

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TREMRON JACKSONVILLE, L.L.C.;	)	
CITY OF JACKSONVILLE; and	)	
CENTURION AUTO TRANSPORT,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case Nos. 01-1157
	)	01-1158
DEPARTMENT OF TRANSPORTATION	)	01-1159
and CSX TRANSPORTATION, INC.,	)	
	)	
Respondents.	)	
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RECOMMENDED ORDER

A formal hearing was conducted in this case on August 13 through 16, 2001, in Jacksonville, Florida, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner Tremron Jacksonville, L.L.C.:	William Graessle, Esquire Winegeart & Graessle, P.A. 219 North Newman Street Fourth Floor Jacksonville, Florida 32202-3222
For Petitioner City of Jacksonville:	Ernst D. Mueller, Esquire Office of the General Counsel 117 West Duval Street, Suite 480 Jacksonville, Florida 32202
For Petitioner Centurion Auto Transport:	Harold A. Shafer, <u>pro se</u> Centurion Auto Transport 5912 New Kings Road Jacksonville, Florida 32209

For Respondent  
Department  
of Transportation: Bruce Conroy, Esquire  
Scott A. Matthews, Esquire  
Office of the General Counsel  
605 Suwannee Street, Mail Station 58  
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For Respondent  
CSX Transportation  
Inc.: Eric L. Leach, Esquire  
Milton, Leach, D'Andrea &  
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815 Main Street, Suite 200  
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

The issue is whether Respondent CSX Transportation, Inc.'s railroad crossing located on Old Kings Road in Jacksonville, Florida, meets the criteria for closure as set forth in Rule 14-46.003(2)(b), Florida Administrative Code.

PRELIMINARY STATEMENT

On April 9, 1997, Respondent CSX Transportation, Inc. ("CSXT") filed an application with Respondent Florida Department of Transportation ("FDOT") to close an at-grade railroad crossing located in Jacksonville, Florida. On January 31, 2001, FDOT issued a Notice of Intent to Issue a Permit to close the subject crossing. On March 9, 2001, Petitioner City of Jacksonville ("COJ") filed a petition challenging the proposed granting of the permit. COJ's petition was designated Case No. 01-1158. On March 12, 2001, Petitioner Tremron of Jacksonville, Inc. ("Tremron") filed a petition challenging the proposed granting of the permit. Tremron's petition was designated Case No. 01-1157. On March 12, 2001, Petitioner

Centurion Auto Transport, Inc. ("Centurion") filed a petition challenging the proposed granting of the permit. Centurion's petition was designated Case No. 01-1159. The petitions were filed with the Division of Administrative Hearings on or about March 23, 2001.

The undersigned entered an Order consolidating the above referenced cases on April 5, 2001. A Notice of Hearing dated April 9, 2001, scheduled a formal hearing on May 31, 2001. A subsequent Order dated April 30, 2001, rescheduled the case for formal hearing on July 10 through 13, 2001.

The parties jointly moved for a continuance of the formal hearing on June 21, 2001. An order dated June 25, 2001, granted a continuance and rescheduled the case for hearing on August 13 through 16, 2001. The parties filed a Pre-Hearing Stipulation on August 7, 2001.

During the hearing, COJ presented the testimony of Harold Shafer; Thomas Miller; Faye Barham; Rebecca Jenkins; Lloyd Washington; Leonard Propper; Jimmy Holderfield; Richard Ball; Winfred Hazen, Jr.; Toufic Khayat; Reginald Fullwood; Talmadge Ford; and Kevin Carter. COJ presented Exhibits City 1 - City 12, City 13A - City 13D, City 15 - City 17, City 21 - City 25, which were admitted into evidence.

Tremron presented the testimony of Hugh Caron. Tremron offered three exhibits, which were accepted into evidence.

Centurion did not present any witnesses. Centurion offered one exhibit, which was accepted into evidence.

During the hearing, CSXT presented the testimony of David Teeter; Darryl Murray; Othie Fuller, Jr.; Terry Bright; Robert Grear; Lorin Mock; Dennis Lynch; and G. Rex Nichelson.

Respondent CSXT presented the testimony of Geoff Pappas in a post-hearing deposition. CSXT offered 33 exhibits, which were accepted into evidence.

FDOT presented the testimony of Scott Allbritton. FDOT offered seven exhibits for admission into evidence, all of which were admitted into evidence except for one composite exhibit, FDOT 3, and several isolated documents contained in two other composite exhibits, FDOT 1 and FDOT 2 described in the hearing Transcript, which the undersigned reserved ruling on and which are hereby excluded.

The Transcript of the proceeding, including the post-hearing deposition of Geoff Pappas, was filed on September 11, 2001. CSXT, FDOT, and Tremron filed their Proposed Recommended Orders on November 30, 2001. COJ filed its Proposed Recommended Order on December 3, 2001. All of these Proposed Recommended Orders have been considered in the preparation of this Recommended Order. Centurion did not file proposed findings of fact and conclusions of law.

## FINDINGS OF FACT

### A. History and Current Status of Crossing

1. Old Kings Road has been in existence at least since 1837. The road was located in its approximate location in COJ's city limits prior to the arrival of the railroad. COJ owns and maintains Old Kings Road.

2. The subject of this proceeding is a public at-grade railroad crossing ("the Crossing"), designated by FDOT as Crossing No. 621191C. The Crossing is located in the northwestern part of COJ in Duval County, Florida. The Crossing intersects with Old Kings Road, which has always been an important means of ingress and egress to downtown COJ for residents located west of the Crossing. A neighborhood association, the Grand Park Civic Club, requested that COJ build an overpass over the Crossing due to train blockages in the 1930's.

3. The Crossing originally consisted of five tracks. Later it was increased to seven tracks.

4. In 1995, CSXT requested COJ to consider closing the Crossing. COJ refused this request.

5. In April 1997, CSXT filed an application with FDOT to close the Crossing. Neither CSXT nor FDOT gave COJ immediate notice that FDOT was considering the application. However, as

early as January 15, 1998, CSXT was aware that COJ opposed the closing.

