

Finding of No Significant Impact

for the

Double Track NWI Project

Gary to Michigan City, Indiana

prepared by the

U.S. Department of Transportation Federal Transit Administration

and the

Northern Indiana Commuter Transportation District

pursuant to:

*National Environmental Policy Act of 1969 (42 USC § 4332) and
Section 4(f) of the United States Department of Transportation Act of 1966
(49 USC § 303)*



Federal Transit Administration
Region V
DOUBLE TRACK NORTHWEST INDIANA PROJECT
Finding of No Significant Impact (FONSI)
Approved November 1, 2018

1.0 INTRODUCTION

This document provides the basis for a determination by the United States Department of Transportation (USDOT), Federal Transit Administration (FTA), of a Finding of No Significant Impact (FONSI) for the proposed Double Track Northwest Indiana (DT-NWI) Project. This determination is made in accordance with the National Environmental Policy Act of 1969 (NEPA); 42 United States Code (USC) § 4331 et seq; FTA's implementing procedures (23 Code of Federal Regulations [CFR] § 771.121); Section 4(f) of the USDOT Act of 1966, 49 USC § 303; and the National Historic Preservation Act of 1966 (NHPA), 54 USC § 300101 et seq.

As lead federal agency, FTA jointly prepared the Environmental Assessment (EA), Section 4(f) Evaluation, and Section 106 findings (of the NHPA) with the Northern Indiana Commuter Transportation District (NICTD), as the local project sponsor. These documents describe potential adverse effects on the human and natural environment and the integrity of historic resources that may result from the proposed Project. The EA was prepared pursuant to 23 CFR § 771.119 and issued by FTA on September 21, 2017. This FONSI is prepared by FTA pursuant to 23 CFR § 771.121, and incorporates, by reference, the EA and other cited documentation.

2.0 EXISTING CONDITIONS

The South Shore Line (SSL) operates from South Bend, Indiana, to downtown Chicago, Illinois (**Figure 1**). From Gary, Indiana to South Bend (approximately 59 miles), the railroad is mostly single track, except for one 6.5-mile section of double track and three separate passing sidings that total 2.2 miles. The proposed Project begins in Gary at milepost (MP) 58.8, west of Virginia Street, and ends at MP 32.2, near Carroll Avenue in Michigan City, Indiana, a distance of 26.6 miles.

Most of the SSL commuter line shares track with the Chicago South Shore and South Bend Railroad (CSS) freight service. Commuters on the SSL frequently experience less than optimum on-time performance, limited schedules, and trains without enough seating capacity. The lack of a second track constrains capacity and results in inflexible schedules, reliability issues, and long running times, making it less competitive with automobile travel times. Additionally, the 2 miles of embedded, street-running track in Michigan City, along with 39 at-grade crossings in 3 miles, contribute to some of the highest roadway and rail accident rates in Indiana.



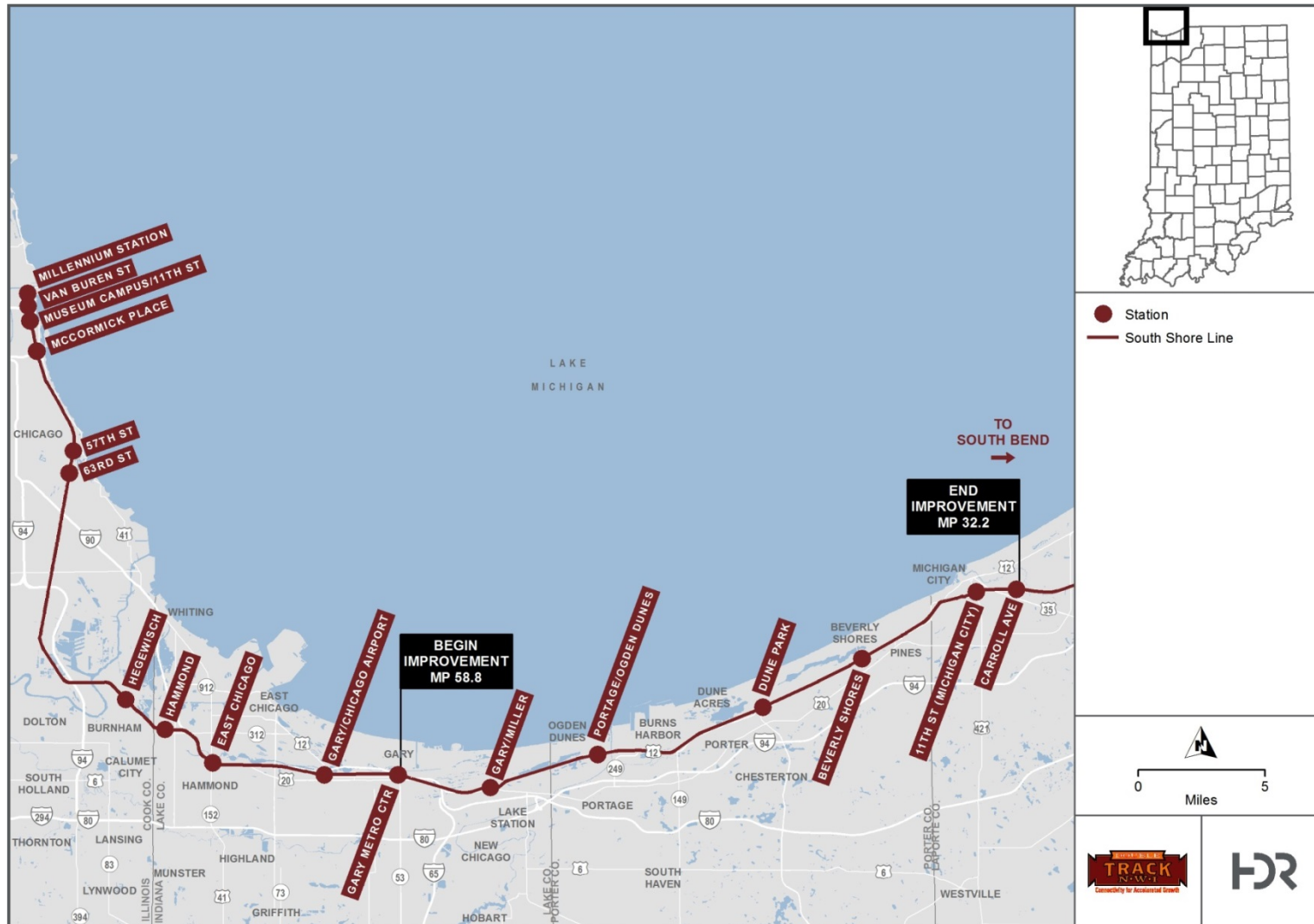
Double Track Northwest Indiana Project

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Figure 1. Project Corridor





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3.0 PROJECT PURPOSE AND NEED

The purpose of the proposed Project is to expand the existing SSL capacity to meet current and future ridership demand. Increasing capacity will improve operating flexibility; reduce delay; reduce travel time; improve system reliability, mobility, and safety; and increase access to employment centers in Chicago.

The following key factors define the need for the proposed Project:

In the Bailly portion of the proposed Project (a 2.7-mile track segment), the single NICTD/CSS railroad track is located between CSS freight storage tracks resulting in switching conflicts, slower speeds, and safety concerns. Additionally, CSS transfers many long unit trains in this area, which requires that the train switch off the mainline for temporary storage. These conflicts partially contribute to NICTD's 2016 overall on-time performance of 81.9 percent, compared to the acceptable industry standard of 90 percent.

Peak trains currently operate at 98 percent seating capacity, with little room to accommodate additional passengers. As the population of northwest Indiana continues to grow and export workers to jobs in Chicago, demand for transit will increase.

The current average trip time on the SSL during rush hour is considerably longer than by automobile because of freight and passenger train interference, speed restrictions, and passenger boarding delays.

Only 7 of the 39 existing at-grade crossings in the Michigan City portion of the proposed Project have automatic warning devices. Eight of the crossings are in the Federal Railroad Administration's (FRA) 2016 top 100 predicted accident locations in Indiana (FRA 2017). These statistics do not account for the inherent danger of trains traveling down the middle of residential and commercial streets with automobiles, pedestrians, and bicyclists sharing the same right-of-way (ROW).

4.0 ALTERNATIVES CONSIDERED

Two alternatives were developed and evaluated as part of the proposed Project EA: the No Build Alternative and the Build Alternative. The Build Alternative was developed and evolved through an alternatives analysis that considered multiple design options and extensive public input. It was determined that the Build Alternative best meets the purpose and need for the proposed Project.

4.1 NO BUILD ALTERNATIVE

The No Build Alternative represents future conditions if the proposed Project was not implemented. The No Build Alternative would be the least environmentally disruptive alternative; however, the No Build Alternative does not meet the purpose and need for the proposed Project. The No Build Alternative would not include any major transit system or station investments or construction, but would include typical maintenance and repairs to the NICTD/CSS railroad track and associated infrastructure based on historic funding levels needed to keep the lines functional. Some expenditure would be made to keep the SSL service operating; however, service quality and capacity would decline over time as capital expenditures would be minor compared to the Build Alternative, maintenance costs would rise, and ridership is predicted to continue to rise. Interference with freight train operations would continue, and likely worsen because of the anticipated growth in freight traffic. The corridor would continue to suffer from the single point of failure that exists with single-track operations. Travel times would likely continue to increase and service reliability would continue to degrade, as train operators would continue to safely operate both freight and passenger trains on a single track with limited capacity.

