

Timothy D. Phelps
P. O. Box 67,
East Hardwick,
Vermont, 05836
June 29, 2009

225307

Surface Transportation Board,
Attn: STB Ex Parte No. 690,
395 E Street S.W.,
Washington,
DC 20423-0001

Re: Ex Parte No. 690 Written Submission

To The Board:

This letter represents my written statement in response to the Notice dated May, 21 2009 for STB Ex Parte No. 690, *TWENTY-FIVE YEARS OF RAIL BANKING: A REVIEW AND LOOK AHEAD*. This written submission provides comment for the public hearing to be held beginning July 8, 2009 to examine the impact, effectiveness, and future of rail banking under Section 8(d) of the National Trails System Act. I will only be submitting this written statement, and do not intend to speak at the July 8 hearing. In accordance with the Notice, I am offering comments on the rail banking program in general, in addition to comments regarding several of the specific bullet items that are listed.

I write as an interested citizen, concerned that the rail trail "movement" has turned into a force that in some instances has worked for the improper cessation of rail service, intent on elimination of the rail infrastructure in order to create a recreation trail. Encouragement of rail discontinuance for trail replacement was certainly not the intent of the original "rail-banking" concept of the 1970s and 80s, however there is evidence that this in fact does happen in the present time. This situation can be expected to occur especially in instances where a state government has stepped in to purchase a rail line, generally with the initial intent to preserve active rail service. With an "easy" mechanism available to take the right-of-way for a non-rail recreation use, and with no requirement for the trail interests or other planners to fully quantify (and more importantly, to actually pay for) the actual costs of the trail replacement activity and associated dismantling of very expensive rail infrastructure (both the eventual replacement costs to re-build rail infrastructure in addition to any increased medium and long term transport costs to the local regional economy), it is easy to see how trail interests can become "anti-rail" in the pursuit of their goals. This is unfortunate, for rail is widely acknowledged as the environmentally friendly mode of ground transport, and should ordinarily be supported by environmentally conscious bicycling and hiking support groups. I believe the Board's implementing regulations must be modified to prevent this fundamental imbalance toward recreational use, where trail use can improperly benefit at very little cost from the destruction of very expensive and difficult to replace rail infrastructure, causing rail-banking to then become a force for rail elimination. Quite simply, if trail groups intend to lobby for the destruction of rail infrastructure, there must be no free ride – they must then be required to pay for what they desire to destroy.

While much of the discussion that follows is intended to be general in nature, my comments are based on the specific facts involving the “rail-banking” and subsequent dismantling of rail infrastructure on the only railroad that had served my local community and immediate geographic region, the former Lamoille Valley Railroad in northern Vermont. As such, my observations initially stem from this local rail line about which I have some personal knowledge, supported by a variety of documented facts and studies in the public record. In order to provide access to my supporting documents I have provided an Appendix containing attachments, which includes either complete documents or excerpts as referenced herein. Where excerpts are provided (in the interest in reducing overall size), the complete texts are publicly available from the originating or an otherwise referenced state agency or commission. This railroad line, the original St. Johnsbury and Lamoille County Railroad, was already owned by the State of Vermont when rail-banking was undertaken (purchased with the intent, originally, to preserve active rail service), with a contract “operator” serving as the legal rail carrier. As previously noted, this condition is one likely to develop a trail vs rail situation even before any formal abandonment proceeding was to be initiated, which in fact occurred.

I have provided this information and discussion because it is of importance for this review of rail-banking. It is not my intent to in any way reopen any earlier proceeding that allowed the elimination of a rail transport option to occur; it is understood that the rail infrastructure of my local railroad has been now totally dismantled (for approximately four years now, with no “trail” yet built), and it is almost certain that rail service will never be restored due to the high cost of rail facility replacement coupled with the lack of any formal replacement funding mechanism and the rural territory the line serves. In providing these comments, it is my intent to share with the Board what has happened here in the hills of Vermont, with the hope that the implementing regulations for rail banking can be strengthened to protect against any favoring of non-rail recreational use over rail operation, especially for state owned infrastructure.

I am especially concerned that any additional destruction of rail infrastructure at this point in time is extremely shortsighted owing to the impending energy crises and its predicted effect on overall economic development, especially considering the extreme difficulty and very high cost to restore rail infrastructure once destroyed. It is much more sensible to make every possible effort to continue rail service where it still exists, wherever this is possible. I believe that preserving, and hopefully expanding, the rail option as a vital component in our overall transportation system should be a national priority. This now has renewed importance as we confront rising energy costs, seek energy independence and fight global climate change, and in no way should “rail-banking” be allowed to become an encouragement for elimination of rail transport in a particular region, forcing less energy efficient (and more costly) transport over the very long term.

Historical Perspective

In the 1970s when the Rails to Trails movement was first gaining momentum, I totally supported the concept. I had seen railroad lines that had been abandoned prior to this for which the right-of way had been totally lost to future generations, reverting to original landowners, obstructed by construction of new structures, and with all of the rail bridges dismantled. Once this dismemberment had occurred, it became extremely difficult (if not impossible) to recreate the abandoned railroad should re-establishment of rail service be found desirable at some later time. With this understanding, it seemed that the use of a former rail right away for a linear land use such as a recreation trail would be a sensible and ideal approach to keeping the option for possible future rail service available, while

allowing the alternative trail use to “borrow” the rail right-of-way in the interim. In fact the popular name “rail-banking” does describe the earlier philosophy very well, although I have come to see this is no longer the real intent of the program.

The early “Rails to Trails” movement stated the underlying concepts in exceptionally clear terms. One of the seminal reports encouraging the establishment of “Rails to Trails” (see Attachment 1, excerpt from booklet “*FROM RAILS TO TRAILS*,” Citizens Advisory Committee on Environmental Quality, 1975, page 5) provides this explicit discussion and statement:

Today, however, we are beginning to realize that the environmental and energy costs brought about by this (gasoline powered motor-vehicle, road, superhighway and air travel) type of life style are greater than we had imagined. Automobiles spew more pollutants into the air, use more fuel, and make more noise than railroads. Perhaps even more damaging, the highways required for our ever-increasing number of gas-guzzling combustion engines gobble up the landscape at an alarming rate. But dependence on the automobile and air-travel is not the only way to meet our transport needs. There is an urgent need for a more balanced, energy-efficient vehicle mix. Bicycles should be more numerous and more frequently used, and mass transportation and rail facilities should be improved and more extensively utilized.

It is not the purpose of this report to encourage in any way the thoughtless abandonment of additional miles of rail trackage but only to ensure that if tracks are abandoned that rights of way will remain open to public access. And if in the future the need arose for the increased use of rails for either passenger or freight conveyance, the rights of way preserved as trails could be “re-energized” for rail service use. To allow commercial, industrial or other private interests to destroy the unique linearity of these areas would cause irreparable damage to the fabric which has taken more than 100 years to weave.

It must be remembered that this was written over thirty years ago, long before the reality (just a brief time ago) of \$4.00 per gallon gasoline. While these earlier words ring amazingly true even today concerning the “thoughtless abandonment of additional miles of rail trackage,” it has become increasingly clear that in the present day application of “rail-banking,” the concept of preserving rail service if at all possible has been almost entirely lost. My recent experience has shown that the original wisdom expressed so clearly in 1970s is no longer understood, and as such the “rail-banking” option fueled by interest groups dedicated to trail conversion becomes another pressure to thoughtlessly dismantle rail infrastructure, with little real hope of in most cases for restoring the fixed guideway transport resource being destroyed.

Misrepresented Facts, Trail Groups and the Lamoille Valley Railroad

Whenever the State of Vermont's decision to dismantle the rail infrastructure of the Lamoille Valley Railroad has been questioned by concerned Vermonters who remain uncertain of the “wisdom” in destroying the safest and most energy efficient mode of transportation, the responsible state agencies and commissions inevitably cite reports from several earlier independent, expert, studies which were made of this rail line. Interestingly, the reports themselves actually do not support the decision to dismantle the railroad, and once this is understood it becomes more and more apparent that the fate of rail transportation was decided not by good transportation planning, but rather by a popularity contest. The activities of interest groups play a part in this, as does the failure of agencies at all levels of

government to properly study, present facts (the facts can be shown to have been widely misrepresented) and to evaluate the true costs involved in dismantling rail infrastructure.

The Lamoille County Planning Commission (LCPC) in Morrisville, Vermont, whose recommendation (through a subsidiary working committee, the Mountain Valley Corridor Consortium or MVCC) substantially determined the state's decision to abandon the rail line, has cited two of these, the MIT "Highest and Best Use" Study ("Analysis of the Lamoille Valley Railroad and Determination of the Highest and Best Use of the Corridor," by Carl D. Martland of the Massachusetts Institute of Technology, June 3, 1997 Draft Final Copy, hereafter designated the "MIT Report") made for the Northeast Vermont Development Association and the October 2001 Stone Consulting and Design Report for the Vermont Joint Fiscal Office (hereafter referred to as the SC&D Report) as being two of the primary study documents leading to the State of Vermont's decision to "pursue discontinuance of service" for the Lamoille Valley Railroad (see Attachment 2, response letter, LCPC to Timothy Phelps, dated February 9, 2004, attached).

In fact, LVPC and VAOT had repeatedly cited these reports, leading one to believe that these had absolutely recommended the rail line be immediately converted to a trail. Surprisingly, rather than trail conversion, the MIT Report actually recommended something entirely different. The MIT Report (see Attachment 3, MIT Report, Draft Final Report of June 3, 1997, excerpt of Summary & Recommendations Section) actually recommended that rail operation over most of the rail line first be given a fair chance to succeed, and did not recommend either the immediate abandonment of all rail service, or snowmobile trail use of the rail right-of-way through residential areas. Ignoring this, LCPC moved forward in cooperation with the the Washington, DC, based Rails-To-Trails Conservancy (RTC) to help it "sell" a plan to convert the entire Lamoille Valley railroad to an end-to-end snowmobile/recreation trail, inconsistent with recommendations of the MIT Report (see Attachment 4, LCPC Press Release and Agenda for Rail Trail meeting, September 5, 2003). In spite RTC's stated policy against promoting railroad abandonments, RTC began a letter writing campaign to the Federal Surface Transportation Board (STB) *encouraging abandonment* of the Lamoille Valley Railroad, and submitting "letters to the editor" which challenged other letters expressing Vermonters legitimate transportation concerns (see Attachment 5, Anti-Rail Letter to the Editor, dated November 30, 2003 that appeared in the local Hardwick Gazette newspaper). Not one word was mentioned in these letters of the many benefits that rail transportation could provide to the region, and the real facts about the verified shipper base and the projected traffic levels from other studies for the State of Vermont were similarly totally ignored. RTC, of course, only had a single minded purpose, to further the proliferation of "rail trails," with absolutely no concern for the overall long-range transportation, economic, or environmental issues in northern Vermont.

Allied groups like the Vermont Bicycle & Pedestrian Coalition (VBPC) had also embraced the letter writing campaign, and had published an "Action-Alert" to their membership, which was also posted on the Internet (see Attachment 6, VBPC Anti Rail "Action-Alert," December 10, 2003, attached). Unfortunately, these groups also ignored the actual facts that had been developed in studies regarding this railroad, apparently intent on destroying hundreds of millions of dollars of state owned infrastructure, and the chance for a balanced transportation system, in order to take this right-of-way for their own intended use.

RTC and VBPC urged people to write the STB that "a few people" were trying "for nostalgic reasons" to disrupt a Federal decision about railbanking, that rail service was a waste of money on a "doomed

private railroad,” and that there was no rail freight business on the line. They urged people to write letters saying there was “considerable public process” concerning rail abandonment, and that the Legislature “spoke loudly” for trail conversion. Documents in the public record, however, revealed a totally different situation. In fact, the record shows that the public process found virtually all adjacent landowners testifying that they opposed to conversion to a recreation trail, and studies made for the Vermont Joint Fiscal Office (see Attachment 7, the previously mentioned SC&D Report, excerpt of Page 1 and Freight Operation section) had determined that the rail line could break even in three years, without an operating subsidy, while running over publicly owned rail infrastructure in a fashion similar to all other state owned rail lines. Since the “railbanking” item was carried as a zero cost item in a \$331 million “must-pass” bill (Section 16, Act 141 (H.764) of the 2001-2002 Vermont Legislature, *AN ACT RELATING TO THE STATE'S TRANSPORTATION CAPITAL PROGRAM AND PROJECT DEVELOPMENT PLAN*), even those who supported the railroad were forced to “vote” against the rail line. For this reason, the pushing of the railbanking provision through the Legislature was really more an example of Legislative trickery than of anyone speaking “loudly.”