6. In July 1998, CSXT closed the Crossing for repairs with COJ's acquiescence. COJ understood originally that the repairs would last from two to four weeks. Some months later, COJ learned that the Crossing might not reopen until December 1998.

7. COJ learned about CSXT's application to close the Crossing sometime during the fall of 1998. At that time, FDOT verbally conveyed the information about the pending application for closure of the Crossing to COJ.

8. In October 1998, COJ wrote a letter requesting FDOT's assistance in opening the Crossing because FDOT had not issued a permit to close it. Then in February 1999, CSXT advised FDOT by letter that CSXT and COJ were engaged in negotiations regarding closure of the Crossing. In August 1999, FDOT suspended consideration of the application pending the on-going negotiations between COJ and CSXT.

9. In a February 2000 letter, COJ again requested FDOT to reopen the Crossing until such time as formal hearings were held and/or the parties could enter into a stipulation. FDOT's consideration of the application remained suspended at that time.

10. In October 2000, CSXT requested that FDOT reopen the file on its application. By letter November 1, 2000, FDOT advised CSXT that the file would be reopened.

11. On January 31, 2001, FDOT issued a Notice of Intent to Issue a Permit to close the Crossing. The Crossing remained closed at the time of the formal hearing.

B. The Crossing

12. CSXT conducts freight rail operations on railroad tracks that run in a northwest - southeast direction across Old Kings Road in Jacksonville, Florida. The Crossing is located within the yard limits of CSXT's Moncrief Yard, a large classification yard for CSXT trains.

13. CSXT removed the two westernmost tracks and the roadbed at the Crossing after closing it in July 1998. Currently, the Crossing has a total of five parallel railroad tracks that cross the road at a skewed angle of approximately 20 degrees.

14. The distance across the existing tracks is 276 feet. On both sides of the Crossing, Old Kings Road is a two-lane highway with no sidewalks. The Crossing has more railroad tracks than any other railroad crossing in Jacksonville, Florida.

15. The Crossing has automatic crossing gates and flashing signal lights. CSXT disconnected these traffic control devices

when CSXT closed the Crossing in July 1998. FDOT has no plans to upgrade the traffic control devices regardless of whether the Crossing is reopened or remains closed.

16. The Crossing is located in an urban area. The next crossing point over the CSXT rail lines is located at the Edgewood Avenue Bridge, 1.35 miles to the north as measured along the rails. Going south, again measuring along the rails, the next CSXT crossing is 1.7 miles away at McQuade Street. The McQuade Street crossing is located at the southern end of Moncrief Yard.

17. The easternmost track at the Crossing is the CSXT mainline track. The mainline track is the primary track for Amtrak passenger trains and CSXT freight trains that do not require switching or maintenance in the Moncrief Yard. The speed limit for trains using the mainline track is 40 miles per hour. The remaining four tracks at the Crossing are yard tracks, which CSXT uses for the assembly of trains on the north end of the Moncrief Yard, as well as inbound and outbound freight train arrivals and departures. The four yard tracks have a speed limit of 10 miles per hour.

C. Train Movements at Old Kings Road Crossing

18. There are approximately 100 train movements, including switching movements across the Crossing on a daily basis. Switching movements in the Moncrief Yard involve the assembly



and disassembly of trains through the movement of freight cars into designated yard tracks. Switching movements take place in the Moncrief Yard 24 hours per day, seven days per week, except for Christmas, Thanksgiving and select holidays.

19. Switching movements are carried out primarily at the north end of Moncrief Yard near the Crossing because the track layout at that end is best suited for such operations. Other parts of the yard do not lend themselves to efficient switching operations.

20. In order to be switched, a cut of railroad cars must be moved back and forth repeatedly, with pauses between movements. Once switching is complete, federal law requires the train's brakes to be checked. The train then must wait for the track to be clear of other train traffic before departing. Often a cut of railroad cars will pull close enough to the Crossing to activate the warning lights and gates without actually blocking the roadway. When that happens, a motorist will see an open roadway and a stopped train that is the apparent cause of the activation of the warning devices. This circumstance creates a uniquely hazardous situation for motorists and pedestrians.

21. CSXT operates between 11 and 22 intermodal trains daily through Moncrief Yard, which is an unusually extensive operation. Approximately 40 locomotives per day are serviced in

the yard. Amtrak operates daily approximately nine scheduled movements over the mainline track throughout the day and night.

22. Due to its proximity to the Moncrief Yard, Old Kings Road is regularly blocked by trains engaged in switching movements that travel back and forth across the Crossing, in addition to other train traffic. There is no practical method of operating the Moncrief Yard without blocking Old Kings Road for extended periods of time. This is the only CSXT railroad crossing in the State of Florida that is regularly blocked by switching movements for extended periods of time.

23. On November 29 and 30, 2000, CSXT studied the amount of time that the Crossing was blocked by train movements. The study demonstrated that train traffic blocked the Crossing for a total of 12 hours and six minutes during a 24-hour period of time. Such blockage has consistently existed at the Crossing for 30 years or more.

24. On July 31 through August 2, 2001, COJ studied the amount of time that the Crossing was blocked by train movements. The results of the COJ study were consistent with the CSXT study of train blockages at the Crossing.

25. The surveys performed by CSXT and COJ to determine the time that trains blocked the Crossing measured only the amount of time that one or more trains actually blocked Old Kings Road. If the Crossing were open to traffic, Old Kings Road would be

blocked for even longer periods of time because the flashing lights and gates would activate before the trains arrived at the Crossing.

D. Motor Vehicle Traffic at the Crossing

26. From 1991 to 1997, the average daily traffic volume in the vicinity of the Old Kings Road crossing was less than 2,000 vehicles per day. The motor vehicle traffic volume at Old Kings Road is considered a low traffic count by FDOT standards. The traffic volume at the Crossing is far too low to justify expending the funds and other resources necessary to construct an overpass.

