U.S. Department of Transportation
Federal Highway Administration

Record of Decision
A Proposed Detroit Intermodal Freight Terminal, Wayne County, Michigan
FHWA-MI-EIS-03-03-R

Decision

In accordance with 23 U.S.C. 109(h), the Federal Highway Administration (FHWA) concurs with the Michigan Department of Transportation (MDOT) in determining the Selected Alternative for the Detroit Intermodal Freight Terminal in Detroit, Wayne County, Michigan. The Selected Alternative will:

- Expand the Norfolk Southern (NS) and CSX intermodal operations at the Livernois-Junction Yard;
- Provide the opportunity to shift the NS Triple Crown operations from Melvindale and Willow Run in Romulus to the Livernois-Junction Yard;
- Move the CP Oak intermodal operation to the Livernois-Junction Yard;
- Provide for external rail improvements, with participation by all four Class I railroads in Michigan: NS, CSX, CP, and CN;
- Make roadway and yard entry gate changes in support of the project; and,
- Provide enhancements to the community.

The Selected Alternative is identified as the environmentally preferred alternative that best:

- Meets the purpose and need for intermodal capacity while minimizing the project footprint and truck impacts;
- Meets design constraints; and,
- Protects, preserves, and enhances historic, cultural, social, and natural resources.

FHWA has based its decision on the:

- Transportation needs of the project study area;
- Draft Environmental Impact Statement (DEIS);
- Final Environmental Impact Statement (FEIS) and Final Section 4(f) Evaluation;
- The Pre-development Plan Agreement (PDPA);
- Interagency coordination;
- Public comments received on the DEIS and FEIS; and,
- Other information in the project record.

FHWA has reviewed and considered all comments received on the project during the 49-day review period after the initial Notice of Availability of the FEIS appeared in the Federal Register on December 11, 2009. Substantive comments received on the FEIS are summarized and responded to in Section 7 of this Record of Decision. All other comments and responses can be found at DIFT project website located at www.michigan.gov/mdot, click "Programs and Projects" and then click "Studies" then click "DIFT". The file is titled "DIFT FEIS Comments and Responses". They are also available from: DIFT Project Manager, MDOT, 425 W. Ottawa Street, Lansing, Michigan 48909.

April 22, 2010
Signature Date

Theodore G Burch
Theodore G. Burch
Acting Division Administrator
Michigan Division
Federal Highway Administration

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1. BACKGROUND

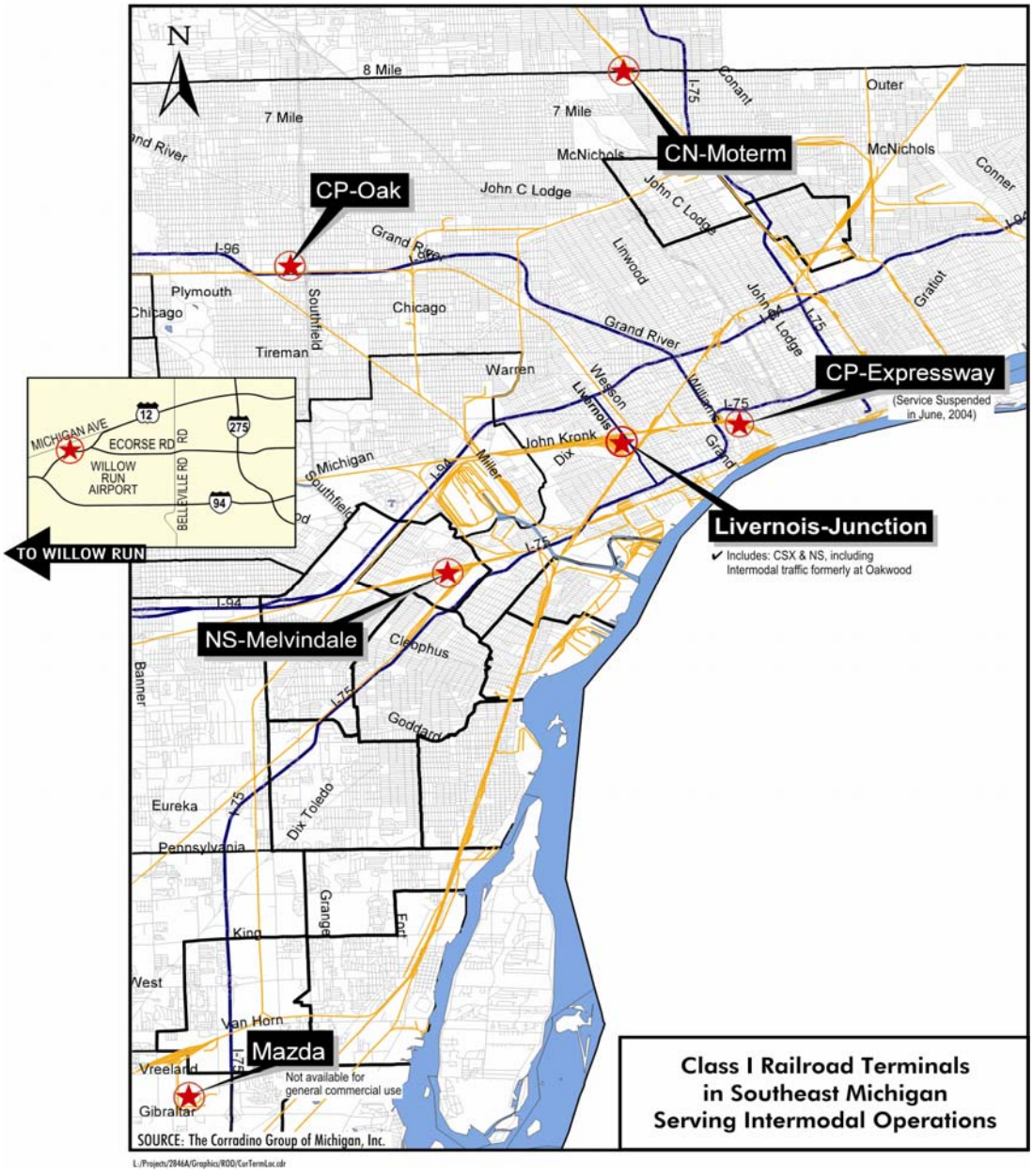
This Record of Decision (ROD) sets forth the basis for choosing the Selected Alternative for the Detroit Intermodal Freight Terminal Project (DIFT) in Wayne County, Michigan. The project will consolidate intermodal freight terminal activities of three of the four Class I railroads (Norfolk Southern [NS], CSX, Canadian National [CN], and Canadian Pacific [CP]) serving Michigan through improvements at the Livernois-Junction Yard in southwest Detroit and east Dearborn, in Wayne County. Also included are associated external-to-the-terminal road and rail improvements. The fourth Class I railroad will participate with the other three in the external rail improvements.

1.1 Project History

In the 1990s, as railroads consolidated and intermodal growth strengthened, the Michigan Department of Transportation (MDOT) recognized the need to address the rapidly growing intermodal (rail/truck) mode of transportation (see Figure 1, which shows intermodal terminals in place at the beginning of the study). In 1998, the DIFT was listed as a High Priority Project in the Transportation Equity Act of the 21st Century (TEA-21). TEA-21 provided $18 million in federal funding assistance (TEA-21, Section 1602, High Priority Project 1221). In 2001, MDOT and the Federal Highway Administration (FHWA) initiated a feasibility study to determine the intermodal needs in Southeast Michigan. A Notice of Intent (NOI) to prepare the Environmental Impact Statement (EIS) appeared in the *Federal Register* on March 13, 2002. Scoping meetings were held in Detroit on September 19, 2002 and June 4, 2003.

The Draft Environmental Impact Statement (DEIS) was signed April 15, 2005, and its Notice of Availability (NOA) was published in the *Federal Register* on May 13, 2005. It included a Memorandum of Understanding signed by NS, CN, CP, and MDOT that set forth the understanding and intentions of the signing parties related to the project. (CSX did not sign.) Public Hearings were held June 13, 14, 15, and 16, 2005, at LASED Youth Center in Detroit, the IBEW Local 22 Hall in Detroit, the Holiday Inn in the Grandmont neighborhood of Detroit (adjacent to Dearborn), and the Michigan State Fairgrounds on the border of Wayne and Oakland counties, respectively. These hearing sites were close to the intermodal terminals being considered in the proposed action. The comment period ended August 16, 2005, for a total 96-day comment period.

Figure 1
Class I Railroad Intermodal Terminals in Southeast Michigan at Beginning of DEIS
Detroit Intermodal Freight Terminal Study



Because more than three years passed between the signing of the DEIS and the Final Environmental Impact Statement (FEIS), a re-evaluation was required per 23 CFR 771.129. That re-evaluation was included in Appendix G of the FEIS. It determined that a supplemental DEIS was not required.

In developing the FEIS and identifying the Preferred Alternative, full consideration was given to: public and agency comments on the DEIS; all alternatives considered and the respective environmental consequences; and, issues related to the proposed action. All four railroads, including CSX, memorialized their commitment to the DIFT project by signing a Pre-Development Plan Agreement (PDPA), included in Appendix F of the FEIS and Appendix B of

this *Record of Decision* (ROD). The PDPA outlines how the DIFT project will continue to unfold, based on available funding and railroad priorities.

The FEIS was signed December 1, 2009, and distributed. A Notice of Availability (NOA) was published in the *Federal Register* on December 11, 2009. An Amended Notice was published December 18, 2009, extending the wait period from January 11, 2010, to January 29, 2010. The Selected Alternative is described in Section 2 of this ROD. The DIFT has independent utility[1] from all other projects, including the Detroit River International Crossing and the Ambassador Bridge Gateway Project. It takes into account development of High Speed Rail through the Livernois-Junction Yard.

[1] Independent utility means the action being taken should be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made, See:
http://www.environment.fhwa.dot.gov/projdev/tdmtermini.asp

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2. DECISION

The Selected Alternative for the DIFT is to improve the Livernois-Junction Yard (refer to Figure 1) together with associated external-to-terminal road and rail improvements. In the event of any differences in wording, the ROD takes precedence over the FEIS.

2.1 Selection of Alternative

The DEIS evaluated the no-build and three build alternatives, but did not recommend a preferred alternative due to on-going discussions with the railroads. Since the publication of the DEIS, the positions of the railroads have clarified.

The FEIS identified a preferred alternative. The FEIS describes the purpose and need (Section 2), development and evaluation of alternatives (Section 3), the affected environment and potential environmental consequences of the proposed project (Section 4), proposed mitigation (Section 5), the Section 4(f) evaluation (Section 6), and coordination with regulatory agencies and comments from agency and public review of the DEIS (Section 7).

In April 2009 the preliminary engineering, right-of-way acquisition and construction phases of the project were added to the Southeast Michigan Council of Governments' (SEMCOG's) *Transportation Improvement Program* (TIP). The Section 106 Memorandum of Agreement (MOA) was finalized and signed in September 2009 (Appendix C of the FEIS).

FHWA and MDOT provided opportunities for government agency and public involvement in the development of the National Environmental Policy Act (NEPA) documentation. The opportunities and methods that were used to involve the public and government agencies in the study can be found in the FEIS, Section 7. The staffing of a local project office (during the initial project analysis), a telephone hotline, a website, outreach meetings, and other means were used to solicit input. Railroad input was also sought at key milestones.

A Memorandum of Understanding included in Appendix F of the DEIS recorded the understandings and intentions of MDOT and the railroads, and laid out a process for ongoing railroad and community involvement in the decision-making process. The result in the FEIS (Appendix F) was a signed Pre-Development Plan Agreement (PDPA) by all railroads that will participate in the DIFT funding program (Appendix B of this ROD). Both the DEIS and FEIS were made available for public review. Public hearings were held in June 2005 on the DEIS. The comments received on the DEIS were addressed in the FEIS. Substantive comments received on the FEIS are summarized and responded to in Section 7 of this Record of Decision.

2.1.1 Location of the Selected Alternative

The Selected Alternative for terminal improvements is proposed for the Livernois-Junction Yard within the cities of Detroit and Dearborn, Wayne County, Michigan. The yard is between Wyoming Avenue (west), Livernois Avenue (east), I-75 (south) and I-94 (north) (Figures 1 and 2).

2.1.2 Description of the Selected Alternative

The Selected Alternative is fully described in Section 3.5 of the FEIS. The improvements at the Livernois-Junction Yard are shown in Figure 2. Figure 3 shows the major interlockers (locations where train tracks cross or join together) in the Detroit Area that were considered for improvement; those highlighted in yellow in Figure 3 are included in the Selected Alternative.

The Selected Alternative (a variation of Practical Alternative 4) will consolidate intermodal operations of CSX, NS, and CP railroads in Southwest Detroit/Dearborn at the Livernois-Junction Yard. The CP/Oak terminal (refer to Figure 1) will continue to be used for non-intermodal purposes. CP's Expressway (trailer loading) operation at the Michigan Central Depot terminated in 2004. The CN Railroad will not shift its Moterm operations (Figure 1) to the Livernois-Junction Yard and not expand its terminal. But, it, like the other railroads, will participate in paying its share of external-to-terminal rail improvements that are part of the DIFT project. Such improvements by the DIFT project will increase the efficiency of operations of all the railroads in Southeast Michigan. The agreement on the Selected Alternative is memorialized in the signed Pre-Development Plan Agreement in Appendix F of the FEIS. Road improvements will also be made, as discussed below.

In summary, the Selected Alternative will:

- Expand the NS and CSX intermodal operations at the Livernois-Junction Yard;
- Provide the opportunity to shift the NS Triple Crown operations from Melvindale and Willow Run in Romulus to the Livernois-Junction Yard; and
- Move the CP Oak intermodal operation to the Livernois-Junction Yard.

All four Class I railroads will participate, to the extent they benefit, in the following external rail improvements (Figure 3 – Selected Alternative shown in yellow):

- Beaubien
- Coolidge
- Delray
- Dix
- Mill
- Milwaukee Junction
- Oakwood Junction
- Schaefer
- Trenton
- Vinewood
- Waterman
- West Detroit
- New Rotunda
- Track from Delray to Dix
- Track from Oakwood to Schaefer

