



ENTERED
Office of Proceedings
May 23, 2016
Part of
Public Record

TELEPHONE:
(802) 828-2831

FAX:
(802) 828-2817

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
VERMONT AGENCY OF TRANSPORTATION
NATIONAL LIFE BUILDING
ONE NATIONAL LIFE DRIVE
MONTPELIER, VERMONT 05633-5001



May 20, 2016

VIA UPS NEXT DAY AIR MAIL

Ms. Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36016
Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust and Antonio Aja, Jr. and Virginia C. Aja, Trustees of the Antonia Aja, Jr. Trust and the Virginia D. Aja Trust—Petition for Declaratory Order

Dear Ms. Brown:

Enclosed for filing in the above matter are the original and ten (10) copies of the Reply of the State of Vermont and Washington County Railroad Company, with attachments, along with three discs containing a copy of the filing.

Please contact me if you have any questions or concerns regarding this matter.
Thank you.

Sincerely,

John K. Dunleavy
Assistant Attorney General

Enclosures

cc: Daniel P. O'Rourke, Esq.
Eric R. Benson, Esq.

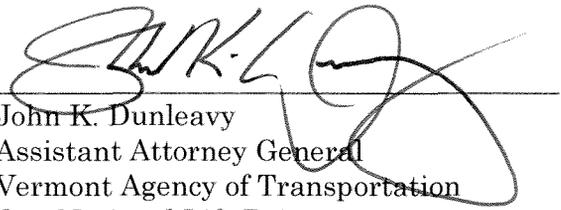
CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2016, I caused a copy of the foregoing Reply of the State of Vermont and Washington County Railroad Company to be served by United States Mail, first-class postage prepaid, upon the following parties:

Daniel P. O'Rourke, Esq.
Bergeron, Paradis, & Fitzpatrick, LLP
34 Pearl Street (PO Box 174)
Essex Junction, VT 05453-0174

Eric R. Benson, Esq.
Law Offices of Eric R. Benson
6A Hillside Lane
Westford, VT 05494-9769

Dated at Montpelier, Vermont, this 20th day of May, 2016.



John K. Dunleavy
Assistant Attorney General
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001
(802) 828-3430
john.dunleavy@vermont.gov

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

REPLY OF STATE OF VERMONT AND
WASHINGTON COUNTY RAILROAD COMPANY

William H. Sorrell
Attorney General
John K. Dunleavy
Assistant Attorney General
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633
(802) 828-3430 (Tel.)
(802) 828-2817 (Fax)
john.dunleavy@vermont.gov

Attorneys for State of Vermont

Eric R. Benson, Esq.
Law Offices of Eric R. Benson
6A Hillside Lane
Westford, VT 05494-9769
(802) 373-3589 (Tel.)
(802) 891-6639 (Fax)
bensonpatentlaw@comcast.net

*Attorney for Washington County
Railroad Company*

May 20, 2016

TABLE OF CONTENTS

| | |
|--|----|
| Statement of the Issues | iv |
| Table of Authorities | v |
| Statement of the Case | 1 |
| I. Parties | 1 |
| II. History of the Line | 2 |
| A. The 1870-71 Montpelier & Wells River Condemnation | 3 |
| B. The 1944 Conveyance to the Barre & Chelsea Railroad | 3 |
| C. The 1956 Conveyance to the Montpelier & Barre Railroad | 4 |
| D. The 1958 Consolidation of Parallel Trackage | 5 |
| E. The 1980 Condemnation by the State of Vermont | 6 |
| F. The 1985-87 State Court Litigation | 8 |
| G. The Continued Need for the Montpelier & Wells River Corridor | 11 |
| H. The Pioneer Street Highway Bridge Project | 12 |
| I. The 2010 Grant Application | 13 |
| Summary of Argument | 14 |
| Argument | 15 |
| I. Assuming for Purposes of Argument that Petitioners Have Standing, their Sole Remedy is to File an Adverse Abandonment Application | 15 |
| II. Petitioners Are Not Entitled to Adverse Abandonment of the Line | 19 |
| III. The Express Preemption Provisions of the ICCTA Also Protect the Line Against Petitioners' State Property Law Claims | 22 |

IV. The State of Vermont and the Washington County Railroad
Have Taken Affirmative Steps to Protect the Line's
Continued Usefulness for Possible Resumption of Rail
Freight Service 23

Conclusion 24

Appendix

Verified Statement of David W. Wulfson (Attachment 1)

Filings from 1985-87 State Court Litigation (Attachment 2)

Verified Statement of Erin L. Charbonneau (Attachment 3)

Verified Statement of Matthew C. Colburn (Attachment 4)

Verified Statement of Krista L. Chadwick (Attachment 5)

Verified Statement of Joshua D. Martineau (Attachment 6)

STATEMENT OF THE ISSUES

1. Can abutting landowners who claim a reversionary interest in a railroad right-of-way use a petition for declaratory relief to avoid the procedural and substantive standards for an adverse abandonment application?

2. Does federal law protect a railroad from abutting landowners who seek to carve off for non-rail use a strip of railroad right-of-way that the railroad has identified as critical to the resilience of ongoing railroad operations, as well as needed to accommodate future railroad operating needs?

TABLE OF AUTHORITIES

Cases

| | |
|--|--------|
| <i>Atchison, Topeka & Santa Fe Ry. Co.—Abandonment Exemption—In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991)</i> | 17, 20 |
| <i>Barre & Chelsea R.R. Co.—Purchase, etc., Finance Docket No. 14773 (ICC served Dec. 28, 1944)</i> | 3 |
| <i>Barre & Chelsea R.R. Co.—Abandonment, Finance Docket No. 19171 (ICC served Sept. 19, 1956)</i> | 4 |
| <i>Boston & Maine R.R.—Valuation, 30 Val. Rep. 515 (ICC 1930)</i> | 3 |
| <i>Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981)</i> | 9, 18 |
| <i>City of Auburn v. STB, 154 F.3d 1025 (9th Cir. 1998)</i> | 22 |
| <i>City of Creede, CO—Petition for Declaratory Order, Finance Docket No. 34376 (STB served May 3, 2005)</i> | 21 |
| <i>City of Lincoln—Petition for Declaratory Order, Finance Docket No. 34425, (STB served Aug 12, 2004), aff'd 414 F.3d 858 (8th Cir. 2005)</i> | 21 |
| <i>City of South Bend v. STB, 566 F.3d 1166 (D.C. Cir. 2009)</i> | 16 |
| <i>Denver & Rio Grande Ry. Historical Foundation—Adverse Abandonment—In Mineral County, CO, Docket No. AB-1014 (STB served May 23, 2008)</i> | 19 |
| <i>Friends of Pioneer Street Bridge Corp. v. FHWA, 150 F.Supp.2d 636 (D.Vt. 2001)</i> | 12 |
| <i>Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005)</i> | 22 |
| <i>Hayfield Northern R.R. Co. v. Chicago & North Western Transp. Co., 467 U.S. 622 (1984)</i> | 15 |

| | |
|--|------------|
| <i>Honey Creek R.R., Inc.—Petition for Declaratory Order,</i> Finance Docket No. 34869, (STB served June 4, 2008) | 17, 19, 20 |
| <i>Jie Ao and Xin Zhou—Petition for Declaratory Order,</i> Finance Docket No. 35539 (STB served June 6, 2012) | 22, 23 |
| <i>Mid-America Locomotive & Car Repair, Inc.—</i> <i>Petition for Declaratory Order,</i> (STB served June 6, 2005) | 23 |
| <i>Midland Valley R.R. v. Jarvis,</i> 29 F.2d 539, 541 (8th Cir. 1928) | 20 |
| <i>Modern Handcraft, Inc.,</i> 363 I.C.C. 969, 971 (1981) | 15, 20 |
| <i>Montpelier & Barre R.R. Co.—Entire Line Abandonment</i> <i>—From Graniteville to Montpelier Jct. in Washington</i> <i>Co., Vt., Docket No. AB-202F (ICC served Mar. 12, 1980)</i> | 6 |
| <i>Montpelier & Barre R.R. Co.—Entire Line Abandonment</i> <i>—From Graniteville to Montpelier Jct. in Washington</i> <i>Co., Vt., Docket No. AB-202F (ICC served May 22, 1980)</i> | 7 |
| <i>Montpelier & Barre R.R. Co.—Entire Line Abandonment</i> <i>—From Graniteville to Montpelier Jct. in Washington</i> <i>Co., Vt., Docket No. AB-202F (ICC served Jan. 19, 1981)</i> | 8 |
| <i>Montpelier & Barre R.R. Co.—Purchase Barre Branch</i> <i>(Portion)—Central Vermont Ry., Inc., Finance Docket</i> <i>No. 19936 (ICC served Mar. 19, 1958)</i> | 5 |
| <i>Napa Valley Wine Train, Inc.—Adverse Abandonment</i> <i>—In Napa Valley, Cal., Docket No. AB-582 (STB served</i> <i>Mar. 30, 2001)</i> | 17 |
| <i>New York Cross Harbor R.R. v. STB,</i> 374 F.3d 1177 (D.C. Cir. 2004) | 16 |
| <i>Norfolk Southern Ry. Co.—Adverse Abandonment</i> <i>—In St. Joseph County, Ind., Docket No. AB 290</i> <i>(Sub-No. 286) (STB served Apr. 17, 2012)</i> | 17 |
| <i>Pace v. CSX Transportation, Inc.,</i> 613 F.3d 1066 (11th Cir. 2010) | 23 |
| <i>Phillips Co.—Petition for Declaratory Order,</i> Finance Docket No. 32518 (ICC served Apr. 18, 1995) | 18 |

| | |
|--|-------|
| <i>Phillips Co. v. Denver & Rio Grande Western R.R. Co.</i> , 97 F.3d 1375 (10th Cir. 1996) | 19 |
| <i>Port City Properties. v. Union Pacific R.R. Co.</i> , 518 F.3d 1186, 1188 (10th Cir. 2008) | 23 |
| <i>State Agency of Transportation v. Montpelier & Barre Railroad Co., Inc. et al.</i> , Docket No. S180-80 Wnc (Vermont Superior Court, Washington County) | 7 |
| <i>Stewartstown R.R. Co.—Adverse Abandonment—In York County, PA.</i> , Docket No. AB-1071 (STB served Mar. 10, 2011) | 16 |
| <i>Stewartstown R.R. Co.—Adverse Abandonment—In York County, PA.</i> , Docket No. AB-1071, (STB served Nov. 16, 2012) | 17 |
| <i>Trustees of the Diocese of Vermont, et al. v. State of Vermont</i> , 145 Vt. 510, 514, 496 A.2d 151 (1985) | 9, 10 |
| <i>Union Pacific R.R. v. Chicago Transit Authority</i> , 647 F.3d 675 (7th Cir. 2011) | 22 |
| <i>Washington County R.R. Co.—Modified Rail Certificate</i> , Finance Docket No. 33807 (STB served Nov. 3, 1999) | 2 |
| <i>Washington County R.R. Corp.—Operations—From Montpelier Jct. to Graniteville, VT</i> , Finance Docket No. 29536F (ICC served Jan. 2, 1981) | 8 |
| <i>Waterloo Ry. Co.—Adverse Abandonment—Lines of Bangor & Aroostook R.R. Co. and Van Buren Bridge Co. in Aroostook Co., Maine</i> , Docket No. AB-124 (Sub-No. 3) (STB served May 3, 2004) | 20 |
| <i>Zorzi v. State of Vermont</i> , Docket No. S41-85Wnc (Vermont Superior Court, Washington County) | 2, 8 |
| <i>Zorzi v. Transportation Board</i> , Docket No. 87-197 (Vermont Supreme Court Nov. 16, 1987) | 10 |

Statutes

| | |
|--|------------|
| Interstate Commerce Act, § 1(18-22) | 5 |
| Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. § 10101, <i>et seq.</i> | 16, 22 |
| Trails Act, 16 U.S.C. § 1247(d) | 21 |
| 49 U.S.C. §§ 10101-11908 | 22 |
| 49 U.S.C. § 10101(4) | 15 |
| 49 U.S.C. § 10102(6) | 23 |
| 49 U.S.C. § 10102(9) | 23 |
| 49 U.S.C. § 10501(b) | 15, 22 |
| 49 U.S.C. § 10903(a)(1) | 16 |
| 49 U.S.C. § 10903(d) | 15, 17, 19 |
| 1867 Vt. Acts & Resolves No. 161 | 2 |
| 1979 Vt. Acts & Resolves No. 71, § 21 | 6 |
| 1980 Vt. Acts & Resolves No. 188 | 7 |
| Vt. Stat. Ann. tit. 30, § 1324 (now Vt. Stat. Ann. tit. 5, § 3540 (2011)) | 9 |

Rules

| | |
|---|------------|
| 49 C.F.R. § 1011.7 | 18 |
| 49 C.F.R. §§ 1105.7-1105.8 | 18 |
| 49 C.F.R. Part 1152, Subpart C | 16, 17, 18 |
| 49 C.F.R. § 1152.20 | 18 |
| 49 C.F.R. § 1152.20(a)(2) | 18 |
| 49 C.F.R. § 1152.20(a)(3)-(4) and (b) | 18 |

| | |
|---------------------------------|----|
| 49 C.F.R. § 1152.20(c) | 18 |
| 49 C.F.R. § 1152.21 | 18 |
| 49 C.F.R. § 1152.22 | 18 |
| 49 C.F.R. § 1152.24(e)(2) | 19 |
| 49 C.F.R. § 1152.24(e)(5) | 18 |

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

**REPLY OF STATE OF VERMONT AND
WASHINGTON COUNTY RAILROAD COMPANY**

Statement of the Case

This case involves a dispute as to reversion of the former Montpelier & Wells River Railroad/Barre & Chelsea Railroad right-of-way ("the Line") where it passes through the lands of the former Sabin Farm in Montpelier, Vermont. To allow them to assert their claim to reversion in the Vermont courts, the Petitioners seek a declaratory ruling that the Surface Transportation Board ("STB" or "Board") no longer has any jurisdiction over the Line because a prior rail carrier unilaterally removed the tracks in the late 1950s.

I. Parties

Petitioners Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust and Antonia Aja, Jr. and Virginia C. Aja, Trustees of the Antonio Aja, Jr. Trust and the Virginia D. Aja Trust, claim to be the owners of the former Sabin Farm, through which the Line passes.

In 1980, the State of Vermont, through its Agency of Transportation ("VTrans"), acquired for continued railroad operation the Montpelier & Barre

Railroad, extending approximately 14 miles from Montpelier Junction, through the cities of Montpelier and Barre, to Graniteville, Vermont. The acquisition included the Montpelier & Barre's interest in the former Montpelier & Wells River Railroad/Barre & Chelsea Railroad right-of-way where it passes through the lands of the former Sabin Farm in Montpelier, Vermont.

In 1999, the present rail carrier, the Washington County Railroad Company ("WACR") took over operation of the State-owned Montpelier Junction-Graniteville line from a prior lessee-operator. See *Washington County R.R. Co.—Modified Rail Certificate*, Finance Docket No. 33807 (STB served Nov. 3, 1999); Verified Statement of David W. Wulfson ("Wulfson V.S.") (Attachment 1).

II. History of the Line

The history of the Line goes back to shortly after the end of the Civil War. In 1867, the Vermont Legislature incorporated the Montpelier & Wells River Railroad Company, authorizing the corporation to build a railroad from Montpelier or Berlin (both located in central Vermont) to the Village of Wells River in the Town of Newbury (located on the Connecticut River, which forms the boundary between Vermont and New Hampshire). 1867 Vt. Acts & Resolves No. 161; Stipulation as to Agreed Statement of Facts ¶ 4, *Angeles A. Zorzi, Trustee v. State of Vermont*, Docket No. S41-85Wnc (Vermont Superior Court, Washington County, Apr. 12, 1986) ("1986 Stipulation") (Attachment 2).

A. The 1870-71 Montpelier & Wells River Condemnation

In late 1870, the Montpelier & Wells River Railroad Company began the condemnation process by recording a description of its centerline in the Montpelier land records. The centerline of the Montpelier & Wells River Railroad, as thus described and recorded, crossed the lands of the Sabin Farm. Court-appointed commissioners appraised damages for taking the lands of various condemnees, including the Sabins. In January 1871, the railroad recorded the commissioners' award to the Sabins in the Montpelier land records. 1986 Stipulation ¶¶ 6-9 (Attachment 2).

B. The 1944 Conveyance to the Barre & Chelsea Railroad

The Montpelier & Wells River Railroad was completed in 1873 and operated, more or less continuously, between Montpelier and Wells River under its original name until 1944. 1986 Stipulation ¶ 9 (Attachment 2). During many of these years, the Boston & Maine Railroad controlled the Montpelier & Wells River. See generally *Boston & Maine R.R.—Valuation*, 30 Val. Rep. 515, 970-87 (ICC 1930). The route thus operated included tracks on the right-of-way through the old Sabin Farm. On December 28, 1944, the Interstate Commerce Commission ("ICC") authorized the Barre & Chelsea Railroad Company's purchase of the physical property and franchises of the Montpelier & Wells River Railroad. *Barre & Chelsea R.R. Co.—Purchase, etc.*, Finance Docket No. 14773 (ICC served Dec. 28, 1944). Almost immediately, the Montpelier & Wells River Railroad Company conveyed its

property to the Barre & Chelsea Railroad, including the right-of-way through the old Sabin Farm in Montpelier. 1986 Stipulation ¶¶ 19-20.

C. The 1956 Conveyance to the Montpelier & Barre Railroad

On September 19, 1956, the ICC authorized the Barre & Chelsea Railroad Company to abandon its entire line of railroad extending from Wells River to Montpelier, along with its branch through Barre to Barre Mountain (*i.e.*, Graniteville). This Commission's report stated:

Since the service of the report proposed by the [hearing] examiner we have been informed by interested persons of their desire to obtain a portion of the line for continued operation. Under such circumstances, our certificate will be subject to the condition that the applicant shall sell the line or any portion thereof, including such tracks and other facilities as may be essential to the continued operation of such line or portion thereof, to any responsible person, firm, or corporation offering, within 40 days from the date of the certificate, to purchase the same for continued operation, and is willing to pay not less than the fair net salvage value of the property sought to be purchased. The acquisition and operation of the line, or any portion thereof, in interstate and foreign commerce by a new owner, except as an industrial or spur track, could not be accomplished lawfully, however, without first securing appropriate approval from us.

Barre & Chelsea R.R. Co.—Abandonment, Finance Docket No. 19171 (ICC served Sept. 19, 1956) Accordingly, the ICC made its certificate of abandonment subject to the condition that the Barre & Chelsea keep the property intact for 40 days for sale to permit continued operation. 1986 Stipulation ¶ 24 (Attachment 2).

In November 15, 1956, the Barre & Chelsea Railroad Company conveyed its railroad property in Montpelier (including the right-of-way now at issue) to the Montpelier & Barre Railroad Company, a new railroad organized by short-line railroad operator Samuel B. Pinsly. From about January 1957 to March 1958, the

new railroad operated a through line of railroad from Montpelier to Barre Mountain (Graniteville) using tracks located on the right-of-way now at issue. 1986 Stipulation ¶ 25 (Attachment 2).

D. The 1958 Consolidation of Parallel Trackage

On March 17, 1958, the ICC authorized the Montpelier & Barre Railroad Company to purchase the Barre branch of the Central Vermont Railway, Inc. from Montpelier Junction to Barre. *Montpelier & Barre R.R. Co.—Purchase Barre Branch (Portion)—Central Vermont Ry., Inc.*, Finance Docket No. 19936 (ICC Mar. 19, 1958). After reviewing the economies capable of being realized by consolidation of parallel trackage between Montpelier and Barre, the Commission's report stated:

Nothing herein is to be construed as expressing an opinion as to whether either of the parallel tracks of the Montpelier [& Barre Railroad Company], as hereafter existing, may be abandoned without our permission pursuant to section 1(18-22) of the [Interstate Commerce Act].

Id. at 4; 1986 Stipulation ¶ 28 (Attachment 2).

Between Granite Street in Montpelier and the wye track near the U.S. Route 2 crossing on the easterly side of Montpelier, the former Montpelier & Wells River tracks stayed on the north side of the Winooski River, while the former Central Vermont tracks (which in 1958 still had several on-line customers) crossed over to the south side of the Winooski River and back again. Along this segment, the Montpelier & Barre kept intact the former Central Vermont tracks, while removing the parallel former Montpelier & Wells River tracks (including those through the

former Sabin Farm). 1986 Stipulation ¶ 29 (Attachment 2). The Montpelier & Barre did not seek ICC approval for its track removals.

E. The 1980 Condemnation by the State of Vermont

In the late 1970s, the financial condition of the Montpelier & Barre became precarious, leading it to threaten to abandon its entire line. In 1979, the Vermont Legislature, expressing its intention to “temporarily preserve the existing railroad rights-of-way between Montpelier Junction and Barre Town for ultimate use as a transportation corridor,” authorized Vermont’s Secretary of Transportation to purchase an option or leasehold in the right-of-way. 1979 Vt. Acts & Resolves No. 71, § 21; 1986 Stipulation ¶ 37 (Attachment 2).

On February 6, 1980, the ICC authorized the Montpelier & Barre Railroad Company to abandon its entire line from Montpelier Junction to Graniteville. However, the Commission delayed issuance of a certificate of abandonment to permit offers of financial assistance for the continued operation of the line. The Commission prohibited the railroad, for a period of 120 days from the effective date of its decision (*i.e.*, April 11, 1980), from disposing of the right-of-way “to permit any state or local government agency or other interest party to negotiate the acquisition for public use of all or any portion of the right-of-way.” *Montpelier & Barre R.R. Co.—Entire Line Abandonment—From Graniteville to Montpelier Jct. in Washington Co., Vt.*, Docket No. AB-202F (ICC served Mar. 12, 1980); 1986 Stipulation ¶ 38 (Attachment 2).

The Vermont Legislature subsequently authorized VTrans to acquire the Montpelier & Barre and, toward that end, authorized VTrans to use the statutory procedures for highway condemnations. 1980 Vt. Acts & Resolves No. 188.¹ In September 1980, in anticipation of its acquisition of the Montpelier & Barre Railroad properties, VTrans entered into a lease and operating agreement with the original lessee-operator. The lease covered most of the property to be acquired from the Montpelier & Barre, including the portion of the Barre & Chelsea (Montpelier & Wells River) right-of-way through the old Sabin Farm. 1986 Stipulation ¶¶ 39-41 (Attachment 2).

On October 27, 1980, the Washington Superior Court approved VTrans' condemnation of the Montpelier & Barre Railroad properties. *State Agency of Transportation v. Montpelier & Barre Railroad Co., Inc., et al.*, Docket No. S180-80 Wnc. The order's description of the authorized acquisition included whatever interest the Montpelier & Barre Railroad still had in the former Montpelier & Wells River Railroad right-of-way as it passed through the old Sabin Farm but in its final form did not describe any new taking from the Aja Trusts. On November 12, 1980, the State Transportation Board established the compensation VTrans was to pay the Montpelier & Barre Railroad. On November 21, 1980, VTrans recorded the compensation order in the Montpelier land records, thus acquiring the Montpelier & Barre's interest in the subject property. 1986 Stipulation ¶¶ 42-43 (Attachment 2).

¹ The ICC treated VTrans' offer to purchase and the availability of highway condemnation procedures to resolve any disagreement as to the amount of compensation as a bona fide financial assistance/acquisition offer complying with the Commission's financial assistance procedures relating to abandonment. *Montpelier & Barre R.R., supra*, slip op. at 2 (ICC served May 22, 1980).

