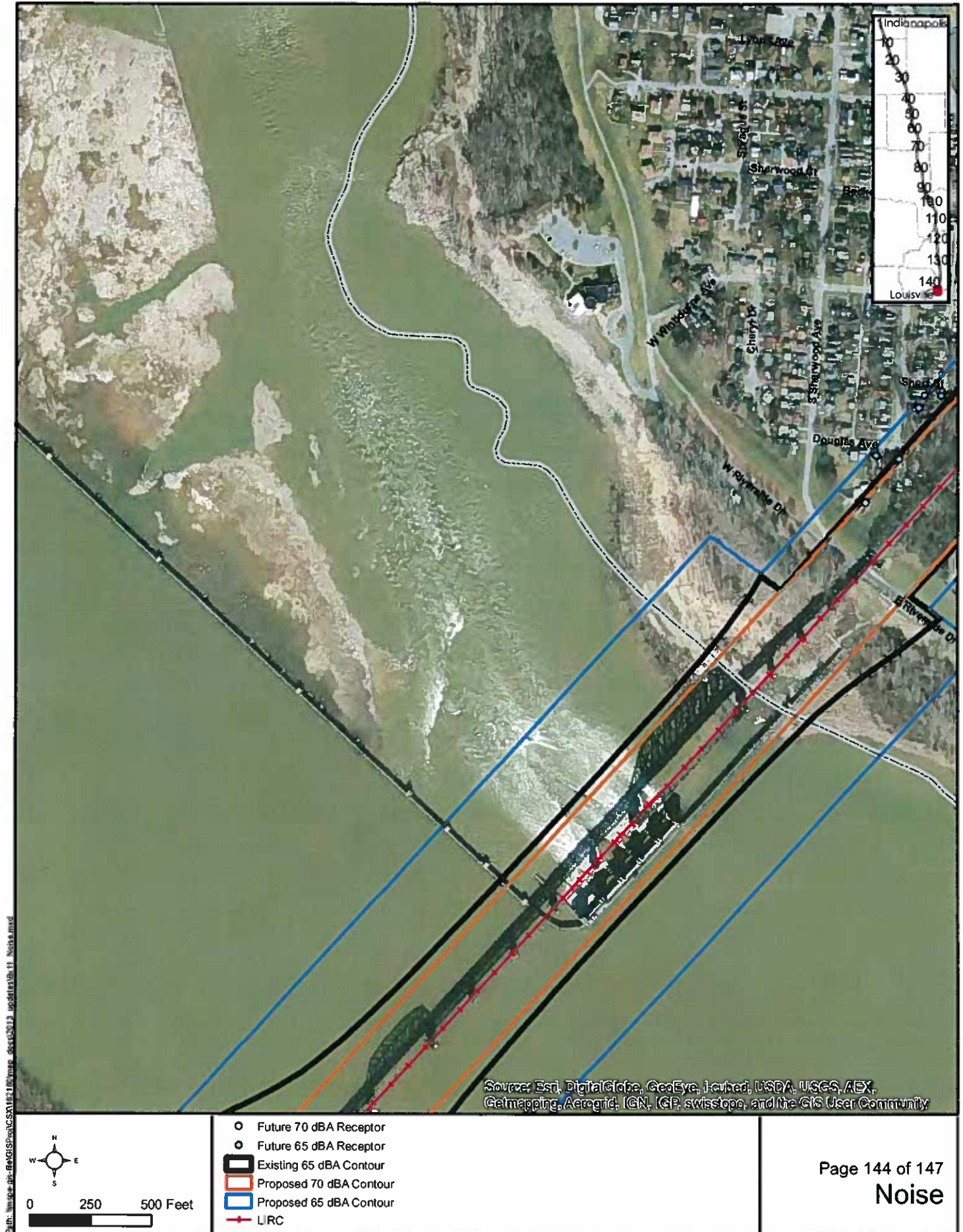
Dave

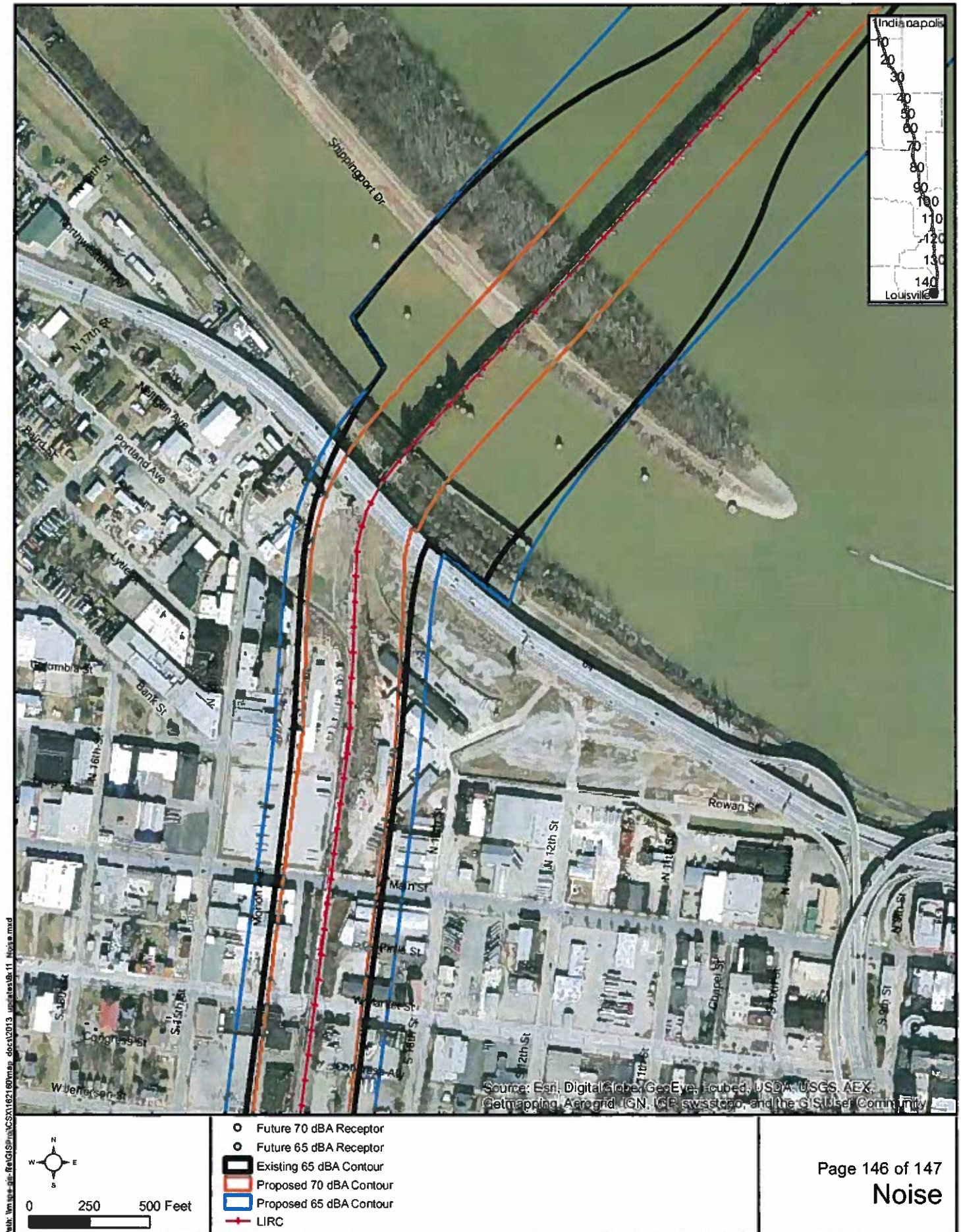


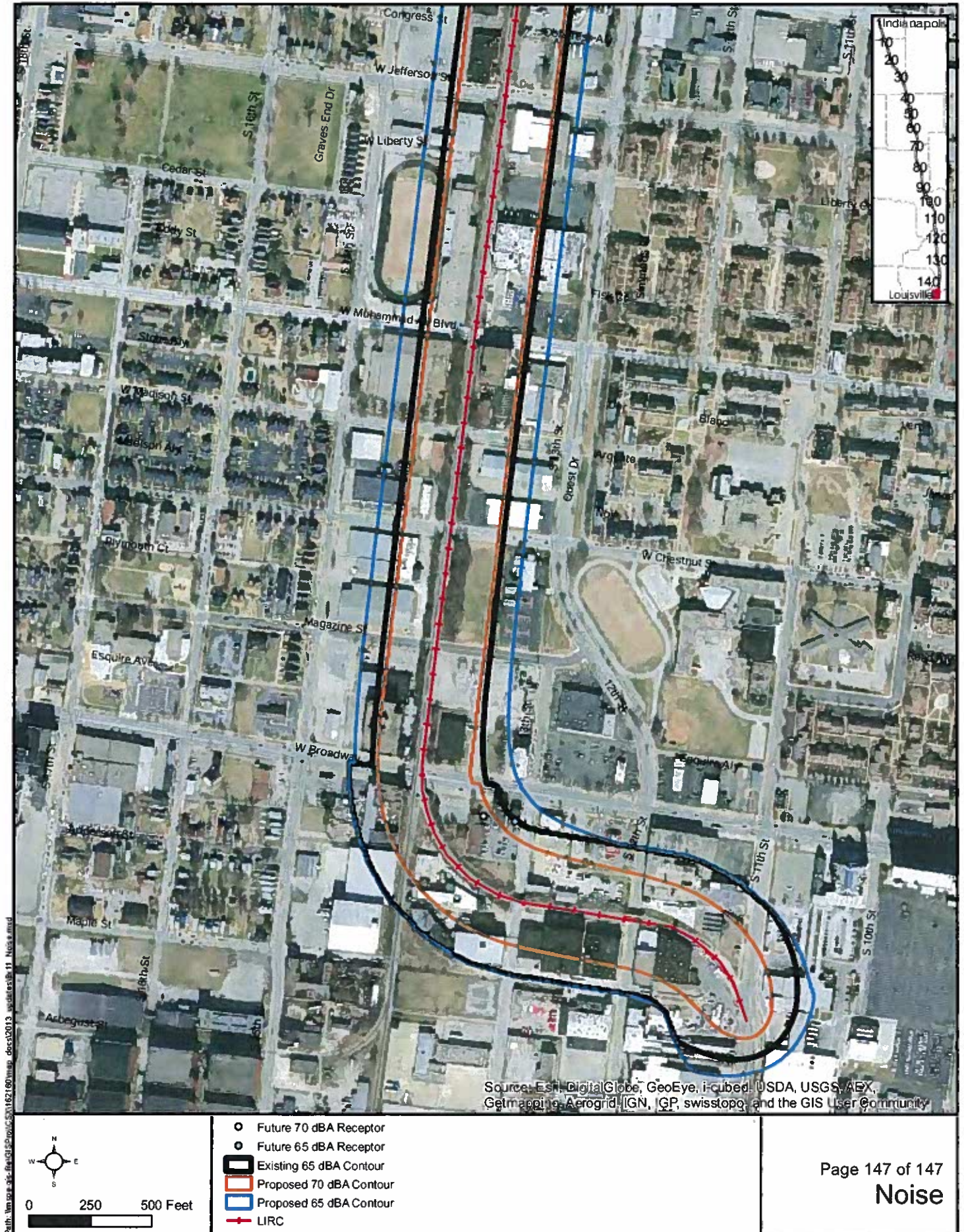
Draft EA_Appendix G_Louisville Section Only.pdf



