



APPENDIX B

Agency Comments and Responses



Double Track Northwest Indiana Project

Finding of No Significant Impact

November 1, 2018

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 18 2017

Elizabeth Breiseth
Federal Transit Administration
200 W. Adams Street, Suite 320
Chicago, Illinois 60606

REPLY TO THE ATTENTION OF:

Michael Noland
Northern Indiana Commuter Transportation District
33 East U.S. Highway 12
Chesterton, Indiana 46304

Re: EPA Comments on Draft Environmental Assessment for the Northern Indiana Commuter Transit District – Double Track Expansion Project (Gary to Michigan City); Lake, Porter, and LaPorte Counties, Indiana

Dear Ms. Breiseth and Mr. Noland:

The U.S. Environmental Protection Agency has reviewed a Draft Environmental Assessment (Draft EA) under the National Environmental Policy Act (NEPA) for proposed improvements along the existing South Shore Commuter Rail Line (SSL); improvements are proposed between Gary and Michigan City, Indiana. The Federal Transit Administration (FTA) is the lead federal agency, and the Northern Indiana Commuter Transportation District (NICTD) is the project sponsor for the proposed project. This letter provides EPA's comments on the Draft EA, pursuant to NEPA, the Council on Environmental Quality's (CEQ) NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

Specifically, FTA and NICTD propose to expand a portion of the SSL service between milepost (MP) 58.8 in Gary and MP 32.2 in Michigan City, a distance of 26.6 miles. Proposed upgrades include construction of a second track with related signal, power, communications, bridge, and track infrastructure, and station improvements to existing commuter stations. Between Gary and Burns Harbor, Indiana, a second mainline already exists. In Michigan City from MP 35.3 to MP 33.3, the track is embedded within and runs parallel to local roads. Proposed upgrades in Michigan City would remove the current in-street track, add a second track, and physically separate the track from the roadway. Sensitive resources in the project vicinity include wetlands, the Indiana Dunes National Lakeshore, and the Indiana Dunes State Park.

EPA's comments on the Draft EA focus mainly on impacts to aquatic resources, impacts to communities and community cohesion, and mitigation commitments. We commend FTA and NICTD for developing a preferred alternative that does not propose permanent impacts to, or acquisition of, property from the Indiana Dunes National Lakeshore or the Indiana Dunes State Park. Our comments are discussed in greater detail in the enclosure to this letter: *"EPA Detailed Comments on the Draft EA for the NICTD South Shore Commuter Rail Line – Double Track*

Improvement Project.” We stress the importance of making clear commitments in the NEPA decision document.

EPA appreciates the open communication and coordination between EPA, NICTD, FTA, and the regulatory agencies as this project has developed. Overall, we commend the level of detail and plain language readability of the Draft EA. EPA also recognizes that well-planned improvements to the South Shore Line commuter rail system could result in long-term regional air quality benefits.

Thank you for the opportunity to review and comment upon the Draft EA. We are available to discuss our comments with you in further detail if requested. Please send us a copy of future NEPA documents for this project, including the project’s signed decision document. If you have any questions regarding the content of this letter, please contact Ms. Liz Pelloso at 312-886-7425 or via email at pelloso.elizabeth@epa.gov, or Ms. Jen Tyler at 312-886-6394 or tyler.jennifer@epa.gov. Questions about wetlands can be directed to Ms. Kerryann Weaver at (312) 353-9483 or weaver.kerryann@epa.gov.

Sincerely,



Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosure:

EPA Detailed Comments on the Draft EA for the NICTD South Shore Commuter Rail Line – Double Track Improvement Project

cc (via email):

Paul Leffler, U.S. Army Corps of Engineers, Chicago District
Liz McCloskey, U.S. Fish and Wildlife Service, Chesterton Sub-Office
Dan Plath, National Park Service, Indiana Dunes National Lakeshore
Mike Riley, Indiana Department of Transportation
Laura Hilden, Indiana Department of Transportation
Marty Maupin, Indiana Department of Environmental Management
Christie Stanifer, Indiana Department of Natural Resources

EPA Detailed Comments on the Draft EA for the NICTD South Shore Commuter Rail Line – Double Track Improvement Project

October 18, 2017

WETLAND IMPACTS

- The project as proposed will impact 51 of 76 delineated wetlands found within the project right-of-way (ROW). Specifically, 5.73 acres of wetland impact are proposed (4.75 acres of permanent impact and 0.98 acre of temporary impact); of this, 4.90 acres of wetland are considered high quality. Because this is a linear project, many wetlands extend past the project ROW. As proposed, the project would require the filling of portions of several wetlands located within the project footprint; not all of these wetlands will be completely filled. Some wetlands have acreage that extends outside of the project footprint and ROW, and some wetlands may be located entirely within the project ROW but may not be proposed for full impact. In situations where a wetland would be partially filled, EPA is concerned that the remaining wetland acreage may experience declines in functions, values, and habitat quality. The Draft EA does not clearly consider, describe, or analyze such indirect wetland impacts.

EPA discussed indirect impacts to wetlands along the ROW at meetings with you on 2/7/17 and 2/16/17 as well as through email correspondence from EPA dated 3/22/17. NICTD responded to EPA's concerns via a letter that is included on page 46 of Appendix IV. EPA and U.S. Army Corps of Engineers (USACE) staff discussed with you that indirect impacts could be quantified, to a certain extent, at this point in the process. Recognizing the effort, and constraints, involved with doing a comprehensive wetland secondary impact analysis required under Section 404 of the Clean Water Act, examples were offered to allow NICTD to carry out a reasonable indirect impacts assessment. Specifically, it was suggested that a wetland proposed to be more than 50% filled (filling being a direct impact) would result in a strong likelihood that the remaining portion of the wetland would lose certain functions and values, thus resulting in an indirect impact. While EPA's 3/22/17 email correspondence provided an example of the potential indirect impacts to a wetland being more than 50% filled, our concerns are not limited to fill at this percentage threshold.

In our 3/22/17 email to you, EPA recommended: (1) describing the relationship between the wetland features that would be impacted and the larger connected wetland complexes, and including maps of the larger complexes; (2) providing maps that clearly depict impacted wetlands, to include visual representation of the portion of the wetland acreage that would be impacted and the portion of that wetland feature that would not be impacted (generally via shading wetland impacts in a map legend); and (3) identifying specific wetlands where direct impacts would take enough of the feature that the remaining portion of the wetland would be harmed, and quantifying such indirect impacts.

On 10/18/17, EPA held a call with NICTD to discuss our continued concerns regarding how indirect impacts are addressed in the EA. Specifically, EPA staff articulated the need for a

more thorough narrative and depiction of potential indirect impacts to wetlands from the proposed work. NICTD staff acknowledged our concerns, discussed some potential limitations to carrying out our request, and suggested they coordinate further with EPA as they develop a more thorough discussion on indirect impacts to wetlands in the EA.

Recommendations: EPA continues to recommend that NICTD provide a narrative describing the potential indirect impacts to wetlands and any efforts used to identify and quantify wetland features where direct impacts may compromise the functions and values of remaining wetland acreage (i.e. indirect impacts). The discussion should include the results of their analysis, supporting literature regarding their assessment, and any conclusions drawn as well as any limitations to the assessment of indirect impacts for this specific project. The narrative should also include a summary of the commitments made by NICTD during agency coordination meetings (i.e. those commitments documented in Appendix IV) to address indirect impacts and mitigation for such impacts. Additionally, construction plans should be amended to show not just wetland boundaries, but the extent of wetland impacts, both direct and indirect, via shading in the legend. Erosion control plans should include the location where all silt and snow fencing will be installed around wetland acreage to remain undisturbed within the ROW. Plans should also show locations of silt fencing installation for protection of amphibians and wildlife.

EPA reserves its right to provide additional comments when more information is available during future Clean Water Act Section 404 permitting for this project.

- NICTD is proposing the construction of stormwater detention facilities in the Gary/Miller, Ogden Dunes, and Dune Park station areas as part of the upgraded parking designs. It is unclear if such detention construction would propose impacts to any delineated wetlands.

Recommendation: Detention areas should not be located or sited in wetlands, streams, or any other Waters of the U.S. EPA recommends that NICTD/FTA utilize porous pavers or porous concrete in new surface parking lots; this may reduce the size or overall need for onsite detention at these locations.

ENVIRONMENTAL COMMITMENTS/MITIGATION

- A clear list of environmental commitments, to include mitigation and enhancement, required to implement the project, should be created and included in the project decision document. Citizens would then have a single list to refer to in order to easily identify protective measures that will be taken during project implementation.

Recommendations: EPA recommends that NICTD/FTA create an environmental commitments list based off of the Michigan Department of Transportation's project mitigation summary "Green Sheets," which are available online for many projects. Such a commitments list could be part of a decision document, or an appendix to a

decision document¹. The commitments list should include a specific point person, to include a phone number and email address, for citizens to contact if they believe appropriate and required commitments are not being undertaken.

Such commitments should include, but are not limited to, statements made in the EA that will be undertaken, including:

- Ensuring the contractor prepares and implements a dust control plan, a work-zone traffic management plan, and a strategy to control emissions from diesel-powered equipment;
- Ensuring the contractor(s) follow EPA's Construction Emission Control Checklist;
- Ensuring the construction contractor employs at least one environmental staff member responsible for monitoring construction activities within residential areas to help ensure that construction does not become a nuisance to nearby residences;
- Allowing no filling of, or digging/excavating in wetland areas from November 1 through March 1 to minimize impacts to the massasauga snake, spotted turtle, and northern leopard frog; these dates define their inactive season;
- Ensuring that for work that occurs during the active season (between March 1 and November 1) for the massasauga, spotted turtle, and northern leopard frog, a trenched-in silt fence be installed around the sites where these species are found. The fencing should have a minimum distance of 0.50 mile and should curve at the ends. Any turtles or snakes encountered, regardless of species, should be removed, unharmed, and immediately placed outside the work area into nearby safe habitat.
- Implementing a quiet zone in Michigan City;
- Ensuring that no work in any waterway occurs from April 1 through June 30 without the prior written approval of the IDNR-Division of Fish and Wildlife;
- Ensuring that no trees within the project footprint that are suitable for Indiana bat or Northern Long-eared bat roosting (greater than 3 inches diameter at breast height, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) are cut down from April 1 through September 30;
- Any state-listed plant species found within the construction footprint be relocated to a new mitigation site (to be determined); and
- Ensuring that contract documents include best management practices to protect adjacent wetland areas from accidental intrusion during construction. This would include installation of silt fence, including employing an on-site environmental protection specialist to monitor construction activities;

Additionally, as wetland mitigation site(s) are developed, EPA reminds NICTD/FTA that all mitigation sites should be discretely identified to ensure there is no overlap of federal funds from Great Lakes Restoration Initiative (GLRI) projects in the area.

¹ An example of a "green sheet" appendix to a NEPA Record of Decision can be found here: <https://www.state.gov/documents/organization/194998.pdf>

COMMUNITY IMPACTS/COMMUNITY COHESION

- Page 4-123 of the EA explains that induced growth near stations is anticipated, which could alter property markets, and states, “*if property values, taxes, and rents increase, low-income EJ [environmental justice] populations may no longer be able to afford to remain in their neighborhoods or would have fewer housing choices. Development around station areas may have an offsetting indirect beneficial effect on EJ neighborhoods by including affordable housing and development space for local businesses*” and that “*It is expected that the existing and in-progress TOD [transit-oriented development] plans would be implemented by the respective communities.*”

Recommendation: EPA recommends that NICTD consider partnering with local governments to promote affordable housing near stations.

- Page 4-44 of the EA states, “*Visual impacts of the proposed Project would be mitigated by developing the improvements according to the local communities’ design standards.*” The EA does not discuss if any of the project communities have design standards applicable to this project.

Recommendation: EPA recommends that if local communities do not have existing design standards, that NICTD consider if it is possible to partner with communities to assist in developing community-supported design standards.

- EPA recognizes that “*NICTD would develop a maintenance of traffic plan with each community to minimize traffic-related impacts during construction.*” (Page ES-4).

Recommendation: EPA recommends that NICTD consider augmenting this commitment to help protect children’s health and safety, in line with Executive Order 13045. Specifically, we recommend including requirements in the maintenance of traffic plan, when possible, for trucks hauling materials and for heavy machinery to avoid areas where children congregate. Please route construction truck traffic away from schools, daycares and parks when possible, and use crossing guards when such areas cannot be avoided.

RESILIENCY

- The National Climate Assessment² finds that in the Midwest extreme heat, heavy downpours, and flooding will affect infrastructure.

Recommendation: Consider precipitation and temperature trends and modeled future conditions for the project area, which are available in the National Climate Assessment. As needed, EPA recommends that NICTD incorporate resiliency and adaptation measures into the project design now to avoid necessary retrofits in the future.

² U.S. Global Change Research Program, 2014 National Climate Assessment, available at: <http://nca2014.globalchange.gov/report>

NOISE

- The EA states that “NICTD would work with Michigan City and FRA to implement a quiet zone between Sheridan Avenue and Carroll Avenue” (page 4-51). Creation and implementation of a new quiet zone will require approval from the Federal Rail Administration. Furthermore, meeting minutes provided in the document appendices state, “Mark [Assam, FTA] was concerned that the mitigation strategy appeared to be dependent on FRA’s approval of a quiet zone. Mark said that, if after applying mitigation, severe noise impacts still remain (even if they are severe now too), they could be considered significant, and a FONSI [Finding of No Significant Impact] could not be achieved. Janice [Reid, HDR] suggested that a commitment is included in the EA that Michigan City will be a quiet zone pending FRA’s approval. To this regard, Susan Weber (FTA) suggested FTA discusses this issue with FRA.” (Appendix IV, 2/17/2017 meeting minutes, p. 3). However, the EA did not discuss the progress of discussions with FRA or the status of creation of a quiet zone in Michigan City.

Recommendation: EPA recommends that FTA/NICTD discuss coordination with FRA to date regarding the creation of a quiet zone, the process for receiving FRA’s approval, and the likely timing of implementation.

THREATENED/ENDANGERED SPECIES and OTHER WILDLIFE

- EPA commends efforts to relocate documented, state-listed plant species found in the construction footprint prior to disturbance in cooperation with the Indiana Department of Natural Resources (IDNR) and the National Park Service (NPS).

Recommendation: If suitable habitat is not available at NPS or IDNR lands, EPA recommends NICTD commit to considering non-governmental suitable habitat for transplants (e.g., properties owned by Shirley Heinz Land Trust, etc.). Additionally, non-governmental organizations (e.g., Friends of the Indiana Dunes) may be appropriate partners to ensure relocated plants survive and thrive (e.g., are not out-competed by non-native, invasive plant species).

NATIVE AND INVASIVE PLANT SPECIES

- EPA commends NICTD’s commitment to voluntarily replace trees to be cut down during project construction. However, after reviewing the EA, it is unclear if tree replacement would be made on a 1-to-1 basis, or based on acreage removed. Additionally, it is unclear if a monitoring/maintenance plan has been developed.

Recommendations:

- Clarify the tree restoration ratio(s). EPA also recommends NICTD/FTA consider non-governmentally-owned suitable locations for replanting, if suitable habitat is not available at NPS or IDNR lands (e.g., properties owned by Shirley Heinz Land Trust);

- Clarify how woody debris (from removed trees, etc.) will be disposed of and removed from the project area. If feasible and approvable, large woody debris may be able to be used to create wildlife habitat in terrestrial areas (e.g., brush piles). Alternately, removed trees may be able to be mulched and available for use by the public. EPA strongly recommends that vegetation should not be burned to avoid adverse air impacts;
- Require an additional commitment to include equipment washing as a required best management practice in Section 4.3.4 of the document and also in contract documents. Washing equipment before it moves from a particular area will be important to reduce the possibility of introducing/expanding non-native, invasive plant species, considering the high mean coefficient of conservatism and floristic quality index for the habitat units associated with the Indiana Dunes National Lakeshore and Indiana Dunes State Park portions of the Project Area; and
- Consult with IDNR and the other regulatory agencies to determine the adequate frequency and duration of monitoring tree plantings. Because restoration and replanting requires periodic monitoring and maintenance to be successful, EPA recommends the results of consultation with IDNR and other regulatory agencies be clarified and committed to in the decision document. Such monitoring plans should consider what “success” will look like for restoration efforts and for transplanting/replanting of state-listed plants. Performance objectives (e.g., no greater than 15 percent non-native, invasive plant species/acre, etc.) should be determined with IDNR and the other regulatory agencies, as appropriate, and included in a monitoring/maintenance plan. Proposed monitoring duration and frequency per year should also be addressed in a monitoring/maintenance plan.



U.S. Department
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**Federal Transit
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September 17, 2018

Mr. Kenneth Westlake
Chief, NEPA Implementation Section
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: EPA Comments on Draft Environmental Assessment for the Northern Indiana Commuter Transit District - Double Track Expansion Project (Gary to Michigan City); Lake, Porter, and LaPorte Counties, Indiana

Dear Mr. Westlake:

Thank you for the U.S. Environmental Protection Agency's (EPA) letter dated October 18, 2017, pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act, commenting on the Double Track Expansion Project (Gary to Michigan City) *Environmental Assessment* (EA), published in September 2017 by the Federal Transit Administration (FTA) and the Northern Indiana Commuter Transit District (NICTD).

This response letter is intended to provide information in response to the comments and recommendations provided by EPA that focus mainly on impacts to aquatic resources, impacts to communities and community cohesion, and mitigation commitments as required by 23 C.F.R. § 771.119(g) and will be incorporated into the administrative record. FTA's responses to comments and recommendations are included in the enclosure to this letter.

We hope this additional information is useful and provides background information for how EPA's recommendations are being addressed by the project design team. The NEPA decision document is anticipated for publication in October 2018. If you require additional assistance, please contact Susan Weber at (312) 353-3888 or Susan.Weber@dot.gov. Thank you for your coordination on this important regional project.

Sincerely,

Kelley Brookins
Acting Regional Administrator

cc: Jay Ciavarella, FTA Region V
Susan Weber, FTA Region V
Elizabeth Breiseth, FTA Region V
Michael Noland, NICTD
Nicole Barker, NICTD

FTA Comments and Responses to USEPA Letter dated 10/18/17

WETLAND IMPACTS

EPA Comment: EPA continues to recommend that NICTD provide a narrative describing the potential indirect impacts to wetlands and any efforts used to identify and quantify wetland features where direct impacts may compromise the functions and values of remaining wetland acreage (i.e., indirect impacts). The discussion should include the results of their analysis, supporting literature regarding their assessment, and any conclusions drawn as well as any limitations to the assessment of indirect impacts for this specific project. The narrative should also include a summary of the commitments made by NICTD during agency coordination meetings (i.e., those commitments documented in Appendix IV) to address indirect impacts and mitigation for such impacts. Additionally, construction plans should be amended to show not just wetland boundaries, but the extent of wetland impacts, both direct and indirect, via shading in the legend. Erosion control plans should include the location where all silt and snow fencing will be installed around wetland acreage to remain undisturbed within the ROW. Plans should also show location of silt fencing installation for protection of amphibians and wildlife. EPA reserves its rights to provide additional comments when more information is available during future Clean Water Act Section 404 permitting for this project.

FTA Response: FTA and NICTD agree that a preliminary quantification of potential indirect impacts to wetlands could be performed at this early phase of project design. The NEPA decision document (FONSI) will include the following language to describe the process that NICTD took to quantify during preliminary design any indirect impacts to wetlands, as well as short and long-term strategies to reduce impacts after construction.

“To provide a preliminary quantification of potential indirect impacts to wetlands, NICTD overlaid the National Wetlands Inventory (NWI) GIS shapefile with the Project’s construction footprint and the delineated wetlands. While it is understood that the NWI maps are not extremely accurate, it is the best source of available data to indicate connections between the wetlands in the Project’s construction footprint and larger wetland complexes. The results indicate that of the 5.7 acres of wetlands that are located within the construction footprint that would be filled, only 0.160 acres are associated with NWI wetlands (see Table 1).

To illustrate these indirect relationships, both the NWI wetlands and the delineated wetlands are included on the natural resource maps that are contained in Appendix II of the EA.”

Table 1. NWI Wetlands in Construction Footprint

Wetland Type	Cowardin Class	Acres in Construction Footprint
Freshwater Emergent Wetland	PEM1F	0.013
Riverine	R5UBFx	0.029
Riverine	R5UBFx	0.014
Riverine	R5UBFx	0.023

Wetland Type	Cowardin Class	Acres in Construction Footprint
Riverine	R5UBFx	0.033
Riverine	R5UBH	0.032
Riverine	R2UBHx	0.016
	Total	0.160

“To further protect adjacent wetland areas from short term impacts during construction, commitments that include developing erosion and sediment control plans that incorporate Best Management Practices (such as silt and drift fences) to avoid or minimize construction-related impacts are detailed in this FONSI. The locations of the BMPs and the wetland boundaries will be included in the design drawings and specifications as project design and engineering advances. NICTD will require that contractors institute these BMPs, and monitor compliance by having an on-site environmental specialist overseeing the work. NICTD will also require that the construction contractor work within the designated construction footprint to avoid inadvertent encroachment on wetlands.

The wetland and natural resource mitigation plan being developed for this project would create, restore, and enhance wetland and hydrology within the Indiana Dunes National Lakeshore. The intent of this plan is not only to mitigate for the direct impacts caused by the project, but also to establish longer-term strategies that not only protect adjacent wetlands from indirect impacts, but enhance their functions. NICTD has committed to develop this mitigation plan as part of the Section 404 individual permit from USACE, and it will also be reviewed and approved by IDEM.”

EPA Comment: Detention areas should not be located or sited in wetlands, streams, or any other Waters of the U.S. EPA recommends that NICTD/FTA utilize porous pavers or porous concrete in new surface parking lots; this may reduce the size or overall need for onsite detention at these locations.

FTA Response: Stormwater detention facilities in the parking lots associated with the Gary/Miller, Ogden Dunes, and Dune Park stations will not be located in wetlands, streams, or any other Waters of the U.S. The design of parking lot drainage will include measures to filter any runoff from these areas. NICTD will consider potential applications of green infrastructure including native landscaping and drainage design at the parking lots in the final design for the project. NICTD will review and consider municipal development standards during final design and coordinate with municipal staff, as appropriate.

ENVIRONMENTAL COMMITMENTS/MITIGATION

EPA Comment: EPA recommends that NICTD/FTA create an environmental commitments list based off of the Michigan Department of Transportation’s project mitigation summary “Green Sheets,” which are available online for many projects. Such a commitments list could be part of a decision document, or an appendix to a decision document. The commitments list should include a specific point person, to include a phone number and email address, for citizens to contact if they believe appropriate and required commitments are not being undertaken. Such commitments should include, but are not limited to, statements made in the EA that will be undertaken.

FTA Response: The following environmental commitments listed in your October 18, 2017 letter have been included in the EA and will also be included as commitments in the FONSI:

- Preparation and implementation of a dust control plan, a work-zone traffic management plan, and a strategy to control emissions from diesel-powered equipment;
- A requirement for the contractor(s) to follow EPA's Construction Emission Control Checklist;
- Contractor(s) to employ at least one environmental staff member to monitor construction activities within residential areas to help ensure that construction does not become a nuisance to nearby residences;
- No filling of or digging/excavating in wetland areas will occur from November 1 through March 1 to minimize impacts to the eastern massasauga rattlesnake, spotted turtle, and northern leopard frog; these dates define their inactive season;
- Installation of silt fences in known habitat areas for the eastern massasauga rattlesnake, spotted turtle, and northern leopard frog within active work areas, consistent with IDNR and USFWS guidance;
- A qualified herpetologist will be employed to relocate individual amphibians or reptiles from any of these species outside of construction areas;
- NICTD is working with FRA and Michigan City to implement a quiet zone between Carroll Avenue and Sheridan Avenue in Michigan City (see commitment under Noise below);
- No work will occur in any waterway from April 1 through June 30 without the prior written approval of the IDNR–Division of Fish and Wildlife;
- Tree clearing will be restricted to occur only between December and April in accordance with U.S. Fish and Wildlife Service *Revised Programmatic Biological Opinion for Transportation Projects in the Range of the Indiana Bat and Northern Long-Eared Bat* (December 15, 2016) and *Range-wide Programmatic Consultation for Indiana Bat and Northern Long-Eared Bat, Avoidance and Minimization Measures* (December 2016);
- NICTD is actively working with Save the Dunes on preparing a relocation/seeding project for state-listed threatened or endangered plant species that would be impacted by the project. To the extent practicable, NICTD will coordinate with IDNR and NPS to either relocate state-listed plant species prior to disturbance or plant new vegetation as part of the wetland and natural resource mitigation plan;
- The construction contractor will be required to employ at least one environmental specialist to monitor compliance with Best Management Practices (BMPs). NICTD will also require that the construction contractor work within the designated construction footprint to avoid inadvertent encroachment on wetlands and protect adjacent wetland areas during construction; and
- FTA and NICTD will develop a wetland and natural resource mitigation plan to provide mitigation on land within the Indiana Dunes National Lakeshore. The specific wetland mitigation site(s) within the Indiana Dunes National Lakeshore have not yet been confirmed. NICTD and NPS would develop the specific details of the mitigation strategy, in consultation with the USACE and IDEM, during final design. This mitigation plan would be submitted to regulatory agencies as part of the permitting process before construction activities begin. The mitigation site(s) will not overlap with Great Lakes Restoration Initiative (GLRI) projects in the corridor.

