

John H. Chafee

BLACKSTONE RIVER VALLEY

National Heritage Corridor Commission



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L7619

October 25, 2002

Mr. Vernon A. Williams, Secretary
US Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street N.W.
Washington, DC 20423-0001



Re: LB Railco, Inc. Proposed Solid Waste Transload Facility
Millbury, Massachusetts

Mr. Williams:

I recently was made aware of a project by LB Railco, Inc., a federally-chartered railroad, to be located within the John H. Chafee Blackstone River Valley National Heritage Corridor. Congress established this unit of the National Park system in 1986 through Public Law 99-647 to protect and interpret the nationally significant landscape representing the birthplace of America's Industrial Revolution. A federal Commission was also established to provide a management framework for the 24 communities, and States of Massachusetts and Rhode Island to help conserve important natural and cultural resources of the Blackstone Valley. Section 9 of P.L. 99-647 states that "any Federal entity conducting or supporting activities directly affecting the Corridor shall consult with the Secretary of the Interior and the Commission with respect to such activities," so that those activities can be conducted, to the maximum extent practicable, in a manner that avoids an adverse effect on the National Heritage Corridor.

It is our understanding that the project proponent, LB Railco, Inc. is proposing to construct and operate a Solid Waste Transload Facility within the Town of Millbury on land within 50 feet of the Blackstone River owned by the Providence & Worcester Railroad and C&S Lumber Company. The National Heritage Corridor Commission would like to request that the proposed development plans be forward to:

John H. Chafee Blackstone River Valley National Heritage Corridor Commission
One Depot Square
Woonsocket, Rhode Island 02895

Our concern is that the process, so far, has avoided the opportunity to study prudent and feasible alternatives, or consider other designs to lessen or avoid environmental impacts. Please note that the Act establishing the National Heritage Corridor is explicit in that the Commission shall not



interfere with local zoning or private property. The Commission has a very positive relationship with the Providence & Worcester Railroad and supports economic development along the rail line and with Corridor communities. Typically, the Corridor Commission would not respond to these types of inquiries concerning private development but the letter from LB Railco to the Town of Millbury indicating their status as a "federally chartered railroad" and their exemption from state and local ordinances and regulations raises the question of the federal review process.

An attorney consulting for LB Railco indicated in a letter provided to the Town of Millbury and Massachusetts State agencies that they plan to file a new exemption for the Millbury project. They are apparently viewing this as an expansion of its existing operations, which were authorized by the Surface Transportation Board on December 29, 2000 (Docket No. 33985) as an exemption to lease and operate lines from the San Francisco Port Commission. The proposed project in Millbury, MA appears substantially different from the San Francisco operation in that it involves construction of a new facility. This would appear to trigger an environmental and historic review process as defined under 49 CFR 1150.

Thank you for the opportunity to make you aware of our concerns. I would like to ask that you contact me when you receive a filing for this project so that we can discuss the process for review.

Sincerely,

Michael Creasey
Executive Director

2 Attachments:

1. Public Law 99-647
2. LB Railco Advisory Letter, August 28, 2002 excerpt from St.Germain & Assoc., Inc., dated September 16, 02

cc: Victoria Rutson, Surface Transportation Board

Public Law 99-647
99th Congress

An Act

To establish the Blackstone River Valley National Heritage Corridor in
Massachusetts and Rhode Island.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

ESTABLISHMENT OF NATIONAL HERITAGE CORRIDOR

SECTION 1. That for the purpose of preserving and interpreting for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, waterways and structures within the Blackstone River Valley in the States of Massachusetts and Rhode Island there is hereby established the Blackstone River Valley National Heritage Corridor (hereafter in this Act referred to as the "Corridor"). It is the purpose of this Act to provide a management network to assist the States of Massachusetts and Rhode Island and their units of local government in the development and implementation of integrated cultural, historical and land resource management programs in order to retain, enhance and interpret the significant values of the lands, waters and structures of the Corridor.