The facts that had been developed by independent study showed there was a real shipper demand for rail service on the line, which LVRC was making no effort to serve, with the complete acceptance and consent of VAOT itself. For this reason, the objections to trail conversion were not about nostalgia (an initial traffic with no new marketing of from 750 to 1000 carloads per year had been independently verified by previously mentioned SC&D Report), but really about the fact that 12 shippers were denied the rail service they desired, which was the actual reason there was no rail traffic. Those who misrepresented the facts to justify ripping up the rail line for trail conversion obviously did not consider it important that the region have low cost, energy efficient rail service, intent on taking the rail up for a trail. Perhaps they also were afraid that given a fair chance, rail service might be have been successful after all, as the SC&D Report anticipated.

This special case of a state owned railroad demonstrates clearly that if we as a nation really want to preserve rail infrastructure for the future wherever possible, changes in the rail-banking implementing regulations will be required that protect against the favoring of non-rail recreational use over rail service, requiring certain standards for study and planning, and to provide for transfer mechanisms which account for the real infrastructure costs as well and both present and projected future transportation needs. The dismantling of rail infrastructure which may be needed again in the relatively near term (ten to twenty year) time frame has very real and very large costs. To allow this to happen without requiring the identification of these costs, requiring a meaningful projection of both present and future need, and the actual assignment of these costs to entities that desire to eliminate this infrastructure, is extremely poor public policy. Rail-trails are not free, especially if they senselessly destroy hundreds of millions of dollars of infrastructure that will again be needed in the short to medium time frame.

This discussion leads to two requests that the Board consider changes to the implementing regulations for rail banking, as follows:

- 1) Modifications to the implementing regulations to prevent rail-banking from becoming a force for rail service elimination, by eliminating the fundamental imbalance toward recreational use, especially in conjunction with public ownership of the rail line, where trail interests (by lobbying for rail discontinuance) can improperly benefit by creating their desired recreational facility at very little cost from the destruction of very expensive and difficult to replace rail transport infrastructure. This results in an unfair transfer of transport resources to the recreation sector, while

leaving the transportation sector with the need to expend huge sums to recover that original infrastructure when required. It is proposed that organizations and affiliated groups that will directly or indirectly benefit through acquiring (to them) a relatively inexpensive recreation trail by requiring removal of the original rail infrastructure be formally prohibited from lobbying for cessation of rail service where the rail line has potential for continued operation, in order to eliminate this inherent conflict of interest. Conversely, if trail groups do continue to lobby for the destruction of rail infrastructure, there must be no free ride – they must then be required to pay the cost of future replacement for what they intend to destroy, as this is the true cost of trail replacement. The intent is to return to the original philosophy of Rails-to-Trails, to rail bank only rail lines for which rail service is discontinued after careful planning, and to eliminate replacing proper transportation planning with a popularity contest staged by trail conversion interests as has happened in some instances.

2) Modifications to the implementing regulations to require uniform standards for the evaluation and planning to determine if a rail line should be dismantled in the short term based on projected economic or population growth in the region served, before permission is granted to rail-bank from a given line. This information should be a formal filing, such that the public can see the projected costs for rail infrastructure being proposed for elimination. This should also include a full accounting of the cost to eventually replace the rail infrastructure, the anticipated economic effect to the region due to the loss of rail service, and the costs for trail conversion (especially since these costs are often ignored). The intent is to eliminate the random type of evaluation methodology as was seen on the Lamoille Valley Railroad, replete with misinformation appearing throughout the local decision making process, and in part caused by a desire by all concerned to make the facts serve pre-determined outcomes. Even as shippers had formally expressed a desire to ship by rail, the Vermont Agency of Transportation had decided it would not operate the rail line and that the line would be rail banked, ignoring facts presented in studies made for it by expert consultants. Uniform standards for evaluation would go a long way toward allowing the public to understand what the full cost and overall economic development implications will be if the rail infrastructure is to be removed.

Improper Use of Exempt Abandonment In Conjunction With Rail-Banking

The exempt abandonment, as was used to formally discontinue service on the Lamoille Valley, is a source of concern for those of us who observed rail service being withheld yet the absence of traffic nonetheless used to justify the abandonment exemption. It seems that this concern is especially warranted in the case of a publicly owned railroad with a contract rail operator, where it is sometimes not clear if anyone is really in charge. There continues to be a serious question as to how the Vermont Agency of Transportation (VAOT), fully aware that the Lamoille Valley Railroad leaseholder/operator had made no effort to serve shippers that actually desired rail service (as determined in the previously referenced SC&D Report), could even accept an abandonment recommendation from a citizen committee (MVCC, the Mountain Valley Corridor Consortium) that surely considered the total lack of rail freight traffic itself the *major* reason for the abandonment recommendation. Would this committee have recommended abandonment if even 800 railcars per year of traffic was being handled on this railroad? Most certainly not, as would not have been done for any other operating rail line in Vermont, however marginal. Had any other private rail carrier intentionally denied service to Vermont shippers and then attempted to use lack of traffic as the reason to abandon service, one would have expected the same agency (VAOT) to have vigorously challenged that carrier's actions as being totally unethical, as

well as illegal. Since VAOT was clearly aware that it did not intend to provide any rail service on the rail line, due to the pre-determined outcome that trail conversion was the goal, it is perhaps no surprise that the partially dismantled rail line and resulting lack of traffic was also (I believe improperly) considered by VAOT to be a candidate for an exempt abandonment.

By 2002, there were an almost innumerable number of man made and natural impediments to operating a train anywhere over the Lamoille Valley railroad, with virtually every railroad crossing paved over, rail removed in places, trees growing in the track structure, and various non-repaired washouts, with little chance that a shipper could really be served, as attested to in the accompanying photographs (see Attachment 8, information document, "Photos-Impediment to Rail Service on LVRC," prepared by Timothy Phelps, attached). Yet in spite of this, the VAOT had falsely painted the picture that the Lamoille Valley Railroad Company (LVRC) was always ready, willing and able to provide rail freight service, upon "reasonable" request, should a shipper just call. In reality, this would have been virtually impossible. In the first place, the LVRC "railroad" by that time had no serviceable locomotives or working shop facilities on the property, having actually "pulled out" and taken everything it could back to Florida. In fact, LVRC had clearly let it be known in 1997 that it had no interest in actually operating the line, which is why there was a "search" on for a new operator (lasting all the way to 2001). The implication that service would be provided is all the more absurd when compared to the actual language of the Interim Agreement itself (Attachment 9, Interim Agreement between the Vermont Agency of Transportation and LVRC, January 4, 2002), containing the explicit statement that no rail service was actually contemplated. The second paragraph of Section 1 of the Interim Agreement actually reads as follows: *"The parties agree and acknowledge that no request for rail freight service on or over the line has been made by any shipper for many years, and that the line is currently in an "embargoed" condition as that term is defined under applicable federal and State track safety standards. The parties do not anticipate any such request for freight service on or over the line will be made during the term of this agreement. The performance of actual freight service during the term of this Agreement by LVRC is highly unlikely and is not contemplated."* In fact there was no service request from any shipper that could have been reasonably expected to really have resulted in the provision of rail freight service on the line.

With the submittal of the Vermont Rail Link (VRL) proposal in March of 2001, VAOT and LVRC received a set of Shippers Best Estimate forms, along with letters of interest, in which 12 shippers had made their desire to ship by rail known. The VRL proposal was covered in the SC&D Report already discussed, an excerpt of which is attached as Attachment 7. This information requesting rail freight service by 12 shippers, was submitted to the VAOT in March of 2001, and was said to be reviewed by LVRC as part of the selection process for a new rail operator, yet the Interim Agreement was signed in January 4, 2002, *less than one year later*, and the Interim Agreement clearly made the statement *"The parties agree and acknowledge that no request for rail freight service on or over the line has been made by any shipper for many years,"* which is clearly totally false in itself. Clearly there are ethical issues surrounding the use of such blatantly false statements in such an agreement. Most reasonable people would agree that the shippers that had desired service (through Shippers Best Estimate documents submitted to VAOT) were not provided the service they requested, such that there really was an improper impediment to rail service, and that therefore an "exempt" abandonment should not have been used by VAOT in the first place to bypass the public's input. This is no question in the average persons mind that this was nothing more than "sharp practice," specifically intending to minimize public discussion by the identified shippers that still had desired rail service.

Since VAOT and LVRC had said that they were prepared to provide service, upon reasonable request,

continuously through the end of 2003, and Shipper's Best Estimate forms from 12 shippers requesting rail service were formally submitted to VAOT and LVRC in March 2001, why was rail freight service not provided, and the question on all Vermonter's minds that understand what really happened here, is why was an exempt abandonment even permitted in the first place when rail service was intentionally denied throughout the two year "test" period.

This discussion of questionable application of the exempt abandonment, especially in the minds of the common citizen who sees a partially abandoned rail line yet is expected to believe that trains could somehow have magically been operated at any time, leads to an additional request that the Board consider changes to the implementing regulations for rail banking, as follows:

1) Modifications to the implementing regulations to prevent the use of the exempt abandonment in conjunction with rail-banking for any rail line, to insure that additional public input, and a uniform study of costs and economic impacts be made, irrespective of recent operations. The required study should verify recent conditions and the availability, in addition to the items proposed above, and this information should be included in a formal filing, including consistent reporting of all applicable conditions affecting operation of trains on the line (bridges removed, main track removed, highway crossings paved over, etc.) This will serve to require additional documentation to show that no pre-abandonment of other impediment to rail service had rendered the exempt abandonment improper. As a compromise, it might be acceptable to only make this applicable to non-parallel service discontinuances, where the loss of the line will result in the complete loss of rail service for an extended region.

Summary and Conclusions

As discussed in the forgoing, my experience in recent years has led me to the conclusion that the present implementation of "rail-banking" does not serve the larger needs of our nation to preserve rail transportation, wherever possible, in our time, and that it would be desirable that the Board consider changes in the rail-banking implementing regulations in order to protect against the favoring of non-rail recreational use over rail service. I believe the Board should require uniform standards for evaluation and planning in regard to the dismantling of rail infrastructure for trail conversion, and to provide for transfer mechanisms which account for the real infrastructure costs as well and both present and projected future transportation needs. As discussed above, the dismantling of rail infrastructure which may be needed again in the relatively near term (ten to twenty year) time frame has very real and very large costs. To allow this to happen without requiring the identification of these costs, requiring a meaningful projection of both present and future need, and the actual assignment of these costs to entities that desire to eliminate this infrastructure, is extremely poor public policy. Rail-trails are not free, especially if they senselessly destroy hundreds of millions of dollars of infrastructure that will again be needed in the short to medium time frame.

Twenty five years ago the perceived future need for many rail lines was largely theoretical, especially considering the government's heavy subsidization of non rail transport modes, however this is no longer true today. The present energy, economic, environmental and global climate realities have made preservation of the rail transport option essential, while our rail transport policies (which include the rail-banking mechanism as well as the exempt abandonment) still tend to ignore actual future transport needs, focusing on recent past performance with no planning analysis to judge the destruction of what often represents many millions of dollars of very difficult to restore infrastructure. Organized rail trail

interest groups could be seen lobbying for rail trail conversion (as in the Lamoille Valley Railroad example) even before abandonment proceedings of a rail line were initiated, loudly proclaiming that trail use is more socially desirable than any effort to continue active rail transport. With this occurrence rail-banking, originally billed as a means to preserve an option for future rail service, can actually act as a powerful force for the improper dismantling of rail infrastructure, as my personal experience with the discontinuance of rail service has shown. In this actual case, which is likely typical of other rural non-parallel situations (especially with public ownership involved), trail creation/rail removal has become the goal, not the preservation of the rail transport option.

I strongly believe that the original intent of rail banking must be restored, and that no rail line should be thoughtlessly removed in order to create a trail.

I thank the Board for the opportunity to offer comments in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Phelps", with a long horizontal flourish extending to the right.