Draft EA_Executive Summary.pdf







EXECUTIVE SUMMARY

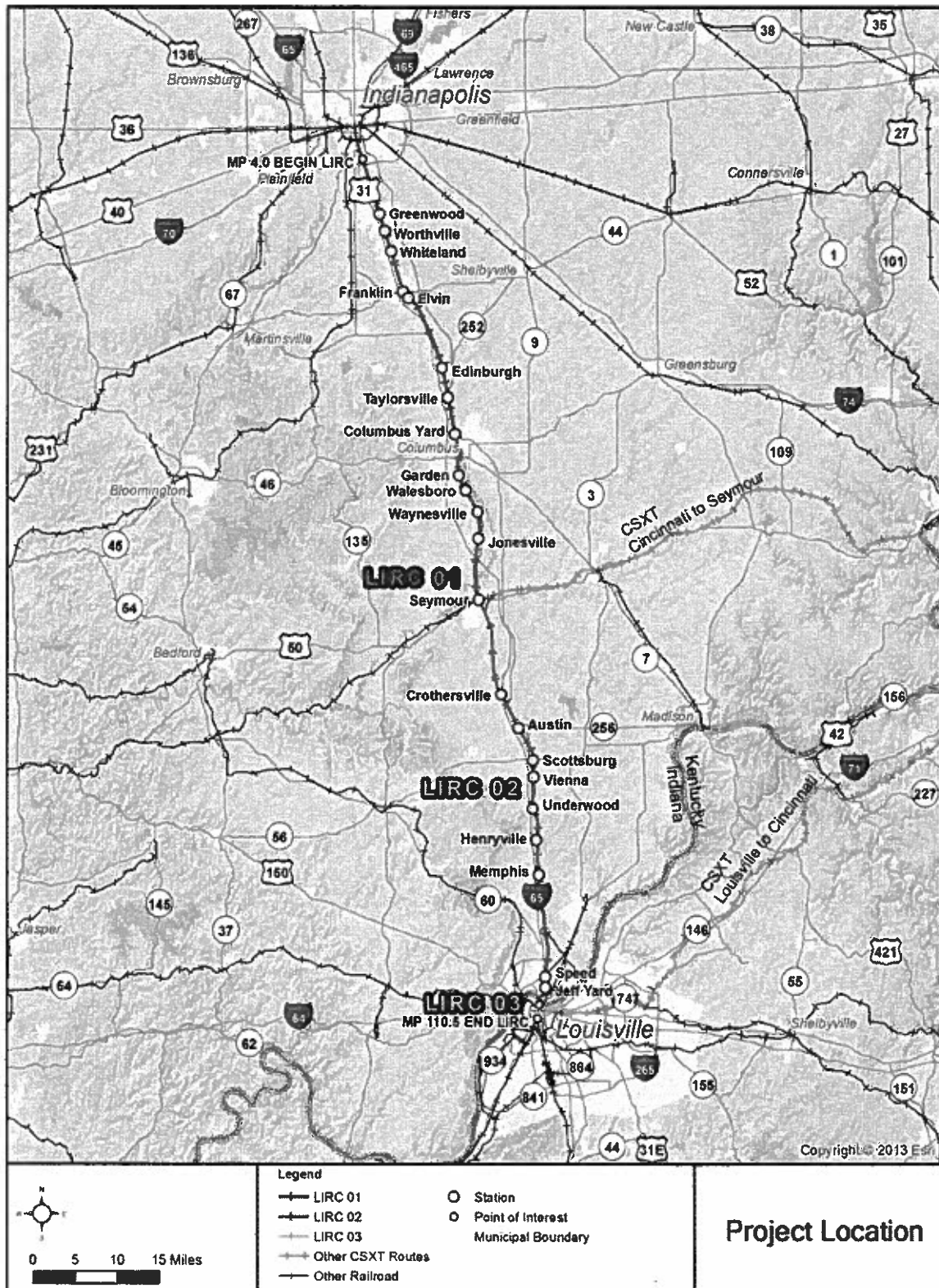
1. Background

On July 2, 2013, CSX Transportation, Inc. (CSXT) and the Louisville & Indiana Railroad Company (L&I) (jointly, Applicants) filed an application with the Surface Transportation Board (Board) pursuant to 49 United States Code (U.S.C.) § 11323 and 49 Code of Federal Regulations (C.F.R.) Part 1180.¹ Applicants seek Board authority for CSXT to acquire from and jointly use with L&I a perpetual non-exclusive railroad operating easement² (Easement) over a 106.5-mile portion of L&I rail line (Line). The Line extends from a connection with CSXT in Indianapolis, Indiana, milepost (MP) 4.0, and a connection with CSXT in Louisville, Kentucky, MP 110.5 (Proposed Transaction). The Proposed Transaction would increase CSXT's ability to control its traffic in the Midwest, particularly in its Louisville to Cincinnati corridor (LCL Subdivision), and enhance the efficiency of its operations. The Proposed Transaction would also increase the efficiency of L&I on the Line. The Proposed Transaction lies within Bartholomew, Clark, Jackson, Johnson, Marion, and Scott counties in Indiana, and Jefferson County, Kentucky. Figure ES 1.1-1 shows the location of the Proposed Transaction.

¹ Applicants filed a portion of the application on June 14, 2013. However, the Board did not receive information material to its consideration of whether to accept or reject the application from Applicants until July 2, 2013. Therefore, the Board considers the application filed on July 2, 2013. The Application and other filings for this case are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for Docket No. FD 35523.

² A railroad operating easement is an agreement between railroad companies that grants one railroad the right to operate over a rail line while the granting railroad continues to own the underlying land.

Figure ES 1.1-1 Project Location



2. NEPA and the Environmental Review Process

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires that the Board examine the potential environmental impacts of major federal actions—including regulatory approval of projects proposed by private parties—and to inform the public concerning those potential impacts.

Under NEPA, the Board must consider potential environmental impacts. While NEPA prescribes the process that must be followed, it does not mandate a particular result.³ Thus, once the environmental effects have been adequately identified and evaluated, the Board may conclude that other values outweigh the environmental costs.⁴ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality (CEQ)⁵ and by the Board.⁶ The Board's Office of Environmental Analysis (OEA) is responsible for conducting environmental reviews on behalf of the Board, evaluating potential environmental impacts, and when appropriate, recommending environmental mitigation conditions to the Board.

In imposing environmental mitigation conditions in acquisition proceedings, the Board has consistently focused on the potential environmental impacts that would result directly from transaction-related changes in activity levels on existing rail lines and at rail facilities. The Board typically does not require mitigation for pre-existing environmental conditions, such as the effects of current railroad operations.

The level of environmental review depends upon the potential for significant impacts. Actions whose environmental effects are ordinarily insignificant may normally be categorically excluded from a case-specific NEPA review.⁷ Included in this category are acquisition transactions that would not result in operational changes that exceed certain rail activity thresholds established by the Board. *See* 49 C.F.R. §1105.7(e) (4), (5). Acquisitions that are expected to cause increases in trains per day, rail traffic, or rail yard activity above the Board's thresholds for environmental review (generally, an increase of three trains per day in areas with poor air quality and eight trains per day in areas with good air quality) presumptively require the preparation of an Environmental Assessment (EA).⁸ An EA is being prepared in this case because train traffic is

³ *Robert v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989).

⁴ *Id.*

⁵ 40 C.F. R. Parts 1500-1508.

⁶ 49 C.F.R. Part 1105.

⁷ 49 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. §1105.6(c), (d).

⁸ 49 C.F.R. §§ 1105.6(b)(4), (c)(2)(i). Agencies must prepare a detailed Environmental Impact Statement (EIS) for proposals that would significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). Agencies may prepare a more limited EA to determine whether a full EIS is necessary or whether, with appropriate mitigation, they can make a Finding of No Significant Impact. 40 C.F.R. §§ 1501.3, 1501.4. The Board's Draft EAs are issued for public review and comment. A Final EA is then prepared, addressing the comments and containing additional environmental analysis, if warranted. Final EAs also contain OEA's final recommendations, if any, for environmental mitigation to minimize any potential environmental impacts of the proposed transaction.

expected to increase by 13 trains per day on two portions of the Line and by 15 trains per day on the remaining portion of the Line.

In this case, CSXT requested permission from OEA to prepare a Preliminary Draft EA (PDEA), which OEA approved under CEQ guidelines at 40 C.F.R. § 1506.5(b). That guideline provides that an agency may permit an applicant to prepare an EA, provided the agency reviews the PDEA, makes appropriate modifications to ensure that the document meets the Board's NEPA-compliance responsibilities and takes responsibility for the scope and content of the EA.

After receiving approval from OEA to prepare a PDEA, CSXT and L&I conducted early outreach and consultation with various federal, state, and local agencies and other interested parties. L&I and CSXT performed outreach and consultations both by letter and by public meetings held in the project area. Based on studies and feedback from many stakeholders, CSXT prepared a PDEA (using the consulting firm HDR Engineering, Inc.), which described the purpose and need for the proposed action, described the affected environment and the potential environmental impacts of the Proposed Transaction and the No-Action Alternative (i.e. retention of the status quo). The PDEA also set forth voluntary mitigation with which Applicants agreed to comply with should the Board approve the Proposed Transaction and concluded that, as mitigated by the measures suggested by Applicants, the Applicants' proposal would not result in significant environmental impacts.

Applicants received comments during their preliminary outreach and consultation. Comments were received from the U.S. Department of Agriculture; U.S. Fish and Wildlife Service; U.S. Army Corps of Engineers (USACE); U.S. Coast Guard; Delaware Nation; Peoria Tribe of Indians of Oklahoma; Kentucky Heritage Council; Indiana Department of Environmental Management (IDEM); Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology; Indiana Department of Transportation (INDOT); Kentucky Energy and Environmental Cabinet; Kentucky Transportation Cabinet (KYTC); Town of Whiteland; Scott County Commissioners; The City of Greenwood; City of Indianapolis; The City-County Council of Indianapolis and Marion County; Johnson County Highway Department; the University of Indianapolis; and Amtrak. Each of these comments may be found in Appendix A of this Draft EA.

OEA has carefully reviewed the information set forth in the PDEA, verified its methodologies and data, edited the PDEA, and converted it into this Draft EA, which OEA is now issuing for public review and comment.

The Draft EA describes the affected environment; evaluates and compares the potential environmental impacts of the Proposed Transaction and the No-Action Alternative; and identifies mitigation measures that could eliminate or lessen potential impacts. The Draft EA includes both the Applicants' proposed voluntary mitigation and additional preliminary mitigation proposed by OEA. The preliminary mitigation measures in the Draft EA cover the following resource areas: safety, transportation; rail operations; hazardous materials transportation; emergency response; water resources; biological; noise and vibration; energy; and monitoring and enforcement.

Based on all the information available to date, OEA has preliminarily determined that the potential environmental impacts of CSXT's proposal would be adverse in the areas of noise and vibration and emergency vehicle access/vehicles delays, but with the preliminary mitigation set forth in the Draft EA, potential impacts would not be significant, and therefore, there is no need for an EIS.

OEA emphasizes that the recommended environmental mitigation measures for the Proposed Transaction in the Draft EA are preliminary. OEA invites comments on the proposed environmental mitigation measures and all other aspects of this Draft EA during the comment period on this Draft EA, which will end on September 30, 2013. In order for OEA to effectively assess the comments, it is critical that interested parties be specific regarding their concerns, including any desired additional mitigation and the reasons why it would be appropriate. OEA will consider all public comments on the Draft EA, and may conduct further environmental analysis and agency consultation, as appropriate, based on these comments. OEA anticipates issuing a Final EA on or before November 6, 2013, which would complete the environmental review process. The Final EA will address the comments received on the Draft EA and make final environmental recommendations, including mitigation recommendations to the Board.

In an acquisition proceeding such as this, which does not involve the merger or control of at least two Class I railroads,⁹ the STB, under 49 U.S.C. § 11324(d), “shall approve . . . an application unless it finds that – (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.”