BOUNDARIES AND ADMINISTRATION

SEC. 2. (a) BOUNDARIES.--The boundaries shall include those lands generally depicted on a map entitled Blackstone River Valley National Heritage Corridor, numbered BRV-80-80,000 and dated October 1986. The map shall be on file and available for public inspection in the office of the Department of the Interior in Washington, DC and the Massachusetts and Rhode Island Departments of Environmental Management. The Secretary of the Interior (hereafter referred to as the "Secretary") shall publish in the Federal Register, as soon as practical after the date of enactment of this Act a detailed description and map of the boundaries established under this subsection.

(b) Administration.--The Corridor shall be administered in accordance with the provisions of this Act.
PUBLIC LAW 99-647-NOV. 10, 1986

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Sec. 3. (a) ESTABLISHMENT.--There is hereby established a commission to be known as the Blackstone River Valley National Heritage Corridor Commission (hereafter known as the "Commission") whose purpose shall be to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters as specified in section 2.

(b) MEMBERSHIP.--The Commission shall be composed of nineteen members appointed by the Secretary as follows:

- (1) the Director of the National Park Service, ex officio, or a delegate;
- (2) six individuals nominated by the Governors of Rhode Island and Massachusetts and appointed by the Secretary, who shall be the Department of Environmental Management Directors from Rhode Island and Massachusetts, the State Historic Preservation Officers from Massachusetts and Rhode Island, and the Department of Economic Development Directors from Massachusetts and Rhode Island;
- (3) four representatives of local government from Massachusetts and four from Rhode Island nominated by the Governor of their State and appointed by the Secretary, to represent the interests of local government; and
- (4) two individuals, nominated by the Governor of Massachusetts and two individuals nominated by the Governor of Rhode Island appointed by the Secretary, to represent other interests each Governor deems appropriate.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) TERMS.--Members of the Commission shall be appointed for terms of three years.

(d) COMPENSATION.--Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(e) CHAIRPERSON.--The chairperson of the Commission shall be elected by the members of the Commission.

(f) QUORUM.--(1) Ten members of the Commission shall constitute a quorum but a lesser number may hold hearings.

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(2) Any member of the Commission may vote by means of a signed proxy exercised by another member of the Commission, but any member so voting shall not be considered present for purposes of establishing a quorum.

(3) The affirmative vote of not less than ten members of the Commission shall be required to approve the budget of the Commission.

(g) MEETINGS.--The Commission shall meet at least quarterly at the call of the chairperson or ten of its members. Meetings of the Commission shall be subject to section 552b of title 5, United States Code (relating to open meetings).

STAFF OF THE COMMISSION

SEC. 4. (a) STAFF.--(1) The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out its duties.

(2) Staff appointed by the Commission--

(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(B) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

b) EXPERTS AND CONSULTANTS.--Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.--(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out the Commission's duties.

(2) The Commission may accept the services of personnel detailed from the States of Massachusetts and Rhode Island (and any political subdivision thereof) and may reimburse that State or political subdivision for those services.

POWERS OF THE COMMISSION

- SEC. 5. (a) HEARINGS.-(1) The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.
- (2) The Commission may not issue subpoenas or exercise any subpoena authority.
- (b) POWERS OF MEMBERS AND AGENTS.-Any member or agent of the Commission, if so authorized by the Commission, may take any action which the Commission is authorized to take by this Act.