4.2 BUILD ALTERNATIVE

Figures 2, 3A, 3B, and 4A through 4C illustrate the proposed Build Alternative presented in the EA. Key Project elements of the Build Alternative include:

Station Improvements

- The Gary/Miller Station will be improved with two realigned tracks, two high-level boarding platforms, gauntlet tracks for passing freight trains, two storage tracks, a new station building and additional parking.
- At the Portage/Ogden Dunes Station, two new high-level boarding platforms and additional parking will be constructed. The mainline tracks will be realigned to the north and south of the existing tracks and gauntlet tracks for passing freight trains will be constructed.
- At the Dune Park Station, one new low-level platform to the north and additional parking will be constructed.
- At the Beverly Shores Station, two new low-level boarding platforms will be constructed and the second mainline will be located to the north of the existing mainline.
- 11th Street (Michigan City) Station will be improved and expanded with two high-level boarding platforms and a new station building that will include a multi-level parking structure, a station waiting area, and gauntlet tracks.

Double Tracking – 14.2 miles of a second mainline and five high-speed crossovers will be added in locations where only a single track exists, mostly within existing ROW, between Tennessee Street in Gary to Sheridan Avenue in Michigan City (MP 58.1 to MP 35.3).

Remove/Replace In-Street Tracks – Approximately 1.9 miles of embedded, in-street tracks will be removed from the roadway and two tracks will be reconstructed in a separate, parallel ROW between Sheridan Avenue and just west of Michigan Boulevard in Michigan City (MP 35.3 to MP 33.3).

Bridges – Four additional NICTD bridges will be constructed at the following locations to accommodate the second mainline tracks: over CSX Transportation tracks at MP 54.65, Hobart Road at 54.62 in Gary, over Norfolk Southern Railway (NS) tracks at MP 47.41, and the main entrance road to ArcelorMittal at MP 47.32 in Burns Harbor.

Signal and Overhead Contact System Infrastructure – New signal work from MP 58.8 to MP 58.1 and from MP 33.3 to MP 32.2 (1.8 miles) and overhead contact system infrastructure along the entire proposed Project length (MP 58.8 to 32.2) will be installed.

Crossing Diamonds – One new crossing diamond will be constructed at the CN track at MP 57.6 in Gary. At the Amtrak crossing at MP 34.5 in Michigan City, the existing crossing will be replaced with new crossing diamonds for the two new SSL tracks.

Figure 2. Preferred Alternative

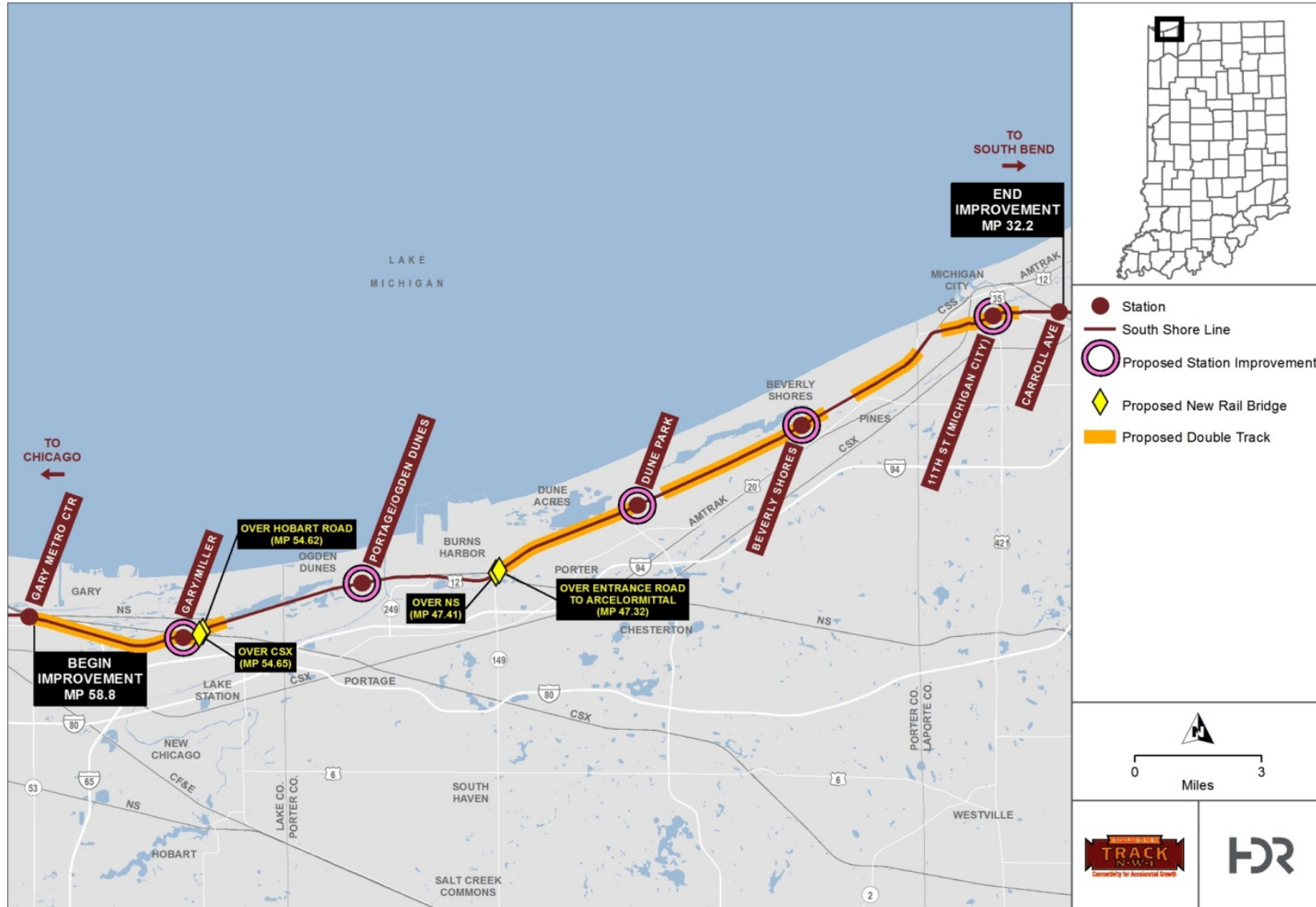


Figure 3. Bailly Design Option 4, MP 46.5 to MP 44 (EA PREFERRED ALTERNATIVE)

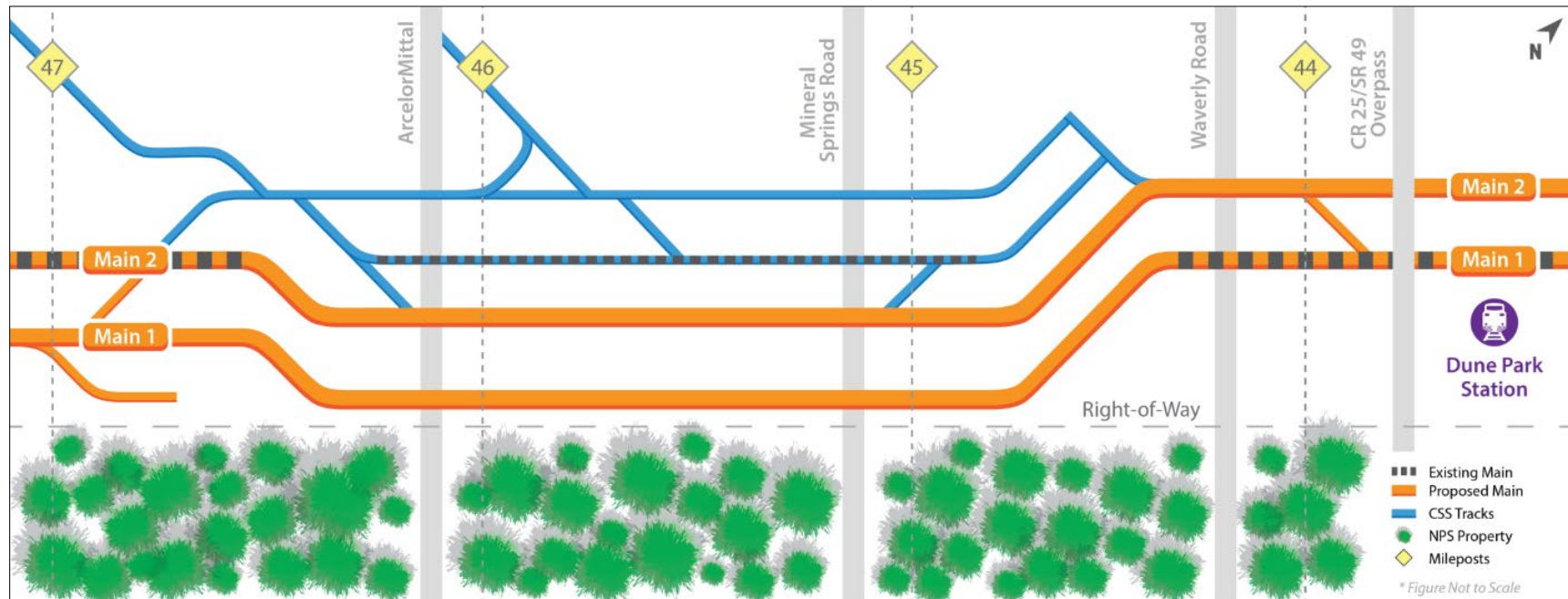


Figure 3B. Bailly Design Option 4, Wilson Freight Siding, MP 49.7 to MP 48.3 (EA PREFERRED ALTERNATIVE)

