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Office of Proceedings
July 20, 2021
Part of
Public Record

July 20, 2021

CSXT/PAR-15

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: **STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company**

Dear Ms. Brown:

At the request of a party to this proceeding, Applicants¹ are re-designating certain information in the Amended and Supplemented Application from Highly Confidential to Confidential. Enclosed is an updated public version of the NSR Settlement Agreement, included in Exhibit 22-C of the Amended and Supplemented Application, which reflects the updated confidentiality designations. Specifically, Applicants are re-designating Article X (page numbers APP-437 – APP-438) and Appendix 1 (page number APP-441) of the NSR Settlement Agreement from Highly Confidential to Confidential.

The Highly Confidential version of the NSR Settlement Agreement that Applicants filed under seal on July 1, 2021 with the Amended and Supplemented Application has not been changed.

Please contact me with any questions.

¹ The acronyms and defined terms used in this letter are the same as those used in the Amended and Supplemented Application filed in the above-captioned proceeding.

Cynthia T. Brown
July 20, 2021
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Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca
Peter W. Denton
Sally Mordi
*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer
All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

ATTACHMENT TO AMENDED AND SUPPLEMENTED
VERIFIED STATEMENT OF MR. SEAN PELKEY

NSR Settlement Agreement

Settlement Agreement

CSX Transportation, Inc. (“CSX”) enters this Settlement Agreement with Norfolk Southern Railway Company (“NSR”) to resolve issues between the parties regarding 1) the proposed acquisition by CSX and CSX Corporation of Pan Am Systems, Inc. (“Pan Am”) and 2) the resulting acquisition of Pan Am’s interest in Pan Am Southern LLC (“PAS”) (the “Transaction”).

CSX intends to file an Application seeking authorization from the Surface Transportation Board (“STB”) for the Transaction. In connection with its Application for STB authority, CSX will advise the STB that it has reached the Settlement Agreement set out herein, submit a copy of this Settlement Agreement to the STB, and request that the Settlement Agreement be established as a condition to the STB’s approval of the Transaction. Based on this Settlement Agreement, NSR will support CSX’s STB Application and its implementation consistent with this Settlement Agreement. CSX will provide NSR with an appropriately redacted draft of the Application prior to filing it.

Upon entering this Settlement Agreement, CSX and NSR will prepare the definitive agreements or amendments to existing agreements as necessary to implement the terms set forth below. Such definitive agreements or amendments shall take effect on the date the Transaction is consummated.

CSX and NSR agree to the following:

I. Operator of PAS

CSX and NSR agree that Genesee & Wyoming Inc. (or a wholly owned affiliate thereof, “G&W”) will replace Springfield Terminal Railroad Company (“ST”) as the contract operator of PAS upon:

- (1) Establishing required agreements among the relevant parties including G&W addressing G&W’s operating responsibilities, compensation and rate-setting obligations;
- (2) G&W’s commitment to operate PAS so that PAS provides service in a non-discriminatory fashion to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS; and
- (3) G&W’s commitment to:
 - a. Execute the pricing protocols defined in this agreement;
 - b. Preserve pricing integrity of existing contracts and quotes;
 - c. Price moves in such a way that, while not necessarily equal, do not discriminate between connections except based on mileage, density and similar operating characteristics.
 - i. The Norfolk Southern Joint Use Agreement, will be honored and shall be considered as an exception to this otherwise all-encompassing rule.

{{ [REDACTED] }} The parties agree that the Transaction, and the introduction of G&W as an operator of PAS, will be subject to the *New York Dock* labor protection provisions, including without limitation any dismissal or displacement payments required to be made to the employees who held the {{ [REDACTED] }} positions that NSR and CSX agree have been allocated to PAS, as shown on Attachment A, “PAS Employee Allocation,” attached hereto.

{{ [REDACTED] }}

II. Ownership of PAS

Starting immediately after consummation of the proposed Transaction and continuing for {{ [REDACTED] }} years thereafter, NSR, or its assignee, may initiate a defined appraisal and sales process for the sale of CSX’s 50% ownership interest of PAS to NSR or the assignee of NSR (“Near-Term Sale”).

For purposes of the Near-Term Sale, CSX’s 50% share of PAS will be valued as follows:

1. The purchaser will pay the greater of (1) {{ [REDACTED] }} or (2) the “valuation”
2. The “valuation” will be calculated by {{ [REDACTED] }}
{{ [REDACTED] }}
{{ [REDACTED] }}
- a. {{ [REDACTED] }}
- b. In the event of a Near-Term Sale initiated within the first {{ [REDACTED] }} years following consummation of the Transaction, the minimum price to be paid will be {{ [REDACTED] }} and the maximum price to be paid will be {{ [REDACTED] }}. In the event of a Near-Term Sale initiated within the {{ [REDACTED] }} years following consummation of the Transaction, the minimum price to be paid will be {{ [REDACTED] }} and the maximum price to be paid will be {{ [REDACTED] }}
- c. Should CSX receive an offer for CSX’s 50% share of PAS during the first {{ [REDACTED] }} years following consummation of the Transaction, and NSR chooses not to initiate a Near-Term Sale, then CSX will have the right to sell its interest without restrictions on sale price.

At any time, CSX shall only have the ability to sell the entirety of its 50% ownership interest in PAS, and no less, to NSR, its assignee, or a third party. NSR shall additionally and simultaneously receive an assignable and customary right of first refusal in favor of NSR. The right of first refusal shall be in addition to the rights of NSR described above and remain in effect for so long as CSX owns its 50% of PAS. After the first seven years following consummation, the above restrictions to the sale price shall not apply. NSR, or the assignee of NSR's assigned right of first refusal shall exercise that right of first refusal no later than {{[REDACTED]}} after receiving the material terms of CSX's sale of its interest to a third party (the "ROFR Period"). If NSR, or its assignee, does not exercise such right of first refusal within the ROFR Period, CSX may sell the entirety of its ownership interest to the applicable third party on substantially the terms presented to NSR, or its assignee; provided that if CSX has not executed with the buyer an agreement to sell within {{[REDACTED]}} after the expiration of the ROFR Period, such proposed sale shall again be subject to NSR's right of first refusal.