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- (c) ADMINISTRATIVE SUPPORT SERVICES.-The Administrator of General Services shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.
- (d) MAILS.-The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.
- (e) USE OF FUNDS TO OBTAIN MONEY.-The Commission may use its funds to obtain money from any source under any program or law requiring the recipient of such money to make a contribution in order to receive such money.
- (f) GIFTS.-(1) Except as provided in subsection (g)(2)(B), the Commission may, for purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.
- (2) For purposes of section 170(c) of the Internal Revenue Code of 1954, any gift to the Commission shall be deemed to be a gift to the United States.
- (g) ACQUISITION OF REAL PROPERTY.-(1) Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c), the Commission may not acquire any real property or interest in real property.
- (2) Subject to paragraph (3), the Commission may acquire real property, or interests in real property, in the Corridor-
- (A) by gift or devise; or
- (B) by purchase from a willing seller with money which was given or bequeathed to the Commission on the condition that such money would be used to purchase real property, or interest in real property, in the Corridor.
- (3) Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public or private land managing agency, as determined by the Commission. Any such conveyance shall be made-
- (A) as soon as practicable after such acquisition;
- (B) without consideration; and
- (C) on the condition that the real property or interest in real property so conveyed is used for public purposes.
- (h) COOPERATIVE AGREEMENTS.-- For the purposes of carrying out the plan, the Commission may enter into cooperative agreements with the State of Massachusetts and the State of Rhode Island, with any political subdivision of each State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State of Massachusetts and the State of Rhode Island, such political subdivision, or such person which may affect the implementation of the plan.
- (i) ADVISORY GROUPS.-The Commission may establish such advisory groups as the Commission deems necessary to ensure open communication with, and assistance from, the

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State of Massachusetts and the State of Rhode Island, political subdivisions of the State of Massachusetts and the State of Rhode Island, and interested persons.

DUTY OF THE COMMISSION

- SEC. 6. (a) PREPARATION OF PLAN.-Within one year after the Commission conducts its first meeting, it shall submit a Cultural Heritage and Land Management Plan to the Secretary and the Governors of Massachusetts and Rhode Island for review and approval for ninety days. The plan shall be based on existing State plans, but shall coordinate those plans and present a unified historic preservation and interpretation plan for the Corridor. The plan shall--
- (1) provide an inventory which includes any property in the Corridor which should be preserved, restored, managed, developed, maintained, or acquired because of its national historic or cultural significance;
- (2) establish standards and criteria applicable to the construction, preservation, restoration, alteration, and use of all property within the Corridor;
- (3) develop an historic interpretation plan to interpret the history of the valley;
- (4) contain policies for land use management which consider and detail the application of appropriate land and water management techniques, including but not limited to local zoning, use of easements and development of intergovernmental cooperative agreements, so as to protect the Corridor's historical, cultural, scenic and natural resources and enhance water quality of the Blackstone River in a manner consistent with supporting economic revitalization efforts;
- (5) contain a coordination and consistency component which details the ways in which local, State and Federal programs may best be coordinated to promote the purpose of this Act; and
- (6) contain a program for State and local government implementation of the plan.
- (b) APPROVAL OF THE PLAN.-- (1) No plan submitted to the Secretary under this section shall be approved unless the Secretary finds that the plan, if implemented, would adequately protect the plan significant historical and cultural resources of the Corridor and consistent with such protection provide adequate and appropriate outdoor recreational opportunities and economic activities within the Corridor.
- (2) In determining whether or not to approve the Plan, the Secretary shall consider whether:
- (A) the Commission has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the plan;
- (B) he has received adequate assurances from appropriate State officials that the recommended implementation program identified in the plan will be initiated within a reasonable time after the date of approval of the plan and such program will ensure effective implementation of the State and local aspects of the plan.
- (3) If the Secretary disapproves the plan, he shall advise the Commission in writing of the reasons therefore and shall indicate any recommendations for revisions. Following completion of any necessary revisions to the plan, the Secretary shall have forty-five days to either approve or disapprove the plan.
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- (c) IMPLEMENTATION OF THE PLAN.--(1) After review and approval of the plan by the Secretary and the Governors of Massachusetts and Rhode Island as provided in subsections (a) and (b) the Commission shall give priority to actions which assist in--
- (A) preserving and interpreting the historic resources of the valley;
- (B) completing State and local parks in the Corridor; and
- (C) supporting public and private efforts in economic, revitalization consistent with the goals of the Cultural Heritage Plan.
- (2) Priority actions to be carried out under paragraph (1) shall include--
- (A) assisting the States in appropriate preservation treatment of the Blackstone Canal;
- (B) assisting the States in designing, establishing, and maintaining visitor centers and other interpretive exhibits in the Corridor;
- (C) encouraging private landowners adjacent to the canal or river to retain or reestablish, where possible, vegetative, or other buffers as specified in the State park plans;
- (D) assisting in the enhancement of public awareness of an appreciation for the historical and architectural and geological resources and sites in the Corridor;
- (E) the State or any local government or any non-profit organization in the restoration of any historic building in the Corridor;