Therefore, in assessing the transportation merits, the Board focuses on evidence concerning possible anticompetitive effects. The Board also conducts an environmental review under NEPA where, as here, the thresholds in the Board's environmental rules are met, and can impose environmental conditions to minimize potential environmental impacts. See 49 U.S.C. §11324(c). Should the Proposed Transaction be approved, the Board will consider the entire environmental record, all public comments, and OEA's final environmental recommendations, including final recommended mitigation measures in deciding what, if any, environmental mitigation to impose.

3. Purpose and Need for the Proposed Transaction

Applicants have stated that the Proposed Transaction would improve routing flexibility and performance in CSXT's Midwestern region. It would also create greater efficiencies for L&I over the Line. CSXT would be able to utilize the Line to improve train performance, more

⁹ Three classes of railroads are designated by the Board using railroad operating revenues. Based on 2011 data, CSXT is one of seven Class I railroads in the United States (i.e., those with operating revenues of approximately \$433.2 million or more). The other six Class I railroads are Norfolk Southern Railway Company, Canadian National Railway Company, BNSF Railway Company, Canadian Pacific Railway, Kansas City Southern Railway Company, and Union Pacific Railroad Company.

efficiently handle future and/or expected growth of business, and better utilize available capacity (on both the Line and CSXT's network) to improve transportation services to its customers.

Applicants state that the purpose of the Proposed Transaction is to improve the efficiency, consistency, and reliability of CSXT's operations in that region of CSXT's rail network that includes Illinois, Indiana, Ohio, Kentucky, and Tennessee, specifically the portion of CSXT's network between Louisville, Kentucky, and Cincinnati, Ohio, referred to as the Louisville to Cincinnati Subdivision (LCL Subdivision). CSXT believes that the Proposed Transaction would be the most efficient and cost-effective way to meet this goal.

According to Applicants, the LCL Subdivision currently operates at or above a level of capacity utilization (i.e., more trains than available train slots), which impacts CSXT's ability to operate a consistent, reliable, and recoverable¹⁰ railroad. Applicants state that the LCL Subdivision experienced no significant decrease in freight train activity during the recent recession. As the demand for freight rail transportation is currently increasing and is expected to increase into the future, under its current network structure, CSXT expects to continue to operate at levels of train capacity that adversely impacts its performance.

Applicants state that CSXT could not economically improve capacity on the LCL Subdivision. Capacity and performance constraints are a result of the LCL Subdivision's significant grade, over one percent, and eight degrees curvature, which result in train length restrictions (5,100 feet), tonnage restrictions, and reduced train speeds which average about 15 miles per hour (mph). As a result of the Proposed Transaction, CSXT would be able to increase its train lengths to 7,500 feet. This increase in train length would provide operating economies for CSXT.

According to Applicants, on average, CSXT reaches train tonnage limitations before it reaches any train length limitations on the LCL Subdivision. The limitations on the LCL Subdivision require CSXT to operate smaller, less efficient trains between Louisville and Cincinnati. Applicants assert that these smaller trains create inefficiencies throughout CSXT's network in terms of additional resources, terminal congestion, and track occupancy. Operating limitations (i.e., shorter trains at slower speeds) require additional resources and train starts, which results in more trains moving across an already capacity constrained corridor and more trains moving through CSXT's Queensgate Yard, a major railcar classification facility located in Cincinnati, Ohio.

According to Applicants, the LCL Subdivision's grade and curvature makes increasing velocity or adding capacity very expensive, because it would require significant stabilization and grading efforts. The Line, on the other hand, has a grade under one percent, generally, and no curves greater than five degrees. These attributes would allow CSXT to operate longer, heavier, and faster trains.

CSXT currently has trackage rights permitting it to operate over the Line and there is no limitation on the number of trains that CSXT can run under the trackage rights. However, due to

¹⁰ Recoverable refers to the ability of a railroad to return to normal operations after an event that disrupts its operations. Such an event could be an accident or a weather-related event.

current clearance restrictions on the Line, CSXT only uses the southern portion of the Line between Seymour and Louisville.

Due to the anticipated costs of improving the LCL Subdivision's capabilities, CSXT feels it would be more efficient and cost effective to invest capital improvement dollars in the Line and derive the operational benefits the Line offers rather than investing in the LCL Subdivision.

4. Proposed Transaction and No-Action Alternative

This Draft EA evaluates two alternatives: the Proposed Transaction and the No-Action Alternative (i.e., maintaining the status quo). Because the Proposed Transaction involves the acquisition of an easement, and the joint use of the Line, and construction of an additional rail line is not planned, there is no other reasonable and feasible alternative to move CSXT's train traffic between Louisville, Kentucky, and Cincinnati, Ohio other than the Proposed Transaction and the No-Action Alternative. As a result of the Proposed Transaction, CSXT would reroute some traffic in its Midwest Region resulting in an increase of traffic on portions of the Line of as many as 15 trains a day. Where there would be potential adverse effects from the traffic increases on the Line, Applicants have proposed voluntary mitigation to reduce the potential effects.

The Board encourages communities and other entities and applicants to reach negotiated agreements and propose voluntary mitigation because the mitigation that results can be more far-reaching and more tailored to the specific needs of the community or other entity than mitigation the Board could unilaterally impose. The Board's practice is to impose conditions requiring compliance with voluntary mitigation and with any negotiated agreements that are reached in lieu of other site-specific mitigation that might be imposed and to impose in supplemental decisions the terms of any negotiated agreements that might be reached after a final Board decision has been issued and has become effective.

Proposed Transaction

As noted, Applicants are seeking the Board's authorization under 49 U.S.C. § 11323 and 49 C.F.R. Part 1180 for CSXT to acquire from and jointly use with L&I a perpetual non-exclusive¹¹ operating easement for the Line between its connection with CSXT in Indianapolis, Indiana (MP 4.0) and in Louisville, Kentucky (MP 110.5). For purposes of this Draft EA, OEA has divided the Line into three rail line segments (LIRC-01, LIRC-02, and LIRC-03). LIRC-01 lies within Bartholomew, Jackson, Johnson, and Marion counties, Indiana; LIRC-02 lies within Clark, Jackson, and Scott counties, Indiana; and LIRC-03 lies within Clark County, Indiana, and Jefferson County, Kentucky.

Under the Proposed Transaction, CSXT plans to reroute up to 15 of its trains per day to various segments of the Line. Specifically, the Proposed Transaction would add 15 trains per day on LIRC-01, 13 trains per day on LIRC-02, and 13 trains per day on LIRC-03 to existing train traffic. The existing trains on the LIRC-01, LIRC-02, and LIRC-03 number two, four, and seven trains per day, respectively. While no material train frequency increase would occur until the

¹¹ The owning railroad can have other tenants on the Line.

line has been upgraded during a multi-year process (as described below), to be conservative and to err on the side of over-inclusion, the Draft EA assumes that all additional CSXT trains would operate on the Line beginning in 2014.

In addition, as part of the Proposed Transaction, CSXT intends to:

- Fund upgrades to the Line that would result in a Federal Railroad Administration (FRA) Class 4 track standard, which would allow a majority of the route to operate at 49 mph.¹² This would include installing continuously welded rail (CWR) over the entire route, adding wayside detection devices (i.e., hot boxes, wheel impact, and wide-load detectors), replacing cross-ties as necessary, and surfacing (i.e., adding new ballast) of the Line. The result of the upgrade would be a route that is capable of handling 286,000-pound carloads and double-stack intermodal trains and multi-level cars.¹³ Currently, trains can operate on the Line at a maximum allowable speed of 25 mph.
- Add capacity to two existing sidings (at Elvin and Brook) and add up to two more sidings (at Crothersville and Underwood). The lengthened and new sidings would be about 10,000 feet long, which would enable the sidings to hold current trains and proposed trains. The rehabilitation and construction activities would be limited to work upon and within existing right-of-way (ROW).
- Replace the bridge over the Flatrock River, in Columbus, Indiana, on LIRC-01. CSXT has stated that it plans to replace the existing bridge's superstructure with a similar steel girder structure to allow for the handling of 286,000-pound carloads, double-stack intermodal trains, and multi-level cars. The replacement of the bridge and construction activities related to the bridge would be limited to work upon and within existing ROW. Currently, the bridge cannot accommodate double-stack intermodal trains or multi-level cars.

No-Action Alternative

CEQ's regulations implementing NEPA (40 C.F.R. § 1502.12(d)) require consideration of a No-Action Alternative. Consideration of the No-Action Alternative provides a basis for understanding the benefits and potential adverse impacts of the Proposed Transaction. Under the No-Action Alternative, CSXT would not acquire an operating easement from L&I, would not upgrade the Line, and would not jointly use the Line with L&I. CSXT would continue to use the Line for its current load of overhead traffic and would not make any improvements to the Line or make any changes to existing rail operations. Under the No-Action Alternative, the traffic increases on the Line that would occur under the Proposed Transaction would not take place, but

¹² Train speeds on Class 4 tracks are limited to 49 mph when train traffic is controlled through a warrant system (i.e., authorization to occupy a main line is provided through a verbal authorization system by radio, phone or other electronic transmission from a dispatcher [i.e., traffic warrant control]). Applicants currently use a traffic warrant control system on the Line and intend to retain that system under the Proposed Transaction. If Applicants were to use an automated signaling system to control train traffic on the Line, the speed limit would increase to 60 mph.

¹³ The Kentucky portion of the Line is currently cleared for 286,000-pound railcars; however, Applicants intend to upgrade the rail on that portion of the Line as well.

the potential transportation-related benefits of this project to CSXT and L&I that would result from the upgrades that CSXT plans to make would not occur either.

5. Affected Environment and Potential Environmental Impacts

The existing social, economic, and environmental conditions were examined in the study area to serve as the baseline for comparing the potential impacts of the Proposed Transaction and the No-Action Alternative, and for assessing the need for mitigation of potential adverse environmental impacts. As part of its environmental evaluation, OEA staff made a site visit of the area on May 27, 2011. OEA staff was accompanied by CSXT and L&I staff, who provided information on the transaction, operations, and adjoining areas. This site visit allowed OEA to inspect the Line and adjoining areas first-hand.

To describe the existing conditions and assess the potential impacts of the increase in rail traffic that would occur under the Proposed Transaction, the following areas were studied in preparing this Draft EA: traffic and grade crossing delay, rail safety and operations, emergency response, community resources and land use, socioeconomic, geology and soils, water resources, biological resources, air quality and climate, noise and vibration, energy, cultural resources, and environmental justice. The analyses presented in the Draft EA indicate that, without mitigation, adverse impacts could occur in the subject areas of grade crossing delay and emergency response, noise and vibration, water resources, and biological resources. The analysis for each resource area assessed in the Draft EA is summarized below.

However, as discussed below, Applicants propose voluntary mitigation and OEA recommends additional mitigation measures that are designed to minimize potential adverse impacts from the Proposed Transaction to below significant levels.

Transportation

This section discusses the potential impacts of the Proposed Transaction on traffic and crossing delay, rail operations, rail safety, and emergency response.

Traffic and Grade Crossing Delay

OEA evaluated the potential effects of increased rail traffic as a result of the Proposed Transaction.¹⁴ A total of 176 public and 49 private crossings are located along the Line. Of the 176 public crossings, 22 are grade-separated crossings and 154 are at-grade crossings. All 154 public, at-grade crossings would experience a transaction-related increase in train traffic.

Out of 154 public at-grade crossings, the most currently available Average Daily Traffic (ADT) data ranges from 100 vehicles per day (vpd) at seven, very rural crossings on the Line to 36,000 vpd at State Route 46 in Columbus, Indiana. Because ADT statistics are from 1986 to 2010, a one-percent growth rate was applied in determining the existing ADT volumes.