E. Safety Effects upon Rail and Vehicle Traffic

27. Some of the facts necessary to determine safety effects upon rail and vehicle traffic are discussed in paragraph 20.

28. Due to the height and length of slow-moving or stopped trains involved in switching operations on some or all of the four railroad tracks to the west of the CSXT main line, motorists approaching the crossing from the west cannot see fast-moving trains, including Amtrak passenger trains, approaching the Crossing on the CSXT mainline. Likewise, the 20-degree skew of the intersection makes it difficult for westbound motorists on the east side of the Crossing to look to

their left to determine whether a northbound train is approaching.

29. Motorists frustrated by the long wait times at the Crossing regularly drive around the crossing gates. They take this risk often under the mistaken belief that stopped or slow moving trains have activated the signal lights and gates. At times vehicles fall off the roadway as drivers attempt to go around trains partially blocking the roadway. Drivers also become distracted by the beveled and rough roadway surface between the numerous tracts. These circumstances, together with the regular and extended blockages, give motorists a high probability of interacting with train traffic while simultaneously almost inviting them to run the gates.

30. COJ's neighborhood witnesses testified that they either personally drove around the lowered crossing gates at the Crossing or observed other motorists driving around the gates in order to avoid extended train delays. COJ witnesses, Rebecca Jenkins and Talmadge Ford, have observed two to four vehicles driving around the crossing gates at the same time.

31. Motor vehicles have also been stranded on the railroad tracks on several occasions when motorists drove around the lowered gates and left the paved road area at the Crossing.

32. The safety hazards present are unique to the Crossing based upon the presence of a substantial number of train-

switching movements over the crossing, multiple tracks with trains of varying speeds, motorist frustration over train delays, obstructions to visibility and a general misapprehension by the motoring public of the nature of yard switching movements. Unlike the Crossing, the majority of railroad crossings do not contain multiple railroad tracks within yard limits with trains performing different operations at different rates of speed.

33. Due to the skewed angle of the Crossing, the presence of five railroad tracks, and the location of the crossing gates, the distance that a motor vehicle or pedestrian must travel to traverse the Crossing is 397 feet. Even if the signal lights were relocated closer to the railroad tracks, the distance across Old Kings Road would be approximately 276 feet, the actual distance across the tracks. The substantial length and the skewed angle of the Crossing reduce visibility for motorists and increase the probability of a crossing accident.

34. The use of commercial trucks over the Crossing on a regular basis would substantially increase the danger of an accident due to the distance that a truck must travel over the Crossing under normal operating conditions. Because of their length, large commercial trucks take longer to clear a crossing than a car traveling at the same speed.

35. There were at least 12 railroad-crossing accidents at the Crossing from 1975 until 1998. Most of these accidents occurred on account of violation of law by drivers or pedestrians. One of these, a motor vehicle accident, resulted in a fatality. Six of the eight accidents involving a motorist resulted in no personal injury. Even so, the Crossing had the highest number of grade-crossing accidents in Jacksonville, Florida, from 1975 until 1998.

36. In January 2001, COJ commissioned a Jacksonville engineering firm, Waitz and Moye, to perform a study of 10 railroad crossings in the northwest quadrant of Jacksonville, Florida. This study included the Crossing, which had the highest number of accidents of the 10 railroad crossings. There were twice as many accidents at the Crossing than the crossing with the second highest number of accidents, despite the fact that the Crossing had one of the lowest traffic volumes.

37. In addition to accidents, there have been numerous near-miss incidents at the Crossing, where motorists driving around the crossing gates narrowly avoided injuries. Due to obstructions to visibility, an Amtrak train traveling 40 miles per hour on the CSXT main line does not have sufficient time to avoid a collision at the Crossing.

38. Mr. Darryl Murray, the Service Manager for Amtrak, testified that he regularly operated trains over the Crossing

from 1974 until 1986 with the Seaboard Coastline Railroad, and from 1986 until 1991 with Amtrak. Since 1991, Mr. Murray has directly supervised Amtrak train crews that operate over the Crossing.

39. Mr. Murray testified there are other crossings that are just as busy as the Crossing. He admitted that the Crossing would be safer in the future because the two western-most tracks have been removed. However, according to Mr. Murray, the Crossing is one of the most dangerous railroad crossings that he has encountered during his railroad career. According to Mr. Murray, a crossing accident involving an Amtrak passenger train traveling 40 miles per hour at Old Kings Road could result in serious personal injury or death to the motor vehicle occupants and train crew; derailment of the train; and injuries to Amtrak passengers due to the emergency braking application of the train. In the early to mid 1990's, Mr. Murray personally investigated an accident involving an Amtrak train and a passenger vehicle at the Crossing, which resulted in serious personal injuries to the motorist.

40. Mr. Kevin Carter, a manager for Resource Logistics International ("RLI"), testified that if the Crossing were re-opened, RLI trucks carrying 80,000 pounds of aluminum would use it during transport. Mr. Carter has seen one or two of his truck drivers go around the gates at the Crossing and was aware

of other trucks going around the lowered gates. Mr. Carter has disciplined at least one of his drivers for driving around railroad crossing gates in the down position.

41. CSXT also presented the testimony of experienced railroad employees who have worked in the Moncrief Yard at the Crossing on a daily basis for many years. CSXT employees testified that, due to its location in the middle of an active switching yard, the Crossing is the most dangerous railroad crossing in Jacksonville, Florida.

42. In addition to motor vehicle accidents at the Crossing, the evidence established a serious safety hazard involving pedestrians. Prior to its closing in 1998, pedestrians regularly climbed between freight cars stopped at the Crossing in order to avoid extended train blockages. Additionally, pedestrians regularly placed their bicycles over or under the coupling mechanism that connects railroad cars while attempting to climb between railroad cars.

43. Several of the accidents at the Crossing involved serious injuries to pedestrians who were trapped between freight cars when the train suddenly moved. The number of pedestrians at the Crossing has decreased since its closure. There have been no accidents at the Old Kings Road crossing since its closure in 1998.



44. If the Crossing were closed, protective measures could be taken to more effectively discourage trespasser access, including cul-de-sacs, road barriers, fencing and signage. COJ has determined there is sufficient land to build cul-de-sacs at the Crossing. On the other hand, it is impossible to completely block pedestrians from using the Crossing if they are intent on doing so.