Figure 2
Selected Alternative

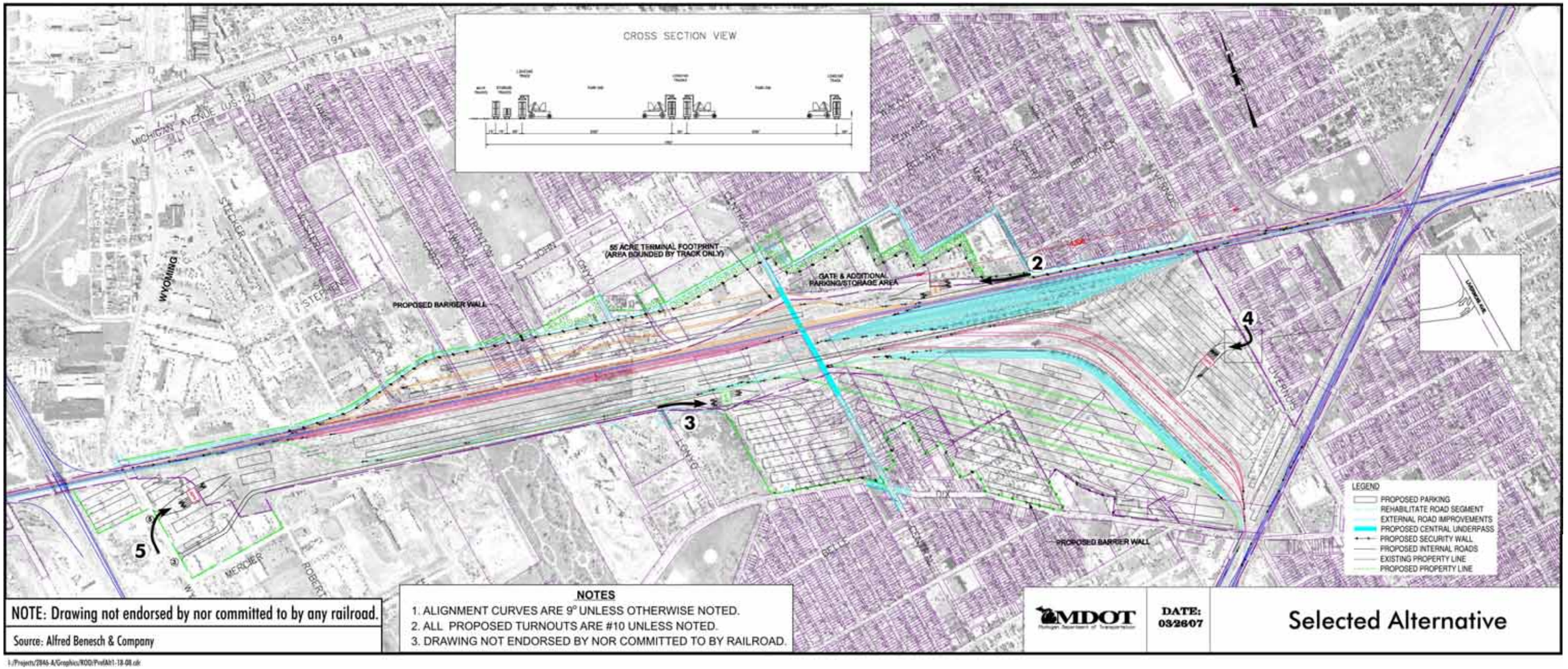

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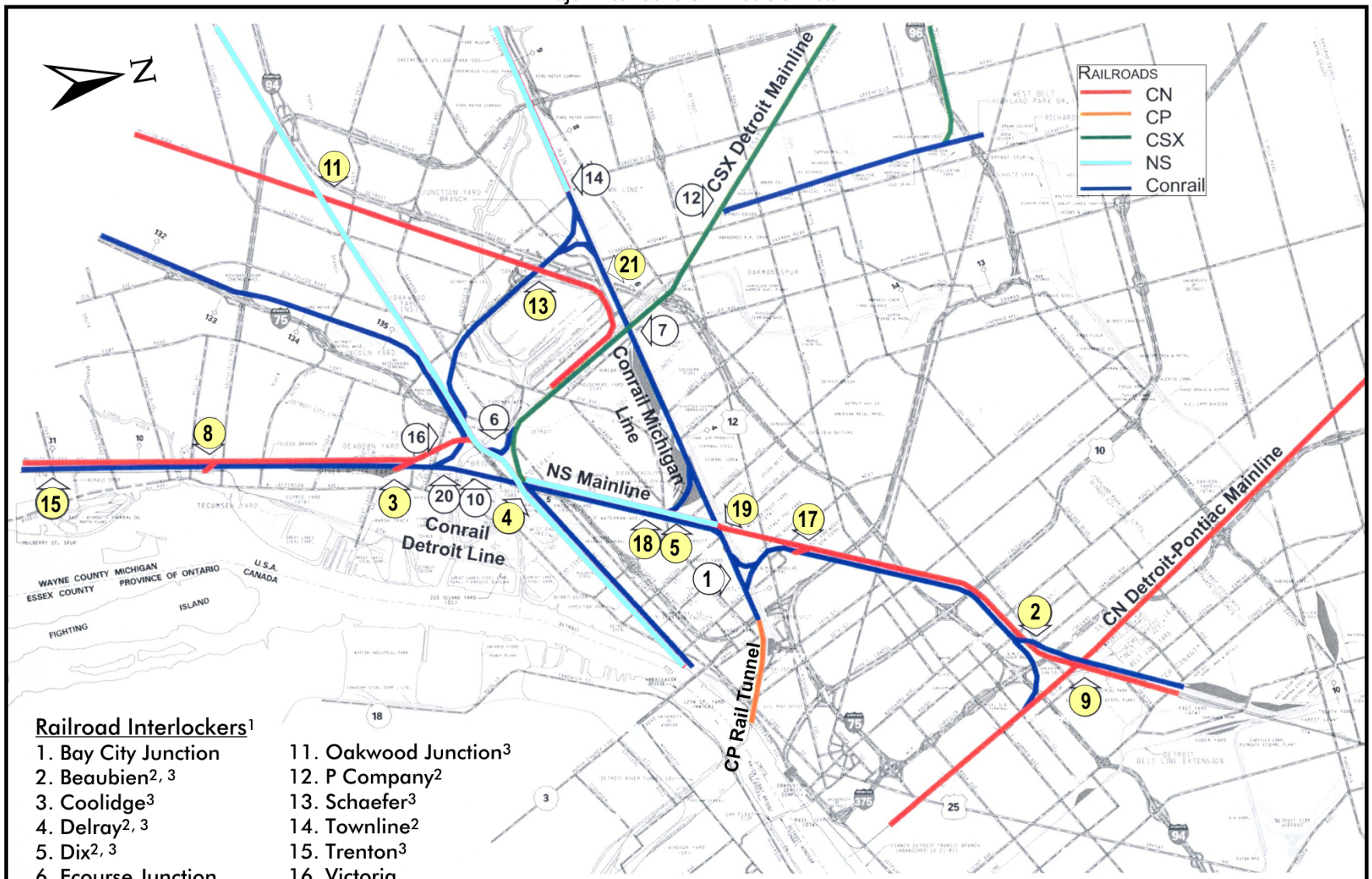
Figure 3
Major Interlockers in Detroit Area



Railroad Interlockers[1]

1. Bay City Junction
2. Beaubien[2, 3]
3. Coolidge[3]
4. Delray[2, 3]
5. Dix[2, 3]
6. Ecourse Junction
7. Lou[2]
8. Mill[3]
9. Milwaukee Junction[2, 3]
10. NS Bridge
11. Oakwood Junction[3]
12. P Company[2]
13. Schaefer[3]
14. Townline[2]
15. Trenton[3]
16. Victoria
17. Vinewood[2, 3]
18. Waterman[2, 3]
19. West Detroit[2, 3]
20. YD
21. New Rotunda[3]

[1] Interlockers are locations where trains must stop for one another. Interlockers are controlled by signals.

[2] Improved by practical alternative.

[3] Included in Selected Alternative ( )

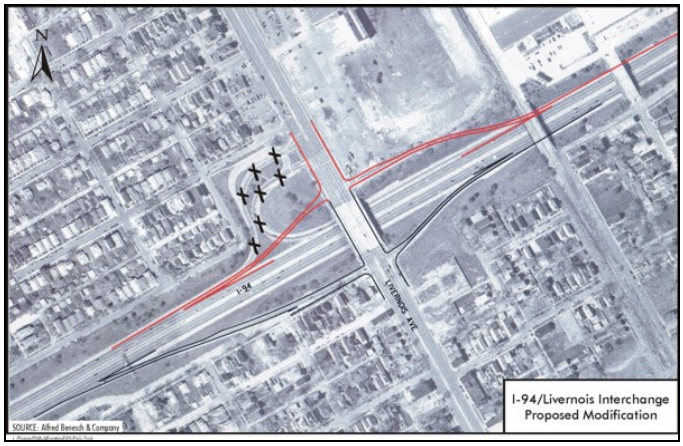
SOURCE: Alfred Benesch & Company

L:/Projects/2846-A/Graphics/FEIS/OtherProj.cdr

Major Interlockers in Detroit Area

Several road improvements will be made to facilitate access to the Livernois-Junction Yard:

- Modifying the I-94/Livernois interchange on its north side to create direct on- and off-ramps, rather than a loop ramp, so that trucks will use this interchange (one curve is now too tight for efficient container truck use) and Livernois Avenue, rather than other roads that pass through areas that are predominantly residential;



Modification of the I-94/Livernois Interchange

- Closing the Waterman/Dix entrance to the Livernois-Junction Yard and modifying the Livernois entrance (Gate 4 in Figure 2) so that trucks access the yard from I-94 only;

- Closing Lonyo Avenue and rebuilding Central Avenue under the Livernois-Junction Yard so that railroad operations do not conflict with the movements of cars and trucks that now pass across the yard. (Figure 4 shows a grade-separated underpass with sidewalks and bike lanes on Michigan State University's East Lansing campus. Although not as wide, it is an example of what the Central Avenue underpass could look like. Figure 5 shows what the proposed Central Avenue underpass could look like.);

- Providing two new access points to the yard from the west off Wyoming Avenue (Gates 3 and 5 in Figure 2).

- Improving John Kronk for a new gate at Martin (Gate 2 on Figure 2 - entrance from Livernois Avenue) for a new terminal north of, and contiguous to, the existing Livernois-Junction Yard.

- Constructing a north perimeter road to replace John Kronk between a point west of Stecker to Central, then along the terminal boundary to Martin. This road is laid out with curves east of Central Avenue to discourage use by large trucks and high-speed traffic on the edge of the residential area.

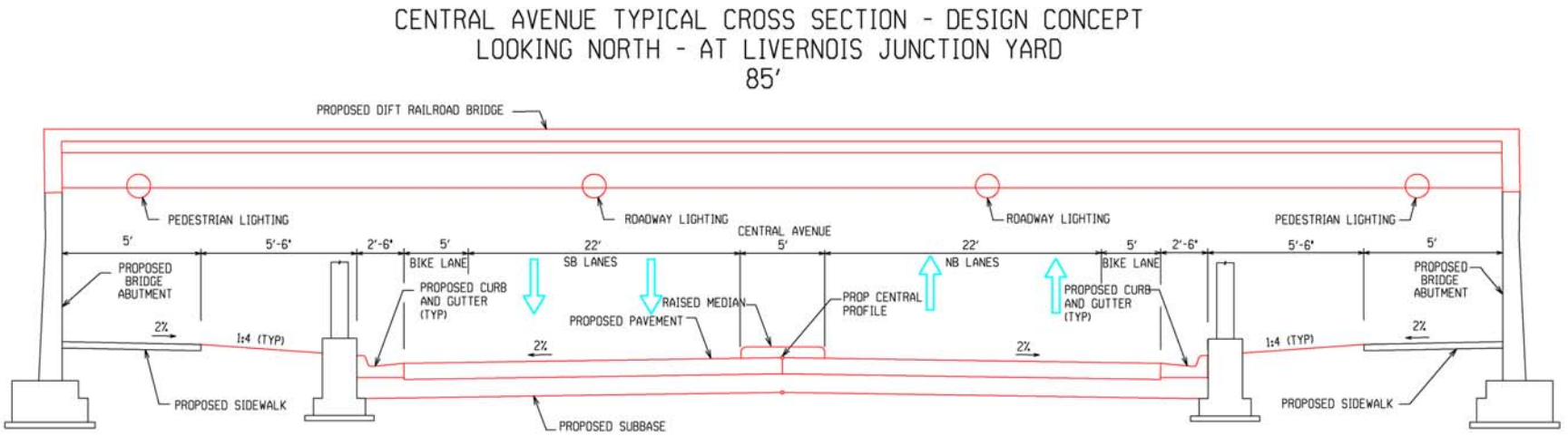
The Selected Alternative was found to be the environmentally preferred option because it best meets the project purpose and need by improving intermodal capacity, while minimizing the project footprint. It provides for access to/from the Livernois-Junction Yard to minimize truck traffic in neighborhood areas; it addresses design constraints; it minimizes impacts; and, it protects, preserves, and enhances historic, cultural, social, and natural resources.

Figure 4
Grade Separation Underpass with Sidewalk and Bike Lanes on Michigan State University Campus

Source: Michigan Department of Transportation

Figure 5

Potential Central Avenue Underpass Cross Section with Sidewalks and Bike Lanes



NOTE: THE DRAWING IS CONCEPTUAL IN NATURE SHOWING THE FEATURES THAT WILL BE INCLUDED AND A MAXIMUM OF 4 TRAFFIC LANES. SOME OF THE ACTUAL DIMENSIONS MAY CHANGE DURING THE DETAIL DESIGN OF THE PROJECT.

Source: The Corradino Group of Michigan, Inc.

2.1.3 Property Acquisition

The Selected Alternative will require acquisition of approximately 169 acres of land and relocate 32 residential dwelling units (28 single-family homes and four apartment units) and 29 businesses. A Conceptual Stage Relocation Plan can be found in Appendix B of the FEIS and relocations are discussed in Section 4.4 of that document. The property acquisition areas are shown in Figure 6.

2.1.4 Governance

MDOT will act in cooperation with the other parties that have signed the Pre-Development Plan Agreement (see Appendix F of the FEIS). The purpose of the PDPA is to further refine the understandings and intentions of the parties as first set forth in a Memorandum of Understanding dated April 6, 2006. The parties envisioned the steps presented graphically on Figure 7. Following execution of this ROD, the next steps are:

(1) The preparation of a detailed DIFT Development Plan (20-year period) agreed to by all the parties;

(2) Execution of individual DIFT Program Agreements (rolling five-year periods) between MDOT and the individual DIFT Rail-Related Participants; and,

(3) Execution of individual DIFT Project Agreements (providing for specific, then-committed projects) between MDOT and the individual railroad participants.

Figure 7
DIFT Plan – Program
Project Agreements and Level of Commitment

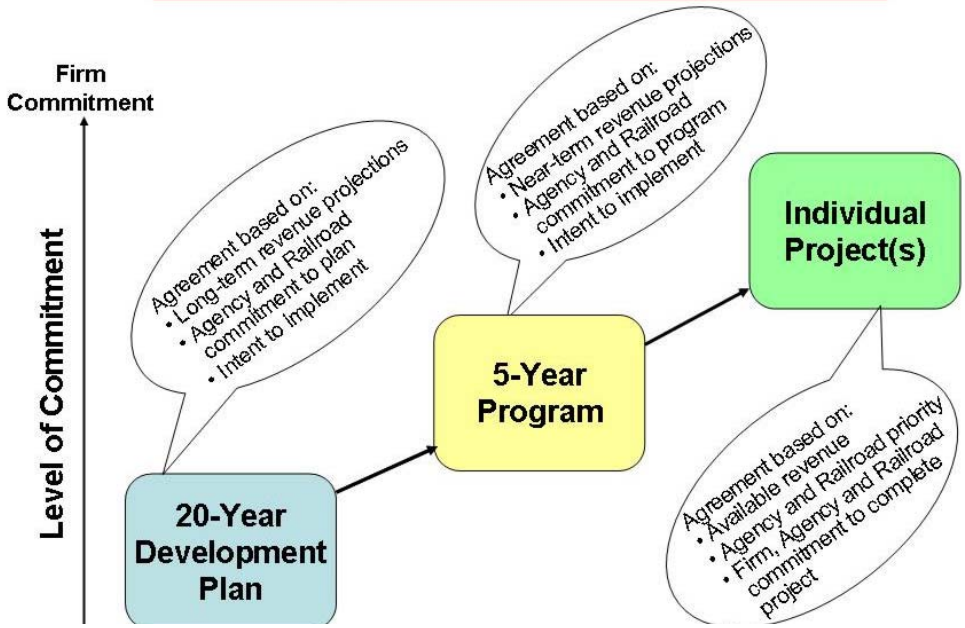


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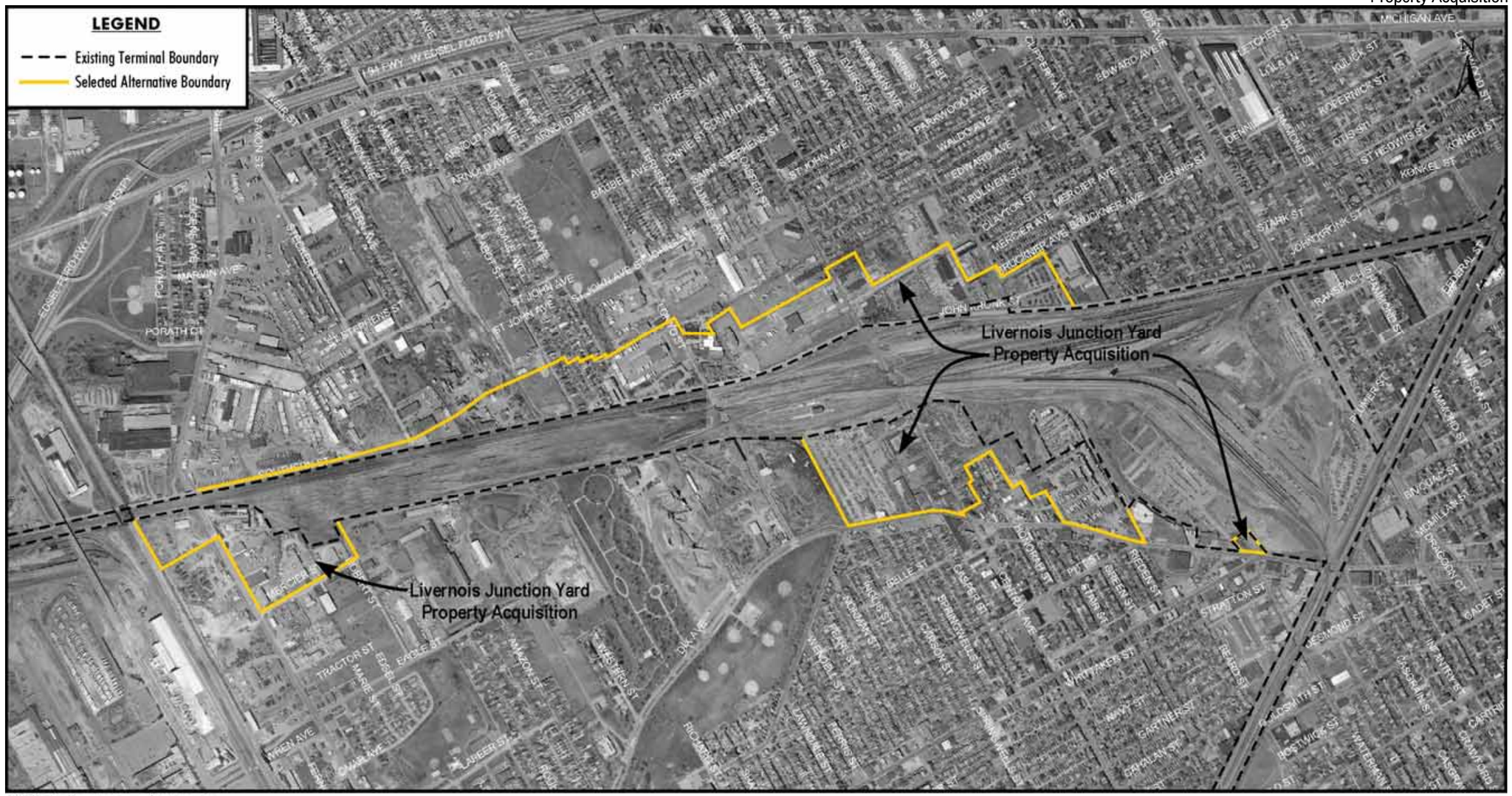
Figure 6
Selected Alternative Livernois-Junction Yard
Property Acquisition



SOURCE: The Corradino Group of Michigan, Inc.
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According to the PDPA, governance will be guided by certain principles:

1. A Management Committee will be established to include MDOT, CN, CP, CSX, and NS. The Management Committee will also include a non-voting representative from the FHWA and from the Southwest Detroit/East Dearborn neighborhood.
2. Among the responsibilities of the Management Committee will be to meet regularly to review and approve certain changes to the DIFT Development Plan; and, to review and adopt an annual schedule and budget.
3. A Program Manager will be provided by MDOT, with the advice and consent of the Management Committee.
4. Voting members of the Management Committee will utilize reasonable efforts to secure federal funding.