The provisions of this Settlement Agreement shall survive in the event of CSX's sale of its 50% stake in PAS.

III. Governance of PAS

Prior to the closing of the Transaction, NSR agrees not to pursue the exercise of its change of control rights under the applicable PAS agreements that would otherwise arise in connection with the Transaction. The NSR change in control rights contained in the LLC Agreement or any of the JV Transaction Agreements (as defined in the LLC Agreement), however, shall be amended to apply post-Transaction with regards to CSX's 50% ownership interest in PAS in the same manner as it currently applies to Pan Am Railway's 50% ownership interest in PAS. Should NSR in the future obtain voting control of the Management Committee through the exercise of its change in control rights, CSX will continue to have a 50% vote on capital contributions, indebtedness or other financial obligations imposed on the members, and on certain out-of-the ordinary-course actions to be determined which at a minimum, include without limitation (a) repealing, modifying, waiving any provision of, or amending the LLC Agreement or any of the JV Transaction Agreements to which PAS is a party, (b) sale of PAS or substantially all of the assets of PAS, (c) change of PAS operator and admission of any other carrier to the PAS line, and (d) changing the profit and loss allocation of the members.

IV. NSR Trackage Rights

CSX is agreeable to providing trackage rights to NSR between the Voorheesville area and Hill Yard to service the Ayer intermodal terminal for the movement of one train pair per day carrying intermodal and automotive vehicles traffic only ("NSR Premium Trains"). CSX's cooperation and assistance will be needed for design and construction, as well as for T&E qualification on CSX's and Pan Am's trackage, and CSX agrees that such cooperation and assistance shall not be unreasonably withheld. Other terms associated with this provision are subject to the following:

- (1) NSR entering trackage rights agreements on industry standard terms except as described hereinafter, with CSX, Providence and Worcester Railroad Company ("P&W"), and Boston and Maine Corporation limited to no more than one pair of NSR Premium Trains per day operating over the trackage rights;
- (2) NSR and CSX will agree to a reasonable schedule and operating plan for the NSR

Premium Trains that is efficient, consistently executable and avoids any degradation of CSX's operational efficiency on the route between Voorheesville and Harvard. Further, NSR and CSX agree to work towards an operating plan and schedule that accommodates the operation of the NSR Premium Train with one crew between Voorheesville and Ayer. If it is determined that such a schedule is not consistently executable with one crew even with an NSR crew change point at or in close proximity to Voorheesville and at Ayer, NSR and CSX will work to establish an operating plan that minimizes total crew requirements for the operation;

- (3) Said trackage rights agreements with CSX and B&M shall be subject to the terms of the 2002 simplified reciprocal trackage rights compensation letter agreement between NSR and CSXT, as supplemented and amended from time to time, and as modified by the terms of the trackage rights agreements;
- (4) NSR will assume the capital cost of the connections and infrastructure necessary to double stack the route, including:
 - (a) the Voorheesville/Schenectady connection;
 - (b) the clearance upgrades needed on the P&W segment south of Ayer; and
 - (c) the clearance upgrades needed between Barbers Station and Harvard;
- (5) NSR Premium Trains shall meet CSX clearances and train length shall not exceed the siding capacity between Schenectady-Harvard;
- (6) NSR Premium Trains shall be limited to 9,000' plus locomotives unless otherwise agreed.
- (7) NSR Premium Trains must be sufficiently powered to maintain track speed on the segment. CSX and P&W will have consent rights to the capacity design and build; and
- (8) In the event of the implementation of an NSR merger with another Class I, the trackage rights will be subject to termination by CSX with four (4) years advance notification, or the time that it takes to clear the Hoosac Tunnel, whichever is shorter. If CSX chooses to terminate the trackage rights within 20 years of NSR's commencement of running the NSR Premium Trains, CSX will be required to reimburse for the actual, documented costs of the infrastructure improvements described above. If CSX is the first to implement a merger with another Class I, the trackage rights will not be subject to termination.
- (9) The cars in these trains shall remain in the revenue waybill account of NSR and will not be for the benefit of another party.

At the same time that CSX files its application with the STB to seek approval to acquire Pan Am, NSR will seek trackage rights authority from the STB in sub-dockets related to CSX's application for authority to acquire Pan Am, including filing agreed-upon drafts of the trackage rights agreements.

CSX may petition the STB for a power of attorney to file discontinuance on NSR's behalf upon termination should NSR not file within 180 days of the timeframe set forth in Section IV(7) above.

NSR will be responsible for paying labor protection costs for adversely impacted employees, specifically NSR employees and any ST/CSX employee on the PAS line adversely impacted as a result of rerouting the NSR Premium Trains off of PAS and onto CSX.

Prior to the operation of the NSR Premium Trains, NS, CSX and G&W will negotiate an Ayer Intermodal Facility Use Fee that will include compensation for the land, assets, maintenance and switching of the facility, regardless of whether the NS (or CSX from the north) is using the facility. {{ [REDACTED]

}} This fee shall be in addition to (1) trackage rights fees between Barbers Station and Ayer (CPF 312 and Ayer for traffic from the north) and (2) any lift and associated fees incurred at the terminal.

V. Hoosac Tunnel

If the Hoosac Tunnel and/or the Little Tunnel becomes impassable, CSX agrees to allow PAS trains requiring an alternative route on its southern route between Rotterdam Jct., NY and Harvard, MA pursuant to the terms of standard detour agreements similar to previous emergency situations where CSX and NSR have assisted each other in the past.

VI. Ayer Trackage Rights

NSR and CSX agree to substantial modifications in the Ayer Trackage Rights as defined in Attachment B, “Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap” attached hereto.