On December 18, 1980, the ICC authorized the Washington County Railroad Corporation (the State's original lessee-operator) to provide freight service from Montpelier Junction to Graniteville. *Washington County R.R. Corp.—Operations—From Montpelier Jct. to Graniteville, VT*, Finance Docket No. 29536F (ICC served Jan. 2, 1981). In a January 12, 1981 supplemental decision, the Commission provided that the Montpelier & Barre's abandonment should become final February 19, 1981. *Montpelier & Barre R.R. Co.—Entire Line Abandonment—From Graniteville to Montpelier Jct. in Washington Co., Vt.*, Docket No. AB-202 F (ICC served Jan. 19, 1981); 1986 Stipulation ¶ 44 (Attachment 2).

F. The 1985-87 State Court Litigation

In 1985, Angeles A. Zorzi, in her capacity as trustee of certain Aja family trusts, filed suit in state court against the State of Vermont and the Vermont Transportation Board, seeking a declaration of the parties' rights in the former Montpelier & Wells River right-of-way as it passed through the old Sabin Farm (by then owned by the Aja family trusts). *Angeles A. Zorzi, Trustee of the Antonio Aja Trust and Trustee of the Angeles Maria Aja Trust v. Transportation Board of the State of Vermont and State of Vermont*, Docket No. S41-85Wnc (Washington Superior Court).

On April 12, 1986, the parties filed with the state court a 16-page Stipulation as to Agreed Statement of Facts (see Attachment 2). On March 12, 1987, Vermont Superior Judge John P. Meaker decided that the state court, because of the ICC's

exclusive subject matter jurisdiction over railroad abandonments, lacked subject matter jurisdiction. Judge Meaker therefore dismissed the Zorzi complaint:

In 1958, the Montpelier & Barre Railroad purchased and began using a parallel line of track (the Central Vermont track) and tore up the rails over the right of way at issue here (the Barre & Chelsea track). Plaintiff argues that this was not an "abandonment" requiring ICC approval because "identical rail service was provided" on the parallel tracks. Instead, the argument goes, this was merely a "relocation" under 30 V.S.A. section 1324 [now Vt. Stat. Ann. tit. 5, § 3540 (2011)], which provides that in the event of relocation, a landowner may elect between returning the damage payment in exchange for return of the condemned land, and keeping the payment by conveying the land to the railroad voluntarily.

Whether or not the factual premise of plaintiff's argument is correct (that identical rail service was provided), the construction of section 1324 urged by plaintiff would bring that statute into conflict with the ICC's "plenary authority to regulate . . . rail carriers' cessations of service on their lines. [A]s to abandonment, this authority is exclusive." *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 323 (1981), quoted in *Trustees of the Diocese of Vermont, et al. v. State of Vermont*, 145 Vt. 510, 514 (1985). The "relocation" urged by plaintiff is at least a "cessation of service" over the route at issue, and as such is within the exclusive jurisdiction of the ICC. This court will not construe a statute in a way that renders it unconstitutional if that result can be reasonably avoided. The subchapter containing section 1324 is entitled "Location, Condemnation and Construction," and read as a whole it seems to apply to the pre-operation phases of railroading. Once ICC jurisdiction has attached, it cannot be displaced by operation of state law. *Trustees of Diocese, supra*.

II

On September 19, 1956, the ICC authorized the abandonment of the entire line of railroad from Wells River to Montpelier, including the portion at issue here. That order was subject to the condition that the property be kept intact for 40 days (i.e. until October 29, 1956) to permit sale and continued operation if possible. A sale of the relevant portion to the new Montpelier & Barre Railroad was accomplished, but not until November 15, 1956. Plaintiff contends that after October 29,

1956, a legal abandonment had occurred and the land comprising the right of way automatically reverted to its previous owners.

This contention misconstrues the effect of the ICC order. That order *authorized*, but did not *mandate*, abandonment of the line. The ICC did not consider the line abandoned, as evidenced by its recognition of the new company's operation of the line. See Stipulated Fact, paragraph 28. Also, on March 17, 1958, the ICC authorized the purchase by the Montpelier & Barre Railroad of the parallel Central Vermont tracks; that order specifically declined to express "an opinion as to whether either of the parallel tracks ... may be abandoned without our permission." See Stipulated Facts, paragraph 28. The Commission apparently did not conclude the line was abandoned, and this court defers to the Commission's interpretation of its own order and authority.

Finally, plaintiff contends that certain language used in the state commissioner's award of damages to plaintiff's predecessors indicates the taking of only a defeasible fee in the disputed property. Whether or not that is true, the argument asks this court "to enforce an alleged common law right, which in this instance would interfere with the laws of Congress. The action thus cannot be sustained...." *Trustees of Diocese*, 145 Vt. at 515. Plaintiffs in the *Diocese* case sought the termination of "an easement for railroad purposes," *id.* at 511, while plaintiff's argument here concedes that a greater interest, a fee of some sort, was taken. The rationale and holding of *Diocese* clearly defeats the claim.

This court notes in passing that plaintiff's reading of the record of the award, describing the interest taken, appears unduly restrictive. Read as a whole the instrument fairly indicates that a full fee simple was taken. It is not, however, necessary to reach that issue, for the reason noted above.

Mrs. Zorzi filed a notice of appeal to the Vermont Supreme Court. However, she subsequently stipulated to withdrawal of her appeal. On November 16, 1987, the Vermont Supreme Court dismissed Mrs. Zorzi's appeal. *Angeles Zorzi v. Transportation Board of Vermont*, Docket No. 87-197 (Attachment 2).

G. The Continued Need for the Montpelier & Wells River Corridor

As explained in the verified statements of WACR's David W. Wulfson (Attachment 1) and VTrans bridge engineer Erin L. Charbonneau (Attachment 3), the former Central Vermont route between Granite Street and the U.S. Route 2 crossing—which has remained in service since 1958—has the disadvantage of crossing over to the south side of the Winooski River and then crossing back again to the north side, in the process relying on two early twentieth century bridges.

Bridge No. 305 ("BR 305") on the former Central Vermont route is a 230-foot open deck, three-span through plate girder, constructed in approximately 1925. VTrans most recently inspected BR 305 in 2015. Its overall condition rating was 4 (poor). Its superstructure condition rating was 3 (serious). A 2014 load capacity analysis rated BR 305 at 3 (serious).

Bridge No. 306 ("BR 306") on the former Central Vermont route is a 147-foot through truss bridge, constructed in approximately 1902. VTrans most recently inspected BR 306 in 2015. Its overall condition rating was 3 (serious). Its superstructure condition rating was 3 (serious). A 2014/2015 load capacity analysis rated the bridge at 3 (serious).

These two bridges on the former Central Vermont route not only are in serious structural condition, but also cross a flood-prone river valley. Because of economic changes since 1958, the former Central Vermont route no longer has any on-line customers.

By contrast, the former Montpelier & Wells River/Barre & Chelsea route stays on the north side of the Winooski River, thus avoiding the need for two major bridges. Although the tracks were removed in 1958, the roadbed remains substantially intact and readily can be reconnected to the national rail network at both the segment's west and east ends.

As further explained in the Wulfson verified statement (Attachment 1), resiliency is a critical factor in a short-line railroad's ability to establish and maintain a traffic base. Simply put, prospective and current customers must have confidence in the railroad's ability to provide reliable service, with minimal disruptions because of structural deterioration or natural disasters. By providing an alternative route, the former Montpelier & Wells River segment, even though not presently in service, continues to serve interstate commerce.

H. The Pioneer Street Highway Bridge Project

Because of the strategic importance of the former Montpelier & Wells River route, the WACR has cooperated with VTrans and the City of Montpelier to keep the former Montpelier & Wells River corridor available for railroad use. In the early 2000s, VTrans and the City of Montpelier undertook a federal-aid project ("Montpelier BRF 6400(29)") to replace the Pioneer Street highway bridge over the Winooski River. See *Friends of Pioneer Street Bridge Corp. v. FHWA*, 150 F.Supp.2d 636 (D.Vt. 2001). To meet modern highway engineering standards, it was necessary to build the new Pioneer Street highway bridge on a skewed alignment, which affected the former Montpelier & Wells River roadbed on the north side of the

Winooski River. The WACR worked with VTrans, the City of Montpelier, and the Federal Highway Administration to move the former Montpelier & Wells River roadbed farther north, so that it would continue to be available for railroad use. This project included the City of Montpelier's acquiring additional land and rights from the Zorzi Trust to provide functional replacement of the former Montpelier & Wells River roadbed, which the City subsequently reconveyed to VTrans. Verified Statement of Matthew C. Colburn (Attachment 4).

I. The 2010 Grant Application

In October 2010, VTrans, in cooperation with the WACR, applied to the Federal Railroad Administration (FRA) for a \$2.6 million grant under the FRA's Rail Line Relocation and Improvement Capital Grant Program ("RLR"). Verified Statement of Krista C. Chadwick (Attachment 5). VTrans proposed to use the RLR grant, along with \$290,121 in matching state funds, to relay tracks on the former Montpelier & Wells River. The grant application's "Project Description/Narrative" explained:

The scope of this project encompasses the realignment of tracks at the Montpelier-Wells mainline on the opposite side of the Winooski River from the presently-used alignment of the former Central Vermont Railroad trackage. The relocation will fulfill the need for increased capacity, operational efficiencies, and will provide a safer alternative for rail freight transportation between Montpelier Junction and Graniteville, passing through the towns of Montpelier, Berlin, Barre, and Barre Town.

To accomplish this, any past modifications of the original grade will have to be corrected (including adequate ditching and drainage), clearing and grubbing of the rail bed, approximately 8,048 tons of new ballast, 2,823 tons of sub-ballast, 4,450 new ties, the installation of 1.32 track miles of 105# replacement rail brought from another project

within the state (7,350 t/f), three new switches—one at either end of the new alignment, one diamond, plus one 175-foot highway grade crossing (Barre Street), and one to connect to the spur at WSKI. There is also the need for two private (Ibey and Coniff Properties) and one public crossing (Barre Street).

The line is a major mode of freight transportation in Central Vermont, and connects to the New England Central Railway (NECR) at Montpelier Junction. Through haulage rights, WACR has access to the Green Mountain Railroad and the Connecticut River Line in White River Junction or can continue on the NECR to Palmer, MA to connect to other lines for access nationwide.

Although the grant application was unsuccessful, it nonetheless provides evidence that VTrans and the WACR are seriously committed to re-establishing service over the former Montpelier & Wells River segment. Moreover, the rails and other track materials (“OTM”) reserved for the project remain stockpiled in the WACR’s Barre yard, where they can be readily accessed when VTrans and the WACR succeed in securing funding for the project. Verified Statement of Joshua D. Martineau (Attachment 5).

SUMMARY OF ARGUMENT

The Board must dismiss the Petitioners’ Petition for Declaratory Relief. Although a prior carrier unilaterally removed tracks from the subject line in the late 1950s, neither the Board nor its predecessor agency, the Interstate Commerce Commission, has ever authorized abandonment. The requirement for regulatory approval of a railroad abandonment does not go away because a rail carrier has unilaterally removed track.

Even assuming for purposes of argument that Petitioners have standing, their sole remedy is to file an adverse abandonment application. Such an

application still must satisfy the statutory criteria for abandonment. The Board must not allow Petitioners to skirt the required notice and filing requirements for adverse abandonment applications.

Given that the incumbent rail carrier has identified the line segment at issue as critical to the resiliency of ongoing railroad operations, as well as needed to accommodate future railroad operating needs, the Petitioners cannot satisfy the substantive statutory criteria for abandonment.

ARGUMENT

I. Assuming for Purposes of Argument that Petitioners Have Standing, Their Sole Remedy is to File an Adverse Abandonment Application.

Congress has delegated to the Board exclusive jurisdiction to regulate “transportation by rail carriers” and “the construction, acquisition, operation, abandonment, or discontinuance” of rail facilities, *see* 49 U.S.C. § 10501(b). In railroad abandonment proceedings, the Board is directed to “ensure the development and continuation of a sound rail transportation system,” 49 U.S.C. § 10101(4). A rail carrier may abandon a line upon its own petition or that of a third party with a “proper interest,” *Modern Handcraft, Inc.*, 363 I.C.C. 969, 971 (1981) (adjacent landowner and transportation authority have standing), but “only if the Board finds that the present or future public convenience and necessity require or permit the abandonment,” 49 U.S.C. § 10903(d). Abandonment frees subservient landowners to exercise reversionary rights in the railroad’s right-of-way. *See Hayfield Northern R.R. Co. v. Chicago & North Western Transp. Co.*, 467 U.S. 622, 633-34 (1984). Because reassembling a right-of-way may be difficult if not

impractical, the Board must, before authorizing an abandonment, give weight to its “statutory duty to preserve and promote continued rail service.” *New York Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1187 (D.C. Cir. 2004).

However, 49 U.S.C. § 10903(a)(1), as amended by the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”), 49 U.S.C. § 10101 *et seq.*, suggests that abandonment can occur only upon application of the rail carrier. The provision reads:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

(A) abandon any part of its railroad lines; or

(B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

See City of South Bend v. STB, 566 F.3d 1166, ____ (D.C. Cir. 2009) (Kavanaugh, J., concurring).

But even assuming that non-carrier third parties such as Petitioners do have post-ICCTA standing to file an application for adverse abandonment, the Petitioners still must satisfy the statutory criteria for abandonment. The Board’s regulations require that abandonment applications conform to the requirements of 49 C.F.R. Part 1152, Subpart C. When appropriate, however, such as the filing of a third party or adverse abandonment application, the Board may waive inapplicable and unneeded provisions. *See Stewartstown R.R. Co.—Adverse Abandonment—In*

York County, PA., Docket No. AB-1071, slip op. at 2 (STB served Mar. 10, 2011), *Napa Valley Wine Train, Inc.—Adverse Abandonment—In Napa Valley, Cal.*, Docket No. AB-582 (STB served Mar. 30, 2001), and cases cited therein.

The requirement that a line of railroad can be abandoned only pursuant to the Board's authority does not go away because a rail carrier has unilaterally removed track. *Honey Creek R.R., Inc.—Petition for Declaratory Order*, Finance Docket No. 34869, slip op. at 6 (STB served June 4, 2008); *Atchison, Topeka & Santa Fe Ry. Co.—Abandonment Exemption—In Lyon County, KS (“Lyon County”)*, Docket No. AB-52 (Sub-No. 71X), slip op. at 3 (ICC served June 17, 1991). The lack of current freight operations alone is not grounds for granting an adverse abandonment application; under the public convenience and necessity (“PC&N”) test of 49 U.S.C. § 10903(d), the Board also must consider the potential for future freight traffic. *Stewartstown R.R. Co.—Adverse Abandonment—In York County, PA*, Docket No. AB-1071, slip op. at 5 (STB served Nov. 16, 2012). As part of its PC&N analysis, the Board must consider whether the proposed abandonment would have a serious, adverse impact on rural and community development. 49 U.S.C. § 10903(d); *Norfolk Southern Ry. Co.—Adverse Abandonment—In St. Joseph County, Ind.*, Docket No. AB 290 (Sub-No. 286), slip op. at 3, (STB served Apr. 17, 2012).

Petitioners' attempt to skirt the required notice and filing requirements of an adverse abandonment pursuant to 49 U.S.C. § 10903(d) and 49 C.F.R. Part 1152, Subpart C should not be rewarded by allowing the petition to proceed as a petition for a declaratory order. The Petitioners' filing, *in toto*, asks for one thing, the

abandonment of the subject line. Furthermore, the Petitioners have undertaken no steps to request from the Board relief from any of the filing requirements of 49 C.F.R. Part 1152, Subpart C, pursuant to 49 C.F.R. § 1152.24(e)(5).

The Petitioners have **failed** to:

1. Serve their Notice of Intent on the Board, by certified letter, in the format prescribed in 49 C.F.R. § 1152.21;
2. Serve a notice of intent to abandon (*i.e.*, seek adverse abandonment) upon all interested persons as set forth in 49 C.F.R. § 1152.20(a)(2);
3. Post and publish a notice of intent to abandon (*i.e.*, seek adverse abandonment) at least 15 days **before** the petition is filed, as required by 49 C.F.R. §1152.20(a)(3)-(4) and (b);
4. Submit the Environmental and Historic Reports described at 49 C.F.R. §§ 1105.7-1105.8 at least 20 days prior to filing their application (petition) as required by 49 C.F.R. § 1152.20(c);
5. Provide the required contents of an application for abandonment as required by 49 C.F.R. § 1152.22; and
6. Tender with their application an affidavit attesting to their compliance with the notice requirement of 49 C.F.R. § 1152.20.

It is incumbent upon the Director of the Office of Proceedings, as the STB's delegated authority pursuant to 49 C.F.R. § 1011.7, to examine the Petitioners' filing in this matter both as to the relief being sought and for conformance with the rules. As stated above, the subject Line has never been abandoned and the Petitioner is seeking a declaratory order for a "*de facto* abandonment," which is a form of relief long rejected by the STB. *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., supra; The Phillips Co.—Petition for Declaratory Order*, Finance Docket No. 32518, slip op. at 4-5 (ICC served Apr. 18, 1995), *aff'd sub nom.*

Phillips Co. v. Denver & Rio Grande Western R. Co., 97 F.3d 1375, 1376-78 (10th Cir. 1996) *Honey Creek*, *supra*, slip op. at 6 (well-settled that a line of railroad can be abandoned only pursuant to Board authority, which over abandonments is exclusive and plenary).

As the STB-delegated authority, the Director of the Office of Proceedings is required by 49 C.F.R. § 1152.24(e)(2) upon the filing of Petitioners' abandonment application, to review the application and determine whether it conforms to all applicable regulations. Because the Petitioners' application is substantially incomplete and, further, is defective because it seeks relief that the Board cannot grant, the rule obligates the Director of the Office of Proceedings to reject the application for stated reasons by order (which order will be administratively final).

Id.

II. Petitioners Are Not Entitled to Adverse Abandonment of the Line.

Under 49 U.S.C. § 10903(d), the standard governing *any* application for authority to abandon a line of railroad is whether the present or future PC&N require or permit the proposed abandonment. *Denver & Rio Grande Ry. Historical Foundation—Adverse Abandonment—In Mineral County, CO*, Docket No. AB-1014, slip op. at 5 (STB served May 23, 2008). The Board typically preserves and promotes continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. *Id.* at 6.

In the present case, the line segment at issue remains physically connected to the interstate railroad network at both its east and west ends, with the possibility

of restoration of service. See *Honey Creek*, *supra*, slip op. at 6-7; *Lyon County*, *supra*, slip op. at 3. Even though the segment is not presently operated, its availability as an alternative to an in-service route with two antiquated bridges provides needed resiliency for the WACR's ongoing freight operations. The Board has recognized that the function of its regulatory authority "with respect to abandonments or discontinuance of rail service is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service." *Waterloo Ry. Co.—Adverse Abandonment—Lines of Bangor & Aroostook R.R. Co. and Van Buren Bridge Co. in Aroostook Co., Maine*, Docket No. AB-124 (Sub-No. 3), slip op. at 5 (STB served May 3, 2004), citing *Modern Handcraft*, *supra*, 363 ICC at 972.

Although the present case involves what historically was a main-line track, it is similar in some respects to cases involving allegedly "surplus" railroad right-of-way, where the Board has recognized its duty to consider a rail carrier's plans, as well as its current uses:

Many railroad lines have a wider ROW than might appear to be used, but that does not mean that all of the property is not needed for rail operations. As noted by D&RGHF and AAR, extra width on the sides of the track allows room to maintain or upgrade the track, to provide access to the line, to serve as a safety buffer, and to ensure that sufficient space is left available for more tracks and other rail facilities to be added, as needed, as rail traffic changes and grows, among other uses. Thus, it cannot be said that property at the edge of a railroad's ROW is "not needed for railroad transportation" just because tracks or facilities are not physically located there now. See *Midland Valley R.R. v. Jarvis*, 29 F.2d 539, 541 (8th Cir. 1928).

City of Creede, CO—Petition for Declaratory Order, Finance Docket No. 34376, slip op. at 6 (STB served May 3, 2005). Additionally, as pointed out in the Verified Statement of David W. Wulfson (Attachment 1), this segment of the railroad property is critical to the WACR's service on the line because as the WACR develops additional rail traffic from the granite quarries in Barre, Vermont, there is a present need for rail car storage. Regardless of whether the main line stays in its current location or relocated to the former M&WR/B&C roadbed between Granite Street and Gallison Hill, the WACR has a current need to relay track on the former M&WR/B&C roadbed between Granite Street and Gallison Hill for purposes of car storage.

In *City of Lincoln—Petition for Declaratory Order*, Finance Docket No. 34425, slip op. at 5 (STB served Aug 12, 2004), *aff'd* 414 F.3d 858 (8th Cir. 2005), the Board rejected an attempt by a municipality to condemn a 20-foot-wide strip in the outer portion of a railroad's 100-foot-wide right-of-way for use as a recreational trail. In that decision, the Board held that where the rail carrier opposes a plan to use state eminent domain law to take part of a right-of-way and claims that the property is or will be needed for the conduct of rail operations, the burden is on the party seeking to take property away from the national transportation system to show that the entire right-of-way is not and will not be needed for rail purposes.

Similarly, in a case where the Board previously had authorized railbanking and interim trail use of a railroad corridor under the Trails Act, 16 U.S.C. § 1247(d), the Board rejected abutting landowners' attempt to gain exclusive control of a 35-

foot by 135-foot strip of railroad right-of-way over the objections of the entities that are maintaining the right-of-way, that hold the right to reactivate freight rail service over it, and that assert that continued access to the entire right-of-way is required for rail-related activities. *Jie Ao and Xin Zhou—Petition for Declaratory Order (“Ao-Zhou”)*, Finance Docket No. 35539 (STB served June 6, 2012). “Ao-Zhou’s approach to preemption would permit landowners to carve off strips of railroad ROW all over the country for non-rail use, even though the Board has not authorized the ROW to be permanently removed from the nation’s rail system under Title 49. That untenable result would undermine interstate commerce and the strong federal policy in favor of retaining rail property in the national rail network, where possible.” *Id.*, slip op. at 7.

III. The Express Preemption Provisions of the ICCTA Also Protect the Line Against Petitioners’ State Property Law Claims.

In the ICCTA, Congress further broadened the express preemption contained in the Interstate Commerce Act. *See, e.g., Union Pacific R.R. v. Chicago Transit Authority*, 647 F.3d 675, 678 & n.1 (7th Cir. 2011); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005); *City of Auburn v. STB*, 154 F.3d 1025, 1029-31 (9th Cir. 1998). Section 10501(b) states that “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law.” Section 10501(b) thus preempts other regulation that would unreasonably interfere with railroad operations that come within the Board’s jurisdiction, without regard to whether or not the Board actively regulates the particular activity involved. *See*

Pace v. CSX Transportation, Inc., 613 F.3d 1066, 1068-69 (11th Cir. 2010) (state law claims related to sidetrack preempted); *Port City Properties. v. Union Pacific R.R. Co.*, 518 F.3d 1186, 1188 (10th Cir. 2008) (state law claims preempted even though Board does not actively regulate spur and side track). The statute defines rail transportation expansively to encompass any property, facility, structure or equipment “related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.” 49 U.S.C. § 10102(9). Moreover, section 10102(6) defines “railroad” broadly to include “a switch, spur, track, terminal, terminal facility, [or] a freight depot, yard, [or] ground, used or necessary for transportation.” The Board has interpreted state or local regulation to include state property law claims brought by non-governmental entities, where such claims would have the effect of interfering with railroad operations. *Ao-Zhou, supra*, slip op. at 4-7; *Mid-America Locomotive & Car Repair, Inc.—Petition for Declaratory Order*, slip op. at 5 (STB served June 6, 2005).