Timothy Phelps
East Hardwick, Vermont
June 29, 2009

APPENDIX

Reference Attachments

Attachment 1

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

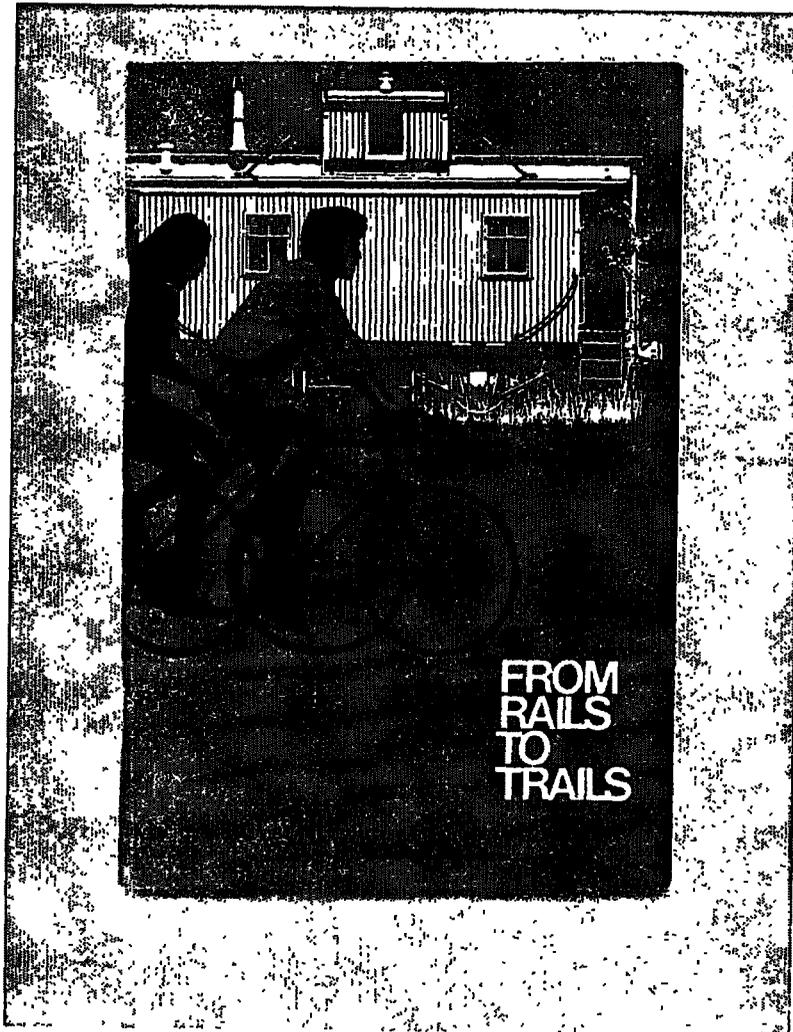
of

Timothy Phelps

dated

June 29, 2009

**(excerpt from booklet "*FROM RAILS TO TRAILS,*"
Citizens Advisory Committee on Environmental Quality, 1975, page 5)**



FROM
RAILS
TO
TRAILS

Chapter I

Rights of way can be recycled

*God keeps on making children
but he has quit making land.*

With these words Reub Long, central Oregon's cowboy philosopher, summed up one of the most urgent environmental challenges now confronting the Nation. As population increases, human development sprawls across the landscape. Open spaces are carved into tiny plots, each to bear its own individual and specialized structure. The fields and forests around our cities are being covered with a crazy quilt of asphalt, shingles, and blinking neon lights. This intricate pattern of private property rights that has developed raises a multiplicity of barriers to our growing needs for open space and outdoor recreation opportunities. In particular, two important forms of recreation and travel—walking and bicycling—are barred by the fences, walls, and hedgerows of modern development. At the same time, our realization that fossil fuel supplies are limited is developing a tremendous demand for energy-efficient modes of transportation and recreation.

Fortunately, a great network of outmoded transportation corridors awaits rediscovery. Spanning the continent, linking cities with suburbs, and both with the rural countryside, they criss-cross every region of the country. These are the massive grid of old transportation routes abandoned by the Nation's railroads, canals, aqueducts, and interurban trolley lines.

Once these corridors have ceased to be of value for their original purposes, they can be converted into trails for hikers and bikers, thereby providing recreation opportunities for a public that once depended on them for transportation.

Sixty years down the track

Railroading is a dramatic chapter in our economic and cultural history. In 1916, the heyday of the American railroads, 250,000 miles of rail routes carried freight and passengers to and through every city and town larger than a country crossroads. Sixty years later, nearly 50,000 of these miles have been abandoned, and the rate at which more fall into disuse is accelerating. In October 1974 the Interstate Commerce Commission (the regulatory agency which must approve abandonments by interstate carriers) had 340 abandonment requests pending, involving 7,000 miles of trackage. And Congressional action to revitalize the deteriorating rail system of the Northeast through regrouping into better patterns will lead to the abandonment of many thousands of miles of rail lines.

This decline is the result of many complex and interrelated factors that have altered the way we live. The most obvious and most visible is the gasoline-

powered motor vehicle, appearing as both the private automobile and the commercial truck. An ever-expanding system of roads and superhighways now takes passengers and freight virtually everywhere in the country. Additionally, a large majority of railway passengers was encouraged to shift to air travel.

Today, however, we are beginning to realize that the environmental and energy costs brought about by this type of life style are greater than we had imagined. Automobiles spew more pollutants into the air, use more fuel, and make more noise than railroads. Perhaps even more damaging, the highways required for our ever-increasing number of gas-guzzling combustion engines gobble up the landscape at an alarming rate. But dependence on automobile and air travel is not the only way to meet our transport needs. There is an urgent need for a more balanced, energy-efficient vehicle mix. Bicycles should be more numerous and more frequently used, and mass transportation and rail facilities should be improved and more extensively utilized.

It is not the purpose of this report to encourage in any way the thoughtless abandonment of additional miles of rail trackage but only to ensure that if tracks are abandoned, the rights of way will remain open to public access. And if in the future the need arose for the increased use of rails for either passenger or freight conveyance, the rights of way preserved as trails could be "re-energized" for rail service use. To allow commercial, industrial, or other private interests to destroy the unique linearity of these areas would cause irreparable damage to a fabric which has taken more than 100 years to weave.

From rails to trails

Railroad and other transportation rights of way have several unique characteristics that make them especially worthy of recycling for recreation use.

Linearity. Long narrow strips of land are one of the most effective forms of open space. William H. Whyte, an urban planner and consultant to the Committee, stresses the importance of the perimeter of parkland in his book, *The Last Landscape*, noting that when "laid along the routes people travel or walk, or poke in the places where they live, the spaces provide the maximum visual impact and the maximum physical access." Broad expanses of open space tend to be underutilized, for it is the perimeter that is most readily available to the greatest number.

An abandoned transportation corridor is one of the best examples of narrow strip open space. Usually between 50 and 100 feet in width, it is virtually all "perimeter." Furthermore, it typically cuts cross-sectionally through urban regions, bordering industrial, commercial, residential, and open areas. Thus, it provides easy access to a great number of people as they engage in a wide variety of activities. For all those who come near, it provides a contrast to the visual monotony of roads and buildings. For people with a short time to spend, it is easily reached for a brief stroll. And to others with more time, it can carry them as far away as they care to hike or cycle.

APPENDIX

Reference Attachments

Attachment 2

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

(response letter, LCPC to Timothy Phelps, dated February 9, 2004)



Lamoille County Planning Commission

The Tegu Building • 43 Portland Street

P.O. Box 1009

Morrisville, Vermont 05661-1009

(802) 888-4548 • e-mail: lcpc@pshift.com • fax: (802) 888-6938

February 9, 2004

Tim Phelps
1009 Hardwick Farms Road
East Hardwick, Vermont 05836

Dear Mr. Phelps:

Regarding your recent request for information pertaining to the public process that led to the State of Vermont's decision to pursue discontinuance of service for the Lamoille Valley Rail Road and rail-bank status for the state-owned rail corridor, I have enclosed the following:

1. 1997 M.I.T. Highest and Best Use Study
2. Final Recommendation of the Mountain Valley Corridor Consortium as presented to the Vermont Agency of Transportation
3. Vermont Agency of Transportation's declaration of support for the Consortium's recommendation
4. Stone Consulting & Design, Inc. Report on the Viability of the Vermont Rail Link Proposal
5. H764 and H545 Transportation Bill language regarding the LVRR

As indicated by and within these documents, there has been extensive objective review, public process, and debate on the topic. The venues have ranged from local boards, to regional and county agencies, to the Vermont Agency of Transportation, and finally, multiple sessions of the Vermont State Legislature.

I hope these materials are useful to you. Thank you for your interest in this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "David Pelletier".

David Pelletier
Senior Transportation Planner

Cc: Michele Boomhower, LCPC Executive Director

APPENDIX

Reference Attachments

Attachment 3

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

(MIT Report, Draft Final Report of June 3, 1997, excerpt of Summary & Recommendations Section)

**A Study Conducted for the
Northeast Vermont Development Association**

**ANALYSIS OF THE LAMOILLE VALLEY RAILROAD
AND DETERMINATION OF THE HIGHEST AND
BEST USE OF THE RAIL CORRIDOR**

Draft Final Report

**by
Carl D. Martland
Senior Research Associate
Jimmy Tsz Kwan Wong
Research Assistant**

**Center for Transportation Studies
Massachusetts Institute of Technology
Cambridge, MA 02139**

June 3, 1997

**Principal
Investigator: Carl D. Martland
Senior Research Associate & Lecturer
Department of Civil & Environmental Engineering
Room 1-153
Phone: 617-253-5326
FAX: 617-258-5942
E-Mail: martlan@mitvma.mit.edu**

Within the last few years, a world-wide slump in the forest products industry has hurt producers in New England and nearby Canada, which has affected all of the transportation carriers serving these industries. More serious from the perspective of the rail industry is the shift from rail to truck. Many moves that historically went by rail now go by truck, largely because heavy trucks operating over the interstate highway system are much faster, more reliable, and often cheaper than the competing rail service.

There is an on-going debate concerning the uses of this forest. Among the issues being debated are:

- Preservation of more wilderness area
- Restricting logging to allow more recreational use of the land
- Reduction in the use of clearcutting techniques
- Maintaining the integrity of the forest (i.e. limiting development)
- Maintaining employment in logging industry
- Maintaining a role for the small woodlot
- Modernizing the paper mills in the region
- Limiting the number of large trucks on the rural road network (to avoid damage to the roads, limit congestion in towns, and to reduce the number of heavy, slow log trucks on the roadways)

It is conceivable that the railroad could be a factor in part of a larger strategy to promote the forest products industry in northern New England that is related to the highway, clear-cutting, small woodlot issues. For example, a "sweeper" service could be run by the railroads to pick up logs or pulp wood on a regular schedule. Independent loggers and cooperatives could concentrate on moving logs and pulpwood to the nearest pickup location, reducing their time and the usage of highways for moving these products to the mills. The added benefits to the community in terms of road maintenance, congestion, and average speed on the rural roads might justify some support for the rail service.

7 Summary and Conclusions

This study reviewed some of the history of the Lamoille Valley Railroad along with its prospects for growth. The study considered the location of the line within the broader rail network and its potential importance as part of a through route between major population, industrial, or natural resource centers. The study also reviewed information concerning

industrial activity along the corridor in order to assess the potential demand for rail transportation to and from points served by the railroad.

A fundamental conclusion is that there is very limited potential for continued freight use of this corridor. It is conceivable that some innovative operations could generate traffic, but this would require a new approach to light density rail operations.

For rail freight, in general, the overriding factor is that trucks are more efficient for short haul, general merchandise traffic, while railroads are more efficient only for the long haul, bulk traffic. That is why the rail network has been shrinking for so long. The problems with the LVRC as a freight railroad are three-fold:

- a) **No local traffic:** the railroad has had no local traffic in recent years. The asbestos and talc industries that once contributed significantly to the line's traffic base are now gone and unlikely to recover.
- b) **Low development potential:** there is little potential for development along the route, as there are more attractive development sites at either end of the corridor that are closer to the interstate highway system and to the major US and Canadian rail networks.
- c) **Not a viable bridge route:** the railroad's potential as a bridge route is very limited, because of its position in the international rail network.

The line also has very low potential for intercity passenger or commuter service. The route does not serve any major metropolitan centers, nor is it on the shortest rail path between any major metropolitan centers. None of the towns served by the line are large enough to support commuter rail operations.

There are better possibilities for excursion operations and tourist rail services. However, it is unclear whether these services would be profitable enough to support any substantial portion of the line. For excursion services, typical distances are on the order of 5-25 miles, and network linkages are less essential than in intercity passenger or freight. The key for excursion services is to have stations in activity centers that attract tourists and to have attractive scenery to view.

Morrisville, with its station close to the highest mountains in the state, is an obvious point for excursions, although excursions could also be run out of either end of the line. Linkages to Amtrak in Swanton or to the excursion roads in Northern New Hampshire (in St. Johnsbury) might also be possibilities.

Although there is a need for some immediate repairs, the line is for the most part in reasonable shape for low density operations. It is our understanding that federal funds are available to repair recent flood damage to the line, so that there is not an immediate concern about spending significant amounts of state money to restore the line to operating condition. What is needed for continued rail operations is a consistent financial basis for maintaining the line. Successful excursion operations will be able to support routine maintenance of short (10- to 20-mile) stretches of the line, but certainly not of the entire line.

According to traditional methods of analysis, the line is a solid candidate for abandonment. The normal procedure would be to break the line in the middle, and abandon segments toward either end. The rail and other track material could be salvaged as scrap metal for something on the order of \$15,000 per mile (higher if the rail could be re-used elsewhere).