COMMUNITY IMPACTS/COMMUNITY COHESION

EPA Comment: EPA recommends that NICTD consider partnering with local governments to promote affordable housing near stations.

FTA Response: Development that would occur around stations will be guided by plans prepared by the local municipalities. All of the regional and municipal plans do recommend mixed use/transit-oriented development near stations, and regional plans further recommend that this includes affordable housing. Additionally, within the proposed station areas of Gary (Miller) and Michigan City, the amount of existing, legally binding affordable housing units is much higher than FTA's recommendation. This is one measure that FTA considers when

grantees request funding from the Capital Investment Grant program. NICTD is supportive of local jurisdiction planning efforts to develop affordable housing in the vicinity of stations.

EPA Comment: EPA recommends that if local communities do not have existing design standards, that NICTD consider if it is possible to partner with communities to assist in developing community-supported design standards.

FTA Response: NICTD will discuss design standards and visual changes resulting from the Project with the local community.

EPA Comment: EPA recommends that NICTD consider augmenting this commitment to help protect children's health and safety, in line with Executive Order 13045. Specifically, we recommend including requirements in the maintenance of traffic plan, when possible, for trucks hauling materials and for heavy machinery to avoid areas where children congregate. Please route construction truck traffic away schools, daycares and parks when possible, and use crossing guards when such areas cannot be avoided.

FTA Response: The FONSI will include a commitment that requires trucks hauling materials and heavy machinery to avoid areas where children congregate, such as parks and schools, to the extent practicable. Maintenance of traffic (MOT) plans developed for this project will be reviewed by NICTD and the local municipality.

RESILIENCY

EPA Comment: Consider precipitation and temperature trends and modeled future conditions for the project area, which are available in the National Climate Assessment. As needed, EPA recommends that NICTD incorporate resiliency and adaptation measures into the project design now to avoid necessary retrofits in the future.

FTA Response: NICTD has been coordinating with the IDNR from the start of the preliminary design phase of the project. The proposed cross-drainage structures had been preliminarily designed to meet capacity and structural requirements, avoid frequent overtopping of the track embankment and to minimize adverse impacts upstream of the waterway crossing locations. In general, proposed water surface elevations upstream of the crossings are lower than existing water surface elevations thereby satisfying 'no-rise' conditions. Proposed replacement structures are generally larger in size compared to existing structures due to flood discharge capacity requirements, keeping discharge velocities lower than erosive velocities, and to prevent frequent overtopping of the tracks. Final design of all cross-drainage structures will be designed consistent with IDNR's permitting requirements.

NOISE

EPA Comment: EPA recommends that FTA/NICTD discuss coordination with FRA to date regarding the creation of a quiet zone, the process for receiving FRA's approval, and the likely timing of implementation.

FTA Response: NICTD and the City of Michigan City have been working together to determine the feasibility and approximate costs associated with establishing a quiet zone between Sheridan Avenue and Carroll Avenue. Representatives of NICTD, the City, FRA, HDR and CTC, Inc. (HDR subconsultant) performed a preliminary quiet zone evaluation and field inspection on May 19, 2017. It was mutually agreed that all crossings to remain would have at a minimum automatic warning devices consisting of gates lights and bells. FRA has verbally agreed that providing constant warning time for the crossing devices is not practical since NICTD is an electrified railroad. Combinations of alternate and supplemental safety measures will also be considered as design progresses. A detailed diagnostic team review will be performed later in the final design process to ensure that

the proposed crossing improvements will meet the necessary quiet zone requirements of 49 CFR Parts 222 and 229. The City will submit a Notice of Intent (NOI) to create a quiet zone to the FRA, INDOT, CSS and NICTD in 2020 or 2021. When the proposed quiet zone improvements are in place and are confirmed by the City to meet FRA requirements, the City will submit a Notice of Quiet Zone Establishment to the FRA, INDOT, CSS and NICTD in 2020 or 2021. Additional details of the quiet zone planning work performed to date and details of the quiet zone establishment process are contained in the Quiet Zone Evaluation Study for Michigan City, IN dated 10/9/2017.

THREATENED/ENDANGERED SPECIES AND OTHER WILDLIFE

EPA Comment: If suitable habitat is not available at NPS or IDNR lands, EPA recommends NICTD commit to considering non-governmental suitable habitat for transplants (e.g., properties owned by Shirley Heinz Land Trust, etc.). Additionally, non-governmental organizations (e.g., Friends of the Indiana Dunes) may be appropriate partners to ensure relocated plants survive and thrive (e.g., are not out-competed by non-native, invasive plant species).

FTA Response: NICTD is actively coordinating with Save the Dunes, Indiana Dunes National Lakeshore, IDNR, and NIPSCO regarding a state-listed plant relocation and seed collection/dispersal project. This commitment will also be included in the FONSI. In addition, NICTD will invite volunteers from Shirley Heinze Land Trust to participate.

NATIVE AND INVASIVE PLANT SPECIES

EPA Comment: Clarify the tree restoration ratio(s). EPA also recommends NICTD/FTA consider non-governmentally-owned suitable locations for replanting, if suitable habitat is not available at NPS or IDNR lands (e.g., properties owned by Shirley Heinz Land Trust).

- Clarify how woody debris will be disposed of and removed from the project area.
- Require an additional commitment to include equipment washing as a required best management practice in Section 4.3.4 of the document and also in contract documents.
- Consult with IDNR and the other regulatory agencies to determine the adequate frequency and duration of monitoring tree plantings. Such monitoring plans should consider what “success” will look like for restoration efforts and for transplanting/replanting of state-listed species. Performance objectives (e.g., no greater than 15 percent non-native, invasive plant species/acre, etc.) should be determined with IDNR and the other regulatory agencies, as appropriate, and included in a monitoring/maintenance plan. Proposed monitoring duration and frequency per year should also be addressed in a monitoring/maintenance plan.

FTA Response: Tree replacement ratios will be considered during the development of the natural resource and wetland mitigation plan described above that will be developed during final design, in concert with NPS, IDEM and IDNR. FTA and NICTD will consider non-governmentally-owned suitable locations for replanting should suitable habitat not be available at NPS or IDNR land.

- FTA and NICTD will determine the method in which woody debris will be disposed of and removed from the project area during final design and permitting.
- FTA and NICTD will add a commitment in the FONSI to require contractors to wash equipment before moving from a particular area to another. This will reduce the likelihood of introducing or expanding invasive plant species to new areas along the corridor.
- FTA and NICTD will consider monitoring and maintenance of tree plantings to ensure successful restoration and replanting during construction, in accordance with applicable permit requirements.

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

DNR #: ER-19132

Request Received: June 28, 2016

Requestor: HDR Engineering Inc
Sara Merchan-Paniagua
8550 West Bryn Mawr Avenue
Suite 900
Chicago, IL 60631-3223

Project: Northwest Indiana Connectivity Plan South Shore Line Double Track: addition of a second track to the 23-mile segment between Gary & Michigan City, NICTD

County/Site info: Lake - LaPorte - Porter

The Indiana Department of Natural Resources has reviewed the above referenced project per your request. Our agency offers the following comments for your information and in accordance with the National Environmental Policy Act of 1969.

If our agency has regulatory jurisdiction over the project, the recommendations contained in this letter may become requirements of any permit issued. If we do not have permitting authority, all recommendations are voluntary.

Regulatory Assessment: This proposal may require formal approval(s) of our agency pursuant to the Flood Control Act (IC 14-28-1) for any proposal to construct, excavate, or fill in or on the floodway of a stream or other flowing waterbody which has a drainage area greater than one square mile. Please submit more detailed plans to the Division of Water's Technical Services Section if you are unsure whether or not a permit will be required.

*NOTE: This project falls within the Lake Michigan Coastal Program's boundary; therefore, it may be subject to Federal Consistency (FC) review. For more information regarding items requiring Federal Consistency Review, please go to <http://www.in.gov/dnr/lakemich/files/20070214-IR-312070085NRA.xml.pdf>. If your project requires a Permit, Agency Action, or Funding as listed in Section III (pages 8-13) it must go through a FC Review. It is your responsibility to initiate a FC Review. Failure to do so may result in the Federal entity denying your project. Please follow the FC process outlined at <http://www.in.gov/dnr/lakemich/6041.htm>.

Natural Heritage Database: The Natural Heritage Program's data have been checked. A list of managed lands and species that have been documented within 150 feet of the project area as indicated in the 57 aerial sheets submitted is attached. To date, no plant or animal species listed as state or federally threatened, endangered, or rare have been reported to occur in the project areas shown on sheets 2, 3, 6, 7, 8, 21, 22, 23, 24, 25, 26, 54, 55, and 56.

The Division of Nature Preserves (DNP) recommends that construction activities be confined as much as possible near the Dunes Nature Preserve in order to have the smallest impact possible. However, as this is an ongoing project, more information is needed to make a full assessment of impacts to plants and nature preserves near the construction sites. Continue coordination with DNP to keep staff up-to-date with site surveys and project developments as they occur. Site visits by the DNP Regional Ecologist are planned.

Fish & Wildlife Comments: Avoid and minimize impacts to fish, wildlife, and botanical resources to the greatest extent possible, and compensate for impacts. As project plans develop, more details can be submitted for further environmental review, if needed. The following are recommendations that address potential impacts identified in the proposed project area:

Attachments: A - General Information

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

1) Animals:

a. Reptiles and Amphibians:

To minimize impacts to the massasauga, spotted turtle, and northern leopard frog, we recommend no digging/excavating or filling of wetlands occur during the inactive season which is from November 1 through March 1. Any other type of work may be conducted during that time frame without a silt fence. For work that occurs during the active season, a trenched-in silt fence should be installed around the sites where these species are found prior to March 1. The fencing should have a minimum distance of 0.5 mile and should curve at the ends. Any turtles or snakes encountered, regardless of species, should be removed, unharmed, and immediately placed outside the work area into nearby safe habitat.

b. Birds:

The project area no longer consists of suitable habitat for the American bittern, king rail, Virginia rail, and black-crowned night-heron. Also, the golden-winged warbler no longer breeds in Indiana. Therefore, we do not foresee any impacts to these species as a result of this project.

Any forest habitat clearing near sites on sheets 37 and 38 will impact tree nesting species that are federally protected by the Migratory Bird Treaty Act. Also, habitat near sites on sheets 44, 45, 46, and 52 may support hooded warblers as they prefer forested areas with some shrubby understory for nesting. Therefore, to minimize impacts to these species, we recommend construction activities take place outside of the breeding season from September to late March.

2) Stream Crossing:

For purposes of maintaining fish passage through a crossing structure, the Environmental Unit recommends bridges rather than culverts and bottomless culverts rather than box or pipe culverts. Wide culverts are better than narrow culverts, and culverts with shorter through lengths are better than culverts with longer through lengths. If box or pipe culverts are used, the bottoms should be buried a minimum of 6" (or 20% of the culvert height/pipe diameter, whichever is greater up to a maximum of 2') below the stream bed elevation to allow a natural streambed to form within or under the crossing structure. Crossings should: span the entire channel width (a minimum of 1.2 times the bankful width); maintain the natural stream substrate within the structure; have a minimum openness ratio (height x width / length) of 0.25; and have stream depth and water velocities during low-flow conditions that are approximate to those in the natural stream channel. The new, replacement, or rehabbed structure should not create conditions that are less favorable for wildlife passage under the structure compared to the current conditions.

3) Riparian Habitat:

We recommend a mitigation plan be developed (and submitted with the permit application, if required) if habitat impacts will occur. The DNR's Floodway Habitat Mitigation guidelines (and plant lists) can be found online at:
<http://www.in.gov/legislative/iac/20140806-IR-312140295NRA.xml.pdf>.

Impacts to non-wetland forest of one (1) acre or more should be mitigated at a minimum 2:1 ratio. If less than one acre of non-wetland forest is removed in a rural setting, replacement should be at a 1:1 ratio based on area. Impacts to non-wetland forest under one (1) acre in an urban setting should be mitigated by planting five trees, at least 2 inches in diameter-at-breast height (dbh), for each tree which is removed that is 10" dbh or greater (5:1 mitigation based on the number of large trees).

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

4) Wildlife Passage:

The Environmental Unit emphasizes the importance of wildlife passage issues and transportation infrastructure projects. The following link has resources to consider in the design of the proposed project: <http://www.fs.fed.us/wildlifecrossings/library/>.

5) Site Boundary:

The information submitted for review mentioned the need for more accurate site boundary information for Indiana Dunes State Park as well as various trails near the project corridor. More detailed information can be found at <http://www.in.gov/dnr/parklake/2392.htm> and <http://www.in.gov/dnr/outdoor/>.

6) Additional Resources:

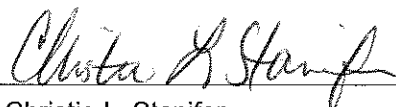
Carl Wodrich (Director of Ecological Services, 317-232-1291, cwodrich@dnr.in.gov) with the Division of Land Acquisition has been involved with some of the Great Lakes Restoration Initiative projects in the general area and may be a good resource in addition to EPA staff.

The additional measures listed below should be implemented to avoid, minimize, or compensate for impacts to fish, wildlife, and botanical resources:

1. Revegetate all bare and disturbed areas with a mixture of grasses (excluding all varieties of tall fescue), legumes, and native shrub and hardwood tree species as soon as possible upon completion.
2. Minimize and contain within the project limits inchannel disturbance and the clearing of trees and brush.
3. Do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.
4. Do not cut any trees suitable for Indiana bat or Northern Long-eared bat roosting (greater than 3 inches dbh, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) from April 1 through September 30.
5. Do not excavate in the low flow area except for the placement of piers, foundations, and riprap, or removal of the old structure.
6. Plant native hardwood trees along the top of the bank and right-of-way to replace the vegetation destroyed during construction.
7. Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.
8. Seed and protect all disturbed streambanks and slopes that are 3:1 or steeper with erosion control blankets (follow manufacturer's recommendations for selection and installation); seed and apply mulch on all other disturbed areas.

Contact Staff:

Christie L. Stanifer, Environ. Coordinator, Fish & Wildlife
Our agency appreciates this opportunity to be of service. Please contact the above staff member at (317) 232-4080 if we can be of further assistance.



Christie L. Stanifer
Environ. Coordinator
Division of Fish and Wildlife

Date: July 26, 2016

ER-19132: Managed lands and species within 150 feet of the project sites, as indicated by the 57 aerial sheets submitted.

(NOTE: FE=Federally Endangered, FC=Federal Candidate, SE=State Endangered, SSC=State Special Concern, ST=State Threatened, SR=State Rare, WL=Watch List)

MANAGED LANDS:

Indiana Dunes National Lakeshore, US National Park Service
Indiana Dunes State Park, DNR Division of State Parks
Dunes Nature Preserve, DNR Division of Nature Preserves

SHEETS:

10-18, 27- 47, 51-53
33-36
36-40

PLANTS:

Bulrush	<i>Scirpus expansus</i>	SE	36-38, 41
Northern Bog Clubmoss	<i>Lycopodiella inundata</i>	SE	32, 33
Finely-nerved Sedge	<i>Carex leptoneura</i>	SE	32, 33
Sand-heather	<i>Hudsonia tomentosa</i>	ST	19
Sticky Goldenrod	<i>Solidago simplex</i> var. <i>gillmanii</i>	ST	52
Primrose-leaf Violet	<i>Viola primulifolia</i>	ST	40, 44
Forked Bluecurl	<i>Trichostema dichotomum</i>	SR	1
Fire Cherry	<i>Prunus pensylvanica</i>	SR	4, 5, 45-50, 52
Northern Bush-honeysuckle	<i>Diervilla lonicera</i>	SR	4, 5
Black-fruit Mountain-ricegrass	<i>Oryzopsis racemosa</i>	SR	17-20
Rushlike Aster	<i>Aster borealis</i>	SR	19
Baltic Rush	<i>Juncus balticus</i> var. <i>littoralis</i>	SR	30
Spoon-leaved Sundew	<i>Drosera intermedia</i>	SR	30
American Wintergreen	<i>Pyrola rotundifolia</i> var. <i>Americana</i>	SR	31
Long Sedge	<i>Carex foliculata</i>	SR	32, 33, 37-39, 41-43
White-edge Sedge	<i>Carex debilis</i> var. <i>rudgei</i>	SR	32, 33
Roundleaf Dogwood	<i>Cornus rugosa</i>	SR	34-36
Blackseed Needlegrass	<i>Stipa avenacea</i>	SR	46, 47
Michaux's Stitchwort	<i>Arenaria stricta</i>	SR	52
Deep-root Clubmoss	<i>Lycopodium tristachyum</i>	SR	37, 38
Ridged Yellow Flax	<i>Linum striatum</i>	WL	32, 33, 37, 38
Dwarf Ginseng	<i>Panax trifolius</i>	WL	34, 35, 44-48
American Ginseng	<i>Panax quinquefolius</i>	WL	34, 35
Butternut	<i>Juglans cinerea</i>	WL	34, 35
Small Green Woodland Orchis	<i>Platanthera clavellata</i>	WL	37, 38
Broadwing Sedge	<i>Carex alata</i>	WL	41
Trailing Arbutus	<i>Epigaea repens</i>	WL	30

INSECTS:

Karner Blue	<i>Lycaeides melissa samuelis</i>	FE & SE	19
A Pyralid Moth	<i>Pyla arenaeola</i>	SE	18, 19
Big Broad-winged Skipper	<i>Poanes viator viator</i>	ST	36-38, 40
Bunchgrass Skipper	<i>Problema byssus</i>	ST	9
Great Lakes dune spittlebug	<i>Philaenarcys killa</i>	SR	19

ANIMALS:

Massasauga	<i>Sistrurus catenatus</i>	FC & SE	31, 40-43
Spotted Turtle	<i>Clemmys guttata</i>	SE	32, 33
American Bittern	<i>Botaurus lentiginosus</i>	SE	14-17
King Rail	<i>Rallus elegans</i>	SE	14-18, 42, 43
Virginia Rail	<i>Rallus limicola</i>	SE	40, 41
Golden-winged Warbler	<i>Vermivora chrysoptera</i>	SE	42-45
Black-crowned Night-heron	<i>Nycticorax nycticorax</i>	SE	57
Northern Leopard Frog	<i>Lithobates pipiens</i>	SSC	32, 33
Hooded Warbler	<i>Wilsonia citrina</i>	SSC	42-46

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

DNR #: ER-19132-1

Request Received: September 21, 2017

Requestor: Northern Indiana Commuter Transportation
District
Nicole Barker
33 East US Highway 12
Chesterton, IN 46304-3521

Project: NICTD South Shore Line Double Track Northwest Indiana Project: construction of a second track to the segment between MP 58.8 in Gary and MP 32.2 in Michigan City, Environmental Assessment

County/Site info: Lake - LaPorte - Porter

The Indiana Department of Natural Resources has reviewed the above referenced project per your request. Our agency offers the following comments for your information and in accordance with the National Environmental Policy Act of 1969.

If our agency has regulatory jurisdiction over the project, the recommendations contained in this letter may become requirements of any permit issued. If we do not have permitting authority, all recommendations are voluntary.

Regulatory Assessment: This proposal may require the formal approval of our agency pursuant to the Flood Control Act (IC 14-28-1) for any proposal to construct, excavate, or fill in or on the floodway of a stream or other flowing waterbody which has a drainage area greater than one square mile. Please submit more detailed plans to the Division of Water's Technical Services Section if you are unsure whether or not a permit will be required.

Natural Heritage Database: The Natural Heritage Program's data have been checked. Attached is a list of managed lands, high quality natural communities, and species that have been documented near the project area in addition to the list provided in our July 26, 2016, letter.

This project has the potential to impact and fill approximately 5.73 acres of wetlands. The Division of Nature Preserves (DNP) recommends build options that reduce permanent and temporary impacts to wetlands. DNP recommends Option 2 at the CN interchange in Gary as it will result in the fewest negative impacts to natural resources. Furthermore, within the Bailly (Porter) section, DNP recommends Option 4 as it minimizes impacts to wetlands and does not require impacts to land owned and managed by the Indiana Dunes National Lakeshore (IDNL).

The DNP has concerns about impacts to rare plants. *Shepherdia canadensis* (Russet buffalo-berry) is a state extirpated plant, but it was listed as a plant observed within the project area. If the plant does occur within the project area, it may be the only population within the State of Indiana. The DNP would like to gather information about this plant population and work with partner conservation organizations, such as Save the Dunes, to protect this plant species, if possible. More specific information about this plant population is requested including GPS locations and number of plants within the population. Staff from the DNP would like permission to visit this plant population and develop a plan for its protection.

Opportunities for mitigation of wetland impacts should be focused within the IDNL. The staff at IDNL has the capacity to manage the wetland restoration after mitigation requirements have been met.

Attachments: A - General Information

THIS IS NOT A PERMIT

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

Fish & Wildlife Comments: The recommendations in our previous response letter dated July 26, 2016, still apply.

Contact Staff: Christie L. Stanifer, Environ. Coordinator, Fish & Wildlife
Our agency appreciates this opportunity to be of service. Please contact the above staff member at (317) 232-4080 if we can be of further assistance.



Date: October 23, 2017

Christie L. Stanifer
Environ. Coordinator
Division of Fish and Wildlife

ER-19132-1: Species, managed lands and high quality natural communities have been documented within ½ mile of the project area (in addition to the list provided in our July 26, 2016, letter).