45. In an effort to assess safety hazards at the Crossing, COJ presented evidence about the FDOT Safety Index. FDOT uses the safety index to determine the prioritization of upgrades for crossings that do not have automatic gates and signal lights. FDOT does not utilize the safety index for its closure analysis. The FDOT safety index for prioritizing crossing-warning device upgrades does not determine the dangerousness of a railroad crossing.

46. The federal government requires FDOT to create the safety index annually. From among the top 800 crossings, FDOT determines which crossings receive funding for improvement of warning devices. The maximum protection that FDOT currently permits is flashing lights and automatic gates. Crossings that rank in the top 800 on the safety index and that already have lights and gates do not receive funding because no further improvement is available. In effect, the safety index report serves only to identify problematic crossings. With annual

funding of only approximately \$5 million, FDOT improves about 30 crossings per year.

47. Although the Crossing had automatic gates and flashing signal lights before they were disconnected in July 1998, the current FDOT Safety Index indicates that the Crossing has a safety index rank of 561 out of 4500 railroad crossings in the state. This does not mean that FDOT considers 560 other crossings to have greater priority for upgrades than the Crossing. Because the safety index report continues to assign a high rank to the Crossing, which already has lights and gates, the only way FDOT can make the Crossing safer is to close it.

48. Even so, using the FDOT safety index ranking and correct factual assumptions, the safety index number for the Crossing is approximately 50, which is less than the marginal safety level index number of 60 set by FDOT. FDOT guidelines indicate that a crossing should be considered for improvements at a safety level index of 60.

49. FDOT uses a separate program to consider overpass construction for crossings. As stated above, the low traffic count and the availability of the Edgewood Avenue overpass less than two miles away means that the Crossing does not warrant the expenditures required for construction of an overpass.

50. The automatic gates at the Crossing are part of a two-quadrant gate system. Petitioners have proposed that

four-quadrant gates and a median be constructed in order to deter motorists from going around the gates. The appeal of a four-quadrant gate system is that it blocks both lanes of travel on both sides of a crossing. A four-quadrant system discourages more people from running the gates than does a two-quadrant gate system. However, people at times run four-quadrant gates and would be likely to do so at the Crossing.

51. An activated four-quadrant gate system could block a vehicle attempting to get out of the Crossing. FDOT uses two-quadrant gate systems because they leave the exit from a crossing unobstructed. An exit for vehicles at the Crossing is especially important because of the unusual width and the constant activation of the gates by switching trains. A four-quadrant gate system would neither redress the extremely dangerous conditions at the crossing nor change the incentives for people to run the gates.

52. FDOT does not currently permit four-quadrant gates at crossings like the one at issue here. Additionally, the Federal Highway Administration has not authorized installation of four-quadrant gates as a standard recommended practice. Other states do use four-quadrant gates on an experimental basis. Finally, installing a four-quadrant gate system at the crossing would cost between \$500,000 and \$1,500,000.

F. Necessity, Convenience and Utilization of Remaining Routes Where Practical

53. In the area of the Crossing, Old Kings Road connects New Kings Road and Edgewood Avenue. The intersection of Old Kings Road and New Kings Road is located at a distance of approximately 100 yards to the east of the Crossing.

54. New Kings Road is a four-lane highway that curves at its intersection with Old Kings Road, going east through the neighborhood of Grand Park and becoming Kings Road and US 23. Kings Road is a thoroughfare to downtown COJ in this direction.

55. In the other direction, New Kings Road runs north, paralleling the CSXT mainline track, which is to the west for some distance. In this area, New Kings Road forms the western end of the Grand Park neighborhood. As New Kings Road runs north, it becomes U.S. 1/23 about one-half mile from the Old Kings Road intersection. New Kings Road is also a heavily traveled four-lane highway.

56. On the west side of the Crossing, 20th Street West and St. Clair Street, both of which are two-lane streets, dead end into Old Kings Road, with 20th Street West running west and St. Clair Street running south. Further to the west, Old Kings Road intersects with Edgewood Avenue, a four-lane state highway running north and south. The neighborhood directly to the west and south of Old Kings Road is known as the Paxon community.

57. Running north from the intersection with Old Kings Road, Edgewood Avenue intersects New Kings Road (US 1/23). Just before this intersection, Edgewood Avenue separates from grade and becomes a viaduct (overpass) that crosses the CSXT mainline tracks. Traveling this route and then turning south on New Kings Road, a vehicle would reach the intersection of New Kings Road and Old Kings Road. If one is located on the west side of the Crossing, and the Crossing is closed, this route is the shortest distance to the east side of the Crossing.

58. The distance going around the Crossing from west to east (clockwise), starting at the intersection of Old Kings Road and St. Clair Street and finishing at the intersection of Old Kings Road and New Kings Road is approximately 3.26 miles. Going in the opposite direction (counterclockwise) the distance is approximately 3.28 miles. These distances were calculated as averages after making six vehicle travel runs in a clockwise direction (west to east) and five vehicle travel runs in a counterclockwise direction (east to west) respectively.

59. Traveling around the Crossing in a southern direction, either from west to east or east to west would require going all the way to the McQuade Street crossing, or to the Beaver Street viaduct, just south of McQuade Street. The southern route involves distances substantially in excess of those along the Edgewood Avenue - New Kings Road route to the north.

60. All of the major interstates in Jacksonville can be conveniently reached via New Kings Road or Edgewood Avenue.

61. Motorists traveling west on Old Kings Road over the Crossing would have to cross several other railroad crossings in order to reach Edgewood Avenue. In addition to the significant train blockages at the Crossing, significant train blockages exist at Norfolk Southern's Old Kings Road crossing due to the proximity of the crossing to Norfolk Southern's Simpson Yard.

62. A little over one-half mile to the west of the Crossing, and to the north and south thereof, the Norfolk Southern mainline tracks run parallel to the CSXT tracks and also cross Old Kings Road. The Norfolk Southern tracks cross St. Clair Street, 20th Street West and Old Kings Road, going south to north. Immediately north of Old Kings Road those tracks comprise the southern end of Norfolk Southern's Simpson Yard, a switching yard like Moncrief Yard.