2.2 Environmental Commitments (Mitigation and Enhancements)

FHWA, in approving this ROD, directs the implementation of the project and environmental commitments. Environmental commitments are those mitigation and enhancement measures[2] listed on the "Green Sheet: Project Mitigation Summary" contained in Appendix A of this ROD. FHWA will support efforts, in cooperation with MDOT and applicable resource agencies, to ensure the timely implementation of these measures.

As the project progresses through design and construction, efforts will continue to minimize harm and reduce project impacts. When this is possible, without reducing the performance of the Selected Alternative or increasing impacts to other sensitive resources, resource agencies and the public will be consulted to determine if mitigation may be modified.

2.2.1 Environmental Commitment Funding

Mitigation measures implemented pursuant to this ROD (including land acquisition) are eligible for federal funding and subject to prior approval by FHWA. Enhancement measures will be federal-funded if eligible, and state funded if not.

2.2.2 Environmental Commitment Tracking

Environmental impacts and environmental commitments to address these impacts will be tracked and reported to the public and appropriate resource agencies (see Section 6).

[2] Enhancements are activities above and beyond what is required by law, and developed in cooperation with the local community.

3. ALTERNATIVES CONSIDERED

3.1 Purpose and Need

The purpose of the Detroit Intermodal Freight Terminal Project (DIFT) is to support the economic competitiveness of southeastern Michigan and the state by improving freight transportation opportunities and efficiencies for business, industry and the military. The goal is to ensure Southeast Michigan has a regional facility, or facilities, with sufficient capacity and interconnectivity to provide for existing and future intermodal demand and reduce time, monetary costs and congestion to support the economic competitiveness of Southeast Michigan.

The Detroit area has a need for greater intermodal capacity and improved connectivity among the intermodal terminals of the Class I railroads.[3] The needs of the U.S. economy and national defense are undergoing significant changes. Modern supply chain logistics, just-in-time manufacturing and deployment, and leaner organizations have revolutionized the way industry and the military transport freight. Concurrently, intermodal freight transport also is undergoing change. It is growing, spreading into new markets and restructuring to meet the needs of its customers. Supporting the needs of business, industry and the military – particularly in the way they contribute to the quality of life, the economy and national defense – continues to be the primary justification for public investments in the transportation system.

3.2 Identification and Evaluation of Alternatives

The alternatives afforded the four Class I railroads operating in southeastern Michigan the opportunity to participate. It was recognized that much of the growth in freight transportation would come in the form of intermodal container use. So, the participation of the railroads is essential to the project. The development of the alternatives tested how the public sector could support the private railroads in an equitable way. The railroads meanwhile discussed internally their business plans and needs. Some railroads have a need for expanded terminal capacity; others, in the end, determined they did not. All railroads see advantages to upgrading interlockers (rail line interconnection points).

The process leading to the Selected Alternative was evolutionary. The information gained from the Practical Alternatives and the DEIS was the means for the railroads to determine their business interest. The Selected Alternative represents the culmination of the process and is codified in the signed Pre-Development Plan Agreement. From the public point of view, the process allowed the planning for intermodal growth to be done consistent with community needs. Area roadway improvements and paving; security walls and streetscaping around the Livernois-Junction Yard; and, poorly working viaducts under railroad lines that serve the yard were all addressed in a comprehensive planning process that led to the Selected Alternative.

[3] A Class I railroad has a business volume that exceeds $319 million (2007 dollars). There are four Class I railroads in southeast Michigan: CSX, Norfolk Southern, Canadian National, and Canadian Pacific.

3.2.1 Preliminary Alternatives

A set of Illustrative Alternatives was developed beginning in 2001 in the feasibility study phase. It was assumed the project would center on the Livernois-Junction Yard, with consideration given to truck access to the yard from I-75 and I-94. In 2002 the National Environmental Policy Act phase began, leading to preparation of a DEIS. It was determined during the DEIS process to include an alternative that called for expansion of each railroad's terminal at its then-existing location(s).

3.2.2 Alternatives Carried Forward - DEIS

Four alternatives, including the No Action Alternative were analyzed and discussed in the DEIS. The DEIS did not identify a Preferred Alternative.

- Alternative 1: No Action Alternative – assumed expansion of each railroad's business on its existing terminal, without government participation.

- Alternative 2: Expand Existing Terminals – would have expanded each railroad's terminal at its current location, with government support. This alternative responded to public interest to distribute impacts among the existing terminals, rather than concentrating them at the Livernois-Junction Yard. Norfolk Southern (NS) and CSX were to expand at the Livernois-Junction Yard, including into land north and south of the Livernois-Junction Yard to be acquired by the proposed action. (CP was to expand its Expressway operations at the Michigan Central Depot and its container movement at its Oak Yard. In both cases government was to be involved in right-of-way acquisition and related access development. CN was to expand its terminal into the State Fairgrounds, as expansion in any other direction was neither prudent nor feasible. The DEIS right-of-way and construction cost total for this alternative was $267 million.

- Alternative 3: Consolidate – would have consolidated all railroads at the Livernois-Junction Yard. This alternative represented the concept of maximizing railroad efficiencies by locating them all at one location. This option had the maximum footprint of any of the alternatives considered in the DEIS. The DEIS right-of-way and construction cost total for this alternative was $583 million.

- Alternative 4: Composite – would have consolidated CSX, NS, and CP terminals at the Livernois-Junction Yard with CN expanding at Moterm. This alternative responded to CN's unwillingness to move its operations to the Livernois-Junction Yard. It is a composite of Alternatives 2 and 3. The DEIS right-of-way and construction cost total for this alternative was $551 million.

Figure 8 depicts the area at the Livernois-Junction Yard that each DEIS build alternative would have occupied. No Preferred Alternative was identified in the DEIS, as MDOT

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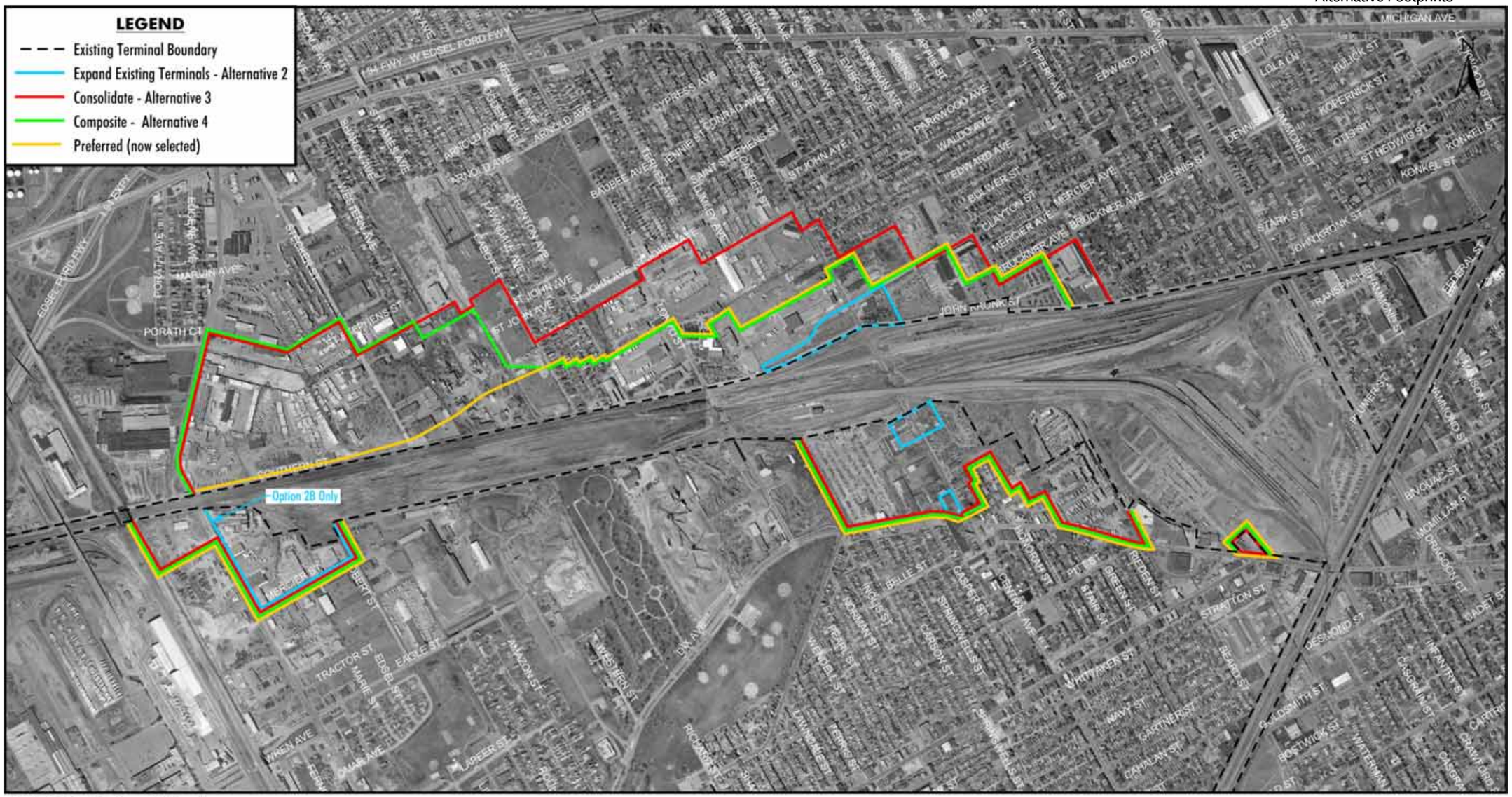
Figure 8
Livernois-Junction Yard
Alternative Footprints



SOURCE: The Corradino Group of Michigan, Inc.
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wanted to hear public comments and continue interaction with the railroads. The comments on the DEIS indicated substantial opposition to expanding the CN terminal onto the Michigan State Fairgrounds, and to minimize impacts for expansion of the Livernois-Junction Yard. Further, there was sentiment to reduce truck traffic in neighborhood areas. Presently all trucks enter the terminal off of Livernois Avenue and via the Dix/Waterman/Vernor gate, which has been noted at meetings and in comments to be unpopular.

Later, for the FEIS, a community enhancement program was developed with the Selected Alternative (see Green Sheet in Appendix A of this ROD), which provides for gates into the intermodal terminal both west (Wyoming Avenue) and east (Livernois Avenue), and the closing of the existing gate at Dix/Waterman/Vernor.

3.2.3 Cost Comparison

Estimated right-of-way and construction costs for the alternatives considered in the DEIS that involved use of government funds (in 2004 dollars) are shown in Section 4.24 of the DEIS and summarized in Table 1. Alternative 1, the No Action Alternative, has involved approximately $7 million (2008 dollars) spent on DIFT studies, a cost common to all alternatives. It involves no expenditure of government funds, but acknowledges that the railroads could have taken action with their own funds.

Table 1
DEIS Action Alternative Costs
(2004 dollars shared by Government and the Railroads – in millions)

Alternative	Construction	Right-of-Way/Property	Total
Alternative 2	$170	$98	$267
Alternative 3	$458	$125	$583
Alternative 4	$436	$115	$551

Source: The Corradino Group of Michigan, Inc. and Alfred Benesch, Inc.

The only cost difference was that the greater the consolidation, the greater the land need and construction cost. Costs were updated to 2008 for the Selected Alternative. See the cost verification in Section 3.3.5 of this ROD.

3.3 Preferred Alternative - FEIS

The identification of the Preferred Alternative in the FEIS resulted from public and agency input and consultation with the railroads. The criteria for selection were public and railroad acceptance and meeting the project's purpose and need. The Preferred Alternative meets the needs of the railroads and reduced impacts compared to other construction alternatives. It reduced impacts and public concerns by routing truck traffic away from residential areas and including air quality measures among the community enhancement in the Green Sheet in Appendix A of this ROD.

3.3.1 Rationale for Selection

The Preferred Alternative is a modification of Alternative 4. Its selection was based on: 1) comments received on the DEIS and through community, Local Advisory Council, and other meetings: 2) reorienting the access pattern to the Livernois-Junction Yard by planning for the elimination of the Dix/Waterman/Vernor gate and addition of gates on Wyoming: 3) minimizing right-of-way needs through discussions with the railroads and gaining their concurrence through the Pre-development Plan Agreement; and 4) the development of enhancements that were included on the Green Sheet in Appendix A of this ROD.

CN chose not to expand its operation in Ferndale south across 8 Mile Road into the Michigan State Fairgrounds. At the Livernois-Junction Yard, the changes are on the north side of the yard, where a revised yard layout reduced the right-of-way acquisition need and the related impacts.

CSX and NS intermodal rail operations will expand at the Livernois-Junction Yard. Some or all of the Triple Crown operation of NS is expected to move from the Melvindale and Willow Run terminals to the Livernois-Junction Yard. And, CP will move its intermodal operations from the Oak Terminal to the Livernois-Junction Yard. CN has elected not to shift its Moterm operation to the Livernois-Junction Yard and not to expand its terminal. But, it will participate in paying its share of the external-to-terminal rail improvements that are part of the DIFT project. Meanwhile, the CP/ Expressway intermodal operation closed permanently in June 2004 and is no longer part of the project.

The railroads were instrumental in the selection of a Preferred Alternative, as there would be no project without the railroads. After CSX declined to sign the Memorandum of Understanding included in the DEIS, MDOT and FHWA determined to proceed with the project, even if CSX did not participate. Conclusions related to each of the alternatives included in the DEIS follow.

- No Action Alternative – The No Action Alternative does not use government funds to expand the operational footprint of any railroad. The No Action Alternative cannot be the Selected Alternative, because it does not meet the project purpose and need.

- Alternative 2 – Alternative 2 would have had each railroad expand at its current location. Alternative 2 cannot be the Selected Alternative. CSX, NS, and CP desire to be at the Livernois-Junction Yard, therefore, Alternative 2 is not consistent with the desires of CP.

- Alternative 3 – Alternative 3 would have consolidated all railroads at the Livernois-Junction Yard. It cannot be the Selected Alternative because CN desires to remain at its Moterm Terminal,

- Alternative 4 – Alternative 4 was designed to bring CSX, NS, and CP together at the Livernois-Junction Yard and have CN expand at Moterm. It cannot be the Selected Alternative, because expansion of Moterm was not desired by CN and, if expansion had occurred, it would have been into the Michigan State Fairgrounds. But, the Preferred Alternative evolved from Alternative 4.

3.3.2 Potential Reasonably Foreseeable Impacts of Selected Alternative

The impacts of the Selected Alternative are those of the Preferred Alternative that are summarized in FEIS Table 1-1, which is included here as Table 2. The impacts are analyzed in FEIS Section 4.

3.3.3 Consistency with Established Statewide and Regional Transportation Planning Goals

The project is consistent with MDOT's *Long-Range Plan* and is noted in MDOT's *2009-2013 Five-Year Transportation Program.* The project is also consistent with regional planning goals and it is included in the metropolitan planning organization (SEMCOG) Transportation Improvement Program (TIP) and long-range plan, *Direction 2035*.

3.3.4 Environmentally Preferred Alternative

As noted in Section 2.1.2 above, the Selected Alternative is considered the environmentally preferred alternative, because it minimized the footprint of the project without compromising the needs of the railroads or the community. It incorporates the best physical features of the Practical Alternatives considered in the DEIS, with the least harm and offsets community impacts with community enhancements (see the Green Sheet in Appendix A of this ROD). It requires less land and fewer relocations than the Practical Alternatives considered in the DEIS.

3.3.5 Cost Savings Considerations

A Cost Estimate Review was conducted May 5-8, 2009, involving specialists from FHWA, MDOT, and MDOT's consultants. The review is mandated for federal projects with a cost greater than $500 million to assure the reasonableness and accuracy of the cost estimating. During this review, the Preferred Alternative cost estimates were updated using the FHWA level-of-confidence approach. Cost savings (opportunities) and increases (risks) were thoroughly reviewed in establishing the project cost estimates. Its conclusion was that "the pre-review year of expenditure (YOE) cost estimate of $654 million was not changed significantly during the review." At the 70 percent confidence level, the cost estimate for the Selected Alternative is calculated to be approximately $650 million.