- (F) encouraging, by appropriate means, enhanced economic and industrial development in the Corridor consistent with the goals of the plan;
- (G) encouraging local governments to adopt land use policies consistent with the goals of the State park and the plan and to take actions to implement those policies; and
- (H) ensuring that clear, consistent signs identifying access points and sites of interest is put in place.

TERMINATION OF COMMISSION

SEC. 7. (a) TERMINATION.--Except as provided in subsection (b), the Commission shall terminate on the day occurring five years after the date of the date of the enactment of this Act.

(b) EXTENSION.--The Commission may be extended for a period of not more than five years beginning on the day referred to in subsection (a) if, not later than one hundred and eighty days before such day--

- (1) the Commission determines such extension is necessary in order to carry out the purpose of this Act;
- (2) the Commission submits such proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

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(3) the Governor of Massachusetts, the Governor of Rhode Island, and the Secretary each approve such extension.

DUTIES OF THE SECRETARY

SEC. 8. (a) PURPOSE.--To carry out the purpose of this Act, the Secretary shall assist the Commission in preparing the Cultural Heritage and Land Management Plan. Following approval of the plan as provided under section 6 (a) and (b) the Secretary shall assist the Commission to design and fabricate interpretive materials based on the plan including--

- (A) guide brochures for exploring the heritage story of the valley by automobile, train, bicycle, boat, or foot;
- (B) visitor displays (including video presentations) at several locations well distributed along the Corridor, including both indoor and outdoor displays; and
- (C) a mobile display depicting the heritage story to be used in the park, public buildings, libraries, and schools.

(b) Technical Assistance.--The Secretary shall, upon request of the Commission, provide technical assistance to the Commission in the preparation of the plan and for implementing the plan as set out in section 6(c).

DUTIES OF OTHER FEDERAL ENTITIES

Sec. 9. Any Federal entity conducting or supporting activities directly affecting the Corridor shall--

- (1) consult with the Secretary and the Commission with respect to such activities;
- (2) cooperate with the Secretary and the Commission in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and
- (3) to the maximum extent practicable, conduct or support such activities in a manner which the Commission determines will not have an adverse effect, on the Corridor.

AUTHORIZATION OF APPROPRIATIONS

Sec. 10. There is authorized to be appropriated annually to the Commission \$250,000 for the next five fiscal years to carry out the purposes of this Act, except that the Federal contribution to the Commission shall not exceed 50 percent of the annual operating costs of the Commission.

Approved November 10, 1986.
PUBLIC LAW 99-647-NOV. 10, 1986

LEGISLATIVE HISTORY--S.1374:

SENATE REPORTS: No. 99-488 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD. Vol. 132 (1986):

Oct. 8, considered and passed Senate.
Oct. 15, considered and passed House, amended.
Oct. 17, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS: Vol. 22 (1986):
Nov. 10, Presidential Statement.
PUBLIC LAW 101-441-OCT. 18, 1990

Public Law 101-441
101st Congress

An Act

To amend Public Law 99-647, establishing the Blackstone River Valley National Heritage Corridor Commission, to authorize the Commission to take immediate action in furtherance of its purposes and to increase the authorization of appropriations for the Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. IMPLEMENTATION OF THE PLAN.

Section 8 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note) (hereinafter referred to as the "Act"), is amended by inserting the following at the end thereof:

"(C)(1) In furtherance of the purposes of this Act, the Secretary is authorized to undertake a limited experimental program of financial assistance for the purpose of providing demonstration funds for projects within the corridor which exhibit national significance or provide a wide spectrum of historic, recreational, or environmental education opportunities to the general public in a manner consistent with the purposes of this Act.