¹⁴ As discussed in Section 2 above, Applicants retained HDR Engineering, Inc. to conduct the technical analyses for the PDEA. OEA has reviewed and verified the scope and content of these analyses and takes responsibility for that work in the Draft EA.

All of the at-grade crossings analyzed exhibit some level of delay under 2011 existing conditions. The existing average delay per delayed vehicle ranges from 1.3 to 4.1 minutes. Total vehicle delays per crossing over a 24-hour period currently ranges from less than one minute per day to approximately 449 minutes per day, and nine at-grade crossings currently have total vehicle delays that exceed 100 minutes per day. The queue analysis results showed the longest existing vehicular queues at the at-grade crossings of Hanna Avenue in Indianapolis and Hamburg Pike in Cementville, Indiana (31 vehicles) and McClain Street/SR #56 in Scottsburg, Indiana (48 vehicles).

The delay analysis indicates that the Proposed Transaction would have vehicle delay effects that range from nominal to substantial. Under the Proposed Transaction, the average delay per delayed vehicle would range from 1.5 to 3.1 minutes. These future per vehicle delays would be comparable to or less than existing conditions because future trains, although more frequent and generally longer, would be moving at faster speeds.

However, total vehicle delays per crossing over a 24-hour period would increase considerably under the Proposed Transaction because of the proposed increases in trains per day. Under the Proposed Transaction, total vehicle delays per crossing over a 24-hour period would range from seven minutes per day to approximately 6,454 minutes per day, and 45 at-grade crossings would have total vehicle delays that exceed 100 minutes per day. The largest total vehicle delays under the Proposed Transaction would occur at SR #46 in Columbus, Indiana (6,454 minutes per day), and Charlestown Road in Jeffersonville, Indiana (2,579 minutes per day), where the number of trains would increase from 2 to 17 and 7 to 20 per day, respectively.

In addition to vehicle delays, when a queue is so long that it blocks an arterial roadway, the mobility of the community is considered to be affected. On the other hand, when a queue blocks no roadways, or a local roadway only, the mobility of the community is not considered to be affected. Additional analysis of the SR #46 and Charlestown Road crossings determined that the vehicle queue length of 1,472 feet at SR #46 under the Proposed Transaction would not block adjacent intersections. The vehicle queue length of 600 feet at Charlestown Road under the Proposed Transaction would not block the adjacent intersections on the east leg of the roadway. However, the vehicle queue would block the exit ramp of I-65 on the west leg of the roadway. The exit/entrance ramp is a signalized intersection. The SR #46 and Charlestown Road crossings did not exceed any other threshold criteria. OEA preliminarily concludes that these queues would have minimal impact on vehicle movements on the regional roadway network.

Applicants have offered voluntary mitigation measures in response to these potential grade crossing delays (see Voluntary Mitigation [VM] 33, VM 34, VM 35, VM 37 and VM 49). Applicants propose to examine planned train operations for ways of reducing highway/rail at-grade crossing blockages. Applicants would also cooperate with the appropriate state and local agencies and municipalities to: evaluate the possibility that one or more roadways listed in Table C-6 could be closed at the point where it crosses the Line, in order to eliminate the at-grade crossing; improve or identify modifications to roadways that would reduce vehicle delays by improving roadway capacity over the crossing by construction of additional lanes; assist in a survey of at-grade crossings for a determination of the adequacy of existing grade crossing signal systems, signage, roadway striping, traffic signaling inter-ties, and curbs and medians; and

identify conditions and roadway, signal, and warning device configurations that could trap vehicles between warning device gates on or near the at-grade crossing. Additionally, Applicants would install power switches along the Line where they determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of trains and reduce the likelihood of such blockages.

In addition, OEA preliminarily recommends that Applicants be required to establish a Community Liaison (MM 16), prepare a Grade Crossing Mitigation Plan (MM 1), and design sidings to the minimize potential for blocking crossings (MM 2).

Rail Safety

An analysis was conducted of at-grade crossings using a high predicted accident frequency standard of more than 0.15 accidents per year (one accident every seven years) as an indicator that a crossing should be considered for either warning device upgrading or, if the warning devices are already sufficient, additional mitigation measures.

Freight rail safety was evaluated using the rate of train accidents and incidents for CSXT, CN, and the Class I railroad industry average between 2006 and 2010 collected from the Federal Railroad Administration's (FRA) website. Based on these data, the Proposed Transaction would not be likely to increase accident and incident rates for the number of trains that would be rerouted over the Line.

This analysis showed that no crossings would meet or exceed the rate of greater than 0.15 accidents per year under either existing conditions or the Proposed Transaction. Thus, based on the information available to date, OEA does not believe that there is a need for additional safety measures at any individual crossing.

L&I moved 14 carloads of toxic inhalation hazard (TIH) material over the Line in 2010. Other hazardous materials totaled 187 carloads in 2010. L&I anticipates that it would continue to move a similar amount of hazardous materials over the Line under the Proposed Transaction. According to CSXT, CSXT's trains carrying hazardous materials would not be transferred over to the Line. Therefore, the Proposed Transaction would not have any impact on hazardous materials transport. Nevertheless, Applicants have volunteered nine mitigation measures related to hazardous material shipments (VM 40 through 48).

Emergency Response

OEA identified six emergency service providers (including two police stations, three fire departments and one hospital) that are within two miles of an at-grade crossing that would experience Transaction-related increased vehicle delays (i.e., 30 second increase per vehicle and 30 minute increase per day for all vehicles) and are more than one mile from the nearest grade-separated crossing. OEA considers these emergency service providers to be subject to potentially substantial effects.

In Columbus, IN, Columbus Fire Department Station 1 at 1101 Jackson Street and the Columbus Police Department administrative offices at 123 Washington Street are located within two miles of the 11th Street, 8th Street and SR 46 at-grade crossings. Both facilities are also more than one

mile away from the nearest grade-separated crossing and first responders from these facilities could experience delays if 11th Street, 8th Street or SR 46 were blocked by a passing train at the time of an emergency response. However, the Columbus Fire Department operates five other fire stations that would likely be able to provide emergency response relief if the subject crossings were blocked by a passing train. Therefore, OEA would not expect the Proposed Transaction to have a substantial effect on Columbus Fire Department emergency responses.

OEA would not expect the Proposed Transaction to have a substantial impact on emergency response times by the Columbus Police Department because police officers responding to calls are not limited to those stationed at the administrative offices but are typically deployed throughout a community patrolling in vehicles.

In Seymour, IN, the Seymour Fire Station at 318 East Pine Street, Seymour Police Station at 205 N. Ewing Street, Hamilton Township Fire Station at 414 W. 2nd Street, and the Schneck Medical Center at 411 W Tipton Street are located within two miles of the Tipton St./U.S. 50 at-grade crossing in Seymour, IN and more than one mile away from the nearest grade-separated crossing. However, the two fire stations are located on opposite sides of the Line and would likely be able to provide emergency response relief for each other if the Tipton St./U.S. 50 and other nearby at-grade crossings were blocked by a train. The Seymour Fire Department also maintains two other fire stations that could provide additional response relief. Therefore, OEA would not expect the Proposed Transaction to have a substantial effect on Columbus or Hamilton fire department emergency responses.

OEA does not expect the Proposed Transaction to have a substantial impact on emergency response times by the Seymour Police Department because police officers responding to calls are not limited to those stationed at one location but are typically deployed throughout a community patrolling in vehicles.

OEA believes that the Proposed Transaction could have a substantial effect on emergency service providers transporting patients to the Schneck Medical Center, particularly those responders on the east side of the Line attempting to transport patients west to Schneck Medical Center at the time a stopped or slowly moving train is blocking the Tipton St./U.S. 50 and other at-grade crossings in Seymour. To address this concern, OEA has preliminarily recommended a mitigation measure that would require Applicants to purchase, install and maintain a camera system that would enable the emergency service providers in Seymour to identify (1) blocked at-grade crossings in the city and (2) alternative routes for emergency service providers to take to Schneck Medical Center (see MM 4).

Applicants have also volunteered mitigation (see VM 49) where it would notify Emergency Service Dispatching Centers for all communities along the Line when a stopped train may be unable to move from at-grade crossings for a significant amount of time. OEA has supplemented that voluntary mitigation with a recommendation that Applicants contact the appropriate Emergency Service Dispatch Centers when a stopped or slowly moving train will not clear a public at-grade crossing within 10 minutes (MM 3).

Additionally, although the Proposed Transaction could affect emergency access for police, fire and emergency medical technician vehicles, the communities along the Line would be expected

to continue implementing existing mutual aid agreements and other forms of intergovernmental agreements to contact each other in the event of blocked at-grade crossings.

Community Resources and Land Use

The Draft EA evaluated the potential impacts of the Proposed Transaction to community resources and land use.

The Proposed Transaction involves use of an existing rail line that serves as a boundary between neighborhoods and communities. The communities in the area developed using the existing rail line as a border. While rail traffic would increase by as much as 15 trains per day, the Proposed Transaction would not separate or isolate any new neighborhoods.

There would be no new construction that would separate or isolate neighborhoods and all construction activities associated with the Proposed Transaction would take place within the existing ROW. There are four public facilities (Franklin College of Indiana, Southside School, Indiana Masonic Home, and Province Park) near the existing Elvin siding, which is proposed to be extended (MP 20.8 to 22.9). However, construction activities would be confined to the existing ROW and, therefore, are not anticipated to adversely impact those public facilities.

Although increased train traffic from the Proposed Transaction would increase train-related noise along the Line, the Proposed Transaction would be congruent with historic, current, and future land uses and land use plans. Therefore, any impacts from these increased noise levels on community resources, public facilities and land use would likely be minimal and mitigation measures have not been proposed.

Socioeconomics

OEA conducted an analysis of the potential impacts of the Proposed Transaction on socioeconomics. That analysis showed that there would be negligible impacts to the local economy or other socioeconomic conditions associated with the change in rail operations and construction activities resulting from the Proposed Transaction. Although several representatives of state and local governments and industrial interests expressed support for the Proposed Transaction, none identified any specific increases in rail shipping activity or new industrial development that would result from the Proposed Transaction. There would be no displacement of population in the area. Because of the limited scope of the proposed upgrades to the Line under the Proposed Transaction, any increases in construction-related employment opportunities would be minimal. Likewise, increased CSXT overhead train traffic on the Line under the Proposed Transaction would generate negligible employment opportunities. As such, the Proposed Transaction would not generate any pressure on housing or public services that could not be absorbed by the existing infrastructure. Because negligible impacts are expected, socioeconomic-related mitigation measures have not been proposed.

Topography, Geology, and Soils

Minor impacts to geology and soils are anticipated as a result of construction activities connected with the Proposed Transaction. Construction activities related to the Proposed Transaction would be within the existing ROW. As part of their voluntary mitigation, Applicants would use appropriate design that incorporates results of soil studies and would implement best

management practices (BMPs), including utilization of foundation type best suited to the site soil conditions, inclusion of drainage control features, and proper construction techniques. In addition, because the area disturbed by construction activities would be greater than one acre, Applicants would need to obtain a National Pollutant Discharge Elimination System (NPDES) permit (VM 18). With implementation of the BMPs described in the Stormwater Pollution Prevention Plan (SWPPP) that would be prepared in compliance with the NPDES permit, soil erosion would be prevented or contained and minimized. Thus, with the voluntary mitigation proposed by Applicants (i.e., VM 12 through VM 19), any impact would be minimal.