(NOTE: SE=State Endangered, SCC=State Special Concern, ST=State Threatened, SR=State Rare, WL=Watch List)

MANAGED LANDS:

Indiana Dunes Nature Preserve, DNR Division of State Parks and Reservoirs

Dunes Prairie Nature Preserve, DNR Division of State Parks

Coulter (John Merle) Nature Preserve, Shirley Heinze Land Trust

COMMUNITIES:

County, Township, Range, Section:

Dry Sand Savanna	Porter Co, 37N, 7W, 34 & 36; Lake Co, 36N, 8W, 1 & 36N, 7W, 4
Dry Sand Prairie	Porter Co, 37N, 7W, 36
Dry-mesic Sand Prairie	Lake Co, 36N, 8W, 1
Dry-mesic Sand Savanna	Lake Co, 37N, 7W, 31 & 36N, 7W, 4
Marsh	Lake Co, 36N, 7W, 4
Mesic Sand Prairie	Lake Co, 36N, 7W, 4
Wet Sand Prairie	Lake Co, 36N, 7W, 4
Wet-mesic Sand Prairie	Lake Co, 36N, 7W, 4

Common:

Scientific:

Rank:

County, Township, Range, Section:

PLANTS:

Globe-fruited False-loosestrife	<i>Ludwigia sphaerocarpa</i>	SE	Lake Co, 36N, 8W, 1
Gray Birch	<i>Betula populifolia</i>	SE	Porter Co, 37N, 5W, 19
Hall's Bulrush	<i>Schoenoplectus hallii</i>	SE	Lake Co, 36N, 7W, 4; Porter Co, 37N, 6W, 24
Jointed Rush	<i>Juncus articulatus</i>	SE	Porter Co, 37N, 6W, 23
Northern Appressed Bog Clubmoss	<i>Lycopodiella subappressa</i>	SE	Porter Co, 37N, 5W, 10
Small Floating Manna-grass	<i>Glyceria borealis</i>	SE	Lake Co, 36N, 8W, 1
Smith's Bulrush	<i>Schoenoplectus smithii</i>	SE	Porter Co, 37N, 6W, 21
Spotted Pondweed	<i>Potamogeton pulcher</i>	SE	Lake Co, 36N, 8W, 1
American Golden-saxifrage	<i>Chrysosplenium americanum</i>	ST	Porter Co, 37N, 5W, 9&17 & 37N, 6W, 23
Black-fruited Spike-rush	<i>Eleocharis melanocarpa</i>	ST	Porter Co, 37N, 6W, 24
Dune Thistle	<i>Cirsium pitcheri</i>	ST	Porter Co, 38N, 5W, 35
Maryland Meadow Beauty	<i>Rhexia mariana</i> var. <i>mariana</i>	ST	Porter Co, 37N, 5W, 9
Northeastern Smartweed	<i>Polygonum hydropiperoides</i>	ST	Porter Co, 36N, 7W, 3
	var. <i>opelousanum</i>		
Pipsissewa	<i>Chimaphila umbellata</i>	ST	Porter Co, 38N, 5W, 36
	ssp. <i>Cisatlantica</i>		
Prairie Fame-flower	<i>Talinum rugospermum</i>	ST	Lake Co, 36N, 8W, 1 & 36N, 7W, 4
Prairie Gray Sedge	<i>Carex conoidea</i>	ST	Porter Co, 37N, 6W, 27
Reticulated Nutrush	<i>Scleria reticularis</i>	ST	Porter Co, 37N, 7W, 34
Scirpus-like Rush	<i>Juncus scirpoides</i>	ST	Lake Co, 36N, 8W, 1
			Porter Co, 37N, 6W, 23
Silverweed	<i>Potentilla anserina</i>	ST	Porter Co, 37N, 5W, 18
Smaller Forget-me-not	<i>Myosotis laxa</i>	ST	Porter Co, 37N, 6W, 23
Yellow Sedge	<i>Carex flava</i>	ST	Porter Co, 37N, 5W, 16
Beach Sumac	<i>Rhus aromatica</i> var. <i>arenaria</i>	SR	Porter Co, 37N, 6W, 21
Blackseed Needlegrass	<i>Piptochaetium avenaceum</i>	SR	Porter Co, 37N, 5W, 7
Chamomile Grape-fern	<i>Botrychium matricariifolium</i>	SR	Porter Co, 37N, 5W, 17
Eastern Jointweed	<i>Polygonella articulata</i>	SR	Porter Co, 37N, 7W, 34 & 37N, 6W, 24;
			Lake Co, 36N, 7W, 4&5
Grove Meadow Grass	<i>Poa alsodes</i>	SR	Porter Co, 37N, 5W, 18
Jack Pine	<i>Pinus banksiana</i>	SR	Porter Co, 37N, 7W, 35 & 37N, 5W, 18
Longstalk Sedge	<i>Carex pedunculata</i>)	SR	Porter Co, 37N, 5W, 8
Northern Witchgrass	<i>Dichanthelium boreale</i>)	SR	Porter Co, 37N, 7W, 34
Purple Bladderwort	<i>Utricularia purpurea</i>)	SR	Porter Co, 37N, 7W, 34
Seabeach Needlegrass	<i>Aristida tuberculosa</i>)	SR	Lake Co, 36N, 7W, 4&5; Porter Co, 37N, 5W, 18
Small Purple-fringe Orchis	<i>Platanthera psycodes</i>)	SR	Porter Co, 37N, 5W, 8
Tall Beaked-rush	<i>Rhynchospora macrostachya</i>)	SR	Porter Co, 37N, 7W, 34
Tall Millet-grass	<i>Milium effusum</i>)	SR	Porter Co, 37N, 5W, 8&18
Weak Stellate Sedge	<i>Carex scorsa</i>)	SR	Porter Co, 37N, 5W, 9&16
Western Silvery Aster	<i>Symphyotrichum sericeum</i>)	SR	Porter Co, 37N, 7W, 34&35; Lake Co, 36N, 7W, 4
Whorled Water-milfoil	<i>Myriophyllum verticillatum</i>)	SR	Lake Co, 36N, 8W, 1
Blunt-lobe Grape-fern	<i>Botrychium oneidense</i>)	WL	Porter Co, 37N, 5W, 16
Bog Bluegrass	<i>Poa paludigena</i>)	WL	Porter Co, 37N, 5W, 18
Slender Pondweed	<i>Potamogeton pusillus</i>)	WL	Lake Co, 36N, 8W, 1
Tower-mustard	<i>Arabis glabra</i>)	WL	Porter Co, 37N, 5W, 1

INSECTS:

Persius Duskywing	Erynnis persius persius	SE	Porter Co, 37N, 7W, 34 (all same location)
Phlox Moth	Schinia Indiana	SE	
Mottled Duskywing	Erynnis martiali)	ST	
Olympia Marble	Euchloe Olympia	ST	
A Leafhopper	Chlorotettix fallax	SR	
A Noctuid Moth	Schinia septentrionalis	SR	
Anna's tiger moth	Grammia anna)	SR	
Band-winged Meadowhawk	Sympetrum semicinctum	SR	
Leonard's Skipper	Hesperia leonardus	SR	
Praeclara Underwing	Catocala praeclara	SR	
Red-legged Spittle Bug	Prosapia ignipectus	SR	
Saturn quaker	Protorthodes incincta	SR	
Sprague's Pygartic	Pygarctia spraguei	SR	

ANIMALS:****BIRDS****

Cerulean Warbler	Dendroica cerulean)	SE	Porter Co, 37N, 5W, 18
Golden-winged Warbler	Vermivora chrysoptera)	SE	Porter Co, 37N, 5W, 2&17
Least Bittern	Ixobrychus exilis)	SE	Porter Co, 37N, 7W, 31&33 & 37N, 5W, 9
Marsh Wren	Cistothorus palustris)	SE	Porter Co, 37N, 7W, 35
Black-and-white Warbler	Mniotilta varia)	SSC	Porter Co, 37N, 5W, 18; LaPorte Co, 38N, 4W, 18
Broad-winged Hawk	Buteo platypterus)	SSC	Porter Co, 37N, 5W, 7
Great Egret	Ardea alba)	SSC	Porter Co, 37N, 6W, 31
Red-shouldered Hawk	Buteo lineatus)	SSC	Porter Co, 37N, 5W, 7

****REPTILES & AMPHIBIANS****

Blanding's Turtle	Emydoidea blandingii)	SE	Lake Co, 36N, 7W, 6
Smooth Green Snake	Opheodrys vernalis)	SE	Porter Co, 37N, 6W, 22
Western Ribbon Snake	Thamnophis proximus proximus)	SSC	Porter Co, 37N, 5W, 9 & 37N, 7W, 34
Four-toed Salamander	Hemidactylum scutatum)	SSC	Porter Co, 37N, 5W, 8&9
Blue-spotted Salamander	Ambystoma laterale)	SSC	Porter Co, 37N, 7W, 34 & 37N, 5W, 8, 9 & 17; Lake Co, 36N, 7W, 4&33



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

September 17, 2018
Christie L. Stanifer
Environmental Coordinator
Department of Natural Resources
402 West Washington Street, W273
Indianapolis, IN 46204

Re: IDNR Comments on Draft Environmental Assessment for the Northern Indiana Commuter Transit District - Double Track Expansion Project (Gary to Michigan City); Lake, Porter, and LaPorte Counties, Indiana

Dear Ms. Stanifer:

Thank you for the Indiana Department of Natural Resources (IDNR) letter dated October 23, 2017, commenting on the Double Track Expansion Project (Gary to Michigan City) *Environmental Assessment* (EA), published in September 2017 by the Federal Transit Administration (FTA) and the Northern Indiana Commuter Transit District (NICTD).

This response letter is intended to provide information in response to the comments and recommendations provided by IDNR in the October 23, 2017 letter along with previous correspondence dated June 28, 2016; recommendations made in the June 2016 correspondence are incorporated by reference into the October 2017 letter. This response is provided pursuant to 23 C.F.R. § 771.119(g) and will be incorporated into the administrative record. FTA's responses to comments and recommendations are included in the enclosure to this letter.

We hope this additional information is useful and provides background information for how IDNR's comments and recommendations are being addressed by the project design team. The NEPA decision document is anticipated for publication in October 2018. If you require additional assistance, please contact Susan Weber at (312) 353-3888 or Susan.Weber@dot.gov. Thank you for your coordination on this important regional project.

Sincerely,


Kelley Brookins
Acting Regional Administrator

ecc: Jay Ciavarella, FTA Region V
Susan Weber, FTA Region V
Elizabeth Breiseth, FTA Region V
Michael Noland, NICTD
Nicole Barker, NICTD

Comments and Responses to IDNR Letters dated 10/23/17 and 06/28/16

IDNR Comment: This proposal may require the formal approval of our agency pursuant to the Flood Control Act (IC 14-28-1) for any proposal to construct, excavate, or fill in or on the floodway of a stream or other flowing waterbody which has a drainage area greater than one square mile. Please submit more detailed plans to the Division of Water's Technical Services Section if you are unsure whether or not a permit will be required.

FTA Response: Although there are three areas in which the Project crosses a FEMA-designated 100-year floodplain, the hydraulic survey and preliminary hydraulic modeling and analysis conducted for the EA indicate that proposed structures do not cause a rise in water surface elevations upstream of the track crossings during a 100-year flood event. However, results of the hydraulic modeling and analysis would be re-evaluated in the next phase of design.

Should a permit be required for any project-related impacts to floodplains and/or floodways, coordination with IDNR will take place accordingly and permit conditions will be followed.

IDNR Comment: This project falls within the Lake Michigan Coastal Program's boundary; therefore, it may be subject to Federal Consistency (FC) review. If your project requires a Permit, Agency Action, or Funding as listed in Section III (pages 8-13), it must go through a FC Review. It is your responsibility to initiate a FC Review.

FTA Response: NICTD will request a Federal Consistency review to IDNR Division of Nature Preserves when design plans are developed and during the Clean Water Act Section 401/404 permitting process. This will be included as a commitment in the FONSI.

IDNR Comment: The Division of Nature Preserves (DNP) recommends that construction activities be confined as much as possible near the Dunes Nature Preserve in order to have the smallest impact possible. Continue coordination with DNP to keep staff up to date with site surveys and project developments as they occur.

FTA Response: The construction footprint does not encroach on the Indiana Dunes State Park. Page 35 of the Affected Environment Mapbook included in Appendix II of the EA depicts the construction footprint in the area surrounding the Dune Park Station. Additionally, NICTD will require that the construction contractor work within the designated construction footprint to avoid inadvertent encroachment on wetlands. NICTD will include a commitment in the FONSI to continue coordination with the DNP as project design progresses.

IDNR Comment: Avoid and minimize impacts to fish, wildlife, and botanical resources to the greatest extent possible, and compensate for impacts. As project plans develop, more details can be submitted for further environmental review, if needed.

FTA Response: The recommendations listed in the IDNR environmental review results letter dated July 26, 2016 were taken into consideration during refinements to the design and construction footprint in order to minimize impacts to fish, wildlife, and botanical resources. NICTD will continue to consider impacts to natural and biological resources as the project design progresses.

IDNR Comment: Reptiles and Amphibians: To minimize impacts to the massasauga, spotted turtle, and northern leopard frog, we recommend no digging/excavating or filling of wetlands occur during the inactive season which is from November 1 through March 1. Any other type of work may be conducted during that time frame without a silt fence. For work that occurs during the active season, a trenched-in silt fence should be installed around the sites where these species are found prior to March 1. The fencing should have a minimum distance of 0.5

mile and should curve at the ends. Any turtles or snakes encountered, regardless of species, should be removed, unharmed, and immediately placed outside the work area into nearby safe habitat.

FTA Response: Modifications to the Preferred Alternative have reduced impacts to suitable habitat for the eastern massasauga and Kirtland's snakes by 1.3 acres. This will be indicated in the FONSI.

The following environmental commitments will be included in the EA and in the FONSI:

- No digging, excavating, or filling of wetlands will occur from November 1 to March 1.
- To the extent practicable, trenched-in silt fences will be installed around the sites where these species are found prior to work during the active season. The fencing requirements will be followed.
- NICTD will conduct daily inspections before work begins. To the extent possible, a qualified herpetologist will relocate individual amphibians and/or reptiles from any of the four target species found in construction areas. NICTD will require the construction contractor to employ at least one environmental specialist to monitor compliance with best management practices (BMPs).
- NICTD will require that the construction contractor work within the designated construction footprint to avoid inadvertent encroachment on wetlands and protect adjacent wetland areas during construction.

IDNR Comment: Birds: The project area no longer consists of suitable habitat for the American bittern, king rail, Virginia rail, and black-crowned night-heron. Also, the golden-winged warbler no longer breeds in Indiana. Therefore, we do not foresee any impacts to these species as a result of this project.

FTA Response: Comment noted.

IDNR Comment: Any forest habitat clearing near sites on sheets 37 and 38 will impact tree nesting species that are federally protected by the Migratory Bird Treaty Act. Also, habitat near sites on sheets 44, 45, 46, and 52 may support hooded warblers as they prefer forested areas with some shrubby understory for nesting. Therefore, to minimize impacts to these species, we recommend construction activities take place outside of the breeding season from September to late March.

FTA Response: Please note that sheets 37 and 38 of the mapbook submitted for the IDNR Environmental Review in 2016 now correspond to sheets 38-40 of the mapbook included in Appendix II of the EA as published in September 2017. The majority of the forested area in this portion of the corridor is located on NPS land to the south of the existing track. The construction footprint in this area includes the track and extends north of it where there are few trees, if any.

Also note that sheets 44-46 of the mapbook submitted for the IDNR Environmental Review in 2016 now correspond to sheets 45-48 of the mapbook included in the EA, just west of Milepost 38. Construction is anticipated only in some portions of this area, primarily within the existing track and not in the forested areas to the south. However, there is a small portion of the construction footprint south of the tracks on sheet 45, immediately south of the Beverly Shores Station.

NICTD recognizes the importance of avoiding or minimizing impacts to wildlife and their habitat, and will strive to identify measures to reduce such impacts during the Section 404 permitting process. As part of this permit, coordination with the USFWS will continue under the MBTA and Section 7 of the Environmental Species Act. A review of potentially impacted listed federal species or suitable habitat for them will be conducted. NICTD will fully comply with all conditions laid out in the permit.

IDNR Comment: Stream Crossing: For purposes of maintaining fish passage through a crossing structure, the Environmental Unit recommends bridges rather than culverts and bottomless culverts rather than box or pipe culverts. Wide culverts are better than narrow culverts, and culverts with shorter through lengths are better than

culverts with longer through lengths. If box or pipe culverts are used, the bottoms should be buried a minimum of 6" (or 20% of the culvert height/pipe diameter, whichever is greater up to a maximum of 2') below the stream bed elevation to allow a natural streambed to form within or under the crossing structure. Crossings should span the entire channel width (a minimum of 1.2 times the bankful width), maintain the natural stream substrate within the structure, have a minimum openness ratio (Height x width/length) of 0.25; and have stream depth and water velocities during low-flow conditions that are approximate to those in the natural stream channel. The new, replacement, or rehabbed structure should not create conditions that are less favorable for wildlife passage under the structure compared to the current conditions.

FTA Response: Such details regarding crossing structures will be prepared in the design phase. Information provided about the preferred characteristics of crossing structures for maintaining fish passage will be considered during the design phase.

IDNR Comment: Riparian Habitat: We recommend a mitigation plan be developed (and submitted with the permit application, if required) if habitat impacts will occur. The DNR's Floodway Habitat Mitigation guidelines (and plant lists) can be found online.

FTA Response: During final design, NICTD and NPS, in consultation with the U.S. Army Corps of Engineers (USACE), the Indiana Department of Environmental Management (IDEM) and the IDNR, will develop a wetland and natural resource mitigation plan, which will be submitted to the USACE, IDEM and IDNR as part of the permitting process before construction activities begin. Consideration of the IDNR's guidelines will be taken into account during the development of this plan.

IDNR Comment: Riparian Habitat: Impacts to non-wetland forest of 1 acre or more should be mitigated at a minimum 2:1 ratio. If less than 1 acre of non-wetland forest is removed in a rural setting, replacement should be at 1:1 ratio based on area. Impacts to non-wetland forest under 1 acre in an urban setting should be mitigated by planting five trees, at least 2 inches in diameter-at-breast height (dbh), for each tree which is removed that is 10" dbh or greater (5:1 mitigation based on the number of large trees).

FTA Response: Mitigation of tree impacts will be discussed in the wetland and natural resource mitigation plan. During final design, NICTD will coordinate with IDNR and NPS regarding the appropriate tree ratio and species to provide the appropriate mitigation for tree replacement.

IDNR Comment: Wildlife Passage: The Environmental Unit emphasizes the importance of wildlife passage issues and transportation infrastructure projects. The following link has resources to consider in the design of the proposed project: <http://www.fs.fed.us/wildlifecrossings/library/>.

FTA Response: Comment noted. Specifics on culvert design will be determined in the design phase. Information provided from the U.S. Forest Service on wildlife crossings will be taken into consideration.

IDNR Comment: Site Boundary: The information submitted for review mentioned the need for more accurate site boundary information for Indiana Dunes State Park as well as various trails near the project corridor. More detailed information can be found at <http://www.in.gov/dnr/parklake/2392.htm> and <http://www.in.gov/dnr/outdoor>.

FTA Response: Information at these links has been used in the description of the State Park and trails in the EA.

IDNR Comment: Additional Resources: Carl Wodrich (Director of Ecological Services) with the Division of Land Acquisition has been involved with some of the Great Lakes Restoration Initiative projects in the general area and may be a good resource in addition to EPA staff.

FTA Response: Comment noted.

IDNR Comment: Re-vegetate all bare and disturbed areas with a mixture of grasses (excluding all varieties of tall fescue), legumes, and native shrub and hardwood tree species as soon as possible upon completion.

FTA Response: NICTD will re-vegetate all disturbed areas after construction activities cease. The re-vegetation efforts will be discussed in detail in the wetland and natural resource mitigation plan and as part of the required permit applications.

IDNR Comment: Minimize and contain within the project limits in-channel disturbance and the clearing of trees and brush.

FTA Response: NICTD has refined the construction footprint in multiple instances throughout the development of the project thus far in order to minimize impacts to natural resources, including streams. The proposed Project would require in-stream work impacting approximately 1,117 linear feet of streams primarily due to the construction of a new track, extension or widening of existing culverts, and construction of necessary new culverts.

IDNR Comment: Do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.

FTA Response: The FONSI will include a commitment that no work will be performed in a waterway between April 1 and June 30 without the written approval of the IDNR, Division of Fish and Wildlife.

IDNR Comment: Do not cut any trees suitable for Indiana bat or northern long-eared bat roosting (greater than 3 inches dbh, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) from April 1 through September 30.

FTA Response: After reviewing the DT-NWI Bat Habitat Assessment in January 2017, the U.S. Fish and Wildlife Service (USFWS) Field Office agreed that there was "low to moderate" suitable habitat for the Indiana bat or northern long-eared bat species. The USFWS Field Office indicated there are no known maternity roost trees in the Project Area. USFWS advised NICTD to follow the avoidance and minimization measures in *Range-wide Programmatic Consultation for Indiana Bat and Northern Long-Eared Bat, Avoidance and Minimization Measures* issued in December 2016. This project is covered under the Programmatic Biological Opinion as a project to "Not Likely to Adversely Affect, with Avoidance and Minimization Measures" determination for the two bat species. NICTD will include a commitment in the FONSI that for areas identified in the 2017 Bat Habitat Assessment as "low to moderate suitable habitats, no tree clearing can occur between April 1 and December 30. These areas will be identified in the design plans and a special provision will be included in the specifications.

IDNR Comment: Do not excavate in the low flow area except for the placement of piers, foundations, and riprap, or removal of the old structure.

FTA Response: This measure will be taken into consideration during the design phase.

IDNR Comment: Plant native hardwood trees along the top of the bank and right-of-way to replace the vegetation destroyed during construction.

FTA Response: NICTD will continue to coordinate with IDNR and NPS regarding the species and locations for tree replacement, keeping in mind that trees will be planted away from NICTD catenary and track to comply with federal regulations. Mitigation will be determined in the wetland and natural resource mitigation plan.

IDNR Comment: Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.

FTA Response: Erosion control plans will be developed as part of the construction documents. Erosion and sediment control plans will incorporate BMPs to avoid or minimize construction-related impacts. NICTD will require the construction contractor to implement such BMPs during construction.

IDNR Comment: Seed and protect all disturbed streambanks and slopes that are 3:1 or steeper with erosion control blankets (follow manufacturer's recommendations for selection and installation); seed and apply mulch on all other disturbed areas.

FTA Response: As the wetland and natural resource mitigation plan will discuss in detail, NICTD will plant new vegetation in disturbed areas after construction activities have ceased. NICTD will coordinate with IDNR and NPS during preparation of the wetland and natural resource mitigation plan. In addition, NICTD will develop erosion control plans as part of the construction documents, which will include BMPs to minimize erosion and sedimentation.

IDNR Comment: The project has the potential to impact and fill approximately 5.73 acres of wetlands. The DNP recommends build options that reduce permanent and temporary impacts to wetlands. DNP recommends Option 2 at the CN interchange in Gary as it will result in the fewest negative impacts to natural resources. Furthermore, within the Bailly (Porter) section, DNP recommends Option 4 as it minimizes impacts to wetlands and does not require impacts to land owned and managed by the Indiana Dunes National Lakeshore (IDNL).

FTA Response: This is consistent with the Preferred Alternative as described in the EA. Additionally, further modifications to the Preferred Alternative have reduced total impacts to wetlands by 0.3 acres.

IDNR Comment: DNP has concerns about impacts to rare plants. *Shepherdia canadensis* (Russet buffalo-cherry) is a state-extirpated plant, but it was listed as a plant observed within the project area. If the plant does occur within the project area, it may be the only population within the State of Indiana. The DNP would like to gather information about this plant population and work with partner conservation organizations, such as Save the Dunes, to protect this plant species, if possible. More specific information about this plant population requested including GPS locations and number of plants within the population. Staff from DNP would like permission to visit this plant population and develop a plan for its protection.

FTA Response: Further review of the plant species indicated that this species was not present in the study area. An errata sheet to the EA has been prepared and will be included with the FONSI.

IDNR Comment: Opportunities for mitigation of wetland impacts should be focused within the IDNL. The staff at IDNL has the capacity to manage the wetland restoration after mitigation requirements have been met.

FTA Response: A wetland and natural resource mitigation plan will be developed as part of the Section 404 permit. NICTD and NPS will develop the specific details of the mitigation strategy, including management of the restored areas after mitigation, in consultation with USACE, IDEM and IDNR, during design. The IDNL will also be consulted as needed during the development of the mitigation plan. This plan will be submitted to the USACE, IDEM and IDNR as part of the permitting process before construction activities begin.



Division of Historic Preservation & Archaeology · 402 W. Washington Street, W274 · Indianapolis, IN 46204-2739
Phone 317-232-1646 · Fax 317-232-0693 · dhpa@dnr.IN.gov · www.IN.gov/dnr/historic



October 23, 2017

Marisol R. Simón
Regional Administrator
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606

Federal Agency: Federal Transit Administration ("FTA")

Re: September 27, 2017, e-mail from HDR, Inc., notifying of the availability, for public review and comment, of the "Environmental Assessment and Section 4(f) Evaluation, NICTD Double Track NWI (DT-NWI), Milepost (MP) 58.8 to MP 32.2, Gary to Michigan City, IN, September 18, 2017" and October 10, 2017, letter from FTA, inviting the Indiana SHPO to review and comment on the Double Track NWI Project Section 4(f) Evaluation

Dear Ms. Simón:

Pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108) and 36 C.F.R. Part 800, the National Environmental Policy Act of 1969 (42 U.S.C. § 4332), and Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303 and 23 U.S.C. § 138), the staff of the Indiana State Historic Preservation Officer ("Indiana SHPO") has reviewed the aforementioned documents for the NICTD Double Track NWI project proposed for Lake, Porter, and LaPorte counties in Indiana.

As the Environmental Assessment ("EA") indicates, the Indiana SHPO has concurred with FTA's Section 106 identification and evaluation of buildings, structures, districts, objects, and sites, FTA's determinations of eligibility of properties for inclusion in the National Register of Historic Places ("NRHP"), and FTA's findings of effects on those properties that were found to be listed in or otherwise eligible for inclusion in the NRHP. There was discussion regarding the eligibility of some of the properties, but the Indiana SHPO accepts the conclusions of the EA regarding the NRHP eligibility of the properties identified and regarding the Preferred Alternative's impacts on them. Our office and the other Section 106 consulting parties are close to final agreement with FTA upon the terms and specific language of a Section 106 memorandum of agreement ("MOA") to mitigate the project's adverse effects, although the language of the mitigation stipulations in most recent draft MOA (dated September 20, 2017) have been refined somewhat from the tentative language in Section 4.4.4 of the EA.

Although we realize that the caption of Section 4.4.4 ("Measures to Avoid or Minimize Harm") is probably standard language for EAs, the measures that tentatively have been agreed upon for this project pertain mostly with mitigation. Although the Indiana SHPO did review and comment in our March 15, 2017, letter to NICTD about the 2013 *Michigan City/NICTD Rail Realignment Study*, and the other Section 106 consulting parties were advised that other alternatives to the Preferred Alternatives had been considered, the only measure arguably dealing with minimization that my staff recalls the FTA's discussing in detail, or asking for consulting party input on, during the 2016-2017 Section 106 consultation, is the salvage of the historic, 11th Street South Shore Station's decorative façade and its reapplication to a new building that would be constructed about 15 feet farther north. Alternatives to the what has become the Preferred Alignment obviously were considered in the 2013 study and through NICTD's further development of the corridor along 10th and 11th streets during preliminary design, as mentioned in Section ES.3 of the EA, but our impression is that such consideration occurred outside the context of consultation under 36 C.F.R. § 800.6(a).