The PAS/ST Joint Use Agreement will be modified to incorporate this model, remove the carload limit, and replace it with graduated requirements for adding CSX overhead train pairs. Except as otherwise defined in Attachment B, CSX will not be responsible for the funding of infrastructure required to accommodate capacity considerations that are attributable to current or future non-CSX causes, including the pair of NSR Premium Trains rerouted over CSX.

VII. PTC

The remainder of funds received from MBTA for PTC installation on PAS that eventually transfer to CSX after STB approval and CSX’s consummation of the Transaction will be dedicated to PTC costs on PAS.

VIII. Hoosac Legal Claim

After STB approval and consummation of the Transaction, CSX agrees to support legal action and will confer in good faith with NSR on the appropriate use of PAS funds or parent funds to support the recovery and litigation effort.

IX. Ayer Switching District

CSX agrees to interchange traffic to/from Ayer Industry Locations (as defined in the Ayer Switching Agreement), via Rotterdam for a transitional {{[REDACTED]}} period from the date CSX consummates the Transaction (“Rotterdam commitment”), except to and from the following origin/terminating states and district: Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia, the District of Columbia, Maryland, and, to the extent that the traffic originates or terminates on a CSX local station only, Connecticut, Rhode Island, and Massachusetts (the “Excepted States”). CSX may route via a PAS gateway other than Ayer any traffic originating or terminating in Connecticut, Rhode Island, and Massachusetts which does not originate or terminate at a CSX local station (“Non-local commitment”). Traffic to or from the Excepted States may be switched at CSX’s option through Barbers Station without prior or subsequent movement over CPF 312 subject to a switch charge of {{[REDACTED]}}

[REDACTED]

[REDACTED]

[REDACTED]}

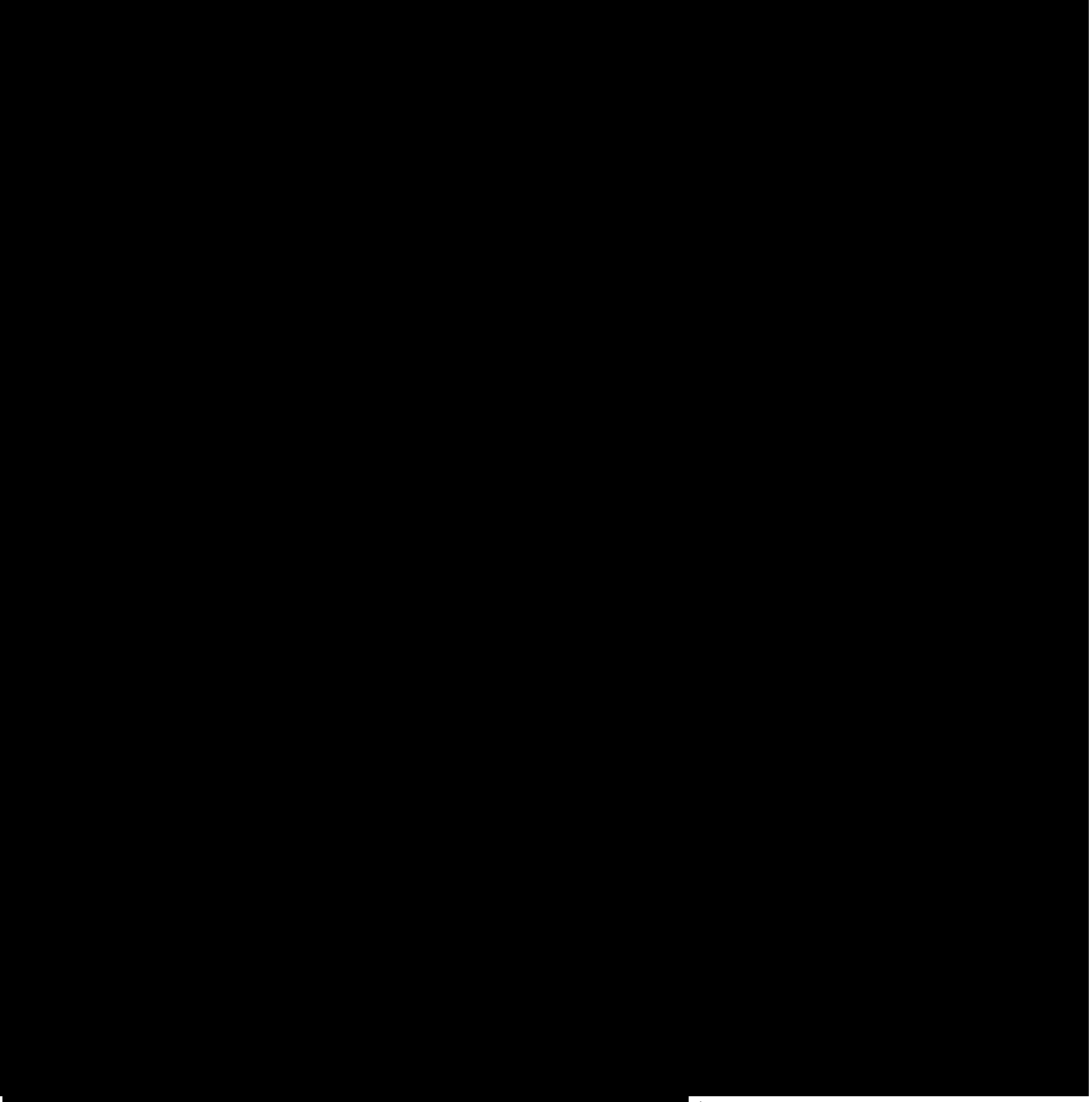
All other aspects of the Ayer Switching provisions are detailed in Attachment B.

X. Zone 1-6 Pricing

{ [REDACTED]

[REDACTED] }

{



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XI. Release of Prior Ayer-Related Claims

NSR will release Pan Am and/or CSX as successor or otherwise for any past claims related to the PAS Agreements at Ayer as to overhead trackage rights, switching, haulage, and interchange.