Hazardous Waste Sites

Based on the review of state environmental databases, there would be no impacts to hazardous waste sites as a result of the construction activities connected to the Proposed Transaction. However, for the Brook siding, residual soil contamination from a former leaking underground storage tank at a former Conrail, now L&I property, could be encountered during construction activities. Applicants and their contractors should be prepared to monitor for contaminated soils and to excavate, document, and dispose of affected material, as needed, in compliance with applicable environmental and health and safety laws and regulations. Thus, OEA recommends a mitigation measure to address contractor preparedness during the proposed construction work at the Brook siding (MM 9).

Water Resources

The Draft EA examines the potential effects of the Proposed Transaction on surface waters, groundwater, floodplains, wetlands, and water quality. The Draft EA analysis indicates that the Proposed Transaction would not likely impact water resources if the preliminarily proposed mitigation is imposed.

CSXT would replace the Flatrock River Railroad Bridge located just north of Columbus, Indiana. Because neither the U.S. Coast Guard nor USACE classify Flatrock River as navigable, Section 9 of the Rivers and Harbors Act would not be applicable for work performed on or around Flatrock River.

Wetlands would likely be impacted by the extension of the Elvin and Brook sidings, construction of the new siding north of Crothersville and replacement of the Flatrock River Bridge. Any discharge of dredged or fill material into waters of the U.S. would require a Clean Water Act (CWA) Section 404 permit from USACE before work could begin on or around wetlands. If a Section 404 permit were required, then CSXT would also be required to obtain a Section 401 Water Quality Certification from the State of Indiana. Impacts to wetlands would be mitigated in accordance with USACE's Mitigation Regulations (see VM 11), and OEA's recommendations that Applicants acquire a Section 404 permit (MM 11) and Water Quality Certification (MM 12).

Because project-related construction activities would disturb more than one acre of land, the Proposed Transaction would also be subject to Section 402 of the CWA, and CSXT would be required to obtain a NPDES stormwater permit. Therefore, CSXT would have to submit a SWPPP (as part of the Construction Plan) to the appropriate county or Soil and Water Conservation District in order to obtain a NPDES permit. Impacts to water resources would be

mitigated in accordance with the U.S. Environmental Protection Agency (USEPA) or appropriate agency stormwater discharge requirements (see VM 18 and VM 19).

Project-related construction activities would occur on the floodplains of Flatrock River, Rider Ditch, and Pigeon Roost Creek. CSXT would be required to obtain a Construction in a Floodway Permit from the Indiana Department of Natural Resources (INDNR) for each floodplain where construction activities would occur. Impacts to floodplains would be mitigated by appropriate INDNR Floodway Permit requirements. Thus, OEA recommends that Applicant be required to obtain a Construction in a Floodway Permit (MM 10).

Construction would not occur within 303(d)-listed waters. Under Section 303(d), states are required to publish (every two years) a list of streams and lakes that are not meeting their designated uses because of excess pollutants. No impacts to a degraded waterway are anticipated as a result of the Proposed Transaction.

CSXT would implement several BMPs during construction (see Chapter 4). With the implementation of voluntary measures and OEA's recommended mitigation measure, only minor impacts to water resources would be anticipated as a result of project-related construction activities.

Biological Resources

The Draft EA evaluates the impacts of the Proposed Transaction on vegetation; wildlife; threatened, endangered, and rare species; and migratory birds in the study area. The analysis shows that the Proposed Transaction could impact vegetation temporarily during construction activities. To mitigate any temporary impacts to vegetation from construction, Applicants have agreed to confine, to the extent reasonably practicable, traffic to temporary access roads within the construction ROW or established public roads; to commence reclamation of disturbed areas as soon as reasonably practicable after construction ends; and to limit ground disturbance to only the areas necessary for construction-related activities (see VM 10, 27, 28). Additionally, any required post-construction re-vegetation would include invasive species control measures (see VM 23).

There could be an increase in wildlife (including migratory birds) and federally- and state- listed species strikes as a result of increased rail traffic resulting from the Proposed Transaction. In addition, there could be short-term impacts to wildlife (including migratory birds) as a result of construction activities related to the Proposed Transaction. However, because of the voluntary mitigation measures VM 20 through 23, construction impacts would likely be minimal. Applicants have agreed to place temporary barricades, fencing, and/or flagging in sensitive habitats to contain construction-related impacts to the area within the construction ROW (see VM 21 and 22). Applicants would employ BMPs to implement their current noxious weed control program during construction and operation of Transaction-related sidings. All herbicides used by Applicants would be approved by the USEPA.

According to the U.S. Fish and Wildlife Service (USFWS)(see Appendix A), adverse impacts to Federally listed species including the Indiana bat and several mussels would not likely occur if tree clearing does not occur during the Indiana bat roosting period and if BMPs are used to

protect water quality during Transaction-related construction. Applicants have volunteered to comply with these measures (see VM 12 through 19, 21, 27 and 28).

To minimize impacts to fish, the USFWS also recommends that channel disturbance during any Transaction-related bridge replacement in perennial and large intermittent streams avoid the primary fish spawning period. OEA recommends a mitigation measure to address this USFWS concern (MM 13).

Before beginning construction activity, Applicants would survey all suitable habitats potentially impacted by Transaction-related construction activities for state-listed threatened or endangered plant species. If any state listed plant species are located, Applicants would implement a mitigation plan in consultation with the appropriate state agencies (VM 20).

Suitable habitat for State-listed species may be found in Falls of the Ohio State Park, Clark State Forest, Stucker Fork Fish and Wildlife Area, and Pigeon Roost Memorial Park, all of which are within 0.25 miles of the Proposed Transaction. No project-related construction activities would occur near these areas. However, noise associated with project-related construction activities in the vicinity of Pigeon Roost Memorial Park could temporarily impact any state-listed species located in this park. As part of its voluntary mitigation measures, CSXT would work with its contractors to minimize, to the extent reasonably practicable, construction-related noise disturbances. For example, Applicants would maintain construction and maintenance vehicles in good working order with properly functioning mufflers to control noise (see VM 56). With implementation of VM 20 through 22 and VM 24, impacts associated with construction-related activities would likely be minor.

Air Quality and Climate

The Draft EA assesses the extent to which air pollutant emissions could change as a result of the Transaction-related construction activities would be very limited and temporary. In particular, any earthwork would likely be limited to siding-related construction activities. Potential impacts from fugitive dust and construction equipment emissions would likely be negligible because of the very limited and temporary nature of these Transaction-related construction activities. Nevertheless, Applicants have volunteered two measures to minimize fugitive dust and equipment emissions during Transaction-related construction activities (see VM 24 and 25).

From a regional perspective, locomotive emissions would decrease under the Proposed Transaction. The overall operating upgrades under the Proposed Transaction would improve CSXT's gross-ton of freight per mile (GTM) efficiency. This improvement, along with an improved ability to control traffic in the Midwest (particularly on the current Louisville to Cincinnati corridor), would enhance efficiencies through shorter train travel times. Improvements in these efficiencies over the region and shorter travel routes for trains under the Proposed Transaction would have a tendency to have a reduction in fuel use across the region, and therefore, lower air emissions.

For pollutants that are more significant locally (i.e., particulates and carbon monoxide), some areas along the Line could experience slight localized degradation in air quality because of the increased fuel use associated with both increases in trains and in the gross-tonnage hauled along the rail line associated with the Proposed Transaction. However, improvements in overall GTM

efficiencies would tend to offset these decreases in air quality. For pollutants which are more significant regionally (i.e., nitrogen oxide, volatile organic carbon [as precursors to ozone], sulfur dioxide, and carbon dioxide), it is anticipated that the system-wide improvements under the Proposed Transaction would cause the region to experience a net benefit to air quality.

OEA also analyzed emissions from idling vehicles delayed at crossings. According to USEPA guidance, signalized intersections that operate at level of service (LOS)¹⁵ D, E, or F have sufficient traffic congestion that the associated vehicle emissions might cause or contribute to local carbon monoxide and particulate concentrations which could exceed the National Ambient Air Quality Standards (NAAQS) within maintenance¹⁶ and nonattainment areas.¹⁷ All of the at-grade crossings in the study area except four are currently at and would remain at LOS A. Four would change to LOS C. Although there would be some air quality impacts, the Draft EA concluded that vehicle idling as a result of the Proposed Transaction would have negligible air quality impacts at localized at-grade crossings.

A reduction of locomotive fuel usage would result in a reduction of greenhouse gas emissions; however, such a minor change would not have any quantifiable effect on climate change.

Noise and Vibration

The Draft EA assesses potential changes in train noise associated with the Proposed Transaction. The projected increase in daily train traffic is expected to increase train noise levels in the areas immediately adjacent to the Line. Segments LIRC-01, LIRC-02, and LIRC-03 would experience an increase in train traffic in excess of eight trains per day, the Board's threshold for noise analyses. Therefore, OEA evaluated the potential for an increase in noise exposure of 3dBA (A-weighted decibel) or more in the day-night noise level (L_{dn}) or an increase to a noise level of 65 dBA L_{dn} or greater in these three segments. The Draft EA concludes that traffic changes on Segments LIRC-01 and LIRC-02 would contribute to an increase of 3 dBA or more in the L_{dn} . Although less than half of Segment LIRC-03 would experience Transaction-related noise increases of 3 dBA or more (Table 3.8-3), OEA included Segment LIRC-03 in its entirety in the noise assessment.

Due to the increased number of trains on the Line, the number of noise-sensitive receptors in the 65-dBA L_{dn} contour in the three segments would nearly double from 2,937 to 5,606 (an additional 2,669 noise-sensitive receptors). Noise-sensitive land uses that would experience an increase of at least 3dBA and 65-dBA L_{dn} are considered potentially adverse impacts. There are affected receptors throughout the Line, but the largest number is in Johnson County, Indiana. The changes occurring to train traffic that would result from the Proposed Transaction would

¹⁵ LOS is used estimate the vehicle delay effects of highway/rail at-grade crossings. LOS is defined in terms of delay and expressed as a letter grade and includes LOS A (free flowing), LOS B (reasonably free flowing), LOS C (stable or near free flow), LOS D (approaching unstable flow), LOS E (unstable flow, operating at capacity) and LOS F (severely congested).

¹⁶ Once a nonattainment area meets the standards and additional redesignation requirements in the Clean Air Act, Section 107(d)(3)(E), the EPA designates it a maintenance area.

¹⁷ An area that does not meet the NAAQS.

likely affect the noise emission levels of trains from several noise sources, including wheel/rail noise, locomotive engine noise, and locomotive horn noise.

Historically, the Board has treated noise-sensitive receptors that would experience an increase of at least 5 dBA and reach 70-dBA L_{dn} as being potentially eligible for conditions to mitigate transaction-related train noise. See *Canadian National Railway Company and Grand Trunk Corporation, Acquisition of Joliet & Eastern Railway Company, Final Environmental Impact Statement*, STB Docket No. FD 35087 (STB served December 5, 2008) and *Alaska Railroad Corporation Construction and Operation of a Rail Line Extension to Port MacKenzie, Alaska, Final Environmental Impact Statement*, STB Docket No. FD 35095 (STB served March 25, 2011). Up to 1,551 noise-sensitive receptors along the Line would be exposed to these 5 dBA and 70 dBA L_{dn} conditions.

Applicants have proposed a number of voluntary mitigation measures to minimize the effects of transaction-related noise. CSXT would comply with FRA regulations establishing decibel limits for train operations (VM 58). Applicants would also work with affected communities that would have sensitive receptors that would experience an increase of at least 5 dBA and reach 70 dBA to mitigate train noise to levels as low as 70 dBA by cost-effective means as agreed to by an affected community and CSXT. In the absence of such an agreement, Applicants would implement unspecified cost-effective measures (VM 51). Additionally, Applicants would consider lubricating curves where doing so would be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors (VM 57). Applicants would cooperate with interested communities for the establishment of quiet zones (QZ) and assist in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish QZs¹⁸ (see VM 54). If requested (see VM 60), CSXT would also consult with communities affected by wheel squeal, and cooperate in determining the most appropriate methods for implementing VM 57.