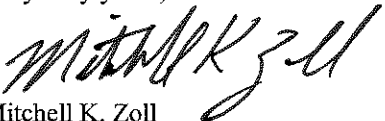
Inasmuch as the Indiana SHPO accepts the conclusions of the EA about impacts on historic properties and, broadly speaking, the mitigation measures for adverse impacts on historic properties described in the EA, the Indiana SHPO does not object to the Section 4(f) Determination Conclusions stated in Section 5.10.

As we have advised before, if any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and -29) requires that the discovery be reported to the Indiana Department of Natural Resources within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 and -29 does not obviate the need to adhere to applicable federal statutes and regulations, including but not limited to 36 C.F.R. Part 800.

If you have questions about above ground properties related to this project, please contact John Carr at (317) 233-1949 or jcarr@dnr.in.gov. Questions about archaeological matters should be directed to Wade T. Tharp at (317) 232-1650 or wtharp1@dnr.in.gov.

In all future correspondence about the Northern Indiana Commuter Transportation District's Double Track NWI project, please refer to DHPA No. 19318.

Very truly yours,


Mitchell K. Zoll
Deputy State Historic Preservation Officer

MKZ:JLC:jlc

emc: Marisol Simón, Federal Transit Administration, Region V
Jay Ciavarella, Federal Transit Administration, Region V
Susan Weber, AICP, Federal Transit Administration, Region V
Elizabeth Breiseth, Federal Transit Administration, Region V
Mark Assam, Federal Transit Administration, Region X
Larry Buckel, Indiana Department of Transportation, Transit Office
Michael Noland, Northern Indiana Commuter Transportation District
John Parsons, Northern Indiana Commuter Transportation District
Nicole Barker, Northern Indiana Commuter Transportation District
Cassandra Francis, Northern Indiana Commuter Transportation District
Double Track NWI
Janice Reid, PTP, HDR, Inc.
Brandon Gabler, PhD, RPA, HDR, Inc.
Jeanne Barnes, HDR, Inc.
Chad Blackwell, HDR, Inc.
Vince Epps, Metric Environmental
Susan Castle, Metric Environmental
Charlotte Bramble, Metric Environmental
Thomas Cervone, Ph.D., Lochmueller Group
Matt Buffington, Indiana Department of Natural Resources, Division of Fish and Wildlife
Christie Stanifer, Indiana Department of Natural Resources, Division of Fish and Wildlife
Stephanie Trapp, Indiana Department of Natural Resources, Division of Fish and Wildlife
Erin Basiger, Indiana Department of Natural Resources, Division of Fish and Wildlife
Mitchell Zoll, Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology
Chad Slider, Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology
Wade T. Tharp, Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology
John Carr, Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology



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September 14, 2018

Jay Ciavarella
Director, Office of Planning and Program Development
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606

Federal Agency: Federal Transit Administration, Region V ("FTA")

State Agency: Northern Indiana Commuter Transportation District ("NICTD")

Re: FTA's August 15, 2018, letter, with August 13, 2018, memorandum, from HDR to NICTD enclosed, regarding the Double Track Northwest Indiana Project, as it pertains to Design Changes on Green Street in Michigan City, LaPorte County, Indiana (DHPA No. 19318)

Dear Mr. Ciavarella:

Pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108), and 36 C.F.R. Part 800, the staff of the Indiana State Historic Preservation Officer ("Indiana SHPO staff" or "INDNR-DHPA") has reviewed your August 15 letter and enclosure, which we received on August 15.

Your August 15 letter explains that its purpose is "to continue consultation for the Double Track NWI Project," because NICTD and the City of Michigan City have determined "that Green Street between Kentucky and Chicago Streets in Michigan City must be improved in order to better accommodate City Services and emergency vehicles after the Project is constructed." Thank you for notifying us of the change in the project planning and for the need to expand the area of potential effects ("APE").

We accept the proposed expansion of the APE for the Double Track Northwest Indiana Project, although the boundaries of the expansion area are somewhat tightly drawn. It appears to us that some of the proposed improvements to Green Street could be visible from the west side of Chicago Street, beyond the western project terminus, and, especially, from a few houses within the National Register of Historic Places-eligible DeWolfe's Addition on the east side of Kentucky Street, beyond the eastern project terminus.

We agree with FTA's conclusion, based on the HDR memorandum, that the houses at 906 and 904 Green Street and the house at 1209 Kentucky Street exceed 50 years in age but do not hold sufficient significance to be eligible for inclusion in the National Register of Historic Places ("NRHP"). We also agree that the auto repair shop at 942 Green Street appears not to be old enough to be NRHP-eligible.

Additionally, based on the submitted information and documentation available to the staff of the Indiana SHPO, we have not identified any currently known archaeological resources listed in or eligible for inclusion in the NRHP within the additional portions of the proposed project area; and it is our opinion that no further archaeological investigations appear necessary at this proposed project area. However, this identification is subject to the project activities remaining within areas disturbed by previous construction of a recent and non-historical nature. If archaeological deposits are encountered from the post-contact period, they will be evaluated regarding their eligibility for the NRHP in consultation with the staff of the Indiana SHPO. Please contact our office if such deposits are encountered. The archaeological recording must be done in accordance with the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation" (48 F.R. 44716) and a report of the archaeological documentation must be submitted to our office for review and comment.


If any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and -29) requires that the discovery be reported to the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology ("IDNR-DHPA") within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 and -29 does not obviate the need to adhere to applicable federal statutes and regulations, including but not limited to 36 C.F.R. Part 800.

Accordingly, we agree that there are no historic properties within the Green Street expansion of the APE for the Double Track Northwest Indiana Project.

If you have questions about above-ground properties related to this project, please contact John Carr at (317) 233-1949 or jcarr@dnr.in.gov. Questions about archaeological matters should be directed to Wade T. Tharp at (317) 232-1650 or wtharp1@dnr.in.gov.

In all future correspondence about the Double Track Northwest Indiana Project (also known as NICTD Double Track NWI), please continue to refer to DHPA No. 19318.

Very truly yours,



Christopher A. Smith
Deputy Director
Indiana Department of Natural Resources

CAS:JLC:WTT:wt

emc: Jay Ciavarella, FTA
Susan Weber, AICP, FTA
Elizabeth Breiseth, FTA
Janice Reid, HDR
Larry Buckel, Indiana Department of Transportation, Transit Office
Chad Slider, INDNR-DHPA
Wade T. Tharp, INDNR-DHPA
John Carr, Indiana INDNR-DHPA

Town of
Chesterton
INDIANA

Office of the Clerk-Treasurer

October 13, 2017



Via Electronic Mail and US Mail
doubletrackNWI@nictd.com

Northern Indiana Commuter Transportation District
Mr. Michael Noland
c/o DT-NWI Project
33 E. US Highway 12
Chesterton, IN 46304

Dear Mr. Noland:

On Monday, October 9, 2017, the Chesterton Town Council passed a Motion expressing the Town's enthusiastic support of NICTD's proposed Double Track project. The Motion was passed unanimously by the four Town Council members present at the meeting. The Double Track project stands to increase local access to Chicago by significantly shortening the commute time to downtown Chicago from Chesterton and surrounding communities. This is a significant key to economic growth in the area, including the Town of Chesterton.

The Double Tracking project will increase local access to lucrative jobs in Chicago, bring additional new jobs to the area, and bring new economic opportunities to the Town and its residents. All of these will make the Town of Chesterton and Northwest Indiana as a whole an even more attractive place to live.

Please accept this letter as a representation of the Town of Chesterton's fervent support of the Double Track project. If the Town is able to assist the District with regard to the Double Track project, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. Ton", written over the word "Sincerely,".

James G. Ton
President, Chesterton Town Council

TOWN OF OGDEN DUNES

115 Hillcrest Road
Ogden Dunes, Indiana 46368

Phone: (219) 762-4125
Fax: (219) 762-3000

October 22, 2017

Nicole Barker
Director of Capital Investment and Implementation
Northern Indiana Commuter Transportation District
South Shore Line
33 East U.S. Highway 12
Chesterton, IN 46304

Dear Nicole:

On behalf of the Ogden Dunes Environmental Advisory Board (ODEAB), thank you for the opportunity to comment upon the *Environmental Assessment (EA)* for the NICTD Double Track NWI (DT-NWI) project.

The comments in this letter pertain specifically to environmental benefits and impacts of the project. Overall the ODEAB supports the proposal because it will have a significant positive impact on our quality of life in Northwest Indiana, in particular with regard to removing vehicle traffic from our roads and highways. Nevertheless, we would like to comment upon a few items of concern, including:

- With regard to the proposed parking lot south of U.S. 12, we are wondering if the trees along U.S. 12 can be left to create a visual buffer and to help absorb stormwater from the parking lot.
- We are aware that the town is opposed to the proposed parking lot west of Hillcrest Road. The ODEAB also does not wish to have a parking lot built on that location. We are wondering how stormwater run-off would be addressed. There is also a concern that wild lupine (*Lupinus perennis*) on the far west end of the parking lot would be impacted.
- As noted in the *EA*, sound emanating from increased rail traffic would increase from 64 to 70 dBA. Does this estimate also include increased sound that would result from cars entering and exiting the parking lot? Also will the double-tracking project potentially increase freight traffic on the South Shore Railroad tracks, and, if so, was that taken into account with respect to estimated increases in sound as well as vibrations?
- For a number of years the town has desired to create a horn-free zone in Ogden Dunes. Would this project present an opportunity for the NICTD to assist the town in configuring the crossing to accommodate requirements for a horn-free zone?

ODEAB, p. 2

- Light-pollution impacts are also a concern of the ODEAB and residents. During a brief discussion at the Open House in Miller, you indicated that lighting impacts would be lessened by the use of downward-directed lighting. You also indicated that a certain amount of lighting is required. Can you please explain who regulates lighting requirements?
- The ODEAB requests that lighting impacts be lessened through the use of 3,000 K or less LEDs. This is important to us as the town strives to lessen the impacts of light pollution in Ogden Dunes and be a good neighbor to the Indiana Dunes National Lakeshore, which is seeking to officially become a Dark Skies Park as designated by the International Dark Skies Association.
- We are also very concerned about how lighting in the proposed west parking lot would impact our residents on Deer Trail.

We hope that you will take these comments into consideration as you further assess the environmental benefits and impacts of the project. If you wish to further discuss our concerns, I may be reached at 219-921-3975 or via email at smihal763@comcast.net.

Sincerely,



Susan MiHalo
Chair, ODEAB

Reid, Janice

Subject: RE: Save the Date: Double Track NWI Open House Public Hearings - October 11 - 12

AMServiceURLStr: <https://slingshot.hdrinc.com:443/CFSS/control?view=services/FTService>

From: Kathryn Kniola [<mailto:kniola@icloud.com>]
Sent: Tuesday, September 26, 2017 1:01 PM
To: Nicole Barker <nicole.barker@nicted.com>
Cc: James Reeder <odpolice@comcast.net>; Timothy Nelson <nelsonat@gmail.com>
Subject: Re: Save the Date: Double Track NWI Open House Public Hearings - October 11 - 12

Hi Nicole,

I don't think I will be able to be at the public hearings, but will try to attend. In the meantime, I would like to comment directly that we continue to be alarmed by the prospect of a second parking lot on the west side of our exit/entrance. We have hours of trains passing our town each day and during the mornings and evenings of weekdays, when the South Shore Line parking will be busiest, we have the most traffic as well.

There is a solution to this - identify the owner of the property just east of the current exit and determine the impact of moving the planned parking to this site. I've discussed this with members of NIRPC and our Police Chief has discussed with a County Commissioner. They are both in support of our suggestions.

I've copied our Police Chief, Marshall James Reeder, for his views to be expressed as well. Please accept these remarks as part of the hearing period discussion.

Thank you,

Kathy

On Sep 26, 2017, at 8:20 AM, Nicole Barker <nicole.barker@nicted.com> wrote:

Good morning –

As you know, the South Shore Line's Double Track Northwest Indiana Project is well underway.

We are at a key milestone – the release of our Environmental Assessment (EA) required under the National Environmental Policy Act. A 30-day formal comment period for the EA began on September 21; the document is now available on our website (see details below). The South Shore Line will hold two public hearings from 6-8pm on Wednesday, October 11 in Gary and Thursday, October 12 in Michigan City. We hope you are able to attend one of the hearings. The hearings will be identical and will be held in an open house format. I've also attached a flier in both English and Spanish. The end of the public comment period is October 23.

I wanted to be sure everyone in Ogden Dunes is aware of this milestone and the upcoming hearings. Please share this information with community members.

As always, should you ever have concerns or questions about the project, do not hesitate to contact me directly.

Thank you for your help; we look forward to everyone's input.

Best,
Nicole Barker
Project Manager, Double Track NWI

Nicole Barker

Director of Capital Investment & Implementation

SOUTH SHORE LINE

nicole.barker@nicted.com

219-926-5744 x 313 (O)

219-921-4263 (M)

33 E. US Highway 12

Chesterton, IN 46304

Reid, Janice

Subject: RE: Double Track NWI Porter County Section 4f De Minimis Letter - please confirm
AMServiceURLStr: <https://slingshot.hdrinc.com:443/CFSS/control?view=services/FTService>

From: Robert Thompson [<mailto:RThompson@porterco.org>]
Sent: Monday, October 23, 2017 11:12 AM
To: Nicole Barker <nicole.barker@nicted.com>
Subject: RE: Double Track NWI Porter County Section 4f De Minimis Letter - please confirm

Nicole,

The contents of the June 27, 2017 letter from Porter County pertaining to the Calumet Trail are still valid. If you should have any other questions please do not hesitate to contact me.

Bob

Robert W. Thompson, AICP | Director | Development & Storm Water Management
155 Indiana Ave.; Suite 311 | Valparaiso, IN 46383 | 219-465-3540
rthompson@porterco.org | www.porterco.org

From: Nicole Barker [<mailto:nicole.barker@nicted.com>]
Sent: Monday, October 23, 2017 10:44 AM
To: Robert Thompson
Subject: Double Track NWI Porter County Section 4f De Minimis Letter - please confirm

Good morning, Bob –

Thank you once again for your help in securing Porter County's Section 4f De Minimis letter relating to the trail. We did not receive additional comments relating to this issue. Per the Federal Transit Administration, we do need an email response from you verifying that the county believes the content of the letter is still valid.

I've attached the original letter. Could you please respond to verify this? Thanks again for your help.

Nicole Barker
Director of Capital Investment & Implementation
SOUTH SHORE LINE
nicole.barker@nicted.com
219-926-5744 x 313 (O)
219-921-4263 (M)
33 E. US Highway 12
Chesterton, IN 46304

Reid, Janice

Subject:

RE:

AMServiceURLStr:

https://slingshot.hdrinc.com:443/CFSS/control?view=services/FTService

From: Labovitz, Paul [mailto:paul_labovitz@nps.gov]

Sent: Thursday, November 2, 2017 5:30 PM

To: Nicole Barker <nicole.barker@nictd.com>

Subject:

The National Park Service is writing to verify that the contents of the attached letter addressed to the Regional Administrator of the Federal Transit Administration dated June 7, 2017, are still accurate. If there are any questions, please let me know. Thanks..

Paul

--

National Park Service
EXPERIENCE YOUR AMERICA

Paul Labovitz, Superintendent
Indiana Dunes National Lakeshore
1100 North Mineral Springs Road
Porter, IN 46304-1299
219-395-1699
www.nps.gov/indu

check out.....

Dunes National Park Association at <http://www.dunesnationalpark.org/>

Save the Dunes at <http://savedunes.org/>

Indiana Dunes State Park at <http://www.in.gov/dnr/parklake/2980.htm>

Friends of Indiana Dunes at www.friendofindianadunes.org

Shirley Heinze Land Trust at www.heinzetrust.org

Dunes Learning Center at <http://www.duneslearningcenter.org/>



Reid, Janice

Subject: RE: Double Track NWI - Town of Porter Section 4f De Minimis Letter - please confirm

AMServiceURLStr: <https://slingshot.hdrinc.com:443/CFSS/control?view=services/FTService>

From: Michael Barry [<mailto:mbarry@townofporter.com>]
Sent: Monday, October 23, 2017 10:56 AM
To: Nicole Barker <nicole.barker@nictd.com>
Subject: RE: Double Track NWI - Town of Porter Section 4f De Minimis Letter - please confirm

Hi Nicole,
Yes, the letter is still valid. Thank you.

Michael Barry
Director of Development
Building Commissioner
Town of Porter
303 Franklin Street
Porter, IN 46304
P: (219) 395-9921
F: (219) 395-8811
C: (219) 405-8615



IMPORTANT NOTICE: The information contained in this email message (including any attachments) may be confidential, privileged or both, and is intended exclusively for the addressee(s) intended by the sender. If it appears you have received this email message in error, please notify the sender immediately and then delete; any other use of this email message is prohibited. Thank you.

From: Nicole Barker [<mailto:nicole.barker@nictd.com>]
Sent: Monday, October 23, 2017 10:43 AM
To: mbarry@townofporter.com
Subject: Double Track NWI - Town of Porter Section 4f De Minimis Letter - please confirm

Good morning, Michael –

Thank you once again for your help in securing the Town of Porter's Section 4f De Minimis letter relating to the trail. We did not receive additional comments relating to this issue. Per the Federal Transit Administration, we do need an email response from you verifying that the town believes the content of the letter is still valid.

I've attached the original letter. Could you please respond to verify this? Thanks again for your help.