Table 2
Summary of Direct and Indirect Impacts – No Action and Selected Alternatives – Livernois-Junction Yard

Livernois-Junction Yard Area[a]												
Traffic and Safety		Community Cohesion		Environmental Justice		Land Use		Relocations				
								No. of Residential Units Affected (Acquisitions)		No. of Business Units Affected (Acquisitions)		Other Affected Properties (Acquisitions)	
No Action	Selected	No Action	Selected	No Action	Selected	No Action	Selected	No Action	Selected	No Action	Select.	No Action	Selected
• Normal, non-DIFT traffic of all kinds increases. Truck traffic continues to use neighborhood streets. • Acceptable volume/ capacity conditions at all intersections, except at the Dix/Waterman/ Vernor intersection. • Continued rail/vehicle conflicts at Central and at Lonyo.	• Grade separation of Central will reduce vehicle-rail conflicts and crashes. • I-94/Livernois interchange improvement will improve safety. • Truck traffic will be reduced on local roads. • Acceptable volume/capacity conditions will be experienced at all intersections.	• Industrial/ commercial uses will continue to be mixed with residential uses. • Continued rail/ vehicle conflicts at Central/Lonyo.	• Lonyo will be closed. Central Avenue railroad crossing will be grade separated. • Truck traffic will be reduced on neighborhood streets.	• No adverse disproportionate impact expected.	• There is a history of impacts to minority and low-income populations associated with past industrialization and transportation projects. There will be adverse disproportionate impacts from this project.	• Maintains existing land use pattern.	• Consistent with Detroit and Dearborn land use plans.	0	• 28 single-family homes • Four apartments	0	• 29	N/A	• None

Farmland and Open Space/ Part 361 Lands		Economic Impacts		Air Quality				Noise Considerations	
				Hot Spots		Pollutant Burden			
No Action	Selected	No Action	Selected	No Action	Selected	No Action	Selected	No Action	Selected
• No active farmland, or Part 361 open space land needed.	• No active farmland, or Part 361 land needed.	• Jobs Relocated: 0 • Net Jobs Gained: Terminal Area 194 Statewide 1,029	• Jobs Relocated: 231 • Net Jobs Gained: Terminal Area 1,542 Statewide 4,514	• No violations of CO standards at intersections.	• No violations of CO standards at intersections. • Qualitative analysis of $PM_{2.5}$ or PM_{10} hotspots indicates there will be no standards violated.	• Terminal burdens less than existing conditions except for PM_{10} and $PM_{2.5}$. • Roadway burdens less than existing conditions because of cleaner engines and fuels. • Regional burdens are reduced.	• Terminal burdens about same as No Action even with increased intermodal activity. • Roadway burdens similar to No Action. • Regional burdens will be reduced with freight shift to rail.	• No perceptible increase.	• No perceptible increase with the addition of planned security walls.

[a] Only the Livernois-Junction Yard is involved in the Selected Alternative. There are no project impacts at other terminals.
Source: The Corradino Group of Michigan, Inc.

Table 2 (continued)
Summary of Direct and Indirect Impacts – No Action and Selected Alternatives – Livernois-Junction Yard

Livernois-Junction Yard Area[a]											
Surface Water Impacts		**Wetlands**		**Threatened and Endangered Species**		**Historic/ Archaeological 4(f) Resources**		**Parklands/ Recreational Land 4(f) Resources**		**Visual Effects**	
No Action	**Selected**	**No Action**	**Selected**	**No Action**	**Selected**	**No Action**	**Selected**	**No Action**	**Selected**	**No Action**	**Selected**
• No change	• Yard paving will improve drainage. • Storm drainage subject of NPDES permitting. • Spill prevention plans will be in place. • Particulate matter that clogs sewers will be reduced.	• None	• 0.01 acres of Palustrine Emergent wetland of low quality will be affected.	• None	• None	• No effect	• Adverse effect with removal of Michigan Box Company building. • SHPO review of security wall across from 6332 Kronk for compatibility.	• No effect	• No direct effects, indirect or cumulative negative effects.	• Unsightly properties and streetscapes remain.	• Removal of some unsightly properties through acquisition will be positive. • Security wall along north edge of terminal will separate terminal operations. • Directional lighting near residential areas will be used to reduce/avoid light intrusion.

Contaminated Sites		**Soils**		**Indirect and Cumulative**				**Energy**		**Implementation Project Cost (millions 2008)**	
No Action	**Selected**	**No Action**	**Selected**	**No Action**	**Selected**			**No Action**	**Selected**	**No Action**	**Selected**
• No sites around terminal area expected to change • Potential to remediate up to 10 acres for non-terminal intermodal activity	• 27 sites need additional testing • Up to 100 acres for non-terminal intermodal activity will be remediated.	• No change	• Former clay pits will need geotechnical testing prior to construction of any structures.	• Perpetuates current conditions/ trends in traffic, economics, land use, community effects, noise, cultural resources, contaminated sites and water quality. Pollution reduced by cleaner engines/fuel.	• No negative traffic congestion effects. • Some business expansion expected. • Unwanted mixing of land uses must be resisted through local land use controls. • No adverse air quality effects are expected.	• Ambient noise levels may increase in commercial areas with no negative effect. • Existing land use controls must be enforced to avoid adverse cultural resource impacts.	• Some contaminated property reclaimed. • Available infrastructure is expected to handle stormwater from the buildout of the expanded Livernois-Junction Yard.	• DRIC[b] project will reduce I-75 access to Livernois/ Dragoon	• Continues past trends.	• Energy will be used during construction. • Improved efficiencies from conversion of some freight shipments from truck to rail are expected.	• Land Acquisition and Relocation: $0 • Construction: $0 • Community Benefits: $0 • Studies: $7 • Total: $7	• Land Acquisition and Relocation: $123 • Construction: $395 • Local Road Improvements: $11 • Total: $529 Note that inflation would add $121 million for a Year of Expenditure total cost of $650 million.

[a] *Only the Livernois-Junction Yard is involved in the Preferred Alternative. There are no project impacts at other terminals.*
[b] DRIC is the Detroit River International Crossing project, proposing a new international bridge to Canada. The DIFT has independent utility from all other projects, including the Detroit River International Crossing and the Ambassador Bridge Gateway Project. It takes into account development of High Speed Rail through the Livernois-Junction Yard.
Source: The Corradino Group of Michigan, Inc.

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4. FINAL SECTION 4(f)

As previously indicated in the FEIS (FEIS Section 6, Final Section 4(f) Evaluation), FHWA finds, in accordance with 23 CFR 774, that:

- The preliminary FEIS findings made in accordance with 23 CFR 774.3(a) for the overall DIFT project remain valid; and,

- Because there is no prudent and feasible alternative to use of Section 4(f) resources (Michigan/General Box Company [Spranger/Detroit Wire Wheel Corporation]), in accordance with 23 CFR 774.3(c), that the Preferred Alternative (now the Selected Alternative in this ROD) (1) causes the least overall harm in light of the preservation purpose of Section 4(f) of the Department of Transportation Act of 1966; and (2) the Preferred Alternative (now the Selected Alternative in this ROD) includes all possible planning, as defined in 23 CFR 774.17, to minimize harm to Section 4(f) property.

The Memorandum of Agreement (MOA) in Appendix C of the FEIS also provides for the unlikely discovery of any archaeological sites eligible for the *National Register of Historic Places* (NRHP) during construction.

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5. MEASURES TO MINIMIZE HARM

All practicable measures to minimize environmental harm have been incorporated into the decision. Major regulatory requirements applicable to this project include the following:

- Evaluation of the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites under Section 4(f) of the Department of Transportation Act;

- Consultation regarding historic and archaeological resources under Section 106 of the National Historic Preservation Act;

- Certification of conformity under the Clean Air Act;

- Compliance with Environmental Justice guidelines and Title VI of the Civil Rights Act of 1964 in identifying impacts to minority and low-income population groups in the study area;

- Permitting activities.

Actions committed to or taken to comply with these requirements are summarized below. The Project Mitigation Summary "Green Sheet," which identifies proposed mitigation, is included as Appendix A of this ROD. A list of community enhancements above and beyond the required mitigation measures was developed in cooperation with the local community. This list of enhancements is included at the end of the Green Sheet. Measures to minimize harm are outlined below.

Monitoring of the environmental commitments within this project will be accomplished in part by MDOT tracking environmental commitments with regular reporting to FHWA and the public as the project progresses.

5.1 Section 4(f) (Department of Transportation Act)

The criteria of 23 CFR 771.135(a) have been met for the DIFT project and FHWA has determined that the DIFT will use identified resources protected under this regulation.

Public/Private Historic Sites - The known historic resource affected by the Selected Alternative is the Michigan/General Box Company (Spranger/Detroit Wire Wheel Corporation), which would be removed by the project. This property is also covered by Section 106 of the National Historic Preservation Act. The mitigation measures related to this Section 4(f) resource are documented in the signed Memorandum of Agreement contained in Appendix C of the FEIS. Mitigation measures include complete documentation of the structures prior to any demolition or construction activities.

5.2 Section 106 (National Historic Preservation Act)

The Selected Alternative will affect one historic property covered by Section 106 of the National Historic Preservation Act, the Michigan/General Box Company (Spranger/Detroit Wire Wheel Corporation), by removing it.

The mitigation measures related to Section 106 resources, pursuant to 36 CFR 800.6(b)(1), are documented in the signed Memorandum of Agreement (Appendix C of the FEIS).

5.3 Air Quality Conformity (Clean Air Act)

The project is consistent with MDOT's *Long-Range Plan* and is listed on MDOT's *2009-2013 Five-Year Transportation Program.* The metropolitan planning organization, the Southeast Michigan Council of Governments (SEMCOG), included the project in its long-range plan, *Direction 2035,* and the design, right-of-way acquisition and construction phases of the Project into its *2008-2011 Transportation Improvement Program.* The U.S. Department of Transportation (USDOT) found it to conform to the 8-hour Ozone, CO, and $PM_{2.5}$ regional conformity requirements based on a 2015 construction timeline. The regional conformity demonstration reflects the implementation timeline (completion of construction by year 2015). FHWA's conformity finding for SEMCOG's long-range plan will be issued in February 2010.

A Mobile Source Air Toxics (MSATs) Impact Analysis was done consistent with FHWA Interim Guidance. Local "hot spots" were analyzed. The analysis concluded that carbon monoxide (CO) and particulate matter (PM) air quality standards will not be violated.

No violations of the National Ambient Air Quality Standards (NAAQS) are projected for this project. Even though no air quality mitigation measures are required, FHWA and MDOT are committed to the following measures to minimize impacts on ambient air quality in or around the project vicinity. This includes measures to reduce pollution, minimize truck idling and to remove trucks from neighborhoods. Specifically:

- The Selected Alternative design includes improved access to Livernois Avenue from I-94 which discourages trucks cutting through residential streets in the neighborhood south of I-94 and along Central Avenue.

- Buffering is included in the form of a security wall around the portions of the yard adjacent to residential areas.

- Landscaping along the replacement road for John Kronk on the north edge of the project will aid in improving air quality. MDOT will work with the cities of Detroit and Dearborn in an effort to secure Transportation Enhancement Funds to beautify roadways and greenways near the DIFT.

- The Livernois-Junction Yard will be paved, substantially reducing the amount of windblown particulate matter that accumulates on homes, on vehicles and in the streets, which in turn causes drainage issues. Reduction of windblown particulate matter will reduce re-entrained particulates on area roads.

- The modern design of the terminals will reduce gate idle time by trucks hauling containers to and from the terminals.

- Anti-idling - Trucks dropping/picking up containers do not dwell in the terminal, and locomotives do not wait for new intermodal trains to be made up after dropping an intermodal load - they are put in service elsewhere. NS, CSX, and CP all have anti-idling policies. Auxiliary power units for trains - Railroads are introducing these units for fuel savings merit. On-road fuels for equipment - Ultra-low sulfur diesel applies to nonroad vehicles effective June 2010 and locomotives June 2012; so, on road fuels will be used. Retrofit technology - Over the ten-year implementation period, new equipment will be introduced. Hybrid locomotives - Intermodal trains use long-haul locomotives, not switch locomotives.

- Construction operations will follow best operational practices (i.e. engine shut down to reduce idling, locating operations away from sensitive receptors) and Best Available Demonstrated Control Technology (BADCT) to reduce any impact of diesel emissions on the community.

- MDOT will work with contractors on an operational agreement to control air pollution during construction. A construction emissions plan may include actions such as: retrofitting off-road construction equipment; limiting the age of off-road vehicles used in construction projects; minimizing engine operations; restricting construction activities around certain more sensitive receptors; using diesel particulate traps and oxidation catalysts; and, using existing power sources or clean fuel generators, rather than temporary power generators. The Contractor will institute fugitive dust control plans as per MDOT Standard Construction Specifications under Section 107.15A and 107.19.

- MDOT will work with SEMCOG, MDNRE, the private sector and the community to create an action plan that includes short-term and long-term objectives aimed at reducing fugitive dust, diesel truck idling, fuel consumption, or diesel emissions to limit $PM_{2.5}$ emissions in the study area defined by the map shown in FEIS Figure 3-16. The action plan will identify priorities for future federal aid eligible transportation projects through programs such as Congestion Mitigation and Air Quality (CMAQ) and the Midwest Clean Diesel Initiative. The action plan will be implemented during design and construction phases, and sustained through the maintenance and operations of the facilities.

- Outreach activities could include informing commercial operations and residents on air pollution control strategies. The actual projects will be generated from the community and its partners who will develop project proposals.

5.4 Environmental Justice and Title VI (Civil Rights Act)

The Selected Alternative will have a disproportionately high and adverse effect on minority and low-income population groups in the study area. The FEIS complied with the National Environmental Policy Act (NEPA), Environmental Justice guidelines, and Title VI of the Civil Rights Act of 1964, and did not exclude participation or deny benefits of any program or activity while conducting the NEPA process.

To ensure compliance with Environmental Justice guidelines and Title VI of the Civil Rights Act of 1964[4] and related statutes:

1. An intensive community involvement effort was employed as part of the environmental justice analysis and cumulative impact analysis; and

2. A cumulative analysis was done to determine the cumulative impacts of the DIFT project and others in the area on the community.

5.5 Permitting

Environmental permits required during final design will be obtained by MDOT in accordance with its Program/Project Management System. Environmental permits required include:

- Permits under Michigan Public Act 451 required from the Michigan Department of Natural Resources and Environment (MDNRE – formerly Michigan Department of Environmental Quality):
  - Part 55 (Air Pollution Control), and
  - Part 303 (Wetlands Protection).

- Executive Order 11990 (Wetland Protection).

- Permits under the Clean Water Act of 1977, as amended, as administered through MDNRE:
  - Section 401, State Water Quality Certification; and,
  - Section 402(b), National Pollutant Discharge Elimination System, storm water permit.

- Any additional required local permits will be obtained. The specific permits required will be determined during the design phase.

[4] The intent of Title VI is to ensure that no person shall on the grounds of race, religion (where the primary objective of the program, activity or service is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age, retaliation or disability be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

6. MONITORING AND ENFORCEMENT

NEPA legislation and implementing regulations require monitoring of mitigation measures to reduce or eliminate adverse environmental impacts associated with a planned action. Per 23 CFR 771.109, "It shall be the responsibility of the applicant [MDOT], in cooperation with the Administration [FHWA] to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation." (For additional statutory guidance, see: 42 USC 4371 *et seq*., Presidential Order 11514, 23 CFR 771.109(6), and 40 CFR 1505.2(C) and 1505.3).

6.1 Environmental Commitments Defined

Environmental commitments are composed of both environmental mitigation and community enhancements (see Project Mitigation Summary Green Sheet in Appendix A of this ROD).

- Project mitigation includes measures required by law to address any damage to the social and natural environments caused by the project. Mitigation measures include avoidance, replacement, restoration, compensation or any other means.

- Community enhancements are activities above and beyond what is required by law, and developed in cooperation with the local community.

6.2 Enforcement of Environmental Commitments

MDOT will track and enforce the implementation of the environmental commitments listed on the Green Sheet. The Project Mitigation Summary Green Sheet included in Appendix A of this ROD details the DIFT project mitigation and enhancement commitments.

- MDOT's Project Planning Division will coordinate with MDOT's Lansing and Region Design and Construction staff to review the mitigation and enhancement commitments included in the FEIS and ROD.

- MDOT's Senior Project Manager for the DIFT project will be responsible for incorporating mitigation and enhancement commitments listed in the FEIS and ROD into the project design plans and proposal.

- MDOT Lansing and Metro Region staff will assist the Senior Project Manager in completing and coordinating the various mitigation and enhancement commitments such as property contamination surveys, historic property documentation, and landscaping.

- MDOT staff will also coordinate with other federal, state, and local agencies on items such as local road improvements, lighting, job training, economic development and air quality improvements.

- The MDOT Project Manager for the Construction phase will be responsible for making sure the Contractor follows the maintenance of traffic plan and the construction staging plan.

- The MDOT Project Manager for the Construction phase will be responsible for making sure the Contractor completes the mitigation and enhancement commitments shown on the design plans and project proposal.

6.3 Environmental Commitment Progress Reporting

Good environmental stewardship and trust among the agencies and public can occur if MDOT assures, demonstrates, and communicates project environmental commitment implementation. The progress or status of the environmental mitigation and enhancement commitments made during the environmental clearance process and included in this ROD will be reported:

- Annually to FHWA in the DIFT Financial Plan.

- Annually to the Federal and State Resource Agencies at the fall MDOT/FHWA update meetings held to discuss existing and upcoming major projects.

- Quarterly on the DIFT Project Website.