IV. The State of Vermont and the Washington County Railroad Have Taken Affirmative Steps to Protect the Line’s Continued Usefulness for Possible Resumption of Rail Freight Service.

As summarized in the Statement of the Case, above, the State of Vermont and the WACR, over the past 36 years, have taken affirmative steps to protect the Line’s continued usefulness for possible resumption of rail freight service. These measures include the following:

- **The 1980 Acquisition:** In 1980, the State, to avoid a threatened abandonment, acquired the properties of the Montpelier & Barre Railroad, including the former Montpelier & Wells River/Barre & Chelsea corridor through the former Sabin Farm, and arranged for continued operation by the

original lessee-operator.

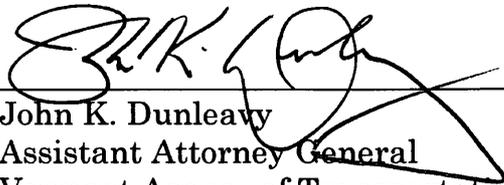
- **The 1985-87 Defense of the Original Zorzi/Aja Litigation:** In 1985-87, the State successfully defended the original Zorzi/Aja litigation, persuading the state court to rule that it lacked subject-matter jurisdiction because the Line remained under the jurisdiction of the ICC.
- **Functional Replacement of the Line's Roadbed.** In the early 2000s, when a federal-aid project to replace the Pioneer Street highway bridge over the Winooski River affected the Line's roadbed on the north side of the Winooski River, VTrans, the City, and the WACR cooperated to construct a replacement roadbed on new location, including acquisition of new right-of-way from Petitioners.
- **Stockpiling of Rails and OTM for Track Reconstruction:** VTrans and the WACR have cooperated to reserve rails and other track material ("OTM") from rail replacement projects on other State-owned lines, which they have stockpiled at the WACR's Barre yard for reconstruction of the Line.
- **The 2010 Grant Application to the FRA:** In October 2010, VTrans, in cooperation with the WACR, applied to the FRA for a \$2.6 million grant under the FRA's Rail Line Relocation and Improvement Capital Grant Program ("RLR"). VTrans proposed to use the RLR grant, along with \$290,121 in matching state funds, to re-establish tracks on the former Montpelier & Wells River.

Conclusion

Even assuming for purposes of argument that Petitioners have standing, they must seek relief through a petition for adverse abandonment. They have not done so. Moreover, even if they were to satisfy the procedural requirements for filing a petition for adverse abandonment, they could not satisfy the substantive standards for the Board to authorize an adverse abandonment. Accordingly, the Board must dismiss their petition for declaratory relief.

Dated at Montpelier, Vermont, this 20th day of May, 2016.

WILLIAM H. SORRELL
ATTORNEY GENERAL
STATE OF VERMONT

By: 
John K. Dunleavy
Assistant Attorney General
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633
(802) 828-3430 (Tel.)
(802) 828-2817 (Fax)
john.dunleavy@vermont.gov

Dated at Burlington, Vermont, this 20th day of May, 2016.

WASHINGTON COUNTY
RAILROAD COMPANY

By: 
Eric R. Benson, Esq.
Law Offices of Eric R. Benson
6A Hillside Lane
Westford, VT 05494-9769
(802) 373-3589 (Tel.)
(802) 891-6639 (Fax)
bensonpatentlaw@comcast.net

ATTACHMENT 1

VERIFIED STATEMENT

OF

DAVID W. WULFSON

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36016

**STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT**

VERIFIED STATEMENT OF DAVID W. WULFSON

1. My name is David W. Wulfson. I am the President and Chairman of the Board of the Washington County Railroad Company ("WACR"), which leases from the State of Vermont and operates a line of railroad extending approximately 14 miles from Montpelier Junction, VT to Graniteville, VT. See *Washington County R.R. Co.—Modified Rail Certificate*, Finance Docket No. 33807 (STB served Nov. 3, 1999); *David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch—Continuance in Control Exemption—Washington County R.R. Co.*, Finance Docket No. 33816 (STB served Nov. 15, 1999).

2. I am also the President, Chairman of the Board and shareholder of the nine affiliated companies of the Vermont Rail System, namely Railway Services, Inc., Trans Rail Holding Company, Clarendon and Pittsford Railroad Company, Green Mountain Railroad Corporation ("GMRC"), The New York & Ogdensburg Railway Company, Inc., Vermont Railway, Inc. ("VTR"), NLR Company, Cheshire Handling Corporation and Cheshire Railway Corporation. The principal place of business for all these companies is 1 Railway Lane, Burlington, Vermont 05401.

3. My father founded Vermont Railway, Inc. (VTR), one of the railroads in the Vermont Rail System, in 1964 when I was six years old. Even when I was a child, my father believed it important that I learn the business, from the ground up. At a very young age, I was able to learn about the “nuts and bolts” of railroading. I started working at the railroad during the summer and in the afternoons during my high school years starting in 1974. In 1978, after attending the business school at Champlain College, I began working at VTR on a full-time basis. I have worked extensively in every department of the railroad since that time and have been certified as a conductor and engineer. For about six years in the late seventies and early eighties, I worked as a signal maintainer. In that capacity I worked closely with state and federal officials to design, install and maintain active warning systems at rail-highway crossings along the VTR. I have received extensive training and on the job experience in these aspects of railroading:

- Handling hazardous materials;
- Maintenance of way (railroad infrastructure);
- Track layout and design;
- Bridge and culvert design, maintenance and construction;
- Emergency management; and
- Traffic, sales, and marketing.

The training that I receive is ongoing through participation in various conferences, which I regularly attend. I have personally engineered and supervised the installation of numerous rail facilities, such as team tracks, switches, customer

sidings and intermodal transfer facilities involving state and federal agencies which involve millions of dollars of private and public funding. I have also engineered and supervised the repair or installation of numerous bridges and culverts. I have extensive experience in dealing with flooding and bridge and culvert damage from storm events. In 2011, I directly engineered and supervised the reconstruction of four of the Vermont Rail System railroads damaged by Tropical Storm *Irene*. As a result of my ability to restore service without an embargo after Tropical Storm *Irene*, *Railway Age*—a leading trade journal in the railroad industry—named VTR as the Railroad of the Year (2012). In the aftermath of Tropical Storm *Irene*, I personally assisted with VTR resources the reconstruction of state and local highways.

3. In my capacity as President and Chairman of the Board of the WACR, I personally met with officials from the Vermont Agency of Transportation (“VTrans”), as well as members of the Vermont Legislature, to become the operator of the railroad facilities that the State acquired from the former Montpelier & Barre Railroad Company, Inc. These include two parallel routes—the former Central Vermont Railway, Inc. (“CVR”) and the former Montpelier & Wells River/Barre & Chelsea (“M&WR/B&C”). In those meetings, we concluded that the maintenance and operation of the railroad in this corridor is a critical railroad transportation link for Montpelier and Barre Vermont to the National Rail Network. At that time, I viewed the unused portion of the former Montpelier & Barre Railroad as a critical

link, given the condition of the bridges on the parallel route currently used as the main line.

4. The WACR's September 30, 1999 Operating Agreement ("1999 Operating Agreement") with the State of Vermont, includes all the real property acquired by the State of Vermont from the Montpelier & Barre Railroad Company, Inc. in 1980. Between Granite Street in Montpelier and the Gallison Hill wye track (located on the eastern outskirts of Montpelier), the 1999 Operating Agreement includes two parallel routes—the former CVR and the former M&WR/B&C.

5. Between Granite Street in Montpelier and the Gallison Hill wye track, the tracks are intact on the former CVR route, which continues to be used by the WACR. My understanding is that when the former Montpelier & Barre Railroad consolidated operations on the former CVR and M&WR/B&C routes in the late-1950s, it selected the former CVR route over the former M&WR/B&C route between Granite Street and the Gallison Hill wye because the former CVR route still had several lineside customers, whereas the former M&WR/B&C route had no lineside customers. However, the former CVR route between Granite Street and Gallison Hill—the route now is use by the WACR—no longer has any lineside customers, so this factor no longer is relevant.

6. Both the former CVR and former M&WR/B&C routes run roughly parallel to the Winooski River between Granite Street and Gallison Hill. However, the former M&WR/B&C route stays on the north (right) bank of the Winooski River, without any major bridges or culverts.

7. By contrast, the former CVR route crosses over to the south (left) bank of the Winooski River, with two major crossings of the Winooski River—Bridge No. 305 at Milepost 2.28 and Bridge No. 306 at Milepost 3.14.

8. Bridge No. 305 is a 230-foot open deck, three-span through plate girder, constructed in approximately 1925. According to the State of Vermont's bridge inspection reports, the overall condition of Bridge No. 305 on a 1-9 scale is "3." This equates to "serious" condition.

9. Bridge No. 306 is a 147-foot through truss bridge, constructed in approximately 1902. According to the State of Vermont's bridge inspection reports, the overall condition of Bridge No. 306 on a 1-9 scale is "4." This equates to "poor" condition.

10. The Winooski River, which drains much of Vermont's Green Mountain range, is vulnerable to severe flooding. Vermonters still remember the Great Flood of November 2-4, 1927 for causing catastrophic damage to Vermont's railroads, including CVR lines in the Winooski Valley. On August 28, 2011, flooding from Tropical Storm *Irene* severely damaged two of the WACR's affiliated railroads—the VTR and the GMRC. As president of both VTR and GMRC, I was personally involved in flood recovery work. I am thoroughly familiar with the challenges of quickly restoring service on flood-damaged railroad lines and the need for resilience.

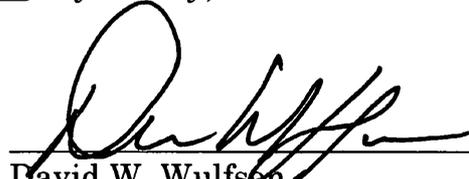
11. If Bridge No. 305 and/or Bridge 306 were to become unusable, the most cost-effective response to preserve service along the WACR could be to relay tracks on the former M&WR/B&C roadbed between Granite Street and Gallison Hill.

12. Because of the strategic importance of the former M&WR/B&C, the WACR has cooperated with VTrans and the City of Montpelier to keep the former M&WR/B&C corridor available for railroad use. In the early 2000s, VTrans and the City of Montpelier undertook a federal-aid project to replace the Pioneer Street highway bridge over the Winooski River. To meet modern highway engineering standards, it was necessary to build the new Pioneer Street highway bridge on a skewed alignment, which affected the former M&WR/B&C roadbed on the north side of the Winooski River. The WACR worked with VTrans, the City of Montpelier, and the Federal Highway Administration to move the former M&WR/B&C roadbed farther north, so that it would continue to be available for railroad use. This project included the City of Montpelier's acquiring additional land and rights from the Zorzi Trust to provide functional replacement of the former M&WR/B&C roadbed.

13. As the WACR develops additional rail traffic from the granite quarries in Barre, Vermont, there is a present need for rail car storage along the WACR. Regardless of whether the main line stays in its current location or relocated to the former M&WR/B&C roadbed between Granite Street and Gallison Hill, the WACR has a current need to relay the track in the former M&WR/B&C roadbed between Granite Street and Gallison Hill for purposes of car storage. Given the public/private nature of these State-owned and WACR-operated rail facilities, the WACR necessarily yields to VTrans' scheduling of this project as VTrans takes the lead in obtaining state and federal funding to complete the project. These efforts are

ongoing and represent a priority in our strategic planning for the provision of rail service to this relatively isolated portion of Vermont.

Dated at Burlington, Vermont, this 19th day of May, 2016.



David W. Wulfsen

STATE OF VERMONT)
CHITTENDEN COUNTY, ss.)

Subscribed and sworn to before me,



Notary Public
(My commission expires Feb. 10, 2019)

ATTACHMENT 2

FILINGS FROM

1985-1987

STATE COURT LITIGATION

STATE OF VERMONT
WASHINGTON COUNTY, SS.

SUPERIOR COURT
DOCKET NO. S41-85Wnc

ANGELES A. ZORZI, Trustee)
of the Antonio Aja Trust)
and Trustee of the Angeles)
Maria Aja Trust,)
PLAINTIFF)

v.)

TRANSPORTATION BOARD OF)
THE STATE OF VERMONT and)
STATE OF VERMONT,)
DEFENDANTS)

APR 9 12 54 PM '96
SUPERIOR COURT,
WASHINGTON COUNTY
FILED

STIPULATION AS TO AGREED STATEMENT OF FACTS

NOW COME the parties, by and through their undersigned attorneys, and hereby agree and stipulate to the following agreed statement of facts:

1. The parties agree and stipulate that this case may be decided by the court based on this agreed statement of facts and the parties' joint exhibits. In the event of any conflict between the stipulation and the actual language used in the exhibits, the latter shall control.

2. This case involves a dispute as to reversion of the former Montpelier & Wells River Railroad right-of-way

where it passes through the lands of the former Sabin Farm in the City of Montpelier.

3. By warranty deed dated February 22, 1866, Alanson Nye and Mary B. Nye conveyed to Henry W. Sabin the property that became known as the Sabin Farm. This deed was received for record on March 7, 1866 and is recorded in the Montpelier land records at Book 5, Page 464. (Joint Exhibit 1.)

4. In 1867, the Montpelier & Wells River Railroad Company was incorporated by the Vermont legislature and authorized to build a railroad from Montpelier or Berlin to the village of Wells River in the town of Newbury. 1867 Vt. Acts No. 161.

5. By warranty deed dated March 22, 1869, Henry W. Sabin and Fidelia T. Sabin conveyed to Charles T. Sabin equal and undivided half interest in the Sabin Farm. This deed was receive for record on July 21, 1869 and is recorded in the Montpelier land records at Book 7, Page 227. (Joint Exhibit 2.)

6. On November 5, 1870, the Montpelier & Wells River Railroad Company laid out the centerline of its road through the town of Montpelier. A description of this centerline is recorded in the Montpelier land records in Book 7, Page 508. (Joint Exhibit 3.)

7. The centerline of the Montpelier & Wells River Railroad Company, as thus described and recorded, crossed the lands of the Sabin Farm.

8. On or about December 10, 1870, commissioners appointed by the Supreme Court made reports of their appraisals with respect to damages for taking the lands of various condemnees, including the Sabins. On or about January 8, 1871, the Montpelier & Wells River Railroad Company recorded the commissioners' written statement of their appraisal and descriptions of the land and other property so appraised. The commissioners' award as to H. W. and C. T. Sabin is recorded in Book 7, Page 502 of the Montpelier land records. (Joint Exhibit 4.)

9. On September 22, 1871, the Montpelier & Wells River Railroad Company caused to be recorded in the Montpelier land records a description of the limits of its roadway through the town of Montpelier. This description is recorded at Book 8, Pages 138-140. (Joint Exhibit 5.)

10. The Montpelier & Wells River Railroad subsequently was completed and operated, more or less continuously, between Montpelier and Wells River under its original name until 1944. The route thus operated included tracks on the right-of-way through the Sabin Farm.

11. By quitclaim deed dated March 1, 1874, Henry W. Sabin conveyed to Charles T. Sabin all right and title in

the Sabin Farm. This deed was received for record on March 19, 1874 and is recorded in the Montpelier land records at Book 8, Page 552. (Joint Exhibit 6.)

12. By warranty deed dated September 12, 1885, Charles T. Sabin conveyed to Melville E. Smilie a part of the Sabin Farm, including a house and some acreage. This deed was received for record on September 12, 1885 and is recorded in the Montpelier land records at Book 13, Page 62. (Joint Exhibit 7.)

13. By quitclaim deed dated September 12, 1885, Melville E. Smilie conveyed to Emily M. Sabin (wife of Charles T. Sabin) a part of the Sabin Farm, including a house and some acreage. This deed was received for record on September 12, 1885 and is recorded in the Montpelier land records at Book 13, Page 181. (Joint Exhibit 8.)

14. By decree of distribution in the Estate of Charles T. Sabin, dated November 29, 1890, subject to right of dower in Emily M. Sabin, equal, undivided shares in the Sabin Farm were distributed to Charles T. Sabin's three daughters, Fannie S. Andrews, Laura S. Ferrin, and Jessie M. Sabin. This decree of distribution was received for record on December 2, 1890 and is recorded in the Montpelier land records at Book 15, Page 430. (Joint Exhibit 9.)

15. By decree of distribution in the Estate of Emily M. Sabin, dated January 22, 1918, the interest of Emily M. Sabin in the Sabin Farm was distributed jointly to Fannie S. Andrews, Laura S. Ferrin, and Jessie M. Sabin. This decree of distribution was received for record on January 22, 1918 and is recorded in the Montpelier land records at Book 33, Pages 304-305. (Joint Exhibit 10.)

16. By decree of distribution in the Estate of Fannie S. Andrews, dated January 2, 1936, the undivided one-third interest of Fannie S. Andrews in the Sabin Farm was distributed in equal undivided parts to her surviving sisters, Laura S. Ferrin and Jessie M. Sabin. This decree of distribution was received for record on February 27, 1936 and is recorded in the Montpelier land records at Book 50, Pages 67-68. (Joint Exhibit 11.)

17. By administratrix' deed of Laura S. Ferrin, administratrix of the Estate of Jessie M. Sabin, dated June 1, 1943, three plots of land which were a part of the undivided one-half interest of Jessie M. Sabin in the Sabin Farm was conveyed to Antonia Aja. This deed was received for record on June 3, 1943 and is recorded in the Montpelier land records at Book 58, Pages 81-82. (Joint Exhibit 12).

18. By warranty deed also dated June 1, 1943, Laura S. Ferrin conveyed to Antonio Aja her own undivided one-half interest in three plots of land which were a part of the

Sabin Farm. This deed was received for record on June 3, 1943 and is recorded in the Montpelier land records at Book 58, Pages 79-80. (Joint Exhibit 13.)

19. On December 28, 1944, the Interstate Commerce Commission approved and authorized purchase by the Barre & Chelsea Railroad Company of the physical property and franchises of the Montpelier & Wells River Railroad. Finance Docket No. 14773, Barre & Chelsea Railroad Company Purchase, etc., 257 I.C.C. 817. (Joint Exhibit 14.)

20. On December 29, 1944, by warranty deed, the Montpelier & Wells River Railroad Company conveyed to the Barre & Chelsea Railroad Company its railroad property in the City of Montpelier, including the right-of-way now at issue. This deed is recorded in the Montpelier land records at Book 58, Pages 404-05, having been received for record on January 9, 1945. (Joint Exhibit 15.)

21. By warranty deed dated June 28, 1948, Antonio Aja and his wife, Angeles Aja, conveyed to Spauldings, Inc. a triangular piece of land between the Barre & Chelsea Railroad to the north, the Central Vermont Railway to the south, and the Ajas' land to the east. This deed was received for record on June 28, 1948 and is recorded in the Montpelier land records at Book 64, Page 91. (Joint Exhibit 16.)

22. By warranty deed dated September 19, 1949, Antonio Aja and Angeles Aja conveyed to Prudence Duhamel the three parcels of land, part of the Sabin Farm, which had been conveyed by the two deeds executed by Laura S. Ferrin on June 1, 1943. This deed was received for record on September 20, 1949 and is recorded in the Montpelier land record at Book 67, Pages 19-20. (Joint Exhibit 17.)

23. By quitclaim deed dated September 19, 1949, Prudence Duhamel conveyed to Antonio Aja and Angeles Aja, as tenants by entirety, the three parcels of land, part of the Sabin Farm, which had been conveyed by the two deeds executed by Laura S. Ferrin on June 1, 1943. This deed was received for record on September 20, 1949 and is recorded in the Montpelier land records at Book 66, Pages 91-92. (Joint Exhibit 18.)

24. On September 19, 1956, the interstate Commerce Commission authorized the Barre & Chelsea Railroad Company to abandon its entire line of railroad extending from Wells River to Montpelier and its branch through Barre to Barre Mountain (i.e., Graniteville). This Commission's report stated:

Since the service of the report proposed by the [hearing] examiner we have been informed by interested persons of their desire to obtain a portion of the line for continued operation. Under such circumstances, our certificate will be subject to the condition that the applicant shall sell the line or any

portion thereof, including such tracks and other facilities as may be essential to the continued operation of such line or portion thereof, to any responsible person, firm, or corporation offering, within 40 days from the date of the certificate, to purchase the same for continued operation, and is willing to pay not less than the fair net salvage value of the property sought to be purchased. The acquisition and operation of the line, or any portion thereof, in interstate and foreign commerce by a new owner, except as an industrial or spur track, could not be accomplished lawfully, however, without first securing appropriate approval from us.

Finance Docket No. 19171, Barre & Chelsea Railroad Company

Abandonment (unreported decision at 9). (Joint Exhibit 19.) Accordingly, the Commission's certificate of abandonment was made subject to the condition that the property be kept intact for 40 days for sale to permit continued operation. *file to Oct. 29, 1950*

25. By quitclaim deed dated November 15, 1956, and recorded in the Montpelier land records at Book 87, Pages 77-78, having been received for record on January 4, 1957, the Barre & Chelsea Railroad Company conveyed its railroad property in Montpelier (including the right-of-way now at issue) to the Montpelier & Barre Railroad Company, a new railroad organized by Samuel B. Pinsly. From about January 1957 to March 1958, the new railroad operated a through

line of railroad from Montpelier to Barre Mountain using tracks located on the right-of-way now at issue. (Joint Exhibit 20.)

26. [Omitted.]

27. In No. 239 of the Acts of 1957, the General Assembly authorized the State Board of Forest and Parks to acquire approximately 35.5 miles of the right-of-way of the Barre & Chelsea Railroad between Gallison Hill Road and Wells River. This portion of the former Montpelier & Wells River right-of-way was located east of the so-called "wye track" (near the intersection of Gallison Hill Road and U.S. Route 2) and did not directly involve the portion of the right-of-way now in dispute.

28. On March 17, 1958, the Interstate Commerce Commission authorized the Montpelier & Barre Railroad Company to purchase the Barre branch of the Central Vermont Railway, Inc. from Montpelier Junction to Barre. See Finance Docket No. 19936, Montpelier & Barre Railroad Company -- Purchase Barre Branch (Portion) -- Central Vermont Railway, Inc. (unreported). After reviewing the economies capable of being realized by consolidation of parallel trackage between Montpelier and Barre, the Commission's report states:

Nothing herein is to be construed as expressing an opinion as to whether either of the parallel tracks of the Montpelier [& Barre Railroad Company],

as hereafter existing, may be abandoned without our permission pursuant to section 1 (18-22) of the [Interstate Commerce Act].

Id. at 4. (Joint Exhibit 21.)

29. In 1958, from Granite Street in Montpelier to the wye track near the U.S. Route 2 crossing, the Montpelier & Barre kept intact the former Central Vermont tracks (which, at that time, still had several on-line customers) while the parallel former Montpelier & Wells River tracks (including those over the right-of-way now at issue) were removed.

30. By letter dated April 29, 1959, Peter Giuliani, attorney for Antonio Aja, wrote to the Montpelier & Barre Railroad inquiring about the status of the former Montpelier & Wells River Railroad right-of-way as it ran along or through the former Sabin property. (Joint Exhibit 22.)

31. By letter dated May 1, 1959, S. M. Pinsly, on behalf of the railroad, answered that the abandoned right-of-way from Montpelier to Wells River had been sold to the State of Vermont. (Joint Exhibit 23.)