The vibration level caused by a train is affected by track conditions, the locations of special track work (e.g., crossings and switches), train speed, and extent to which the ground vibrates between the tracks and receiver. Under the Proposed Transaction, the train speed would increase and CSXT would replace the jointed rail with continuously welded rail. While an increase in train speed may increase vibration levels, continuously welded rail would decrease vibration. Therefore, changes in ground-borne vibration as a result of the Proposed Transaction would be small. The incremental changes in the distance to the Federal Transit Administration (FTA) residential vibration impact threshold of 72 VdB range between five and 35 feet, with some net decreases due to the installation of continuously welded rail. The increased frequency of train movements would not impact the vibration impact threshold. Although vibration would decrease, Applicants would install and maintain rail and rail beds according to American Railway Engineering and Maintenance of Way Association standards for minimizing noise and

¹⁸ Applicants state that their willingness to cooperate does not commit Applicants to expend funds on a physical project.

vibration See VM 59). OEA does not recommend any additional mitigation to address potential vibration impacts.

Energy Resources

Under the Proposed Transaction, train operations would be more efficient, trains would idle for shorter periods of time, and the distance traveled would be shorter, resulting in a net decrease in annual fuel use. Nevertheless, Applicants have volunteered two measures to assist them in reducing fuel consumption (see VM 52 and 53).

Increased vehicles delays caused by passing trains under the Proposed Transaction would consume an additional 240 gallons of fuel daily as the vehicles idled at the blocked crossings. However, this increase generally would be offset by decreases in delays and idling vehicles at crossing located on the rail lines from which CSXT would be diverting and reducing its daily rail traffic.

The Proposed Transaction would not likely change the types of commodities that are currently transported along the Line. Therefore, the transportation of recyclable commodities would not likely be affected by the Proposed Transaction.

OEA does not recommend any additional mitigation to address potential vibration impacts.

Cultural Resources

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470, applies to the Proposed Transaction. The Section 106 process has three steps: identification of historic resources; determination of adverse effects; and if there would be any adverse effects, development of appropriate mitigation. Accordingly, preparation of the Draft EA included an analysis of the potential impact of the Proposed Transaction on archaeological resources and historic properties in the study area.

Section 106 review involves an evaluation of any proposed new construction, building demolition, or repair/replacement of railroad structures directly related to the Proposed Transaction. The Proposed Transaction would involve reconstruction of a railroad bridge over the Flatrock River, as well as extension of the two existing sidings and construction of two new sidings, all in Indiana. Work would be limited to work upon and within existing ROW.

Indiana Department of Natural Resources, State Historic Preservation Office (Indiana SHPO), considers the Flatrock River Railroad Bridge to meet the criteria of eligibility for inclusion in the National Register of Historic Places (National Register). Indiana SHPO notes that the bridge appears to be significant under National Register criteria because its association with transportation and as a good example of a heavily built Pratt through-truss bridge. Because replacement of the Flatrock River Bridge would constitute an adverse effect to a potentially eligible historic property, CSXT must work with OEA and Indiana SHPO to either (1) submit the necessary material to Indiana SHPO to obtain a no adverse effect determination or (2) execute a Memorandum of Agreement regarding mitigation of the adverse effect determination. Either scenario would need to be completed before the Board could issue its final decision in this case. Until the completion of either scenario, OEA recommends mitigation requiring that no construction of the bridge begin until completion of the section 106 process (MM 14).

Additionally, Indiana SHPO identified eight archaeological sites and six cemeteries that have been recorded adjacent to the Line, and raised concern about the potential presence of previously unknown archaeological sites. Transaction-related construction would not likely directly impact the 14 recorded sites. With the exception of the construction of two sidings and the extension of two sidings in Indiana, there would be minimal ground disturbance. Pursuant to Section 106, OEA recommends that as a mitigating condition, Applicants be required to report to Indiana SHPO any archaeological artifacts or human remains uncovered during construction activities (MM 15).

A letter from Kentucky SHPO dated August 1, 2011 states that, although the Proposed Transaction would be limited to existing ROW, there is potential for direct and indirect effects to cultural resources along the path of the Line. Kentucky SHPO also states that an area of potential effect for the portion of the Proposed Transaction in Kentucky must be determined with its concurrence. Additionally, a survey of above-ground resources over 50 years of age needs to be submitted for review. Any ground-disturbance activities associated with the Proposed Transaction would require an archaeological survey (Kentucky Heritage Council 2011). However, the Proposed Transaction would not entail construction activities in the state of Kentucky. Pending the outcome of further Section 106 consultations with the Kentucky SHPO, OEA recommends a mitigation measure to address Kentucky SHPO's concerns (MM 15).

Environmental Justice

The Draft EA assessed the extent to which train noise and at-grade crossing delay resulting from the Proposed Transaction could disproportionately affect minority or low-income populations in the project area. The analysis indicates that, without mitigation, noise impacts to the 0.4-mile subsection of LIRC-01 (Sub-segment 01.G in Table 3.8-3) resulting from train traffic increases potentially would be high and adverse.

Although there are minority and low-income populations distributed along the entire Line, none of the minority or low-income populations appears to be located in the sub-segment of LIRC-01 anticipated to experience a +8.5-dBA increase in noise levels.

With regard to noise, the noise analysis indicates that the majority of additional receptors anticipated to be impacted are located in Johnson County, Indiana. Only one of the 16 census block groups containing potential low-income populations and none of the 17 census block groups containing potential minority populations is located in Johnson County. Therefore, OEA concluded that noise impacts would not likely be disproportionately borne by environmental justice populations.

With regard to the traffic delays, the area where SR #46 in Columbus, Indiana crosses the Line at-grade is not located in a block group containing minority or low-income populations. The area where Charlestown Road in Jeffersonville, Indiana crosses the Line at-grade is partially located within a census block group containing minority and low-income populations, west of the Line. The ramp to I-65, which possibly would experience blocking, is also located in this census block group. However, Veterans Parkway, a grade-separated crossing of the Line approximately one mile to the north, provides access to the area west of the Line, as well as access to I-65. Because the possible traffic delay would likely be experienced by all travelers on

Charlestown Road and on I-65 using the Charlestown Road exit, and because Veterans Parkway provides access to the area west of the Line as well as access to I-65, OEA concludes that traffic delay impacts would not likely be disproportionately borne by minority or low-income populations.

Cumulative Effects

The environmental analysis here identified several projects within 0.5 miles of the Line with the potential to result in cumulative impacts when considered together with the Proposed Transaction. They are:

- I-465 / I-65 Interchange Modification on South Side of Indianapolis, which includes the addition of travel lanes from I-465 to Whiteland Road and improvement of interchanges at Southport Road, County Line Road, Main Street, and Whiteland Road. This project is located in Marion and Johnson counties, Indiana.
- I-465 to Whiteland Road / I-65, which includes the addition of travel lanes from I-465 to Whiteland Road, as well as improvement of interchanges at Southport Road, County Line Road, Main Street, and Whiteland Road. This project is located in Marion and Johnson Counties, Indiana.
- I-65 at State Road 11, which includes the modification of an interchange for improved traffic flow and safety. The project is located in Jackson County, Indiana.
- I-65 Clark County from SR 311 to Memphis Road / I-65, which includes the addition of travel lanes, an interchange modification, and two overhead bridges. The project is located in Clark County, Indiana.
- I-65 Ohio River Bridge, which includes the addition of a six-lane I-65 bridge into downtown Louisville; the existing Kennedy Bridge would be transitioned into a six-lane northbound bridge. Approximately 1.5 miles of I-65 would require reconstruction and expansion approaching the bridge. This project is located in Clark County, Indiana, and Jefferson County, Kentucky.
- I-65 Ramp Modifications include improvement of traffic flow, safety, and access associated with ramps along I-65 from Crittenden Drive to St. Catherine Street. This project is located in Jefferson County, Kentucky.

To identify possible cumulative impacts on environmental resources, the Draft EA analysis examined the potential effects of each project in combination with potential effects from the Proposed Transaction to determine whether those related projects, in conjunction with the Proposed Transaction, could result in cumulative impacts to any environmental resource; and whether the approval of the Proposed Transaction would result in any indirect effects. Finally, OEA considered whether potential cumulative effects that were identified would warrant mitigation.

As a result of the environmental analysis, this Draft EA concludes that:

- The reasonably foreseeable roadway improvements are intended to improve traffic flow, and cumulative impacts to traffic delay beyond the direct effects of the Proposed Transaction are not anticipated.

- It is possible that noise from the Line would contribute to a cumulative noise impact where it is in proximity to I-65. It is unlikely that the reasonably foreseeable roadway improvements would contribute to a cumulative noise impact, as they are intended to improve traffic flow and reduce congestion. Because construction noise would be temporary and would not be anticipated to contribute to an adverse cumulative effect, OEA does not recommend any mitigation measures on this topic.

6. Request for Comments on the Draft EA

OEA encourages the public and any interested party to send its written comments on this Draft EA. In preparing the Final EA, OEA will consider and respond to all comments on the Draft EA, and may conduct further environmental analysis and agency consultation as appropriate based on these comments. The Final EA will include OEA's final recommendations, including final recommended mitigation measures. To be considered, comments must be submitted during the comment period, which will close on September 30, 2013. OEA anticipates issuing the Final EA on or before November 6, 2013. The Board plans to issue a final decision on the Proposed Transaction by December 6, 2013.

When submitting comments on the Draft EA, please be as specific as possible. OEA is particularly interested in your thoughts on the recommended mitigation measures. Any suggestions you may have to improve our recommendations to the Board would be very welcome.

Comments may be submitted by mail or electronically using "E-Filing" button on the Board's website (www.stb.dot.gov). *However, OEA strongly encourages the submittal of comments electronically to ensure receipt by September 30, 2013.* Comments must refer to Docket No. FD 35523 in all correspondence, including e-filings, addressed to the Board.

- **Electronically:** For electronic comments, simply click on E-filing and then "Environmental Comments" from the E-Filing button on the board's website. The next web page will be formatted to allow you to fill in your information and comment directly or you can provide your comments in a file attachment.
- **By Mail:** If you are sending your comment by mail, please be aware that there may be up to a week delay in the delivery of mail to federal agencies. Mail written comments to:

Dave Navecky
Surface Transportation Board
395 E Street, SW
Room 1104
Washington, DC 20423

- If you have any questions or need clarification or guidance, please contact Dave Navecky by phone at (202) 245-0294, or by email Mr. Navecky at david.navecky@stb.dot.gov.

7. Mitigation

The analysis used in preparing this Draft EA has taken a hard look at the likely environmental consequences of the Proposed Transaction and No-Action Alternative, consistent with NEPA and the relevant CEQ and Board regulations. The potential environmental effects that have been

identified would be both beneficial and adverse. Chapter 3 discusses in detail the affected environment and potential environmental benefits and effects.

Applicants submitted a number of voluntary mitigation measures to address potential effects that would result from the Proposed Transaction. The Draft EA includes Applicants' proposed mitigation without any changes and proposes additional environmental mitigation developed by OEA. OEA seeks public comment on all the mitigation proposed in the Draft EA. The Final EA will contain final recommendations for mitigation that the Board should impose if the Proposed Transaction is authorized.

Limits of Conditioning Power

The Board has authority to impose conditions to mitigate potential environmental impacts, but that authority is not limitless. As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Any conditions the Board imposes must relate directly to a specific proposed action, must be appropriate to the scope and degree of impacts, and must be supported by the record before the Board. The Board's practice consistently has been to consider mitigation for only those impacts that result directly from a proposed action and not to impose mitigation to remedy preexisting conditions.