"(2) Applications for funds under this section shall be made to the Secretary through the Commission. Each application shall include the recommendation of the Commission and its findings as to how the project proposed to be funded will further the purposes of this Act.

"(3) The Secretary is authorized to provide funds for the following purposes-

"(A) preservation and restoration of properties on or eligible for inclusion on the National Register of Historic Places;

"(B) design and development of interpretive exhibits to encourage public understanding of the resources of the Blackstone Valley; and

"(C) cultural programs and environmental education programs related to environmental awareness or historic preservation.

"(4) Funds made available pursuant to this subsection shall not exceed 50 percent of the total costs of the project to be funded. In making such funds available, the Secretary shall give consideration to projects which provide a greater leverage of Federal funds. Any payment made shall be subject to an agreement that conversion, use, or disposal of the project so assisted for purposes contrary to the purposes of this Act, as determined by the Secretary, shall result in a right of the United States of compensation of all funds made

PUBLIC LAW 101-441-OCT. 18, 1990

available to such project or the proportion of the increased value of the project attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater."

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Act is amended by inserting "(a)" after "Sec. 10.i, striking "\$250,000 for the next five fiscal years" and inserting "\$350,000 for each year in which the Commission is in existence" and inserting at the end thereof the following:

"(b) DEMONSTRATION.-There are authorized to be appropriated to carry out the provisions of section 8(c), \$1,000,000 annually for fiscal years 1991, 1992, and 1993, to remain available until expended."

Approved October 18, 1990.

LEGISLATIVE HISTORY-S. 830:

HOUSE REPORTS: No. 101-712 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 101-63 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD:
Vol. 135 (1981): July 14, considered and passed Senate.
Vol. 136(1990): Sept. 17, considered and passed House, amended.
Oct. 3, Senate concurred in House amendment.

PUBLIC LAW 104-333-NOV. 12, 1996

110 STAT. 4201

TITLE IX-HERITAGE AREAS

SEC. 901. BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR.

- (a) BOUNDARY CHANGES.-Section 2 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by striking the first sentence and inserting the following new sentence: "The boundaries shall include the lands and water generally depicted on the map entitled 'Blackstone River Valley National Heritage Corridor Boundary Map', numbered BRV-80-80.011, and dated May 2, 1993."
- (b) TERMS.-Section 3(c) of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by inserting before the period at the end the following: ", but may continue to serve after the expiration of this term until a successor has been appointed".
- (c) REVISION OF PLAN - Section 6 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:
- i(d) REVISION OF PLAN. - (1) Not later than 1 year after the date of the enactment of this subsection, the Commission, with the approval of the Secretary, shall revise the Cultural Heritage and Land Management Plan. The revision shall address the boundary change and shall include a natural resource inventory of areas or features that should be protected, restored, managed, or acquired because of their contribution to the understanding of national cultural landscape values.
- "(2) No changes other than minor revisions may be made in the approved plan as amended without the approval of the Secretary. The Secretary shall approve or disapprove any proposed changes in the plan, except minor revisions, in accordance with subsection (b)."
- (d) EXTENSION OF COMMISSION. - Section 7 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows:

iSEC. 7. TERMINATION OF COMMISSION.

"The Commission shall terminate on the date that is 10 years after the date of enactment of this section."

(e) IMPLEMENTATION OF PLAN - Subsection (c) of section 8 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows:

"(c) IMPLEMENTATION.- (1) To assist in the implementation of the Cultural Heritage and Land Management Plan in a manner consistent with purposes of this Act, the Secretary is authorized to undertake a limited program of financial assistance for the purpose of providing funds for the preservation and restoration of structures on or eligible for inclusion on the National Register of Historic Places within the Corridor which exhibit national significance or provide a wide spectrum of historic, recreational, or environmental education opportunities to the general public.

"(2) To be eligible for funds under this section, the Commission shall submit an application to the Secretary that includes-

"(A) a 10-year development plan including those resource protection needs and projects critical to maintaining or interpreting the distinctive character of the Corridor; and

"(B) specific descriptions of annual work programs that have been assembled, the participating parties, roles, cost estimates, cost-sharing, or cooperative agreements necessary to carry out the development plan.