32. By letter dated May 4, 1959, Mr. Giuliani replied to Mr. Pinsly, explaining that the area about which he was inquiring was located a mile or so westerly of the Gallison Hill crossing and therefore had not been affected by the conveyance to the State of Vermont. (Joint Exhibit 24.)

There is no evidence of any further correspondence between representatives of the Ajas and the Montpelier & Barre Railroad.

33. By right-of-way deed dated June 23, 1970, Antonio and Angeles Aja conveyed to the New England Telephone & Telegraph Company a 20' wide easement along the former Montpelier & Wells River right-of-way for underground lines, cable, etc. This deed was received for record on July 9, 1970 and is recorded in Book 125, Pages 253-254. (Joint Exhibit 25.)

34. By warranty deed dated December 18, 1974, Antonio Aja and Angeles Maria Aja conveyed to Richard E. Davis all their interest in the Sabin Farm, except Plot No. 2, the home place. This deed was received for record on December 19, 1974 and is recorded in Book 139, Pages 201-202. (Joint Exhibit 26.)

35. By quitclaim deed dated December 18, 1974, Richard E. Davis conveyed to Angeles A. Zorzi, Trustee of the Angeles Maria Aja Trust, an undivided half interest in the remaining portions of the Sabin Farm, except Plot No. 2, the home place. This deed was received for record on December 19, 1974 and is recorded in the Montpelier land records and Book 128, Pages 505-506. (Joint Exhibit 27.)

36. By quitclaim deed dated December 18, 1974, Richard E. David conveyed to Angeles A. Zorzi, Trustee of the

Antonio Aja Trust, an undivided half interest in the remainig portions of the Sabin Farm, except Plot No. 2, the home place. This deed was received for record on December 19, 1974 and is recorded in the Montpelier land records at Book 128, Pages 507-508. (Joint Exhibit 28.)

37. In the late 1970's, the financial condition of the Montpelier & Barre became precarious and abandonment was threatened. In 1979, the General Assembly, expressing its intention to "temporarily preserve the existing railroad rights-of-way between Montpelier Junction and Barre Town for ultimate use as a transportation corridor", authorized the secretary of transportation to purchase an option or leasehold in the right-of-way. 1979 Vt. Acts No. 71, § 21.

38. On February 6, 1980, the Interstate Commerce Commission authorized the Montpelier & Barre Railroad Company to abandon its entire line from Montpelier Junction to Graniteville. However, the Commission delayed issuance of a certificate of abandonment to permit offers of financial assistance for the continued operation of the line. The Commission prohibited the railroad, for a period of 120 days from the effective date of its decision (i.e., April 11, 1980), from disposing of the right-of-way "to permit any state or local government agency or other interest party to negotiate the acquisition for public use of all or any portion of the right-of-way."

Docket No. AB-202 F, Montpelier and Barre Railroad Company -
- Entire Line Abandonment -- From Graniteville to
Montpelier Junction in Washington County, Vermont.

(Joint Exhibit 29.)

39. On May 1, 1980, the General Assembly authorized the Agency of Transportation to acquire the Montpelier & Barre and, toward that end, authorized the Agency to resort to the power of eminent domain, using the highway condemnation procedures set out in 19 V.S.A. §§ 223-33 and 236. 1980 Vt. Acts [1979 Adj. Sess.] No. 188.

40. Thereafter, the Agency of Transportation filed a petition of necessity in the Washington Superior Court (Docket No. S180-80 Wnc). (By order dated June 14, 1985, the court in the present proceedings has granted defendants' request that it take judicial notice of the proceedings in the necessity case.)

41. On September 12, 1980, in anticipation of its acquisition of the Montpelier & Barre Railroad, the Agency of Transportation entered into a lease and operating agreement with the Washington County Railroad Corporation. The lease covered most of the property to be acquired by the Agency from the Montpelier & Barre, including the portion of the Barre & Chelsea (Montpelier & Wells River) right-of-way at issue in this case.

42. On October 27, 1980, an order of necessity was entered by the Washington Superior Court in State Agency of Transportation v. Montpelier & Barre Railroad Co., Inc. et al., Docket No. S180-80 Wnc. The order's description of interests taken included whatever interest the Montpelier & Barre Railroad still had in the former Montpelier & Wells River Railroad right-of-way as it passed through the old Sabin Farm but did not, in its final form, describe any new taking from the Aja Trusts.

43. On November 12, 1980, the Transportation Board made an order fixing the compensation to be paid the Montpelier & Barre Railroad. On November 21, 1980, the compensation order was duly recorded in the Montpelier land records at Book 169, Pages 15-77. (Joint Exhibit 30.)

44. By order dated December 18, 1980, the Interstate Commerce Commission authorized the Washington County Railroad Corporation to provide freight service from Montpelier Junction to Graniteville. (Joint Exhibit 31.) By supplemental decision dated January 12, 1981, the Commission provided that the Montpelier & Barre's abandonment should become final February 19, 1981. (Joint Exhibit 32.)

45. By instrument dated September 9, 1982, the Antonio Aja Trust and the Angeles Aja Trust conveyed to the City of Montpelier an easement for the purpose of maintaining,

repairing, or replacing a culvert crossing the former railroad right-of-way. This instrument was received for record on September 9, 1982 and is recorded in the Montpelier land records at Book 176, Pages 1-2. (Joint Exhibit 33.)

46. By warranty deed dated June 14, 1983, Angeles Aja, widow of Antonio Aja, conveyed to Angeles Aja Zorzi and Antonio Aja, Jr., as tenants in common, a life estate in that portion of the former Sabin Farm known as Plot No. 2, the home place. This deed was received for record on July 6, 1983 and is recorded in the Montpelier land records at Book 179, Pages 109-110. (Joint Exhibit 34.)

47. The Agency of Transportation and its lessee/operator, the Washington County Railroad, do not claim any immediate railroad operating need for the disputed property. However, the Agency believes that the former Montpelier & Wells River route (including the segment through the old Sabin Farm) may be useful in the future should it decide not to use the former Central Vermont route (the one presently in use).

48. Since 1958, plaintiff Angeles A. Zorzi and her predecessors in title, Antonio Aja and Angeles Maria Aja, have been in open, notorious, hostile, and uninterrupted possession of the land comprising the disputed right-of-way, during which period of time they have utilized the

same for farming purposes, have bulldozed the area on which the tracks formerly ran, have leased portions to third parties, and have posted the same against trespassing.

DATED at Montpelier, Vermont, this 20th day of March, 1986.

JEFFREY L. AMESTOY
ATTORNEY GENERAL

BY: 
JOHN K. DUNLEAVY
ASSISTANT ATTORNEY GENERAL

DATED at Beane, Vermont, this 21st day of March, 1986.

ANGELES A. ZORZI, TRUSTEE OF
THE ANTONIO AJA TRUST AND
TRUSTEE OF THE ANGELES MARIA
AJA TRUST

BY: 
RICHARD E. DAVIS
RICHARD E. DAVIS ASSOCIATES

STATE OF VERMONT
WASHINGTON COUNTY, SS.

ANGELES ZORZI

VS.

TRANSPORTATION BOARD OF VERMONT

FILED
MAR 12 12 02 PM '87

SUPERIOR COURT,
WASHINGTON COUNTY

WASHINGTON SUPERIOR COURT

DOCKET NO. S-41-85WnC

CONCLUSIONS AND ORDER

Plaintiff in this case seeks a declaration of the parties' rights in an allegedly abandoned railroad right of way abutting, and once a part of, the parcel she now owns. Defendant contends that exclusive subject matter jurisdiction over the right of way is vested in the Interstate Commerce Commission (ICC), and that, therefore, this court lacks jurisdiction. This court finds as fact the stipulated facts submitted by the parties. Upon consideration of applicable law, the court concludes that it does indeed lack subject matter jurisdiction and must, therefore, dismiss plaintiff's complaint on that ground.

Plaintiff makes three basic arguments in support of this court's jurisdiction of her claim for relief; these will be addressed without unnecessary recitation of the somewhat complex facts. The arguments are as follows:

(1) That a reversion occurred by virtue of 30 V.S.A. section 1324 when the Montpelier & Barre Railroad purchased and began using parallel trackage in 1958;

(2) That abandonment occurred as authorized by the ICC in 1956, when a condition that would have averted abandonment failed to materialize within a stated time; and

(3) That the interest acquired by the State's predecessor, the Montpelier & Wells River Railroad, was a defeasible fee which reverted by its own terms in 1958.

I.

In 1958, the Montpelier & Barre Railroad purchased and began using a parallel line of track (the Central Vermont track) and tore up the rails over the right of way at issue here (the Barre & Chelsea track). Plaintiff argues that this was not an "abandonment" requiring ICC approval because "identical rail service was provided" on the parallel tracks. Instead, the argument goes, this was merely a "relocation" under 30 V.S.A. section 1324, which provides that in the event of relocation, a landowner may elect between returning the damage payment in exchange for return of the condemned land, and keeping the payment by conveying the land to the railroad voluntarily.

Whether or not the factual premise of plaintiff's argument is correct (that identical rail service was provided), the construction of section 1324 urged by plaintiff would bring that statute into conflict with the ICC's "plenary authority to regulate ...rail carriers' cessations of service on their lines. [A]s to abandonment, this authority is exclusive." Chicago & NORTH WESTERN TRANSPORTATION CO. V. KALO BRICK & TILE CO., 450 U.S. 311, 323 (1981), quoted in TRUSTEES OF THE DIOCESE OF VERMONT et al v. STATE OF VERMONT, 145 Vt. 510, 514 (1985). The "relocation" urged by plaintiff is at least a "cessation of service" over the route at issue, and as such is within the exclusive jurisdiction of the ICC. This court will not construe a statute

in a way that renders it unconstitutional if that result can be reasonably avoided. The subchapter containing section 1324 is entitled "Location, Condemnation and Construction," and read as a whole it seems to apply to the pre-operation phases of railroading. Once ICC jurisdiction has attached, it cannot be displaced by operation of state law. Trustees of Diocese, supra.

II.

On September 19, 1956, the ICC authorized the abandonment of the entire line of railroad from Wells River to Montpelier, including the portion at issue here. That order was subject to the condition that the property be kept intact for 40 days (i.e. until October 29, 1956) to permit sale and continued operation if possible. A sale of the relevant portion to the new Montpelier & Barre Railroad was accomplished, but not until November 15, 1956. Plaintiff contends that after October 29, 1956, a legal abandonment had occurred and the land comprising the right of way automatically reverted to its previous owners.

This contention misconstrues the effect of the ICC order. That order authorized, but did not mandate, abandonment of the line. The ICC did not consider the line abandoned, as evidenced by its recognition of the new company's operation of the line. See Stipulated Fact, paragraph 28. Also, on March 17, 1958, the ICC authorized the purchase by the Montpelier & Barre Railroad of the parallel Central Vermont tracks; that order specifically declined to express "an opinion as to whether either of the parallel tracks... may be abandoned without our permission. "See Stipulated Fact, paragraph 28. The Commission apparently did not conclude the line was abandoned, and this court defers to the Commission's interpretation of its own order and authority.

III.

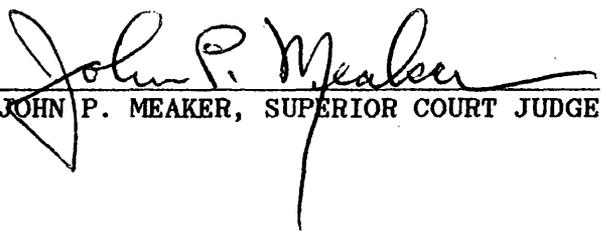
Finally, plaintiff contends that certain language used in the state commissioner's award of damages to plaintiff's predecessors indicates the taking of only a defeasible fee in the disputed property. Whether or not that is true, the argument asks this court "to enforce an alleged common law right, which in this instance would interfere with the laws of Congress. The action thus cannot be sustained.... "Trustees of Diocese, 145 Vt. at 515. Plaintiffs in the Diocese case sought the termination of "an easement for railroad purposes," id at 511, while plaintiff's argument here concedes that a greater interest, a fee of some sort, was taken. The rationale and holding of Diocese clearly defeats the claim.

This court notes in passing that plaintiff's reading of the record of the award, describing the interest taken, appears unduly restrictive. Read as a whole the instrument fairly indicates that a full fee simple was taken. It is not, however, necessary to reach that issue, for the reason noted above.

ORDER

In light of the foregoing, the complaint is hereby DISMISSED for lack of subject matter jurisdiction.

DATED: MARCH 11, 1982


JOHN P. MEAKER, SUPERIOR COURT JUDGE

25

STATE OF VERMONT
WASHINGTON COUNTY, ss.

ANGELES ZORZI

* WASHINGTON SUPERIOR COURT

-v-

* DOCKET NO. S-41-85 Wnc

TRANSPORTATION BOARD OF
VERMONT

*
*
*

NOTICE OF APPEAL

Please take notice that the plaintiff hereby
appeals to the Vermont Supreme Court from the Order of the
Washington Superior Court filed March 12, 1987.

Dated at Barre, Vermont this 9th day of April,
1987.

ANGELES ZORZI

BY *Richard E. Davis*

RICHARD E. DAVIS, ESQ.
Her Attorney

cc: John K. Dunleavy, Esq.
Assistant Attorney General

FILED

APR 10 9 13 AM '87

SUPERIOR COURT
WASHINGTON COUNTY

RICHARD E. DAVIS
ASSOCIATES, INC.
P.O. BOX 666
FIRE, VERMONT 05641
802-476-3123

ENTRY ORDER

FILED

Nov 16 9 12 AM '87

SUPREME COURT DOCKET NO. 87-197

November TERM, 19 87

CLERK
VERMONT SUPREME COURT

Angeles Zorzi

V.

Transportation Board of Vermont

APPEALED FROM:

Washington Superior Court

DOCKET NO. S41-85Wnc

In the above entitled cause the Clerk will enter:

Appeal dismissed pursuant to the stipulation of the parties filed on November 9, 1987.

I certify this document
to be a true copy of the
original on file in the Office
of the Clerk of the Vermont Supreme
Court on 9th

December 87

Larry Allitt

~~Clerk/Deputy Clerk~~

BY THE COURT:

Frederic W. Allen

Frederic W. Allen

Chief Justice

Louis P. Peck

Louis P. Peck

Ernest W. Gibson III

John A. Dooley
John A. Dooley

Frank G. Mahady
Frank G. Mahady

Associate Justices

Publish

Do Not Publish

ENTRY ORDER

FILED

Nov 16 9 12 AM '87

SUPREME COURT DOCKET NO. 87-197

November TERM, 19 87

CLERK
VERMONT SUPREME COURT

Angeles Zorzi

v.

Transportation Board of Vermont

APPEALED FROM:

Washington Superior Court

DOCKET NO. S41-85Wnc

In the above entitled cause the Clerk will enter:

Appeal dismissed pursuant to the stipulation of the parties filed on November 9, 1987.

FILED
Nov 19 10 33 AM '87
SUPERIOR COURT,
WASHINGTON COUNTY

BY THE COURT:

Frederic W. Allen

Frederic W. Allen

Chief Justice

Louis P. Peck

Louis P. Peck

Publish

Do Not Publish

Ernest W. Gibson III

John A. Dooley

John A. Dooley

Frank G. Mahady

Frank G. Mahady

Associate Justices

ATTACHMENT 3

VERIFIED STATEMENT

OF

ERIN L. CHARBONNEAU

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

VERIFIED STATEMENT OF ERIN L. CHARBONNEAU

1. My name is Erin L. Charbonneau. I am employed by the Vermont Agency of Transportation ("VTrans") as its Rail Bridge Management Engineer. My duties include oversight of VTrans' Rail Bridge Management Program, which includes inspection of bridges on State-owned railroads, calculation of load ratings for bridges on State-owned railroads, and making recommendations to program projects to rehabilitate and replace bridges on State-owned railroads.

2. I earned a Bachelor of Science in engineering from the University of Vermont in 2003. I have been employed by VTrans for 12 years and have held my present position since August 2012.

3. The purpose of this Verified Statement is to explain that the track between Granite Street and Gallison Hill in Montpelier presently used by the Washington County Railroad Company ("WACR") includes two early twentieth century bridges over the Winooski River that are in an advanced state of deterioration and would be expensive to replace.

4. Between Granite Street in Montpelier and the Gallison Hill wye track, there are two parallel railroad rights-of-way. The 1.32-mile-long former Montpelier & Wells River/Barre & Chelsea mainline, from which the tracks were removed in the late 1950s, stays on the north shore of the Winooski River. The former Central Vermont Railway (“CVR”) Barre Branch route—the one presently in use by the WACR—crosses over to the south shore, with two major crossings of the Winooski River—Bridge No. 305 (“BR 305”) at Milepost 2.31 and Bridge No. 306 (“BR 306”) at Milepost 3.14.

5. The September 30, 1999 Operating Agreement (“1999 Operating Agreement”) between the WACR and the State of Vermont allocates responsibility for maintaining bridges between VTrans and the WACR. VTrans is responsible to maintain, replace, repair and install when necessary all non-track elements (*i.e.*, other than, rails, crossties, and where applicable, ballast) of structures which have a clear span of 10 feet or more and which carry the railroad over watercourses.

6. Under the 1999 Operating Agreement, VTrans is responsible for the structural, non-track elements of both BR 305 and BR 306.

7. BR 305 is 230-foot open deck, three-span through plate girder, constructed in approximately 1925. VTrans most recently inspected BR 305 in 2015. Its overall condition rating was 4 (poor). Its superstructure condition rating was 3 (serious). A 2014 load capacity analysis rated BR 305 at 3 (serious).

8. A conservative estimate is that it would cost \$3,000,000.00 to replace BR 305. However, VTrans' experience is that actual construction costs often exceed early planning estimates.

9. BR 306 is a 147-foot through truss bridge, constructed in approximately 1902. VTrans most recently inspected BR 306 in 2015. Its overall condition rating was 3 (serious). Its superstructure condition rating was 3 (serious). A 2014/2015 load capacity analysis rated the bridge at 3 (serious).

10. A conservative estimate is that it would cost \$2,500,000.00 to replace BR 306. However, VTrans' experience is that actual construction costs often exceed early planning estimates.

11. If BR 305 and/or BR 306 were to become unusable, VTrans, to preserve service along the WACR, would consider relaying tracks on the former Montpelier & Wells River/Barre & Chelsea route between Granite Street and Gallison Hill, thereby bypassing the two bridges.

Dated at Montpelier, Vermont, this 19th day of May, 2016.



Erin L. Charbonneau

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

Subscribed and sworn to before me,



Notary Public
(My commission expires Feb. 10, 2019)

ATTACHMENT 4

VERIFIED STATEMENT

OF

MATTHEW C. COLBURN

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

VERIFIED STATEMENT OF MATTHEW C. COLBURN

1. My name is Matthew C. Colburn. I am a Right-of-Way Agent IV with the Right-of-Way Section of the Vermont Agency of Transportation ("VTrans"). I am familiar with the right-of-way records of VTrans-administered federal-aid transportation projects. These include both projects on the state highway system and projects on public highways owned and maintained by Vermont municipalities.

2. The purpose of this Verified Statement is to identify and explain certain right-of-way documents prepared in connection with a federal-aid project—known as "Montpelier BRF 6400(29)"—to construct a new Pioneer Street highway bridge over the Winooski River in Montpelier, Vermont.

3. On its south end, the Montpelier BRF 6400(29) project affected a railroad right-of-way containing active railroad tracks leased to and operated by the Washington County Railroad Company ("WACR"). On its north end, the Montpelier BRF 6400(29) project affected the inactive railroad bed of the former Montpelier & Wells River Railroad, requiring the inactive railroad bed to be realigned farther north.

4. The document attached hereto as Exhibit A is a copy of a June 17, 2006 deed from the Zorzi/Aja family trusts to the City of Montpelier, which is recorded in the Montpelier land records at Book 506, Pages 8-9. The land and rights conveyed to the City include land and rights for the functional replacement of the former Montpelier & Wells River roadbed.

5. The document attached hereto as Exhibit B is a copy of a January 6, 2015 deed from the City of Montpelier to the State of Vermont, which is recorded in the Montpelier land records at Book 664, Pages 441-444. The land and rights conveyed to the State include land and rights for the functional replacement of the former Montpelier & Wells River roadbed, some of which the City had acquired in the June 17, 2006 deed described in Paragraph 5, above.

6. The document attached hereto as Exhibit C includes color-coded copies of right-of-way plan sheets 9 and 12-14 for the Montpelier BRF 6400(29) (Pioneer Street Bridge) project. The area colored in red is the new right-of-way for the City of Montpelier's Barre Street, as realigned to approach the new Pioneer Street bridge. The area edged in yellow is the new right-of-way for functional replacement of the former Montpelier & Wells River railroad bed, as realigned to accommodate the realignment of Barre Street.

7. The document attached hereto as Exhibit D is a Google Earth photograph showing the setting of the the Montpelier BRF 6400(29) (Pioneer Street Bridge) project, with pins identifying the new Pioneer Street Bridge, the realigned Barre Street, the realigned Montpelier & Wells River roadbed, and the active WACR track.

Dated at Montpelier, Vermont, this 19th day of May, 2016.


Matthew C. Colburn

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

Subscribed and sworn to before me,


Notary Public
(My commission expires Feb. 10, 2019)



EXHIBIT A

060898

BK 0506 PG 0008

MONTPELIER VT CITY CLERKS OFFICE
Rec'd for record July 3, 2006
at 12 o'clock 45 minutes P M
Recorded in Book 506 Page 8-9
Attest Charlita R. Hoyt City Clerk

QUIT CLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, that we, ANGELES A. ZORZI, TRUSTEE OF THE ANGELES A. ZORZI LIVING TRUST, dated May 30, 1996; of Montpelier, in the County of Washington and State of Vermont and ANTONIO AJA, JR., TRUSTEE OF THE ANTONIO AJA, JR. TRUST, dated June 13, 2000, and VIRGINIA D. AJA, TRUSTEE OF THE VIRGINIA D. AJA TRUST, dated June 13, 2000, of Bradenton, in the County of Manatee and State of Florida (the "Grantors"), for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby **RELEASE, REMISE and FOREVER QUITCLAIM** unto **CITY OF MONTPELIER**, a Vermont municipality of Montpelier, in the County of Washington and State of Vermont (the "Grantee") and its successors and assigns forever, a parcel of land which is more particularly described as follows:

Being Parcel #4A consisting of 0.68 acres, more or less, of land and rights therein, as shown on Pages 9, 12, and 13 of the plans of Highway Project Montpelier BRF 6400 (29) as filed on the 6th day of July, 2000, in the office of the Clerk of the City of Montpelier.

In connection with the above parcel the following rights and/or easements are conveyed:

Permanent easements to extend and maintain slopes and embankments in areas of 480 square feet, 770 square feet, more or less, and 0.34 acre, more or less, as shown on the aforesaid Highway Project plans.

The slopes and embankments may be extended at such an angle as will hold the material of said slopes in repose against ordinary erosion in accordance with the standard construction practice. The City of Montpelier shall have the right to remove all trees, logs, stumps, protruding roots, brush, duff, and other objectionable materials, structures, growth, and any other thing of whatever kind or nature from said slope areas.

All right, title, and interest in and to 1.37 acres, more or less, of land located within the existing railroad right-of-way between a point left of approximate station 51+70 of the established centerline of said Highway Project and a point right of approximate station 361+97 of the proposed railroad and bike path centerline of said Highway Project, and designated as Parcel #4B on the aforesaid Highway Project Plans.