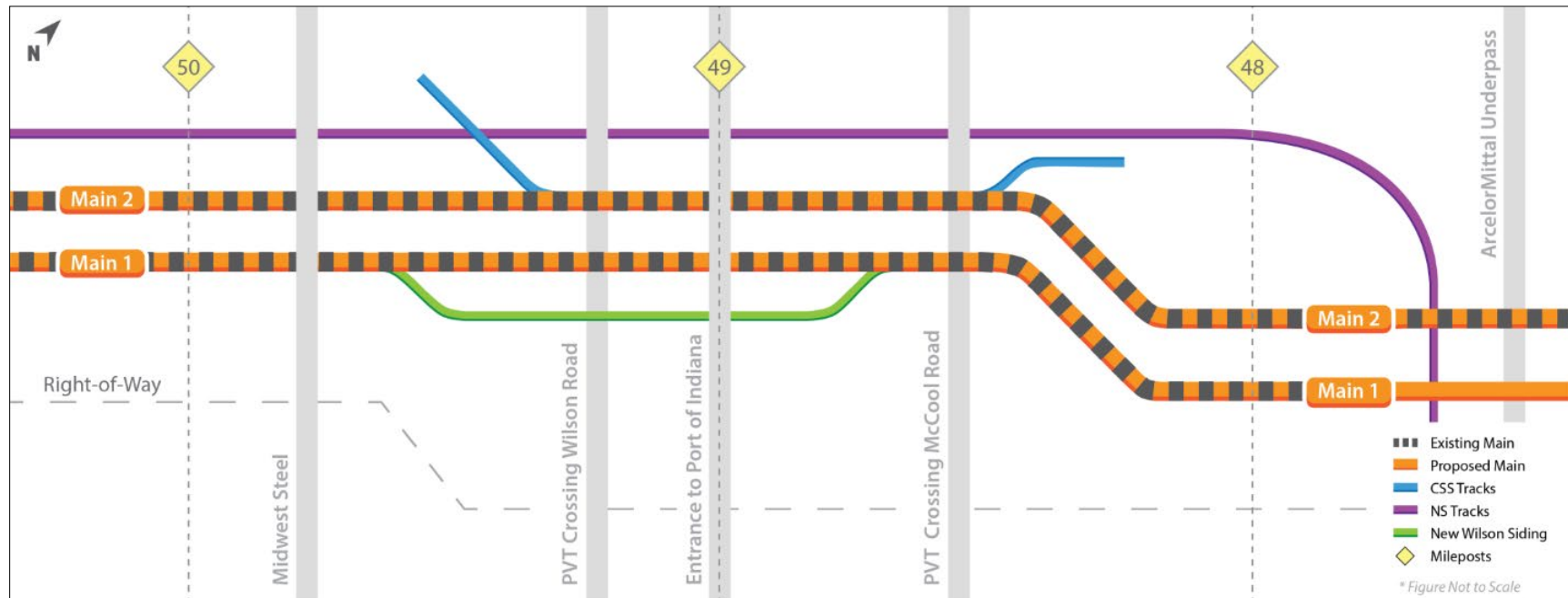


Figure 4A. 10th Street from Sheridan Avenue to Chicago Street, Michigan City (EA PREFERRED ALTERNATIVE)

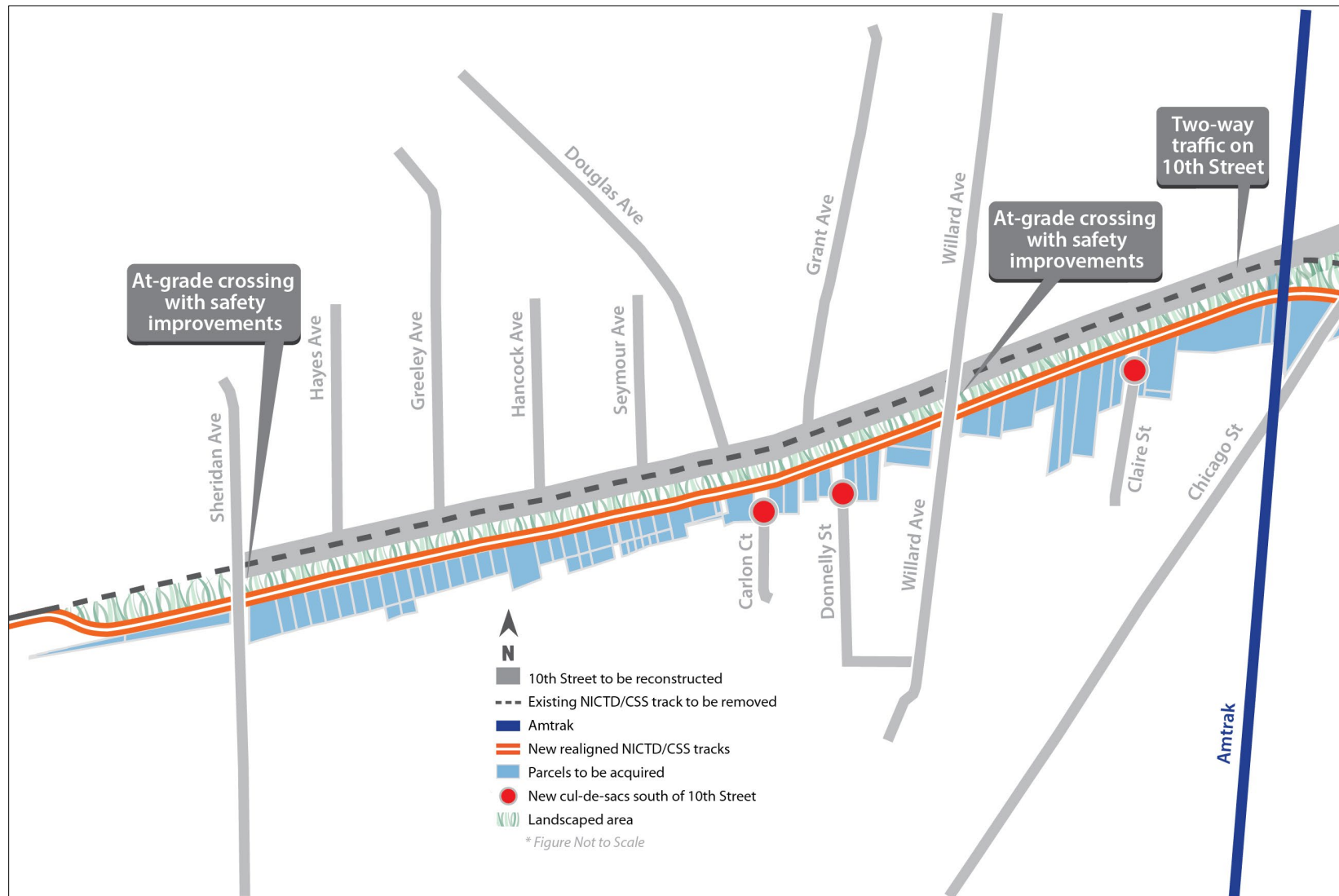
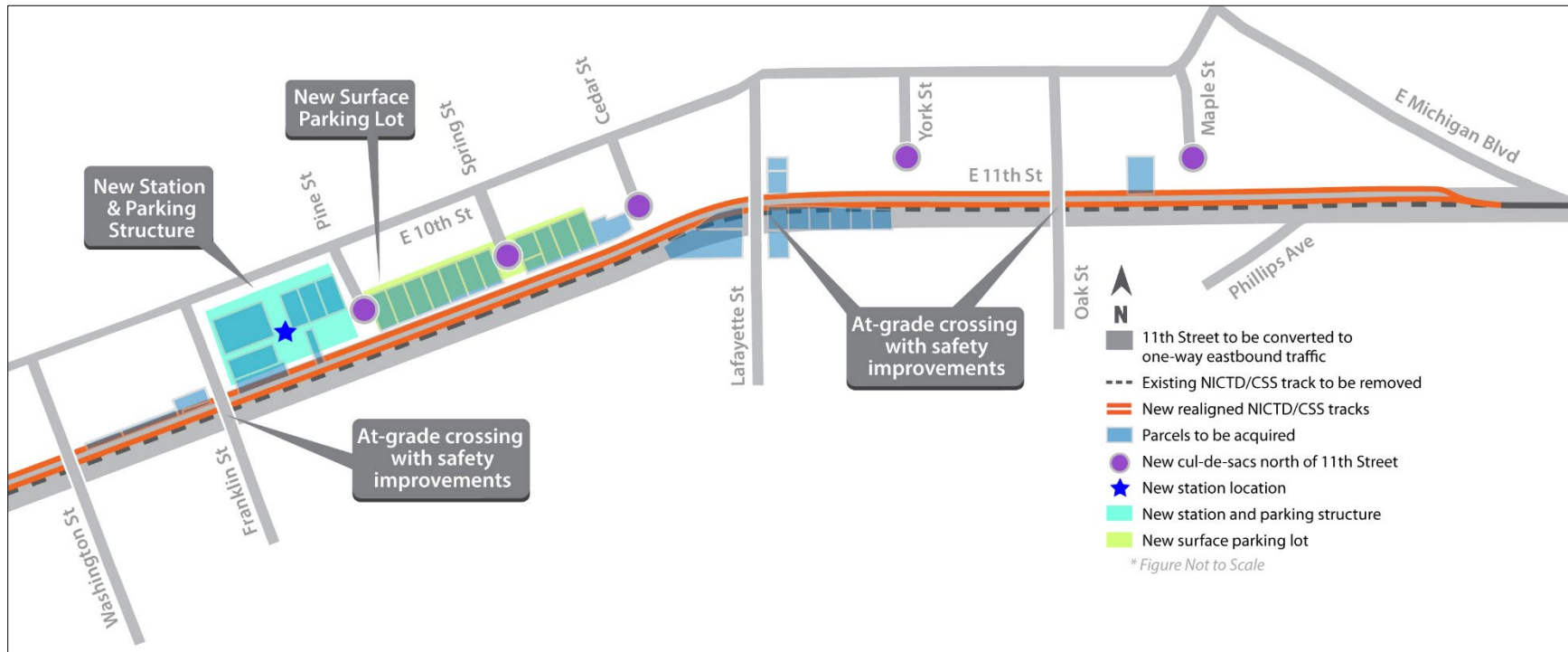


Figure 4B. 11th Street from Chicago Street to Washington Street, Michigan City (EA PREFERRED ALTERNATIVE)



Figure 4C. 11th Street from Washington Street to E. Michigan Boulevard, Michigan City (EA PREFERRED ALTERNATIVE)



4.3 MODIFICATIONS TO PREFERRED ALTERNATIVE

In response to comments received from various agencies after publication of the EA, NICTD proposed modifications to the Preferred Alternative, as described below. In September 2018, NICTD re-evaluated the proposed Project for impacts based on the modifications and submitted a re-evaluation to FTA. FTA concurred with NICTD's re-evaluation findings on September 26, 2018 (see **Appendix G**).