Nicole Barker
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ERROR: undefined
OFFENDING COMMAND: '~
STACK:
```


Marisol Simon
Regional Administrator
Federal Transit Administration
20 W. Adams Street, Suite 320
Chicago, IL 60606

Re: Northern Indiana Commuter Transportation District Double Track Project (DT-NWI)

Dear Administrator Simon:

This letter concerns the preliminary finding of the Federal Transit Administration (FTA), under what is commonly referred to as Section 4(f) of the Department of Transportation Act (49 USC § 303; Public Law 89-670), recodified under 23 USC § 138, that the Northern Indiana Commuter Transportation District (NICTD) Double Track – Northwest Indiana ("DT-NWI") Project will have a *de minimis* impact on the Calumet Trail.

The Northern Indiana Public Service Company (NIPSCO) owns the land that the Calumet Trail occupies and concurs with the FTA's finding. Porter County (Indiana) has jurisdiction and the responsibility to maintain the Calumet Trail and has already concurred with the FTA's finding in a letter dated June 27, 2017. NICTD has committed to coordinate with the Indiana Department of Transportation since the modifications to the Calumet Trail for the DT-NWI Project will involve work on the right of way of State Route 49.

The DT-NWI Project requires the relocation of the Calumet Trail approximately twenty (20) feet to the north, where it crosses under the State Route 49 bridge near the Dune Park Station; and the relocation of the existing trail/railroad crossing at the Dune Park Station to the proposed station pedestrian crossing. These relocations are due to the addition of the second NICTD track to the north of the existing NICTD track.

The Calumet Trail is approximately nine (9) miles long. The affected portion of the Calumet Trail is only approximately two hundred (200) feet. The Calumet Trail will remain open, since the relocated portion of the Calumet Trail will be constructed prior to closing the existing trail under the bridge. These relocations will not affect the features, attributes or activities of the Calumet Trail that qualify the Calumet Trail for protection under 23 USC § 138. The relocations will be performed by NICTD pursuant to plans for the Calumet Trail relocation that have been approved by NIPSCO and Porter County.

If you have any questions concerning this letter, please contact Phil Patrick at 219-286-4450 or ppatrick@nisource.com.

Sincerely,



10/31/2017

Russel Atkins

Vice President Electric Engineering

Northern Indiana Public Service Company (NIPSCO)

**WRITTEN COMMENTS OF
CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD
ON THE
ENVIRONMENTAL ASSESSMENT AND
SECTION 4(F) EVALUATION FOR THE
DOUBLE TRACK NWI PROJECT
GARY TO MICHIGAN CITY, INDIANA**

**SUBMITTED TO THE
FEDERAL TRANSIT ADMINISTRATION
AND THE
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**

**Louis P. Warchot
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
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**Mark H. Sidman
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Anacostia Rail Holdings Company
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***Attorneys for Chicago South Shore &
South Bend Railroad***

Dated: October 23, 2017

INTRODUCTION

On September 18, 2017, the Federal Transit Administration (FTA) and the Northern Indiana Commuter Transportation District (NICTD) issued an Environmental Assessment and Section 4(f) Evaluation for the Double Track NWI Project Gary to Michigan City, Indiana (EA). The EA was prepared by the FTA and NICTD in accordance with the requirements of the National Environmental Policy Act and Section 4(f) of the U.S. Department of Transportation Act of 1966 because NICTD is seeking to partially fund the Double Track NWI Project (Project) with federal funds administered by the FTA. Future planning and implementation of the Project will depend upon FTA's findings through the environmental review process, which includes the EA and comments submitted thereon.

Chicago South Shore & South Bend Railroad (CSS)¹ submits the following written comments on the EA and requests that these comments, including the accompanying Report on the EA prepared at CSS's request by Oliver Wyman (OW Report) attached as Appendix I, be included in the environmental review record for the Project.

The Project involves proposed infrastructure improvements to the single track main rail line currently being jointly used by CSS to provide rail freight service and by NICTD (operating as the South Shore Line) to provide commuter passenger service. The planned infrastructure improvements include double tracking segments of the single main line, including a segment of the line at Bailly, a 2.7-mile section located approximately between Arcelor Mittal Entrance Road and Waverly Road. At that location, the single joint main line runs between three CSS-owned freight switching and storage yard tracks. (The location at Bailly is more fully described

¹ CSS is an affiliate of Anacostia Rail Holdings Company, which owns four other common carrier railroads and a private switching company.

at pages 2-10 through 2-16 of the EA.) The goals of the proposed Project, as summarized in the EA, are to “expand capacity, increase service, modernize infrastructure, reduce passenger travel times, and improve system reliability, mobility and safety.” (EA, pg. 1-1).

These CSS comments are directed to the discussion and conclusions in the EA regarding the proposed Project design at Bailly. CSS owns and uses one track north and two tracks south of the current NICTD/CSS main line at Bailly for freight switching and storage operations. The EA set forth various design options for improvements at Bailly and selected as the preferred option a design (Design Option 4) that would take one of the three CSS-owned switching/storage tracks at Bailly for the second (double track) main line and leave CSS with the reconfigured switching/storage tracks at Bailly, and provide one separate switching track approximately two miles from Bailly. The separate switching track would also be on the opposite side of the main lines from the two reconfigured yard tracks.

For the reasons discussed below and in the OW Report, CSS submits that the preferred option in the EA for the design of improvements at Bailly (Design Option 4) is fundamentally flawed. It is not based upon sound findings and is infeasible. Implementation of Design Option 4 would, contrary to the EA’s conclusions, have a material adverse effect on current and future CSS freight operations, impair the ability of CSS to serve its customers, and degrade safety. In addition, implementation of Design Option 4 would be inconsistent with CSS’s rights to maintain its freight service under the terms of the Trackage Rights Agreement between NICTD and CSS governing operations over the joint line. And, to the extent that the EA’s preferred design option would cause NICTD to plan on using or taking one or more of the current CSS tracks used for freight operations without CSS concurrence, such taking would be preempted by the ICC Termination Act of 1995 (See 49 U.S.C. § 10501(b)). The Project’s current proposed

design for Bailly should not proceed to the Engineering phase without resolution of the issues raised in these comments.

CSS further submits, as explained in the OW Report, that Design Options 2 or 2A, which would involve the acquisition of a strip of National Park Service land (some or all of which was once railroad owned) to provide for a double track main line through Bailly and would preserve at least three CSS freight storage tracks at Bailly, are the only two feasible alternatives presented in the EA that would meet NICTD's stated objectives for the Project, allow CSS to meet its current and projected freight service demands, not degrade safety, and be consistent with NICTD's Trackage Rights Agreement with CSS.

DESIGN OPTION 4 ADVERSELY AFFECTS FREIGHT AND COMMUTER OPERATIONS

The EA states that the preferred design option at Bailly (Design Option 4) "would provide the best balance between meeting NICTD's need for a second main line and operational flexibility; addressing CSS's need for operational flexibility, rail car storage, and expansion of service; and causing no impacts on NPS parkland in the Indiana Dunes National Lakeshore." (EA, pg. 2-14).

CSS retained the consulting firm of Oliver Wyman (OW) to review CSS operations at Bailly and provide an assessment of the impact of the design options in the EA on CSS. The OW Report is included as Appendix I to these comments.

The OW Report concludes that Design Option 4 would "have a material adverse effect on CSS's freight operations, as CSS's three yard tracks would not be side by side, and the third track would be approximately two miles away . . . which would lead to additional freight usage of the main line for switching." (OW Report, pg. 7). The additional CSS operations on the

mainline would also adversely affect commuter operations. “Design Option 4 clearly will add to CSS’s operational burden, while degrading the fluidity of the double-tracked mainline.” (OW Report, pg. 35). Moreover, the OW Report notes that to the extent the reconfiguration of the CSS current tracks and the separation of one CSS track by two miles as proposed under Design Option 4 would diminish CSS operational efficiency or limit Bailly’s use for switching or storage, CSS’s ability to offer competitive options to shippers would be reduced.

The OW Report further concludes that “the combination of a physically separate location for [the separate] siding and [its] location on the opposite side of the main line (south side) from the rest of the Bailly storage tracks makes Design Option 4 the least desirable solution from an operational standpoint – either for commuter or freight.” (OW Report, pg. 38).

DESIGN OPTION 4 DEGRADES SAFETY

The EA addresses safety considerations of Design Options by summarily stating “[w]here the proposed Project would be co-aligned with freight rail operations, NICTD expects safety to be improved because of the separation of freight and commuter trains in high-traffic locations.” (EA, pg. 4-118).

As the OW Report shows, that EA safety assessment is incorrect if the preferred design is Design Option 4 at Bailly. Under Design Option 4, the freight and passenger operations will not be fully separated from each other. “[S]low speed freight switching operations will be occurring over lines on which passenger trains will be operating at 79 mph. . . . [S]afety risks will be exacerbated by the need to cross over the two mainlines from the Bailly tracks on the north side [of the mainlines] to the . . . track on the south side” (OW Report, pg. 43). Moreover, CSS only crosses one mainline track today during switching operations at Bailly, not two mainline tracks as proposed in Design Option 4. Also, the existing track configuration at Bailly does not

require CSS to travel approximately four round-trip miles on mainline tracks to access its third yard track, as would be the case with Design Option 4. The safety implications resulting from these operational changes are substantial and the EA does not take these increased risks into consideration in evaluating the Design Options.

DESIGN OPTION 4 IS INCONSISTENT WITH NICTD/CSS AGREEMENTS

The single track main line over which CSS and NICTD currently operate their respective freight and passenger rail service has been owned by NICTD since 1991. NICTD acquired the line at that time from CSS in connection with a coordinated acquisition by CSS and NICTD of the assets of the then-bankrupt predecessor-in-interest to CSS (which bankrupt entity conducted both freight and passenger operations). At the time of the acquisition by CSS, NICTD was granted an option to purchase those assets necessary for commuter operations subject to CSS reserving “an exclusive perpetual franchise including trackage rights for the operation of freight service consistent with its common carrier obligations ...” and NICTD was to “take no action to encumber or sell [the line] in a fashion that would impair such freight services....”

(Memorandum Agreement Between The Northern Indiana Commuter Transit District And Anacostia & Pacific Company, Inc., dated as of September 27, 1989 (Memorandum Agreement), pages 16-17). NICTD exercised its option to acquire the line; and, upon such acquisition, entered into a Trackage Rights Agreement with CSS, as of December 31, 1990, granting CSS the exclusive franchise provided for in the Memorandum Agreement “to include trackage rights over the [line] fully sufficient to conduct operations as a rail freight common carrier ... and in no event less extensive than the facilities and rights used to maintain the service levels, train lengths, train speeds, and transit times provided or exercisable by CSS immediately prior to the

transfer of [the line] to NICTD.” (Trackage Rights Agreement, dated as of December 31, 1990, pages 1-2).

As the OW Report explains in detail, Design Option 4 is inconsistent with the terms of the Memorandum Agreement and Trackage Rights Agreement between NICTD and CSS because it would not allow CSS to provide the same level of service as it currently provides (and as it provided at the time immediately prior to the transfer of the main line to NICTD). (“[Design Option 4] would have a material adverse effect on CSS’s freight operations.” (OW Report, pg. 7)). The choice of Design Option 4 does not, as the EA otherwise suggests, “address[] CSS’s needs for operational flexibility, rail car storage, and expansion of service. . . .” (EA, pg. 2-14)) and does not mitigate CSS’s concerns. Instead, the EA would impose an additional burden on CSS and on interstate commerce and adversely affect the performance by CSS of its common carrier obligation pursuant to 49 U.S.C. § 11101(a). Design Option 4 is also inconsistent with tenets of the national Rail Transportation Policy set forth at 49 U.S.C. § 10101, which states, in part, that it is the policy of the U.S. Government to “promote a safe and efficient rail transportation system” and to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers. . . .” (49 U.S.C. § 10101(3) and (4)).

The EA notes at pages 3-4 and 3-5 that CSS operates over the existing NICTD/CSS track, that NICTD has had ongoing coordination with CSS about the project; and that “NICTD would continue coordinating with [CSS] and would enter into third-party agreements as required, during final design.” However, the EA fails to note that NICTD, under the existing agreements with CSS, must allow CSS to, among other things, maintain service levels and NICTD cannot encumber or sell the jointly used property in a fashion that would impair freight service by CSS.

To the extent that the current preferred Design Option 4 for Bailly would, according to the OW Report, in fact, impair CSS service, the preferred Design Option is inconsistent with the current NICTD agreements with CSS and adversely affects CSS's ability to perform its common carrier obligation. It would be premature to proceed to the Engineering phase of the Project at Bailly when there is a significant open question as to how NICTD can obtain the necessary third-party agreement from CSS to alleviate its concern and to implement the EA's preferred design option if it remains as Design Option 4.

In addition, under the Memorandum Agreement and Trackage Agreement, NICTD provides dispatching services for all freight and passenger trains. In order to carry out its dispatching obligations, NICTD has entered into dispatching protocols with CSS which reflect both parties' operational needs and obligations. The EA estimates that the Project "would allow for five additional westbound and seven additional eastbound commuter trains per day, primarily during rush hour. This represents a 25 percent increase in peak-period capacity." (EA, pg. 2-3). The expected increase in passenger train frequency contemplated when the Project is completed, whichever design option is ultimately selected, will require renegotiation of the dispatching protocols to reflect operational changes and safety considerations. The EA should take this requirement into account as well.

PROPERTY ACQUISITION FOR DESIGN OPTION 4 IS REQUIRED AND PROBLEMATIC

The EA's preferred design option for improvements at Bailly would require the taking or acquisition of the two existing CSS freight tracks south of the current single main line. (See EA, Figure 2-6 and pg. 2-14). All of the switching/storage tracks at Bailly are on property owned by CSS. The tracks and property were not necessary for commuter operations by NICTD and were

not conveyed to NICTD for joint use when NICTD acquired the single track main line as described above.

As demonstrated in the OW Report, Design Option 4 introduces rail operating inefficiencies, renders CSS less competitive for freight traffic, and creates enhanced safety risks. As the OW Report further noted, Design Option 2 and 2A are the only feasible design options presented for Bally that would both meet NICTD's Project goals as set forth in the EA and maintain safe, efficient, and competitive freight service at Bailly. Those Options were not selected in the EA because each would require the acquisition of National Park Service land. (Design Option 2A was not selected also because the EA did not find additional transit benefits.) However, the EA failed to note that Option 4 also requires the acquisition of property. The two new main lines in Design Option 4 will not be on NICTD's current property. NICTD will need to acquire an interest in the property from CSS. Thus, both Design Options would require acquisition of properties through negotiations with the owners: National Park Service for Options 2 and 2A and CSS for Option 4. Accordingly, to the extent that Option 4 was preferred in the EA because no land acquisition would be required, that premise is unfounded.

Also, if property acquisition for the Project is necessary and agreement cannot be reached with the property owner, the EA states that "NICTD may acquire the property through eminent domain." (EA, pg. 4-3). However, any NICTD acquisition of CSS property at Bailly through eminent domain proceedings is problematic.

The Surface Transportation Board (STB) has broad and exclusive jurisdiction over interstate rail transportation (49 U.S.C. § 10501(b)). Transportation is defined to include any "yard, property, facility, instrumentality or equipment of any kind related to the movement of passengers or property, or both, by rail . . ." (49 U.S.C. § 10102(9)) and "railroad" is defined

broadly to include a “ switch, spur, track, . . . and a freight depot, yard, and ground used or necessary for transportation . . .” (49 U.S.C. § 10102(6)). As a result, the STB and the Courts have consistently held that state condemnation proceedings to take rail property for a conflicting use or where the taking would have the effect of preventing or unreasonably interfering with rail operations are preempted and not permitted under federal law. (See, e.g., Union Pac. R. R. Co. v. Chicago Transit Authority, 647 F. 3d 675 (7th Cir. 2011); and City of Lincoln v. Surface Transp. Bd., 414 F. 3d 858 (8th Cir. 2005)).

Design Option 4 raises the same issues. It would adversely affect CSS’s ability to conduct switching operations at Bailly, which would degrade rail freight service to CSS customers and impair the ability of CSS to fulfill its common carrier obligations under 49 U.S.C. § 11101(a). “CSS provides local shippers with competitive connections to other railroads through switching arrangements via the Bailly line segment. . .Thus, any of the EA Design Options that would diminish CSS’s operational efficiency or would reduce CSS’s ability to use Bailly for storage or switching would both diminish the franchise value of CSS and reduce current competitive options for shippers. . . .” (OW Report, pg. 20).

DESIGN OPTIONS 2 AND 2A ARE THE ONLY FEASIBLE OPTIONS IN THE EA

Of the design options considered in the EA for Bailly, all of the Design Options except 2, 2A, and 4 were eliminated from consideration because they did not meet the Project’s stated goals or did not meet CSS’s operational needs. The status quo at Bailly is also an untenable solution if the rest of the Project is progressed. Design Option 0 in the EA would leave in place both the current single mainline track through Bailly and the CSS yard tracks on both sides of the main line, but double track the rest of the mainline in the Project. As the OW Report found,

Design Option 0 “would materially degrade freight performance” because the expected increase in rail passenger traffic resulting from the double tracking elsewhere on the line will mean an increased frequency of passenger trains passing through Bailly, thus reducing freight operations windows and increasing operational risk (OW Report, pg. 7).

As the OW Report further found, “[o]nly Design Options 2 and 2A provide the operational flexibility and capacity to enable NICTD to meet its operational and capacity goals as stated in the EA; ensure CSS can maintain its current service levels, grow freight volumes in the future, and preserve competitive options for area freight shippers; and not degrade safety. In addition, only Design Option 2 and 2A fully separate freight and passenger activities, thereby also enhancing safety compared to all of the other options presented.” (OW Report, pg. 46). Design Option 4 was chosen in the EA because it did not require the acquisition of NPS land. However, the operational and safety problems identified in the OW Report that are associated with Design Option 4 “are severe enough in terms of their adverse long-term impacts on freight and commuter operations that it is unclear why the conversion of a small amount of parkland – which was previously railroad-owned – is not being prioritized. Procuring a small amount of land for at least one track of right-of-way from NPS would provide the only feasible solution of the Design Options presented in the EA to support the current and future operations of both CSS and [NICTD].” (OW Report, pg. 40).

It should also be noted that Design Options 2 and 2A lend themselves to a “phased” approach for implementation at Bailly as described in the OW Report at page 38. As the OW Report notes, the approach “may work well for construction, budgeting, and negotiation with NPS”

CONCLUSION

The EA's stated basis for selection of Design Option 4 has a number of fundamental flaws. First, the EA states that Design Option 4 "address[es] CSS's needs for operational flexibility, rail car storage, and expansion of service" (EA, pg. 2-15). As explained in the OW Report, that statement is incorrect and unfounded. CSS freight operations, including switching and storage services, will be impaired and CSS will lose operational flexibility. As a result, CSS will also be competitively disadvantaged in the transportation marketplace. Second, the EA states that NICTD assets would remain on railroad property at Bailly, but it fails to note that the property needed for implementation of the design is owned by CSS. Third, the EA states that any property needed to advance the Project can be acquired through state eminent domain proceedings if NICTD and the owner cannot agree. However, NICTD cannot acquire the CSS property through eminent domain proceedings if the acquisition conflicts with CSS usage or unreasonably impairs CSS's ability to provide common carrier service. Fourth, the EA summarily stated that NICTD expects safety to be improved; but as the OW Report shows, Design Option 4 will actually degrade rail safety and increase safety risks.

As the EA has noted, NICTD and other stakeholders in the EA process have listened to CSS's views on the Project design, have expressed an intent to accommodate CSS's concerns, and have explored ways to mitigate any adverse impacts that the Project would have on freight operations. CSS appreciates those efforts. CSS supports the broad objectives of the Project and is committed to continue to work with all appropriate stakeholders to resolve open issues in a way that will preserve the freight franchise while at the same time meet the Project's goals.

In that vein, CSS respectfully submits that, on the basis of the above comments, the EA reconsider Design Options for Bailly before advancing to the Engineering phase of the Project for Bailly and select Design Options 2 or 2A as the only feasible designs in the EA that would meet NICTD's stated goals for the Project, maintain CSS service, and enhance safety.

Respectfully Submitted,

A handwritten signature in black ink, reading "Louis P. Warchot". The signature is fluid and cursive, with a large, stylized "L" and "W".