63. Norfolk Southern trains at times block St. Clair Street, 20th Street West, and Old Kings Road all at the same time. When this occurs, with the Crossing closed, the area inside the triangle formed by Old Kings Road, the Norfolk Southern tracks, and St. Clair Street becomes landlocked, making ingress and egress to the area impossible.

64. Norfolk Southern trains block the Norfolk Southern crossing across Old Kings Road approximately six out of 24 hours

a day. CSXT trains block the Crossing on an average of at least nine or more hours a day and as much as 12 hours a day. Trains block Old Kings Road, 20th Street West, and St. Clair Street all three simultaneously approximately nine times a day, for periods ranging between 1.29 minutes and 15 minutes, with an average blockage time of 6.5 minutes. On the high side, the triangle area might be completely blocked for as much as 2.25 hours per day total.

65. On some occasions since the Crossing was closed, people within the triangle may have been unable to enter or leave the triangle for as much as 30 minutes or more at a time. This might have been the case one or more times a day. It is also true that the total blockage would be somewhat decreased with the Crossing open because it would provide an additional entrance or exit. However, even with the Crossing open, trains will still block the triangle area for approximately 40 percent of the time out of a 24-hour day.

66. Motorists using the alternate route over New Kings Road and Edgewood Avenue would encounter one railroad crossing on New Kings Road. Trains block the New Kings Road crossing for up to 30 minutes at a time, less than one hour of total blockage during an average 12-hour period from 7:00 a.m. to 7:00 p.m.

67. Approximately 2000 to 3000 people live in the Grand Park community on the east side of the Crossing. The same

number of people live in the Paxon community on the west side of the Crossing. These residents oppose the closing of the Crossing for many reasons, including the following: (a) People from Grand Park on the east side of the Crossing participate in community activities such as Little League Baseball at the Joe Hammond Center near the west side of the Crossing; (b) Children in Grand Park go to school at Paxon Middle School and Paxon High School; and (c) Grocery stores, stores such as Home Depot, and other shopping facilities are located on the west side of the Crossing.

68. If the Crossing remains closed, these people will suffer some inconvenience in having to travel the alternate route over New Kings Road and Edgewood Avenue. However, the Edgewood Avenue overpass on the alternate route provides the Paxon and Grand Park residents access to either side of the Crossing without crossing any of railroad tracks along Old Kings Road.

69. If a motorist traveled a loop from the east side to the west side of the Crossing using the alternate route over New Kings Road and Edgewood Avenue, the total amount of travel time would be between five and 10 minutes depending on the time of day and the amount of traffic. In order to calculate the additional burden on motorists using the alternate route, a reduction would have to be taken for the amount of time that a



motorist would have to travel 6,746 feet from the Crossing to Edgewood Avenue.

70. FDOT grades levels of road service from "A" to "F", with "A" being the highest level of service. Roads with an "A" level of service have the ability to handle considerably more vehicle traffic without causing delays in traffic movement. The level of service for New Kings Road and Edgewood Avenue is an "A" level of service. Therefore, the alternate route is in good condition and able to accommodate the additional traffic volume that results from the closure of the Crossing.

71. Due to the significant train blockages at the CSXT and Norfolk Southern Old Kings Road crossings, the alternate route over New Kings Road and Edgewood Avenue is a more reliable route for motorists. The alternate route over New Kings Road and Edgewood Avenue takes significantly less travel time for motorists than Old Kings Road if the CSXT or Norfolk Southern crossings on Old Kings Road are blocked by train traffic.

72. It is undisputed that a substantial volume of rail traffic utilizes the CSXT tracts at Old Kings Road. However, the trains in the Moncrief Yard are no longer than they were in the 1960s. In fact, there are probably 500 less train cars in the yard and traveling across the Crossing than there were back then.

73. CSXT's business operation will not be changed or be affected regardless of whether the Crossing is open or closed. CSXT has no business necessity to have the Crossing closed, apart from its dangerousness.

74. It is true that the closing of the Crossing will result in some inconvenience to three residential homes and two businesses, Tremron and RLI, located within the triangle formed by the Norfolk Southern mainline, Old Kings Road and St. Claire Street. However, the triangle existed before these homes were constructed and before the businesses were established. Anyone locating a home or business in the triangle area between two railroad yards and two railroad tracks knew or should have known that train blockages were going to be a problem.

75. Prior to the closing of the Crossing, the homeowners in the triangle used St. Clair Street as their primary access route. They used the Crossing mainly when the St. Clair Street crossing was blocked.

76. Tremron purchased its St. Clair Street business premises in June 2000, after the Crossing had been closed for almost two years. Prior to the purchase of the business premises, Tremron represented to the Jacksonville Economic Development Commission that it had performed an initial feasibility study and concluded that the current roadways and

public utilities were adequate to meet the demands for the new facility.

77. Tremron, which manufactures cement pavers, has 10 to 40 trucks entering and leaving the company's premises in a day. If the Crossing were open and not blocked by trains, the best access to I-95 for Tremron's trucks would be through the Crossing. Additionally, because the Crossing is closed, Tremron's employees have problems with access to and from work when the triangle is sealed.

78. Tremron performed surveys of train traffic at the Norfolk Southern St. Clair Street and 20th Street West crossings in October and November 2000, and the Crossing in July 2001. The surveys measured the maximum amount of time the St. Clair Street crossing was blocked by train traffic and not actual vehicle delays at the crossing.

79. A COJ study recorded actual vehicle delays using a proper methodology at ten crossings in the area of Old Kings Road. However, this study did not include a survey of vehicle delays at the Norfolk Southern St. Clair Street crossing.

80. CSXT studied train blockages at the Norfolk Southern St. Clair Street crossing on June 13 and 14, 2001. The results of the CSXT surveys provide persuasive evidence that no significant train delays exist at St. Claire Street.