The proposed changes are described below. With most resources, there was no change in impacts. The proposed modifications reduce impacts to right-of-way, wetlands and habitat for two threatened and endangered species.

4.3.1 CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD (CSS)

During the EA 30-day formal comment period, the CSS submitted a letter with its concerns that the EA's Preferred Alternative would have an adverse effect on CSS' freight operations, operational efficiency, and performance in the Bailly area of the proposed Project, and stated that it would not support this alternative. The CSS further stated that of the options studied and presented in the EA, the only option that satisfied their operational concerns in the Bailly area was Design Option 2, which encroached upon National Park Service land to the south (see **Appendix B**).

Since receipt of the CSS letter on October 23, 2017, NICTD, CSS and the Northern Indiana Public Service Company LLC (NIPSCO), all property owners within the Bailly area, have negotiated a series of agreements to convey the necessary property, easements and rights to achieve an alternate design that satisfies all parties and does not affect National Park Service land; these agreements resulted in modifications to the Preferred Alternative.

The negotiations resulted in three agreements between NICTD, CSS and NIPSCO. The following list describes the tenets of the agreements. **Figure 4D** illustrates the subsequent modifications to the Preferred Alternative in the Bailly area.

- NICTD will purchase 8.807 acres of (certain) Bailly yard tracks and property from NIPSCO. The purchase will occur after a Full Funding Grant Agreement (FFGA) or equivalent funding for the DT-NWI Project is obtained. **There is no construction associated with this transaction.**
- CSS agrees to swap the two Bailly south tracks consisting of 7.13 acres for the 8.807 acres purchased by NICTD described above. This will allow for commuter trains to run on the two south tracks, freight trains to run on the two north tracks, and CSS to store trains on the Bailly yard tracks. Further, with this swap, the proposed siding extension at Wilson is unnecessary and wetland impacts would be reduced. There is no impact to the National Park Service land. **The separation of commuter and freight traffic in this manner was included in the EA Preferred Alternative.**
- The CSS will purchase an easement for the wye tracks from NIPSCO. There is an active Resource Conservation and Recovery Act cleanup at the wye track that the U.S. Environmental Protection Agency (USEPA) is monitoring, and NIPSCO will be required to finish, as part of the agreement. CSS will allow NICTD the right to cross the wye tracks to access the existing maintenance of way stub track that NICTD will purchase from NIPSCO as part of the 8.807-acre purchase. **There is no construction associated with these transactions.**



- NICTD will construct the “north siding extension” between mileposts 44 and 46 for CSS and convey this property and track to the CSS (approximately 3.05 acres). **This extension was included in the EA Preferred Alternative.**
- The CSS would withdraw its letter submitted during the EA comment period, and issue a new statement in support of the Project and the revised Preferred Alternative (see **Appendix B**).

In addition to the agreement tenets described above, NICTD and CSS agreed on the following land conveyances during negotiations:

- NICTD and CSS agree to swap property near the Gary (Miller) station. NICTD will convey to CSS a 1.361-acre linear parcel of land generally located south of the existing Miller station building and parking lot, proposed for the new CSX Transportation (CSX) connection track. **The EA Preferred Alternative included this parcel.** NICTD will build the new CSX connection track as part of the proposed Project, and will turn the track and property over to CSS when construction is completed. In exchange, CSS will convey to NICTD the “old CSX connection,” which is a 0.45-acre CSS-owned linear parcel located between the existing NICTD mainline and 7th Avenue (see **Figure 4E**). After NICTD takes ownership, they will remove the track; however, there are no current plans to develop the land. All of the properties that are subject to this transaction are within the environmental survey boundary. **No new construction occurs with this transaction; however, the existing CSX tracks will be removed.** The parcel that CSS will convey to NICTD falls slightly outside of the construction footprint, therefore, NICTD updated the construction footprint to include the entirety of this parcel. Updated plan sheets reflecting the changes are including in **Appendix H**.
- CSS will convey two properties in Michigan City to NICTD. **These properties were included in the EA Preferred Alternative’s construction footprint.** One is a vacant property along 11th Street adjacent to the former First Christian Church (now known as Bride Church) and the other is a small lot on 11th Street between the existing South Shore Line station and the NICTD parking lot.

Figure 4D. Revised Design at Bailly

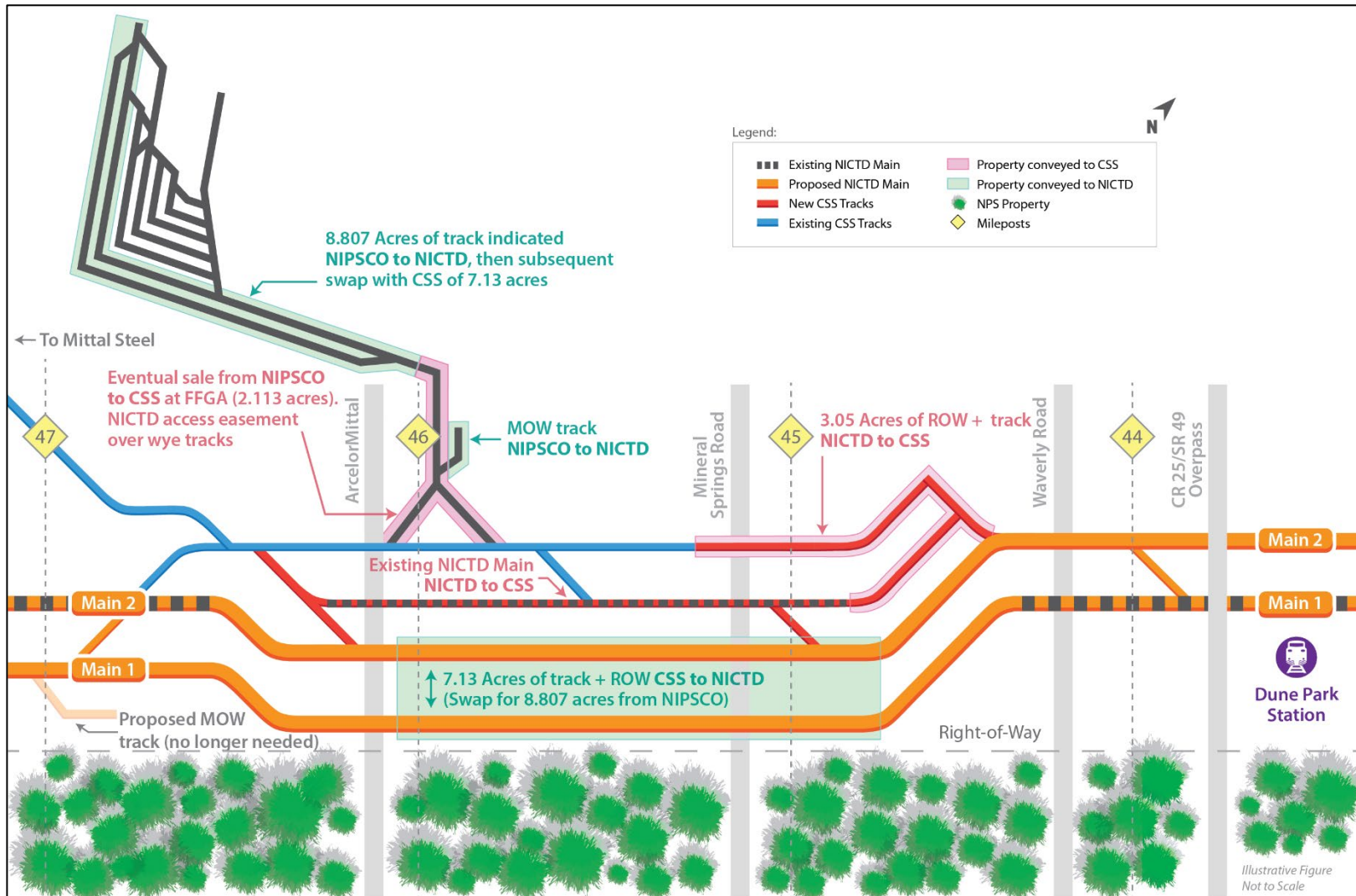
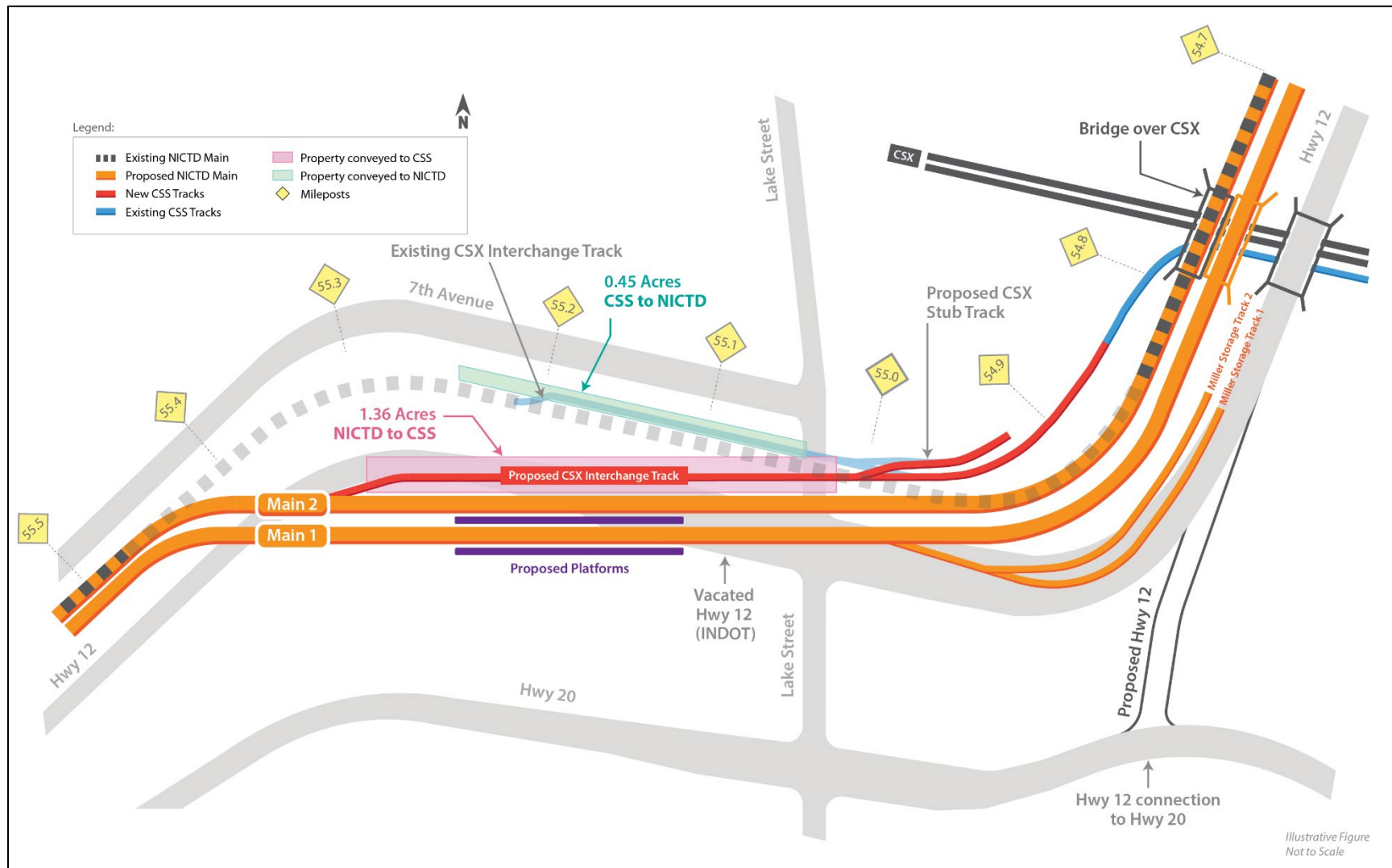