XII. Implementing Agreements and Amendment

The parties will promptly commence and diligently pursue the finalization of the definitive agreements and amendments to existing agreements necessary to implement the terms contained

in this Settlement Agreement, provided, however, that if the parties do not conclude the definitive agreements within sixty (60) days of the execution date of this Settlement Agreement, either party may commence arbitration over terms other than the terms contained herein and seek relief from the arbitrator to establish those other terms. The submission by each party shall contain drafts of those terms that are in dispute and the arbitrator shall select without modification among those submissions, provided, the arbitrator shall not have the power to alter the terms contained in this Settlement Agreement nor to enter a decision that does not include the terms contained herein. In no event shall the arbitration period from commencement until decision exceed three (3) months. In any other respect, the arbitration shall be governed by the law of the state of Delaware, exclusive of its conflicts of law principles and be submitted to a single arbitrator administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, and the Large Complex Case Procedures of the AAA then in effect (the “Rules”) and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in Washington, DC and the single arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator. If the arbitration is not concluded by the time of an STB decision approving CSXT’s acquisition of Pan Am and change of the PAS operator, CSXT/ST will continue to operate PAS consistent with current operations and will agree to maintain PAS rates at current levels with standard AII-LF escalation pending completion of the arbitration and until G&W (or another 3rd party operator) has reached all necessary agreements to allow it to replace CSXT/ST as the operator of PAS.

XIII. Confidentiality

Other than as required for regulatory authority, the contents of this Settlement Agreement shall remain confidential except that this Agreement with reasonably minimal agreed upon redactions, can be disclosed to Pan Am subject to Pan Am’s agreement that it will remain confidential.

XIV. Consents

The obligations of the Parties contained in this Settlement Agreement shall be subject to the Parties acquiring any necessary consent from third parties, government authorities, or any other necessary consent to effectuate the proposed Transaction.

XV. Regulatory Authority

The obligations of the Parties to one another contained in this Settlement Agreement are subject to the Settlement Agreement being authorized and established as a condition to the STB’s approval of the Transaction as provided in the introduction. The Parties shall act in good faith and use reasonable commercial efforts to satisfy any conditions imposed by the STB on its approval of the Transaction.

[Signature Page Follows]

Settlement Agreement – Execution Version
Signature Page

The Parties hereto have caused this Settlement Agreement to be executed by their respective authorized representatives.

CSX TRANSPORTATION, INC.,
a Virginia corporation

By: Sean Pelkey
(print name)

Name: Sean Pelkey
(signature)

Title: VP and Treasurer
(print title)

Date: 2/23/2021

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: Michael R. McClellan
(print name)

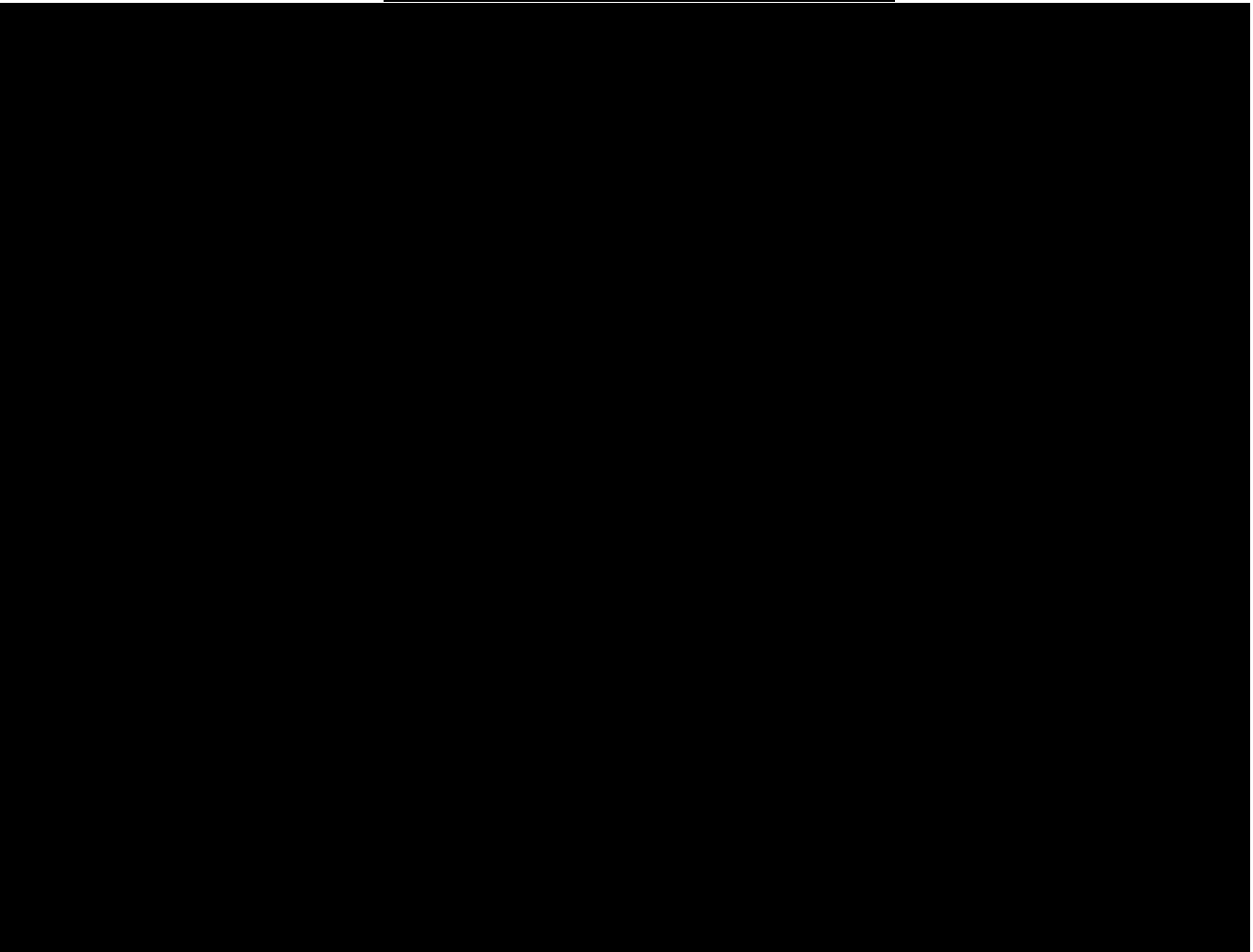
Name: M. R. McClellan
(signature)