For the near future, it may be premature to abandon the line. While it is clear that the potential for freight traffic has been declining and will very likely continue to decline, the potential for passenger excursion operations is high for some portions of the route, especially near Swanton, Morrisville, and St. Johnsbury. Also, the state already owns the line, and the planning commissions for the three regions served by the line have expressed strong support for the continuance of rail service. Under these conditions, deferring abandonment for a few years to allow additional time to develop innovative rail services makes sense.

The highest & best use for the LVRC would appear to be as follows:

Short run (1-5 years, or until such time as major line rehabilitation is needed):

- a. Seek federal funding to repair the recent flood damage that occurred between Hardwick and Swanton. In general, ensure that the necessary minor maintenance is done to enable a minimal level of service over this portion of the line.
- b. A serious effort should be undertaken by the current operator to demonstrate the potential of the line as a tourist railroad, including the possibility for regularly scheduled tourist runs, foliage and other special excursions, and ski trains.
- c. Efforts to promote freight traffic should be focussed on the ends of the line and a limited number of nearby points, as it is not credible to promote interior points along the line as attractive locations for customers dependent upon rail service.

- d. Between Swanton and Hardwick and between St. Johnsbury and Joe's Pond, the rail should be left in place to allow for the possibility that innovative freight and passenger services could be developed over the next few years. Between Hardwick and Joe's Pond, the line is already broken and taking up some portions of the rail may be justifiable. For example, it may be necessary or desirable to take up some of the rail in some special locations (e.g. on or near bridges or grade crossings) as part of the process of creating a safe bicycle path along this part of the right-of-way.
- e. Portions of the line that are not used for rail service should be embargoed for freight. These portions of the route should be made available for hiking, skiing, and (where appropriate) snowmobiling.
- f. Within urban areas where there is no longer any rail service, begin to convert the right-of-way into a transportation path, either with a paved, gravel, or natural surface depending upon the desired uses.

Medium term (5-30 years, or until such time as it is clear that there is no future need for rail service)

- a. Continue to provide passenger and freight rail service, but so long as the operator is able to secure a consistent source of adequate funding (from revenues or from public agencies) to cover operating costs and to maintain the property.
- b. Abandon any significant portions of the line that are not utilized for freight or passenger service. Salvage the rail and other track material unless a clear case can be made to demonstrate the benefits of leaving the rail in place.
- c. Expand and improve the transportation paths and provide better linkages to area services and attractions.

Long term (30+ years)

- a. Preserve the rail line only if funding can be secured to cover the steady state maintenance costs as well as the operating costs; otherwise, abandon the railroad and salvage the rail and other track material.
- b. Expand and improve the transportation path and provide better linkages to area services and attractions.
- c. Preserve the right-of-way in order to provide transportation and right-of-way options for future generations

APPENDIX
Reference Attachments

Attachment 4

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

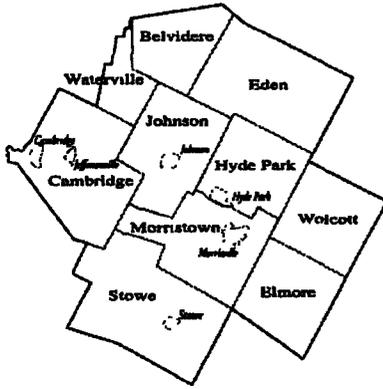
of

Timothy Phelps

dated

June 29, 2009

(LCPC Press Release and Agenda for Rail-Trail meeting, September 5, 2003)



Lamoille County Planning Commission

The Tegu Building • 43 Portland Street

P.O. Box 1009

Morrisville, Vermont 05661-1009

(802) 888-4548 • fax. (802) 888-6938

lcpc@pshift.com • lamoillecountyplanning.org

TO: Media
DATE: August 29, 2003
CONTACT: Michele Boomhower, Lamoille County Planning Commission 888-4548

FOR IMMEDIATE RELEASE

MORRISVILLE – The 96 miles of potential rail-trail along the Lamoille Valley Rail Corridor could provide a resounding economic boom to communities between Swanton and St. Johnsbury, according a national rail-trail advocacy group. With strong snowmobile use predicted during the winter and possibilities for overnight bicycle and horseback excursions during the summer, the planned trail along the Lamoille River is poised to become a reality, pending federal approval and funds.

Planners, legislators, rail-trail experts, and VTrans officials will gather in Morrisville on September 5th at Hilary's Restaurant in Morrisville to discuss the next steps in redeveloping the long-dormant rail corridor into a vibrant four-season, multi-use trail. Keith Laughlin, President of the National Rails to Trails Conservancy, will discuss the positive impact rural rail-trails have on surrounding communities and the benefits Vermont might expect to see with the completion of the Lamoille Valley Rail Trail project.

"Trails built from former railroad corridors have been shown to increase real estate values, provide new tourist destinations and support the opening of trailside businesses such as B&B's, bicycle rental shops, and cafes," said Laughlin. "A year-round trail such as the Lamoille Valley Rail Trail could give a tremendous boost to small towns along the corridor." The corridor,

owned by the State of Vermont, has been the subject of much discussion over the past two legislative sessions. While there has been some interest in reviving railroad activity on the line, numerous economic analyses have shown that rail activity is simply not viable at the present time, according to a Vermont Legislative Joint Fiscal Office report. The rail corridor is in the process of being "railbanked" through a process administered by the Federal Surface Transportation Board. Railbanking provides for the ability to establish a trail on the rail bed, but to hold in reserve the future possibility of returning rail service.

Vermont Association of Snow Travelers (VAST) is the lead organization in the redevelopment process, and will assume management and a lease with the Vermont Agency of Transportation. While snowmobiles will travel the trail in the winter, the plan includes improvements to the corridor that will enable multiple summer uses as well including walking, bicycling, and other activities.

"A path of this length provides tremendous opportunity for tourists looking for a multi-day rail trail experience through some beautiful country. A 96-mile long trail is likely to have an economic impact unprecedented in rural Vermont, as visitors will stay overnight and patronize local businesses along the route.", according to Becka Roof, Director of the Vermont Bicycle & Pedestrian Coalition, which strongly supports the project. "At the same time, such trails always become cherished assets for local residents – whether for recreation, fitness, or transportation."

For additional contacts, please see attached press event announcement.

THE ECONOMIC IMPACT OF RURAL RAIL TRAILS
LAMOILLE VALLEY RAIL TRAIL: VISION TO REALITY
Friday, September 5th, 2003
9am to 12noon
Hilary's restaurant, Morrisville

AGENDA

- 9:00 Welcome / Coffee and muffins
- 9:15 History of Lamoille Valley Corridor redevelopment process to date – LCPC & Vermont Association of Snow Travelers (VAST)
- 9:45 Presentation: The Benefits of Rail Trails - Keith Laughlin, President of National Rails-to-Trails Conservancy
- 10:30 Break
- 10:45 VTrans vision and next steps outlined – Alan Neveau, Local Transportation Facilities Program Manager, Vermont Agency of Transportation (VTrans)
- 11:00 Leaseholder Vision - Bryant Watson, Executive Director, VAST
- 11:15 Panel Question & Answer
- 11:30 Adjourn general event
- 11:45 V.I.P. Lunch at Hilary's
- 12:45 Fisher Bridge site visit
- 1:30 Morrisville Engine House site visit
- 1:45 Return to Hilary's and adjourn

APPENDIX

Reference Attachments

Attachment 5

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

**(very long Anti-Rail Letter to the Editor, Craig P. Della Penna, New England Field Representative,
Rails To Trails Conservancy, dated November 30, 2003, that appeared in the local Hardwick Gazette
newspaper)**

Sunday November 30, 2003

Hardwick Gazette
P. O. Box 367
Hardwick, VT 05843-0367

Dear Letter to the Editor:

I was recently forwarded a series of lengthy letters to your newspaper about the St. Johnsbury and Lake Champlain Railroad—or St. Johnsbury and Lamoille County—as it has more recently been called (St.J & LC). Each of the letters, by the various authors, though well written, have various points that are either misleading or inaccurate. Let's start at the beginning. In the year's after the civil war, an effort was begun in Vermont to charter railroad companies to build a line that connected to a new railroad from Portland, Maine, (Portland & Ogdensburg Railroad—later Maine Central Railroad) The intention was to build west out of St. Johnsbury all the way to Lake Champlain—and actually beyond into Canada. Finally, open in 1877, the life of the railroad began to take an ominous series of twists and turns, reorganizations and bankruptcies that seemed to never end. Severe storms were always a problem, severing the line numerous times.

Traffic either originating or terminating on the line was never enough to be profitable and the 'bridge traffic'—traffic that originated off-line, and then was transported by the St. J& LC to a place that terminated off line—was the only saving grace. The railroad's tag line of being the "Bridge Route" owed more to this truism of logistics rather than the railroad's abundance of scenic, but light duty, covered-bridges.

By the 1950s, local business interests bought the line from the Boston & Maine Railroad and they turned it over to the H.E. Salzburg Company which in turn sold it to the Pinsky Railroad Company in 1968. Pinsky was a notable entity because this was the last time that a private sector railroad actually both owned both the line—and operated the trains.

It was also during the Pinsky years that five of the six old covered bridges were replaced with modern ones. The covered bridge at Wolcott was strengthened with a steel carrying beam—paid for by local businesses and towns people. Overall, both Salzburg and Pinsky collectively put in \$700,000 in track and other capital improvements during their stint and it still wasn't enough to keep up with deteriorating track conditions. When a derailment in late 1972 caused a brand-new \$900,000 generator to land in the Lamoille River, Pinsky ceased operations and started the proceedings to formally abandon the railroad before the old Interstate Commerce Commission (ICC).

After a winter of meetings and hearings, the major shippers (mainly talc and asbestos mines) and town's people along the line wanted the line re-opened. The state of Vermont in the meantime had created a Transportation Authority to buy railroad corridor in the state—and to fund the rehab of such lines if it made sense to do so. The St. J&LC was the beneficiary of \$3.5 million right away in track repairs. However, this was only the beginning of the influx of state and federal money into this line AND it was the beginning of the state subsidy to operate the line.

After a series of operators and even more state subsidies, (\$7.1 million for track repair was authorized in 1977) another reincarnation of the line began in 1978. This time known as the Lamoille Valley Railroad, this reincarnation even had major funds (\$250,000) raised from local shippers. Things began to look up, but events beyond the control of the state of Vermont, conspired to once again, do-in the railroad.

Do not forget, this line was the "Bridge Route"—a bridge between other railroads to the east and west of Vermont. The only hope for a semblance of a profitable railroad could be achieved if the line had viable east-west connections at each end. This was a truism of logistics in rural areas that was known even before the railroad was built.

On June 16, 1981, the Maine Central Railroad (MEC) and its Mountain Division—the St. J&LC's eastern connection to Portland—was sold to Guilford Transportation Industries, a new holding company headed by financier Timothy Mellon. Mellon's intent was to compete with Conrail for east-west traffic. By acquiring the Boston & Maine Railroad and the Delaware and Hudson Railway, and connecting them to the MEC, he was able to do so.

In September of 1983, in order to protect their primary and most efficient east-west route—the one through northern Massachusetts—Guilford rerouted all their east-west traffic onto the Massachusetts route. The last regular train on the Mountain Division ran on September 2, 1983 as Guilford no longer felt it necessary to feed traffic to the St. J&LC—and Guilford's competitors.

In the spring of 1984, with the "bridge" to the east into Portland severed, a major talc plant in Johnson closed down and everyone knows what happened to the asbestos business. Both the talc and asbestos industries accounted for the vast majority of originating traffic. However, in the span of only six months, the St. J&LC not only lost the eastern end of its "bridge", but it also lost the vast majority of its traffic proper.

In June of 1984, another flood did major damage to the line. The entire state was declared a disaster area so federal money was available to rebuild the railroad—once again. The St. J&LC continued to survive—on paper anyway.

In 1989, the state chose a new operator of the line who then rather quickly gave up the ghost on the section west of Morrisville. This, the final operator, ran shorter and shorter trains east to and from St. Johnsbury until the mid 1990s when that segment also became untenable. It was during this last gasp that wags in the railroad industry said that the old St. J&LC had the longest 'engine house lead track in the U.S.' (50 miles from the Morrisville engine-house to St. Johnsbury—with virtually no traffic in between)

During the late 1990s and early 2000s, the State of Vermont's Senate and House Transportation committees began look more closely at the situation on the St. J&LC. An entity called Vermont RailLink surfaced with a proposal to operate the line as a railroad. They only needed some more state money to make it a reality.

After numerous hearings, a high profile marketing campaign, high profile lobbying in the state house and a comprehensive study of the corridor and what it would cost to restore as a marginally functioning railroad. (\$22.1 million¹), the legislature spoke and spoke loudly. They wanted it railbanked, the rails and ties pulled out and salvaged for other functioning railroad lines in Vermont and the corridor to become turned over to the state's snowmobile organization, VAST, to be developed into a true four-season multi-use trail. This is just about to happen.