Figure 4E. NICTD/CSS Property Transfer at Gary/Miller





4.3.2 MICHIGAN CITY/GREEN STREET

During discussions with Michigan City that concluded after publication of the EA, Michigan City informed NICTD that closing the Kentucky/11th Street intersection would eliminate the direct route that the City's Public Works vehicles and emergency vehicles use to access the west side of the City. The City requested that NICTD identify an alternate route for these vehicles to use.

The closest and most reasonable east-west road to use is Green Street, between Kentucky Street and Chicago Street, just to the south of the Kentucky/11th Street intersection. NICTD modified the proposed Project and construction footprint to include improvements to Green Street with one 16' travel lane in each direction, curb and gutter, and a five foot sidewalk on each side. The Green Street/Chicago Street intersection will be improved to define the travel ways of the large angled intersection near the Amtrak railroad crossing. **Figure 5** depicts the updated project footprint. As a result of the changes to the construction footprint, FTA revised the Section 106 Area of Potential Effect (APE) assessed effects of the project changes, and prepared a memo of the findings (See **Appendix G**). FTA consulted with SHPO on the findings. The SHPO concurred with FTA's determination that no historic properties would be affected by the proposed modifications on September 14, 2018. See correspondence in **Appendix B**. Further discussion is presented in **Section 8.3**.



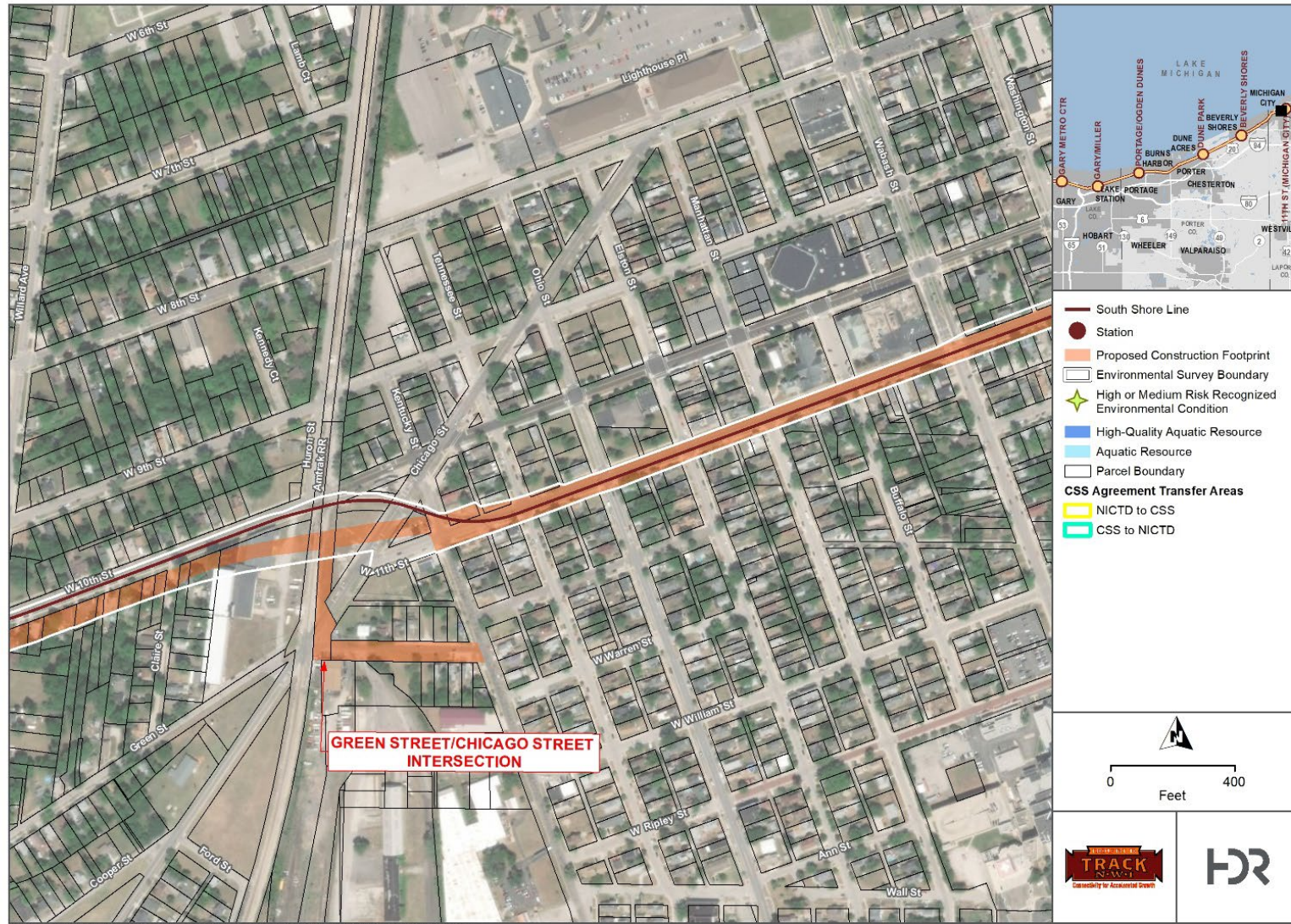
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Figure 5. Green Street Construction Footprint





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5.0 PUBLIC INVOLVEMENT, AGENCY COORDINATION, AND PUBLIC OPPORTUNITY TO COMMENT

The EA, Section 4(f) Evaluation, and Section 106 findings document was made available for public comment from September 21, 2017 through October 23, 2017. The legal Notice of Availability was published in the Northwest Indiana Times, Gary Crusader, and Post Tribune of Northwest Indiana on September 21, 2017. Copies of the document were available for review during this period online on the Project website (www.doubletrack-nwi.com) and in hardcopy format at the following locations: (a) Gary Public Library – Woodson Branch at 501 S. Lake Street, Gary, IN 46403; (b) Gary Public Library – Main Branch at 220 W. 5th Avenue, Gary, IN 46402; (c) Portage Public Library at 2665 Irving Street, Portage, IN 46368; (c) NICTD offices at 33 E. U.S. 12, Chesterton, IN 46304; (d) Michigan City Public Library at 100 E. 4th Street, Michigan City, IN 46360; (e) Westchester Public Library at 200 W. Indiana Avenue, Chesterton, IN, 46304; and (f) FTA Region V offices at 200 W Adams Street, Suite 320, Chicago, IL 60606.

NICTD held two public hearings:

1. Wednesday, October 11, 2017, at the Miller Beach Arts and Creative District, Marshall J. Gardner Center for the Arts (540 S. Lake Street, Gary, IN 46403) from 6:00 PM to 8:00 PM. A total of 92 people signed in at the public hearing.
2. Thursday, October 12, 2017, at the Stardust Event Center (777 Blue Chip Drive, Michigan City, IN 46360) from 6:00 PM to 8:00 PM. A total of 81 people signed in at the public hearing.

Information about the advertising and outreach conducted for the hearings and comment period is included in **Appendix A**.

The public hearings were held in an open house format and included a rolling Microsoft PowerPoint® presentation on a video screen and exhibit boards that described the proposed Project and the EA, Section 4(f) Evaluation, and Section 106 findings. Hearing attendees were invited to speak with NICTD staff to discuss specific issues and ask questions regarding the proposed Project. NICTD provided comment cards to all attendees at the sign-in desk and a court reporter was available to record oral public comments. Multiple copies of the EA, Section 4(f) Evaluation, and Section 106 findings and all EA appendices were available at the hearing for attendees to review. NICTD made the public hearing Microsoft PowerPoint® presentation and the exhibit boards available on the NICTD Project website after the meeting.