- Periodically to the community

7. COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT

The FEIS was signed December 1, 2009, made available for agency and public review and sent to the U.S. EPA for filing the Notice of Availability, which appeared in the *Federal Register* on Friday, December 11, 2009. That Notice ended the wait period on January 11, 2010. Subsequently an amended Notice was published on Friday, December 18, 2009, extending the wait period to January 29, 2010.

All comments received, including those received after the wait period (for example several city of Detroit Department comments), and their responses can be found in the DIFT project website, located at www.michigan.gov/mdot, click "Programs and Projects" and then click "Studies" then click "DIFT". The file is titled "DIFT FEIS Comments and Responses". They are also available from: DIFT Project Manager, MDOT, 425 W. Ottawa Street, Lansing, Michigan 48909.

Only the substantive comments and their responses are included in the development of this ROD, they are summarized by topic and discussed below. They are organized by section of the FEIS: purpose and need; alternatives; environmental consequences, Section 4(f) evaluation, mitigation, and public involvement.

FHWA has reviewed all of the comments received and found that the proposed project was examined and the potential impacts are identified and addressed.

7.1 Purpose and Need

Comment: *The DIFT FEIS describes the DRIC as having "independent utility" but fails to provide any justification for coming to such a conclusion. There is no independent utility from the DRIC project*

Response: These two projects have independent utility[5] under NEPA as neither is dependent upon the other. So, each must be considered individually in terms of its environmental impacts. NEPA requires that the cumulative effects of these projects be considered, and this has been done (Section 4.17 of the FEIS).

Comment: *MDOT . . . notes . . . economic conditions have softened . . . However, it does not discuss what economic conditions, how deep of a reduction in demand or for what amount of time. . . . [It] merely includes a short conclusory note that Global Insight . . . see[s] the freight demand increasing significantly as the economy*

[5] Independent utility means the action being taken should be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made, See:
http://www.environment.fhwa.dot.gov/projdev/tdmtermini.asp

rebounds in 2010 and beyond. . . . [I]n sum, the Final EIS fails entirely to show that it took into account the state of the economy in determining the project need. . . . A supplemental EIS is required . . .

Response: While intermodal freight volumes in 2009 were down, "analysts look for overall intermodal growth in 2010 of 1.5-2.5 percent." (Journal of Commerce, February 19, 2010). U.S. DOT forecasts an almost 90 percent increase in freight rail demand nationwide between 2007 and 2035. FHWA determined in December 2008 that a Supplemental EIS was not required (FEIS Appendix H).

Comment: The projections ignore recent trends in intermodal freight demand. . . .

Response: Recent trends in intermodal freight demand were included in the projections (see the end of section 4.1 of the FEIS). While volumes in 2009 were down, "analysts look for overall intermodal growth in 2010 of 1.5-2.5 percent." (Journal of Commerce, February 19, 2010). U.S. DOT forecasts an almost 90 percent increase in freight rail demand nationwide between 2007 and 2035.

7.2 Alternatives

Comment: Dearborn is actively working to strengthen commercial districts. . . . One . . . is known as the Dix-Vernor Business District. . . . Dearborn is proposing that a new truck road should be developed that either uses DIFT infrastructure or parallels it to have the truck traffic exit the Levy site at the north end and merge with the DIFT traffic patterns on Wyoming.

Response: A concept for a new truck route has been identified by the city of Dearborn. This concept was recently submitted to MDOT on January 29, 2010.

Comment: MDOT is proposing a new gate on John Kronk at Martin, with no public discussion. MDOT should either acquire these homes and create an additional buffer . . . or relocate the proposed gate.

Response: The Preferred Alternative with Gate 2 using John Kronk off Livernois was discussed at the public meetings held November 10, 12, and 13 in 2008, December 7, 2009 (a stakeholder meeting hosted by Rep. Tlaib), and January 27, 2010 (Detroit River International Crossing Local Advisory Council meeting). Gate 2 facilitates a better balance of traffic between Wyoming and Livernois Avenues than most other alternatives. This supports the elimination of the existing gate at Dix/Waterman/Vernor. The latter gate, and access to it, are much closer to homes than Gate 2. Therefore Gate 2 is included in the Preferred Alternative. There is no need to acquire homes along Kronk or provide buffering in addition to

the planned security wall to be built along the edge of the Livernois-Junction Yard at this point.

Comment: *The Detroit City Planning Commission requests that road improvements for Livernois Avenue between the rail yard and I-94 be added to the mitigation measure (not part of the community enhancement proposals). . . . Traffic calming measures need to be considered.*

Response: MDOT will discuss with project stakeholders, including the cities of Detroit and Dearborn the disposition of the $11 million in enhancement funds to be devoted to local roads upon project implementation. The discussions may include traffic calming.

Comment: *[T]he viaduct should be well lit, day and night . . . Ventilation should be provided . . . Separate bike, auto and pedestrian facilities should be provided. The viaduct should be maintained by the railyard, not the city.*

Response: There are a 20-foot viaduct and a 100-foot viaduct today on Central, with no sidewalks across the terminal and numerous at-grade track crossings. Although previously stated that the underpass is estimated to be approximately 800 feet long, current preliminary designs show the total length of the underpass to be approximately 1300 feet long. The underpass will be ADA compliant with separate sidewalks, bike lanes and vehicular lanes. Central Avenue will be well lit and designed to be safe. A recent train accident at Lonyo, and many before it, demonstrate a need for a safer way to cross the yard. Responsibilities for the maintenance of the Central Avenue underpass have not yet been determined.

7.3 Environmental Consequences

7.3.1 Community Cohesion/Non-motorized Provisions

Comment: *[T]he proposed viaducting of Michigan Avenue and closure of Lonyo will further severely impact the ability of the vulnerable populations without access to cars. . . This will have an extremely detrimental effect on the mobility of many residents of Detroit.*

Response: The underpass will be ADA compliant with separate sidewalks, bike lanes and vehicular lanes. Central Avenue will be well lit and designed to be safe. The Central Avenue underpass will improve the mobility of motorized and non-motorized users who wish to cross the Livernois-Junction Yard by providing a secure crossing of the railroad tracks. Although previously stated that the underpass is estimated to be approximately 800 feet long, current preliminary designs show the total length of the underpass to be approximately 1300 feet long.

7.3.2 Jobs and the Economy

Comment: *More substantive language for commitments from MDOT and the railroads . . . to place area . . . residents in any newly created jobs for construction . . . and future operations[s] . . . How many neighborhood people are going to get jobs once this is constructed? Not construction jobs, but people employed at the terminal?*

Response: What is known is that 1,542 permanent jobs are forecast to be created by the DIFT over 20 years in the area around the Livernois-Junction Yard (FEIS Section 4.5). MDOT will coordinate with the cities of Detroit and Dearborn, and others, to explore job training opportunities, English as a Second Language (ESL) and other training options in the project areas (Green Sheet). Committing that certain groups will get jobs is not permissible.

7.3.3 Environmental Justice and Title VI

Comment: *A primary principle of environmental justice is to engage and inform residents. . . MDOT's lack of outreach and education regarding the project over the last year led to failure to adequately engage residents.*

Response: In November 2008 three public meetings were held to present the Preferred Alternative for the DIFT. Nine thousand mail notifications were sent and hundreds more were distributed locally. The Preferred Alternative has not changed since November 2008. An additional stakeholder meeting was attended on December 7, 2009, hosted by Rep. Tlaib to provide an overview of the DIFT and answer questions. The presentation given at the November 2008 public meetings was made again at the January 2010 DRIC Local Advisory Council meeting held at Southwestern High School in southwest Detroit. More than 100 persons attended. Flyers were passed out door-to-door in the DIFT neighborhood in advance of that meeting, and English, Spanish and Arabic language flyers were hand delivered to a number of community organizations in the DIFT project area. The wait period prior to signing the Record of Decision was set at 49 days to allow more than the required 30 days to review the FEIS. Section 7 of the DEIS and Section 7 of the FEIS document the extensive outreach efforts directed at low-income and minority persons throughout the DIFT project.

Comment: *There was no outreach to Arabic or Spanish speaking people in the affected neighborhood.*

Response: Throughout the project, MDOT has reached out to Spanish and Arabic speaking people in the affected neighborhoods. A Local Advisory Council (LAC) was established, which included representatives of the local Spanish and Arabic communities. The LAC acted as a way for organizations to participate, and MDOT reached out to incorporate on the LAC representatives of local Arabic and Spanish speaking groups, so these groups could be continuously represented. Spanish and Arabic translators were present at the many public meetings listed in

FEIS Section 7.2, and at the Public Hearings listed in FEIS Section 7.4. Likewise the November 2008 meetings had translators available. The DEIS and FEIS summaries were translated into Spanish and Arabic. Materials have been delivered to organizations representing these groups.

Comment: *MDOT continues to fall far short with regards to air quality disproportionate impacts . . . MDOT again fails to confirm that there will be disproportionate air quality impacts on the communities.*

Response: The FEIS recognizes disproportionate impacts to environmental justice community members and addresses community benefits to offset them. See FEIS sections 4.3.2 and 5.17 and the Project Mitigation Summary Green Sheet, which is now included in Appendix A of this Record of Decision, and which includes a number of measures to improve air quality.

7.3.4 Traffic

Comment: *The Detroit City Planning Commission requests improved mitigation measures to ensure that trucks do not travel south on Livernois Avenue toward the I-75 Expressway..*

Response: The Livernois Avenue entrance to the Livernois-Junction Yard will be designed to prevent truck movement to/from the south. The DRIC project will close the interchange of I-75 with Livernois/Dragoon. The Detroit Traffic Department has proposed making Livernois and Dragoon two-way streets south of Vernor, which would further discourage truck traffic.

Comment: *Livernois, Wyoming and Central will be virtually converted into a highway for increased truck traffic. Although they claim new interchanges will increase safety, there are no buffer zones for families that live at the immediate boundaries of the new throughways.*

Response: Livernois and Wyoming avenues already carry heavy truck traffic. On Central Avenue north of Kronk, where there is residential development, truck traffic with the project is estimated to decrease by over 200 daily (FEIS Figure 1-3). DIFT truck traffic has been balanced between Wyoming and Livernois avenues. Wyoming has no residential development except the Porath area south of Michigan Avenue. The city of Dearborn has been buying properties there over the years to convert the land use from residential. Livernois Avenue will be among the local roads considered for improvement under the community enhancements noted on the Green Sheet in this ROD.

Comment: *MDOT also repeatedly claims that net truck volumes in the community will decrease when the preferred alternative is built . . .*

Response: The FEIS states there will be a net increase of 700 trucks upon completion of the DIFT (FEIS page 1-16). A decrease in truck traffic is anticipated for a number of local streets with predominantly residential use.

Comment: *Although there may be a net reduction in trucks in the footprint of the yard, it is not valid to claim that there will be an overall reduction in truck volumes in the community . . . [because] . . . the FEIS also states that an attempt will be made to relocate these businesses in the . . . community and that the DIFT will generate additional business development . . . these statements contradict each other.*

Response: The FEIS does not state that there will be an overall reduction in truck volumes in the community. The FEIS states there will be a net increase of 700 trucks upon completion of the DIFT (FEIS page 1-16). It is likely business relocations would occur beyond the immediate project area. East of Lonyo Avenue, the area is built out with residential use, both north and south of the terminal. Relocations could occur along Wyoming, away from residential areas, but most available land is further removed from the project.

Comment: *Although the project removes traffic from some residential areas, it redirects it to other residential areas. A comprehensive truck route study for the DIFT, other transportation projects, and local industrial truck traffic is required.*

Response: The community sentiment, voiced at community meetings, LAC meetings, and in comments received on the DEIS and FEIS, was to reduce trucks moving to and from the south of the Livernois-Junction Yard on Livernois and Dragoon Avenues. Likewise, the desire was to reduce traffic on Central Avenue north of Kronk. The roads that can and do carry trucks are Wyoming and Livernois north to I-94. Truck traffic has been directed to those roads and not to other residential areas.

Comment: *The plan does not clearly indicate the capacity of the proposed Central Ave. underpass at the railroad tracks. . . . Will Central Ave. be widened to accommodate the increased flow and will the proposed underpass be appropriately designed for the increased traffic?*

Response: The conceptual design for the Central underpass calls for at least two, and as many as four, traffic lanes, which will accommodate anticipated traffic.

Comment: *The report did not indicate if there will be an adequate acceleration lane at the westbound I-94 entrance ramp from Livernois Ave. The current acceleration lane is inadequate. . . . My concern is that due to the increased truck traffic there will be congestion and safety problems at the westbound I-94 . . . entrance ramp. Will there be an adequate deceleration lane from westbound I-94 to Livernois Ave. Will the current railroad bridge . . . be demolished . . . ?*

Response: The conceptual design for the westbound I-94 entrance ramp from Livernois Avenue shows it to be 800 feet long. It will be designed to meet current MDOT standards. Acceleration ramp distance will be gained as the sharp reverse curve in the existing ramp will be eliminated. This will improve operations and safety by minimizing speed differentials within the freeway section on the mainline. Congestion will remain on I-94, which will be over capacity in this section. Conceptual design shows the deceleration lane from westbound I-94 to Livernois Avenue to be approximately 600 feet long. This off-ramp will be designed to meet current MDOT standards. The existing railroad bridge is a constraint which will be avoided and is expected to remain in place.

Comment: *Wyoming at Michigan is forecast to be over capacity. . . . The FEIS states this can be corrected by adding left-turn signal phases and realigning this intersection. I strongly disagree.*

Response: The analysis for the DIFT found it would operate at near capacity but adequately with signal timing adjustments. MDOT will monitor the intersection as it does all its state trunkline roads to determine whether additional changes are needed.

7.3.5 Air Quality

Comment: *NEPA additionally requires assessment of any health impacts that might occur below these standards, consideration of alternatives..., and mitigation to prevent any harms from air pollution...*

Response: FHWA has determined that, presently, there is not adequate science to reliably include exposure modeling or risk assessment in the air quality analysis. This is stated in Section 3.6.1 of the DEIS and FEIS. The purpose of the National Ambient Air Quality Standards, as stated in the Clean Air Act, is to protect public health with an adequate margin of safety.

Comment: *. . .during this period prior to the effective date of the conformity requirement for the revised NAAQS, NEPA requires that the impact of emissions from the project be analyzed against the 2006 revised and remanded NAAQS, as well as the standard that is likely to take its place in the near future. U.S. EPA is in the midst of significantly tightening the current NAAQS for PM2.5, ozone, and SO2 . . . The*

changes in the NAAQS are reasonably foreseeable future actions. MDOT therefore must include a quantitative discussion of whether the air pollution from DIFT, in combination with that from all other past, present and reasonably foreseeable actions, may violate any of these tightened NAAQS.

Response: NEPA does not require application of a standard until the final regulations take effect. Qualitative analyses were used to support the decisions where quantitative methods were not yet in effect. For example, in the Federal Register/Vol.71, No.47/Friday, March 10, 2006 page 12499EPA explains the limitations of the MOBILE6.2 model in performing micro-scale level analyses that would be required for PM2.5 and PM10 quantitative hot spot analyses. EPA and FHWA jointly developed qualitative PM2.5 and PM10 hot spot analysis guidelines to be used until EPA releases modeling guidance on PM quantitative hot spot analysis and announces in the Federal Register that these requirements are in effect. The qualitative analyses performed for the DIFT project are consistent with the EPA/FHWA Guidance.

Comment: After reviewing the FEIS, we retain our comments on the need for localized PM2.5 analysis. . . . Although quantitative hot spot analysis for PM2.5 and diesel particulate matter is not required, it can be done.

Response: In the Federal Register/Vol.71, No.47/Friday, March 10, 2006, page 12499, EPA explains the limitations of the MOBILE6.2 model in performing micro-scale level analyses that would be required for PM2.5 and PM10 quantitative hot spot analyses. EPA and FHWA jointly developed qualitative PM2.5 and PM10 hot spot analysis guidelines to be used until EPA releases modeling guidance on PM quantitative hot spot analysis and announces in the Federal Register that these requirements are in effect. The qualitative analyses performed for the DIFT project are consistent with the EPA/FHWA Guidance.

Comment: MDOT relies on its calculations of road PM and paving to respond to U.S. EPA, even though . . . these calculations are flawed from the outset and fail to follow U.S. EPA's recommended procedure. . . . AP-42 strongly recommends collecting of site-specific silt data to use in estimating emissions . . . the unsupported silt content of 10 percent for unpaved roads … is far higher that the vast majority of silt figures provided by AP-42 for unpaved roads at all types of industrial sites.

Response: As noted on page 33 in the *Air Quality Impact Technical Report*, the silt values used in the analysis were from AP-42. These were selected by using an air quality subconsultant's field test results for similar urban roadway surfaces. The mean silt value of all listed industrial categories in the referenced AP-42 table is 9.4 percent, which is comparable to the 10 percent value used in this analysis. A 5 percent silt factor was used for the unpaved travel surface at the Livernois-Junction Yard. (Unpaved road analysis uses <u>percent</u> silt factors per AP-42.) A 1

gm/m^2 silt factor was used for paved roads at Livernois. (Paved road analysis uses $\underline{gm/m^2}$ factors.) Both values are consistent with the AP-42 range of values and testing results for surface conditions. Under the build scenarios, all unpaved travel surfaces on the terminal will be paved. Dust prevention and mitigation measures will be implemented within the terminal. As a result, the silt content is logically forecast to be to be lower than an industrial road that continues to be surrounded by unpaved areas.