Now that the history of the corridor has been brought up to date, let me now address some of the other inaccuracies in those previous letters.

In previous letters, the term *railbanked* was written in a general context of meaning abandoned. This is NOT true. Railbanking preserves corridors for future use as railroads and for those who don't agree with this aren't up to date on what is happening around the U.S.

Some railroad rights-of-way contain easements that revert to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.

A Primer on the Legislative Background of Federal Railbanking Program
As Given in Testimony Before Congress on June 30, 2002
by Andrea Ferster, General Counsel for Rails-to-Trails Conservancy

In 1976, Congress recognized the need to create a "national rail bank" of railroad corridors as a way of ensuring that our nation's built rail corridor infrastructure, which was frequently assembled at great public cost through state or federal land grants or loan guarantees and powers of eminent domain, remained dedicated for transportation purposes, although these corridors were not needed for present or foreseeable future railroad operations. The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) provided for mandatory transfers of corridors proposed for abandonment to other carriers, and directed the Interstate Commerce Commission (ICC), which regulates railroad abandonments, to impose conditions barring the disposition of railroad rights of way for 180 days in order to allow for possible transfers for public use, including for trails. Notwithstanding these regulatory tools, the declining fortunes of the rail industry began to result in an increasing loss of railroad corridor through abandonment. Then in 1980, Congress passed the Staggers Rail Act, which required the ICC to exempt most rail abandonments from regulation. As a result, the rate of rail abandonments by major carriers accelerated to between 4,000 to 8,000 miles per year. This alarming rate of rail abandonments made corridor preservation a critical issue of national policy.

Once the ICC granted abandonment authorization, the railroad was free to remove the tracks and ties, sell the right of way piecemeal to private owners, or simply allow the right of way to be claimed by adjacent landowners. Our nation's rail corridor system, "painstakingly created over several generations," was at risk of becoming irreparably fragmented due to the present high cost of land and the difficulties of assembling right-of-way in our increasingly populous nation. Today, it would be virtually impossible to recreate this system once the right of way is fragmented, and bridges, tunnels and other costly structures destroyed.

Alarmed by the potential loss of this valuable national resource, Congress began to look for ways to facilitate the preservation of these corridors for alternative public transportation uses, without interfering with the ability of the financially-beleaguered railroad industry to shed duplicative or unprofitable lines. The possibility of transferring these surplus rights of way to third parties for use as trails began to emerge as an efficient method of preserving these corridors.

Section 8(d) of the National Trails Systems Act

Section 8(d) of the National Trails System Act is the legislative centerpiece of the federal "Rails to Trails Program..." This law was enacted by Congress and signed into law by President Ronald Reagan in 1983 to provide an effective mechanism for preserving railroad rights-of-way for future rail service and for energy efficient alternative transportation use, without imposing additional burdens on rail carriers. The law allows railroads to transfer inactive railroad corridors to qualified trail managers for interim use as trails, until such time as these rights-of-way are needed for future rail service on the condition that trail managers assume all carrying costs (liability, maintenance, and taxes) of the rights of way. By pairing railbanking with interim trail use, Congress created a mechanism that allows for the preservation of our nation's built rail corridor infrastructure for future railroad purposes without burdening the railroads with unwanted property or the communities through which these corridors run with vacant and derelict land. This process is known as "railbanking".

Section 8(d) (the Railbanking Law) facilitated rails-to-trails conversions by preserving the jurisdiction of the ICC (now called the Surface Transportation Board or STB) over inactive railroad corridors that were dedicated to interim trail use and subject to future reactivation of rail service. At the same time, the Railbanking Law created an incentive for railroads to enter into interim trail use / railbanking negotiations by allowing the railroad to liquidate its entire interest in the rail line where a qualified governmental or private organization agreed "to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way."

The Railbanking Law has, in fact, been serving its intended function of preserving inactive railroad corridors intact for public use. Since the program's inception in 1983, the ICC/STB has issued

398 railbanking orders, resulting in the acquisition of 180 railbanked corridors in 30 states representing 3,983 miles. Some 1,552 miles of railbanked corridors are presently open trails, with an additional 1,834 miles of trail under development on railbanked corridors.

The Railbanking Law has in fact assisted in preserving railroad corridors for active rail use. For example, in 1993, ICC approved the reactivation of a corridor in Ohio that had been railbanked in 1990.

Norfolk and Western Railway Co.—Abandonment Between St. Mary's and Minster in Auglaize

County, OH, Dkt. No. AB-290 (Sub-No. 68), 9 I.C.C.2d 1015 (1993).

Moreover, many more jurisdictions throughout the country have acquired and railbanked rail corridors for future use as light rail, commuter rail, and transit lines. Examples include the Placerville Branch outside of Sacramento, Montgomery County, Maryland, and Madison County, Illinois. Without the Railbanking Law, these corridors would likely have been lost for future rail transportation use.

In 1983, when Congress amended The National Trails System Act to create what we call "railbanking", the amendment simply provided the mechanism to accomplish what Congress had previously intended. According to the legislative history, that was to preserve railroad rights-of-way, protect transportation corridors, and encourage energy efficient transportation use. Railbanking represents a unique win-win situation, protecting the nation's historic transportation corridors, while providing the opportunity for a sensible and beneficial interim use. The result, while serving to accomplish many ends, was the formation of an effective process for creating rail-trails.

Many of the previous letters noted that the railroad has not been given a 'fair chance' and a 'popularity contest' of sorts has ramrodded this trail project ahead. Nothing could be further from the truth. The premise of this argument is that with energetic ownership and creative marketing, a railroad will be able to be weaned from the public dole. This is not true.

In my past life, I worked in the railroad industry marketing rail freight and operated southern New England's largest and most successful railroad-owned transloading facility. A basic rule of thumb for determining profitability in the short line industry is that you need 100 cars per mile, per year, in order to break even. For the St. J&LC this means it would need 9,600 cars of traffic per year. The best year for traffic on the St J&LC was 30 years ago and that saw 7,000 cars. That was when the 'bridge' was functioning along with the talc and asbestos industries. Those days are gone.

Another reason why the idea of resurrecting this railroad line hasn't happened is plainly evident by the lack of qualified railroad operators lining up to become the chosen operator. If this was such a good idea, why haven't the railroads already successfully operating in Vermont taken an interest in this? Vermont Rail Systems (VRS) and New England Central Railroad (NECR) are very successful and savvy operators. They, as well as everyone else in the railroad industry knows that the St. J&LC doesn't work anymore. If it did, they'd be there lining up to run it.

The earlier letters also noted that there were thousands of miles of snowmobile trails in Vermont along with thousands of miles of bike friendly roads—laying out the premise that there is no need for making a rail-trail on the St. J&LC. The premise of one of the letters even suggested that if built out as a trail, there wouldn't be a real benefit to the communities along the St. J&LC. Both of those arguments are without merit.

First of all, I agree that there are thousands of miles of nice snowmobile trails and even thousands of miles of bike friendly roads in Vermont. Why even the St. J&LC has made a nice snowmobile trail for most of twenty years so that wouldn't even change. In addition, quite frankly, most of the 30,000 or so bike tourists who come to Vermont for the organized tours—on the bike friendly roads will still be on the roads.²

-5-

The authors of those previous letters have failed to note the immense population of tourists who love to bike or walk on rail trails, but would never ride on a road. The numbers of users on just one popular rail trail in Vermont, (the 300,000 users on the Burlington Bike Path) swamps the total number of organized

riders throughout the entire state. The dollars generated from users of rail trails also swamps the numbers generated from road bikers. Here's some statistics from a sampling of projects around the U.S and beyond:

- In 1998, the direct economic impact of the Great Allegheny Passage exceeded \$14 million a year—even though the rail trail was only half-finished at that time.³
- In Confluence, Pennsylvania, one of the project's first trailhead towns, the trail has encouraged the development of several new businesses and a rise in real estate values.⁴
- In the months following the opening of the Mineral Belt Trail in Leadville, Colorado, the city reported a 19 percent increase in sales tax revenues.⁵
- Owners of restaurants and lodging facilities report that they are serving customers who have come into town specifically to ride the trail. The trail has helped Leadville recover from the economic blow of a mine closure in 1999.⁶
- The Mineral Wells to Weatherford Rail-Trail in Texas attracts approximately 300,000 people annually and generates local revenues of \$2 million.⁷
- Visitors to Ohio's Little Miami Scenic Trail spend an average of \$13.54 per visit just on food, beverages and transportation to the trail. In addition, they spend an estimated \$277 per person each year on clothing, equipment and accessories to use during these trail trips. The total economic benefit is impressive considering there are an estimated 150,000 trail users per year.⁸
- The Mispillion River Greenway in Milford, Delaware, is credited with inspiring downtown reinvestment and a net gain in new businesses, with more than 250 people now working in a downtown that was nearly vacant 10 years ago.⁹
- The downtown of Dunedin, Florida suffered a 35 percent storefront vacancy rate in 1992. Then, an abandoned CSX railroad track became the Pinellas Trail. Now, storefront occupancy is 100 percent and there is a waiting list for available space.¹⁰
- For peak-season, hotel rooms along Wisconsin's 32-mile Elroy-Sparta State Park Trail are booked up to a full year in advance. A state study revealed that the average visitor travels 228 miles to get to the trail, bringing substantial "new" money into Wisconsin.¹¹
- On average, Québec bicycle tourists travel a total of 15 days per year, generally spread out over two, three or four trips. In terms of accommodations, they prefer either hotels (bed-and-breakfasts, hotels, motels, etc.) or campsites. Bicycle tourists spend an average of about a hundred dollars a day, making them a more lucrative tourist clientele than average Québec tourists, who spend only \$52 per day.¹²

The idea of making the St. J&LC into a world-class rail trail—like none other seen in New England is nearing reality. However, much hard work lies ahead. The Vermont Agency of Transportation (VTrans) is in the midst of the rail-banking process for the Lamoille Valley Rail Corridor. VTrans filed the required package of information to the Surface Transportation Board (STB) in Washington, D.C. on November 24, 2003. The STB is required to post the notice of this in the Federal Register within 20 days after it is filed. It therefore should appear sometime this month. Please write a letter supporting this action and send it to:

Section of Environmental Analysis
Surface Transportation Board, Room 500
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Surface Transportation Board, Docket No. AB-44 (Sub-No. 1X)

Sincerely,

Craig P. Della Penna
New England Field Representative

¹ LVRC Phase One. Preliminary Engineering Inspection, Evaluation & Analysis by Edwards and Kelcey, Inc. for State of Vermont Agency of Transportation Rail Division, October 2000.

² 1991 it was estimated Vermont had 10,500 bicyclists who took guided bicycle tours and 16,250 bicyclists who took self-guided bicycle tours. Burgess, Bruce. 1995. *Bicycle Touring in Vermont and Vermont's Scenic Byways Program*. Vermont Agency of Transportation.

³ 6 Stephen Farber, University of Pittsburgh and Pennsylvania Economy League, Inc., *An Economic Impact study for the Allegheny Trail Alliance*, January 1999, i-ii.

⁴ *Enhancing America's Communities: A Guide to Transportation Enhancements*, National Transportation Enhancements Clearinghouse, November 2002, p.17

⁵ Steve Lerner and William Poole, *The Economic Benefits of Parks and Open Space*, The Trust for Public Land, p. 4

⁶ *Ibid.*, p. 11

⁷ *A Guide to Transportation Enhancements*, National Transportation Enhancements Clearinghouse, 1999, p. 11.

⁸ Ohio-Kentucky-Indiana Regional Council of Governments, *Trail Users Study, Little Miami Scenic Trail*, 1999, p. 15-32.

⁹ *Enhancing America's Communities*, p. 14

¹⁰ *Greenways and Trails: Bringing Economic Benefits to New York*. A report by the New York Parks and Conservation Association and the Business Council of New York State, Inc.

¹¹ *Greenways and Trails: Bringing Economic Benefits to New York*. A report by the New York Parks and Conservation Association and the Business Council of New York State, Inc.

¹² *Bicycling in Quebec, 2000*. Velo Quebec p. 8

APPENDIX

Reference Attachments

Attachment 6

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

(VBPC Anti Rail "Action-Alert," December 10, 2003, attached)



The mission of the Vermont
Bicycle & Pedestrian Coalition
is to promote bicycling & walk-
ing in Vermont, emphasizing
access, safety and education

www.vtbikeped.org

VERMONT BICYCLE AND PEDESTRIAN COALITION

P O B O X 4 0 0 3 , B U R L I N G T O N V T 0 5 4 0 6 8 0 2 - 8 6 1 - 3 3 0 0

Action Alert

December 10, 2003

LAMOILLE VALLEY RAIL TRAIL NEEDS YOUR VOICE!

Please write a short letter today!