All right, title, and interest in and to 0.57 acres, more or less, of land located within the existing right-of-way of Barre Street and Country Club Road between a point right of approximate station 51+70 of the established centerline of said Highway Project and a point right of approximate station 361+97 of the proposed railroad and bike path centerline of said Highway Project, and designated as Parcel #4C on the aforesaid Highway Project Plans.

Being part of the same land and premises conveyed to Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust by Angeles A. Zorzi by Quit-Claim Deed dated June 18, 1996 and recorded in Book 294, Pages 128 and 129 of the City of Montpelier Land Records. Also being PART of all and the same land and premises conveyed by Antonio Aja, Jr., Trustee of the Antonio Aja, Jr. Trust and Virginia D. Aja, Trustee of the Virginia D. Aja Trust to said Antonio Aja, Jr., Trustee of the Antonio Aja, Jr. Trust and said Virginia D. Aja, Trustee of the Virginia D. Aja Trust by Corrective Quit Claim Deed dated August 10, 2000, and of record in Book 348, Page 264 of the said City of Montpelier Land Records.

Reference is hereby made to the above mentioned conveyances and records thereof and to the following instruments in aid of a more complete description and further chain of title.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the Grantee, **CITY OF MONTPELIER**, its successors and assigns, to its own use and behoof forever; and the Grantors, **ANGELES A. ZORZI, TRUSTEE OF THE ANGELES A. ZORZI LIVING TRUST; ANTONIO AJA, JR., TRUSTEE OF THE ANTONIO AJA, JR. TRUST** and **VIRGINIA D. AJA, TRUSTEE OF THE VIRGINIA D. AJA TRUST**, for themselves and their successors and assigns, do covenant with the Grantee, **CITY OF MONTPELIER**, its successors and assigns, that from and after the ensembling of these premises, they will have and claim no rights, title or interest in or to the property.

Vermont Property Transfer Tax
32 V.S.A. Choc. 231
ACKNOWLEDGMENT
I, Clerk of the Board of Health Cert. Rec'd
of Land Use & Development Plans Act Cert. Rec'd
Return No. 06-116
Signed Charlita R. Hoyt, Clerk
Date July 3, 2006

BK0506PG0009

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 14th day of June, 2006.

IN PRESENCE OF:

ANGELES A. ZORZI, TRUSTEE OF THE ANGELES A. ZORZI LIVING TRUST

Shirley A. Moore
Witness

Angeles A. Zorzi
Angeles A. Zorzi

STATE OF VERMONT
WASHINGTON COUNTY, SS.

At Northfield, in said County, this 14th day of June 2006, personally appeared ANGELES A. ZORZI, TRUSTEE OF THE ANGELES A. ZORZI LIVING TRUST, and she acknowledged the within instrument, by her signed, to be her free act and deed and the free act and deed of the ANGELES A. ZORZI LIVING TRUST.

Before me: Shirley A. Moore
Notary Public

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 17th day of June, 2006.

IN PRESENCE OF:

ANTONIO AJA, JR., TRUSTEE OF THE ANTONIO AJA, JR. TRUST

Frank M. Ballentine
Witness

Antonio Aja Jr.
Antonio Aja, Jr.

STATE OF FLORIDA
MANATEE COUNTY, SS.

At Bradenton, in said County, this 17th day of June 2006, personally appeared Antonio Aja, Jr., Trustee of the ANTONIO AJA, JR. TRUST, and he acknowledged the within instrument, by him signed, to be his free act and deed and the free act and deed of the ANTONIO AJA, JR. TRUST.



WILLIAM J. RICHARDS
MY COMMISSION # DD 517891
EXPIRES: March 5, 2010
Bonded Thru Budget Notary Services

Before me: William J. Richards
Notary Public
My Commission Expires: MARCH 5 2010
SEAL

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this 17th day of June, 2006.

IN PRESENCE OF:

VIRGINIA D. AJA, TRUSTEE OF THE VIRGINIA D. AJA TRUST

Frank M. Ballentine
Witness

Virginia D. Aja
Virginia D. Aja

STATE OF FLORIDA
MANATEE COUNTY, SS.

At Bradenton, in said County, this 17th day of June 2006, personally appeared Virginia D. Aja, Trustee of the VIRGINIA D. AJA TRUST, and she acknowledged the within instrument, by her signed, to be her free act and deed and the free act and deed of the VIRGINIA D. AJA TRUST.



WILLIAM J. RICHARDS
MY COMMISSION # DD 517891
EXPIRES: March 5, 2010
Bonded Thru Budget Notary Services

Before me: William J. Richards
Notary Public
My Commission Expires: MARCH 5 2010
SEAL

JUN 3 2006

EXHIBIT B



Doc ID: 000532480004 Type: LAN

BK 664 PG 441-444

Received for Record at Montpelier, VT
On 01/06/2015 At 4:20:00 pmQUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF MONTPELIER, a Vermont municipality located in the County of Washington and State of Vermont, (the "Grantor") for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby **RELEASE, REMISE and FOREVER QUITCLAIM** unto the **STATE OF VERMONT** (the "Grantee") and its successors and assigns forever, a parcel of land which is more particularly described as follows:

All right, title, and interest in and to a parcel of land containing 1.40 acres, more or less, which is part of Parcels 4A and 4B as shown on sheets 9, 12, and 13 of the plans of Highway Project Montpelier BRF 6400(29) (the Project) as filed on the 6TH day of July, 2000 in the office of the Clerk of the City of Montpelier and on any revisions thereto subsequently filed therein, and being more particularly described as follows:

Beginning at a point in the northerly boundary of the existing railroad corridor, said point being approximately 81 feet distant northerly at right angle from approximate station 51+70 of the Barre Street centerline (hereinafter referred to as BS CL) of the Project;

thence 68 feet, more or less, easterly along said northerly boundary of the existing railroad corridor to a point approximately 81 feet distant northerly radially from approximate station 52+39 of said BS CL;

thence 158 feet, more or less, easterly to a point 30 feet distant northerly at right angle from station 354+00 of the railroad centerline (hereinafter referred to as RR CL) of the Project;

thence 624 feet, more or less, easterly and parallel to said RR CL to a point in the aforesaid northerly boundary of the existing railroad corridor, said point being 30 feet distant northerly radially from approximate station 360+05 of said RR CL:

thence 164 feet, more or less, easterly along said northerly boundary of the existing railroad corridor to a point approximately 47 feet distant northerly radially from approximate station 361+74 of said RR CL;

thence 60 feet, more or less, southerly and crossing the existing railroad corridor and said RR CL to a point in the southerly boundary of the existing railroad corridor, said point being approximately 13 feet distant southerly radially from approximate station 361+74 of said RR CL;

thence 173 feet, more or less, westerly along said southerly boundary of the existing railroad corridor to a point 30 feet distant southerly radially from approximate station 360+17 of said RR CL;

thence 300 feet, more or less, westerly and parallel to said RR CL to a point in the aforesaid northerly boundary of the existing railroad corridor, said point being 30 feet distant southerly radially from approximate station 357+00 of said RR CL;

thence 10 feet, more or less, westerly along said northerly boundary of the existing railroad corridor to a point which is located 25 feet distant northerly radially from the aforesaid BS CL, said point also being approximately 31 feet distant southerly radially from approximate station 356+89 of said RR CL;

thence 134 feet, more or less, westerly and parallel to said BS CL to a point in the aforesaid northerly boundary of the existing railroad corridor, said point being 30 feet distant southerly radially from approximate station 355+50 of said RR CL;

thence 147 feet, more or less, westerly and parallel to said RR CL to a point 30 feet distant southerly at right angle from approximate station 354+00 of said RR CL;

thence 161 feet, more or less, westerly to a point in the aforesaid southerly boundary of the existing railroad corridor approximately 21 feet distant northerly radially from approximate station 52+46 of the aforesaid BS CL;

thence 75 feet, more or less, westerly along said southerly boundary of the existing railroad corridor to a point approximately 21 feet distant northerly at right angle from approximate station 51+70 of said BS CL;

thence 60 feet, more or less, northerly and crossing the existing railroad corridor to the point of beginning.

Also conveyed are permanent easements to extend and maintain slopes and embankments in areas of 480 square feet, 770 square feet, and 0.34 acre, more or less, as shown on the aforesaid Project plans. The slopes and embankments may be extended at such an angle as will hold the material of said slopes in repose against ordinary erosion in accordance with the standard construction practices. The State of Vermont shall have the right to remove all trees, logs, stumps, protruding roots, brush, duff, and other objectionable materials, structures, growth, and any other thing of whatever kind or nature from said slope areas.

The parcel conveyed herein is a portion only of the lands and premises conveyed to Grantor by Quit Claim Deed dated June 14, 2006, from Angeles A. Zorzi, Trustee of the Angeles A. Zorzi Living Trust, dated May 30, 1996, and others, and recorded in Volume 506 at page 8 of the City of Montpelier Land Records.

Reference is hereby made to the above-mentioned instruments, the records thereof and the references therein contained, in further aid of this description.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the Grantee, **STATE OF VERMONT**, its successors and assigns, to its own use and behoof forever; and the Grantor, **CITY OF MONTPELIER**, for itself and its successors and assigns, does covenant with the Grantee, **STATE OF VERMONT**, its successors and assigns, that from and after the ensealing of these premises, it will have and claim no rights, title or interest in or to the property.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 6th day of June,

~~2009~~ 2015

CITY OF MONTPELIER

By: [Signature]
Its Duly Authorized Agent

STATE OF VERMONT
WASHINGTON COUNTY, SS.

At Montpelier, in said County, this 6 day of January ~~2009~~ 2015 personally appeared William Fraser, Duly Authorized Agent of the CITY OF MONTPELIER, and he/she acknowledged the within instrument, by him/her signed, to be his/her free act and deed and the free act and deed of the CITY OF MONTPELIER.

Before me,
[Signature]
Notary Public 2/10/15

mor09-001.rea
96-4003

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
-ACKNOWLEDGMENT-
(Including Certificates and, If Required
Act 250 Disclosure Statement) and Tax Paid
Return No. 15-003
Signed [Signature] Clerk
Date January 6, 2015

STITZEL, PAGE &
FLETCHER, P.C.
ATTORNEYS AT LAW
171 BATTERY STREET
P.O. BOX 1507
BURLINGTON, VERMONT
05402-1507

EXHIBIT C

**STATE OF VERMONT
AGENCY OF TRANSPORTATION
RIGHT OF WAY PLANS
DETAIL SHEET**

3

TABLE OF PROJECT PROPERTY ACQUISITION

| PARCEL NO. | GRANTOR | SHEET NO. | BEGINNING STATION | ENDING STATION | TAKING | REM. | RIGHTS | TITLE TAKEN | DATE | TOWN OR CITY RECORDED | BK. | PG. | REMARKS | REVISION NO. | SHEET | DESCRIPTION OF REVISION | DATE | MADE BY | APPROVED BY | | |
|------------|---|-----------|--|--|--------|------|---|-------------|------|-----------------------|-----|-----|--|--------------|-------|---|----------|---------|-------------|--|--|
| 1 | RIBOLINI, STEPHEN A. & WALBRIDGE, EDWARD P. - LESSOR CAREY, STEVEN W. & JODY - LESSEE | 12 | 52+12 RT. 52+15 RT. 52+22 RT. 52+62 RT. 52+62 RT. | 52+62 RT. 52+25 RT. 52+50 RT. | | | CONST. (T) 1170 S.F. DITCH & DRAINAGE (P) CULVERT (P) REMOVE (T) ALL R.T. & I. | | | MONTPELIER | | | SIGN BASE SIGN BASE | 1 | 10,14 | PARCEL NO. 7 BARRETT. MAKE CHANGES AS REQUESTED BY THE CITY FOR UTILITY EASEMENT AREA. PER C.O. 9126. | 06-22-00 | M.J.R. | R.P.D. | | |
| 2 | GOODELL, EVELYN M. | 12 | 52+62 RT. 52+62 RT. 52+69 RT. 52+63 RT. 52+76 RT. 53+00 RT. | 52+75 RT. 52+86 RT. 53+07 RT. | | | CONST. (T) 10 S.F. REMOVE & RESET (T) DRIVE (T) WALK (T) INSTALL (T) DRIVE (T) | | | MONTPELIER | | | FENCE 12' GRAVEL EROSION CONTROL 12' GRAVEL | 2 | 10,13 | PARCEL NO. 6 SHANLEY. CHANGE NAME TO PALMISANO, JAMES A. PER C.O. 9127. | 06-22-00 | M.J.R. | R.P.D. | | |
| 3A | STATE OF VERMONT-LESSOR WASHINGTON COUNTY R.R. COMPANY- LESSEE | 12,13 | 52+46 LT. 51+70 LT. RR STA. 357+00 RT. | RR STA. 360+17 RT. RR STA. 355+50 RT. RR STA. 361+97 RT. | 0.64A± | | ALL R.T. & I. CONST. (T) 0.30A± CONST. (T) 0.41A± | | | MONTPELIER | | | R.R. ROW RAILROAD BED REPLACEMENT RAILROAD BED REPLACEMENT | | | | | | | | |
| 3B | | 14 | 61+90 CL. | | | | APPROACH (T) | | | | | | TO R.R. CROSSING | | | | | | | | |
| 4A | ZORZI, ANGELES A. - TRUSTEE OF THE ANGELES A. ZORZI LIVING TRUST & AJA, ANTONIO JR. | 12,13 | 52+39 LT. 54+20 LT. RR STA. 354+25 LT. RR STA. 355+09 LT. RR STA. 357+08 LT. | RR STA. 360+05 LT. RR STA. 361+40 LT. RR STA. 354+89 LT. RR STA. 355+86 LT. RR STA. 361+20 LT. | 0.68A± | | CONST. (T) 0.16A± SLOPE (P) 480 S.F.± SLOPE (P) 770 S.F.± SLOPE (P) 0.34A± | | | MONTPELIER | | | | | | | | | | | |
| 4B | | 12,13 | 51+70 LT. | RR STA. 361+97 RT. | 1.37A± | | ALL R.T. & I. | | | | | | R.R. ROW | | | | | | | | |
| 4C | | 12,13 | 51+70 RT. | RR 361+97 RT. | 0.57A± | | ALL R.T. & I. | | | | | | BARRE ST. & COUNTRY CLUB RD. HIGHWAY EASEMENT | | | | | | | | |
| 5 | BEVINS, DONALD - LESSOR BEVINS MARINE & CYCLE CENTER, INC. - LESSEE | 12,13 | 53+08 RT. 54+00 RT. 56+00 RT. | 53+13 RT. | | | INSTALL (P) | | | MONTPELIER | | | CURB ISLAND DRIVE PAVED 105' DRIVE PAVED 30' | | | | | | | | |

ACCT.MRyan
\\vaof_cadd\fillingabinet\92j02\RightofWay\jrj02d.dgn
DATE PLOTTED 28-JUN-2000

DR. (P)- DRAINAGE RIGHT
DIT. (P)- DITCHING RIGHT
CH. (P)- CHANNEL RT.
DRIVE (T)- DRIVE RIGHT
CUL. (P)- CULVERT RIGHT
[W]- WATER SOURCES

--- PRESENT R.O.W.
// --- TAKING WITHOUT ACCESS
// --- TAKING WITHOUT ACCESS ALONG PROPERTY LINE
--- P --- TAKING WITH ACCESS
--- L --- PERMANENT EASEMENT
(P)
(T) TEMPORARY EASEMENT

LEGEND
--- C&T (P) --- CLEARING & TRIMMING
... C&T (P) ... CLEAR ZONE
--- CONST. (T) --- CONSTRUCTION EASEMENT
--- SR --- SLOPE RIGHTS
--- P --- PROPERTY LINE
--- L --- TOP OF CUT
--- O --- TOE OF SLOPE

APPROVED: ROGER P. DUMS DATE: 2-14-00
AGENT D, PLANS & TITLES

R. O. W. PLANS

MONTPELIER
BRF 6400(29)
SHEET 9 OF 14

JUN 29 2000

- PRECAST REIN. CEMENT CONC. CURB, TYPE B
- 52+50 (12.5' LT.) - 53+50 (14' LT.)
- 53+50 - 58+41 (14' LT.)
- 58+41 (14' LT.) - 58+59 (30' LT.) (R=25')
- 58+87 (42' LT.) - 58+95 (14' LT.) (R=25')
- 60+52 - 61+42 (14' LT.)
- 53+10 - 53+20 (ISLAND)
- 54+24 - 54+55 (ISLAND)
- 54+55 - 55+62 (14' RT.)
- 56+10 - 56+32 (14' RT.)
- 56+68 - 58+77 (14' RT.)
- 60+52 - 61+65 (14' RT.)

- ALUMINUM APPROACH RAILING
- 60+52 - 60+77 (LT.)
- 61+00 - 61+25 (RT.)
- 10+55 - 10+87 (RT.)
- 57+50 - 57+75 (RT.)

- STEEL BEAM GUARDRAIL (W/ TERMINAL END SECTION)
- 60+77 - 61+40 (LT.)
- 61+25 - 61+49 (RT.)
- 56+68 - 57+50 (RT.)

- CONSTRUCT DRIVE
- 54+00 RT.
- 56+00 RT.
- 56+50 RT.
- 52+69 RT.
- 53+00 RT.

- 5" PORTLAND CEMENT CONCRETE SIDEWALK
- 56+68 - 58+77 (RT.)
- 60+52 - 61+65 (RT.)
- 58+87 - 58+97 (LT.)
- 60+52 - 61+42 (LT.)

- PRECAST C.B. V/TYP E GRATE
- 52+50 (RT.) 55+00 (LT.)
- 53+90 (LT.) 55+00 (RT.)
- 53+90 (RT.) 61+50 (RT.)
- 55+50 (RT.) 61+50 (RT.)

- PRECAST D.M.H. W/CI COVER
- 61+50 (RT.)

- PRECAST RCP D.I. V/TYP E GRATE
- 56+80 (RT.) 61+35 (LT.)
- 60+75 (RT.)

- PRECAST C.B. V/TYP E GRATE
- 53+90 (LT.)

- CONSTRUCT TOWN HIGHWAY APPROACH
- 10+00 - 12+00
- SPECIAL DITCH W/STONE FILL TYPE II
- 10+50 - 11+90 (LT.)
- REINFORCED CONCRETE HEADWALL
- 11+64 (LT.)

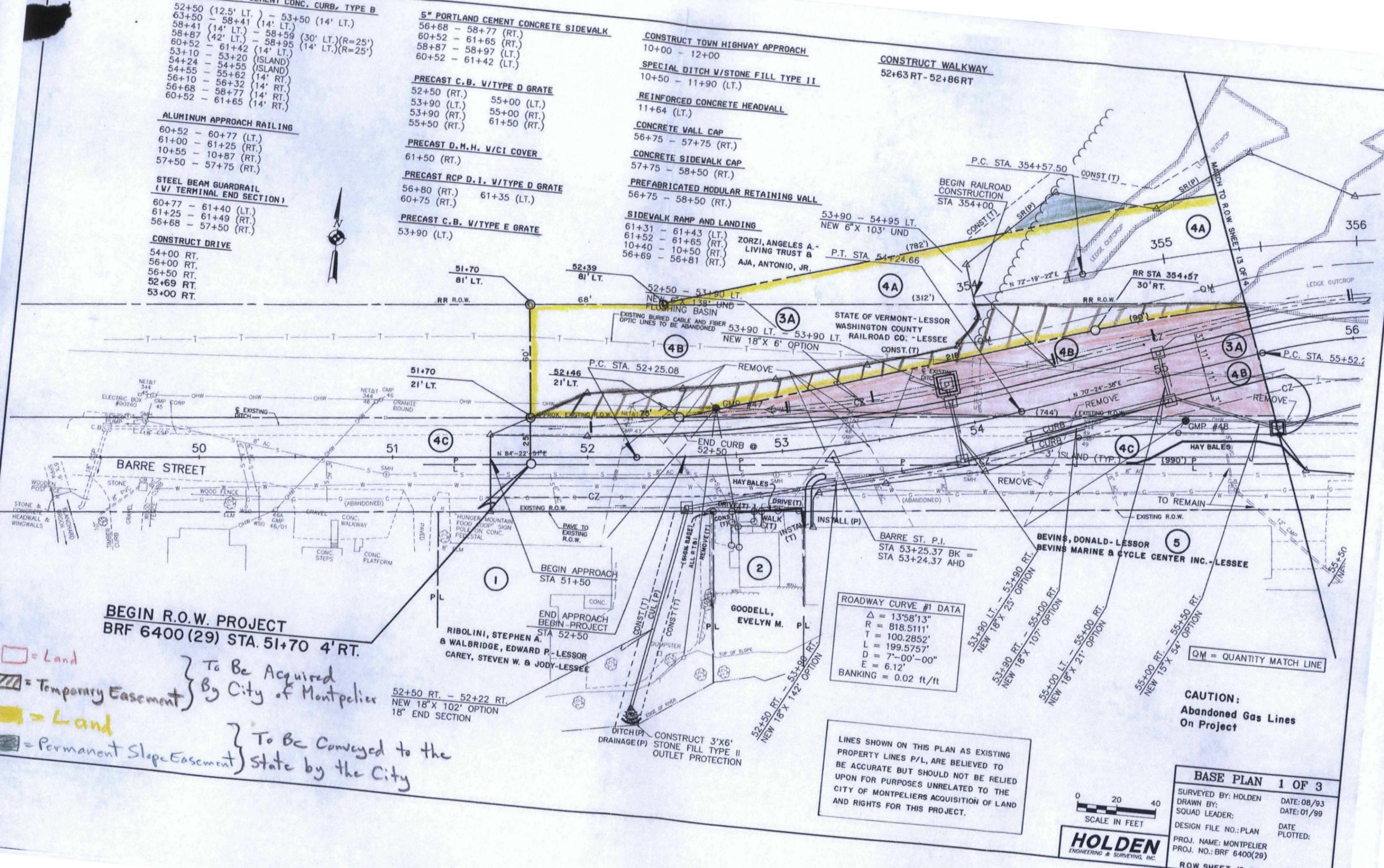
- CONCRETE WALL CAP
- 56+75 - 57+75 (RT.)

- CONCRETE SIDEWALK CAP
- 57+75 - 58+50 (RT.)

- PREFABRICATED MODULAR RETAINING WALL
- 56+75 - 58+50 (RT.)

- SIDEWALK RAMP AND LANDING
- 61+31 - 61+43 (LT.)
- 61+52 - 61+65 (RT.)
- 10+40 - 10+50 (RT.)
- 56+69 - 56+81 (RT.)

- CONSTRUCT WALKWAY
- 52+63 RT - 52+86 RT



BEGIN R.O.W. PROJECT
BRF 6400 (29) STA. 51+70 4' RT.

= Land
 = Temporary Easement
 = Land
 = Permanent Slope Easement

} To Be Acquired By City of Montpelier
 } To Be Conveyed to the State by the City

ROADWAY CURVE #1 DATA

| | |
|---------|--------------|
| Δ | = 13°58'13" |
| R | = 818.5111' |
| T | = 100.2852' |
| L | = 199.5757' |
| D | = 7'-00"-00" |
| E | = 6.12' |
| BANKING | = 0.02 ft/ft |

LINES SHOWN ON THIS PLAN AS EXISTING PROPERTY LINES P/L, ARE BELIEVED TO BE ACCURATE BUT SHOULD NOT BE RELIED UPON FOR PURPOSES UNRELATED TO THE CITY OF MONTPELIER'S ACQUISITION OF LAND AND RIGHTS FOR THIS PROJECT.



HOLDEN
ENGINEERING & SURVEYING, INC.