"(3) Funds made available pursuant to this subsection shall not exceed 50 percent of the total cost of the work programs.

"(4) In making the funds available, the Secretary shall give priority to projects that attract greater non-Federal funding sources.

"(5) Any payment made for the purposes of conservation or restoration of real property or structures shall be subject to an agreement either-

"(A) to convey a conservation or preservation easement to the Department of Environmental Management or to the Historic Preservation Commission, as appropriate, of the State in which the real property or structure is located; or

"(B) that conversion, use, or disposal of the resources so assisted for purposes contrary to the purposes of this Act, as determined by the Secretary, shall result in a right of the United States for reimbursement of all funds expended upon such resources or the proportion of the increased value of the resources attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater.

"(6) The authority to determine that a conversion, use, or disposal of resources has been carried out contrary to the purposes of this Act in violation of an agreement entered into under paragraph (5)(A) shall be solely at the discretion of the Secretary."

(f) LOCAL AUTHORITY. - Section 5 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

110) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED. - Nothing in this Act shall be construed to affect or to authorize the Commission to interfere with-

"(1) the rights of any person with respect to private property; or

"(2) any local zoning ordinance or land use plan of the Commonwealth of Massachusetts or any political subdivision of the Commonwealth."

(g) AUTHORIZATION OF APPROPRIATIONS. - Notwithstanding any other provisions of law regarding limitations on funding for heritage areas,

section 10 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), as amended, is further amended:

(1) in subsection (a), by striking "\$350,000" and inserting "\$650,000"; and

(2) by amending subsection (b) to read as follows:

"(b) DEVELOPMENT FUNDS. - For fiscal year 1996, 1997, and 1998, there is authorized to be appropriated to carry out section 8(c) not to exceed \$5,000,000."

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CONFIDENTIAL

August 28, 2002

William W. Gay, Chief Financial Officer
LB Railco, Inc.
600 Mamaroneck Avenue, Suite 427
Harrison, N.Y. 10528
Fax: 914-381-8571

Re: Millbury Massachusetts

Dear Mr. Gay:

You have asked me to review the interstate commerce and rail transportation legal issues related to LB Railco's establishing a transport operation on lands leased by LB Railco, Inc. from the Providence and Worcester Railroad (P&W) and C&S Lumber in Millbury, Massachusetts. I understand that the operation will receive C&D waste and non-hazardous contaminated soils by truck. These products will be unloaded from the truck into a bin or other sort of containment device or pad and will then be immediately transloaded to rail cars by an appropriate machine of some sort. I understand that the purpose of the containment device and loading machine is to facilitate the proper loading of the rail cars. The rail cars will be shipped by rail to remote locations where the cargos will be delivered to a landfill operator. LB Railco will contract directly with waste generators and will hire truckers to pick up the waste and to deliver it to the proposed facility. LB Railco is a rail common carrier and will accept cargos delivered to the facility by truckers retained by shippers. In either case LB Railco will issue a bill of lading from its point of origin to its point of delivery including the highway, transload and rail services it provides.

This letter is to advise you as the applicability of local regulations to your proposed operation and whether any local regulation can bar local shippers and truckers from using your facility.

49 U.S.C. §10501(b) grants to the Surface Transportation Board exclusive jurisdiction over rail carriers and provides that the remedies provided in the Act with respect to regulation of rail transportation are exclusive and preempt the remedies provided under any other Federal or any State Law. 49 U.S.C. § 11321(a) defines the scope of the authority of the Surface Transportation Board. It then states that "a rail carrier...is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier...hold, maintain and operate property...acquired through..." (a transaction approved or exempt from approval by the Board) See: City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). The courts of the United States have held that the exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. v. American Train Dispatchers Assn. 499 U.S. 117, 127-34. (1991) "The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996).