If you're thinking that the proposed Lamoille Valley Rail Trail, a 96-mile rail trail from St. Johnsbury to Swanton, would be just the ticket for a great place to bicycle, walk, snowmobile, or horseback ride, now is the time to speak up!

Despite considerable public process over the past several years about the conversion of rail-to-trail including approval through the Vermont Legislature, a few individuals are clinging to the hope of a revitalized rail line, and are trying to disrupt a federal decision about officially "railbanking" the corridor.

This corridor has not been economically viable for decades. But the rail advocates that are trying to prevent the trail conversion make it sound like the trail will kill a vital rail corridor. The rail is not in such shape that you could start running trains again; why pour more public funds into supporting a doomed private railroad? If a miracle occurs, and new technology or rail connections make this a viable rail corridor in the future, railbanking will preserve the Right of Way toward possible future conversion back to rail. For now, a multi-use trail will allow true public use of this public corridor. Across the country, rail trails have sparked small-town revitalizations.

Here's what you can do in support of the trail conversion.

1) Write a letter in support of the trail to the federal and state decision-makers.

You can simply say in your own words that you support the railbanking of the Lamoille Valley Rail Road toward its conversion to a multi-use trail. You can add any notes about why you'd like it to be a trail (bicycling, walking, economic development, health, etc.) Please additionally reference the economic failure of the railroad as a reason to railbank it.

A sample letter is below. The public comment period will close in January 2004 (exact date TBA).

2) If you live along the rail corridor or neighboring town, please also send a short letter supporting the trail to the editor of your local newspaper.

Specific target papers include: Caledonian Record, Burlington Free Press, Times/Argus, Hardwick Gazette -- but local weekly papers are key too. **Please email becka@vtbikeped.org if you need any editing advice before you send your letter to the newspaper!**

Want to know more about the history & economic viability of this rail line? See the following link:

<http://www.vtbikeped.org/what/networking.htm>

Here's what to include in the letter to make sure it gets to the right decision-makers:

Reference the project as:

Lamoille Valley R.R. Co. _ Abandonment Exemption _ In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT Surface Transportation Board, Docket No. AB-44 (Sub-No. 1X)

MAIL TO:

Section of Environmental Analysis
Surface Transportation Board
Room 500
1925 K Street, N.W.
Washington, DC 20423-0001

CC TO:

James B. Fitzgerald
Lamoille Valley Railroad Company
c/o VTrans Rail Section
National Life Building, Drawer 33
Montpelier, VT 05633-5001
jim.fitzgerald@state.vt.us

BLIND CC:

VT Bicycle & Pedestrian Coalition
PO Box 4003
Burlington, VT 05406
becka@vtbikeped.org

Please Note:

What trail advocates and communities along the corridor are asking for is called "Railbanking" or an "Abandonment Exemption" -- it is *not* a railroad "abandonment," which is a technical term that dissolves the railroad corridor. Railbanking, in contrast, preserves the Right of Way along the corridor.

SAMPLE LETTER – Please tailor to your own interest/focus.

(date)

Section of Environmental Analysis
Surface Transportation Board
Room 500
1925 K Street, N.W.
Washington, DC 20423-0001

Re: *Lamoille Valley R.R. Co. – Abandonment Exemption – In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, Vermont*
Surface Transportation Board, Docket No. AB-44 (Sub-No. 1X)

Ladies and Gentlemen:

On behalf of [name of organization], I am writing in support of a regulatory exemption allowing the Lamoille Valley Railroad Company (LVRC) to abandon its 95.26-mile-long railroad line between St. Johnsbury and Swanton, Vermont.

In the early 1970s, this line was purchased by the State of Vermont and thereafter extensively rehabilitated with a heavy infusion of federal and state funds. From 1978 through 1990, LVRC was controlled by dedicated group of local investors who struggled heroically to operate a successful short-line railroad. In the end, the obstacles were too great: (1) the loss of overhead “bridge” traffic from the Maine Central’s Mountain Division, (2) the closure of talc and asbestos mines, once the principal source of the line’s originating traffic, and (3) the long-term decline of farming along the line, which eroded the market for the bulk shipments of animal feed that were once the mainstay of the line’s terminating traffic. In the mid-1990s, heavy flood damage to the line, which would cost millions of dollars to repair, ended any practical possibility of resuming railroad service. At several recent sessions, the Vermont legislature has made it very clear that it has no appetite for the heavy financial commitment that would be necessary to restore this line to railroad operation.

However deep the pangs of nostalgia, the time has come to recognize that the public interest would be best served by the Board’s approving the requested regulatory exemption. This would allow the LVRC to surrender its leasehold, opening the way for the State of Vermont, as the line’s owner, to make segments of the corridor available to municipalities, snowmobile clubs, and other responsible organizations for trail use.

Sincerely,

[Typed name of sender]

cc: Mr. James B. Fitzgerald
Lamoille Valley Railroad Company
c/o VTrans Rail Section
National Life Building
Drawer 33
Montpelier, VT 05633-5001

APPENDIX

Reference Attachments

Attachment 7

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

**(Stone Consulting and Design Report
on Vermont Rail Link Proposal for the Vermont Joint Fiscal Office,
October 2001, excerpts - 1st page and Freight Operations Section)**

Vermont Legislative Joint Fiscal Office

Vermont Rail Link Proposal

Letter Report

Our analysis of the Vermont Rail Link Business Plan consisted of several basic steps. First, underlying the validity of the plan is the validity of the passenger and freight market that is driving it.

Our second key effort was to examine the size and distribution of the various expense and revenue items on the business plan, the various year's pro-forma income and expense statements and determine the stated plan is a likely outcome of the proposal.

Meanwhile, other issues surfaced during the review and investigation of this proposal that may render further questions about the validity of any operator securing a clear and legal right to operate the line, let alone develop a sound business plan around the assumptions, and these complications appear to equally affect the rail or trail proposal.

THE PROPOSER

Stone Consulting & Design, Inc. (SC&D) was asked to review only one proposal – that submitted by Vermont Rail Link. The names of other proposers or railroads interested in the process or that were notified is not known; however the score sheets submitted indicate that this proposal was superior to all others and that others had been submitted to the formal scoring process. SC&D did not review the trail proposal that has been offered as an alternative use of the corridor.

Mr.'s Snyder and Worthen adequately presented their backgrounds and experience. We are satisfied with their general knowledge and understanding of both shortline and freight railroading and impressed with their ability to communicate through both the written proposal and the verbal interview process. Their qualifications and experience compare favorably with the typical shortline tourist rail proposals we have reviewed.

Comments made in the operator interview disclosed that no other "operating railroads" had submitted an interest in this line and that there was some question as to just why not – this was asked of the Vermont Rail Link. After verifying some potential freight business on the line ourselves, we investigated further, particularly when some business is so close to the existing NECR connection. Some interesting events have transpired.

operating and working capital as a risk venture. The state must, however, recognize the at-risk investments by proposers and investors to justify profits to be distributed even if grants have been made to preserve state property.

The pro-formas essentially expensed the “profit” by the proposer as an item in administrative costs; i.e. their salary. It is debatable whether this is accepted accounting procedure, but it would also appear that there is actually more ‘cushion’ in the pro-forma than would have initially appeared due to the fact that the proposer’s fee/salary is actually in administrative costs, or that the proposer has, at minimum, created both jobs for itself. Therefore, the “breakeven” pro-forma at year three actually includes a payment to the owners for services provided, if not a profit to be shared with potential stockholders. This is likely to be more of an issue with the SBA than the state at this point.

Repairs and upgrades to facilities that are not the property of the operator (such as repairs to the Morrisville engine house) become a point of negotiated debate directly in relationship to the length of the lease. It is unrealistic to expect the operator to invest significantly in a property where the normal term of an improvement loan is shorter than the lease, or where they cannot depreciate their improvements during the life of the lease. Basically, no bank will ever loan money for a 15-year improvement to a property that only has a 5-year lease. If the state insists on a shorter-term lease (or no extension terms), then they must be willing to either fund the improvements themselves or make a provision for depreciated value buyback to the satisfaction of the bank.

Of the shortline freight and passenger operations that have folded, nearly all failed either because of a catastrophic event or freight business closure on the line (that could not be foreseen), or failed to survive their first five years of operation due to woefully inadequate capitalization. Because of that, the lease should include a minimum acceptable level of working capital to be attained before final operations can begin, and by a certain date. The highly seasonal nature of tourist railroads makes them a fundamentally difficult business, and one where the entire year is basically determined in fall foliage – not completely unlike other tourism-based businesses in Vermont. Freight business, while much more stable based on a variety of commodities and customers, can be difficult to maintain when the environment is as difficult as Northern Vermont in winter.

Freight Operations

Freight services to Morrisville, and later as far east as Hardwick, allow Vermont industries to be reconnected to the outside world by rail. Even today, the Bordeau Bros. Mill in Sheldon is dependent on an NECR rail-to-truck transload (out of St. Albans) to deliver their inbound grain. Reconnecting direct rail will allow Vermont industries to directly connect to the national rail freight system and reach markets that are now too expensive to reach by truck, or decrease their cost to existing customers and suppliers that are now reached by truck. This can make a real difference to the overall profitability and competitiveness of certain industries and impact employment. The challenge is to analyze and verify these potential rail customers and determine if there really is a legitimate reason to assume that rail freight has a future here.

We discovered a substantial interest in freight service by verifying the interest letters in the proposal. Every shipper contacted verified the letters, their interest and, if anything, had seen increased interest in rail transportation since the time of the initial submission. This was a pleasant surprise that was not anticipated.

Across the board, we discovered that the on-line shippers had NOT been contacted by LVRC. If there actually was a shortline freight marketing program by them, it was not effective. They had no recollection of being actively solicited or approached during the previous operator's tenure. This adequately explained the total lack of previous freight business on the line, which is a major and key issue when reviewing this proposal. A 1993 agreement between LVRC and the State of Vermont directed LVRC for continued investment in the Washington County shortline (also operated by Forbes) with at least the perception to create a disincentive for any further attempts to resuscitate LVRC and allowed removal of some equipment, scrap rail and shop contents at Morrisville in exchange for continued investment in Washington County.

If anything, we feel that the freight business may be substantially understated during the initial years of operation and will grow to a 750-1,000 car/year plateau quicker than anticipated. This will change the dynamics of the railroad along with the demand to upgrade the track quicker to provide better service and to be year-round over the entire length of the opened line.

Track conditions on the line can be focused on to immediately repair the washouts and allow passenger equipment to be moved to Morrisville. Beyond that point, the railroad can function for much of the freight business as an "FRA excepted track" railroad west of Johnson in year one. Excepted track cannot be used for passengers or for hazardous materials, so this would impact any potential propane business. But the concrete, fertilizer, wood products and brick would not be affected and can be operated at reduced speed on excepted track.

Sidings are a significant issue. Some of the major customers will need sidings and cannot adequately load on the main line. While rail materials can be salvaged from the east end, it is more than likely that the state should prepare for requests for capital assistance by the shippers to construct new sidings, and this is apparently not included in the \$4.5 million capital budget estimate.

Freight business at Sheldon and Highgate Center, along with the interchange to the west, will fairly well occupy a crew to serve this end of the railroad during a day. Assuming that freight services can be covered with the same unit and crew as running the passenger trains during the fall foliage crush is suspect. At that time of year, at least, both locomotives and two crews on two locomotives will absolutely be necessary because of low running speeds. It may be most viable to serve these west-end customers via an NECR operating agreement during winter months. If the railroad incorporates as a common carrier, however, then the full season obligation is assumed. No shipper contacted offered that they understood that the line would, or might, be closed in the winter – including Poulin Lumber at Hardwick.

The seasonal nature of the railroad is assumed in the initial years, and this runs in direct conflict to the assumptions on freight service and its need to be available all-year. The Phase II proposal explicitly states seasonal freight operation over that portion. The conflict is between assuming

the railroad is a seasonal passenger operation with some seasonal freight vs. a freight operation that keeps trucks off of the road. Since the publication of the draft report, it has been clarified that the primary shipper east of Morrisville, the pulpwood reload facility, may consider a truck-to-rail transfer closer to Morrisville and not require freight service east of that point through the winter. This is the apparent underlying reason for the Phase II intent of a seasonal snowmobile trail east of Morrisville. The Phase I section, Swanton to Morrisville, is intended to remain open for freight service on an as-needed basis during winter months.

Another key, unknown assumption at this point is what level of economic pricing can be negotiated for the NECR rate division. Until actual pricing and ratemaking takes place, it will essentially be unknown what level of rate division will be demanded, and if the total rate division package becomes competitive with truck. The facts are that nearly every customer wants rail, as long as rail remains competitive or at the “magic” 20% cost savings. Rate divisions, as shown in the pro-formas, do not seem to be unrealistic, but will vary significantly depending upon commodity hauled. There is substantially more revenue to be made from commodities such as brick, plastic pellets and chemicals than from low-value commodities such as pulpwood and grain, and an average per-car settlement does not take this into effect. It is also unclear at this point whether the new operator will operate as a switching terminal (setting a standard price per car) or attempt to participate in individual rate settlements. This customer and commodity mix in general looks to be on the low end with the possible exception of manufactured stoves and propane gas.