Louis P. Warchot
Sidley Austin LLP
1501 K Street, N.
Washington, D.C. 20005
(202) 736-8369

Mark H. Sidman
General Counsel
Anacostia Rail Holdings Company
1900 M Street, N.W.
Suite 400
Washington, D.C. 20036

Attorneys for
Chicago South Shore & South Bend Railroad

APPENDIX I

Expert Report
On The

Federal Transit Administration
And
Northern Indiana Commuter Transportation District

Assessment of NICTD Double-Track Options at Bailly and Impact on Freight Operations

By:



1166 Avenue of the Americas
New York, NY 10036

October 23, 2017

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I. Overview and Key Findings

A. Oliver Wyman Introduction

William Rennie, a Partner at Oliver Wyman, was asked by Chicago South Shore & South Bend Railroad (CSS) to conduct an expert evaluation of CSS freight operations and the competitive and freight growth characteristics at Bailly, IN; and, based on this review, to assess the impact on rail freight service of the Design Options in the “Environmental Assessment and Section 4(f) Evaluation for the Double Track NWI Project Gary to Michigan City, Indiana” (EA) that the Federal Transit Administration (FTA) and the Northern Indiana Commuter Transportation District (NICTD) are considering for Bailly. NICTD operates commuter rail services under the operating name of South Shore Line (SSL).

Oliver Wyman is a leading global management consulting firm and its Rail Practice employs the largest and most experienced staff in the world dedicated to the rail industry. Oliver Wyman is widely recognized as the premier management consultancy to state-owned and private freight and passenger railroads. It has carried out major strategic, operational, and financial planning and evaluation assignments for railroads on six continents. Oliver Wyman’s North American rail experience includes evaluating infrastructure, equipment, and operations activities for the major Class I railroads, many regional and short line freight railroads, and intercity passenger/urban transit authorities and operators. Oliver Wyman staff members are leading experts in network planning and operations.

B. Key Findings

As part of a larger project, FTA and NICTD are considering double-tracking segments of the single-track main rail line currently being jointly used by NICTD for SSL commuter trains and by CSS for freight trains between Gary and South Bend, IN. One segment of the line under

consideration for double-tracking is at Bailly, a 2.7-mile section located approximately between ArcelorMittal Entrance Road and Waverly Road, where the SSL/CSS joint mainline track runs between three CSS-owned freight switching and storage tracks.

On September 18, 2017, NICTD/FTA issued the EA pursuant to the National Environmental Policy Act of 1969 and Section 4(f) of the United States Department of Transportation Act of 1966. The EA included a discussion and evaluation of design alternatives for double-tracking at Bailly. The EA's preferred option, Design Option 4, would take one of the three CSS-owned switching/storage tracks at Bailly for the second (double-track) mainline and leave CSS with two reconfigured switching/storage tracks at Bailly and one separate switching/storage track two miles from Bailly.

Based on its assessment and the findings set forth below, Oliver Wyman has concluded that Design Options 2 and 2A in the EA are the only feasible options for double-tracking at Bailly that would allow CSS to maintain its current level of common carrier freight operations, provide the opportunity for CSS freight operations to expand to meet future increased transportation demands, preserve competitive options for freight customers, and not degrade safety. Design Option 2 would provide two (double-track) mainline tracks for joint NICTD/CSS operations and three adjacent CSS switching/storage tracks, while Option 2A would provide two mainline tracks and four adjacent CSS switching/storage tracks.

Oliver Wyman's key findings are as follows:

- Freight/passenger shared-use railroad lines generally have more infrastructure needs than single-use railroads to maintain fluidity for all operators – this includes track, signals, and places to conduct switching operations off of main tracks. In particular, the current single-track mainline from Gary to Michigan City will not support increases in the frequency of

commuter trains operated by NICTD nor will it support any new services, such as express trains that skip stations or groupings of stations, to provide faster commute times for passengers traveling to/from Chicago/Gary and eastern stations on the NICTD network. To the extent that NICTD desires such increased frequencies or new services, doing so without adversely affecting rail operations will require double-tracking of the joint mainline.

- In assessing the best Design Option, NICTD has an explicit responsibility to provide continuous freight access for CSS and Northwest Indiana major rail shippers and employers. Moreover, NICTD has a direct financial interest in the continued viability and growth of the CSS common carrier freight business, since CSS provides annual trackage use fees that help support NICTD's budget. Thus, any improvements at Bailly must support CSS's current freight operations and provide the same level of track utility that CSS has today. This includes at least three side-by-side tracks to sort cars, a switch lead to switch cars, and at least 16,815 total feet of track to store cars.
- CSS also needs to maintain a competitive switching location at Bailly, so that Northwest Indiana shippers and receivers can continue to have the same 24/7 service options from more than one railroad that they currently utilize, while ensuring needed train paths and capacity for current and future passenger trains. Although ArcelorMittal is one of the primary customers served from Bailly, US Steel and other customers to the east and west are served from trains that utilize Bailly as well. CSS is a linehaul carrier and is part of the interline linehaul movement for a range of freight customers, together with Class I carriers such as CSX, BNSF, Union Pacific (UP), Canadian Pacific (CP), and Canadian National (CN). CSS's primary competitor at Bailly is Norfolk Southern (NS), which utilizes a 19-track local yard

that was built for the purpose of serving the adjacent ArcelorMittal (previously Bethlehem Steel) plant.

- Just as NICTD seeks to increase capacity for future passenger services, CSS also must have the capacity to serve future freight volumes. Oliver Wyman estimates that potential growth in Indiana freight volumes requires 20 percent latent capacity at Bailly if freight operations are to remain fluid. CSS has several future potential client sites to consider that are located near Bailly. CSS may need to serve a potential future lakeside rail customer at the existing NIPSCO Bailly facility after the plant is shut down. This could be another customer at the plant or the land could be redeveloped. Additionally, the Port of Indiana at Burns Harbor also represents a potential growth opportunity for CSS rail. These possible customers, as well as other unforeseen customers, lead to CSS needing to potentially grow operations utilizing the railroad infrastructure at and near Bailly.
- Of the various Design Options considered, the No Build Alternative would retain all of the issues of today's physical infrastructure at Bailly, which include the use of the mainline as a switching lead, as well as freight traffic needing permission from the NICTD train dispatcher to access the mainline to perform crossover moves between the north and south yard tracks at Bailly. All of these time request windows slow the switching efficiency of CSS, and the situation would worsen if passenger train frequencies should increase as projected by NICTD.
- Of the various Design Options considered, Design Option 0 would not mitigate freight interference but would materially degrade freight performance, because a greater volume of passenger trains would have to pass Bailly on the single-track mainline, reducing freight

operations windows. Design Option 0 would not allow NICTD to increase passenger train frequency without causing further operational congestion, while also increasing the safety risk profile.

- Of the various Design Options considered, Option 4 is preferred in the EA. This option would have a material adverse effect on CSS's freight operations, as CSS's three yard tracks would not be side by side, and the third track would be approximately two miles away (Wilson siding) – which would lead to additional freight usage of the mainline for switching. Due to the time requirements for repositioning operations, Design Option 4 could cost CSS an additional 2.25 to 6 hours per day to support *one* switching round trip from Bailly to Wilson.¹ Additionally, the long transit across the railroad between two yard track locations, which would require the crossing of a double-track passenger mainline, would introduce new safety risks.
- Of the Design Options presented, only Design Options 2 and 2A provide the operational flexibility and capacity to enable NICTD to meet its operational and capacity goals as stated in the EA and CSS to meet its current service levels, grow freight volumes in the future, and preserve competitive options for area freight shippers. Options 2 and 2A would ensure that both NICTD and CSS receive the infrastructure they need to maximize customer service and operational fluidity both now and in the future. This design would provide NICTD with two side-by-side main tracks and minimal freight interference in the Bailly area and would provide CSS with the side-by-side yard tracks it needs to fully support switching and storage operations for ArcelorMittal and other local customers.

¹ See description of Wilson siding in Section VI.B. under "Design Option 4."

Options 2 and 2A also would mitigate safety risks better than any of the other options, by separating passenger and freight trains as much as possible at Bailly. Options 2 and 2A are the only feasible solutions that would address all of CSS's freight and NICTD's stated passenger needs, without degrading safety.

- Design Option 2 requires procuring 3.9 acres of land from the National Park Service (NPS) for the construction of one of the joint mainline tracks. (Option 2A would impact up to ten acres of NPS land.) If the need to procure this previously railroad-owned land would unreasonably delay the construction process, a "phased" solution for Option 2 could be constructed through Bailly that would address the needs of NICTD and CSS in the short term. A phased Option 2 could work well to balance construction, budgeting, and negotiations with NPS. This phased solution would entail proceeding with Option 2 as planned, minus the addition of the second mainline crossing onto NPS property. Option 2 could then be finalized at a later date when permission was secured from NPS, at which time the second 1.75-mile stretch of (south) mainline could be added.

Operationally, a phased Option 2 would provide NICTD with double-track mainline to Bailly, at which point there would be approximately 1.75 miles of single-track mainline. Unlike Option 0 which retains the separated yard tracks present in today's layout, this phased solution would help alleviate most of the freight train interference at Bailly, which is a key capacity concern for passenger trains. Because this solution provides CSS with three switching/storage tracks, the NICTD train dispatcher would not need to provide CSS access to the mainline for switching moves as it does now, thus reducing the potential for passenger train delays. Meanwhile, the remaining 1.75 miles of single track would be a significantly

shorter bottleneck than it is today, since a passenger train would take less than two minutes to traverse this segment. The second mainline could then be added at Bailly to bridge the 1.75 mile gap at a later date, once land acquisition had been completed.

- Lastly, it is critical that the selected Design Option not adversely impact safety. A key factor in mitigating the risk of accidents is separating freight and passenger trains to the greatest extent possible. This means reducing the frequency of freight trains crossing over the mainline to get to yard tracks, or using the mainline for switching activities. Design Option 4 will actually increase the safety risks. Only Options 2 and 2A reduce risks from a safety perspective, by removing the need for freight trains to cross the mainline and reducing the need to use the mainline for switching activities.

II. CSS Freight Business

A. Overview

CSS was formed to acquire certain railroad assets from a trustee-in-bankruptcy in December 1989. The corridor over which the bankrupt carrier operated was designed to support high-density freight and passenger services. The transaction conveyed the responsibility for passenger operations to NICTD, the regional commuter authority.² CSS acquired the common carrier freight franchise on the corridor (and the right-of-way, which it sold a year later to NICTD). CSS is an affiliate of Anacostia, which owns four other short line railroads and a private switching company.

CSS serves Northwest Indiana's industrial corridor and the Illinois International Port in Chicago and connects with all Class I railroads in Chicago. In all, CSS connects with 16 railroads either directly or through a switch carrier railroad: BNSF, BOCT, BRC, CF&E, CN, CP, CRL, CSXT, GRW, IAIS, IHB, INRD, NS, SCIH, UP and WSOR (see Exhibit II-1). CSS services include interchange switching, industrial switching, weighing, and providing access to port and transloading facilities. Commodities handled by CSS include chemicals, coal, grain, manufactured products, paper, plastics, pig iron, steel, and roofing materials. CSS runs across 102 system miles,³ including 75 miles jointly operated with NICTD. The railroad owns 12 locomotives and owns or leases 600 freight cars (including covered coil – both insulated and regular, plain gondolas, flatcars, and trough gondolas).⁴ In 2015, it handled 52,000 carloads.⁵

² CSS website (<http://www.anacostia.com/railroads/css>).

³ South Shore Freight's Fabulous Franchise," *Trains Magazine*, June 2017.

⁴ CSS website (<http://www.anacostia.com/railroads/css>).

⁵ "South Shore Freight's Fabulous Franchise," *op. cit.*

CSS plays an important role in providing linehaul rail freight service to Northwest Indiana shippers and receivers. In some cases, such as the ArcelorMittal steel mill at Burns Harbor, CSS is one of only two rail carriers (the other being NS) that directly serve the plant. CSS is part of the interline linehaul movement with CSX, CP, CN, BNSF, UP or any other railroad, in competition with NS. The role of CSS is acknowledged in the EA at page 1-8: “Many of the freight trains serve power plants and steel plants along the lakeshore, as well as other customers east of Michigan City. In addition, CSS switches freight cars from CN, NS, and CSX to deliver goods to their final northwest Indiana destinations.”

Exhibit II-1: CSS System Map⁶



⁶ CSS website (<http://www.anacostia.com/railroads/css>).

B. NICTD-CSS Relationship

Approximately 75 miles of mainline that CSS shares with NICTD are owned by the commuter authority, operating from South Bend, IN to Kensington, IL. In connection with NICTD's acquisition of the mainline in 1990, CSS retained exclusive perpetual trackage rights to operate freight services over this rail infrastructure, taking over the freight services of the former Chicago, South Shore & South Bend Railroad Company. These rights are granted at a level that is in "no event less extensive than the facilities and rights used to maintain the service levels, train lengths, train speeds, and transit times provided or exercisable by CSS immediately prior to the transfer of Joint Assets to NICTD."⁷ CSS also has trackage rights deeper into the Chicago rail network.

CSS pays NICTD for trackage rights on a per car-mile basis, which means that the more freight cars CSS hauls, the more revenue CSS earns for NICTD.⁸ According to Anacostia's chairman, "Over the past 26 years, the freight railroad has paid the commuter authority close to \$81 million."⁹ On an annual basis, CSS pays NICTD approximately \$3 million to \$4 million per year (depending on traffic volume), which accounts for an estimated 10 percent of NICTD's annual budget. Thus, if CSS can continue to fully support and grow freight volumes at Bailly, this will translate into direct revenues that NICTD can use for its passenger services.

C. CSS Freight Operations at Bailly

From Gary to South Bend, IN, the rail line shared by CSS and the SSL commuter service run by NICTD is mostly single track. CSS runs 14-18 trains daily on this shared-use mainline. FTA

⁷ Trackage Rights Agreement, p. 1-2.

⁸ "South Shore Freight's Fabulous Franchise," op. cit.

⁹ "South Shore Freight's Fabulous Franchise," op. cit.

and NICTD propose to expand a portion of NICTD/CSS track between milepost (MP) 58.8 in Gary and MP 32.2 in Michigan City, a distance of 26.6 miles (Project Area).

One portion of the Project will involve double-tracking a section of mainline railroad between ArcelorMittal Entrance Road and Waverly Road (approximately between MP 44.5 and MP 46.5) known as the Bailly area (due to the nearby Bailly Generating Station, a coal-fired electric generating plant in Burns Harbor owned by Northern Indiana Public Service Company – NIPSCO).¹⁰

Options under consideration for double-tracking around and through Bailly thus will impact CSS freight operations for local customers. CSS currently serves three major customers at this location: It moves steam coal to and from the NIPSCO Bailly generating station, and metallurgical coal and steel products to and from the ArcelorMittal steel mill at Burns Harbor and US Steel west of Bailly at Wilson.¹¹

NIPSCO has announced that it will close the Bailly generating station in May 2018 but also is exploring the option of “selling the plant to a company that might want to run it and sell the electricity itself,” which could mean the continuance of rail service.¹² Today, NIPSCO coal trains operate through Bailly’s yard tracks to access the yard located on the plant property. Once on NIPSCO property, the coal hopper cars are switched by a NIPSCO locomotive. Even if closed for power generation purposes, the site will remain a prime site for rail-served industrial development, which CSS would serve, and access to the NIPSCO site through Bailly yard needs to remain unhindered at all times.

¹⁰ Environmental Assessment, op. cit., p. 2-10.

¹¹ Environmental Assessment, op. cit., p. 2-10.

¹² “NIPSCO will close Bailly power plant May 31, 2018,” NWI Times, December 18, 2016.

In addition to current customer volumes, Design Options under consideration will need to take into account future freight growth. As noted in the EA, “Historical national statistics indicate that, in general, freight rail traffic grows at an annual rate of 2 percent per year, which could add approximately 10 more freight trains per day by 2040 (USDOT 2017).”¹³ However, a number of factors could push that volume growth higher. As an example, the largest customer at Bailly, ArcelorMittal, recently received an international certification that could significantly increase demand for its products in the maritime industry.¹⁴

In addition, CSS serves the Port of Chicago, a ship, barge, rail, and truck-served terminal owned by the city of Chicago. CSS accounts for the majority of the port's rail freight. The port has extensive yard tracks and “The vast port...has a growing list of railroad customers. Among them are Maryland Pig, which barges in pig iron for area steel mills; Kloeckner Metals, a steel distributor; and a corn syrup distributor.”¹⁵

Finally, CSS could have opportunities in the future to expand service at several locations that are located near Bailly. One example is the Port of Indiana at Burns Harbor, which would likely be partially served from Bailly and which is located just west of the ArcelorMittal steel mill (see Exhibit IV-1 for a map showing the location of the port). The port advertises its proximity to Chicago as an important selling point, yet stresses it is located outside of city congestion, where it excels at “providing tremendous competitive advantages for companies that ship steel, grain, minerals, fertilizer, heavy-lift cargo and oversized equipment via multiple transportation modes.”¹⁶

¹³ Environmental Assessment, op. cit., p. 1-8.

¹⁴ “ArcelorMittal Burns Harbor could land more shipbuilding, energy business,” NWI Times, August 24, 2017.

¹⁵ “South Shore Freight's Fabulous Franchise,” op. cit.

¹⁶ Ports of Indiana website (<http://www.portsofindiana.com/burns-harbor/global-markets/>).

III. Freight Activities at Bailly

A. Key Components of Switching and Sorting

On a “local” rail move where shippers are served directly (often referred to as first-mile or last-mile rail service), railcars are picked up from shippers and then gathered together, sorted by final or intermediate destination, and assembled into a block (grouping of similar destinations) or a train in a rail yard before moving onto the mainline. If the yard facility is serving destination shippers, the inbound train is disassembled in the yard and cars are moved to designated receivers’ facilities. This type of local rail movement is known as “switching.”

Except for instances in which a customer tenders a trainload of freight from a single origin to a single destination (a unit train), shipments from different customers must be consolidated into trains. The process of switching – shipment and railcar consolidation and the splitting apart of trains close to final destinations – is typically handled in dedicated rail yards where multiple side-by-side tracks are located together. Additionally, empty cars must be sorted and temporarily stored until they are delivered to a customer for loading, based on the type of cars the customer needs each day. CSS for example keeps empty cars on hand at Bailly (multiple types of cars) to suit different customer needs. Geographic positioning near the customer is critical to facilitate competitive service, as large customers like ArcelorMittal require multiple switches per day and often have dynamic shipping requirements, including needing a variety of different car types for loading outbound steel products.

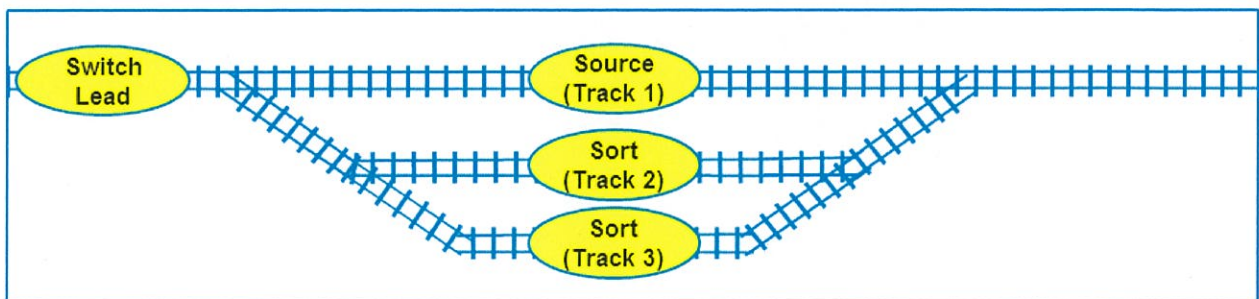
Serving yards (also called “local yards” or “gathering yards”), such as the three-track yard at Bailly, are yards where individual railcars from customer sidings are collected and distributed and empty cars sorted for delivery to customers. Such yards utilize flat switching (a process where cars are sorted in the yard using a locomotive). Serving yards are typically broad, wide

parcels of land with multiple contiguous tracks for sorting. It is critical that such yards have side-by-side tracks (parallel and interconnected) to facilitate blocking and sorting of inbound and outbound cars.

During switching operations, cars are sorted between tracks. If one track is separated and located away from the other sorting tracks, the train must then reposition and travel to the far sorting track to drop or pick up cars, and/or conduct other switching requirements. Such repositioning is a time-consuming operation and requires the entire crew to board the train to go to the remote track. On the way, the train may encounter other train movements that slow down the repositioning process. The repositioning operation to and from a non-contiguous track also requires significantly more communication between train crews, yard authorities, and/or train dispatchers, and introduces new safety risks versus switching operations on side-by-side tracks. And since switching operations require multiple movements, the time and resource-consuming process of repositioning would be repeated potentially multiple times, consuming yet more time and rail capacity and increasing safety risks.

Finally, most yard switching operations require a minimum of three tracks. Exhibit III-1 below provides an example layout and details the purpose of each set of side-by-side tracks for a hypothetical local service yard.

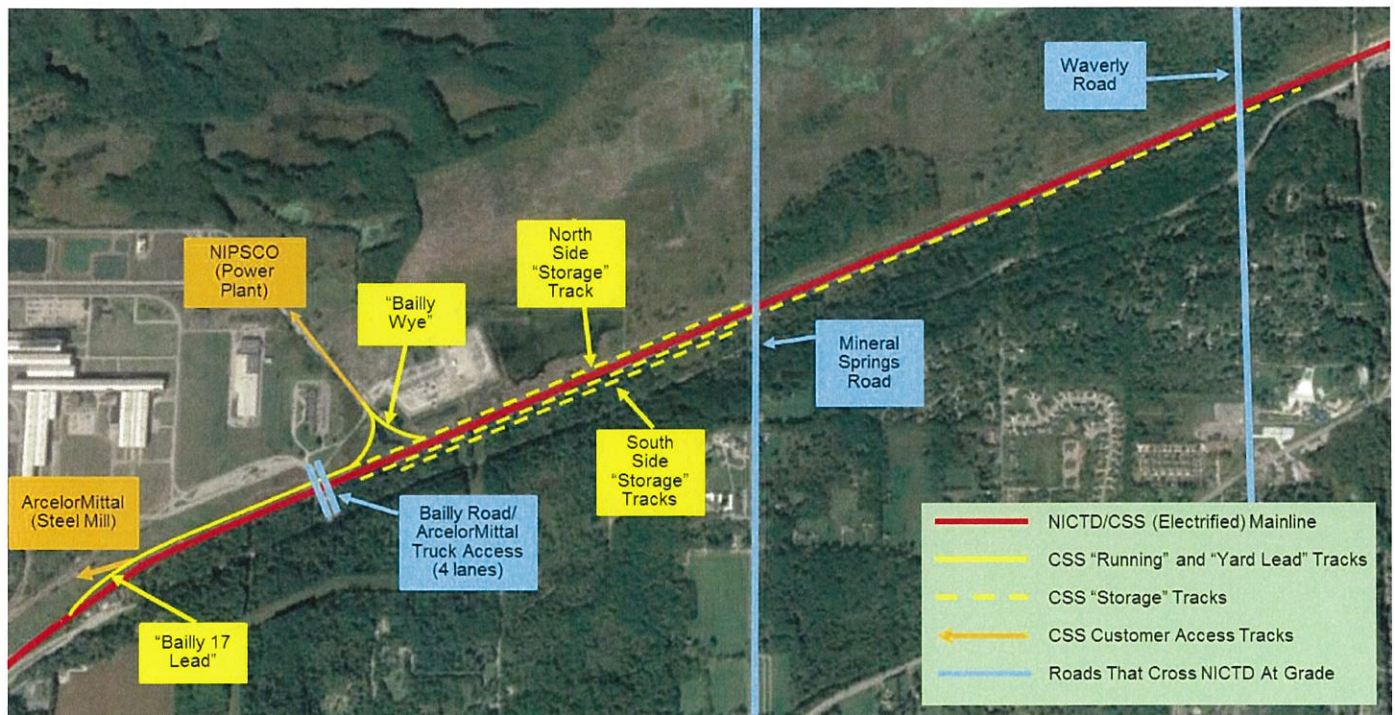
Exhibit III-1: Illustrative: Side-by-Side Tracks Use in a Local Service Yard