Voluntary Mitigation

OEA encourages applicants to propose voluntary mitigation. Because applicants seeking Board authority may gain substantial knowledge about local community or other issues involved during project planning, and because they consult with other regulatory agencies and communities during project planning and at the early stages of the regulatory process, applicants can often propose relevant voluntary mitigation that is more far reaching than mitigation the Board could unilaterally impose. For the Proposed Transaction, Applicants have engaged in substantial outreach with potentially affected agencies, entities, and communities and have proposed extensive voluntary mitigation for this project, which is set forth and discussed in more detail below.

The Board also encourages applicants like CSXT and L&I to negotiate mutually acceptable agreements with affected communities and other government entities to address potential environmental impacts, if appropriate. Negotiated agreements can be with neighborhoods, communities, or other entities. If Applicants enters into any negotiated agreements, the Board would require compliance with the terms of any such agreements as environmental mitigation conditions in any final decision approving the Proposed Transaction. These negotiated agreements would supersede any environmental conditions for that particular community or other entity that the Board would otherwise impose.

Preliminary Nature of Environmental Mitigation

OEA emphasizes that all of the environmental mitigation measures proposed here are preliminary, and welcomes public and agency comment on these measures. In order for OEA to assess the public comments effectively, the public should be specific about any desired mitigation and the reasons why the suggested mitigation would be appropriate.

After considering all public comments on the Draft EA, OEA will issue a Final EA responding to any comments on the Draft EA (including any suggestions related to mitigation) and presenting any additional environmental analysis. The Final EA will contain OEA's final recommendations to the Board, including final recommended environmental mitigation. The Board will then make its final decision regarding the Proposed Transaction in accordance with 49 U.S.C. §§ 11324(c) and (d).

7.1 Applicants' Voluntary Mitigation Measures

As part of their application, Applicants submitted proposed voluntary mitigation measures to OEA for the Board to consider. OEA has reviewed the voluntary mitigation measures, and should the Proposed Transaction be approved, OEA recommends that the Board require Applicants to comply with all of the voluntary mitigation measures submitted.

Below, OEA presents for public review and comment, Applicants' current voluntary mitigation measures (identified as VM #). Applicants divided their mitigation measures in two parts: (1) construction-related VMs (i.e., those related to the proposed upgrades under the Proposed Transaction, all of which would take place within the existing right-of-way of the Line) and (2) VMs related to proposed train operations on the Line under the Proposed Transaction.

Construction –related VMs

Grade Crossing Safety

VM 1. Where transaction-related grade-crossing rehabilitation is mutually agreed to by Applicants and INDOT or KYTC, Applicants will assure that rehabilitated roadway approaches and rail line crossings meet or exceed the standards of the state Department of Transportation's rules, guidelines, or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards, with a goal of eliminating rough or humped crossings to the extent reasonably practicable.

VM 2. Applicants will coordinate with INDOT or KYTC, as appropriate and the appropriate counties and affected communities along the Line to install temporary notification signs or message boards, where warranted, in railroad ROW at highway/rail at-grade crossings, clearly advising motorists of the increase in train traffic on affected rail line segments. The format and lettering of these signs will comply with the Federal Highway Administration (FHWA)'s *Manual on Uniform Traffic Control Devices* (FHWA 2009) and will be in place no less than 30 days before and 6 months after the Applicants' initiate operational changes associated with the Proposed Transaction.

VM 3. Within six months of acquisition of a freight easement over the Line, Applicants will consult with affected communities to improve visibility at highway rail at-grade crossings by clearing vegetation and other obstructions.

VM 4. Within six months of acquisition of a freight easement over the Line, Applicants will cooperate with the INDOT and other appropriate local agencies to coordinate a review of corridors surrounding highway/rail at-grade crossings to examine safety and adequacy of the existing warning devices, and identify remedies to improve safety for highway vehicles.

VM 5. Within six months of Applicants' initiating operational changes associated with the Proposed Transaction, Applicants will cooperate with school and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

VM 6. Applicants will adhere to all applicable Federal Occupational Safety and Health Administration (OSHA), Federal Railroad Administration, and state construction and operational safety regulations to minimize the potential for accidents and incidents on the Line.

VM 7. In undertaking Transaction-related construction activities, Applicants will use practices recommended by AREMA and recommended standards for track construction in the AREMA Manual for Railway Engineering.

VM 8. During Transaction-related construction concerning at-grade crossings, when reasonably practicable, Applicants will consult with the INDOT and the KYTC regarding detours and associated signage, as appropriate, or maintain at least 1 open lane of traffic at all times to allow for the quick passage of emergency and other vehicles.

VM 9. Applicants will minimize temporary road closures during construction activities associated with the rail line upgrade and new siding construction. Applicants will manage construction schedules to:

- Minimize highway/rail at-grade crossing closures; and
- Notify local emergency service providers of highway/rail at-grade crossing closure schedules.

VM 10. To the extent reasonably practicable, Applicants will confine construction traffic to a temporary access road within the construction right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or established public roads, Applicants will make necessary arrangements with landowners to gain access from private roadways. The temporary access roads will be used only during Transaction-related construction. Any temporary access roads constructed outside the rail line right-of-way will be removed and restored upon completion of construction unless otherwise agreed to with the landowners.

Water Resources

VM 11. Applicants will compensate in accordance with U.S. Army Corp of Engineers (USACE) regulations in both Kentucky and Indiana for wetland impacts that cannot be avoided and for impacts that are determined by USACE to be on waters of the United States for construction related to the Transaction.

VM 12. To minimize sedimentation into streams and waterways during construction, Applicants will use Best Management Practices, such as silt fences and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during Transaction-related construction activities. Applicants will seek to disturb the smallest area possible around any streams and will conduct reseeding efforts to ensure proper revegetation of disturbed areas as soon as reasonably practicable following Transaction-related construction activities.

VM 13. In order to control erosion, Applicants will establish staging and lay down areas for Transaction-related construction material and equipment at least 50 feet from jurisdictional waters of the U.S. and in areas that are not environmentally sensitive. Applicants will not clear

any vegetation between the staging area and the waterway or wetlands. To the extent reasonably practicable, areas with non-jurisdictional isolated waters will not be used for staging and lay down and will only be impacted when necessary for construction. When Transaction-related construction activities, such as culvert and bridgework, require work in streambeds, Applicants will conduct these activities, to the extent reasonably practicable, during low-flow conditions.

VM 14. During Transaction-related construction activities, Applicants will require all contractors to use Best Management Practices, including daily inspections of all equipment for any fuel, lube oil, hydraulic, or antifreeze leaks. If leaks are found, Applicants will require the contractor to immediately remove the equipment from service and repair or replace it.

VM 15. Applicants will employ Best Management Practices to control turbidity and disturbance to bottom sediments of surface waters during Transaction-related construction. Applicants will implement Best Management Practices in wetlands or other waters of the U.S. to avoid adverse downstream impacts on fish, mussels, and other aquatic biota.

VM 16. During Transaction-related construction, Applicants will prohibit construction vehicles from driving in or crossing streams at other than established crossing points unless approved by appropriate federal or state permits.

VM 17. During Transaction-related construction activities, Applicants will, to the extent reasonably practicable and consistent with Best Management Practices, ensure that any fill placed below the ordinary high water line of wetlands and streams is appropriate material selected to minimize impacts to the wetlands and streams. All stream crossing points will be returned to their pre-construction contours to the extent reasonably practicable and the crossing banks will be reseeded or replanted with native species immediately following project-related construction.

VM 18. Applicants will obtain a National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit from U.S. Environmental Protection Agency (USEPA) or appropriate state agencies for Transaction-related construction activities that warrant such compliance.

VM 19. Prior to any Transaction-related construction activities, Applicants will comply with any regulations required in the preparation of a construction Stormwater Pollution Prevention Plan.

Biological Resources

VM 20. Before beginning Transaction-related construction activity, Applicants will survey all suitable habitats potentially impacted by the construction activity for state-listed threatened or endangered plant species. If any listed plant species are located, Applicants will implement a mitigation plan in consultation with the appropriate federal and state agencies.

VM 21. In order to avoid a take of the federally endangered Indiana bat, Applicants will not clear trees during its roosting period (April 1 – September 30).

VM 22. During Transaction-related construction, temporary barricades, fencing, and/or flagging will be used in sensitive habitats to contain construction-related impacts to the area within the existing right-of-way.

VM 23. Applicants will employ Best Management Practices to implement their current noxious weed control program during construction and operation of Transaction-related sidings. All herbicides used by the Applicants will be approved by U.S. Environmental Protection Agency.

Air Quality

VM 24. To minimize fugitive dust emissions created during Transaction-related construction activities, Applicants will implement appropriate fugitive dust suppression controls, such as spraying water or other approved measures. Applicants will also regularly operate water trucks on haul roads to reduce dust.

VM 25. Applicants will work with their contractors to make sure that Transaction-related construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air emissions.

Noise and Vibration

VM 26. Applicants will consult with affected communities and work with the construction contractors to minimize, to the extent reasonably practicable, Transaction-related construction noise disturbances near any residential areas.

Topography, Geology, and Soils

VM 27. Applicants will commence reclamation of disturbed areas as soon as reasonably practicable after Transaction-related construction ends along a particular stretch of rail line. The goal of reclamation will be the rapid and permanent reestablishment of native ground cover on disturbed areas. If weather or season precludes the prompt reestablishment of vegetation, Applicants will use measures such as mulching or erosion control blankets to prevent erosion until reseeding can be completed.

VM 28. Applicants will limit ground disturbance to only the areas necessary for Transaction-related construction activities.

VM 29. Applicants will review the limits of land disturbance prior to Transaction-related construction to determine whether any U.S. Department of Commerce, National Geodetic Survey monuments (that is, a government owned permanent survey marker) would be disturbed. If any survey monuments would be disturbed, Applicants will give a 90-day notification to the National Geodetic Survey.

VM 30. Applicants will require contractors to dispose of waste generated during Transaction-related construction activities in accordance with all applicable federal, state, and local regulations.

VM 31. Applicants will make reasonable efforts to identify all utilities that are reasonably expected to be materially affected by Transaction-related construction within their existing right-of-way or that cross their existing right-of-way. Applicants will notify the owner of each such utility identified prior to commencing Transaction-related construction activities and coordinate with the owner to minimize damage to utilities. Applicants will also consult with utility owners to ensure that utilities are reasonably protected during Transaction-related construction activities.

VM 32. During Transaction-related construction activity, Applicants will take reasonable steps to ensure contractors use fill material appropriate and in accordance with applicable regulations for the project area.

Operations-related VMs

Rail Operations

VM 33. Applicants will install power switches along the Line where they determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of rail traffic and reduce the likelihood of such blockages.

Transportation

VM 34. Applicants will examine train operations to identify reasonable ways to reduce highway/rail at-grade crossing blockages.

VM 35. Applicants will cooperate with the appropriate state and local agencies and municipalities to:

- Evaluate the possibility that roadways listed in Table C-1 (Appendix C) of the Draft EA could be closed at the point where it crosses the Line, in order to eliminate the at-grade crossing;
- Improve or identify modifications to roadways that would reduce vehicle delays by improving roadway capacity over the crossing by construction of additional lanes;
- Assist in a survey of highway/rail at-grade crossings for a determination of the adequacy of existing grade crossing signal systems, signage, roadway striping, traffic signaling inter-ties, and curbs and medians; and
- Identify conditions and roadway, signal, and warning device configurations that may trap vehicles between warning device gates on or near the highway/rail at-grade crossing.