BASE PLAN 1 OF 3

| | |
|-------------------------|---------------|
| SURVEYED BY: HOLDEN | DATE: 08/93 |
| DRAWN BY: | DATE: 01/99 |
| SQUAD LEADER: | DATE PLOTTED: |
| DESIGN FILE NO.: PLAN | |
| PROJ. NAME: MONTPELIER | |
| PROJ. NO.: BRF 6400(29) | |

R.O.W. SHEET 12 OF 14 SHEETS

CAUTION:
Abandoned Gas Lines
On Project

- = Land
- = Temporary Easement
- = LAND
- = Permanent Slope Easement

To Be Acquired By City of Montpelier
 To Be Conveyed to State by City

LINES SHOWN ON THIS PLAN AS EXISTING PROPERTY LINES P/L, ARE BELIEVED TO BE ACCURATE BUT SHOULD NOT BE RELIED UPON FOR PURPOSES UNRELATED TO THE CITY OF MONTPELIER ACQUISITION OF LAND AND RIGHTS FOR THIS PROJECT.

CAUTION:
 Abandoned Gas Lines
 On Project

R.R. CURVE #1 DATA

| | |
|---------|--------------|
| Δ | = 25°57'37" |
| R | = 818.5111' |
| T | = 188.6694' |
| L | = 370.8613' |
| D | = 7'-00'-00" |
| E | = 21.46' |
| BANKING | = 0% |

R.R. CURVE #2 DATA

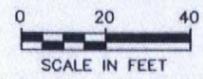
| | |
|---------|--------------|
| Δ | = 12°58'45" |
| R | = 818.5111' |
| T | = 93.1073' |
| L | = 185.4177' |
| D | = 7'-00'-00" |
| E | = 5.28' |
| BANKING | = 0% |

ROADWAY CURVE #2 DATA

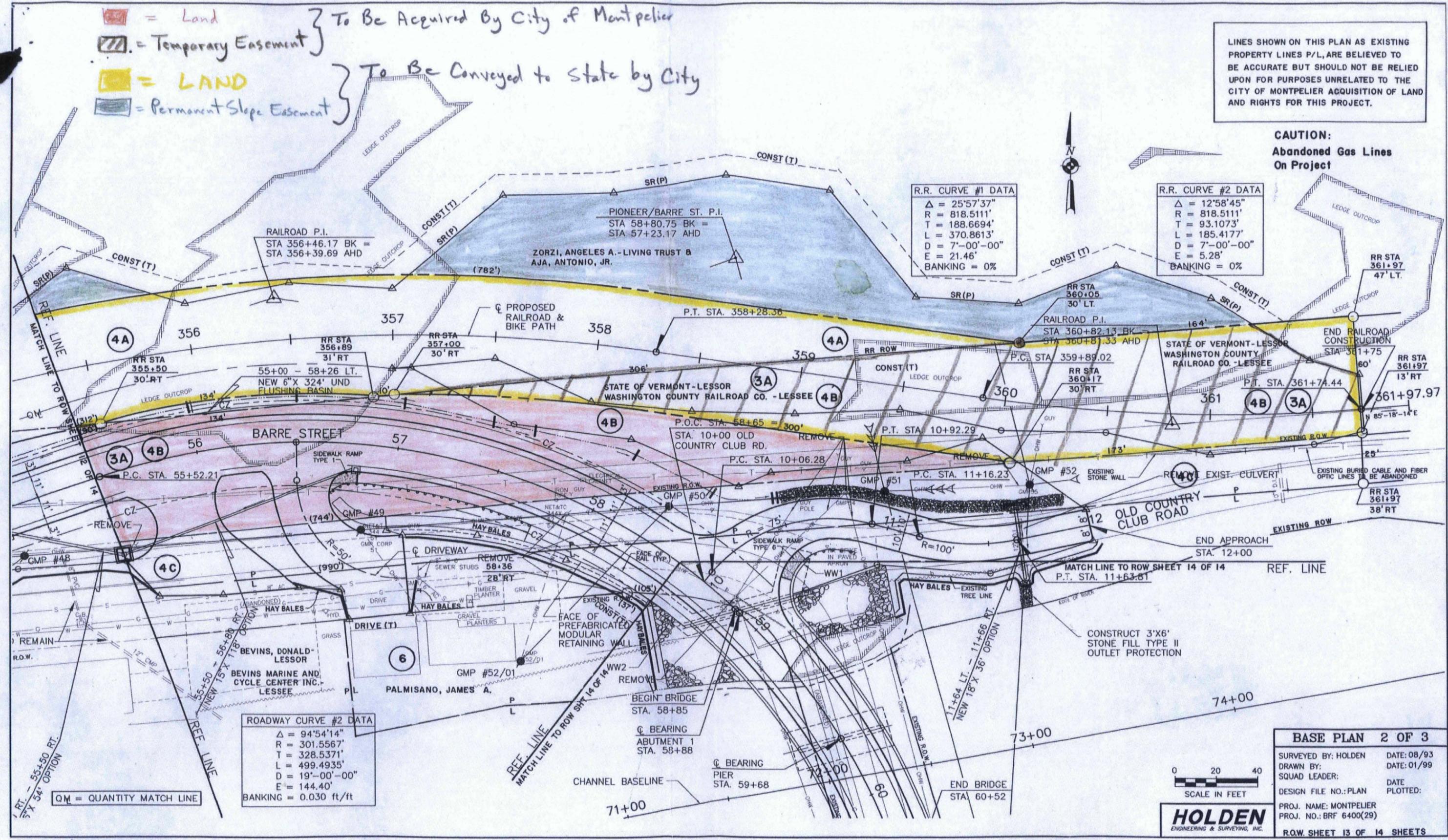
| | |
|---------|---------------|
| Δ | = 94°54'14" |
| R | = 301.5567' |
| T | = 328.5371' |
| L | = 499.4935' |
| D | = 19'-00'-00" |
| E | = 144.40' |
| BANKING | = 0.030 ft/ft |

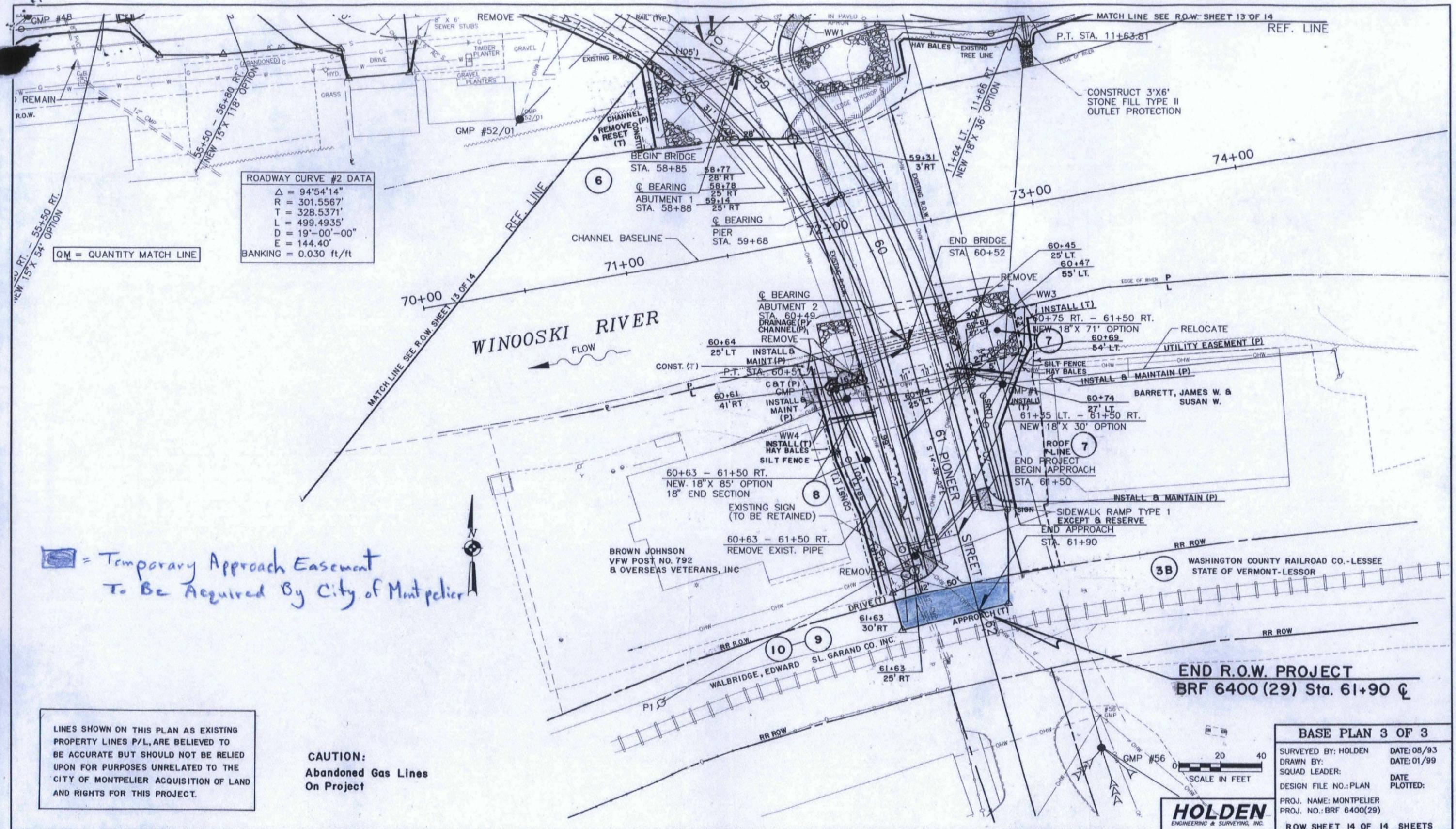
BASE PLAN 2 OF 3

| | |
|------------------------------|---------------|
| SURVEYED BY: HOLDEN | DATE: 08/93 |
| DRAWN BY: | DATE: 01/99 |
| SQUAD LEADER: | DATE: |
| DESIGN FILE NO.: PLAN | DATE PLOTTED: |
| PROJ. NAME: MONTPELIER | |
| PROJ. NO.: BRF 6400(29) | |
| R.O.W. SHEET 13 OF 14 SHEETS | |



HOLDEN
 ENGINEERING & SURVEYING, INC.





ROADWAY CURVE #2 DATA
 $\Delta = 94^{\circ}54'14''$
 $R = 301.5567'$
 $T = 328.5371'$
 $L = 499.4935'$
 $D = 19^{\circ}-00'-00''$
 $E = 144.40'$
 BANKING = 0.030 ft/ft

QM = QUANTITY MATCH LINE

[Handwritten note] = Temporary Approach Easement
 To Be Acquired By City of Montpelier

LINES SHOWN ON THIS PLAN AS EXISTING PROPERTY LINES P/L, ARE BELIEVED TO BE ACCURATE BUT SHOULD NOT BE RELIED UPON FOR PURPOSES UNRELATED TO THE CITY OF MONTPELIER ACQUISITION OF LAND AND RIGHTS FOR THIS PROJECT.

CAUTION:
 Abandoned Gas Lines
 On Project

BASE PLAN 3 OF 3

| | |
|---------------------------|---------------|
| SURVEYED BY: HOLDEN | DATE: 08/93 |
| DRAWN BY: | DATE: 01/99 |
| SQUAD LEADER: | DATE PLOTTED: |
| DESIGN FILE NO.: PLAN | |
| PROJ. NAME: MONTPELIER | |
| PROJ. NO.: BRF 6400(29) | |
| ROW SHEET 14 OF 14 SHEETS | |

8702497, CADD, BRIDGE, DRG, PLAN

HOLDEN
 ENGINEERING & SURVEYING, INC.

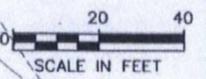
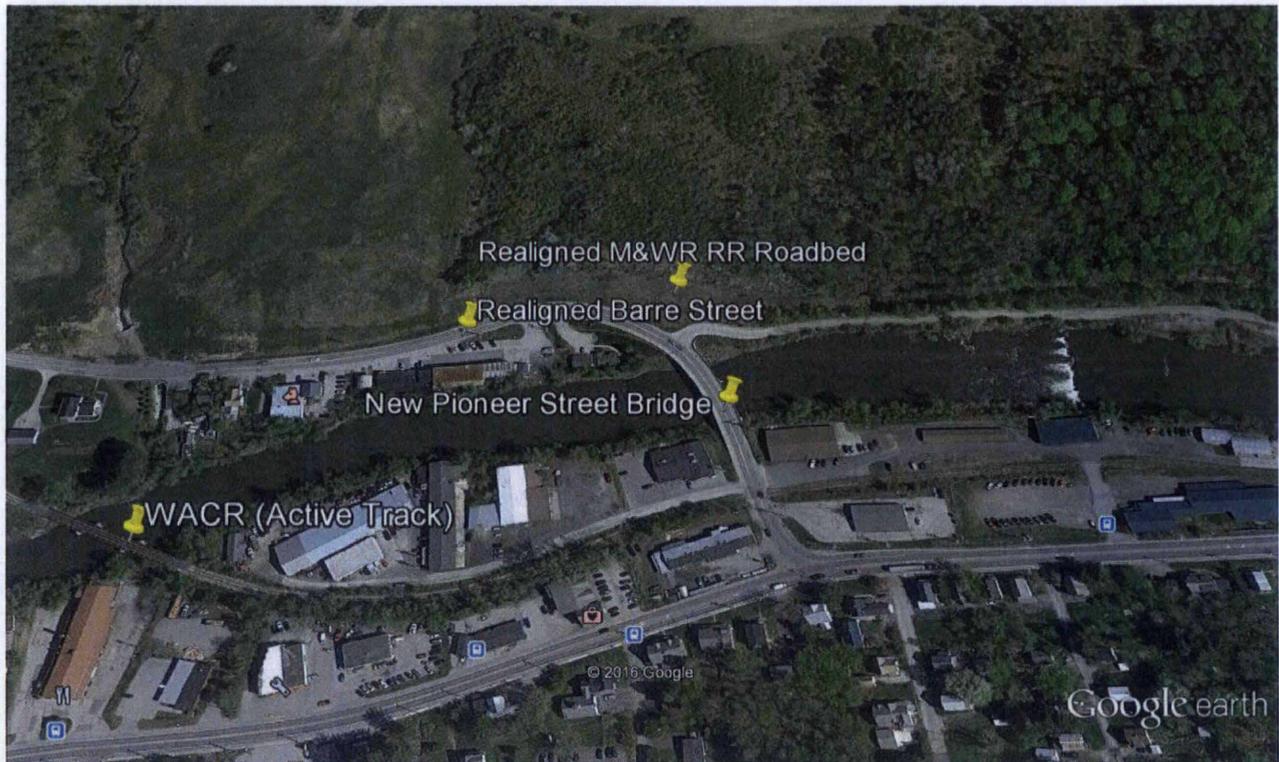


EXHIBIT D



**New Pioneer Street Bridge in Montpelier, Vermont
(As Realigned by Transportation Project Montpelier BRF 6400(29))**

ATTACHMENT 5

VERIFIED STATEMENT

OF

KRISTA L. CHADWICK

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

VERIFIED STATEMENT OF KRISTA L. CHADWICK

1. My name is Krista L. Chadwick. The Vermont Agency of Transportation (“VTrans”) employs me as the Business/Financial Manager for its Rail Section. My duties include coordination of VTrans’ efforts to secure grants from the Federal Railroad Administration (“FRA”) and other funding sources for improvements to Vermont’s railroad infrastructure.

2. The purpose of this Verified Statement is to identify and explain an October 25, 2010 grant application from VTrans to the Federal Railroad Administration, which is attached hereto as Exhibit A.

3. Between Granite Street in Montpelier and the Gallison Hill wye track, there are two parallel railroad rights-of-way. The 1.32-mile-long former Montpelier & Wells River/Barre & Chelsea mainline, from which the tracks were removed in the late 1950s, stays on the north shore of the Winooski River. The former Central Vermont Railway (“CVR”) Barre Branch route—the one presently in use by the WACR—crosses over to the south shore, with two major crossings of the Winooski

River—Bridge No. 305 (“BR 305”) at Milepost 2.31 and Bridge No. 306 (“BR 306”) at Milepost 3.14.

4. In October 2010, VTrans submitted a grant application under the Federal Railroad Administration’s Rail Line Relocation & Improvement Capital Grant Program (“RLR”), seeking federal assistance to relay tracks on the 1.32-mile-long former Montpelier & Wells River/Barre & Chelsea mainline between Granite Street and Gallison Hill. A copy of VTrans’ grant application is attached hereto as Exhibit A. As explained on page 6 of the grant application,

The project will enhance railcar movements by avoiding two turn-of-the-century historic bridges—which are presently part of the existing alignment—and allow for the passage of inbound and outbound trains in the same corridor, as well as lessening the impact of the staging (queuing).

5. In its RLR grant application, VTrans estimated that the project would cost \$2,901,207.00. Although VTrans did not secure the FRA grant, VTrans is continuing to explore other funding opportunities for the project.

Dated at Montpelier, Vermont, this 18 day of May, 2016.



Krista L. Chadwick

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

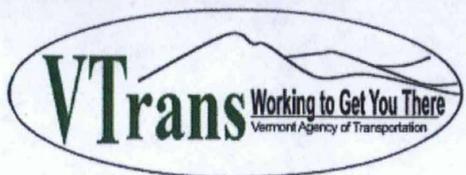
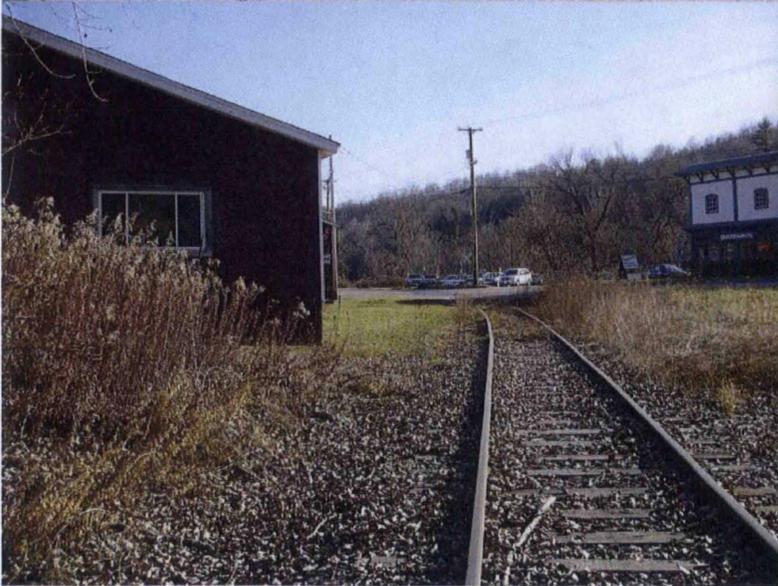
Subscribed and sworn to before me,



Notary Public
(My commission expires Feb 10, 2019)

EXHIBIT A

Washington County Railroad, Barre-Montpelier Branch, Mainline Realignment



October 25, 2010

Project Summary

The State of Vermont is requesting \$2,611,086 in FRA Rail Line Relocation and Improvement Program grant funds to relocate the existing mainline of the Barre-Montpelier line to a currently-inactive 1.32-mile section of the former Montpelier-Wells mainline located in the City of Montpelier, VT. The State will match FRA funding with \$290,121 in state funds.

The scope of the project involves the re-establishment of tracks of the Montpelier-Wells mainline on the opposite side of the Winooski River from the presently-used alignment of the former Central Vermont Railroad trackage. The relocation will fulfill the need for increased capacity and will provide a safer alternative for rail freight transportation between Montpelier Junction and Graniteville, passing through the towns of Montpelier, Berlin, Barre, and Barre Town. The relocation of the line will also result in job creation, alleviate congestion on local roads, and decrease the area's carbon footprint.

Point of Contact

Krista Chadwick
1 National Life Drive
Montpelier, VT 05633-5001
P: (802) 828-5750
F: (802) 828-2848
Krista.Chadwick@state.vt.us

Applicant Eligibility

The project is located along a state-owned rail line and right-of-way. In November 21, 1980, the State of Vermont acquired the 13.1 mile line following its abandonment by the Montpelier & Barre Railroad Company. The line was acquired to ensure the continuance of rail service due to its critical role in the freight rail supply chain. In September 30, 1999 the State signed a lease with the Washington County Railroad (WACR) to operate the line, and operations began in 2003. WACR is a short line railroad, which forms part of the Vermont Rail System.

Project Description/Narrative

The scope of this project encompasses the realignment of tracks at the Montpelier-Wells mainline on the opposite side of the Winooski River from the presently-used alignment of the former Central Vermont Railroad trackage. The relocation will fulfill the need for increased capacity, operational efficiencies, and will provide a safer alternative for rail freight transportation between Montpelier Junction and Graniteville, passing through the towns of Montpelier, Berlin, Barre, and Barre Town.

To accomplish this, any past modifications of the original grade will have to be corrected (including adequate ditching and drainage), clearing and grubbing of the rail bed, approximately 8,048 tons of new ballast, 2,823 tons of sub-ballast, 4,450 new ties, the installation of 1.32 track miles of 105# replacement

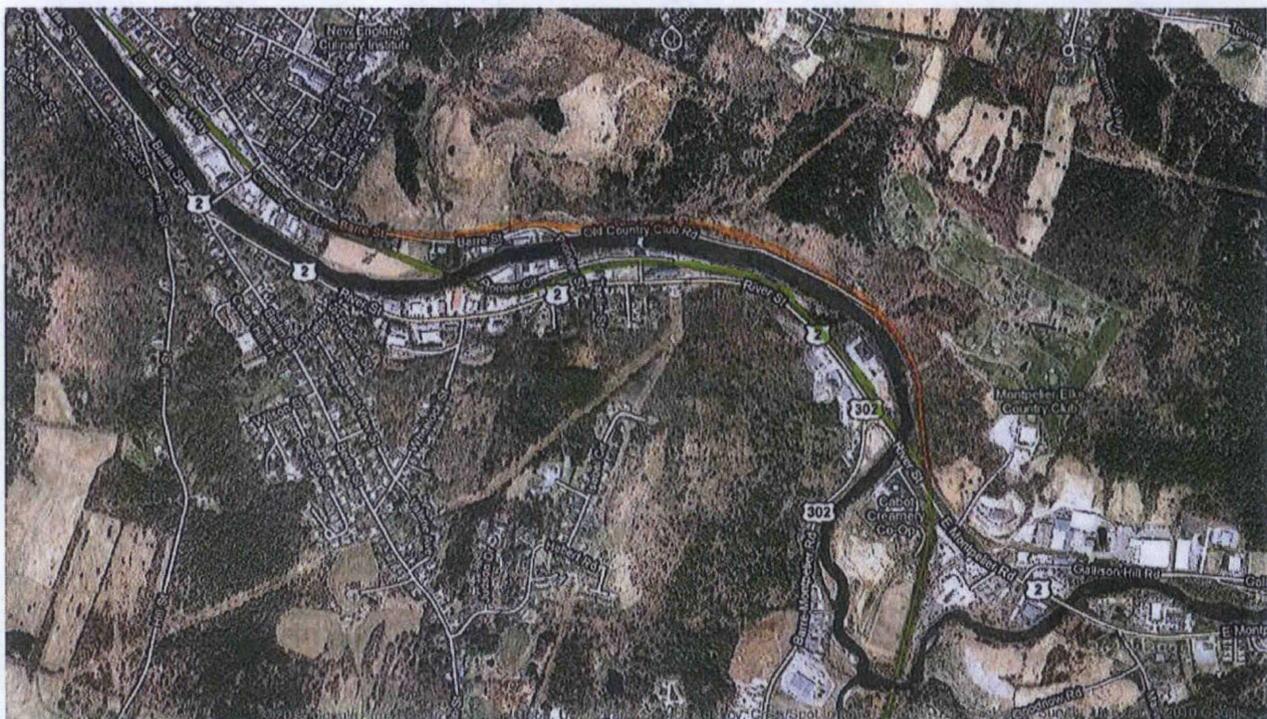
RAIL LINE RELOCATION GRANT APPLICATION

rail brought from another project within the state (7,350 t/f), three new switches—one at either end of the new alignment, one diamond, plus one 175-foot highway grade crossing (Barre Street), and one to connect to the spur at WSKI. There is also the need for two private (Ibey and Coniff Properties) and one public crossing (Barre Street).