Title: VP Strategic Planning
(print title)

Date: 2/23/21

(signature page to Settlement Agreement)

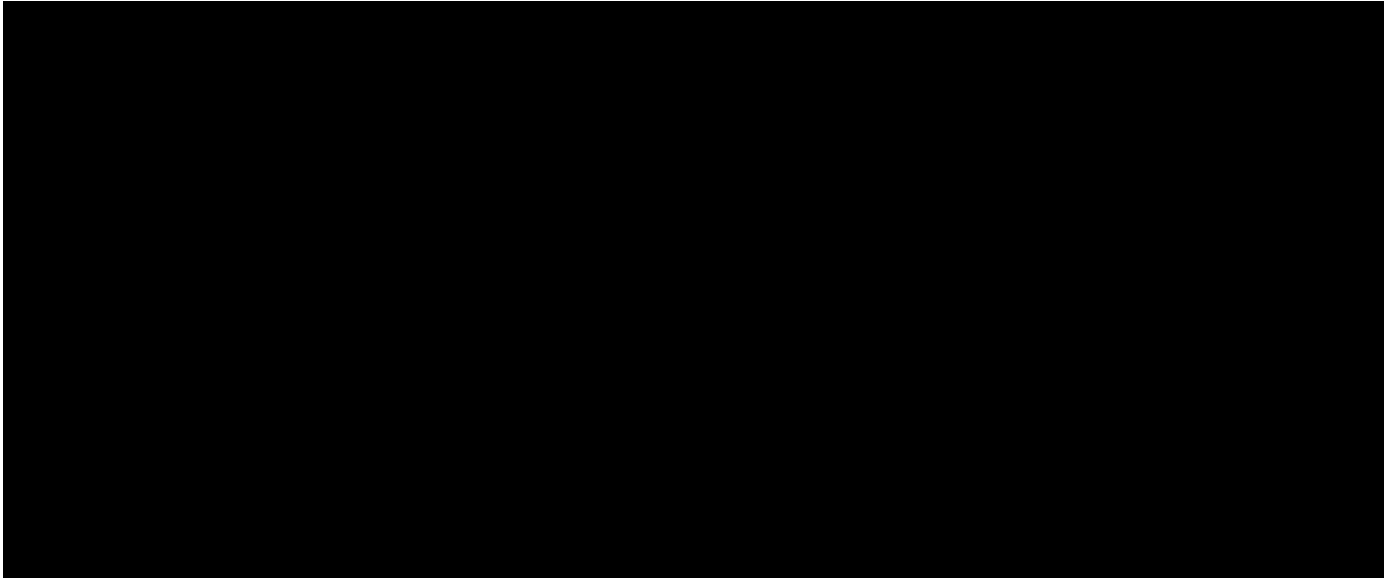
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Attachment A

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Attachment B

Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap

This document is being developed to establish concrete plans and protocols for the operations through the Ayer switching area (Harvard to CPF 312) and the fluidity-improvements required for additional CSX usage of the capacity in the Ayer switching area. This is intended to be used in tandem with all other terms of the CSX – NS Settlement Agreement. This document assumes that the G&W is the contract operator of Pan Am Southern.

I. Levels of Service (LOS) and Operations

- a. NS, CSX and G&W agree to establish **Levels of Service (LOS)** metrics and goals for freight moving to, from and through Ayer, MA, including local service metrics, and to make these metrics visible to all parties at least once per month.
 - i. Metrics will be divided into those that are competitive (commercially sensitive) in nature and those that are not.
 - ii. Metrics that are not competitive in nature but associated with the movement of CSX traffic through the Ayer switching area will remain available to CSX after CSX ceases owning a share of Pan Am Southern.
 - iii. NS, CSX and G&W agree to establish LOS metrics and targets that are consistent with those of CSX and NS.
- b. NS, CSX and G&W agree to establish a **Static Yard Plan** for all movements to, from and through Ayer. NS, CSX and G&W agree that the terminal will be operated on that plan.
 - i. “Significant Changes” to the Static Yard Plan would be subject to approval by NS and CSX (to be implemented by G&W) for so long as NS and CSX jointly own PAS.
 1. “Significant Changes” would mean that any one of the following train pair were impacted by more than 90 minutes: NS Intermodal Trains, NS Automotive Service, the Deerfield – Ayer turn, CSX Overhead Train Pair 1, and CSX Overhead Train Pair 2 and any other then-existing CSX overhead trains.
 - ii. After CSX divests itself of its 50% interest in PAS, PAS may make changes in the Static Yard Plan provided such changes do not create Significant Changes to any then-existing CSX overhead train pair.
- c. NS, CSX and G&W agree that the parties will have access at all times to the property and non-commercially sensitive information sufficient to analyze the LOS and capacity needs.
- d. Neither NS nor CSX can use Ayer yard for storage of equipment beyond normal operating practices and any other exceptions in this agreement

- without prior approval from all parties (NS, CSX and the PAS operator).
- e. As reference, the trains in Exhibit 1 are representative of the types of train volumes and operations expected through Ayer.
 - f. NS and CSX agree to establish the Ayer Static Plan and the Barbers Station – CPF 312 Scheduling plan within 60 days after STB approval, or before the date of G&W's operational start-up of PAS operations, whichever is sooner.