81. After the date of the Tremron train delay studies at the St. Clair Street crossing, Tremron's President, Hugh Caron, reached a cooperative arrangement with Norfolk Southern whereby the railroad agreed to reduce train blockages at St. Clair Street. Mr. Caron and local triangle residents, Thomas Miller, Milton Holland and Rebecca Jenkins, testified that the cooperative arrangement was working in a satisfactory manner at the time of the final hearing.

82. If the Crossing was open, Tremron and RLI trucks might be able to look down Old Kings Road to see if a train was blocking the Crossing before heading in that direction. But if a train blocks the tracks as the trucks approach the Crossing, they cannot turn around.

83. In the event of a train blockage, RLI's trucks can use an alternate route through the Norfolk Southern Simpson Yard to circumvent the blocked crossing on an emergency basis. Additionally, Milton Holland, one of the three homeowners who reside in the triangle area, also uses the alternate route through the Norfolk Southern Simpson Yard to circumvent the Crossing when it is blocked.

84. RLI is a trucking business that transports building material. It ships and receives material such as steel coils and plywood to and from the Norfolk Southern boxcars. It also transports metal containers to and from the two major

Jacksonville seaports. RLI's facility on Old Kings Road serves as a warehouse for these shipments.

85. RLI's tractor-trailers make 16 to 20 round trips a day from the warehouse to the seaports. Prior to July 1998, the tractor-trailers regularly used the Crossing when it was not blocked by train traffic. Even so, the RLI trucks and personnel were trapped within the triangle every now and then. With the closing of the Crossing, RLI's employees and trucks are trapped within the triangle on a more regular basis.

86. RLI has not missed any shipments since the closure of the Crossing. Mr. Carter testified that, at this point in time, it did not make a difference to him whether the Old Kings Road Crossing remained closed.

87. Centurion's President, Harold Shafer, testified that none of his four automobile transport businesses, including Centurion, were impacted by the closure of the Crossing. According to Mr. Shafer, he owns a business in the triangle area known as Vehicle Transport, Inc., which builds racking systems for transporting automobiles in containers.

88. Vehicle Transport, Inc., was not operating and had no employees at the time of the final hearing. Mr. Shafer is planning to reopen Vehicle Transport, Inc., contingent upon the business being a successful bidder on several contracts. In

that event, Vehicle Transport, Inc., would employ 25 to 30 employees at the St. Clair facility.

89. If Vehicle Transport, Inc., were to reopen for business on St. Claire Street with the Crossing closed, the company would suffer a loss in labor efficiency. However, Mr. Shafer's primary concern would be the occasional unavailability of emergency fire and rescue service, not access for his business resulting from the closing of the Crossing.

90. Petitioners' expert witness, Geoff Pappas, presented evidence of an economic impacts study, concluding that the businesses located within the triangle had suffered economic losses due to the Crossing's closure. Rather than examining the business records of these companies, Mr. Pappas based his analysis on estimated projected losses due to the cost of additional motor fuel consumed by commercial trucks accessing the businesses via the alternate route and due to the cost of paying employees for lost time spent waiting at one of the Norfolk Southern crossings.

91. Mr. Pappas opined that RLI's fuel expense has increased by \$3,000 per year since the closing of the Crossing. He concluded that the company has experienced over \$55,200 per year in lost labor because of the time the employees spend waiting on trains to clear the tracks. According to Mr. Pappas,

other trucking companies making deliveries to RLI's facility have also incurred significant financial losses.

92. As to Tremron, Mr. Pappas testified that the company loses approximately \$42,000 per year in labor efficiency because the employees spend so much time waiting for the tracks to clear within the triangle. Tremron pays outside truck drivers to deliver its products by the truckload; therefore, Mr. Pappas asserted that firms delivering to Tremron have incurred approximately \$13,450 in additional fuel expenditures per year because the Crossing is closed. Mr. Pappas calculated these economic losses for Tremron beginning in 1998 even though Tremron did not open its business facility until 2000.

93. In support for his projected fuel consumption cost analysis, Mr. Pappas assumed that each and every truck would have accessed the triangle area via the Crossing if it had been open. Mr. Pappas also assumed that each and every truck used the alternate route because of the Crossing's closure.

94. On cross-examination, Mr. Pappas had to concede the following: (a) Any truck going to or coming from Interstate 10, Interstate 295, or going to northbound Interstate 95 would access the triangle area using a crossing other than the one at issue here; (b) An origin and destination study needs to be conducted to accurately determine the percentage of commercial traffic actually utilizing the alternate route; (c) If an origin

and destination study had been conducted, it would have shown that the trucks would have used the Norfolk Southern crossing at least some of the time; and (d) The analysis did not consider the impact of regular blockages at the Crossing. Mr. Pappas admitted that his analysis was "a last minute review" that could have been "much more accurate."

95. In support of his lost wages cost analysis, Mr. Pappas estimated that every employee of each business would make four trips into or out of the triangle area every working day of the year. He estimated that each and every trip would incur a 15-minute delay due to train blockages on the Norfolk Southern line. Thus, Mr. Pappas concluded that each and every employee was estimated to lose one hour every working day. By multiplying the estimated number of employees of each business by the estimated average hourly wage paid by that business, then doubling that amount to account for "indirect wage losses," Mr. Pappas estimated the dollar amount of wages lost daily by each business. By multiplying that product by the number of working days in a year, Mr. Pappas estimated the annual loss to each business.

96. Mr. Pappas's lost wages cost analysis assumed that each and every trip into or out of the triangle area would have been made via the Crossing had it been open. He further assumed



that each business paid their employees for the time they spent waiting at a rail crossing coming to or leaving work.

97. On cross-examination, Mr. Pappas conceded the following: (a) Employees would not be paid for time spent waiting at a crossing after leaving work; (b) Employees might not leave work for lunch; and (c) Such trips would have to be deducted from the analysis.

98. There is no doubt that RLI and Tremron have incurred an adverse financial impact due to the closure of the Crossing. However, for the reasons set forth above, Mr. Pappas's cost analysis studies and his testimony in support thereof, cannot be relied upon to accurately reflect that impact.