In the above example, “Track 1” is the source track for the supply of railcars to “pull” from – in other words, this is the track from which the train crew and locomotive start the switching operation, using the “Switch Lead” to pull back the cars. Track 2” and “Track 3” are the destination tracks the train crew and locomotive will sort (switch) cars into. In many real-world examples, two sort tracks are not sufficient for switch operations. For instance, if the switching operation calls for four separations of cars, but there are only two tracks available for sorting, then the cars would need to be sorted out a total of three times. This prolongs the time needed for switching operations and consumes more track capacity, time, and crew/locomotive resources.

B. Primary Bailly Activities

Bailly is unlike most local yards, in that its track layout is not integrated. Instead, it is bisected by the NICTD single-track mainline. Bailly’s infrastructure includes three yard tracks: two on the south side of the mainline and one on the north side (Exhibit III-2). All three are used by CSS for switching and storage. Additionally, the north track serves as a “lead” track to access the NIPSCO power plant.

Exhibit III-2: Overview of Trackage at Bailly¹⁷

The NIPSCO power plant requires coal delivered by train for power generation. These coal trains must leave and enter the mainline at Bailly and must traverse some of the yard lead trackage at Bailly, where they enter the power plant at the “Bailly wye.”¹⁸ When a more than 100-car coal train arrives at Bailly, the small size and tight space of the Bailly yard can lead to these trains temporarily blocking the mainline: “CSS transfers many long coal unit trains, a complex process that requires that the train switch off the mainline for temporary storage. These switching moves are done at low speeds and temporarily block the mainline. This can delay SSL commuter trains because they cannot pass the blockage due to the single-track configuration.”¹⁹ The long coal trains are then switched on NIPSCO property by a NIPSCO locomotive. Whether

¹⁷ Source: Google Earth, Oliver Wyman.

¹⁸ A wye is a triangular junction of three tracks that allows direction to be reversed for locomotives and/or railcars.

¹⁹ Environmental Assessment, op. cit., p. 1-8.

the NIPSCO property remains as a power plant or is repurposed for some other use, the yard trackage at Bailly will need to continue to be available to support this customer site.

Double-tracking would alleviate this blockage, but at the same time it is critical that, as further discussed in the next section, CSS (and by extension the other freight railroads with which it interchanges) retains sufficient switching and storage facilities at Bailly to competitively serve local freight shippers. As “250 railcars frequently occupy its freight tracks at Bailly....matching capacity in both length and width (that is, more than two tracks) is very important to maintain CSS operations, sustainability, and potential growth opportunities.”²⁰

²⁰ Environmental Assessment, *op. cit.*, p. 2-10.

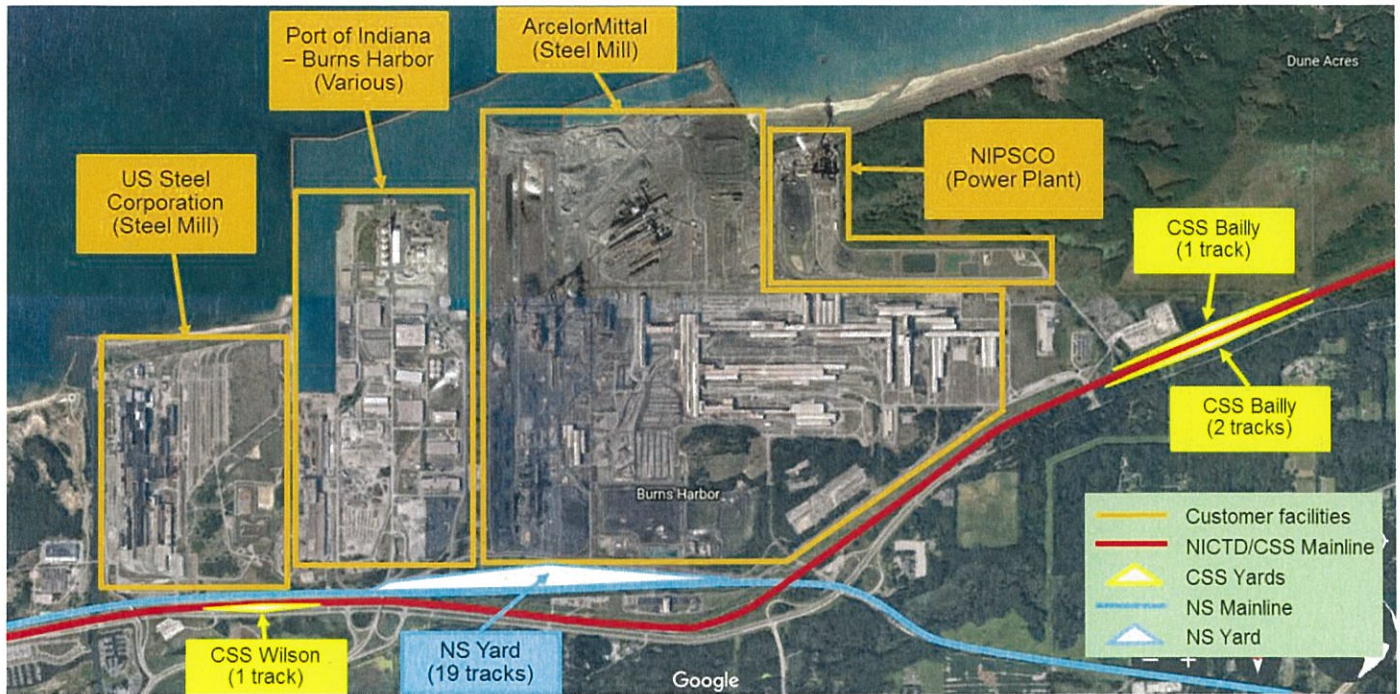
IV. Competitive and Safety Implications of Bailly Activities

A. Importance of Continued Competitive Options at Bailly

Large industrial railroad customers are frequently served by more than one railroad. Where this is not the case, customers often have access to two or more railroads through switching agreements. At Bailly specifically, CSS competes for local traffic such as ArcelorMittal with NS, a Class I railroad with a 19-track local yard. CSS and NS both provide direct rail access to the ArcelorMittal steel mill and serve other customers in the Northwest Indiana lakefront area through direct linehaul service. In addition, CSS provides local shippers with competitive connections to other railroads through switching agreements via the Bailly line segment. Exhibit IV-1 below shows the CSS and NS rail infrastructure at Bailly, as well as key customers served by the two railroads.

As the map makes clear, CSS's yard at Bailly is very small relative to the overall footprint of ArcelorMittal, and even smaller compared to the two steel plants plus the port. The three-track Bailly yard is also much smaller than the 19-track NS yard. From a competitive standpoint, CSS is somewhat strategically disadvantaged relative to NS due to yard size and location – since the NS yard is both larger and closer to the two steel plants, making switching, storage, and delivery/receiving at the plants easier for NS. Thus, any of the EA Design Options that would diminish CSS's operational efficiency or would reduce CSS's ability to use Bailly for storage or switching would both diminish the franchise value of CSS and reduce current competitive options for shippers – which in turn could impact the competitiveness of Northwest Indiana shippers in the larger US and global market.

Exhibit IV-1: CSS and NS Rail Infrastructure at Bailly and Key Customers²¹



B. Importance of Safety Risk Mitigation at Bailly

It is also critical to ensure that the chosen Design Option does not adversely impact safety.

For more than 150 years, railroads have continuously made technological and physical enhancements to reduce railroad equipment accidents. These risk mitigation practices have contributed to declines in fatalities and in injuries for both employees and railroad passengers.

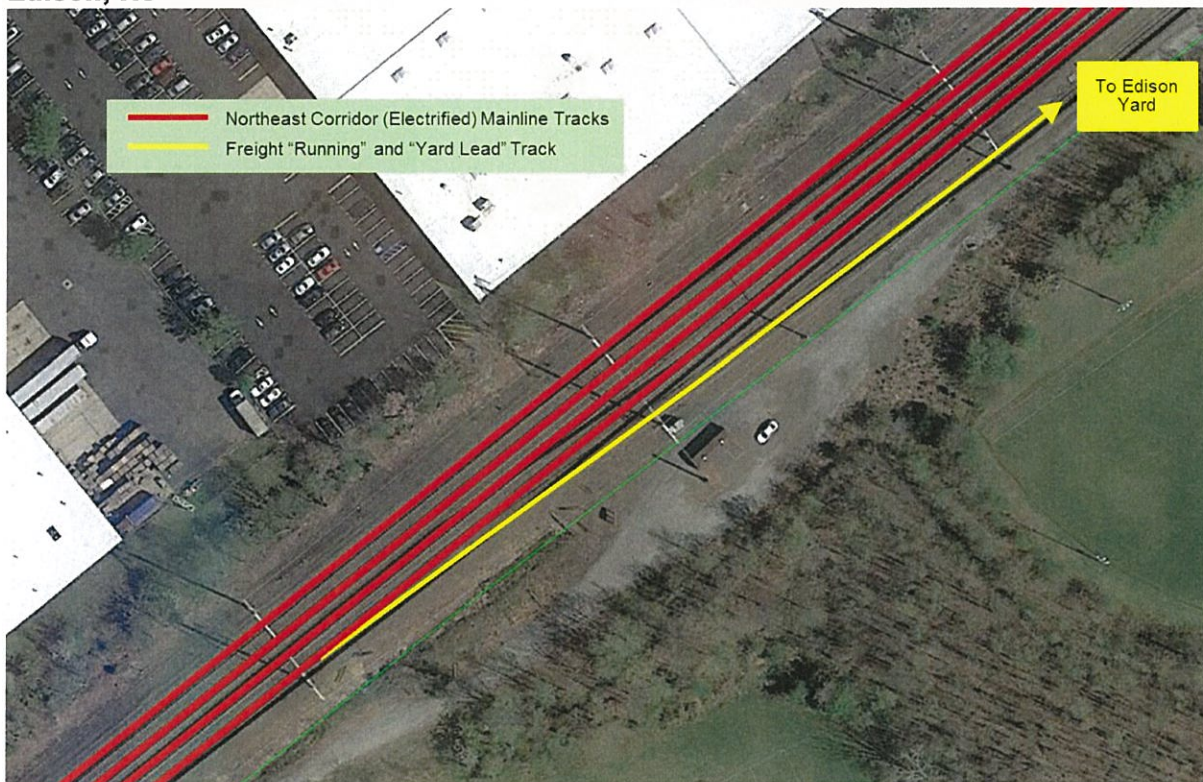
A fundamental mitigation practice is the separation of freight and passenger trains to the largest extent possible. Segregated yards are commonplace on railroads that have a mix of slow-speed freight switching and fast freight and passenger trains. The Northeast Corridor for example has several segments where slower freight trains conduct switching operations using segregated

²¹ Source: Google Earth, Oliver Wyman.

running tracks, yard leads, and yard tracks so as not to interfere with higher-speed passenger trains.

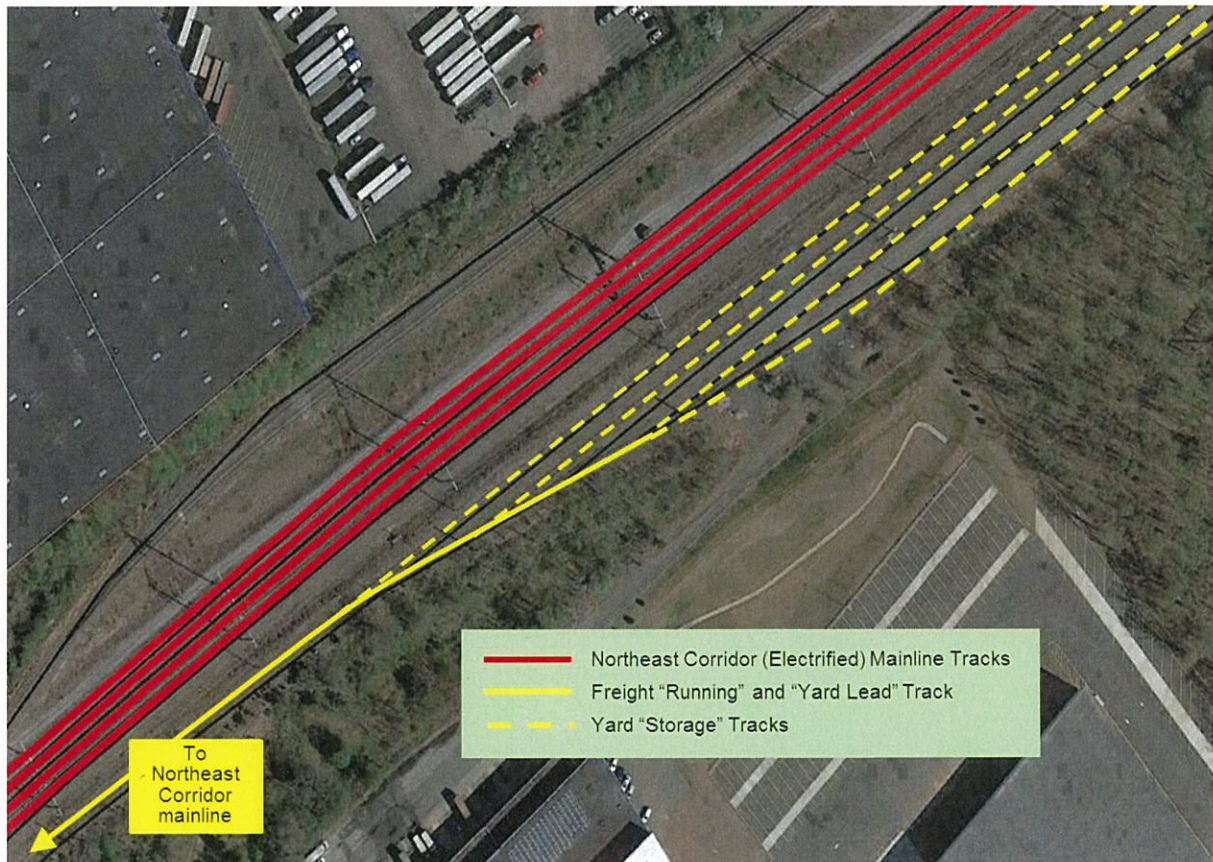
One example is Edison Yard, NJ, which was constructed decades ago in a segregated manner from the Northeast Corridor mainlines. Exhibit IV-2 below shows the location where the freight lead trackage into the yard leaves the electrified mainline tracks. Note that this lead is sufficiently long so that freight operations do not need access to the mainline to conduct yard switching operations, potentially disrupting mainline train operations. Instead, the freight switching operation is completely segregated from the mainline. Exhibit IV-3 shows the segregated side-by-side yard tracks away from the mainline.

Exhibit IV-2: Northeast Corridor Freight Lead Separating from Electrified Mainline at Edison, NJ²²



²² Source: Google Earth, Oliver Wyman.

Exhibit IV-3: Northeast Corridor Freight Segregated Switch Tracks at Edison, NJ²³



The Northeast Corridor at Edison hosts a wide mix of train services, most of which operate under electrified catenary similar to NICTD. These include NJ Transit commuter trains and Amtrak regional and intercity trains. Freight railroads CSX and NS operate local and road freight trains on the Northeast Corridor, but like CSS they operate with diesel locomotives. While Edison's rail geography has some curves that require reduced speeds for safe operating practices, the top speed of the Northeast Corridor in this area is 135 mph. Segregation, however, greatly improves the safety risk profile of this area.

²³ Source: Google Earth, Oliver Wyman.

In the case of Bailly, even though freight trains must cross the passenger mainline to get to yard tracks, rail operations are conducted safely at the current level of passenger and freight operations. But the current layout where freight trains must cross passenger mainline tracks is not ideal from a safety perspective if passenger train volumes increase as NICTD intends. In that instance, any Design Option for Bailly must look to reduce or remove the need for freight trains to cross or utilize the mainline in order to maintain and improve safety. As discussed in detail in Section VI.D., only Design Options 2 and 2A completely separate freight and passenger activities.

V. Freight Operational Needs at Bailly

If NICTD infrastructure is to continue to support competitive freight operations in the safest manner possible at Bailly, then from an operational perspective, CSS needs at least the same level of track utility that it has now. That track utility has the following four aspects:

1. **Three tracks (at least) to sort cars:** CSS needs at least three different tracks to sort cars into for switching operations. These tracks need to be in the same geographic location such that cars can be sorted between tracks on a repetitive basis, without long “travels” between switching moves – in other words, the tracks should be located side by side. To perform switching moves, one track functions as the supply track, from which cars are sourced; cars are then sorted into different groups using the other two tracks (see Exhibit III-1 above for an example). Design Options for Bailly that propose only two adjacent tracks for sorting are insufficient for switching, as this would provide only one supply track and one sorting track.
2. **A switch lead to switch cars:** When a CSS train crew switches railcars using a locomotive, they need track infrastructure to lead off cars from the supply track (“pull”) before then pushing those cars onto a sort track. Some yards have a dedicated pull track for this purpose, while at other locations, mainline track is used. When cars must be pulled onto the mainline, then time (and capacity) must be made available on the mainline to switch cars. The freight crew must request permission from the train dispatcher to access the mainline, and then the dispatcher creates a time “window” that the freight train must adhere to. Given the frequency of SSL commuter trains on the NICTD mainline, the time needed to “clear the railroad” for the passenger train(s) and the corresponding window of time available can be a challenge for freight crews at certain times, impacting freight productivity and causing delays.

3. **At least 16,815 total feet of track to store cars.** The current track arrangement at Bailly provides 16,815 total feet of track capacity, and CSS needs to maintain this amount of space.²⁴ CSS today utilizes most of this “standing” track capacity to store empty coil, flat, and gondola cars awaiting interchange into the ArcelorMittal steel mill and some capacity for other purposes; it has 250-300 railcars on hand on a typical day.²⁵ It is important to note that some track space must remain available for sorting purposes (“switch capacity”), as well as other unforeseen railroad movements related to switching and storage.
4. **Access to the Bailly wye:** Part of the complexity of Bailly is the need to maintain clear tracks to serve the NIPSCO Bailly Generating Station, where railroad-supplied coal arrives at Bailly in unit trains via the NICTD mainline. As noted previously, NIPSCO plans to shutter the plant on May 31, 2018, although it is looking at the option of selling the plant to another company that might want to operate it, which could lead to a continuing need for rail-hauled coal.²⁶ Even if this does not occur and the land is redeveloped instead, access to the wye needs to remain in place for efficient operation. It is the only wye on CSS or NICTD at Bailly. Furthermore, the likelihood of this land being redeveloped for industrial use requiring rail service is high, given its proximity to rail, road, and water transport. The timeline for all of this may not be immediate, but the potential need for the Bailly wye and potential rail-water accessibility needs for a future customer on the NIPSCO property need to be considered in any future state scenarios.

²⁴ Preliminary NICTD Double Track NWI Proposed Track Schematic – Bailly Area Option 2.

²⁵ Interview with Todd Bjornstad, President, CSS, October 3, 2017.

²⁶ “NIPSCO will close Bailly power plant May 31, 2018,” op. cit.

VI. Assessment of Bailly Design Options

A. Overview of Options

The EA considered seven Design Options at Bailly, five of which were dismissed due to failure to meet the purposes and needs of various stakeholders, including CSS, or a high number of environmental impacts. The remaining options, Options 2 and 4, would include a second mainline track and assume that trains would operate at planned speeds. Exhibit VI-1 on the next page provides a summary assessment of the feasibility and desirability of the baseline options (No Build and Option 0), Option 4, and Options 2/2A from a freight railroad operating and management perspective. Discussion of the individual Design Options is included below the table. (Oliver Wyman concurs with the EA's assessment that the other Design Options it lists and discusses are not feasible, insofar as they would apply to CSS operations at Bailly.)

From a railroad operations standpoint, the Project's critical goals are to increase passenger train frequency/capacity by adding a second mainline between Gary and Michigan City. A second mainline will provide a positive benefit for freight, as it will open more "slots" for trains to move on the NICTD joint mainline. But at locations like Bailly, a second mainline could potentially reduce fluidity if freight capacity is reduced through the acquisition of a CSS switching/storage track. For example, if a freight yard track is reassigned to mainline use instead, then a new freight track will need to be constructed in its place to maintain operational fluidity and capacity at the status quo. As Bailly has no land readily available on either side of the railroad right-of-way, this is a significant issue with regard to the optimal Design Option to meet both passenger and freight needs.

Exhibit VI-1: Summary Operational Assessment of Bailly Double-Track Options²⁷

Design Option (report pages)	Synopsis	Freight Perspective (CSS)					Passenger Perspective (NICTD/SSL)	
		Mainline Bisects Yard (Crossover Moves)	Lead For Switching	Total Yard Tracks	Side- by-Side Yard Tracks	Storage/ Sort Track Footage	Tracks for Current Passenger Trains	Tracks for Future Passenger Trains
No Build Alternative (2-1 to 2-2)	No change to layout	Yes	Single track mainline	3	No	~16,815	1	No, a constraint
Option 0 (2-11)	Static layout at Bailly, add 2nd mainline track east and west	Yes	Single track mainline	3	No	~16,815	1	Even more of a chokepoint
Option 4 (2-14 to 2-16)	SSL operates 2 tracks to south, CSS 2 north, with new "Wilson" siding 2 miles to the west	Partially	North mainline track or Bailly North	3	No	~24,000	2	Good (2 tracks)
Option 2 (2-12 to 2-13)	Change layout, SSL operates 2 tracks to south, CSS 3 north; NPS land required for one track	No	North mainline track or Bailly North	3	Yes	~25,000	2	Good (2 tracks)
Option 2A (2-14)	Same as Option 2 but CSS has 4 tracks; NPS land required for one track	No	North mainline track or Bailly North	4	Yes	~31,000	2	Good (2 tracks)
		Key	Not feasible	Partial solution	Optimal solution			

B. Review of Specific Options

No Build Alternative

Although the No Build Alternative is unlikely to be adopted ultimately, it is clear that this option would retain all of the issues of today's physical infrastructure at Bailly. First, the single-track stretch of railroad is fairly long between control points. This means that freight trains must

²⁷ Oliver Wyman analysis.

run within specific “slots” to travel to and from Bailly. Once at Bailly, the freight traffic must switch off of the mainline, or switch utilizing the main track when occupancy can be provided by NICTD between passenger trains. Freight traffic also must seek permission to cross the NICTD mainline to travel between the north yard track and the two south yard tracks. All of these time request windows slow the switching efficiency of CSS, and the situation would worsen if passenger train frequencies should increase.

Design Option 0

Design Option 0 is defined as maintaining the status quo track layout at Bailly, where the NICTD electrified mainline bisects the CSS yard, with two tracks to the south of the NICTD mainline (“Middle Track” and “South Track”) and one track to the north of the NICTD mainline (“North Track”). Design Option 0 differs from the current state because it calls for construction of a second mainline immediately to the east and west of Bailly, but the mainline through Bailly would remain single track, effectively an operational constraint for both passenger and freight operations.

Not only would this option not mitigate freight interference, but it would materially degrade freight performance, as a greater volume of passenger trains would have to pass this point on single track, reducing freight windows. Freight operations would continue to utilize the mainline to switch cars, and freight trains would continue to cross over the mainline between the two sets of yard tracks. Oliver Wyman agrees with the EA assessment that Design Option 0 should be eliminated from further consideration, since it does not meet the stated goals of the Project. Most important, Design Option 0 would not allow NICTD to increase passenger train frequency without simultaneously increasing operational congestion, due to the combination of additional passenger trains and continued freight crossover and switching operations.

Design Options 1, 3, and 5

The EA groups together the assessments of Design Options 1, 3, and 5. In each of these options, the NICTD mainline would be relocated to the south of Bailly, and thus would no longer bisect the yard tracks. These options were dropped from consideration, as “after discussion with CSS, it was determined that this would not meet CSS’s operational needs,”²⁸ and Oliver Wyman agrees with that assessment.

Design Option 4

In Design Option 4, the NICTD mainline also would be repositioned south of Bailly and would no longer bisect the yard. It would use the footprint of two current yard tracks: “Middle Track” and “South Track.” Bailly would continue to be a location where freight cars are switched and stored, but would have only two tracks located side by side. To make up for the loss of the third yard track, a siding called “Wilson” that is currently 2,500 feet long would be extended to 7,000 feet long. The east switch would be about two miles further west than the current west end of track on the “17” lead.

The result would be a two-mile gap between the west switch used for car sorting at Bailly (MP 46.5) and the Wilson siding east switch (MP 48.3) – this is the distance over which CSS would have to reposition cars to use this new track. Performing switching movements using this remote track would consume substantial additional time, as outlined in Exhibit VI-2.

²⁸ Environmental Assessment, op. cit., p. 2-13.

Exhibit VI-2: Time Required To Support Design Option 4 Train Operations at Wilson²⁹

Per switching round trip, in minutes

Step	Operational Task	Option 4 High	Option 4 Low	Option 2
1	Assemble and test the train to reposition from Bailly to Wilson	60	30	0
2	Request mainline access and dispatcher provides access	45	0	0
3	Reposition Bailly to Wilson	30	15	0
4	Switch cars at Wilson	90	45	45
5	Assemble and test the train to reposition from Wilson to Bailly	60	30	0
6	Request mainline access and dispatcher provides access	45	0	0
7	Reposition Wilson to Bailly	30	15	0
Extra minutes from Wilson operation		360	135	45
Extra hours from Wilson operation		6	2.25	0.75

The steps required for the CSS train crew to work at Wilson are significant. For each round trip, seven major steps would need to occur:

1. Assemble and test the train to reposition from Bailly to Wilson – this includes the time required to build the train to reposition. During normal switching operations, this might be done during the many pulls and pushes of the crew's shift. With a repositioning event, the train has to be assembled as a special and separate operation. Once the train is assembled, an air brake test operation has to be performed, which is a visual confirmation of brake set and release at the rear of the train. It requires a member of the train crew to make a round trip walking from the front to the rear of the train, inspecting the cars that make up the train on the way.

²⁹ Oliver Wyman analysis.

2. Request mainline access and dispatcher provides access – this includes the time required for the train crew to request mainline access. The train crew must explain where they need to go and how long they expect to take. This would typically be done while the air brake test operation is being performed and only takes a few minutes. Waiting for the dispatcher to provide access is where significant time can be spent, however. Access could be instantaneous, or it could be 45 minutes or more, depending on what time the request is made and where passenger trains are located on the line. Also, time is needed for signals to be “set up,” which includes a series of necessary safety mechanisms and other mechanics to “line up” a train to make a movement onto the mainline. It is typical for CSS freight crews to work in concert with NICTD train dispatchers, but “everyone recognizes that the passenger trains take priority,” according to Michael Noland, President and General Manager of NICTD.³⁰
3. Reposition Bailly to Wilson – this includes travel time between the two locations. A typical train would travel at a maximum speed of approximately 10-20 mph, but when safe acceleration/deceleration time is factored in, the average speed is more likely in the 5-10 mph range. While the gap between the west switch at Bailly and the east switch at Wilson is approximately two miles, a mile-long train would have to travel three total miles to “clear” the east switch at Wilson. Included in this time is the time required to line any hand-thrown switches that are not controlled by the dispatcher, such as the switches at Wilson. Before moving the train, the entire three-person crew would need to be safely located inside the locomotive cab to travel on the mainline.

³⁰ “South Shore Freight’s Fabulous Franchise,” op. cit.

4. Switch cars at Wilson – this includes all of the time needed to switch cars using only one yard track at Wilson. While switching, the train would need to utilize the mainline as a switching lead as well as an “alternative” sorting track to the “source” of the Wilson track.
5. Assemble and test the train to reposition from Wilson to Bailly – this is effectively the reverse of step 1.
6. Request mainline access and dispatcher provides access – this is effectively the reverse of step 2.
7. Reposition Wilson to Bailly – this is effectively the reverse of step 3.

Exhibit VI-2 provides a high and low time estimate for each step outlined above under Design Option 4 and compares the time impact of Option 4 to Option 2. Design Option 4 could cost CSS an additional 2.25 to 6 hours per day to support *one* switching round trip from Bailly to Wilson. Note that Option 2 adds none of this additional time burden. Thus the repositioning operation under Option 4 could impose significant operational strain on CSS and should not be underestimated.

An additional problematic issue with Design Option 4 that must be highlighted is that Wilson is located on the south side of the double-tracked NICTD mainline – that is, the opposite side from the proposed yard location. Consequently, Design Option 4 would not mitigate freight movements crossing the mainline, and to access the capacity of the Wilson siding, freight mainline consumption time would actually increase. Dispatcher intervention for freight repositioning movements– and to ensure no stopped passenger trains – would be required across both mainlines each time a freight train needed to cross to or from the Wilson track, consuming more dispatcher resources.

Finally, while the train crew is working at Wilson, they will need to request a long time window from the train dispatcher to access the south mainline, blocking it while conducting switching operations. For example, if there are 4,000 feet of parked cars at Wilson (on a 7,000 foot track) before a train arrives, and CSS wants to swap in a replacement group of 4,500 feet of (new) cars, the CSS crews will have 8,500 feet of cars to manage at Wilson, thus potentially requiring the use of up to 8,500 feet of the south mainline, as they will have no other track available to get out of the way of commuter trains until switching moves are completed and the crew is ready to depart back to Bailly. As stated above, the mainline will be the switch lead and the *only* sort track for the train crew working at Wilson, consuming significant time and capacity.

Wilson also would impact crew and locomotive resource productivity. The hours of service that a train crew would require would increase if CSS trains had to serve Wilson. Typically, train crews are on duty an average of 7-10 hours. Railroad train crews operate under strict hours of service rules; under federal law they can only work a maximum of 12 hours. Both the high and low time estimates for Option 4 would result in higher crew costs for CSS.