Comment: *While MDOT claims paving accounts for the reduction in PM emissions, it does not explain a feature of the Preferred Alternative that eliminates over 111 tons per year of PM10 and nearly 28 tons per year of PM2.5 relative to existing conditions and No Action. . . . It is our understanding these emissions represent traffic along John Kronk Road, which will be eliminated from that road when it is incorporated into the terminal footprint. However, this traffic will not be eliminated entirely, but displaced elsewhere in the surrounding area. . . . MDOT must include a full discussion of the air pollution that will be displaced and relocated as a result of incorporation from John Kronk.*

Response: Several local roads (Kronk) with high levels of mud from unpaved junk yards and other businesses will be incorporated into the terminal. So, the existing re-entrained dust will be eliminated. Businesses that contribute to this deposition will be relocated by the project. The area within the confines of the roadway network analyzed for air quality impacts (Figure 4-11 of the FEIS), that is proximate to residential use, is largely built out. Travel related to businesses to be relocated could become more efficient or less so, depending on each individual business's decision that drives its future location. To forecast a change to the presented roadway burden would be speculative. (See response to DEIS comment found in FEIS page 7-34.) The effects of today's mud deposition extend to other area roads that will be "cleaner" in the future. No claim of air quality benefit was made for this improvement.

Comment: *MDOT must explain apparent inconsistencies in its pollutant burden forecasts . . . On page 4-123 . . . Table 4-22a reports . . . PM2.5 emissions in 2025 at the "SW Detroit/E Dearborn" terminal of 47.3 tons and 41.6 tons for the No Action and Alternative 4 alternatives. . . . Table 4-26a reports . . . 26.0 tons and 30.9 tons in 2015 and 2030, respectively for the No Action . . . [and] 8.8 and 14.9 tons in 2015 and 2030, respectively [for the Preferred Alternative]. . . . In other words for very similar build alternatives and locations, the two tables report vastly different burden estimates for 2025 and 2030: 41.6 tons for Alternative 4 in 2025 versus 14.9 tons for the Preferred Alternative in 2030.*

Response: Subsequent to the analysis in the DEIS, as the footnote to FEIS Table 4-26a points out, EPA discovered an error in their PM2.5 emission factors (EF) in MOBILE6.2. The 2025 EF used in the DEIS was 0.0377 grams/mi versus the

corrected 2030 factor of 0.0256 g/mi (part of the reduction is from another five years of fleet turnover to cleaner vehicles). Also, a factor is the lower lift estimate. But, the major factor is a smaller yard on the north side of main east-west railroad tracks (see Figure 1-1c of the FEIS).

Comment: *Under Section 93.123, MDOT cannot rely solely on qualitative methods for assessing hot spot concerns to meet the obligation imposed by Section 93.116. . . The directive in Section 93.116, however, requires the use of the methods prescribed by Section 93.123(c), including quantitative analytical steps. . . While MDOT may attempt to argue that 93.123(b)(2) grants an overall license to replace quantitative analysis with qualitative factors to meet Section 93.116, this argument is without ground. Section 93.123(b)(2) states that qualitative consideration is allowed "[w]here quantitative analysis methods are not available" (emphasis added). The bar for avoiding all quantitative analysis of local hot spots, including that required under 93.123(c), therefore is significantly higher than the bar for avoiding modeling required under 93.123(b)(1). To meet the former, MDOT must show that quantitative methods are not "available," period. . . . MDOT has made no attempt to make the required showing.*

Response: 40 CFR 93.123(b)(4) states "the requirement for quantitative analysis contained in this paragraph (b) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect." Such guidance has not yet been issued.

40 CFR 93.116 requires that an analysis be done. The analysis in the FEIS on page 4-143, Table 4-29 meets the requirement of 93.116.

Comment: *. . . still fails to adequately assess toxics . . . Notably the Final EIS states that the methodologies for doing such assessment have changed since the Draft EIS . . .*

Response: The analysis did change with the publication of the Interim Guidance on Air Toxics in NEPA Documents (FHWA, February 3, 2006), and the analysis is consistent with that document.

Comment: *We are pleased that . . . FHWA adopted . . . [a] reconfiguration of traffic flow . . . [and] willingness to develop an operational agreement with contractors to reduce air pollution during construction [and] work with the Southeast Michigan Council of Governments, the Michigan Department of Environmental Quality, and the private sector to develop a PM2.5 emissions reduction action plan. However, none of the operational mitigation measures that EPA recommended in our DEIS comments were addressed . . ..*

Response: Referring to the EPA letter on FEIS page A-5, each listed point is addressed:
Corridors - Truck traffic has been routed away from residential areas.
Anti-idling - Trucks dropping/picking up containers do not dwell in the terminal; locomotives do not wait for new intermodal trains to be made up after dropping an intermodal load - they are put in service elsewhere. NS, CSX, and CP all have anti-idling policies. Auxiliary power units for trains - Railroads are introducing these units for fuel savings merit. On-road fuels for equipment - Ultra-low sulfur diesel applies to nonroad vehicles effective June 2010 and locomotives June 2012; so, on road fuels will be used. Retrofit technology - Over the ten-year implementation period, new equipment will be introduced. Hybrid locomotives - Intermodal trains use long-haul locomotives, not switch locomotives.
Construction emissions plan - MDOT will work with contractors as, noted on the Green Sheet

Comment: *We recommend [for PM2.5] construction: use particle traps and other technical or operation methods; ensure diesel-powered equipment is properly tuned and maintained, and shut off when not in direct use; prohibit engine tampering to increase horsepower; locate diesel equipment as far as possible from residential areas and sensitive receptors; require low sulfur diesel fuel if available; reduce construction-related trips; lease or buy newer, cleaner equipment at the Tier 2 level or higher, using a minimum of 75 percent of the equipment's total horsepower; use alternative fueled engines, if feasible; use construction equipment retrofitted with diesel oxidation catalysts or diesel particulate filters from the EPA or California Air Research Board Verified List; install retrofit emission control devices on all non-road equipment with higher than EPA's Tier 2 Standards.*

Response: As stated in the Green Sheet (Appendix A of this ROD), MDOT will work with contractors on an operational agreement to control air pollution during construction. A construction emissions plan may include actions such as: retrofitting off-road construction equipment; limiting the age of off-road vehicles used in construction projects; minimizing engine operations; restricting construction activities around certain more-sensitive receptors, like Southwestern High School; using diesel particulate traps and oxidation catalysts; and, using existing power sources or clean fuel generators, rather than temporary power generators. The Contractor will institute fugitive dust control plans per MDOT 2003 Standard Construction Specifications under Section 107.15A and 107.19.

Comment: *We note that the Final EIS does not even contain the anticipated mitigation measures described in the March 2005 Air Quality Impact Analysis Technical Report. This report lists specific measures . . . Then states "[i]t is anticipated that the Final EIS will contain agreements that mandate specific air quality mitigation measures, which will be defined as the project advance" We were not able to*

identify any such agreements in the Final EIS or explanation for why none were included.

Response: The air quality analyses that were conducted following the DEIS involved new procedures to respond to changing EPA regulations. Those analyses indicate no negative impacts that require mitigation measures.

Comment: Because the displaced traffic alone is associated with over 100 tpy of PM10, it is highly likely that the DIFT triggers general conformity.

Response: Displaced traffic, if it could be assigned to roads, would not be associated with over 100 tpy of PM10, because the sediment loading on Kronk and Central today is not characteristic of other roads in the terminal area. Meanwhile, that traffic exists today and simply shifts to some nearby, but unknown area. As it is not new, it cannot be associated with general conformity or this would be double counting.

7.3.6 Enhancements

Comment: MDOT needs to commit to improvements on these areas of road [I-94 to Yard] to minimize impacts of additional trucks, improve appearance and increase pedestrian safety.

Response: The Green Sheet notes that enhancements will be made to local roads. Enhancements to the Livernois corridor have been included in the cost of the project. The type of enhancements need to be determined with input from the project stakeholders, including the cities of Detroit and Dearborn.

7.3.7 Process

Comment: As expressly noted in NEPA regulations, MDOT is required to follow MEPA's [Michigan Environmental Policy Act] mandate and to satisfy the requirements on MEPA in reviewing the DIFT. Mere compliance with the basic requirements of the Clean Air Act and NEPA is not sufficient to satisfy MEPA. This means that to the extent that the Clean Air Act and NEPA fail to adequately protect air, water, climate, and other natural resources, or MDOT interprets these acts in a way that fails to do so, MEPA requires the Agency to select less damaging alternatives and to apply more stringent standards.

Response: MDOT has adhered to all Michigan State environmental law. Throughout the process, MDOT has coordinated appropriately with the Michigan Department of Natural Resources and Environment (formerly the Michigan Department of Natural Resources and the Michigan Department of Environmental Quality).

The Michigan Environmental Protection Act was incorporated into the Natural Resource Act in 1994. Rule 901 "prohibits the emission of an air contaminant which causes injurious effects to human health or safety, animal life, plant life of significant economic value, or property; or which causes unreasonable interference with the comfortable enjoyment of life and property. This rule has primarily been used to address a variety of situations including odors and particulate deposition." (Michigan Department of Environmental Quality staff report, August 19, 2009.)

Comment: *The Detroit City Council urges MDOT to host at least one public meeting in the affected community.*

Response: A public meeting will be held after the ROD is issued by FHWA.

Comment: *We have not been adequately and appropriately informed about the progress of this project before it has reached this stage.*

Response: In November 2008 three public meetings were held to present the Preferred Alternative for the DIFT. Nine thousand mail notifications were sent and hundreds more were distributed locally. The Preferred Alternative has not changed since November 2008. An additional stakeholder meeting was attended on December 7, 2009, hosted by Rep. Tlaib to provide an overview of the DIFT and answer questions. The presentation given at the November 2008 public meetings was made again at the January 2010 DRIC Local Advisory Council meeting held at Southwestern High School in southwest Detroit. More than 100 persons attended. Flyers were passed out door-to-door in the DIFT neighborhood in advance of that meeting and hand delivered to a number of community organizations in the DIFT project area. The wait period prior to signing the Record of Decision was set at 49 days to allow more than the required 30 days to review the FEIS.

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Appendix A

Project Mitigation Summary Green Sheet

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March 2010

Green Sheet: Project Mitigation Summary
Detroit Intermodal Freight Terminal (DIFT)
Record of Decision
For the Selected Alternative *

This Project Mitigation Summary Green Sheet contains the project specific mitigation measures being considered at this time. A list of Community Enhancements that are above and beyond what is required mitigation for this project is included at the end of this Green Sheet. These mitigation items may be modified during the final design, right-of-way acquisition, or construction phases of the project.

General Green Sheet Items

Impact Category	*Mitigation Measures*
I. Social and Economic Environment	
a. Central Avenue Viaduct	The construction of a railroad bridge at Central Avenue will allow vehicles to safely pass under the terminal, eliminating the possibility of train/car crashes on Central Avenue. Rerouting Lonyo Avenue traffic to Central Avenue will eliminate any future car/train crashes at Lonyo also.
b. Visual Effects	Security walls are planned at the Livernois-Junction Yard along the north side and part of the south side. A new perimeter road along the north side will include a landscaped buffer. Security wall construction and construction materials will be discussed with the affected residents in the vicinity of potential construction and local officials during Context Sensitive Solutions (CSS) workshops to be held during the design phase. Directional lighting shall be used adjacent to residential areas.
c. Relocations	Adequate replacement housing and industrial/commercial space is available in southwest Detroit area for those residents and businesses who wish to remain in the area. This project would relocate 32 residential dwelling units (28 single-family homes and four apartment units) and 29 businesses. The DIFT Conceptual Stage Relocation Plan can be found in Appendix B of the FEIS.
d. Environmental Justice/Title VI Population Groups	Mitigation and enhancement measures such as landscaping, security walls, relocation assistance, provisions for pedestrian and non-motorized transportation, air quality improvements, economic development, job training, and local road improvements will benefit minority and low income population groups and Title VI population groups who will be impacted by this project.
e. Noise	Project noise levels exceed FHWA Noise Abatement Criteria at several locations adjacent to terminals. Walls at the perimeter of the Livernois-Junction Yard are planned as part of the project for security and aesthetic purposes. In noise sensitive areas, these security walls will be designed to also provide noise abatement.**
II. Natural Environment	
a. Wetlands	A maximum of 0.01 acres of impacted wetlands will be replaced under the "General Permit Category" where the mitigation will be rolled into another mitigation project elsewhere in the state. A permit will be obtained from the Michigan Department of Natural Resources and Environment (MDNRE) for using this wetland.
b. Tree Removal/ Clearing/Landscaping	Mature trees will be preserved where possible. Remaining property owners will be notified before any trees in front of their residences are removed and will be offered replacement trees. Landscaping will be provided along the north perimeter road that will become the connection to John Kronk Street. Landscaping will emphasize native species and not include invasive species.
c. Water Quality	For runoff, stormwater management facilities will include detention in oversized pipes. Stormwater at all terminals flows to combined sanitary/storm sewers presently. Stormwater management will be incorporated into the project's final design and is subject to National Pollutant Discharge Elimination System (NPDES) permitting. Options for pretreated stormwater runoff could include piping stormwater direct to the Rouge River through newly built pipes so that there is no reliance on the Detroit Water and Sewer Department's combined sewer system.
d. Invasive Species	*Xerolenta obvia* (an invasive land snail) eradication efforts continue in the Livernois-Junction Yard area by the Animal and Plant Health Inspection Service – Plant Protection and Quarantine of the U.S. Department of Agriculture (APHIS-PPQ) in coordination with the railroads. When construction efforts are undertaken by either MDOT or the railroads the local APHIS-PPQ office in Romulus, Michigan will be contacted (734.942.9005) to coordinate with these ongoing eradication efforts.

* Elements that are part of the Livernois-Junction terminal design (paving, lighting, walls for security, Central Avenue underpass) are covered in a Pre-Development Plan Agreement (PDPA) among MDOT and the participating railroads. The PDPA can be found in Appendix B of this ROD.

**In those areas around the terminals where Federal Highway Administration Noise Abatement Criteria are exceeded due to terminal activity, the security walls will be designed to reduce terminal noise a minimum of 5 dBA. The principal wall anticipated would be 1,700 feet long and 12 feet high along John Kronk Street, between Martin Street and Livernois Avenue.

III. Hazardous / Contaminated Materials	
a. Contaminated Sites	A *Project Area Contamination Survey* has been completed. Up to 27 sites will need Preliminary Site Investigations prior to right-of-way acquisition. Contamination areas will be marked on all construction plans. Proper disposal of any hazardous/contaminated material will occur. All monitoring wells will be properly abandoned. A Utility Plan will also be prepared to ensure no deep utility cuts will impact and/or spread existing contamination. A Risk Assessment Plan will be developed which will include a Worker Health and Safety Plan.
IV. Cultural Environment	
a. Historic	The Michigan Box Company building is eligible for listing on the *National Register of Historic Places* and will be demolished by this project. Coordination with the SHPO will continue in order to develop appropriate mitigation measures. The SHPO will also review plans for the security wall in the vicinity of 6332 Kronk for compatibility. See signed Memorandum of Agreement (MOA) in Appendix C of the FEIS.
b. Archaeology	Ground-disturbing activities will not take place in the vicinity of the Michigan Central Stockyards Hotel site as a part of the DIFT Project. Construction plans will specify that excavation beneath existing disturbance is prohibited in this environmentally sensitive area, and a map depicting the environmentally sensitive area will also accompany the plans. See signed MOA in Appendix C of the FEIS.
V. Construction	
a. Vibration	Basement surveys will be offered in areas where vibration effects could occur by MDOT construction. These areas will be identified during the design phase, where pavement and bridge removal will occur, or where piling and/or steel sheeting is planned. Impacts are not anticipated at this time.
b. Maintenance of Traffic	Modification of the I-94 ramps in the northwest and northeast quadrants of the interchange at Livernois will require temporary detours. The construction of the Central Avenue underpass will require a detour to Lonyo Avenue. Lonyo will not be closed until the Central Avenue underpass is complete.