The line is a major mode of freight transportation in Central Vermont, and connects to the New England Central Railway (NECR) at Montpelier Junction. Through haulage rights, WACR has access to the Green Mountain Railroad and the Connecticut River Line in White River Junction or can continue on the NECR to Palmer, MA to connect to other lines for access nationwide.

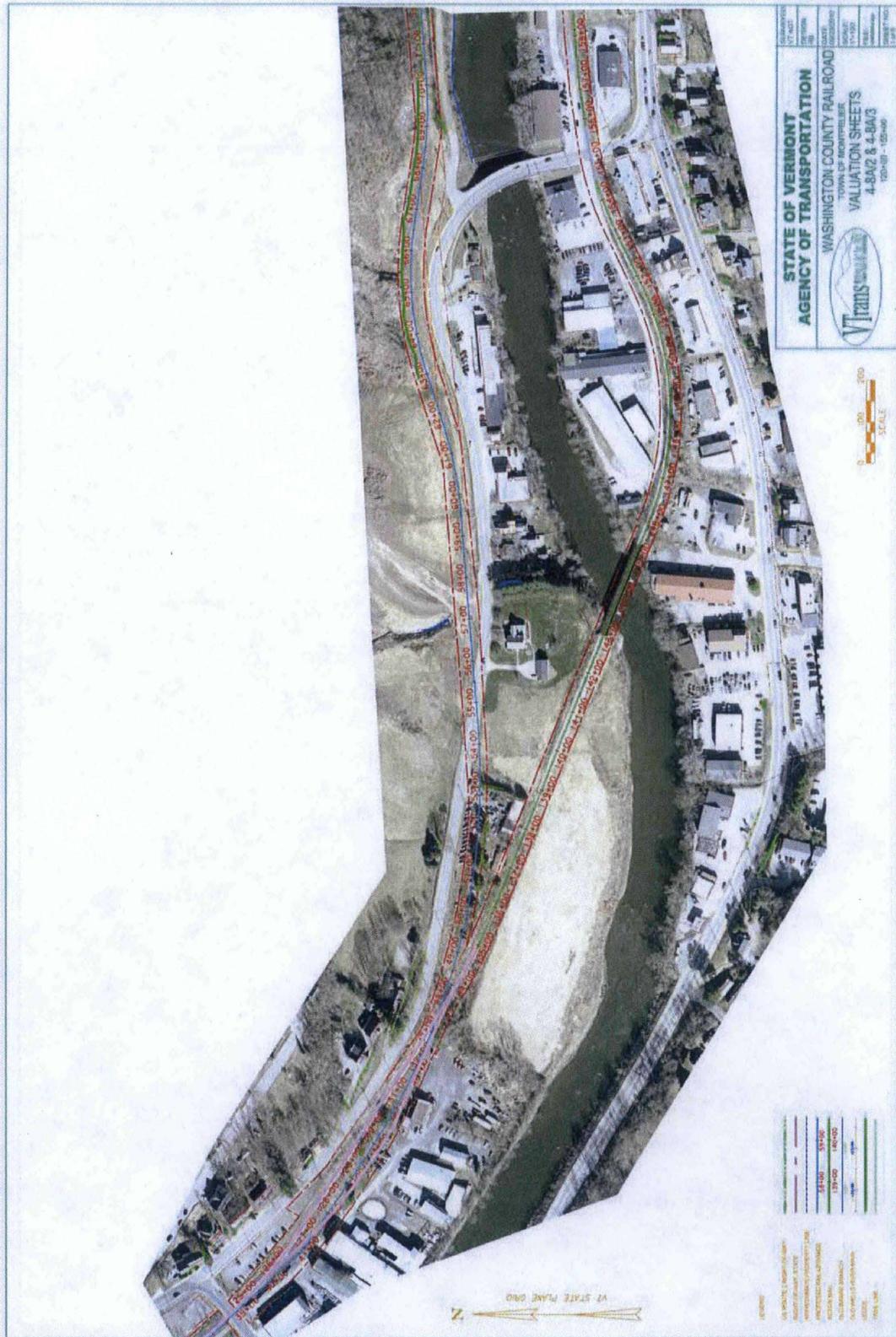
The series of maps and drawings below show the project location as well as the current and proposed alignment of the relocated portion of track.

Project Location and Alignment Map



-  Existing Alignment
-  Relocated Alignment

RAIL LINE RELOCATION GRANT APPLICATION



RAIL LINE RELOCATION GRANT APPLICATION



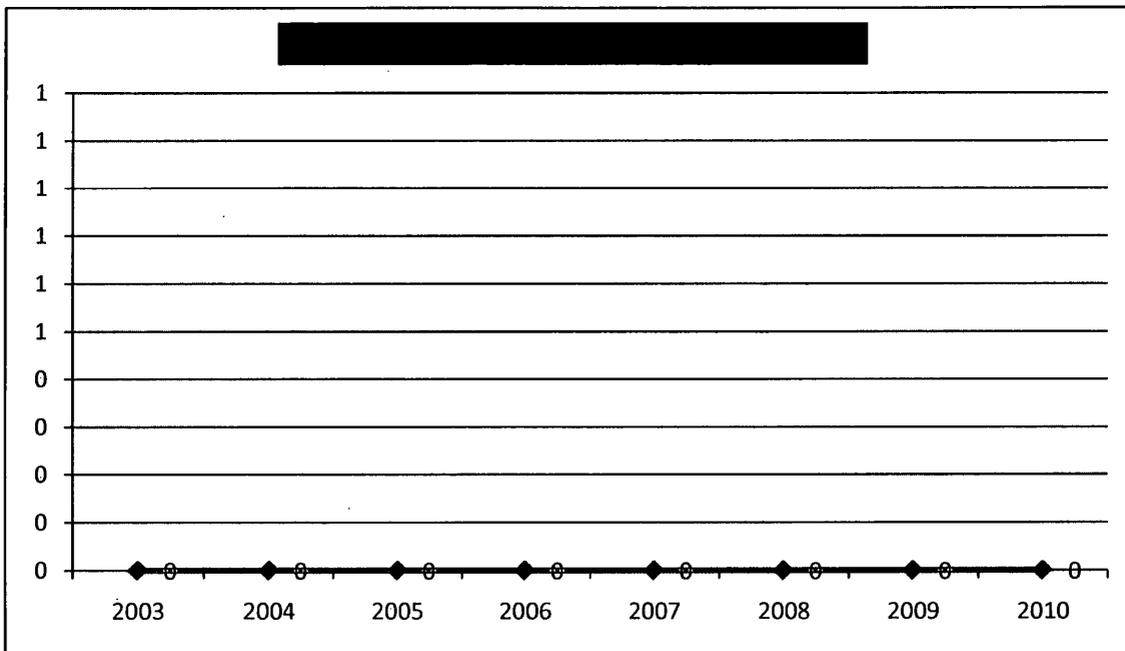
Washington County Railroad, Barre-Montpelier Branch, Mainline Realignment

RAIL LINE RELOCATION GRANT APPLICATION

The proposed rail relocation project begins on Granite Street (MP 1.91) and ends just to the north of the railroad grade crossing across U.S. 2 (MP 3.23), adjacent to the WSKI radio tower, where it rejoins the existing WACR Montpelier-Barre mainline.

The existing land use along the relocated line is currently unoccupied railroad right-of-way. The right-of-way is devoid of ballast, ties and track. No property acquisition is needed for this project.

Commodities shipped along the line include [REDACTED]. Since 2003, freight tonnage along the WACR [REDACTED]



The project will enhance railcar movements by avoiding two turn-of-the century historic bridges –which are presently part of the existing alignment - and allow for the passage of inbound and outbound trains in the same corridor, as well as lessening the impact of the staging (queuing).

A contract was recently signed between the Rock of Ages Granite Company and Northeast Materials, to supply the U.S. Army Corps of Engineers with granite chunks (grout) for storm surge mitigation and erosion control at Lake Okeechobee, Florida. As the granite from Vermont is of excellent hardness, and in adequate supply, there is the strong possibility of many shipments for years to come. [REDACTED]

There has also been strong interest to fulfill the needs of the local business community, (including a wind turbine manufacturer), in Central Vermont to receive and ship products via this railroad to and from the mainline.

VTrans has already completed work on other portions of the WACR line, including embankment re-stabilization, culvert replacement and the installation of corrugated pipe structure.

How the Project Addresses State Rail Goals

Vermont's 748-mile railroad system is an integral part of the regional, national and international rail transportation networks. Of this total, about 427 miles are owned by the State. Most railroad activity is freight traffic, although passenger service is an important component of rail operations. There are 10 railroad companies operating or have trackage rights in Vermont, and all are privately owned and operated with the exception of Amtrak.

Vermont holds the distinction of being one of the few states in which Class I railroads no longer dominate the rail network. By 2004, Class I railroads no longer directly served customers within the State. CN, a Class 1 railroad, operates into northwestern Vermont for approximately two miles and interchanges with NECR.

Vermont expends a significant amount of funding on rail projects. In Fiscal Year 2010, the State Rail budget was \$21,011,812, of which two thirds was used for capital rail improvements.

According to the draft Vermont State Freight Plan, freight rail movements in 2007 accounted for 9.3 million tons valued at \$8.6 billion, representing approximately 17% of all the freight moving into, out of, within, and through Vermont. This represents a doubling of freight rail tonnage from the 8% recorded in the 1991 State Freight Study.

The importance of the freight rail system in Vermont is highlighted by VTrans' maintenance of a State Rail Plan, updated every five years. This project would implement both the vision/goals and strategies of the Plan:

Vision and Goals

- Provide competitive freight and passenger service within the state and connections to the national rail system;
- Provide parallel north-south rail corridors and connecting branch lines to access markets throughout the State and provide redundancy in the event of temporary loss of service;
- Develop programs to assist in major rehabilitation projects and replacement of obsolete bridges, structures, and track required to maintain operations;
- Remove current weight and clearance restrictions, as appropriate, to enhance Vermont's competitive position within the industry;
- Strive to maintain the safest possible network of rail infrastructure and operations;

To accomplish these, VTrans supports the following strategies:

- Promote efficient operations of Vermont's rail system, so that it is a seamless, competitive, interconnected and integrated portion of the state and national multimodal transportation

system – in the movement of both people and goods and a robust component of Vermont’s economy.

- Support the improvement of intermodal movements to include doublestack so as to enhance in Vermont this burgeoning segment of the U.S. transportation industry and promote the cost efficient and productive utilization of both modes – highway and rail – in Vermont.
- Support Vermont’s economy by providing rail access, as appropriate, to all areas of the state, so that rail can be a strong component of Vermont’s economy.
- Remove current weight and clearance restrictions as appropriate so that Vermont’s railroads will be competitive in today’s North American environment of 286,000 pound gross weight and intermodal railcars.
- Complement the regular operating maintenance efforts of Vermont’s railroads, taking into account each line’s long-term importance and the resources available.
- Develop programs to assist in major rehabilitation or replacement of obsolete bridges, structures, rails and other infrastructure and fixtures required for maintaining current operations.
- Seek adequate and stable funding, including Federal assistance for rail projects, and, assure appropriate staffing to support the Agency’s mission.
- Cooperate with Vermont towns, regions, other state agencies, and interested parties in open communications and public outreach, to seek balance between the needs of the railroads and the human and natural environments.
- Continue to promote efficient rail freight and passenger movement to assure continued environmental, economic, and other benefits inherent in use of the rail mode.
- Strive to maintain the safest possible network of rail infrastructure and operations to assure the safety of Vermont’s communities, natural resources, traveling public and railroad workers.
- Maximize the use of rail system assets owned by the State for the fiscal and economic benefit of the State.
- Preserve rail corridors for future transportation use.

Project Benefits

Operational Efficiencies

The project will provide a new mainline alignment of high-quality and uniform rail structure, adequately supported by new ties, ballast, and improved substructure. New switches and grade crossing signals will facilitate the flow of rail traffic through Montpelier, lessening crossing wait times by decreasing the number of train movements per day.

The establishment of the new alignment will allow for the more efficient passage of inbound and outbound trains, as the old alignment could be used to manage empty.

Rail Safety

The need for a safer alternative mainline will be met by improved track infrastructure, sight distances, state-of-the-art grade crossings and signals, and the bypassing of the two historic bridges. (The latter were adequate for their time, but at 100+ years age, they are not up to the modern load standards

required for today's freight loads.) The improved grade crossings will increase crossing safety, allowing for safe coexistence of trains, trucks, cars, bicycles and pedestrians.

Air Quality and Noise Impacts

Air quality will be improved, as this project is expected to significantly alleviate congestion on the local highways, (as rail freight can replace many trucks), and will have a positive effect on quality of life by decreasing the daily flow of this truck traffic through local neighborhoods.

Noise and vibration impacts will be minimized by fewer train movements per day, and the relocation of the mainline to a less densely-populated alignment.

Job Creation



Reducing Traffic Congestion

The relocation project will alleviate congestion on the local highways, as rail freight can replace many trucks - one freight car can carry the load of 1.5 - 6 tractor-trailers for type of commodities currently being shipped.

Traffic congestion occurs on road networks as use increases, and is characterized by slower speeds, longer trip times, and increased vehicular queuing.

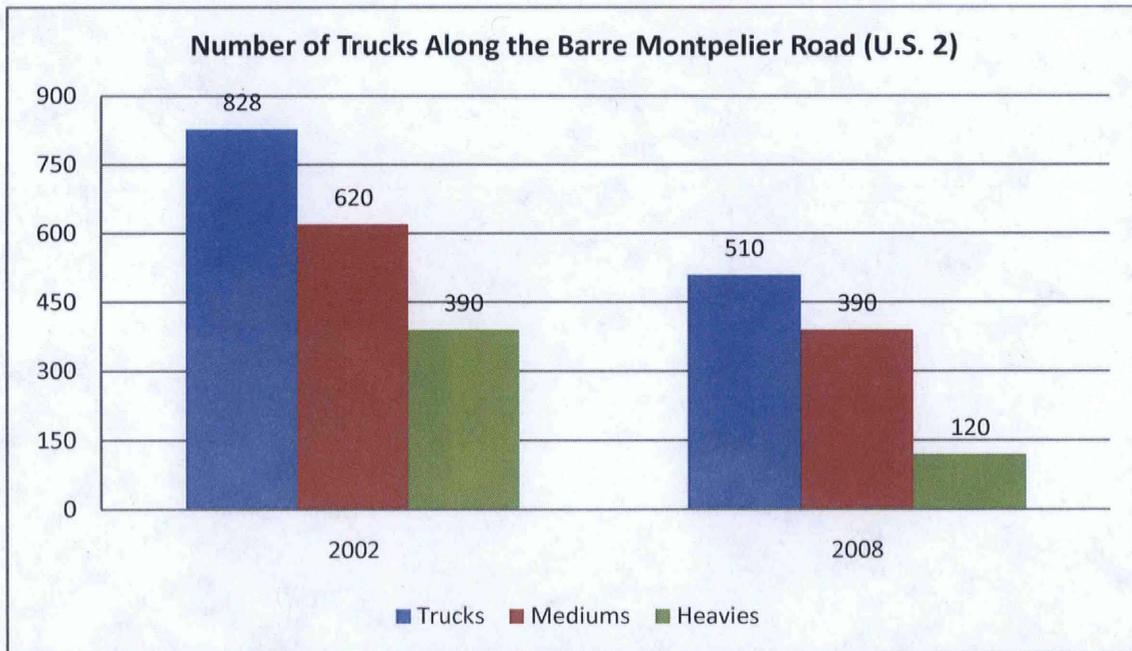
Traffic congestion has a number of negative effects:

- Wasting time of motorists and passengers. As a non-productive activity for most people, congestion reduces regional economic health.
- Delays, which may result in late arrival for employment, meetings, and education, resulting in lost business, disciplinary action or other personal losses.
- Inability to forecast travel time accurately, leading to drivers allocating more time to travel "just in case", and less time on productive activities.
- Wasted fuel increasing air pollution and carbon dioxide emissions owing to increased idling, acceleration and braking.
- Wear and tear on vehicles as a result of idling in traffic and frequent acceleration and braking, leading to more frequent repairs and replacements.
- Stressed and frustrated motorists, thereby reducing the health of motorists
- Emergencies: blocked traffic may interfere with the passage of emergency vehicles traveling to their destinations where they are urgently needed.

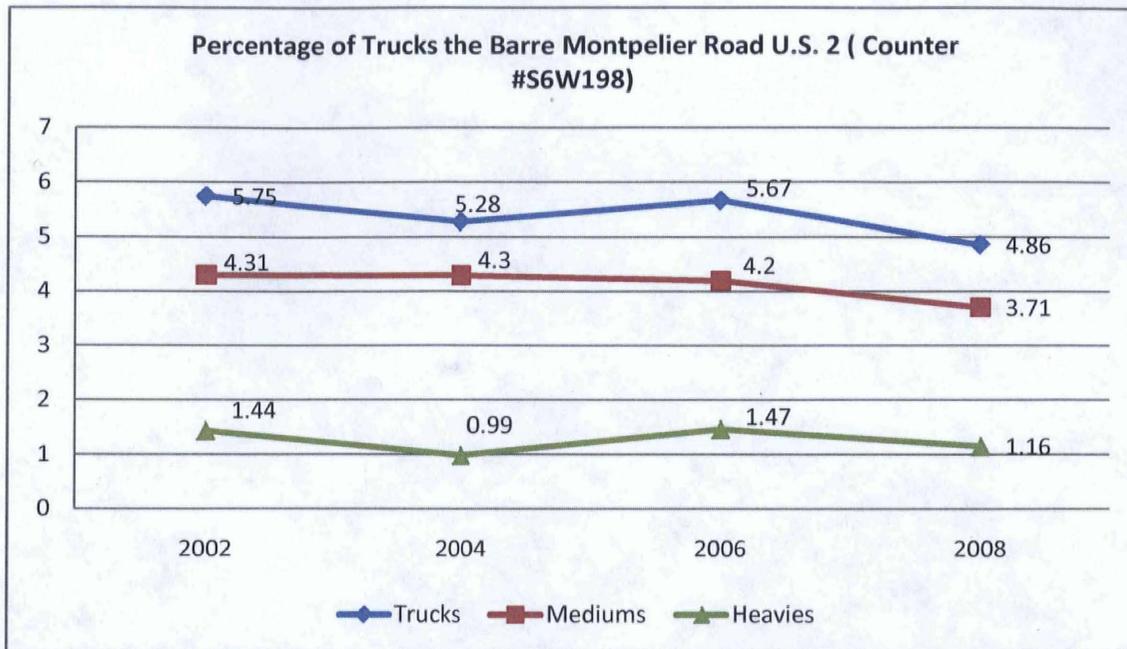
- Spillover effect from congested main arteries to secondary roads and side streets as alternative routes are attempted, which may affect neighborhood quality of life

The Barre-Montpelier Road (U.S. 2) is the major thoroughfare in the area, serving to link Barre and Montpelier, recording between 11,000 to 15,000 Annual Average Daily Traffic (AADT) in the past decade. During peak travel times, the Level of Service drops to F along many intersections. Additionally, much of this traffic spills into VT 12, Montpelier’s Main Street.

Both the total number of trucks and their proportional rate have declined substantially since the introduction of freight rail service along a parallel route. Overall truck numbers declined from 828 in 2002 to 510 in 2008, or 38%. In proportional terms, truck movements decreased from 5.75% of total traffic in 2002 to 4.86% in 2008. How much of this decline can be attributed to WACR rail shipments has not been studied. However, rail shipments have contributed to the decline of truck traffic.

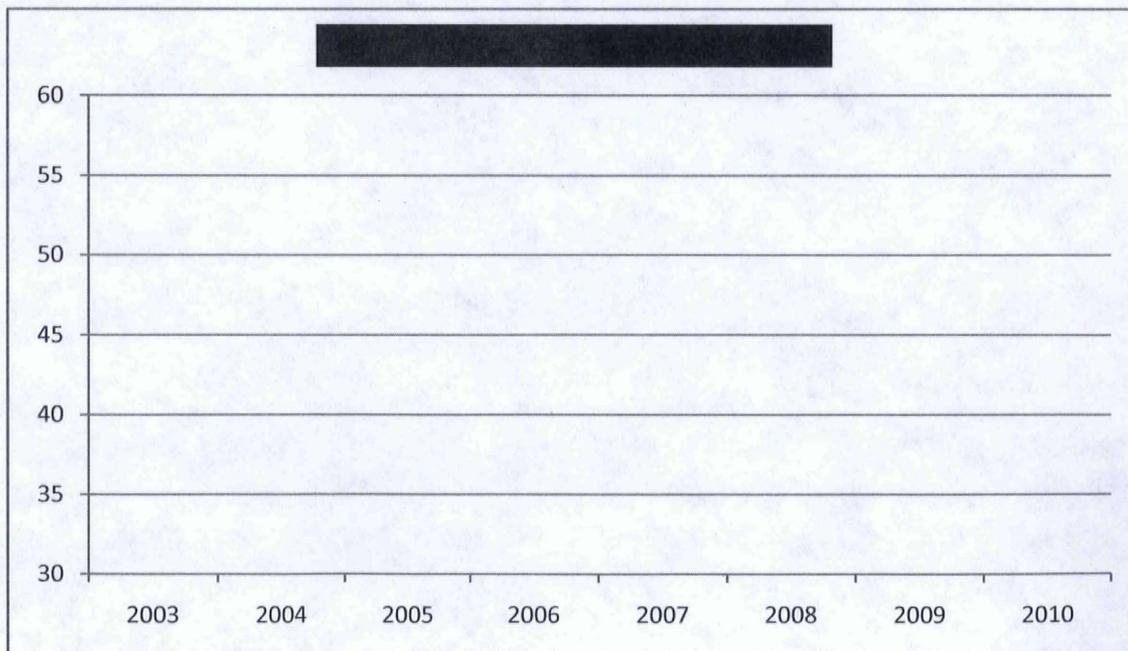


Source: VTrans Automatic Vehicle Classification Report



Source: Calculations VTrans Automatic Vehicle Classification Report

The decline in truck volumes along U.S. 2 has coincided with [REDACTED]

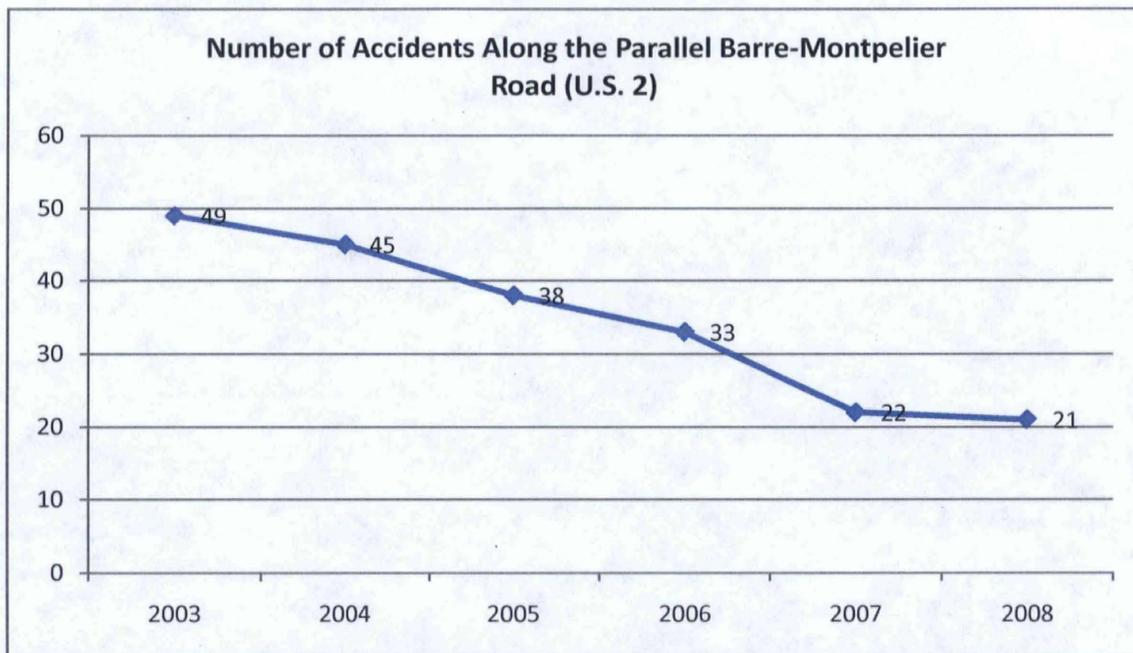


Source: Vermont Rail System

Roadway Safety

Providing a safe transportation system is at the core of VTrans' mission. Decreasing the number of motor vehicle accidents is therefore a major objective of transportation planning and infrastructure investments.