Comments were accepted in writing and verbally through a court reporter at public hearings held on October 11 and 12, 2017. Comments were also accepted via e-mail, United States mail, and the Project website through October 23, 2017. Comments from the United States Department of Interior (USDOI) were accepted until November 24, 2017, due to the proposed Project's adverse effects on Section 4(f) resources.

NICTD received 70 comments from agencies, organizations and the public during the comment period. FTA and NICTD have addressed the comments in this FONSI. **Appendices B and C** contain the agency, organization and public comments and responses, respectively.

Written comments were received from the following federal and state regulatory agencies, local agencies, and railroads. These letters and individual responses from FTA, where appropriate, are included in **Appendix B**:



- United States Environmental Protection Agency (USEPA)
- United States Department of Interior (USDOI)
- Indiana Department of Natural Resources, Fish and Wildlife Division (IDNR)
- Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (DHPA)
- Town of Ogden Dunes, Indiana
- Town of Chesterton, Indiana
- Commuter Rail Division of the Regional Transportation Authority (Metra)
- Chicago South Shore & South Bend Railroad (CSS)

Written comments were also received from other organizations. These letters are included in **Appendix C**. Responses to these comments are included in the comment/response matrix in **Appendix C**.

- Save the Dunes
- National Parks Conservation Association (NPCA)

Key concerns raised during this comment period include:

- Existing and future noise
- Potential for increases in freight traffic due to the proposed Project improvements
- Potential operational impacts to freight services
- Station and platform locations
- Universal/ADA access at the Gary/Miller Station
- Traffic impacts to Lake Street (Gary) between the existing U.S. 12 and U.S. 20 after implementation of the proposed Project and the relocation of U.S. 12 by INDOT
- Impacts of the additional parking, traffic, and pedestrian access at the Portage/Ogden Dunes Station
- Potential errors in the identification of certain plant species, including state threatened or endangered species

6.0 NEW INFORMATION AND PROJECT REFINEMENTS SINCE ISSUANCE OF THE ENVIRONMENTAL ASSESSMENT

NICTD has continued to refine the proposed Project in response to comments received during the EA public comment period and afterwards.

Comments received from IDNR and two non-profit organizations, Save the Dunes and the NPCA, indicated potential errors in the identification of certain plant species, including those that are considered threatened or endangered. NICTD thoroughly re-examined its floristic inventory findings and threatened and endangered species conclusions. As a result, several species were changed and the list of state threatened or endangered plant species was modified. The number of state threatened or endangered plant species remains at seven. An erratum to the EA has been prepared to address these changes. See **Appendix D** for a more thorough description of these changes.

NICTD continued coordination with the CSS and NIPSCO to address concerns regarding operational impacts to CSS in the area known as Bailly. After considerable discussion, the parties negotiated a series of agreements to convey the necessary property, easements and rights to achieve a new alternate design that satisfies all parties and does not affect National Park Service land. See **Section 4.3.1** for details

regarding these negotiations. As a result of these agreements, on August 10, 2018 CSS sent a retraction letter to their objection letter that was submitted September 23, 2017 (see **Appendix B**).

NICTD's on-going collaboration with the City of Michigan City determined that Green Street between Kentucky and Chicago Streets must be improved in order to better accommodate City services and emergency vehicles after the proposed Project is constructed. The changes resulted in an expansion of the proposed Project's construction footprint and the Section 106 Area of Potential Effect (APE).

The design modifications in the Bailly area resulted in a slight decrease in the acreage of wetlands to be filled. It also decreased the area to be cleared that contained suitable habitat for two threatened and endangered species. The changes to the proposed Project reduced ROW acquisitions by seven acres and required temporary easements by two acres. These changes have a net reduction in the proposed Project cost of approximately \$3 million. **Table 1** provides a summary of changes to impacts as a result of project modifications.

Table 1. Summary of Re-Evaluation Resource Impacts

| Resource | EA Identified Impact? | Change in Impacts? | Post-EA Impact |
|---|------------------------------|-----------------------------|-------------------------------------|
| Transportation | Yes | No | No change |
| Land Acquisition/Displacement | Yes 158 properties | Yes -3 properties | Reduction 155 properties |
| Land Use and Economic Development | No | No | No change |
| Neighborhoods, Communities and Businesses | Yes | No | No change |
| Historic, Archaeological and Cultural Resources (Section 106) | Yes | No | No change |
| Visual and Aesthetics | Yes | No | No change |
| Noise | Yes | No | No change |
| Vibration | Yes | No | No change |
| Hazardous/Regulated Materials | No | No | No change |
| Biological Resources | Yes 29.3 ac | Yes - 1.3 ac | Reduction 28.0 ac |
| Water Resources | Yes 5.7 ac | Yes - 0.3 ac | Reduction 5.4 ac |
| Section 6(f) Resources | No | No | No change |
| Environmental Justice | No | No | No change |
| Safety and Security | No | No | No change |
| Indirect and Cumulative Impacts | No | No | No change |
| Air Quality | No | No | No change |
| Farmland | No | No | No change |
| Energy | No | No | No change |
| Navigable Waters | No | No | No change |
| Coastal Zone Management | No | No | No change |
| Geology, Soils and Karst | No | No | No change |
| Section 4(f) Resources | Yes | No | No change |

7.0 MITIGATION MEASURES TO MINIMIZE HARM

The EA describes the proposed Project, its likely effects, and potential mitigation measures to avoid or minimize those effects. **Appendix E** describes the mitigation commitments that FTA requires of NICTD as a condition of FTA's finding that the proposed Project will have no significant impact. These mitigation commitments are based on the mitigation measures identified in the published EA, and described in the Section 106 Memorandum of Agreement (MOA) (**Attachment F**). Satisfaction of the mitigation commitments will be a condition of any future FTA grant for the proposed Project.

8.0 ENVIRONMENTAL DETERMINATIONS AND FINDINGS

8.1 NEPA FINDING

FTA served as the lead federal agency under NEPA for the proposed Project. NICTD will construct the proposed Project in accordance with the design features and mitigation measures presented in the EA, Section 4(f) Evaluation, and Section 106 findings. NICTD prepared the EA, with FTA oversight, in compliance with NEPA, 42 USC § 4331, et. seq., and 23 CFR § 771.121. FTA has made an independent evaluation of the EA and Section 4(f) Evaluation.

After reviewing the EA and supporting documents, including public comments and responses made thereto, FTA finds that the proposed Project will result in temporary and permanent effects on some resources as identified in **Table 2**. Mitigation measures that NICTD will implement to avoid or minimize effects on these resources are described in **Appendix E**.

Table 2. Permanent and Temporary Effects of the Proposed Project

| Resource Appendix E - Section | Appendix E - Mitigation Commitment | Temporary Effects During Construction? (Yes/No) | Permanent Effects? (Yes/No) |
|---|---------------------------------------|--|--------------------------------|
| Transportation Section 3.0 | 1 - 6 | Yes | Yes |
| Land Acquisition/Displacement Section 4.1 | 7 - 8 | Yes | Yes |
| Land Use and Economic Development Section 4.2 | 9 | No | No |
| Neighborhoods, Communities and Businesses Section 4.3 | 10 - 12 | Yes | Yes |
| Historic, Archaeological and Cultural Resources (Section 106) Section 4.4 | 13 | Yes | Yes |
| Visual and Aesthetics Section 4.5 | 14 - 15 | Yes | Yes |
| Noise Section 4.6 | 16 - 18 | Yes | Yes |
| Vibration Section 4.7 | 19 - 20 | Yes | Yes |

| Resource Appendix E - Section | Appendix E - Mitigation Commitment | Temporary Effects During Construction? (Yes/No) | Permanent Effects? (Yes/No) |
|--|---------------------------------------|--|--------------------------------|
| Hazardous/Regulated Materials Section 4.8 | 21 | Yes | No |
| Biological Resources Section 4.9 | 22 - 27 | Yes | Yes |
| Water Resources Section 4.10 | 28 - 33 | Yes | Yes |
| Section 6(f) Resources Section 4.11 | n/a | No | No |
| Environmental Justice Section 4.12 | 34 | Yes | No |
| Safety and Security Section 4.13 | n/a | Yes | No |
| Indirect and Cumulative Impacts Section 4.14 | n/a | Yes | No |
| Air Quality Section 4.15a | 36 | Yes | No |
| Farmland Section 4.15b | n/a | No | No |
| Energy Section 4.15c | n/a | No | No |
| Navigable Waters Section 4.15d | n/a | No | No |
| Coastal Zone Management Section 4.15e | 37 | No | No |
| Geology, Soils and Karst Section 4.15f | 38 | Yes | No |
| Section 4(f) Resources Section 4.15g | 39 - 41 | Yes | Yes |

Pursuant to 23 CFR § 771.121, FTA finds that the proposed Project with mitigation to which NICTD has committed will have no significant impact on the environment. The record provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

8.2 FEDERAL UNIFORM RELOCATION ACT COMPLIANCE

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970 (42 U.S.C. 61) and its implementing regulations, 49 CFR § 24, ensure the fair and equitable treatment of persons whose real property is acquired or who are displaced as a result of a federal or federally assisted Project.

It is anticipated that the proposed Project will require the acquisition of property and temporary construction easements. A total of 80 residential properties; 62 commercial properties; 6 transportation, communication, or utility properties; and 7 municipal easements are required. In addition, temporary construction easements from 41 properties will be required. See **Appendix E, Section 4.1**.



As design progresses, property effects, including acquisitions and temporary and permanent easements, will continue to be refined. NICTD will use, to the greatest extent possible, existing NICTD ROW and acquired properties for construction activities, staging, equipment, and materials storage in order to minimize effects.

NICTD will conduct the acquisition process in accordance with the URA. It is anticipated that comparable decent, safe, and sanitary housing will be available on the real estate market to relocate those who will be displaced from their residences. However, if comparable housing cannot be offered, last-resort housing assistance will become available to displaced persons. Relocation planning and services will be provided to businesses, as explained in the EA.