Community Enhancements

Impact Category	*Enhancement Measures*
a. Local Roads	In the vicinity of the DIFT Project area, adjacent local roads will be evaluated to determine what improvements are needed to the roadways - including paving, sidewalks, streetscaping, and lighting. MDOT will coordinate with the Cities of Detroit and Dearborn to determine the scope of work, cost (not to exceed $11 million), and schedule for the local road improvements. Environmental clearance for the local road improvements will be addressed in future separate clearances.
b. Transportation Enhancement Funds	MDOT will work together with the Cities of Detroit and Dearborn in an effort to secure Transportation Enhancement Funds to further beautify roadways and greenways in the vicinity of the DIFT.
c. Truck Traffic	The DIFT will also address the important issue of reducing truck traffic on neighborhood streets by channeling truck movements to/from I-94 along Livernois Avenue, through the use of directional curbing at the Livernois gate and by eliminating the Waterman/Dix entrance to the terminal.
d. Livernois-Junction Yard Access	New gates will be constructed at the west end of the yard, providing direct access to I-94 via Wyoming Avenue.
e. Security Walls	Construction of security walls at various locations along the perimeter of the terminal will minimize visual and noise impacts.
f. Economic	MDOT will participate with other stakeholders in funding a study of economic development opportunities that will support small business development in the DIFT study area. MDOT will continue to coordinate with the Michigan Economic Development Corporation, the Detroit Economic Growth Corporation, the Dearborn Department of Economic Development, various public-private partnerships and the local community.
g. Air Quality	MDOT will work with contractors on an operational agreement to control air pollution during construction. A construction emissions plan may include actions such as: retrofitting off-road construction equipment; limiting the age of off-road vehicles used in construction projects; minimizing engine operations; restricting construction activities around certain more-sensitive receptors, like Southwestern High School (when it is in session); using diesel particulate traps and oxidation catalysts; and, using existing power sources or clean fuel generators, rather than temporary power generators. The Contractor will institute fugitive dust control plans per MDOT 2003 Standard Construction Specifications under Section 107.15A and 107.19. MDOT will work with SEMCOG, MDNRE, and the private sector to create an action plan that includes short-term and long-term objectives aimed at reducing fugitive dust, diesel truck idling, fuel consumption, or diesel emissions to limit $PM_{2.5}$ emissions in the study area defined by the map shown in Figure 3-16 of the FEIS. The action plan will identify priorities for future federal aid eligible transportation projects through programs such as Congestion Mitigation and Air Quality (CMAQ) and the Midwest Clean Diesel Initiative. The action plan will be implemented during design and construction phases, and sustained through the maintenance and operations of the facilities. Activities could also include outreach activities to inform commercial operations and residents on air pollution control strategies. The actual projects will be generated from the community and its partners who will develop project proposals.
h. Job Training	MDOT will coordinate with the Cities of Detroit and Dearborn and the Michigan Department of Energy, Labor and Economic Growth to explore job training opportunities, English as a Second Language (ESL), and other training options in the project area.

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Appendix B

Pre-Development Plan Agreement

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MDOT No. 2010-0077
AGENDA: DIA

DETROIT INTERMODAL FREIGHT TERMINAL PROJECT
PRE-DEVELOPMENT PLAN AGREEMENT

A. Parties

This Pre-Development Plan Agreement ("Agreement"), effective this 20th day of November, 2009, by and between (i) the "DIFT Rail-Related Participants," sometimes referred to as the "DIFT R-R Participants," as many and only such of the following entities that execute this Agreement: Grand Trunk Western Railroad, Inc. ("CN"), Canadian Pacific Railway Company ("CP"), CSX Transportation, Inc. ("CSX") Norfolk Southern Railway Company ("NS"), and (ii) the Michigan Department of Transportation ("MDOT"), (also individually, "Party", and collectively, "Parties" or "DIFT Participants").

B. Purpose/Steps

The purpose of this Agreement is to further refine the understandings and intentions of the Parties as first set forth in a Memorandum of Understanding ("Memorandum") between certain of the Parties, dated April 6, 2006, with respect to certain terms of the Detroit Intermodal Freight Terminal project ("DIFT") and related issues more particularly described below.

The Parties envision the following steps (as presented graphically on Attachment A): (i) the execution of the Memorandum (April 6, 2006, by CN, CP, and NS, which terminated on December 31, 2006), (ii) the publication of the Draft Environmental Impact Statement ("DEIS") by MDOT (April 15, 2005), (iii) the determination by MDOT of a Preferred Alternative, (iv) the execution of this Agreement, (v) the publication of the Final Environmental Impact Statement ("FEIS") by MDOT, (vi) the signing of a Record of Decision ("ROD") embracing the FEIS, (vii) the preparation of a detailed DIFT Development Plan (20-year period) agreed to by all the Parties, (viii) the execution of individual DIFT Program Agreements (rolling five-year periods) between MDOT and the individual DIFT Rail-Related Participants, and (ix) the execution of individual DIFT Project Agreements (providing for specific, then-committed projects) between MDOT and the individual DIFT R-R Participants, as appropriate.

Generally, those last four steps are described as follows:

- Record of Decision – A document prepared by the Division Office of the Federal Highway Administration that presents the basis for selecting and approving a specific transportation proposal that has been evaluated through the various environmental and engineering studies included in the FEIS.

- DIFT Development Plan – A more detailed version of the Preferred Alternative Conceptual Engineering Report accompanied by a timetable of individual projects that span a 20-year period. These projects include terminal improvements, rail line improvements external to the terminal, road improvements external to the

- terminal, and property acquisition to accomplish these three categories of improvements. The DIFT Development Plan will be considered complete and valid only when approved in writing by each DIFT Participant in its sole discretion.

- DIFT Program Agreements – The list of the first five years of the projects by individual DIFT R-R Participant in the Development Plan, updated each year to include a "rolling five-year" program of projects. The DIFT Program Agreements, and their respective updates, will be executed and approved by MDOT and each individual DIFT R-R Participant.

- DIFT Project Agreements – A single project ("DIFT Project") from the DIFT Development Plan to improve a terminal, rail line external to a terminal, or road external to a terminal, or to acquire propert(y)(ies) to accomplish that DIFT Project. Each DIFT Project or Projects will be the basis of a DIFT Project Agreement, which will require funding to be shared by the DIFT R-R Participant(s) that benefit from the DIFT Project and MDOT. These DIFT Project Agreements are fully binding and will be the final step in obligating the necessary funding to allow the covered DIFT Project component to be fully constructed. Required parties to a DIFT Project Agreement will include all DIFT R-R Participants whose property and/or track(s) will be directly affected by the DIFT Project component, regardless of whether they are sharing in the cost.

C. Legal Effect

The following paragraphs are controlling in determining the legal effect of any part of this Agreement.

The Parties expressly acknowledge that at this point in the pre-design and construction process all of the rights and obligations of each Party with respect to the other Parties and the DIFT have not been agreed to or determined and that in order to implement and complete the DIFT, further negotiation, agreement, and documentation, including but not limited to the publication of the FEIS, signing of the ROD, the preparation of the DIFT Development Plan, and the development of a joint governance structure to coordinate and oversee the DIFT ("Governance Structure"), will be required in a manner typical for preliminary engineering, final engineering and construction ventures of the size and scope contemplated.

As such, this Agreement will serve only as a memorialization of the present understandings and intentions of the Parties with respect to the DIFT, which shall not be legally binding, and shall be subject to further execution of agreements by the Parties (including but not limited to those set forth generally in Section B). However, if the ROD is not signed by the federal government by **July 31, 2010**, this Agreement shall automatically terminate.

Further, the Parties acknowledge that any financial commitment provided by MDOT in connection with the DIFT is subject to approval by various agencies including, without limitation, the State Transportation Commission, the State Administrative Board, the Attorney General (as to legality and form), Department of Civil Service, Department of Management and Budget, and the Federal Highway Administration (FHWA) and that no assurance can now be given that such approval will or will not be forthcoming regarding such commitment. MDOT will make every reasonable effort to ensure funding and completion of the DIFT. MDOT funds or assets that are utilized in the DIFT must be for a transportation purpose and provide public benefits.

In furtherance and not in limitation of the foregoing, the Parties understand that the benefits and costs for individual Parties and collectively are not yet fully understood or agreed to, and that any Party hereto in assessing those benefits and costs may withdraw from this Agreement at any time, without any further obligation or liability, at each Party's individual discretion. The Parties also expressly acknowledge that although the DIFT planning contemplates the use of certain properties belonging to DIFT R-R Participants for various DIFT purposes, the DIFT R-R Participants reserve the right to utilize, lease, or sell those properties for non-DIFT purposes as changed conditions in the future may warrant.

D. Project Description

The purpose of the DIFT is to enhance the economic competitiveness of Southeast Michigan and the State by improving the rail intermodal transportation service capability and efficiencies for business, industry, and the military. The goal is to provide and/or improve regional facilities, owned and/or operated by one or more of the DIFT Rail-Related Participants, with sufficient capacity and interconnectivity to provide for existing and future intermodal demand and to reduce time, monetary costs and congestion to support the economic competitiveness of Southeastern Michigan. This will be done by providing necessary intermodal terminal capacity and by improving the related rail and highway infrastructure within Wayne and Oakland Counties to meet projected intermodal freight demand through 2025. The Parties will work together to:

- Develop new and expanded rail intermodal terminal capacity for intermodal operations of the DIFT Rail-Related Participants serving Southeastern Michigan.

- Make necessary rail infrastructure efficiency and capacity enhancements to facilitate intermodal rail freight train operations of the DIFT Rail-Related Participants in Southeastern Michigan.

- Improve highway infrastructure to facilitate and improve the efficiency of trucking operations from and to the DIFT Rail-Related Participants' intermodal terminals.

- Secure public and private funding needed to complete the DIFT Development Plan, as generally defined in the FEIS and ROD.

E. Background

The DIFT has been in development for several years. The growth of U.S. intermodal traffic, the enormous influx of double-stack trains and marine containers, and the even more recent entry and rapid growth of rail-truckload initiatives have highlighted the need for additional capacity to handle traffic increases and to do so efficiently.

In the 1980s, the railroads consolidated their intermodal service networks into larger hub terminals to improve the efficiency of their terminals through mechanization and elimination of smaller inefficient terminals.

To respond to the challenge of attracting increased intermodal terminal business and in response to the Michigan Legislature's initiative to address intermodal transportation in the Greater Detroit Area, MDOT in 1993 and 1994 undertook a review. The results of that, and subsequent work, recognized that:

- Detroit is one of the top markets in the nation for intermodal freight (trailer or container loads moving by rail).

- Because of the auto industry, Detroit leads the nation in its use of carless or RoadRailer intermodal technology, i.e. a system wherein the truck trailer is placed directly on rail wheels and the trailer becomes part of the rail train.

- One third of Detroit's intermodal traffic is trucked to and from other cities. This means that it travels by rail to Chicago, Toledo or Windsor, Ontario, for example, and then it is trucked to Detroit rather than arriving in Detroit directly by rail. Capital improvements for intermodal service could result in a diversion of some of this intermodal activity to Detroit. This would eliminate some trucks from Michigan's roads which could reduce congestion, improve air quality, and help ease the need for added capacity on the roadway network.

- The improvement of the Detroit-Windsor rail tunnel and the construction of a new Port Huron-Sarnia rail tunnel enhances intermodal access to and from the Detroit area.

It is important to facilitate and enhance the movement of freight which, in turn, drives jobs and economic development growth in Southeast Michigan and plays a key role in national defense. It is also important to respect the quality of life of the residents in neighborhoods where terminals exist and may expand. In that regard, and consistent with the role of ensuring that business and industries involved in the freight transportation segment of the economy continue to have access to their markets, MDOT decided in December 2001 to prepare an Environmental Impact Statement (EIS) to evaluate alternatives to improve intermodal transportation.

The DIFT is proposed for the enhanced development of intermodal terminals of the Class I railroads that are DIFT Rail-Related Participants (CN, CP, CSX, and NS) serving

Southeast Michigan and nearby rail and highway infrastructure to provide increased rail intermodal service to business, industry, and the military in the State. Presently, there are four intermodal terminals in, or in close proximity to, Southwest Detroit: the separate NS and CSX terminals at Detroit-Livernois Yard, and NS's terminals in Delray and Melvindale. NS also has a fourth terminal located at Willow Run, located predominantly in Washtenaw County. There is another intermodal terminal in Wayne County, CP/Oak terminal, located in the northwest corner of the intersection of I-96 and the Southfield Freeway. The CN/Moterm intermodal terminal is on the Wayne County / Oakland County border north of 8 Mile Road between I-75 and Woodward Ave. CP/Expressway operated for four years at a terminal near the Michigan Central Depot. CP/Expressway service was temporarily suspended in June 2004.

MDOT developed a DEIS dated April 15, 2005, on four alternatives: Alternative 1, No Action; Alternative 2, Improve/Expand Existing Terminals; Alternative 3, Consolidation of all four DIFT Rail-Related Participant Class I Railroads' intermodal activity (at the Livernois-Junction Yard area); and Alternative 4, Composite Option which involves consolidation of intermodal activity of CSX, NS and CP at the Livernois-Junction Yard area and CN remaining at its Moterm terminal.[1] In reviewing the various improvements that might be associated with the four alternatives, and various development scenarios and options possible with regard to those alternatives, MDOT consulted with representatives of the DIFT Rail-Related Participants. The DIFT R-R Participants subject to terms and provisions to be agreed, support the DIFT concept as described in Section D; are willing to continue to consult with MDOT as it processes the FEIS and then the ROD.

At this point in the process set forth generally in Section B, MDOT has determined the Preferred Alternative, which has been published in the Final Environmental Impact Statement based on review of and response to comments on the DEIS and interaction with the public and the DIFT Rail-Related Participants. That Preferred Alternative is a modification to Alternative 4 as presented in the Draft Environmental Impact Statement, which contemplates eliminating: 1) expansion of the CN/Moterm Terminal; and, 2) the CP/Expressway intermodal expansion at the Livernois-Junction Yard. The Preferred Alternative is described in the graphic at Attachment B and is more fully defined in the FEIS.

F. Local Area Considerations/Governance

The Parties to this Agreement and a representative from the FHWA and from the Southwest Detroit/East Dearborn neighborhood will endeavor to meet regularly once:

(i) the ROD is signed by the federal government to discuss implementing the course approved in the ROD, particularly those items which affect the local area surrounding the terminal(s) at which investments will be made; and,

[1] At the time of the DEIS, CN stated it did not intend to relocate its intermodal activity to the Livernois-Junction Yard area and has also stated it will accept no funds to improve its existing intermodal facilities.

(ii) the Parties have entered into individual DIFT Program Agreements (as set forth generally in Section B).

The public-private Governance Structure will be established among the Parties who execute a DIFT Program Agreement to oversee the implementation, operation, and maintenance of the DIFT over the life of the project.

The Governance Structure is yet to be fully developed by the Parties, but its general components will include the following:

1. A Management Committee will be established to include MDOT, CN, CP, CSX, and NS. The Management Committee will also include a non-voting representative from the FHWA and from the Southwest Detroit/East Dearborn neighborhood.

2. Among the responsibilities of the Management Committee will be to meet regularly to review and approve certain changes to the DIFT Development Plan; and, to review and adopt an annual schedule and budget.

3. A Program Manager will be provided by MDOT, with the advice and consent of the Management Committee.

4. The Management Committee will utilize reasonable efforts to secure federal funding.

G. Terms of MDOT's Participation

Following approvals by the agencies identified in Section C, MDOT expects to participate in the DIFT upon the following general terms:

1. MDOT will complete the FEIS and ROD process and meet any other requirements necessary to qualify for project approval and funding, subject to the cooperation of the DIFT Rail-Related Participants with MDOT in the completion of these requirements.

2. MDOT will make all necessary applications and take other necessary steps to secure federal and state approval and funding for the DIFT, subject to the cooperation of the DIFT R-R Participants with MDOT in securing state and federal approval and funding.

3. MDOT will establish the necessary grant programs and procedures to enable awarding of grants to DIFT R-R Participants for development of elements of the DIFT.

4. MDOT, in collaboration with and subject to the approval of the DIFT R-R Participants, will prepare the DIFT Development Plan.

H. Terms of DIFT Rail-Related Participants' Participation

The DIFT Rail-Related Participants, which may at the option of a specific DIFT R-R Participant, to the extent necessary to implement the DIFT Development Plan, include that company's wholly-owned railroad or non-railroad subsidiaries, expect to participate in the DIFT upon the following general terms:

1. DIFT implementation will include only those projects that are described in the FEIS, ROD, and the subsequently-approved DIFT Development Plan. The primary goal of the FEIS and the DIFT Development Plan is to provide the DIFT R-R Participants with individual intermodal facilities and related infrastructure improvements satisfactorily sized, conditioned, and located for their individual long-term needs which will improve intermodal rail movement through the region. The FEIS and the DIFT Development Plan will include the following types of projects:

    a. DIFT Intermodal Facilities: The construction of new facilities and the improvement and expansion of existing facilities in the Detroit area for the transfer of truck trailers, including RoadRailers, and containers between rail and highway modes of transportation.

    b. DIFT Rail Access Improvements: Improvements to existing railroad lines in the general vicinity of the DIFT Intermodal Facilities to facilitate efficient rail access and enhance overall intermodal rail movement through the region.

    c. DIFT Road Access Improvements: New public roads and/or improvements to existing public roads linking the DIFT Intermodal Facilities to other public highways.

    d. DIFT Rail Yard Relocations: The relocation, replacement, or modification of existing non-intermodal facilities within the Livernois-Junction Yard terminal area owned by Conrail, or other DIFT R-R Participants, as needed to accommodate the DIFT Intermodal Facilities. The DIFT Rail Yard Relocations shall provide capacity and capability at least equal to the existing facilities being displaced by the DIFT Intermodal Facilities.

2. a. The DIFT Development Plan will be a more-detailed version of the Preferred Alternative accompanied by a timetable of individual projects. Its preparation shall be financed by MDOT, and shall consist of one or more drawings, timetable, plans, and/or renderings to be prepared by MDOT and the DIFT R-R Participants together; provided, however, that each DIFT R-R Participant will bear the respective costs of its review and comment in the preparation of the DIFT Development Plan. Each component of the DIFT Development Plan, with the exception of the DIFT Road Access Improvements, will be allocated in the DIFT Development Plan to a specific DIFT R-R Participant(s).

b. The DIFT Development Plan shall not be considered complete and valid until it is approved in writing by each DIFT Participant.

c. After approval by all of the DIFT Participants, MDOT and any individual DIFT R-R Participant may make further changes to the DIFT Development Plan based upon the procedures agreed to by the DIFT Participants prior to approval of the DIFT Development Plan.