II. CSX Construction (Referring to CSX Drawing MEA20201208)

- a. CSX agrees to fund the construction of certain improvements in Ayer Yard, as depicted on CSX Drawing MEA20201208 dated February 11, 2021, attached hereto and incorporated herein by reference. Those improvements will consist of the following:
 - i. Addition of the "Thoroughfare Storage Track";
 - ii. Addition of the powered, heated, switches at the end of the NW wye as shown in the drawing; and
 - iii. Reconfiguration of the northern throat of Ayer Yard in such a way that accommodates 2 simultaneous moves of (1) inbound or outbound trains through the north end (2) merchandise switching and/or (3) Intermodal switching.
 - 1. The plan as drawn would need to be modified to meet this objective.
 - iv. Reconfiguration of the southern throat in such a way that the center lead can serve either the intermodal tracks or the running track.
 - v. Addition of the Future Thoroughfare Track 1
- b. {{ [REDACTED] }}
- d. NSR and PAS cooperation and assistance will be needed for the contemplated design and construction and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld.

III. Upon consummation of the proposed transaction, CSX shall be permitted to run up to

1 pair of 9000' trains (plus locomotives) per day between Harvard and CPF 312.

- a. If CSX wants to use this train to set off or pick up cars in Ayer, then the train shall be limited to the clear length of the running track, which is currently 4750'.

- i. This 4750' limitation will be increased once CSX funds any project to extend the clear length of the running track as contemplated in II.a.iii above.
- ii. The new train length for any train that is to set off or pick up cars in Ayer will be increased up to the new clear length of the running track.
- b. The cars in these trains shall remain in the revenue waybill account of CSX and will not be for the benefit of another party.
- c. Other commercial terms in this agreement shall apply to these operations.

IV.

{{ [REDACTED] }}

V. NSR Premium Train

- a. Upon completion of the required clearances and infrastructure improvements, NS shall be permitted to move up to 1 trackage rights train pair per day over the Voorheesville – Barbers – Ayer route ("NSR Premium Train").
- b. NSR Premium Train will be limited to 9000' plus locomotives.
- c. NS may continue to store empty intermodal equipment in Ayer Yard, but shall be limited to 9000'.

VI. CSX Second Overhead Train Pair

CSX shall be permitted to add a second train pair per day for operations between Harvard and CPF 312 under the following terms and conditions:

- a. Operations must be consistent with the Static Yard Plan, subject to Section VI.f. below.
- b. Preferences
 - i. Schedule Preference: NS and CSX agree to have a reasonable operating plan for train movements between Barbers Station and CPF 312. In establishing this plan, NS and CSX will consider operational constraints, such as track occupancy, the Ayer 24 hour operating clock, and commuter window restrictions, as well as efficient scheduling protocols, such as fleeting, to mitigate these constraints. In terms of establishing this plan CSX shall have schedule preferences for its first overhead train pair, and its Ayer Local (e.g. Barbers Station – Ayer), should that train be

in scheduled operation by the time that NS begins its Premium service over the CSX. If the Ayer Local is not scheduled at this time, then NS shall have preference on scheduled slots. In any case, CSX' second overhead train pair shall have last preference of schedule slots. Should the CSX Overhead Train Pair 2 commence before the NSR Premium Train, the schedules on the CSX Overhead Train Pair 2 shall be modified to accommodate that preference.

- ii. Operating Preference: In terms of operating preference, trains operating in their scheduled window shall have dispatch preference over trains operating out of their scheduled window, unless the cause of one Class I's compliance failure is the result of an action by the other Class I.
- c. CSX will only be able to pick-up or set-off in Ayer Yard – subject to the train length restrictions in III.a. above – with one (but not both) of the two overhead train pairs per day.
- d. Trains shall be limited to 9000' plus locomotives
- e. Upon notice by CSX of its intent to add a second train pair, CSX and NS will confer on the proposed operation of the new Ayer Static Yard plan that incorporates CSX Overhead Train Pair 2 and agree upon infrastructure as necessary to ensure that introduction of the CSX Overhead Train Pair 2 will not degrade the service levels expected at the later of: (1) the construction of the infrastructure contemplated by Section II above, plus the introduction of operations by G&W as operator of PAS, and the introduction of the NS Premium Train; or (2) the contemplated initiation date of the second CSX overhead train pair. For clarification purposes, actual completion of the construction of the infrastructure contemplated by Section II above is not necessary for CSX to provide the notice anticipated by this section. As of the execution date of the Settlement Agreement, the parties contemplate (i) G&W as PAS operator and (ii) the NSR Premium Train being established in the relative short-term following STB approval and consummation of CSX's acquisition of Pan Am. If (i) within 3 years of approval and consummation, G&W is no longer the PAS operator, or the NSR Premium train has not been established, or (ii) at any time before the addition of CSX Overhead Train Pair 2, the agreements relative to both G&W and the NSR Premium Train have been terminated in accordance with their terms, CSX will not be required to consider their impact on service levels prior to the addition of CSX Overhead Train Pair 2.
 - i. This will be an operational and engineering exercise that shall not take more than 3months.
 - ii. If the review of CSX's Overhead Train Pair 2 indicates a degradation to the then-current operations, then CSX and NS agree that there are several different tactics available to mitigate potential operational impacts. CSX and NS will review these several tactics and shall implement, upon mutual agreement, one or more of these to

mitigate those potential operational impacts. These tactics include, but are not limited to:

1. Additional infrastructure at CSX' expense.
 - a. Infrastructure will be reasonable and will not include assets such as flyovers, etc.
 - b. Infrastructure requirements could be outside of the yard limits in order to siphon local freight out of the Ayer yard – e.g. Fitchburg to Willows.
 - c. Any infrastructure shall be limited to the cap as defined in section II.b.
 2. Increase in speeds through the yard and/or through the Wye.
 3. Modification of the Static Yard Plan, but without creating a Significant Change with regard to any of the trains identified in Section I.b.i.1. above.
- iii. CSX and NSR shall agree upon a mitigation plan within 30 days of concluding the review period. The agreed upon mitigation plan shall have an expected duration for implementation that will take no longer than 6 months to implement (no more than 9 months from CSX providing notice). NSR and PAS cooperation and assistance will be needed throughout this process and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld. In no case can NS or PAS prohibit the addition of this second CSX train pair if all of the above tactics are reasonably deployed in accordance with the above protocol and schedule. In the event of a dispute about the parties' mitigation efforts, CSX may operate CSX Overhead Train Pair 2 during the pendency of the dispute.
- iv. In the event the parties, acting in good faith, cannot agree at any point during the process set forth in this Section VI(e), either party may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
- f. All cars in both the first and second CSX train pairs will be in the revenue waybill account of CSX and will not be for the benefit of another party.

VII.

{{ [REDACTED] }}

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VIII. Additional Overhead Trains Through Ayer

At some future date, CSX may want to run additional overhead train pairs between Harvard and CPF312. NS is agreeable to permitting these additional train pairs under the following terms:

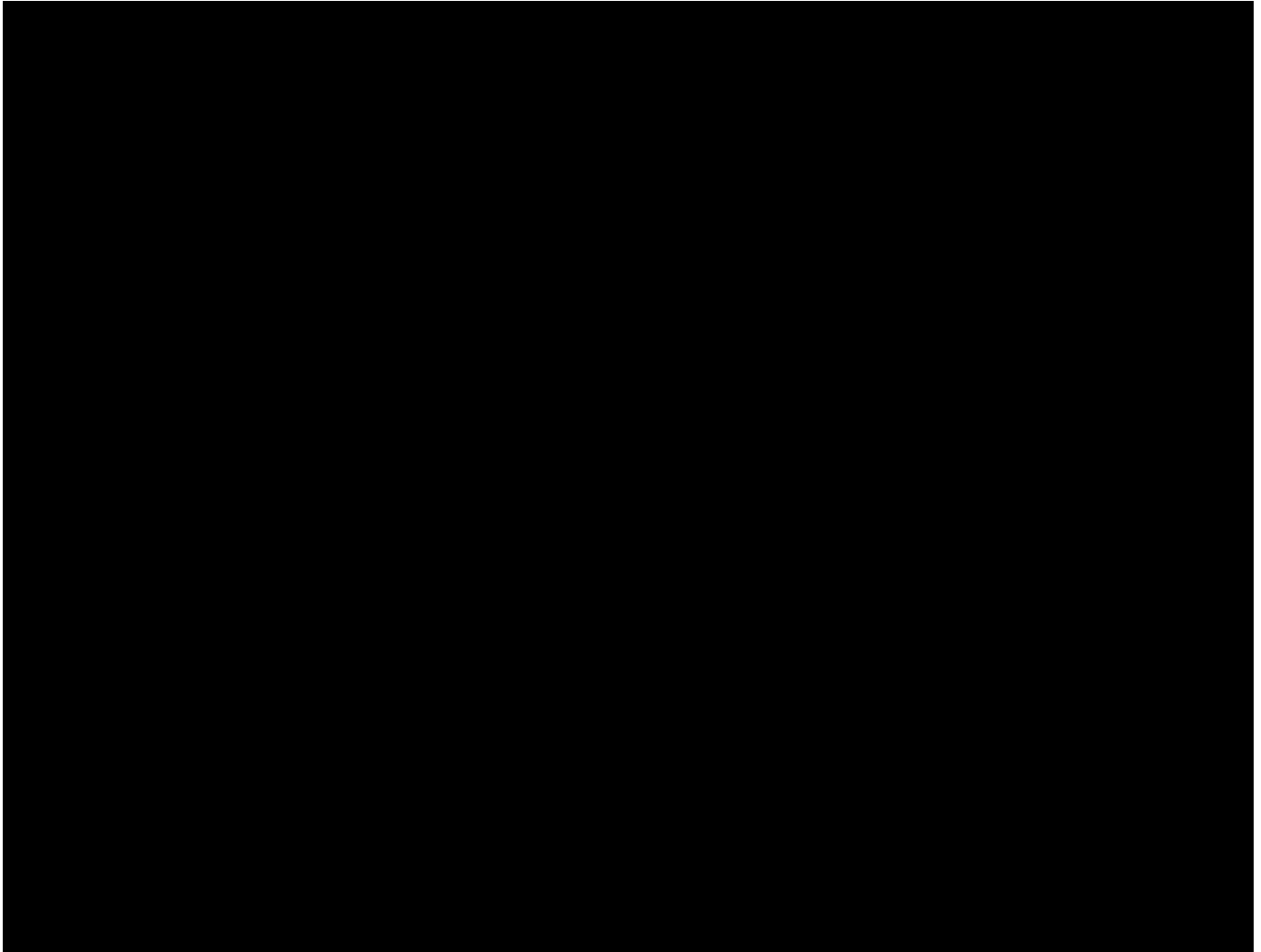
- a. Notice to evaluate introduction of additional train pairs beyond the first two described above shall be given no sooner than three (3) years following the consummation of the Transaction.
- b. Operations of any additional train pairs will be consistent with the Static Yard Plan.
- c. CSX will only be able to pick-up or set-off in Ayer yard – subject to the train length restrictions in III.a. – with one of the overhead daily train pairs. CSX will be able to determine from time to time which of the daily overhead train pairs will be the one to set off or pick up in Ayer yard.
- d. Trains will be limited to 9000' plus locomotives.
- e. Upon notice by CSX of its intent to add an additional train pair beyond those then-currently operated, CSX and NS will confer and agree upon the proposed operation of the new Ayer Static Yard plan that incorporates the additional train pair and agree upon infrastructure as necessary to ensure that introduction of the operation will not degrade the then-current operations ("Additional Train Pair Mitigations").
 - i. This will be an operational and engineering exercise that shall not take more than 3 months.
 - ii. If the review of the additional train pair indicates a degradation of the then-current operations, then CSX and NS will review these several tactics and shall implement one or more of these to mitigate those potential operational impacts:
 1. Additional infrastructure to be funded by CSX.
 2. Increase in speeds through the yard and/or through the Wye.
 3. Modification of the Static Yard Plan, but without creating a Significant Change with regard to any of the trains identified in Section 1.b.i.1. above.
 4. Reduction in then-current CSX Overhead Train lengths (but only at CSX's discretion).
 - iii. CSX and NSR shall agree upon a mitigation plan within 3 months of concluding the review period. NSR and PAS cooperation and assistance will be needed throughout this process and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld.
 - iv. If, after a good faith review by the parties of the mitigation factors, no combination of the above can be accomplished in such a way as