Grade Crossing Safety

VM 36. For up to three years from the date that Applicants' initiate operational changes associated with the Proposed Transaction, CSXT will make Operation Lifesaver programs available to communities, schools, and other appropriate organizations located along the Line.

VM 37. For each of the public grade crossings on the Line, Applicants will provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Regulations (23 C.F.R. Part 655). The toll-free number will enable drivers to report accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions and will be answered 24 hours per day by Applicants' personnel.

VM 38. Applicants will continue on-going efforts with community officials to identify elementary, middle, and high schools within 0.5 miles of the Line's right-of-way and provide, upon request, informational materials concerning railroad safety to such identified schools.

VM 39. Applicants will consult with state departments of transportation and other appropriate agencies and will abide by the reasonable requirements of INDOT or KYTC prior to

constructing, relocating, upgrading, or modifying highway/rail at-grade crossing warning devices on the Line.

Hazardous Materials Transportation

VM 40. Applicants will assist in the hazardous materials training of emergency responders for affected communities that express an interest in such training. Applicants will support through funding or other means the training of one representative from each of the communities located along the Line where the transportation of hazardous materials would increase. Applicants will complete the training within three years from the date that they initiate operational changes associated with the Proposed Transaction.

VM 41. Applicants will comply with the current Association of American Railroads “key train” guidelines, found in Association of American Railroads’ Circular No. OT-55-I, and any subsequent revisions.

VM 42. Applicants will incorporate the Line into their existing Transportation Emergency Response Plan (TERP).

VM 43. Applicants will comply with all hazardous materials regulations of the U.S. Department of Transportation (including Federal Railroad Administration and the U.S. Pipeline and Hazardous Materials Safety Administration) and Department of Homeland Security (including the Transportation Security Administration). Applicants will dispose of all hazardous materials that cannot be reused in accordance with applicable law.

VM 44. Upon request from local emergency response organizations, Applicants will implement real-time or desktop simulation emergency response drills with the voluntary participation of local emergency response organizations.

VM 45. Applicants will continue their on-going efforts with community officials to identify the public emergency response teams located along the Line and will provide, upon request, hazardous material training.

VM 46. Applicants will, upon request, conduct Transportation Community Awareness and Emergency Response Program workshops (training for communities through which hazardous materials are transported) in communities along the Line.

VM 47. Applicants will develop internal emergency response plans to allow for agencies to be notified in an emergency, and to locate and inventory the appropriate emergency equipment. Applicants will provide the emergency response plans to the relevant state and local authorities within six months of acquisition of a freight easement over the Line.

VM 48. In accordance with their TERP, Applicants will make the required notifications to the appropriate federal and state environmental agencies in the event of a reportable hazardous materials release. Applicants will work with appropriate agencies such as U.S. Fish and Wildlife Service, Kentucky Department for Environmental Protection (KY DEP), and Indiana Department of Environmental Management to respond to and remediate hazardous materials releases with the potential to affect wetlands or wildlife habitat(s), particularly those of federally threatened or

endangered species. Applicants will adhere to all USEPA regulations described in 40 C.F.R. Part 263 and will coordinate with USEPA, state agencies, and local agencies on spill responses.

Emergency Response

VM 49. Applicants will notify appropriate Emergency Services Dispatching Centers on the Line of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time. Applicants will work with affected communities to minimize emergency vehicle delay by maintaining facilities for emergency communication with local Emergency Response Centers through a dedicated toll-free telephone number.

Water Resources

VM 50. Applicants will maintain drainage ditches as permanent vegetated swales to provide stormwater retention and treatment. Removal of accumulated sediments will be conducted only as necessary to maintain stormwater retention capacity and function.

Biological Resources

VM 51. Applicants will ensure that any herbicides used in right-of-way maintenance to control vegetation are approved by USEPA and are applied by licensed individuals. Application will be limited to the extent necessary for rail operations. Herbicides will be applied so as to prevent or minimize drift off of the right-of-way onto adjacent areas.

Energy Resources

VM 52. Applicants, to the extent reasonably practicable, will adopt efficient fuel saving practices that may include a range of operating practices that will help reduce locomotive emissions, such as shutting down locomotives when not in use and when temperatures are above 40 degrees.

VM 53. Applicants will comply with USEPA emissions standards for diesel-electric railroad locomotives (40 C.F.R. Part 92) when purchasing and rebuilding locomotives.

Noise and Vibration

VM 54. Applicants will work with affected communities that have noise-sensitive receptors that would experience an increase of at least 5 dBA and reach 70 dBA, because of Transaction-related train increases, to mitigate train noise to levels as low as 70 dBA by cost-effective means as are agreed to by an affected community and Applicants. In the absence of such an agreement, Applicants will implement cost-effective mitigation.

VM 55. Applicants will cooperate with interested communities along the Line for the establishment of quiet zones (QZ) and assist in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish QZ.¹⁹

¹⁹ Applicants state that their willingness to cooperate does not commit Applicants to expend funds on a physical project.

VM 56. Applicants will work with their contractors to maintain Transaction-related maintenance vehicles in good-working order with properly functioning mufflers to control noise.

VM 57. In addition to the development of other noise mitigation measures, Applicants will consider lubricating curves where doing so would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors. Applicants will also continue to employ safe and efficient operating procedures that, in lieu of, or as complement to, other noise mitigation measures can have the collateral benefit of effectively reducing noise from train operations. Such procedures will include:

- Inspecting rail car wheels to maintain wheels in good working order and minimize the development of wheel flats;
- Inspecting new and existing rail for rough surfaces and, where appropriate, grinding these surfaces to provide a smooth rail surface during operations; and
- Regularly maintaining locomotives and keeping mufflers in good working order.

VM 58. Applicants will comply with Federal Railroad Administration regulations establishing decibel limits for train operations.

VM 59. To minimize noise and vibration, Applicants will install and maintain rail and rail beds according to AREMA standards.

VM 60. Upon request, Applicants will consult with communities affected by wheel squeal at existing locations on the Line, and cooperate in determining the most appropriate methods for implementing VM 57.

Monitoring and Enforcement

VM 61. Upon approval of the Application by the Board, Applicants will submit semi-annual reports to the Board's Office of Environmental Analysis (OEA) on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first three years of operational changes.

7.2 OEA's Preliminary Mitigation Measures

OEA preliminarily recommends the following additional mitigation measures (MM) to minimize or avoid for potential Transaction-related impacts. OEA's recommended mitigation includes measures to address specific concerns raised by the communities of Greenwood, IN and Whiteland, IN in written comments submitted during the early stages of the environmental review process and the Board's deliberations of the transportation merits of the case, respectively.

Transportation

MM 1. To address potential safety impacts at public at-grade crossings, Applicants shall complete a Grade Crossing Mitigation Plan (GCMP) prior to moving Transaction-related train traffic on the Line. In preparing the GCMP, Applicants shall meet with the INDOT and KYTC, within 45 days of the effective date of any Board approval of the Proposed Transaction, to begin determining the need for grade crossing protection upgrades at each public at-grade crossing on

the Line. Applicants shall update the Board's OEA on the status of the GCMP in their semi-annual mitigation and enforcement reports to OEA.

MM 2. To the extent practicable, Transaction-related siding extensions and new sidings shall be located and designed to minimize blockages of public at-grade crossings by slow-moving trains entering and exiting the sidings.

MM 3. To supplement VM 49, once Transaction-related train traffic begins to move on the Line, Applicants shall promptly notify the appropriate Emergency Services Dispatching Center(s) when a stopped or slowly moving train will not clear a public at-grade crossing within 10 minutes.

MM 4. To assist with the timely response of emergency service providers transporting patients to Schneck Medical Center, Applicants shall consult with appropriate emergency service providers (e.g., including the Seymour and Hamilton fire departments in Seymour, IN) to install a closed-circuit television system (CCTV) with video cameras (or another comparable system or acceptable option) so that train movements and blocked at-grade crossings within the City of Seymour can be monitored in real time. Applicants shall pay for the necessary equipment, equipment installation, and equipment training for up to two individuals from each affected emergency service provider. Applicants shall work with the appropriate emergency service providers to determine specifications and scheduling for the installation of the system. Once installed and operational, Applicants shall be responsible for the ongoing maintenance of the system.

MM 5. To supplement VM 5, within six months of Applicants initiating operational changes associated with the Proposed Transaction, Applicants shall cooperate with residential communities, schools and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

MM 6. Applicants shall coordinate with the appropriate state departments of transportation, counties and affected communities along the Line to develop a program for installing temporary notification signs or message boards in the Line's right-of-way at each of the Line's 154 public at-grade crossings, clearly advising motorists of the pending increase in the number, length and speed of trains on the Line. The format and lettering of these signs shall comply with the Federal Highway Administration's 2007 Manual on Uniform Traffic Control Devices. The signs shall be installed no less than 30 days before Transaction-related train traffic begins moving on the Line, and shall remain in place for at least six months after Transaction-related train traffic begins moving on the Line. Applicants shall provide OEA written notice when installation of the signage has been completed at all 154 public at-grade crossings. At least 30 days before any Transaction-related train traffic begins to move on the Line, Applicants shall also publish a notice in a newspaper of general circulation in each county in which the Line is located to advise residents of the pending increase in the number, length and speed of trains on the Line.

MM 7. Prior to initiating Transaction-related construction activities, Applicants shall consult with the City of Greenwood, IN regarding potential design considerations related to Worthsville Road roadway improvements.

MM 8. Applicants shall consult with the City of Greenwood, IN and Indianapolis, IN regarding their potential interest in moving passenger trains on the Line.

Hazardous Waste

MM 9. For the Brook siding, residual contamination from a previous leaking underground storage tank incident at a former Conrail, now L&I, property could be encountered during Transaction-related construction and upgrading activities. Applicants shall ensure that their employees and contractors are prepared to monitor for contaminated soils and to excavate, document, and dispose of affected material, as needed, in compliance with applicable environmental and health and safety laws and regulations.

Water Resources

MM 10. Prior to initiating Transaction-related construction activities within floodplains, Applicants shall obtain a Construction in a Floodway Permit from the Indiana Department of Natural Resources.

MM 11. Prior to initiating Transaction-related construction activities within waters of the United States including wetlands, Applicants shall obtain a Section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers, as applicable.

MM 12. Prior to initiating Transaction-related construction activities within waters of the United States including wetlands, Applicants shall obtain a Water Quality Certification from the Indiana Department of Environmental Management, as applicable.

Biological Resources

MM 13. During replacement of the Flatrock River Railroad Bridge, Applicants shall avoid stream channel disturbance during the primary fish spawning season (April 1 through June 15).

Historic Preservation

MM 14. CSXT and L&I shall retain their interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, bridges and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CSXT and L&I shall report back to the Board's OEA regarding any consultations with the Indiana SHPO, Kentucky SHPO and the public. CSXT and L&I may not initiate any Transaction-related construction activities (including but not limited to siding construction and bridge replacement) until the Section 106 process has been completed and the Board has removed this condition.

MM 15. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during Transaction-related construction activities, Applicants shall immediately cease all work and will notify the Board's OEA, interested federally recognized tribes, and the Indiana SHPO or Kentucky SHPO, as appropriate, pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federally recognized tribes, the railroads, and other consulting parties, if any, to determine whether additional mitigation measures are necessary.

Community Liaison

MM 16. In response to Transaction-related concerns regarding noise, emergency response and other issue areas, Applicants shall establish a Community Liaison to consult with affected communities, businesses and appropriate agencies; develop cooperative solutions to local concerns; be available for public meetings; and conduct periodic public outreach. Applicants shall establish and staff the Community Liaison position prior to Transaction-related construction activities and for a period of three years following the first movement of Transaction-related trains on the Line.