8.3 SECTION 106 FINDING

In compliance with Section 106 of the National Historic Preservation Act of 1966 and in accordance with the Criteria of Adverse Effect described in 36 CFR § 800.5, FTA determined that the proposed Project will have an Adverse Effect on 27 historic resources, resulting from physical demolition and permanent incorporation. These historic resources include properties individually eligible or listed in the National Register of Historic Places (NRHP); the Elston Grove Historic District, Elston Grove Historic District Expansion, and Franklin Street Commercial Historic District; and contributing resources to these historic districts. The specific historic resources that will be adversely affected are included in **Appendix F, Attachment B**.

The Indiana State Historic Preservation Office (SHPO) concurred with these determinations on August 15, 2017. Treatment measures to minimize and mitigate adverse effects on historic properties were developed based on input from SHPO and Section 106 consulting parties. These mitigating treatment measures are incorporated in the executed MOA (dated December 8, 2017) between FTA, SHPO, and NICTD, included as **Appendix F**.

Additional consultation under Section 106 occurred following the identification of design modifications necessary at Green Street in Michigan City as described above in **Section 4.3.2**. The SHPO concurred with FTA's determination that no historic properties would be affected by the proposed modifications on September 14, 2018. See correspondence in **Appendix B**. See **Appendix G** for the analysis of the proposed changes.

The proposed Project will have an adverse effect on multiple historic properties; however, the effects, when mitigated through the stipulations and treatment measures outlined in the MOA, will not be significant. See **Appendix E, Section 4.4**.

Based on the historic resources analysis included in the EA as well as the consultation with SHPO, and the other Section 106 consulting parties, **FTA finds, in accordance with 36 CFR § 800, that the Section 106 coordination and consultation requirements for the proposed Project have been fulfilled.**

8.4 ENDANGERED SPECIES ACT OF 1973 (ESA) FINDINGS

The ESA intends to protect threatened and endangered species and the ecosystems on which they depend (16 USC §§ 1531-1544). The ESA requires a federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in direct mortality or destruction or adverse modification of critical habitat of listed species (50 CFR

§ 402). This requirement is fulfilled under Section 7 of the ESA by review of the proposed actions and consultation with the appropriate agency responsible for the conservation of the affected species (16 USC § 1536 *et seq.*). If necessary, mitigation is required to avoid jeopardizing listed species or their habitat.

Section 7 of the ESA requires all federal agencies to consult with the United States Fish and Wildlife Service (USFWS) for fresh-water species and inland flora and fauna (50 CFR § 402). USFWS determined that three federally listed species had the potential to occur in the proposed Project area: Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*). No federally listed plant species were identified in the proposed Project Area.

IDNR identified three additional state-listed species potentially present in the area: Kirtland's snake (*Clonophis kirtlandii*), spotted turtle (*Clemmys guttata*), and northern leopard frog (*Lithobates pipiens*).

8.4.1 AMPHIBIANS AND REPTILES

Twenty-eight acres of suitable habitat for the federally-listed eastern massasauga rattlesnake and the state-listed Kirtland's snake will be cleared during construction activities. Four acres of suitable habitat for the spotted turtle and 4.7 acres of suitable habitat for northern leopard frog, both state listed species, will be cleared. See **Appendix E, Section 4.9 – Threatened and Endangered Species: Amphibians and Reptiles**. NICTD will implement the following mitigation measures to avoid and minimize adverse effects on these four species:

- 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.

8.4.2 INDIANA BAT AND NORTHERN LONG-EARED BAT

USFWS issued the Revised Programmatic Biological Opinion (Programmatic B.O.) for Transportation Projects in the Range of the Indiana Bat and Northern Long-Eared Bat and the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat Avoidance and Minimization Measures in December 2016. After reviewing the DT-NWI Bat Habitat Assessment in January 2017, the USFWS Field Office agreed that there was "low to moderate" suitable habitat for the two bat species. The USFWS Field Office also indicated there are no known maternity roost trees in the proposed Project Area. No individual coordination with USFWS with respect to bats was necessary, nor were acoustic surveys needed. USFWS advised NICTD to follow the avoidance and minimization measures in the range-wide programmatic consultation issued in December 2016.

This proposed Project is covered under the Programmatic B.O. as a project “Not Likely to Adversely Affect, with Avoidance and Minimization Measures” for the two bat species. As such, NICTD will implement the following avoidance and minimization measures. See also **Appendix E, Section 4.9 – Threatened and Endangered Species: Indiana Bat and Northern Long-eared Bat:**

- No tree clearing can occur between April 1 and December 31. These areas will be identified in the design plans and a special provision will be included in the specifications.
- NICTD will ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all environmental commitments contained in this FONSI.
- NICTD will ensure that contract plans indicate that temporary lighting must be directed away from suitable habitat during the active season (April 1 – December 31).
- For permanent lighting near moderate-quality habitat, NICTD will use downward-facing, full cut-off lens lights, and direct lighting away from suitable habitat when installing new or replacing existing permanent lights.
- NICTD will ensure that tree removal is limited to that specified in proposed Project plans or as developed in the wetland and natural resource mitigation plan by installing bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits.

8.4.3 PLANT SPECIES

The IDNR search of the Natural Heritage Data Center and their June 2016 Environmental Review identified 31 threatened or endangered plant species that are previously known to occur within the general area. Seven of the 31 state-listed plant species were reported in the EA to be observed in the area during field surveys. See also **Appendix D - EA Errata and Appendix E, Section 4.9 – Threatened and Endangered Species: State Listed Plant Species.**

Field surveys were conducted to assess the potential habitat suitability for both federally- and state-listed species. During the survey periods (late summer/fall 2016 and early spring 2017), many plants were not in flower or fruit, and were identified based on leaf, stem and/or bark characteristics only. A total of 502 plants were identified to the species level, and an additional 21 were identified to the genus level. Direct observations of some listed species were made during fieldwork, which supplemented information that was available in the literature and obtained through agency consultation.

Save the Dunes submitted comments on the EA, indicating potential errors in the identification of certain plant species, including state threatened or endangered species, based on their extensive regional knowledge of the flora within the Indiana Dunes National Lakeshore and the northwest Indiana region. The NPCA reiterated these concerns, and the IDNR requested more information about the report’s finding of the state-expatriated Russet buffalo-berry (*Shepherdia canadensis*).

NICTD and FTA re-examined the findings of the floristic inventory and threatened and endangered species plant survey that was conducted for the proposed Project; the qualifications of the individuals involved in the survey; survey methods; and agency review protocol. FTA finds that the surveys were conducted by professional staff with the proper credentials and according to standards for such work, and that regulatory agency reviews of the draft reports by NPS, IDNR, USFWS and U.S. Army Corps of Engineers (USACE) were conducted in January and February 2017.

NICTD’s re-examination of the findings included consultation with the IDNR State Botanist on November 6, 2017 regarding the Russet buffalo-berry and the Forked bluecurls. The State Botanist indicated that the

specimen believed to be Russet buffalo-berry should be considered to be either a privet (*Ligustrum sp.*) or a species/hybrid of honeysuckle (*Lonicera sp.*) Neither of these is considered state-listed species. This has been changed in the master list of species documented for the proposed Project. The State Botanist further indicated that the specimen believed to be Forked bluecurls should be considered to be a young sprout of purple loosestrife (*Lythrum salicaria*). This is not considered a state-listed species. This change has been made in the master species list.

Based on a thorough re-examination of the floristic inventory reports the following corrections have been made regarding the state-listed plant species observed within the Project Area through the erratum contained in **Appendix D**. Additionally, the erratum corrects other species identifications or errors that are not considered threatened or endangered. The number of state-listed plant species that will likely be unsettled by ground disturbance remains at seven, although the actual species of plant has changed somewhat.

Remove:

- Hairy golden aster (*Chrysopsis villosa*)
- Russet buffalo-berry (*Sherpherdia Canadensis*)
- Forked bluecurls (*Trichostema dichotomum*)
- Skinner's false foxglove (*Agalinis skinneriana*)

Add:

- Kalm's St. John's-wort (*Hypericum kalmianum*)
- Needle-pod rush (*Juncus scirpoides*)
- Dwarf ginseng (*Panax trifolius*)
- White Pine (*Pinus strobus*)

FTA finds that the order of magnitude of the errors or change in species identifications is low and does not change the overall results; that is, the identification of the inaccuracies and resulting corrections do not lead to significant impacts not previously identified during NEPA analysis.

NICTD will implement the following avoidance and minimization measures, to the extent practicable:

- NICTD will coordinate with IDNR and NPS to either relocate listed plant species prior to disturbance or plant new vegetation. This effort will be part of the overall wetland and natural resource mitigation plan that will be prepared as part of the Section 404 individual permit to also mitigate for adverse effects on wetlands.
- NICTD will utilize local area expert botanists during the development and implementation of the relocation plan. This may include conducting additional floristic surveys if deemed appropriate.
- NICTD will continue coordination with the IDNR staff at Indiana Dunes State Park and at the Division of Nature Preserves during final design and construction.

Additional site-specific stipulations may be imposed by regulatory agencies during the permitting phase of the proposed Project. NICTD will comply with all such stipulations and will continue consultation with USFWS and IDNR, as appropriate, to avoid and/or minimize effects to endangered and threatened species.

With the mitigation commitments described above and presented in Appendix E, FTA finds that the proposed Project meets the substantive and procedural requirements of the Endangered Species Act.

8.5 WETLANDS FINDING

USDOT seeks to assure the protection, preservation, and enhancement of the nation's wetlands to the fullest extent practicable during the planning, construction, and operation of transportation facilities and projects (DOT Order 5660.1A). This is consistent with Executive Order 11990, requiring that new construction located in wetlands be avoided unless there is no practicable alternative to the construction and that the proposed Project include all practicable measures to minimize harm to wetlands that may result from such construction, and with Section 404 of the Clean Water Act (CWA)(33 U.S.C. 1251 et seq). Under Section 404, the United States Army Corps of Engineers (USACE) regulates discharges of dredged or fill materials into waters of the United States, including wetlands (33 CFR § 323). USACE requires that adverse effects on wetlands be avoided or minimized to the extent practicable (40 CFR part 230).