to not degrade the then-current operations, then CSX shall not have the right to add additional trains.

- v. In the event the parties, acting in good faith, cannot agree at any point during the process set forth in this Section VIII(d), either party may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
 - vi. Introduction of the additional train pair shall be permitted upon implementation of the agreed-upon Additional Train Pair Mitigations (including the conclusion of construction of an agreed-upon or arbitration-compelled infrastructure).
- f. All cars in any new CSX train pairs will be in the revenue waybill account of CSX and will not be for the benefit of another party.

EXHIBIT 1: {{

[REDACTED]

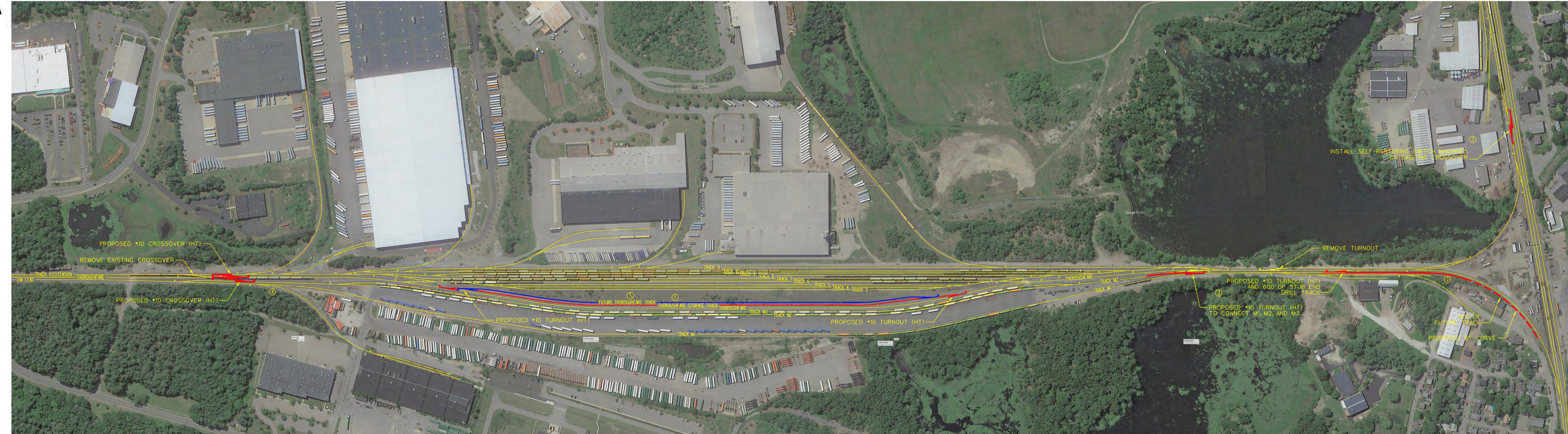


[REDACTED]}

SHIRLEY, MA



AYER, MA



LEGEND

- EXISTING TRACK
- PROPOSED TRACK
- FUTURE TRACK
- REMOVE TRACK

SCOPE 1

- CONSTRUCT 2,400' TIMBER TRACK
- CONSTRUCT (2) *10 TIMBER TURNOUTS (HT)

SCOPE 2

- INSTALL SELF-RESTORING SWITCH MACHINES ON EXISTING CROSSOVER

SCOPE 3

- CONSTRUCT 750' TIMBER TRACK
- CONSTRUCT (2) *10 TIMBER TURNOUTS (HT)
- CONSTRUCT 500' OF FUTURE TIMBER TRACK

SCOPE 4

- CONSTRUCT 65' TIMBER TRACK
- CONSTRUCT (2) *10 TIMBER CROSSOVERS (HT)
- REMOVE EXISTING CROSSOVER

SCOPE 5

- CONSTRUCT 2,300' FUTURE TIMBER TRACK
- CONSTRUCT (2) FUTURE *10 TIMBER TURNOUTS (HT)

CLEAR LENGTHS

SOUTH THOROUGHFARE PS -> NORTH M1 PS LENGTH:	9,100'
M3 PS -> PS LENGTH:	3,300'
M2 PS -> NORTH M1 PS:	4,000'
M1 PS -> PS LENGTH:	4,500'
NORTH M1 PS -> END STUB TRACK LENGTH:	1,800'

DESIGNED BY ME A	CSX TRANSPORTATION, INC. ENGINEERING DEPARTMENT DESIGN & CONSTRUCTION JACKSONVILLE, FLORIDA	VAL. SEC.	CONTRACT NO.	AYER YARD BYPASS TRACK AYER, MIDDLESEX COUNTY, MASSACHUSETTS
DRAWN BY ME A		DRAWING NO. ME A20210208	DRAWING NO. ME A20210208	
CHECKED BY ALH		REVISION 0	SHEET NO. 1	
APPROVED BY MCC		SCALE NTS		
DATE FEBRUARY 11, 2021	[CSX]			

REV	DATE	DESCRIPTION	BY	APP

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

July 20, 2021