LB Railco is a rail carrier, having received authority to operate from the Surface Transportation Board effective December 29, 2000. Finance Docket No. 33985. Thus, LB Railco is an entity under the Board's jurisdiction. It must, as part of the proposed operation, file a new exemption to commence the Millbury operation as that is an expansion of its operations.

While LB Railco's transload operation is confined to the property in Millbury, that operation is but part of the movement covered by the bills of lading. Where a movement of cargo is by multiple modes, such as truck and then rail, as you contemplate, but under a single bill of lading, it is an intermodal move. If the bill of lading is issued by LB Railco either in its own right or as agent for P&W, the entire move is a rail move from point of origin to point of destination, such points to be determined by the shipping document. The jurisdiction of the STB extends to "...a person providing common carrier railroad transportation for compensation" or engaged in services related to that movement. i.e., the "receipt, delivery, elevation,"..." transfer in transit."..."handling" of property, 49 U.S.C. § 10102(9)(B). As LB Railco is engaged exclusively in handling freight in a continuous intermodal rail move then, that entire movement, including highway pick-up and delivery service commissioned by LB Railco is a rail move exclusively controlled by the STB. Central States Motor Freight Bureau Inc. v. Interstate Commerce Commission, 924 F. 2d 1099,1102 (D.C. Cir. 1991).

The prohibition on local efforts to regulate railroad operations was resoundingly upheld this June by the U.S. District Court for the District for Massachusetts. In ordering the Town of Ayer, Massachusetts to pay the attorney's fees of the Boston and Maine Railroad the Court stated, "By conferring exclusive jurisdiction over railroad matters to the STB the ICCTA imposes a binding obligation on the states not to regulate railroads with respect to those matters" Boston and Maine Corp v. Town of Ayer, F. Supp. ___ 2002 WL 1286098 (D. Mass. Civ. A. 99-12606*2, June 10, 2002). The court found that the town's attempt to regulate the railroad was an attempt to use State law to interfere with a federally granted right, thus exposing the town to an

award of damages under 42 U.S.C. § 1988(b) due to town's violation of 42 § 1983. (a civil rights law). The court held that the right to operate a railroad pursuant to its federal franchise is a civil right enforceable, notwithstanding sovereign immunity, under federal law.

Local authorities retain police, health and safety and other authority, the limits of which are not clearly defined. Clearly your trucks must stop at traffic lights and your operation can not create a nuisance or a genuine safety problem. While you can not be required to obtain permits to develop your site for the intended uses and while local zoning laws do not apply, you can be required to comply with local building code construction standards. By making sure your operation complies with basic health and safety standards LB Railco can avoid all legal problems related to the transport-transload operation proposed.

Therefore, it is my opinion that the proposed Millbury project is exempt from local regulation under both the letter of existing law and under current case law. I do not anticipate any major changes in these laws or their interpretation in the near future.

Hopefully this reviews any issues raised by this proposal.

Very truly yours,

John F. McHugh



United States Department of the Interior

OFFICE OF THE SOLICITOR
One Gateway Center – Suite 612
Newton, MA 02458-2802

TEL: (617) 527-3400
FAX: (617) 527-6848

IN REPLY REFER TO

November 7, 2002



Vernon A. Williams, Secretary
U.S. Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

Re: LB Railco, Inc. - Proposed Solid Waste Transload Facility, Millbury, MA

Dear Mr. Williams:

Please be advised that this office represents the John H. Chafee Blackstone River Valley National Heritage Corridor Commission which is a Federal commission appointed by the Secretary of the Interior pursuant to Public Law 99-647. The Commission was established to provide a management framework to assist in the conservation of important natural and cultural resources of the Blackstone River Valley Corridor. Pursuant to Section 9 of Public Law 99-647 "any Federal agency conducting or supporting activities directly effecting the Corridor shall consult with the Secretary and the Commission with respect to such activities."

I am advised by my client that LB Railco, Inc., a company which may be subject to regulation by the Surface Transportation Board is proposing the construction of a Solid Waste Transload Facility on land within fifty (50') feet of the Blackstone River owned by the Providence & Worcester Railroad and C&S Lumber Company in Millbury, Massachusetts. I am further advised that LB Railco, Inc. must, as part of the proposed operation, file a new exemption with the Surface Transportation Board (STB) to commence the Millbury operation.