Subsequent discussion with Mr. Snyder and Worthen have indicated that the intent of the pro-forma rate divisions in the proposal was for NECR to actually be the freight carrier of record to the final customer and VRL to provide only a ‘haulage’ service for a per-car fee and not necessarily involve themselves or NECR in the typical rate-division conflicts inherent between two shortline railroads competing against each other for rate divisions. Stone Consulting has neither verified nor questioned this with NECR due to the sensitive nature of such business negotiations. Generally, we support this ‘haulage’ approach, though we would still recommend to have multiple haulage rates sensitive to disparities in commodity-level pricing.

Though many freight shortline railroads have attempted intermodal (truck trailer or container) operations, margins on these activities have been so small as to virtually wipe them off the shortline railroader’s opportunity list. Equipment necessary to load, unload and handle intermodal equipment makes them a capital-intensive exercise and the per-trailer charges necessary to handle the cars over a shortline (vs. driving the same trailer to a regional reload terminal) makes it a poor competitive proposition. We do not support the suggestion or conclusion that “intermodal” container/piggyback activities will make a significant portion of future freight revenues on this line. Intermodal, as it applies to bulk material reload between truck and railcar, is an entirely different scenario, and these activities have been quite successful by shortlines as a breed.

Operations

Initial operations assuming two used locomotives is entirely reasonable. While much seems to have been made about the cost and usability of two \$80,000, 40-year-old GP-type units, this falls completely within normal ranges in our experience, along with the assumption that you need two locomotives because one may be down for repairs.

What may be the true issue of operations is just how the freight *and* passenger business will be handled with one operating unit. Short-distance passenger excursions will command one unit on a daily basis during fall foliage, and the length of the railroad west will also demand a locomotive on a seasonal basis as well to handle freight. Our discovery was that most of the freight business was to the farthest edges of the railroad (both east and west) making a 2-3 day/week service necessary, along with the time necessary to travel will make it difficult to manage both freight and passenger operations with just one locomotive in service. We would suggest that a third locomotive, possibly even less expensive than \$80,000, would be the most likely solution and that it would be stationed on the west end of the railroad. For the seasonal fall foliage peak, a locomotive could even be short-term leased from NECR.

Railroad Retirement

We questioned the entire validity of the proposal based upon what appeared to be a rather significant error in the understanding of the fundamental costs of railroad retirement, which is nearly three times as expensive as typical FICA+Medicare employer portions. Lack of understanding of this issue would indicate a rather critical lack of understanding in the entire proposal.

In the audiotapes, it was clear to us that their understanding was that the passenger corporation was exempt from railroad retirement, while the freight portion was not. In actuality, railroad operations in interstate commerce must be covered under railroad retirement, which effectively means the freight operations, and in practice this means that you cannot separate operating employees between passenger and freight in the same day's pay in a practical manner. Therefore, the typical practice is for two (2) operating corporations, one that effectively holds all railroad *operating* employees and a second that provides non-railroad *services* so that office employees, train guides, etc. not directly involved in railroad operations are not subject to railroad retirement but rather social security instead. This is a very typical approach by shortlines to reduce their exposure to this item. The net effect is likely more than 10%, but by no means the full 23.75% employer hit⁴ that is feared and questioned by the state as a "fatal flaw" in the proposal. Simply stated, railroad employees involved in the general freight system must be paid through railroad retirement, and that most likely involves operating and track maintenance crews.

Supervision, management, gift shop, etc. employees not involved in "general system transportation" may not be eligible, depending on how the company is structured, but that may be subject to legal appeal and exact job function. Within the context of the audiotapes, we feel

⁴ Railroad Retirement: <http://www.rrb.gov/g34.html>. Full definition of "Railroad Employer" may be found at <http://www4.law.cornell.edu/uscode/45/231.html>

that adequate knowledge was shown of this issue and that it is not necessarily a fatal flaw, though it is still significant enough to possibly justify another effort at a pro-forma revision/clarification and that a request for this would be entirely appropriate.

East End

We agree with the proposer that no interest in freight service was found toward St. Johnsbury. No local service customers saw the need for due-east connections; southern connections can be accomplished via either connection. Though “Phase 3” is shown to St. Johnsbury, there is no particular justification for doing it other than the fact it preserves a corridor. Historically, the LVRC ran east from Morrisville including the covered bridge and the view from the hill above Greensboro Bend. East of that, however, seems to be without support for passenger or freight purposes.

The conclusion, however, that the only way to preserve the rail corridor is by keeping it intact as a weed-grown railroad with rail in place is in question. Rail-to-trails legislation specifically uses the language “interim trail use” to preserve the possibility that a corridor may someday be reconverted to rail. This is specifically to preserve the rail transportation right toward land easements that would otherwise revert.

It should be of some comment that the George S. Mickleson rail-trail at Deadwood, SD (114 miles) was made by filling the space between the rails level with crushed limestone, leaving the rails in place yet allowing an immediate trail facility.⁵ This only provides a true compromise to those individuals that fight the physical removal of the rail, yet do not necessarily contest the validity of the trail concept. In this case, some consideration has been made to reactivate a small portion of the trail immediate to Deadwood for tourist rail use but that has not yet been done.

However, it should also be noted that despite the intent and language of ‘interim trail use’, no converted rail-trail has ever been activated for rail transportation once converted to a trail to our knowledge. Stone Consulting has been involved in one such attempt in Armstrong County, Pennsylvania, where the reactivation of a trail-pending abandoned ROW would have reactivated a local coal mine, taken a projected 28,000 truck trips off of local roads and had strong local economic support for relaying the railroad. Resistance from national and regional trail interests was equally strong and the eventual compromise reached was to transload the coal via barge to another rail line on the other side of a river, leaving the proposed trail project unhindered. While this was a legitimate compromise in this particular project, it was indicative of the difficulty of the reactivation of a rail line once the trail process has actually started.

RECOMMENDATIONS

Part of this process involves an approval process by the Legislative Committee, and at this state it is most appropriate that the State of Vermont concern themselves with the overall viability of the project and the economic impact on the communities and state as a whole. To our surprise, we found that the underlying basic business assumptions of the railroad for both passenger and freight traffic are substantially correct (though not completely) as stated. We feel that the

⁵ George S. Mickleson Rail Trail: http://www.gorp.com/gorp/resource/us_national_forest/sd/hik_bmic.htm

railroad stands a better-than-average likelihood that it can operate in a manner as generally presented in year three, i.e. a small profit or a break-even basis, as the sustainable plateau. This conclusion was reached by our own independent verification of the basic rail business in the area, reviewing comparable tourism markets and agreeing substantially with the arguments presented by the proposer. As this level of operations actually includes a salary/profit for the proposer and covers assumed debt service, the only question is as to whether or not any other investors will actually see any distributed profits and how long it will take to reach this level.

We were very skeptical about the possibility of the project succeeding where a previous shortline railroad had already failed. After our investigation though, we discovered substantial evidence that the previous operator had not pursued the freight business effectively at all and that he was just beginning to discover the potential passenger business when the line closed due to flooding. We have concluded that the lack of success in the freight effort was directly traceable to LVRC's own policies and management, not necessarily the underlying business situation, and that the passenger business never developed far enough to discover its own potential.

Requested projected financial information, while certainly voluminous, leaves out key pro-forma balance sheet information and should require some further adjustments based upon projected maximum ticket prices, adjusted employee benefits, possible increased/adjusted freight business and wintertime operation costs. Taken in total, these are significant enough items to request another financial projection iteration by the proposer as part of the due diligence process. This was offered by the proposer during the interview and should be accepted as a necessary step.

Another 'catch 22' situation is the validity of the SBA loan, where the bank will only perform their due diligence if a lease document is offered. It may actually be necessary to grant a lease (with contingencies and restrictions), or at least a written letter of intent, to provide the bank sufficient justification to do their own due diligence and determine what, if any, portion of operating capital will be actually supplied via credit. We recommend that the state provide some written intent to the bank that will allow them to go forward from here toward what may be one more step in a prolonged and difficult process. It is also questionable whether this loan process can actually move forward while the rail vs. trail intended use remains as a clearly undecided issue in different areas of Vermont state government.

With the legal complications discovered, any new operator may not be able to quickly get either a clear lease or STB authorization to continue service without assuming the entire railroad as was awarded to LVRC and allow them to post the certificate of discontinuation. There are certainly ample opportunities for the entire process to stall. This process must begin immediately for any use of the corridor and for any funding process to continue for any rail or trail project. We would recommend that the services of an STB attorney be used on this particular issue.

Meanwhile, on the east end of the railroad we see no reason as to why a future STB application should not be made for interim trail use. This will serve to further force and clarify the legal standing of the LVRC operator situation in front of the STB without necessarily drawing any subsequent operator into a battle that they did not wish to enter. Interim and almost immediate trail use may be done by leaving the rails in place and filling level with crushed limestone, as the net liquidation value of the rail and ties for salvage is now at historic lows and may be scrap

value at best. This status could effectively and inexpensively preserve the line potential for the same period of time as advocated by the proposer and allow quicker and less expensive reconversion to rail if a new market is actually found for services upon reopening and if the effort is justified. Preserving this section with rails in place and brush grown in it just in order to allow corridor preservation for over a 5-year period though is not supported under practice or legislation. Any attempt though at ever reactivating the railroad after trail status has been begun could be expected to be a protracted conflict

While it can be argued effectively that the state may be putting good money after bad in further committing capital funds for railroad right-of-way restoration, much of the requested monies for capital projects will be equally needed, and valuable, for preservation of the corridor for the alternative trail use. Repair of washouts, bridge repairs and embankment stabilization is equally needed for that trail approach. Only the additional investment in rail and ties, which is comparatively small due to the prior state investments in track repairs, remains at risk and only that portion of that investment above net liquidation (resale) value is actually sunk cost. In that context, the rail-only risk of the state is comparatively small in proportion to the risk being assumed by the owner, the potential investors and any other creditors asking to contribute toward the pool of working capital necessary for this railroad.

Vermont should not attempt this rail revitalization project unless they are prepared to assume the \$4.5 million rehabilitation project by themselves. Federal grants, while possible, are not by any means guaranteed through any conventional rail-only grant program. Alternatives such as EDA, TEA-21, etc. are real, but highly difficult to obtain in a manner equal to the timing necessary in the business plan.

In the case of the Adirondack Scenic, the State of New York has specifically identified capital rail improvements as “corridor improvement and stabilization” not “railroad track repair” as line budget items at the state level. Like Vermont, the desired preservation of the corridor was very clear in 1992, even if the continued rail use was not, and in their case a 119-mile corridor seemed even more daunting. Agreement could be reached much more easily on repairing washouts on a multiple-use rail/trail corridor than specifically on a freight and passenger railroad, when the immediate outcome is unknown.

APPENDIX

Reference Attachments

Attachment 8

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

(Information Document, "Photos-Impediment to Rail Service on LVRC," prepared by Timothy Phelps)



**Figure 1 – RR Paved Over
East of Cambridge Jct.**



**Figure 2 – Tree Grows In Track
East of Morrisville**



**Figure 3 - RR Paved
Over
East of Morrisville**



**Figure 4 – Track Removed
West Danville**



**Figure 5 – Bridge Removed
St. Johnsbury**

No Impediment to Rail Service?

These photographs depict typical conditions on the Lamoille Valley Railroad Company (LVRC) as they actually were in early 2004, during the same time that attorneys acting in behalf of the Vermont Agency of Transportation (and formally representing the private LVRC operator) filed for an “exempt” abandonment of this rail line before the Federal Surface Transportation Board (STB) in Washington, DC. These pictures reflect the general conditions on the rail line throughout 2002 and 2003 (this damage to the rail infrastructure clearly did not develop overnight), and represent but a small percentage of the intentionally caused and/or condoned non-useable conditions then existing on this 95.26 mile railroad. While it is clear that these rail infrastructure conditions are in fact total obstructions to actually providing real rail freight service, the STB was told something entirely different by the attorneys representing the Vermont Agency of Transportation (VAOT, also known as VTrans) and LVRC.