In accordance with USACE's direction, all wetlands in the proposed Project corridor were considered jurisdictional waters of the United States and subject to regulation by USACE. Even after undertaking all practicable avoidance measures, the proposed Project will adversely affect 46 of the 76 wetlands found in the proposed Project corridor, accounting for 5.4 acres of the total 43.01 acres identified. Of these, 4.42 acres will be permanently filled. The remaining 0.62 acre will be temporarily affected. Wetlands will be directly affected to create ballast for the track, service roads, and temporary construction access. The majority of the wetlands are narrow, linear, and run parallel to the proposed Project. Approximately 4.8 acres of the anticipated affected wetlands are considered high quality. In addition, the proposed Project will require in-stream work in 18 streams, for a total of 1,117 linear feet. Construction work primarily includes extending or widening existing culverts, or constructing new culverts. See also **Appendix E, Section 4.10 - Water Resources: Wetlands and Streams.**

Direct, adverse effects on wetlands were minimized substantially by reducing the construction grading footprint throughout the entire proposed Project corridor. **Appendix E** lists measures that will be undertaken to further minimize and mitigate adverse effects on wetlands and streams including:

- NICTD will develop a wetland and natural resource mitigation plan to create, restore, and enhance wetlands and hydrology within the adjacent Indiana Dunes National Lakeshore. The wetland and natural resource mitigation plan will be developed in consultation with National Park Service (NPS), USACE, IDNR and Indiana Department of Environmental Management (IDEM) and submitted as part of the Section 404 individual permit application.
- Erosion and sediment control plans that incorporate BMPs to avoid or minimize construction-related effects. These plans will be developed as part of the National Pollutant Discharge Elimination System permit required under the Clean Water Act.

To provide a preliminary quantification of potential indirect impacts to wetlands, NICTD overlaid the National Wetlands Inventory (NWI) with the Project's construction footprint and the delineated wetlands. While NICTD understands 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 nearby wetland complexes. The results indicate that of the 5.4 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 3).

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 3. NWI Wetlands in Construction Footprint

| Wetland Type | Cowardin Class | Acres in Construction Footprint |
|----------------------------|----------------|---------------------------------|
| Freshwater Emergent | PEM1F | 0.013 |
| Riverine | R5UBFx | 0.029 |
| Riverine | R5UBFx | 0.014 |
| Riverine | R5UBFx | 0.023 |
| 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 BMPs (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. These mitigation measures are detailed in **Appendix E**.

The wetland and natural resource mitigation plan described above will mitigate for the direct impacts caused by the Project and also establish longer-term strategies that not only protect adjacent wetlands from indirect impacts, but enhance their functions. NICTD has committed to working with USACE, NPS, IDNR and IDEM to develop this mitigation plan as part of the Section 404 individual permit.

With the wetlands-related mitigation commitments described in Appendix E, including a commitment to comply with permit conditions to be determined in consultation with USACE, FTA finds that the proposed Project satisfies the requirements of DOT Order 5660.1(a), Executive Order 11990, and Section 404 of the CWA.

8.6 FLOODPLAINS FINDING

NICTD evaluated potential effects on floodplains as a result of the proposed Project, in accordance with Indiana's code for Floodplain Control and Floodplain Management and Executive Order 11988. Executive Order 11988 requires federal agencies to avoid to the extent possible the long- and short-term adverse effects associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.



Permanent adverse effects on three floodplains are anticipated from 1) the construction of a new track and extension of an existing culvert in the Bailly segment (MP 44.4–44.6); 2) the construction of a new track on the north side of the existing track (MP 37.5–37.6) and the repair of the headwalls and wing walls of the existing culvert for Brown Ditch; and 3) the construction of a new track on either the north or south side of the existing track and the enlargement of the existing culvert for Kintzele Ditch (MP 36.0–36.3). The proposed Project will result in the potential filling of approximately 2.02 acres of floodplain. See also **Appendix E, Section 4.10 - Water Resources: Floodplains and Floodways.**

NICTD will mitigate the anticipated adverse effects, including the design of structures in accordance with the IDEM and IDNR permit requirements and submittal of permit applications to local and state authorities. NICTD will follow conditions specified in the permits and erosion control plans will be developed as part of the construction documents. Additionally, work proposed in the floodplain will be conducted with every effort to minimize any adverse effects.

Preliminary analyses determined there are no practical alternatives that will not cause any adverse effects on floodplains. With the mitigation commitments described above and in **Appendix E** and compliance with local and state permit requirements, **FTA finds that the DT-NWI Project will have no significant impacts on 100-year floodplains or floodways.**

8.7 ENVIRONMENTAL JUSTICE FINDING

Executive Order 12898 provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and/or low-income populations.” A disproportionately high and adverse effect on minority or low-income populations is defined as an adverse effect that: (a) is predominantly borne by a minority population and/or a low-income population; or (b) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population (USDOT Order 5610.2(a)).

Based on the analysis contained in the EA and the mitigation commitments made by NICTD, the proposed Project will not result in adverse effects on environmental justice populations. See also **Appendix E, 4.12: Environmental Justice.**

As a result, **FTA finds that the DT-NWI Project will not result in disproportionately high and adverse effects on Environmental Justice populations Project wide.**

8.8 AIR QUALITY CONFORMITY FINDING

The Clean Air Act (CAA) (42 U.S.C. §7401 et seq.) and its associated regulations (40 CFR § 50) are the basic federal statutes and regulations governing air pollution. The Transportation Conformity Rule (40 CFR § 93, Subpart A) requires that projects that are developed, funded, or approved by USDOT and by metropolitan planning organizations or other recipients of federal funds demonstrate conformity with the State Implementation Plan (SIP) developed pursuant to the CAA. A determination of conformity is made by the metropolitan planning organization and USDOT.

The proposed Project is identified in the Fiscal Year 2018–2021 Northwest Indiana Regional Planning Commission transportation improvement program (TIP) under ID # 1700529, 1700594, and 1700620. As this TIP is amended and TIPs for future years are developed, additional funding will be added to support



construction of the proposed Project. The proposed Project is also within the fiscally constrained 2040 Comprehensive Regional Plan. On July 3, 2017, the Federal Highway Administration and FTA determined that NIRPC's amendment to the 2040 Comprehensive Regional Plan and TIP conforms to the transportation-related requirements of the 1990 Clean Air Act Amendments. These findings were in accordance with 40 CFR § 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans." The proposed Project's design and scope are consistent with the proposed Project information used for the TIP conformity analysis; therefore, **FTA finds that the proposed Project conforms to the existing TIP and the transportation-related requirements of the 1990 Clean Air Act Amendments.** See also **Appendix E, Section 4.15a: Air Quality.**

8.9 SECTION 4(F) FINDING

Section 4(f) of the USDOT Act of 1966 (49 USC § 303) is a national policy that states that the Secretary of Transportation may not approve transportation projects that use publicly owned parks, recreation areas, wildlife and waterfowl refuges, or any significant historic site unless a determination is made that there is no prudent or feasible alternative to using that land, and that all possible planning has been done to minimize harm.

The existence of potential Section 4(f) resources was evaluated in the EA and Section 4(f) Evaluation. The proposed Project will result in a Section 4(f) use of the Dunes Kankakee Trail – Porter Brickyard Segment and the Calumet Trail. The use of both trails will have a *de minimis* impact and would not adversely affect the features, attributes, or activities of the Dunes Kankakee Trail or the Calumet Trail that qualify the trails for protection under Section 4(f). Confirmation of this finding from the Officials with Jurisdiction for each resource is included in **Appendix B.**

In addition, the proposed Project will result in the permanent incorporation of 27 historic resources as identified during the Section 106 consultation process including, but not limited to, the historic South Shore Station, the First Christian Church, the Elston Grove and the Franklin Street Commercial Historic Districts, and the Elston Grove Historic District Expansion. To mitigate these effects, NICTD will implement the measures identified in the executed MOA (see **Appendix F**) between FTA, SHPO, and NICTD. See also **Appendix E, Section 5.0: Section 4(f) Resources.**

There are no feasible or prudent alternatives to avoid the use of historic properties. The attached executed MOA between FTA, SHPO, and NICTD, along with the Section 4(f) Avoidance and Least Overall Harm analyses included in the EA, documents that all possible planning to minimize harm to these historic resources has been taken. On October 23, 2017, SHPO indicated that it "does not object to the Section 4(f) Determination Conclusions stated in the (EA) Section 5.10." The DOI indicated on November 16, 2017 that it concurred with FTA's determinations as well, and that "if the MOA is fully executed and included in the environmental decision document, the Department will have no objection to the 4(f) evaluation and concur with the measures to mitigate the adverse effects of the project" (see **Appendix B**). Taking into account the mitigation commitments made by NICTD, **FTA finds that the proposed Project is in compliance with the Section 4(f) statute 49 USC § 303 and 23 USC § 138 and the implementing regulations under 23 CFR § 774.**



Double Track Northwest Indiana Project
Finding of No Significant Impact
November 1, 2018

9.0 CONCLUSION

Based on the EA and its associated supporting documents, FTA finds that, pursuant to 23 CFR § 771.121, there are no significant impacts on the environment associated with the development and operation of the proposed Project. Preparation of an Environmental Impact Statement is not warranted.

Kelley Brookins
Regional Administrator
Federal Transit Administration, Region V

Date



Double Track Northwest Indiana Project

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APPENDICES

- A. EA Notice of Availability and Invitation to Comment
- B. Agency Comments and Responses
- C. Public Comments and Responses
- D. EA Errata
- E. Mitigation Commitments
- F. Section 106 Memorandum of Agreement
- G. NEPA Re-Evaluation dated September 14, 2018
- H. 30% Plan Sheets for Modifications at Bailly



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