3. Consistent with the provisions of Paragraph 7.d, with regard to DIFT Rail Yard Relocations, the fair market value for property belonging to DIFT R-R Participants that may be acquired by MDOT for DIFT consistent with the DIFT Development Plan will be established by mutual agreement of MDOT and the applicable DIFT R-R Participant, using an appraiser mutually agreed to from MDOT's standing list of approved appraisers and using professional independent appraisal techniques, pursuant to the provisions and requirements of Michigan law and the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. ("URAA") and regulations promulgated pursuant thereto. The valuation applied shall be exclusive of existing non-intermodal facilities if the existing non-intermodal facilities are to be replaced as part of DIFT at no cost to the owner.

4. Consistent with the provisions of Paragraph 7.d, the lease rate for property that may be acquired by MDOT for DIFT consistent with the DIFT Development Plan and leased to a DIFT R-R Participant, will be established by mutual agreement of MDOT and the DIFT R-R Participant, using an appraiser mutually agreed to from MDOT's standing list of approved appraisers and using professional independent appraisal techniques, pursuant to the provisions and requirements of Michigan law and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. ("URAA") and regulations promulgated pursuant thereto; provided, however, that (i) the lease rate is to be based upon the land valuation only, without improvements; (ii) the lease rate for all property to become part of the DIFT facilities at or near the Livernois-Junction Yard shall be based on the fair market value of the Livernois-Junction Yard property; and, (iii) no property will be leased to any DIFT R-R Participant for an amount per acre less than the per acre rental rate applied to the Livernois-Junction Yard property.

5. In order to receive public funding, each DIFT R-R Participant will, following the approval of the DIFT Development Plan, enter into one or more DIFT Program Agreements with MDOT to cover the construction cost sharing, construction schedule, operation, maintenance, and ownership of those portions of the DIFT Development Plan allocated to it or on its property. No DIFT R-R Participant is required to enter into a DIFT Program Agreement.

6. Except where a DIFT R-R Participant determines to self-fund its own property improvements, the DIFT Program Agreement will generally include the following provisions and/or address the following issues:

   a. Property acquisition cost, construction cost, ownership and timetable of DIFT Intermodal Facilities:

      (i) Subject to the appropriation of sufficient funds, MDOT will, at its sole cost and expense, acquire and clear for construction all property not owned by any DIFT R-R Participant that is required for a DIFT Intermodal Facility as defined by the DIFT Development Plan. Such property will then be leased to the DIFT R-R Participant by MDOT at a lease rate based on the fair market value of the adjoining railroad terminal property determined in accordance with paragraph H.4.

      (ii) MDOT and the DIFT R-R Participants will share in: (a) paving-related construction cost, and (b) the other construction cost of the DIFT Intermodal Facilities allocated, both for (a) and (b) costs, to the various DIFT R-R Participants. With the exception of the cost of an expanded Central Avenue underpass at the Livernois-Junction Yard (which is provided for elsewhere in this Agreement), each DIFT R-R Participant will pay no more than 10 percent of the paving-related construction cost for existing, operating, unpaved, or paved but deteriorating intermodal terminal areas and no more than 50 percent of the other construction cost of the DIFT Intermodal Facilities allocated to it. Attachment B identifies two potential bridges to carry private roads over tracks within DIFT Intermodal Facilities. If requested by NS or Triple Crown Services Company, MDOT will bear the entire cost of constructing Bridges A and B, provided MDOT, NS, and, where applicable, the DIFT R-R Participants owning and/or operating on the tracks passing beneath the proposed bridges, consider alternative track alignments and other options that will avoid the need for the crossings; and, also in the case of Bridge B, provided that: (1) lifts (defined as a trailer or container loaded onto or off of a railcar) at the existing Livernois Yard intermodal facility serving NS exceed 9,500 per month for at least six (6) consecutive months, and (2) there are plans to utilize as part of the operation of the existing Livernois Yard intermodal facility serving NS a trailer/container parking lot in the portion of Livernois Yard west of Bridge B. The bridges will be two-lane structures designed for tractor-trailer traffic.

      (iii) Each DIFT Intermodal Facility will be solely controlled, operated, and maintained by the DIFT R-R Participant to which it is allocated. Subsequent to the completion of additions and improvements and at its discretion and expense, the DIFT R-R Participant may make modifications to the DIFT Intermodal Facility and may lease or sublease the DIFT Intermodal Facility to other parties. Nevertheless, for any property leased by MDOT to the DIFT R-R Participant, MDOT concurrence will be required before the property is subleased, which concurrence will not be unreasonably withheld.

(iv) The timetable for the type of work covered by this subsection will be as provided for in the DIFT Development Plan, which will follow approval of the DIFT ROD.

b. Construction cost, ownership, and timetable of DIFT Road Access Improvements, DIFT Rail Access Improvements, and DIFT Rail Yard Relocations:

(i) DIFT Road Access Improvements: MDOT will be responsible for securing all funds, including for the Central Avenue underpass, from non-DIFT R-R Participant sources for all construction and property acquisition cost of the DIFT Road Access Improvements. MDOT or local road agencies will own and maintain the DIFT Road Access Improvements as public roads.

(ii) DIFT Rail Access Improvements: MDOT and the applicable DIFT R-R Participants will share in the construction cost of the DIFT Rail Access Improvements allocated to such DIFT R-R Participants. For improvements that will improve intermodal rail efficiency, the DIFT R-R Participant(s) that will use/benefit from the DIFT Rail Access Improvements will bear a maximum of 50 percent of the cost. The DIFT R-R Participants' share will be allocated between/among the appropriate DIFT R-R Participants as negotiated between/among those DIFT R-R Participants. The DIFT R-R Participant who owns or leases the property to which a specific DIFT Rail Access Improvement is allocated shall own and maintain that DIFT Rail Access Improvement, unless otherwise agreed.

(iii) DIFT Rail Yard Relocations: Subject to the appropriation of sufficient funds, MDOT will fully fund all construction and property acquisition cost for DIFT Rail Yard Relocations depicted on the DIFT Development Plan. The DIFT R-R Participant who owns or leases the property to which a specific DIFT Rail Yard Relocation is allocated shall own and maintain that DIFT Rail Yard Relocation and control its use consistent with the lease agreement with MDOT. No other Party shall be required to fund any costs unless otherwise agreed in its sole discretion.

(iv) The timetable for the type of work covered by this subsection will be as provided for in the DIFT Development Plan.

c. Certain trackage rights, or similar access rights, may be necessary to carry out the improvements in this section. Where so required, DIFT R-R Participants, subject to STB authorization and labor issues, as and if required, intend to negotiate bilateral agreements for the movements involved. Such agreements, subject to the provisions of confidentiality agreements, will be incorporated into the DIFT Development Plan and will also address needed capacity enhancement and/or operating issues required to accommodate such access rights requirements.

7. The DIFT Program Agreement(s) will generally include the following provisions and/or address the following issues:

   a. The DIFT Intermodal Facilities and DIFT Rail Access Improvements and associated property acquisition to be provided for in the first five years of the schedule defined by the Development Plan, and as subsequently updated each year to include a "rolling five year" set of projects and properties to be acquired.

   b. The DIFT Road Access Improvements, DIFT Rail Yard Relocations, Central Avenue underpass projects, and associated property acquisitions, to be provided for in the first five years of the schedule defined by the Development Plan, and as subsequently updated each year to include a "rolling five year" set of projects and properties to be acquired.

   c. Conrail's agreement to negotiate a trackage rights agreement, or a similar access agreement, with CP, subject to STB authorization and labor issues, as and if required, to connect the existing CP railroad lines with the DIFT Intermodal Facility to be allocated to CP. The agreement will include terms that provide for the payment of access rights fees that are reasonable for such movements.

   d. Property acquisition cost and ownership of DIFT Intermodal Facilities:
      (i) If Conrail property is needed for a DIFT Intermodal Facility to be allocated to CP,[2] MDOT will pay Conrail an amount per acre equal to the Livernois fair market value determined in accordance with paragraph H.3. MDOT will then lease the property to CP at a lease rate based on the Livernois-Junction Yard fair market value as provided in paragraph H.4.
      (ii) If Conrail property is needed for a DIFT Intermodal Facility to be allocated to CSX or NS,[3] Conrail, CSX and/or NS, as appropriate and/or applicable, will agree to arrange for the property to be sold, transferred, or exchanged by Conrail to CSX or NS, as applicable, for an amount per acre equal to the Livernois-Junction Yard fair market value, or for such other amounts or provisions consistent with the process established by the present agreement between CSX and NS for the Conrail property.

NOW, THEREFORE, it is the intent by and between the Parties hereto to be committed to partner together toward completing the DIFT, subject to the terms of this Agreement and other future agreements between MDOT and the participating DIFT Rail-Related Participants, and to move forward to enhance the competitiveness of Southeast Michigan and the State by developing necessary intermodal rail terminal capacity and improving the supporting rail and highway infrastructure.

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[2] At the time of this Agreement, the Preferred Alternative Conceptual Engineering Report envisions a straightened "mainline" track with approximately 12 acres of existing Conrail property north of that straightened mainline to become part of the proposed CP intermodal facility.

[3] At the time of this Agreement, the Preferred Alternative Conceptual Engineering Report envisions approximately 65 acres of existing Conrail property to become part of the proposed Triple Crown facility.

IN WITNESS HEREOF, the Parties have caused their respective officers, duly authorized, to execute this Agreement to be effective as of the date first written above.

This Agreement may be executed in counterparts with separate execution pages for each of the DIFT Participants; provided, however, that each counterpart shall be executed by MDOT, and the date of MDOT's execution shall be the effective date of the counterpart.

GRAND TRUNK WESTERN RAILROAD, INC.

BY: Paul E. Ladue

Paul E. Ladue
Region Director
Contracts & Administration

MICHIGAN DEPARTMENT

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CANADIAN PACIFIC RAILWAY COMPANY

BY: _____

TITLE: VP Law & General Counsel

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CSX TRANSPORTATION, INC.

BY: _____

TITLE: VP Strategic Planning

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NORFOLK SOUTHERN RAILWAY COMPANY

BY: _____

TITLE: Vice President Intermodal Ops.

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This Agreement may be executed in counterparts with separate execution pages for each of the DIFT Participants; provided, however, that each counterpart shall be executed by MDOT, and the date of MDOT's execution shall be the effective date of the counterpart.

MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: DIRECTOR OF THE BUREAU OF HIGH WAY DEVELOPMENT

FOR TITLE: DIRECTOR
KIRK T. STEUDLE

FORM APPROVED
11/18/09
ASSISTANT ATTORNEY GENERAL

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DIRECTOR AGENDA
November 18, 2009

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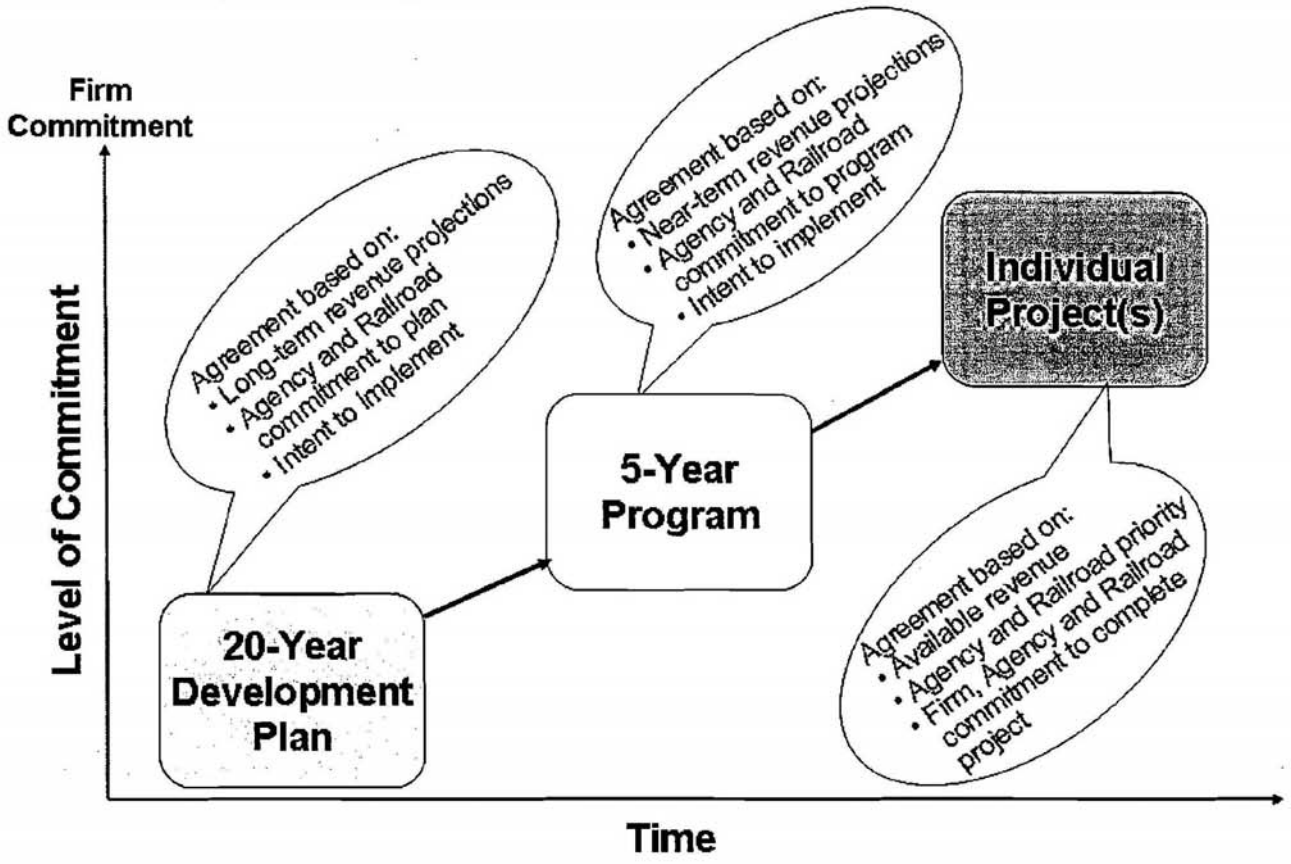
Attachment A

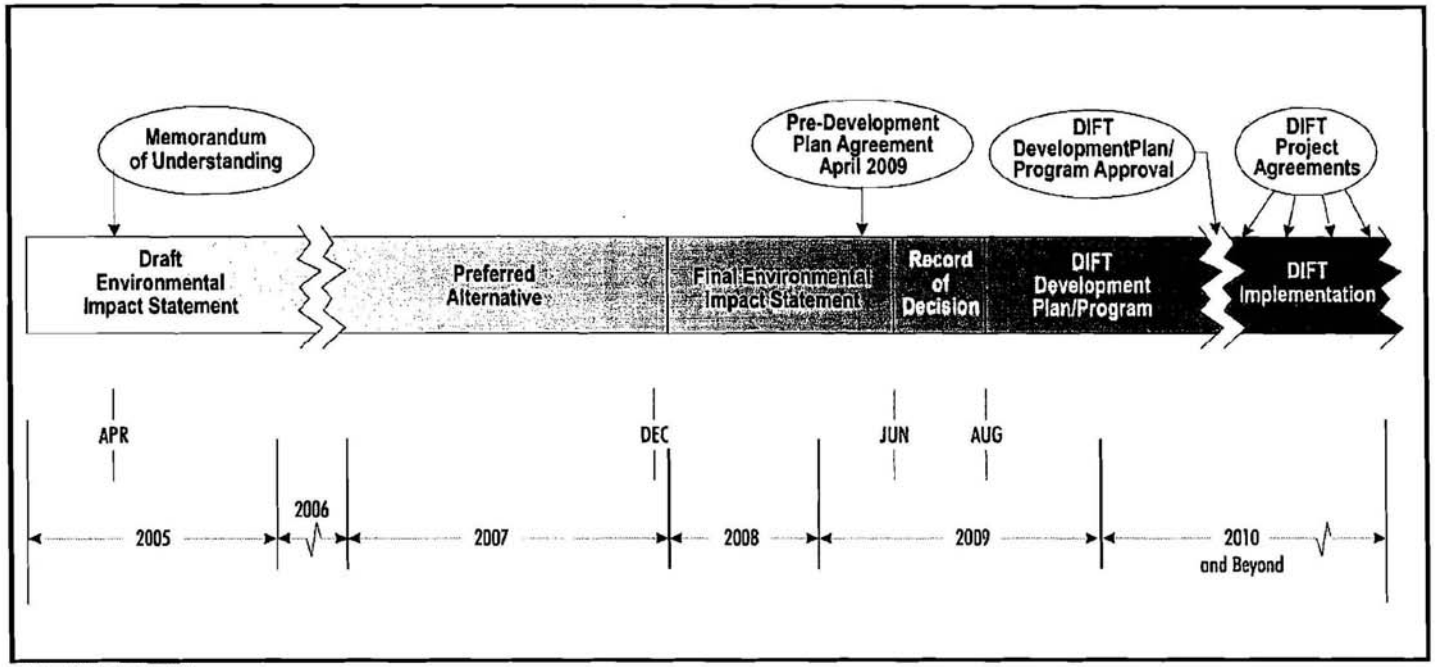
DIFT Plan – Program

Project Agreements and Level of Commitment



Attachment A

DIFT Intermodal Freight Terminal Project
MDOT/Class I Railroad Agreement Process



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Attachment B