#### G. Pedestrian Convenience

99. It is undisputed that the Crossing was not designed for pedestrian or bicycle use. Nevertheless, persuasive evidence indicates that pedestrians and bicyclists used the Crossing before it was closed. They have continued to cross the tracks since CSXT removed the crossing roadway in July 1998.

100. One survey indicates that as many as six pedestrians used the Crossing during a 24-hour period in 2001. Other evidence indicates that at least 15 pedestrians used the Crossing during an eight-hour period in 2001. These pedestrians include a lot of Grand Park community residents who do not own

motor vehicles and therefore need to walk or rely on other means of transportation.

101. It would take over an hour for a brisk walker to walk the proposed alternate route around the Crossing, a distance of 3.26 miles. The alternate route is also dangerous for pedestrians because both Edgewood Avenue and New Kings Road (U.S. 1/23) are four-lane highways with no sidewalks. Additionally, the overpass on Edgewood Avenue has cement barriers that block off and reduce the size of the sidewalks so that they are impassible. Thus a pedestrian must walk right next to the auto lanes on the viaduct.

102. Public bus service provided by the Jacksonville Transportation Authority (JTA) connects the neighborhoods on both sides of the Crossing. Some time shortly before the final hearing, a CSXT witness followed two buses that connect the Paxon community and the Grand Park community on the eastern side of the Edgewood Avenue overpass. Additionally, CSXT and COJ provided exhibits which clearly show that pedestrians on both sides of the Crossing have reasonable access to bus transportation over the alternate route, on weekdays and weekends, without having to walk an unreasonable distance.

103. The pedestrian safety hazards at the Crossing substantially outweigh any limited pedestrian inconvenience that would result from the closing of the Crossing.

H. Excessive Restriction to Emergency Type Vehicles Resulting from Closing

104. The Jacksonville Fire and Rescue Department naturally has some concerns that it will be unable to provide timely emergency services in the triangle area when it is sealed. This is more likely to happen with the Crossing closed.

105. Old Kings Road has always been an area of limited access for fire and rescue crews due to the amount of train blockages at the Crossing. The response time of fire and rescue services could be reduced by one minute if the Crossing were open and not blocked by a train. One minute can mean the difference between life and death in an emergency situation.

106. Prior to its closing, emergency vehicles were dispatched from the east side of the Crossing (from fire and rescue Station 7) to cover emergency calls on the west side of the Crossing. Since the closure of the Crossing, the Jacksonville Fire and Rescue Department has modified its response procedures to handle fire and rescue calls for the west side of the Crossing by placing a new fire and rescue station (Station 17) located on Huron Street, west of and less than two miles from the Crossing. Huron Street connects with St. Claire Street south of the Norfolk Southern crossing.

107. Stations 7 and 17 cannot maximize their potential by providing overlapping fire and rescue services because of the

closure of the Crossing. Instead, the two stations serve as backup units for each other.

108. The change in fire and rescue response procedures was required in part due to the closure of the Crossing. It also was necessary to meet increasing demand for service on the west side of the Crossing and to ensure emergency service when there were simultaneous multiple calls.

109. RLI and Tremron also are concerned that emergency services will not arrive timely if the Crossing is closed and the triangle area is sealed. RLI has 16 to 18 employees. In August 2001, a Norfolk Southern train was blocking 20th Street West and St. Clair Street when one of RLI's employees required emergency medical services. Norfolk Southern had to break the train so that rescue services could answer the emergency call. The rescue response time on that occasion was 12 minutes.

110. Tremron has 12 employees. Sometime in 2001, Tremron had to call for emergency medical help for an employee who was experiencing an asthma panic attack. The emergency response vehicle took 30 minutes to respond to Tremron's facility. The record does not indicate whether a train sealed the triangle area at that time.

111. Despite the above-referenced incidents, the average response times for the three fire and rescue zones in the area of the Crossing have significantly improved since its closure in

1998. For example, fire and rescue Zone 5370 includes the triangle area. The average response time for fire response in Zone 5370 was 6.1 minutes in 1997 and 4.7 minutes in 1999 and 2000. The average response time for emergency medical response in Zone 5370 was 8.6 minutes in 1997, 5.7 minutes in 1999, and 6.2 minutes in 2000. The Jacksonville Fire and Rescue Department considers six minutes to be the optimum response time for emergency medical response.

112. Regardless of the closing of the Crossing, there may be times when fire and rescue vehicles need to request that a train be broken in order to access the triangle area. While fire and rescue personnel prefer that the Crossing be open, any restriction to fire and rescue vehicles as a result of the closure of the Crossing has not been and will not be excessive.

113. The Jacksonville Sheriff's Office has good overlapping vehicle coverage on both sides of the Crossing. There was no evidence presented that police calls have been or would be delayed as the result of the closing of the Crossing. There is evidence that the police do not patrol along Old Kings Road as often as they did before the Crossing was closed. Nevertheless, any restrictions to police patrol vehicles as a result of the closure of the Crossing have not been excessive.

I. Effect of Closing on Rail Operations And Expenses

114. Although CSXT has no business necessity to keep the Crossing closed, crossing accidents impact the railroad's operations. This occurs when train crews are relieved from duty and lose time from work dealing with the emotional effects or psychological trauma caused by witnessing serious accidents. Additionally, CSXT has significant liability exposure for crossing accidents at the Crossing, including physical and emotional injury claims brought by motorists, passengers, train crews and pedestrians based upon the proximity of the Crossing to the Moncrief Yard. So far, CSXT has paid approximately \$500,000 for claims arising out of accidents at the Old Kings Road crossing, exclusive of attorney's fees and costs. Amtrak has paid approximately \$100,000.

CONCLUSIONS OF LAW

115. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

116. CSXT has the burden of proving by a preponderance of the evidence that the Crossing should be closed. Department of Transportation v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

117. FDOT substantially complied with its procedure in issuing its Notice of Intent to Issue Permit. CSXT filed the

application for closure in the Spring of 1997. COJ informally learned about the pending application in the Fall of 1998. FDOT issued the formal Notice of Intent to Issue Permit on January 31, 2001. Any deficiency on the part of FDOT in providing notice to COJ was harmless.