This letter is to respectfully request that the STB consult with the Commission and to the maximum extent practicable conduct such activities in a manner which the Commission determines will not have an adverse effect on the Corridor as required pursuant to Public Law 99-647.

Thanking you for your anticipated cooperation, I am

Very truly yours,

Anthony R. Conte
Regional Solicitor

cc: Michael Creasey, BRVNHCC

RICHARD E. NEAL
SECOND DISTRICT, MASSACHUSETTS

WHIP AT-LARGE



COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
SUBCOMMITTEE ON SELECT REVENUE MEASURES

Congress of the United States
House of Representatives
Washington, DC 20515

November 12, 2002

Dan King
Director, Congressional Board Services
Surface Transportation Board
1925 K Street, N.W., Room 840
Washington, D.C. 20423-0001

RECEIVED
SURFACE TRANSPORTATION
BOARD
2002 NOV 18 P 2:05
OFFICE OF
CHAIRMAN MORGAN

Dear Mr. King:

I am writing this letter at the request of the Town Manager of Millbury, Massachusetts and many of the local residents of that community who have been in touch with my office personally. This is a matter of crucial importance to many of these residents, and I am seeking your assistance in determining what can be done to assist my constituents with their concerns.

It has come to my attention that a waste removal company, L.B. Railco, Incorporated, intends to locate in Millbury, Massachusetts under provisions of the Surface Transportation Act. It is my understanding that this business proposes to haul via rail car construction and demolition material and contaminated soil along the Providence and Worcester rail line. Many of the residents of Millbury are very concerned by this development and the potential environmental contamination and future health concerns it may cause.

The site where L.B. Railco would locate is within 100 feet of the Blackstone River; a river that has received national recognition as an American Heritage River. I have been personally involved in bringing federal resources to the Blackstone River Valley National Heritage Corridor in an effort to preserve the rich history and environmental integrity of this great river. Protecting the Blackstone River from environmental degradation is not a new endeavor for me, and is a priority I take very seriously.

Residents of the town are worried that the location of this waste removal company along the banks of the river is an unwise decision. Local efforts to clean up and rejuvenate the river for recreational use has been great, and many residents fear that the location of L.B. Railco at this proposed site will undo much of the progress they have made in bringing families and residents back to the river as a place to enjoy. Along these same lines, the site is directly adjacent to a newly built bicycle and pedestrian pathway which is part of the highly successful Blackstone River Valley Heritage Corridor. And of additional concern is the fact that the site is located just a few hundred feet from both the Elmwood Street School and the Raymond E. Shaw School. Any accident or environmental contamination could have potentially devastating consequences to the environment and to human health.

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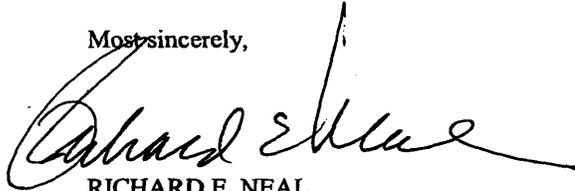
4 CONGRESS STREET
POST OFFICE BUILDING
MILFORD, MA 01757
(508) 634-8198

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Residents of the Town of Millbury have serious concerns that moving trucks filled with petroleum contaminated soil and old building materials, which may contain asbestos, lead and many other dangerous materials, may have devastating environmental and health effects. These are very serious concerns that I am bringing to your attention in the hope that you can be of assistance in advising me as to the rights and the avenues the citizens of the Town of Millbury can exercise and pursue in order to protect themselves from what they perceive to be potential devastating consequences. I urge you to contact me at your earliest convenience with an answer and steps that the Town can take to answer their questions and seek these goals.

I thank you for your consideration in this matter.

Most sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Neal". The signature is fluid and cursive, with a long horizontal stroke at the end.

RICHARD E. NEAL
Member of Congress