The accident rate along the parallel highway has declined in proportion to the decline in AADT and truck volumes, from a high of 49 in 2003 to 21 in 2008.



Source: VTrans General Yearly Summaries – Crash Listings

Project Scope of Work

Past modifications of the original grade will have to be corrected (including adequate ditching and drainage), clearing and grubbing of the rail bed, approximately 8,048 tons of new ballast place, 2,823 tons of sub-ballast, 4,450 new ties, the installation of 1.32 track miles of 105# replacement rail brought from another project within the state (7,350 t/f), three new switches— one at either end of the new alignment, one diamond, plus one 175-foot highway grade crossing (Barre Street), and one to connect to the spur at WSKI. There is also the need for two private (Ibey and Coniff Properties) and one public crossing (Barre Street).

The tables below identify a line item budget, the scope of construction and activities, and a project schedule:

WACR Realignment Project Budget

| | | | |
|---|------------------|---------------------|---------------------------|
| Administrative & Legal Expenses | | | \$80,000 |
| <u>Construction</u> | | | |
| Track (Sub-Ballast, Ballast, Ties, OTM) | \$1,142,165 | | |
| Culverts, Structures and Drainage | \$526,500 | | |
| Crossings and Switches | <u>\$625,000</u> | | |
| | Sub Total | \$2,293,665 | |
| Contingency (5%) | \$114,683 | | |
| Construction Engineering (8%) | \$183,493 | | |
| | Sub Total | <u>\$298,176</u> | |
| Construction (Including E & C) | | | \$2,591,841 |
| <u>Architectural & Engineering Fees</u> | | | |
| Engineering Design (10%) | | | <u>\$229,366</u> |
| Project Total (100%) | | | <u>\$2,901,207</u> |
| | | Federal Share (90%) | \$2,611,086 |
| | | State Share (10%) | \$290,121 |

WACR Realignment Project Scope of Work

| <u>Description</u> | <u>Item</u> | <u>Length</u> | <u>Cost</u> | <u>Estimate Replacement Cost</u> |
|--------------------------------------|-----------------------|---------------|----------------------|--------------------------------------|
| <u>Track Structure</u> | | | | |
| | Ballast | 8,048 | \$8.80/Ton | \$70,822 |
| | Sub-Ballast | 2,823 | \$8.80/Ton | \$24,842 |
| | Ties | 4,450 | \$70/Tie | \$311,500 |
| | Rail Installation | 7,350 | \$100/TF | <u>\$735,000</u> |
| | | | Sub Total | \$1,142,165 |
| <u>Culverts & Concrete Boxes</u> | | | | |
| Sta. #0+580 | 10' Pipe/Arch | 141 | \$1,500/LF | \$225,000 |
| Sta. #0+930 | 18" HDPE | 40 | \$200/LF | \$10,000 |
| Sta. #1+240 | 16" Stone Slab | 20 | \$450/Sq Ft | \$150,000 |
| Sta. #1+440 | 18" HDPE | 33 | \$200/LF | \$10,000 |
| Sta. #1+800 | 3x3 Stone Box | 60 | \$200/LF | \$12,000 |
| Sta. #2+050 | 3x3 Stone Box | 36 | \$200/LF | \$7,500 |
| Sta. #2+190 | 3x3 Stone Box | 60 | \$200/LF | <u>\$12,000</u> |
| | | | Sub Total | \$426,500 |
| <u>Drainage</u> | | | | |
| | Miscellaneous | | | \$100,000 |
| <u>Switches</u> | | | | |
| Barre Street | 1 | | \$75,000 | \$75,000 |
| US 2 | 2 | | \$75,000 | <u>\$150,000</u> |
| | | | Sub Total | \$225,000 |
| <u>Crossings</u> | | | | |
| Coniff Driveway | Gravel & Timber | | | \$25,000 |
| Ibey Driveway | Gravel & Timber | | | \$25,000 |
| Barre Street | Pavement/Rail Seal | | | <u>\$350,000</u> |
| | | | | \$400,000 |
| | | | Project Total | \$2,293,665 |
| | | | Federal Share (90%) | \$2,064,298 |
| | | | State Share (10%) | \$229,367 |

| Project Schedule | |
|---------------------------|---------------------------------|
| | Time to Complete (in Months) |
| Preliminary Engineering | 12 |
| Final Design | 6 |
| Contracting | 4 |
| Construction & Inspection | 5 |
| Project Closeout | 3 |
| | |

Legal and Technical capacity

The specific statutory authority to build and oversee rail capital investments lies in two titles of Vermont State Statutes that set state policy for railroads, and acquisition & modernization. Title 19 (Chapter 1) § 10e ‘Statement of policy; railroads’ recognizes the importance of passenger rail service as an integral part of the state’s transportation network and directs VTrans to fully integrate it with other modal efforts. This directive includes – among the many policies included – (1) to cooperate with the federal government, other states, and providers of those services, to provide opportunities for rail passenger services; (2) to preserve and modernize for continued railroad service those railroad lines, both within the state of Vermont and extending into adjoining states, which directly affect the economy of the state; and (3) to preserve established railroad rights-of-way for future reactivation of railroad service. This section also directs VTrans to seek federal aid for rail projects that implement policy goals contained in statute. Title 5 (Chapter 58), 3403 § 3403 ‘Acquisition and modernization’ includes specific authority to rebuild any state-owned railroad property and to spend appropriated funds for the modernization of any state-owned railroad property.

VTrans has a significant amount of experience in managing large and complex rail projects. Some examples include:

- FRA HSIPR Track 1 Project (currently), track, roadbed and bridge improvements, \$70 million
- Western Corridor (completed), 2005-08, track, roadbed and bridge improvements, \$7.2 million
- Western Corridor (currently), track, roadbed and bridge improvements, \$23 million
- ABRB, 2002, track, roadbed and bridge improvements, \$16 million
- Burlington Tunnel, 2008, \$1.2 million
- Bellows Falls Tunnel, 2007, \$2.8 million

VTrans' rail budget averages approximately \$20 million annually, of which approximately two thirds is used for capital projects. The Agency's rail staff currently consists of 13 members, and includes project managers, construction and engineering specialists, and administrative support. In addition, VTrans' Rail Section has a number of rail consulting firms on retainer, who undertake design and engineering work on an as-needed basis.

Implementation Plan

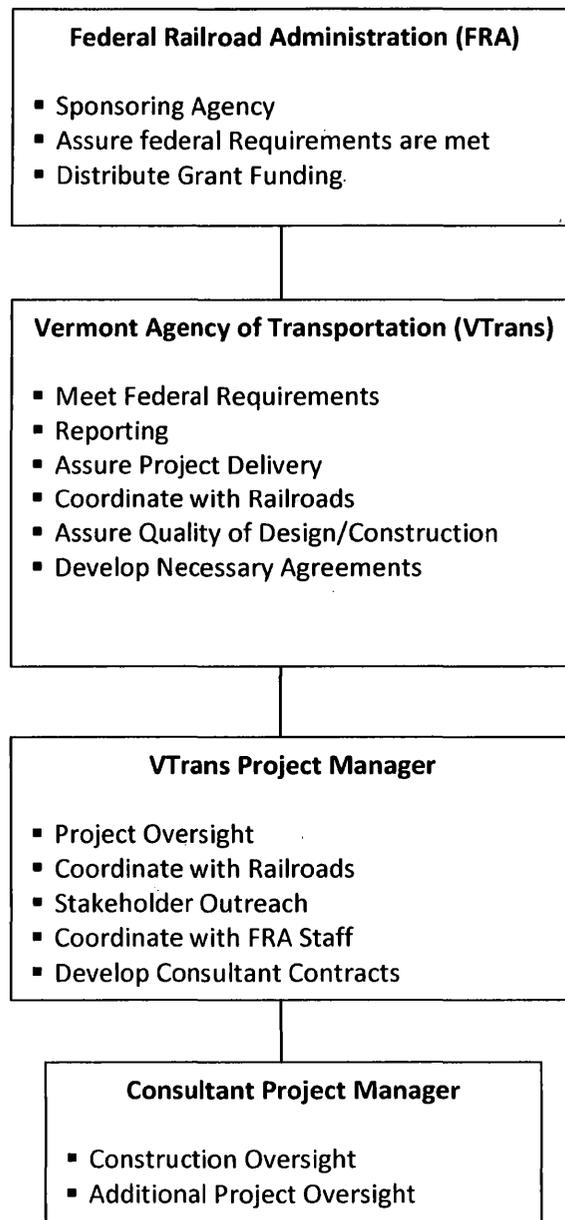
The implementation approach encompasses a number of experienced VTrans transportation staff and relies on consultants when needed to augment and support the VTrans workforce. The VTrans project manager performs the functions necessary to maintain, monitor and verify the project schedule and budget. The implementation plan includes the following:

- Organization, mobilization and direction of the work.
- Execution of design, procurement and construction.
- Project controls, including cost and quality control.
- Coordination and management of the work of consultants and contractors.
- Administration and project procedures.
- Quality assurance.
- Safety and Security.
- Administrative and technical support.

VTrans' Rail Section is responsible for the full range of planning, program management, project management, and technical oversight activities for rail capital projects. The Rail Section – supported by its Division Business Office - currently manages dozens of individual projects. Most recently, rail investments have focused on projects throughout the State to improve railroad network capacity, and improve vertical clearances.

Each rail project is assigned a VTrans project manager and follows a workflow which has several controls and review steps. Consultant managers are used to assist with various technical tasks. VTrans will progress project construction third party bid solicitations. Once construction is authorized, construction reimbursement activities will be performed by VTrans' project manager. VTrans' staff and consultant manager will inspect construction activities to ensure conformance with the plans, specifications and terms of agreements.

Project Management Flow Chart



Project Control Points

VTrans has several controls in place ensure successful project delivery. The Agency has been successfully advertising and awarding construction projects for over 80 years and has had a prime contractor prequalification process in place since 1951. Over the years many safeguards have been put into effect

to protect public investments in transportation infrastructure improvement projects. Outlined below are the key steps that are used as control points for projects.

Monitoring

- Once a signed contract is in place with the construction contractor the responsibility for the project is turned over to the Rail Section's Project Manager, with support from the Agency's Construction Division or a Consultant Manager.
- Based on the size and nature of the project additional staff are assigned to assist the project manager in the day-to-day oversight of the work. The inspectors in the field monitor the contractors' work to ensure it is in conformance with the plans and specifications.
- Field inspectors are trained to ensure safe traffic control practices are being used, environmental regulations are followed, contractors' provide a safe work environment and the general safety and well being of the public is preserved.
- Contractors are only paid for work that meets specifications and is complete as determined by the Agency's project manager and construction staff.
- Bi-weekly estimates are prepared by Agency staff and are processed through a comprehensive payment processing protocol that has been developed to avoid errors and overpayments and to get payment to the contractor in a timely manner. Contractors do not "invoice" the state for payment.
- The Agency has a separate Materials and Research Section, who inspect, sample and test materials used on the job to ensure quality and conformance with the specifications. Many materials provided by the contractor also require submittal of signed and documented material certificates. These also ensure that only quality materials are used on the project. In the case where the "Buy America" provisions apply this is also documented through the material certification process.
- When a project is completed the Construction Division conducts a "final inspection" during which any unacceptable or uncompleted work is noted and a punch list provided to the contractor to take appropriate action. The contractor does not receive final payment until all work has been completed to the satisfaction of the Agency.
- After a project is completed, it goes through a "finals" process. This is a comprehensive check of the quantities, payments and material certifications to ensure all work was completed properly and payments were made correctly.
- The Agency also undergoes an annual external audit of all the programs that use federal funds. These audits can find discrepancies and point out areas of potential weakness and are used to continually upgrade and improve the performance of various monitoring and compliance systems. This is one more step in a series of checks and balances that take place at VTrans to safeguard the public investment and minimize risk.

Financial Control Points

Invoice Verification

- Expenditure accounts (EA) and subjobs are assigned. These contain most of the chart fields required for payment.
- Invoices are verified against the contract and/or grant document.
 - Scope of work
 - Materials

- Payment provisions
- Invoices are verified for compliance with various state statutes and administrative bulletins.
- Adequate funds in budgets are confirmed.

Invoice Approval

- All invoices presented for payment are approved by the following VTrans staff:
 - Project manager
 - Program manager
 - Contract manager
 - Business manager
- The approval is signified by the signature of the approver and the date approved.

Invoice Payment

- Other chartfields are assigned as needed.
 - Object detail or expense account
 - Vendor numbers
- The invoice is entered in the STARS accounting system used by VTrans.
- STARS is interfaced into VISION daily.
 - VISION is the statewide accounting system that generates checks.
- The interface records are reviewed daily by Financial Operations – Accounts Payable.
 - Errors are corrected
- The checks or electronic payments are processed by VISION.
 - VISION generates a warrant of all vouchers to be paid that day.
 - This warrant must be approved by the Commissioner of Finance & Management or his/her designee.

Monitoring & Audits

- All expenditures are reviewed monthly to assure proper coding and purpose.
- Corrections are processed by Financial Operations – Accounting.
- There is a Single Audit performed most years for the federal funds by independent auditors contracted by the State Auditor's Office
- The Transportation fund is audited annually by the State Auditor's Office.

Risk Management

VTrans' average annual budget exceeded \$400 million dollars over the five-year period 2005-2009. For FY2010, including currently available Recovery Act (ARRA) funding, the budget is \$558 million. The Agency has sufficient flexibility to shift funding between projects to accommodate unforeseen cost overruns, and can also shift funding between programs if necessary. Adding to this capability is active budget monitoring process whereby finance and budget staff meet regularly with program management staff (monthly at minimum) to monitor expected costs at a both a project and overall program level of detail. This careful monitoring allows the Agency to identify in advance when and where potential

budgetary adjustments may become necessary, and plan for the changes in advance to avoid sudden and more disruptive funding shifts.

Vermont also recently enacted legislation that adds infrastructure assessments to sales of motor fuels – diesel and gasoline – that are dedicated exclusively to long term transportation infrastructure investments. These assessments have the additional advantage of serving as a dedicated revenue source to pay debt service on revenue bonds for transportation investments if necessary. The potential for issuing bonds if needed provides additional capacity, if needed, to accommodate unforeseen project and program cost overruns.

The primary non-federal sources for Vermont’s transportation budget include transportation motor fuel infrastructure funds (mentioned above) and the transportation fund. Although transportation source revenues have experienced some decline recently, the state typically seeks regular increases in motor vehicle fees – a major component of the fund – on a three year cycle. Thus revenues are regularly increased to accommodate for inflation at a minimum. Moreover, to protect against annual revenues fluctuations, the state maintains a transportation fund stabilization reserve equal to five percent of the prior fiscal year level of transportation fund appropriations.

Grantee risk: State governments in general are tasked in these difficult economic times to do more with less. Vermont is no exception. As such, there is a risk that VTrans will be unable to find adequate human resources to accomplish what we plan to achieve. In recent years, VTrans has been required to identify over 40 positions (out of a total of approximately 1,300) to reduce and give up through normal attrition. The Agency is mitigating this risk by actively managing the process, and evaluating business processes that can be streamlined, coordinated, or consolidated to minimize the impact of a reduced workforce. In addition, VTrans has multi-year consultant contracts that assist in managing workflow.

Funding risk: Like other states, Vermont faces the challenge of revenues not keeping pace with the demand to improve transportation infrastructure. This challenge poses a risk that sufficient funding will not be available to address growing needs. Vermont has taken several steps to mitigate this risk. Most recently, as indicated above, the Agency has new motor fuel assessments that provide dedicated additional revenues for transportation infrastructure, and also serve as a dedicated source for issuing revenue bonds if needed to assist in meeting transportation needs.

VTrans is also actively initiating and implementing asset management techniques to facilitate optimal utilization of available resources, including a system of project prioritization to assist in prioritizing investments. In recent years, the Agency embarked on an initiative dubbed “The Road to Affordability.” The primary components The Road to Affordability include:

1. Realignment of priorities:
 - a. Focus on traveler safety and preservation of the existing infrastructure.
 - b. Optimizing resources by focusing on a practical number of large projects.
 - c. Setting realistic timetables for large projects and new roadway segments.
2. Rethinking project focus:
 - a. Require a “back-to-basics” approach by limiting project amenities not related to preservation, traveler safety, or environmental protection.
 - b. Require innovative-financing approach for proposed new roadway segment projects and incorporate “Just-in-time delivery” of design, right-of-way, and permitting.

Stakeholder risk: Groups and individuals responsible for avoiding or mitigating identified risks are listed in the Risk Assessment & Management Worksheet and include:

- Vermont Agency of Transportation (project implementer)
- Vermont Railway (rail operator)
- Consultant Project Team

VTrans and all stakeholders have continually demonstrated an ongoing and firm commitment to the present and the future of rail in Vermont. In fact, the latest transportation capital bill passed last session (Act 50 of 2009, Section 21) requires that VTrans apply for a grant(s) to improve the state's rail corridors.

Costs and Benefits

Pursuant to 49 CFR 262.11(b), the following anticipated costs, private benefits, and public benefits have been identified:

Costs

- \$2,901, 207 (total project cost)

Private Benefits

- Increased operating efficiency
- Increased capacity
- New freight shipping opportunities

Public Benefits

- Increased rail line safety
- Job Creation [REDACTED]
- Reduced traffic congestion ([REDACTED])
- Positive impact on air quality (decreased emissions and energy use resulting from increased use of rail freight, including diesel use differential between rail and trucks)
- Increased roadway safety

VTrans consulted the rail operator to determine private benefits as well as estimates of future granite transportation needs. The public benefits – some readily quantifiable while others apparent but difficult to monetize – were also derived with input from the rail operator.

In the opinion of VTrans, the benefits associated with this project significantly outweigh its costs.

Anticipated Environmental or Historical Property Impacts

A Categorical Exclusion for this project has been filed with FRA. VTrans has considered the potential environmental consequences of the project in accordance with the National Environmental Policy Act (NEPA). The project will not involve substantial planning, resources, or expenditures; nor is it likely to induce significant alterations in land use, planned growth, development patterns, traffic volumes, or traffic patterns. No significant environmental impact is expected to result from construction or maintenance of this facility and therefore qualifies for a Categorical Exclusion in accordance with NEPA.

Reestablishing rail service on this segment of track has some connections to two existing permitted projects. The first is Berlin-Montpelier Bike Path EH96(16), that involves construction of a bike path from Granite Street in Montpelier to the Ames Shopping Plaza on Route U.S. 2 in Berlin, with a spur to the Central Vermont Civic Center on Gallison Hill Road in Montpelier. The proposed rail project proposes to use a 1.32 mile segment of inactive rail line that is currently being proposed for the bike path. The Pioneer Street Bridge, now in storage, has also been committed for use on the bike path as a multi-modal crossing over the Winooski River. However, only a portion of the bike path alignment (1.32M) is affected by the rail project and does not include the area where the Pioneer Street Bridge is to be relocated. VTrans Local Transportation Facilities has indicated that the path could go forward, but would need a new alignment in that area of the re-established rail service.

The second project affected is the Montpelier Pioneer Street Bridge replacement BRP 6400(29). The 140', 1927 Pratt design Pioneer Street truss bridge is scheduled for use on the above-described bike path as a crossing over the Winooski River and a commitment was made to that effect in the March 06, 1998 MOA governing the bridge replacement project. VTrans intends to honor this commitment through redesign of the bike path project in consultation with the Cities of Montpelier and Berlin.

ATTACHMENT 6

VERIFIED STATEMENT

OF

JOSHUA D. MARTINEAU

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT-OF-WAY
IN THE CITY OF MONTPELIER, VERMONT

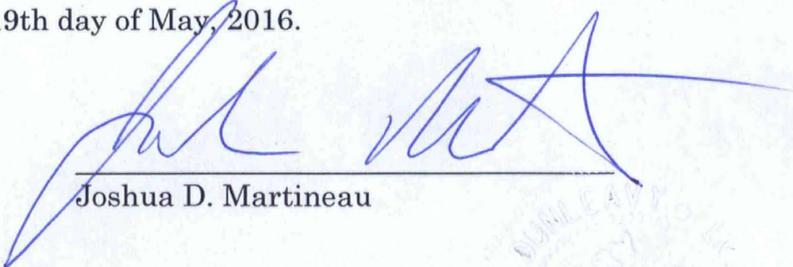
VERIFIED STATEMENT OF JOSHUA D. MARTINEAU

1. My name is Joshua D. Martineau. I am employed by the Vermont Agency of Transportation ("VTrans") Rail Section as a civil engineer.

2. The purpose of this Verified Statement is to confirm that the stockpiles of 105# rails and other track material ("OTM") identified in VTrans' October 2010 application to the Federal Railroad Administration ("FRA") for a \$2.6 million grant under the FRA's Rail Line Relocation and Improvement Capital Grant Program ("RLR") remain intact and in storage at the Barre, Vermont yard of the Washington County Railroad Company ("WACR")

3. I took the photographs attached hereto as Exhibit A on May 19, 2016. They depict the two stockpiles of 105# rail and OTM in the WACR's Barre, Vermont yard.

Dated at Montpelier, Vermont, this 19th day of May, 2016.


Joshua D. Martineau

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

Subscribed and sworn to before me,

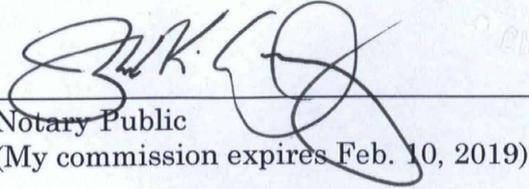

Notary Public
(My commission expires Feb. 10, 2019)

EXHIBIT A



105# Rail/OTM Stockpile "A"
Washington County Railroad
Barre, Vermont Yard
May 19, 2016



105# Rail/OTM Stockpile "B"
Washington County Railroad
Barre, Vermont Yard
May 19, 2016