118. FDOT exercises regulatory authority over all public railroad-highway crossings in the State of Florida pursuant to Section 335.141, Florida Statutes. City of Plant City v. Department of Transportation, 399 So. 2d 1075 (Fla. 2d DCA 1981).

119. To carry out its responsibility, FDOT has promulgated Rules 14-46.003(1) and 14-46.003(2), Florida Administrative Code, which provide as follows, in pertinent part:

(1) Purpose. To provide rules for the Florida Department of Transportation, pursuant to Section 335.141, Florida Statutes, for the establishment of uniform standards in the issuance of final orders of the department regarding permits for the opening and closing of public railroad - highway grade crossings. The two basic objectives of these uniform standards will be to:

- (a) Reduce the accident frequency and severity of grade crossings, and
- (b) Improve rail and motor vehicle operating efficiency.

(2) Opening and Closing Public Grade Crossings. The Department of Transportation may accept applications for the opening and closing of public railroad crossings from the governmental body that has jurisdiction over the public street or highway; any railroad operating trains through the

crossing; any other applicant for a public grade crossing provided there is in existence an agreement between the applicant and governmental body to assume jurisdiction as a public crossing; or the Department, itself, on behalf of the State of Florida. Opening or closing of public grade crossings shall take the form of a Final Order by the Secretary of Transportation, either subsequent to administrative hearings conducted pursuant to Chapter 120, Florida Statutes, or based upon a voluntary Stipulation of Parties executed by all parties, including the Department. Acceptance of any application for processing by the Department shall not be construed as indicating the Department's position regarding the application.

120. FDOT has established criteria for determining whether to issue a permit to close a crossing. Rule 14-46.003(3)(b), Florida Administrative Code, states as follows:

- (b) Closing Public Grade Crossings. In considering the closing of a public grade crossing, the following criteria will apply:
1. Necessity, convenience and safety effects upon rail and vehicle traffic.
  2. Utilization of remaining routes where practical.
  3. Effect of closing on rail operations and expenses.
  4. Excessive restriction to emergency type vehicles resulting from closing.

121. In determining whether to approve CSXT's application, FDOT considered the following: (a) the necessity, convenience and safety of the Crossing to rail and vehicle traffic; (b) whether other alternate routes may be utilized; (c) the effect of closing the Crossing on rail operations and expenses; and (d)



whether excessive restrictions to emergency type vehicles will result from the closure of the Crossing.

122. Although reasonable people may disagree over the precise details of FDOT's diagnostic review, it is beyond dispute that FDOT substantially complied with its own procedures, and any omissions, have been cured by consideration of those elements in the course of the formal hearing.

123. The evidence in this case proved that the Crossing has significant safety hazards, including but not limited to:

- a. The highest number of railroad crossing accidents in Jacksonville, Florida, including several involving serious personal injury;
- b. Motorists running the gates because of extended train blockages and a general lack of appreciation of the nature of switching movements;
- c. Potential danger of obstructed trains traveling at high speeds on the CSXT mainline;
- d. Visibility obstructions for motorists who cannot observe fast-moving freight or Amtrak passenger trains on the mainline;
- e. Approximately one hundred train movements daily;
- f. Five railroad tracks that cross the road at a skewed angle;
- g. Motorist frustration over extended train delays;
- h. The proximity of the Crossing to the Moncrief Yard switching activities;
- i. Trains performing different activities on different railroad tracks at varying speeds;

- j. Pedestrians climbing between freight cars on a regular basis due to extended train delays; and
- k. A substantial likelihood of future railroad crossing accidents.

124. Closing the Crossing would enhance its safety. The benefit of the enhanced safety outweighs any possible inconvenience to motorists and pedestrians that may result from closure.

125. The evidence demonstrated there is an existing reliable, alternate route for vehicle traffic over New Kings Road and Edgewood Avenue. The alternate route eliminates the substantial train delays and safety hazards that exist at the Crossing and the Norfolk Southern crossings. The alternate route is practical given its minimal additional distance and time requirements. Public buses provide pedestrians with reasonable transportation to both sides of the Crossing over the alternate route.

126. The evidence demonstrated that closure of the Crossing might cause some occasional inconvenience to individuals located in the triangle area. Trains will block this area more often if the Crossing is closed. However, the additional inconvenience is not significant when balanced against the problems of substantial train delays at the Crossing and the overwhelming public safety benefits associated with eliminating the crossing.

127. Closure of the crossing may increase the cost of doing business for companies located in the triangle. The record does not accurately reflect the financial impact on these companies.

128. CSXT does not have a business necessity to close the Crossing. On the other hand, closure of the Crossing would have a beneficial effect on rail operations and expenses based upon the railroad's potential liability exposure for accidents. This exposure is especially significant based on the regular presence of motorists and pedestrians crossing around lowered gates in front of trains or between freight cars.

129. Finally, the evidence proved that the closure of the Old Kings Road crossing would not cause an "excessive" restriction to emergency type vehicles. To the contrary, response times for emergency vehicles have improved since the closure in 1998.

130. In tacit recognition of the safety hazards that exist at the Crossing, Petitioners argued that FDOT should consider upgrades to the traffic control devices as an alternative to closure. Under Rule 14-46.003, Florida Administrative Code, FDOT is not required to consider the relative merits of allocating funds to upgrade the traffic control devices at a railroad crossing as part of its crossing closure determination.

131. FDOT would not consider upgrades to the traffic control devices based upon the existence of signal lights and gates at the Crossing. Moreover, installation of a four-quadrant gate system would enhance the danger at the Crossing because vehicles could be trapped in the path of a train.

132. In this case, Respondents have shown that the closing of the Crossing effectuates FDOT's policy of improved safety at railroad crossings by eliminating, where reasonably convenient, the interaction of motor vehicle traffic with rail traffic.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That FDOT enter a final order granting CSXT a permit to close the Crossing.

DONE AND ENTERED this 11th day of February, 2002, in Tallahassee, Leon County, Florida.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.