And where the crews go, so do the locomotives. A typical switch locomotive has significant asset ownership and maintenance costs tied to it; when extra fuel for repositioning and extra running time are added in, locomotive costs will increase accordingly. Additionally, the locomotive involved in excessive repositioning operations to and from Wilson would be unavailable for other uses.

Typically, railroads consider the sum of these operational costs to be approximately \$200 per hour, factoring in crew, locomotive, and car costs. The low and high estimates of 2.25 hours and 6 hours per repositioning move to Wilson thus would translate into additional costs of \$450 to \$1200 per move for CSS. This amounts to \$140,000 to \$375,000 on an annual basis if this

scenario plays out just once per day six days a week. Over the long term, these are unsustainable costs for such an operation.

Design Option 4 clearly will add to CSS's operational burden, while degrading the fluidity of the double-tracked mainline. Design Option 4 thus effectively retains the single-track problems that are present today at Bailly, but compounds them by moving them two miles west to Wilson.

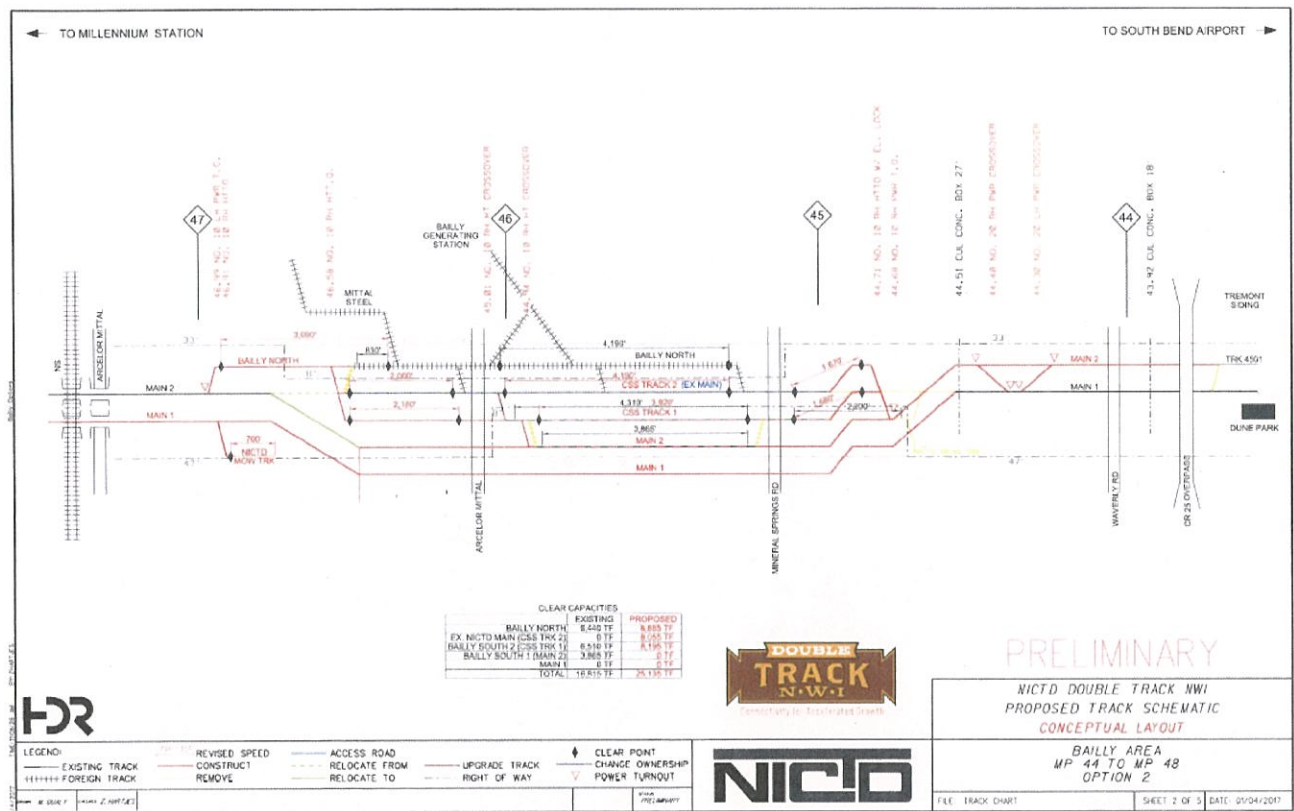
Design Option 2

In Design Option 2 (see Exhibit VI-3), the NICTD mainline also would be repositioned south of Bailly and would no longer bisect the yard. It would use the footprint of two current yard tracks: "Middle Track" and "South Track." Bailly would continue to be a location where freight cars are switched and stored, with three tracks located side by side. Based on detailed engineering plans that have been defined for this option, the "Bailly North" track could function as a lead track for some switching operations.³¹ This would reduce the amount of time that CSS freight movements would need to occupy one of the mainlines, as noted in the EA: "Locating all tracks in the same general vicinity would reduce the need for CSS to travel up or down the tracks to access storage tracks located farther away."³²

³¹ Preliminary NICTD Double Track NWI Proposed Track Schematic – Bailly Area Option 2.

³² Environmental Assessment, op. cit., p. 2-12.

Exhibit VI-3: Design Option 2³³



Of the choices presented, Design Option 2 (and 2A, described below) are the only feasible options that would meet the following needs:

- Enable CSS to both maintain its current level of freight service and allow for growth
- Maintain the current level of competitive options for freight shippers
- Not degrade safety
- Still meet NICTD's stated passenger service goals

³³ Preliminary NICTD Double Track NWI Proposed Track Schematic – Bailly Area Option 2.

Design Option 2 would provide a double-tracked mainline for the use of NICTD and CSS, sufficient track space for CSS, and a switch lead separate from the mainline for a majority of freight switching and steel mill movements. It would require 3.9 acres of permanent conversion of NPS Indiana Dunes National Lakeshore property.

Design Option 2A

The primary difference between Design Option 2 and Design Option 2A is that the latter would provide CSS with a fourth side-by-side switching track, which would result in more storage track capacity. Adding this fourth track however would impact up to 10 acres of NPS property (more than twice the amount of acreage required by Design Option 2), because it would require two new tracks to be located on NPS property through Bailly, as opposed to only one new track located on NPS property in Design Option 2. Design Option 2A was eliminated from further consideration in the EA due to the impact on parkland with no additional benefit to transit.³⁴

C. Operational Feasibility of Design Options

The EA expresses a preference for Design Option 4 over Design Options 2 and 2A as it “would provide the best balance between meeting NICTD’s need for a second mainline and operational flexibility; addressing CSS’s needs for operational flexibility, railcar storage, and expansion of service; and causing no impacts on NPS parkland in the Indiana Dunes National Lakeshore.”³⁵

In examining this statement relative to the various Design Options, however, it is unclear how the EA arrived at this preference. For example, Design Options 1 through 5 would all add a

³⁴ Environmental Assessment, op. cit., p. 2-14.

³⁵ Environmental Assessment, op. cit., p. 2-14.

second mainline through Bailly, and thus provide an equal footing in terms of “meeting NICTD’s need for a second mainline.” And in general Design Options 2 through 5 are stated in the EA as providing CSS with the same number of storage tracks and sufficient track footage. Only Design Option 2 and 2A provide the right configuration for CSS, however.

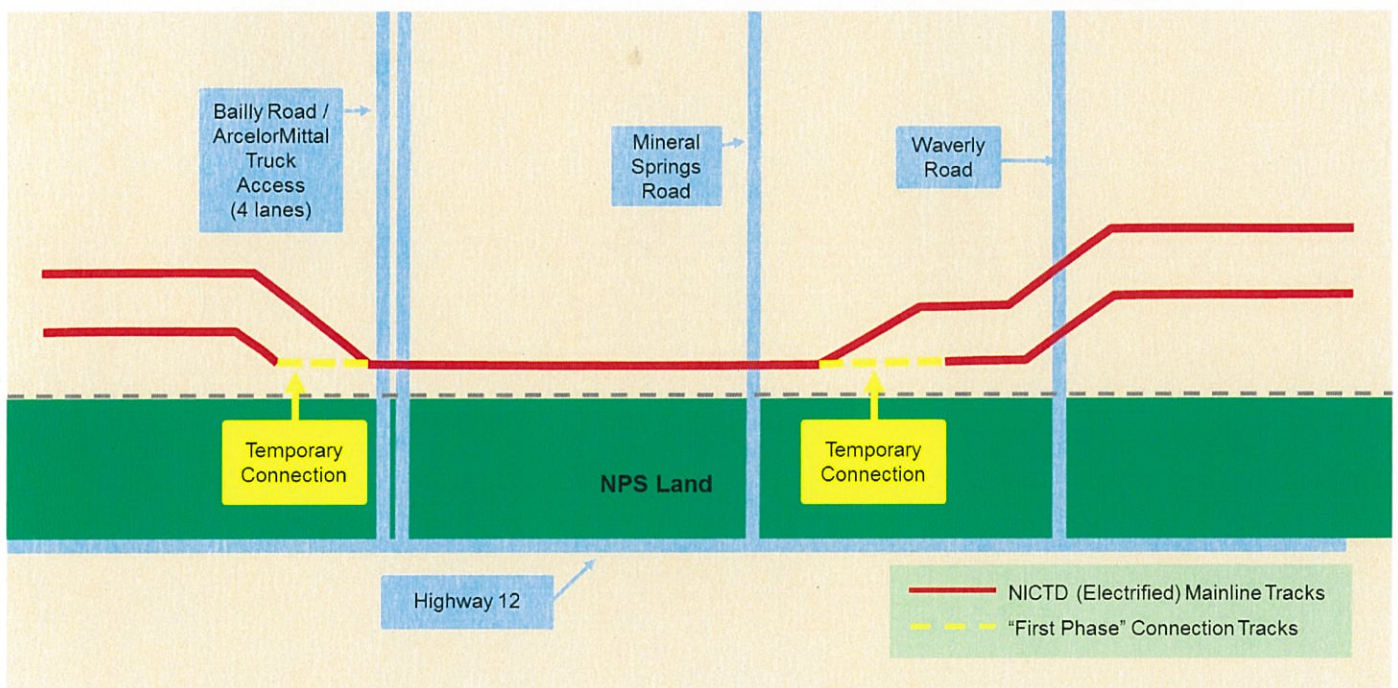
In fact, the combination of a physically separate location for the Wilson siding and Wilson’s location on the opposite side of the mainline (south side) from the rest of the Bailly storage tracks makes Design Option 4 the least desirable solution from an operational standpoint – either for commuter or freight. NICTD commuter trains would not only continue to be impacted by freight train crossings but these crossing events would increase, as would the need to use the mainline for switching/sorting activities at Wilson, while CSS would experience increased time and operational complexity due to a lack of two side-by-side sorting tracks and the use of a remote track.

By comparison, Design Options 2 and 2A would provide the most operational flexibility. Commuter and freight trains would be as separated as possible and freight trains would not need to cross on the mainline, maximizing mainline capacity and fluidity for commuter trains. CSS operational flexibility would be optimized by having all three needed yard tracks side by side at Bailly.

Design Options 2 and 2A also allow for a “phased” approach that may work well for construction, budgeting, and negotiation with NPS if a compromise version were to be constructed for the near-term that would serve the aims of NICTD and CSS. For the “first phase,” instead of the south mainline crossing onto NPS property, the mainline infrastructure through Bailly for approximately 1.75 miles could continue to be single track, with the “South Track” of the three yard tracks becoming the main track (Exhibit VI-4). This realignment of the

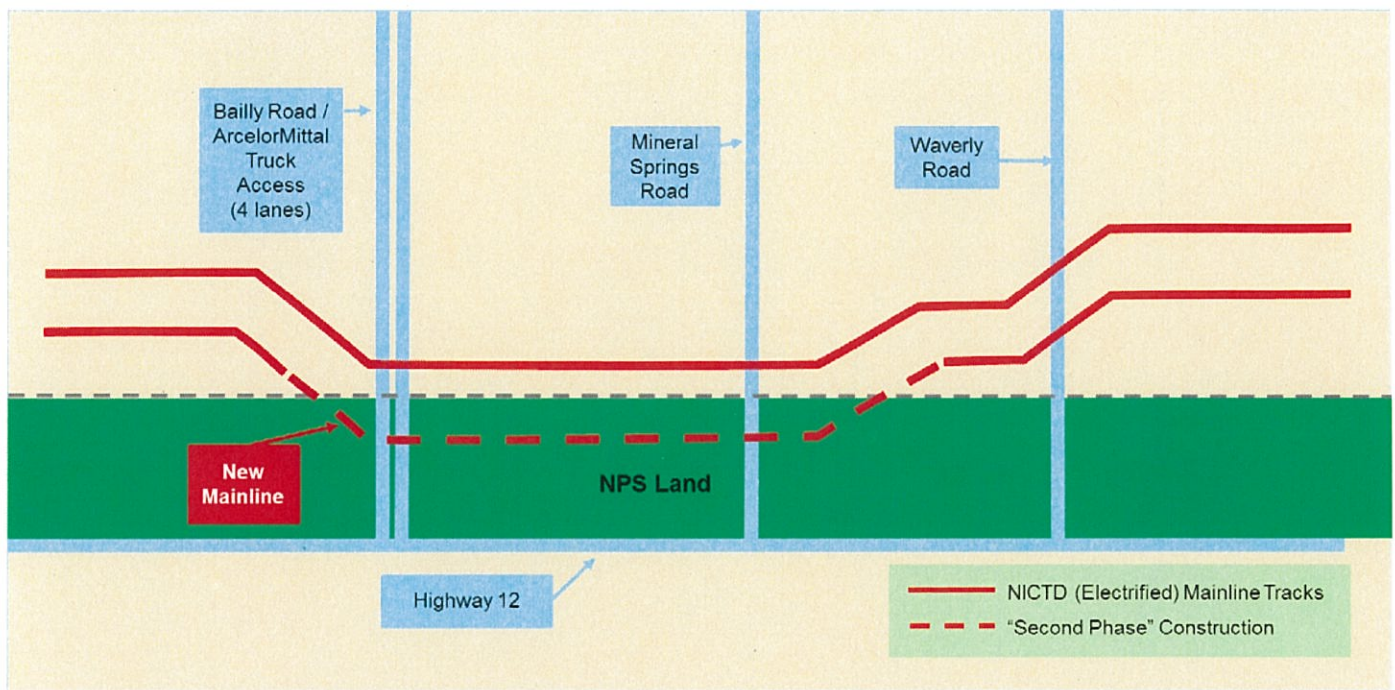
yard tracks would still help resolve the issue of freight train interference at Bailly, which is a key capacity concern for passenger trains. The train dispatcher would not need to provide CSS access to the mainline for switching moves, reducing the potential for passenger train delays. After double-tracking the mainline to Bailly from both the east and west, the remaining approximately 1.75 miles of single track would be a minimal operating hindrance to NICTD. A passenger train would take less than two minutes to traverse the 1.75 mile “bottleneck,” which would be minimal due to the many miles of new double track planned on either side of Bailly.

Exhibit VI-4: Design Option 2/2A Phased Approach: First Phase Mainline Configuration³⁶



The “second phase” would be the later addition of a second mainline to Bailly – to bridge the 1.75 mile gap – once land acquisition had been completed (Exhibit VI-5).

³⁶ Source: Oliver Wyman analysis.

Exhibit VI-5: Design Option 2/2A Phased Approach: Second Phase Mainline Configuration³⁷


The final benefit of Design Option 4 stated in the EA is that it would not impact NPS parkland. Although this is true, the other issues raised by Design Option 4 are severe enough in terms of their adverse long-term impacts on freight and commuter operations that it is unclear why the conversion of a small amount of parkland – which was previously railroad-owned land – is not being prioritized. Procuring a small amount of land for at least one track of right-of-way from NPS would provide the only feasible solution of the Design Options presented in the EA to support the current and future operations of both CSS and SSL.

D. Safety Impacts of Design Options

Finally, there is the issue of how the various design options will impact safety. Exhibit VI-6 provides a summary of the safety risk levels associated with each Design Option considered

³⁷ Source: Oliver Wyman analysis.

above. Our analysis of safety risks centered around the track layouts for each option and the corresponding amount of time Oliver Wyman predicts freight activity would utilize the NICTD mainline or mainlines during switching operations. Design Options 2 and 2A thus carry the least risk from a safety perspective.

Exhibit VI-6: Summary Safety Assessment of Bailly Double-Track Options³⁸

Design Option (report pages)	Synopsis	Safety Risk
No Build Alternative (2-1 to 2-2)	No change to layout	Same as today
Option 0 (2-11)	Layout static at Bailly, add second mainline track east and west of Bailly	Increased
Option 4 (2-14 to 2-16)	SSL operate 2 tracks to south, CSS 2 north, with new "Wilson" siding to west for railcar sorting/ storage	Increased
Option 2 (2-12 to 2-13)	Change layout, SSL operate 2 tracks to south, CSS 3 north; NPS land required for one track	Reduced
Option 2A (2-14)	Same as Option 2 but CSS has 4 tracks; NPS land required for one track	Reduced
<div> <div></div> Increased risk <div></div> Static risk <div></div> Reduced risk </div>		

The No Build Alternative would maintain the current level of risk. It is worth noting that the No Build Alternative has a baseline level of some risk that likely concerns rail managers both at CSS and NICTD. Every day, passenger train movements operate at a maximum authorized speed of 79 mph through Bailly, while decelerating to 60 mph at the Bailly Road grade crossing. These passenger trains navigate a "canyon" of standing freight cars and catenary poles at Bailly. Exhibit VI-7 shows this "canyon" as it would be seen by an engineer on a passenger train

³⁸ Source: Oliver Wyman analysis.

operating at 79 mph. With grade crossings at both ends of the “canyon,” locomotive engineers have little sight distance to react to any unforeseen dangers.

Exhibit VI-7: View of the Bailly Freight “Canyon” from a Passenger Train³⁹



Design Option 0 would create a bottleneck due to the proposed increase in passenger trains operating over a single-track mainline segment. This added passenger train volume without much capacity relief would lead to an increase in safety concerns, and these safety concerns are especially compounded by the continuation of separated north and south yard tracks, resulting in continued freight train usage of the mainline at Bailly. Due to the combination of higher passenger train counts and the unchanged separation of yard tracks that require continuing freight train mainline interference, Oliver Wyman believes that Design Option 0 is an untenable solution.

³⁹ Source: CSS.

The EA's preferred Design Option 4 also represents an increased safety risk when compared to Options 2 and 2A. While the "Bailly North" track could be used as a switch lead, the fact that trains would need to reposition approximately two miles to outlying siding tracks such as the enhanced "Wilson" siding increases the risk profile, since slow-speed freight switching operations will be occurring over lines on which passenger trains will be operating at 79 mph. Design Option 4 is also untenable because safety risks will be exacerbated by the need to cross over the two mainlines from the Bailly tracks on the north side to the Wilson track on the south side, as well as the four-mile roundtrip CSS trains would need to travel between Bailly and Wilson.

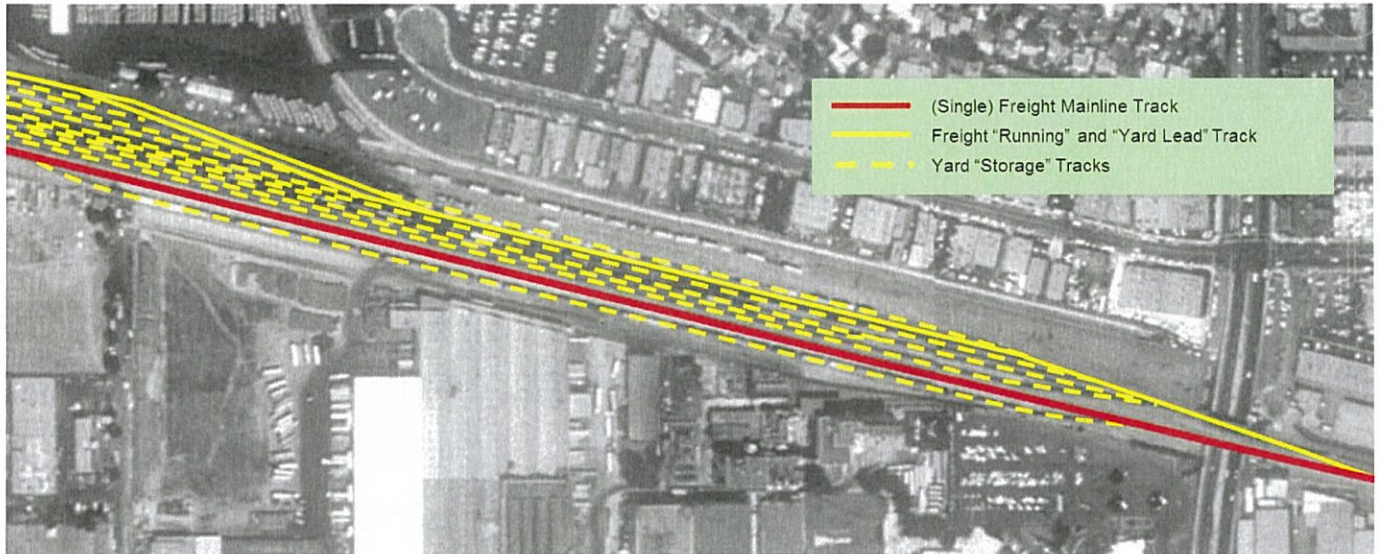
Design Options 2 and 2A represent less risk than the aforementioned options because switching operations will happen off the mainline and freight and passenger operations will be segregated from each other. In addition, if a railcar derails while it is traveling through a switch, it is less likely to foul an adjacent mainline track where a passenger train might be operating. Although positive train control (PTC) can help protect against train versus train collisions on a single line (e.g., the system knows if there is a train ahead and can stop a train violating a speed restriction) it cannot protect against what is happening on an adjacent track before or during the simultaneous passing of a passenger train on the mainline.

E. Example of Design Option 2/2A Implementation

Design Options 2 and 2A are clearly the best choices because they segregate freight and passenger operations to maximize safety, while providing side-by-side yard tracks. A real-world example of a similar implementation can be found at the former Southern Pacific (now Union Pacific) "GEMCO" yard at Van Nuys, CA.

GEMCO is a local yard, i.e., it is used to switch cars for local customers. Circa 1989, prior to a change in rail infrastructure, most yard tracks and switching activity occurred on the north side of the mainline, with an additional yard track south of the mainline. Thus, the mainline bisected the yard tracks – a physical layout nearly identical to Bailly today (Exhibit VI-8).

Exhibit VI-8: 1989: Southern Pacific Railroad GEMCO Yard in Van Nuys CA⁴⁰



In 1990, a group of California county governments purchased approximately 175 miles of former freight railroad track from Southern Pacific to create a commuter rail system called Metrolink. Freight service is permitted over Metrolink trackage, similar to how CSS operates over NICTD. Shortly after the sale and after closure of a large auto plant at GEMCO following Metrolink's creation, the yard track on the south part of the mainline was deemed surplus and was converted into a second mainline. The new double-track mainline was segregated from freight railroad operations (Exhibit VI-9).

⁴⁰ Source: Google Earth, Oliver Wyman.

Exhibit VI-9: 2016: Metrolink Mainline/Union Pacific GEMCO Yard in Van Nuys, CA⁴¹



The double-tracking of the mainline through an established freight yard area at GEMCO is similar to what is proposed in Design Options 2 and 2A for Bailly. At GEMCO, the passenger railroad gained a second mainline, while freight crossover moves across the mainline were eliminated and yard tracks remained side by side, as proposed in Design Options 2 and 2A. The changes at GEMCO provided strong operational benefits while not degrading safety, as is the case for Design Options 2 and 2A.

⁴¹ Source: Google Earth, Oliver Wyman.

VII. Conclusion

In conclusion, the choice of a Design Option for Bailly will critically impact both passenger and freight operations in Northwest Indiana. NICTD states that it needs a double-tracked mainline if it is to increase passenger train frequencies and expand passenger services. CSS needs to ensure that it can continue to provide competitive common carrier freight service to Northwest Indiana shippers. In addition, all parties want to ensure that any changes which are made will maximize railroad safety.

Design Option 4 is preferred in the EA but would adversely affect the ability of CSS to maintain its current level of freight operations and service to its customers. Only Design Options 2 and 2A provide the operational flexibility and capacity to enable NICTD to meet its operational and capacity goals as stated in the EA; ensure CSS can maintain its current service levels, grow freight volumes in the future, and preserve competitive options for area freight shippers; and not degrade safety. In addition, only Design Options 2 and 2A fully separate freight and passenger activities, thereby also enhancing safety compared to all of the other options presented.

VERIFICATION

I, William J. Rennie, declare under penalty of perjury, that the foregoing Expert Report by Oliver Wyman is true and correct and that I am qualified and authorized to make this statement.



William J. Rennie

Executed on October 23, 2017.



Chicago South Shore & South Bend Railroad



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August 10, 2018

BY FEDERAL EXPRESS

Kelley Brookins
Acting Regional Administrator
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, IL 60606

Re: Written Comments of Chicago South Shore & South Bend Railroad on the Environmental Assessment and Section 4(f) Evaluation for the Double Track NWI Project

Dear Ms. Brookins:

Chicago South Shore & South Bend Railroad (CSS) submits the following update pertaining to its Written Comments submitted on October 23, 2017 to the Federal Transit Administration (FTA) and Northern Indiana Commuter Transportation District (NICTD) on the Environmental Assessment and Section 4(f) Evaluation for the Double Track NWI Project Gary to Michigan City, Indiana (EA). The Double Track NWI Project (Project) involves proposed infrastructure improvements to the single track main line, including a segment of the line at Bailly where the single mainline runs between three CSS-owned freight switching and storage yard tracks.

The EA's proposed design (Design Option 4) for the Project at Bailly would take one of the three CSS-owned switching/storage tracks for the second (double track) main line, leave CSS with two reconfigured switching storage tracks at Bailly, and provide one separate switching/storage track approximately two miles from Bailly on the opposite side of the main lines from the two reconfigured storage/switching tracks.

In its Written Comments, CSS expressed serious operational, safety, and legal concerns over Design Option 4 and asked that the Project not proceed to the Engineering phase until the concerns raised by CSS were resolved.

CSS wishes to advise the FTA that CSS and NICTD have entered into a Double Track Agreement (DT Agreement) setting forth a proposed course of action, which, if implemented, is expected to satisfactorily address and resolve the issues raised by CSS in its Written Comments.



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In addition, CSS and NICTD each have entered into agreements with Northern Indiana Public Service Company LLC (NIPSCO) that are referenced in the DT Agreement. A copy of the DT Agreement is attached. Specifically, the new design would provide CSS with sufficient switching and storage yard tracks all at Bailly, all adjacent to each other, and all on the same side of the double track main line. (The new design is Attachment AA to the DT Agreement.)

As a result, CSS is withdrawing the request in its Written Comments that the Project not proceed to the Engineering phase of the FTA's evaluation for Project funding. An explanation of how each of CSS's concerns is expected to be resolved is set forth below.

Resolution of Concerns

DESIGN OPTION 4 ADVERSELY AFFECTS FREIGHT AND COMMUTER OPERATIONS

Concern:

In its Written Comments, CSS explained that, based in part on a Report from the consulting firm Oliver Wyman (OW), Design Option 4 would have a material adverse effect on CSS's freight operations, operational efficiency, and ability to offer competitive options to shippers.

Resolution:

This issue is expected to be resolved through implementation of the new track design contemplated in the DT Agreement. The newly designed CSS tracks would have the capacity and configuration to provide service to freight customers at levels comparable to the service CSS presently provides on its yard tracks at Bailly. Accordingly, freight service should not be adversely impacted.

DESIGN OPTION 4 DEGRADES SAFETY

Concern:

The Written Comments and the OW Report explained that the EA's safety assessment was incorrect for Design Option 4 because freight and passenger operations would not be fully separated, the new design would require an additional crossing of the mainline track not required today, and the new four-mile round trip that CSS would need to travel to access its third yard track.

Resolution:

This issue is expected to be resolved through implementation of the new track design contemplated in the DT Agreement. The safety concerns raised by CSS having to cross and operate over the main line when moving between yard tracks will no longer be an issue because all of the CSS tracks will be on the same side of the main line.



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DESIGN OPTION 4 IS INCONSISTENT WITH NICTD/CSS AGREEMENTS

Concern:

The Written Comments and the OW Report concluded that Design Option 4 is inconsistent with the terms of the Memorandum Agreement and Trackage Rights Agreement between NICTD and CSS because it would not allow CSS to provide the same level of service it currently provides, would have a material adverse effect on CSS's freight operations, would impose an additional burden on CSS and on interstate commerce, and would adversely affect CSS's performance of its common carrier obligations under federal regulations. The Written Comments further explained that the increase in passenger train frequency resulting from the Project will require renegotiation of dispatching protocols between CSS and NICTD in order for NICTD to meet its dispatching service obligations under the Memorandum Agreement and Trackage Rights Agreement.

Resolution:

This issue is expected to be resolved through implementation of the new track design contemplated in the DT Agreement. The new design, if implemented, will, in CSS's opinion, be consistent with the terms of the Memorandum Agreement and Trackage Right Agreement.

PROPERTY ACQUISITION FOR DESIGN OPTION 4 IS REQUIRED AND PROBLEMATIC

Concern:

CSS noted that Design Option 4 would require NICTD's acquisition of an interest in CSS property for the proposed two new main lines, and that could involve an eminent domain proceeding if CSS did not concur in the acquisition. CSS explained that if it did not concur because of the adverse effect on switching operations at Bailly, NICTD's acquisition of the CSS property would be problematic. Federal law gives the Surface Transportation Board exclusive jurisdiction over interstate freight railroad transportation.

Resolution:

This issue is expected to be resolved through implementation of the new track design contemplated in the DT Agreement. Since freight service would not be adversely affected if the new track design is implemented, there would be no legal issues giving rise to the need for Federal preemption.

DESIGN OPTIONS 2 and 2A ARE THE ONLY FEASIBLE OPTIONS IN THE EA

Concern:

CSS explained that only Design Options 2 and 2A meet the Project's stated operational and capacity goals for NICTD, meet CSS's current and projected operational and service needs, and do not degrade safety.



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Resolution:

This issue is expected to be resolved through implementation of the new track design contemplated in the DT Agreement. CSS believes the new design is the functional equivalent of the EA's Design Options 2 or 2A.


Updated CSS Position on the EA

The DT Agreement contemplates that the parties will enter into definitive agreements regarding their respective obligations. The DT Agreement further specifically states that the modified Design Option 4 (as shown on Attachment AA to the DT Agreement) will be implemented through the property transfer agreements that are in place between NICTD and NIPSCO, and between CSS and NIPSCO, which are appended to the DT Agreement. Moreover, the design is conditioned at the outset in the DT Agreement upon the approval and receipt of FTA funding for the Project.

Although all of the necessary agreements that may be required are not in place at this time, CSS believes that, with the execution of the DT Agreement and the NIPSCO agreements, the operational and safety concerns raised by CSS in its Written Comments have been identified and a process is underway for the timely completion of those agreements and the fulfillment of the undertakings and commitments in the agreements.

As stated above, in view of the above developments, CSS can now support the advancement of the Project to the Engineering phase. CSS withdraws the request in its Written Comments that the Project not proceed to the Engineering phase of the FTA's evaluation for funding. CSS supports the broad objectives of the Project; and CSS commits to continue working with NICTD to reach final agreement on all matters relating to the modified design so that the Project's goals can be achieved while protecting freight operations. However, in light of the fact that the transactions described in the DT Agreement must be consummated in order to address the operational and safety issues raised by CSS, CSS reserves its right to object to the Project if those transactions are not consummated or if NICTD seeks to implement a design option at Bailly other than modified Design Option 4 as shown on Attachment AA to the DT Agreement.

Respectfully submitted,


Todd Bjornstad
President