Even as these conditions existed, VAOT’s attorneys filed statements before the STB which indicated the LVRC rail operator still had a common carrier obligation to provide rail freight service over this rail line upon “reasonable request,” and that there was no impediment to the continued availability of rail service on the line. VAOT’s legal counsel thus falsely painted the picture before the Federal regulatory board that the LVRC rail operator was always ready, willing and able to provide rail freight service, upon “reasonable” request, should a shipper happen to call. In fact, however, 12 shippers along the middle and west end of the line had expressed their desire for rail freight service in March of 2001 (fully explored in the SC&D Report for the Vermont Joint Fiscal Office, made in October 2001), with service projected to begin in 2002 at a level of approximately 750 carloads per year. Predictably, as could be expected from these photographs, no rail service was ever provided.

When the true condition of the railroad is known, it is impossible to imagine any “reasonable request” that could have reasonably resulted in actual rail service, since as photographs clearly show, there was in fact a complete impediment to the actual provision and availability of rail service. If there truly was no impediment, since the public record clearly shows rail freight service had been requested, why then wasn’t this rail service provided?

APPENDIX

Reference Attachments

Attachment 9

to

**Surface Transportation Board
Ex Parte No. 690 Written Statement**

of

Timothy Phelps

dated

June 29, 2009

(Interim Agreement between the Vermont Agency of Transportation and LVRC, January 4, 2002)

INTERIM CORRIDOR MANAGEMENT AGREEMENT

THIS AGREEMENT, entered into as of this 4th day of January, 2002 and effective as of September 1, 2000 (the "Effective Date"), by and between LAMOILLE VALLEY RAILROAD COMPANY, a Vermont corporation ("LVRC"), and the STATE OF VERMONT, a sovereign state, acting through its Agency of Transportation ("VTrans").

WITNESSETH:

WHEREAS, VTrans and LVRC are parties to a December 31, 1977 Lease Agreement (the "Lease") pursuant to which, among other things, LVRC has leased from VTrans and occupied a certain railroad right of way located approximately between railroad milepost 0.057 in St. Johnsbury, Vermont and railroad milepost 95.324 in Swanton, Vermont (the "Line"), as more particularly defined and described in the Lease; and

WHEREAS, VTrans and LVRC are also parties to a certain Settlement Agreement dated on or about February 19, 1998 ("Settlement Agreement") pursuant to which, among other things, LVRC agreed to surrender its leasehold interest in the Line, subject to obtaining required regulatory approval from the U.S. Surface Transportation Board ("STB"); and

WHEREAS, in *Lamoille Valley R.R. Co. – Modified Certificate of Public Convenience and Necessity*, Finance Docket No. 33709 (ICC served Feb. 10, 1999 and May 17, 1999), the STB denied LVRC's verified notice of exemption requesting a modified rail certificate of public convenience and necessity under 49 C.F.R. Part 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*; and

WHEREAS, after extensive investigation, the parties believe that other procedural avenues are needed to obtain the required regulatory approval from the STB for abandonment or discontinuance of operations of the Line and/or for transfer of the Line (or segments of the Line) to other operators; and

WHEREAS, VTrans, in collaboration with the regional planning commissions along the Line and other interested parties (a group known as the "Mountain Valley Consortium"), has been reviewing proposals by other parties for rail and other public uses of the Line; and

WHEREAS, in 2001 Vt. Acts No. 64, § 29, the General Assembly directed VTrans not to make any long-term commitments for future use of the Line, pending further legislative action; and

WHEREAS, VTrans is not a common carrier by railroad and is unable to assume LVRC's federal regulatory responsibilities as the incumbent common carrier on the Line; and

WHEREAS, as of the Effective Date, the parties have amended the Settlement Agreement to provide that LVRC shall continue to serve as the common carrier on the Line until such time as LVRC is directed by VTrans to assign its common carrier rights and

responsibilities to some other entity designated by VTrans or, in the alternative, to take appropriate action to obtain federal regulatory approval to abandon or discontinue service over the Line, such continued service by LVRC as common carrier to be pursuant to the terms and conditions of an Interim Corridor Management Agreement which shall serve as an amendment to the Lease; and

WHEREAS, such Interim Management Corridor Agreement between VTrans and LVRC is in the public interest;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. INTRODUCTION

As of the Effective Date, the parties' respective rights and obligations with respect to LVRC's service as common carrier on the Line, and its lease, use, occupancy, maintenance and repair of the same, shall be governed by and construed in accordance with this Agreement. Prior to the Effective Date, the parties' respective rights and obligations with respect to LVRC's service as common carrier on the Line, and its lease, use, occupancy, maintenance and repair of the same, shall be governed by and construed in accordance with the Lease, subject to the Settlement Agreement, including all releases provided in the Settlement Agreement.

The parties acknowledge and agree that no request for freight rail service on or over the Line has been made by any shipper for many years, and that the Line is currently in "embargoed" condition as that term is defined under applicable federal and State track safety standards. The parties do not anticipate that any such request for freight service on or over the line will be made during the term of this Agreement. The performance of actual freight rail service during the term of this Agreement by LVRC is highly unlikely and is not contemplated.

It is the intent of the parties that LVRC shall continue to serve as the designated common carrier for the Line for the purposes of STB regulations, to insure the Line, to pay the property and/or franchise taxes on the Line, to perform occasional monitoring of and occasional minor repairs to the Line, all within the nature and scope of the funds available through the Management Fee provided for in Section 12, below. Such services are to be performed on an interim basis until VTrans designates a New Designated Operator for the Line or determines an alternative use for the Line, such that LVRC would not benefit from any capital expenditures or similar investment in the condition or operations of the Line.

VTrans acknowledges that LVRC has relied on such premises in calculating such Management Fee and in entering into this Agreement. Accordingly, notwithstanding anything to the contrary herein, VTrans acknowledges and agrees that, (a) should such a request for freight rail service on or over the Line be made during the term, and should LVRC be required to accommodate such request, or (b) should major maintenance or repairs to the Line, other than occasional monitoring, occasional minor repairs and related

administrative responsibilities contemplated hereunder, such activation of such freight rail service and/or such work would involve the performance by LVRC of services that would substantially exceed the obligations and related costs contemplated hereunder ("Unbudgeted Management Expenses"), and the performance of such freight rail services and/or work would require a modification of the terms and conditions of this Agreement.

SECTION 2. DEFINITIONS

Except as otherwise specifically provided herein, the following capitalized terms shall have the meanings specified below whenever used in this Agreement:

"Agreement" shall mean this Interim Corridor Operating Agreement.

"New Designated Operator" shall mean an entity designated by VTrans to become the successor to LVRC as permanent freight operator on the Line or segments of the Line.

"Lease" shall mean the December 31, 1977 Lease and Operating Agreement between VTrans and LVRC, as subsequently renewed.

"Line" shall mean the railroad right of way located approximately between railroad milepost 0.057 in St. Johnsbury, Vermont and railroad milepost 95.324 in Swanton, Vermont (the "Line"), as more particularly defined and described in the Lease.

"Operating Rights" means the freight railroad operating rights of LVRC under the Lease.

"Party" or "Parties" shall mean the signatories to this Agreement, unless otherwise specified.

"Settlement Agreement" means the February 19, 1998 agreement between VTrans and LVRC, as amended by Amendment dated as of the date hereof.

"STB" means the federal Surface Transportation Board.

SECTION 3. PERMITTED USE OF LINE

(a) Subject to the terms and conditions herein provided, LVRC shall continue to have the right to operate its trains, locomotives, cars and equipment with its own crews over the Line for the purpose of conducting necessary freight railroad operations on the Line for the entire term of this Agreement. This right shall be exclusive.

(b) Subject to Section 6(b), below, LVRC shall continue to have exclusive control and management of its freight rail operations (if any) along the Line.

(c) LVRC shall continue to be entitled to all revenues derived from its provision of actual freight rail services (if any) along the Line. However, LVRC shall not have any

further entitlement to any track rent or similar fee that may be owed by a third party who uses the Line or portions of the Line.

SECTION 4. RESTRICTIONS ON USE OF LINE

LVRC shall not, without prior written consent of VTrans, which consent may be withheld by VTrans in its sole discretion:

(a) Conduct any passenger or commuter railroad operations on the Line;

(b) Allow any person, entity or railroad other than VTrans or its designee to conduct any freight or passenger operations on the Line.

(c) Grant any easement, lease, license or right of occupancy in, on, under, through, above, across or along the Line, or any portion of the Line, to any third party;

(d) Cause or knowingly allow the creation of any encumbrance or lien on the Line or any portion of the Line.

SECTION 5. ASSIGNMENT OF CONTRACTS

(a) VTrans shall continue to assign to LVRC its rights in any easements, crossing agreements and other agreements ("Contracts") affecting the use, occupancy or possession of all or any portion of the Line, to the extent such rights are necessary for LVRC to conduct freight rail operations on the Line. LVRC shall continue to be responsible for any and all liabilities under such Contracts and shall be entitled to any and all benefits under such Contracts, to the extent such liabilities and benefits are applicable to its freight rail operations on the Line.

(b) Upon expiration or termination of this Agreement, LVRC immediately shall relinquish its rights under such Contracts and shall not be liable for any obligations or eligible for any benefits arising from such Contracts which accrue after the date of termination or expiration.

SECTION 6. TERM AND TERMINATION

(a) This Agreement shall be and is effective as of the Effective Date of September 1, 2000.

(b) This Agreement shall continue in full force and effect from the Effective Date through June 30, 2002 (the "Original Termination Date"), unless terminated before the expiration of such period by VTrans in its sole discretion. The term of the Agreement may be extended beyond the initial 22-month term by VTrans in its sole discretion; provided, however, that LVRC's written consent shall be required to extend the term more than twelve (12) months beyond the Original Termination Date.

(c) LVRC covenants and agrees to perform its common carrier freight railroad obligations over the Line for the entire term of this Agreement, including any extensions to the initial 22-month term which may be agreed upon by the parties. Upon the expiration or termination of the Agreement, LVRC covenants and agrees to transfer and convey its Operating Rights to VTrans' New Designated Operator. LVRC also covenants and agrees that, upon expiration or termination of this Agreement, LVRC immediately shall cease its freight rail operations on the Line, vacate its occupancy of any portion of the Line and remove any of its property from the Line. LVRC also covenants and agrees to cooperate in any regulatory filings which may be necessary to effectuate the transfer and conveyance of its Operating Rights to VTrans' Designated Operator. LVRC also shall transfer, assign and/or convey any contractual rights necessary to perform its common carrier obligation to provide freight rail transportation service over the Line to VTrans' New Designated Operator(s) upon expiration or termination of this Agreement.

(c) The parties acknowledge that it would be difficult or inconvenient to quantify the damages suffered by VTrans if LVRC were to violate the requirements of this Section 6. Accordingly, the parties have agreed that in the event of LVRC's violation of this Section 6 liquidated damages shall be (i) \$1,000 per day; (ii) all of LVRC's Railway Operating Revenues included in Account 501 during the third preceding month (or an equivalent amount under an alternative standard agreed-to in advance by the parties) for the entire period of non-compliance; and (iii) all reasonable fees and expenses (including attorney's fees and expenses) incurred by VTrans in effecting transfer and conveyance of freight operating and related rights to VTrans' Designated Operator, securing cessation of LVRC's operations on, and occupancy of, the Line and removal of LVRC's property from the Line. The parties agree that these liquidated damages are reasonable concerning all of the circumstances, and that they fairly represent the range of damage VTrans reasonably could be anticipated to incur in the event of a violation of this Section 6.

(d) The rights, benefits, duties and obligations running from or to either party under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the expiration or termination of this Agreement.

(e) Expiration or termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to its termination.

SECTION 7. TAXES AND UTILITIES

(a) LVRC shall be responsible for the payment of all taxes which may be assessed, levied, charged, confirmed or imposed by any governmental authority on the property, rights or franchises constituting the Line.

(b) LVRC shall initiate, contract for and obtain, in its name, any and all utility services required on the Line during the term of this Agreement, including gas, electricity, telephone, water and sewer connections and services, if any, as may be necessary in connection with LVRC's performance of its obligations hereunder, and LVRC shall bear and pay all charges for those services as they become due during the term of this Agreement.

(c) LVRC shall be solely responsible for all costs, expenses, charges, obligations and liabilities, of any nature and kind, relating to or arising from LVRC's use, occupancy, interest in, maintenance of or operations on the Line during the term of this Agreement.

SECTION 8. MAINTENANCE OF LINE

(a) The parties acknowledge that the Line is in "embargoed" condition, as that term is defined by applicable federal and State track safety standards.

(b) Subject to the provisions of Section 1, above, LVRC shall perform occasional monitoring of and occasional minor repairs to the Line, within the nature and scope of the funds available through the Management Fee provided for in Section 12, below. Such services are to be performed on an interim basis until VTrans designates a New Designated Operator for the Line or determines an alternative use for the Line, such that LVRC would not benefit from any capital expenditures or related investment in the condition of the Line.

(c) VTrans represents and warrants that it has inspected the Line and that it is not aware of any current condition on the Line that would require any Unbudgeted Management Expense.

SECTION 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

If any condition on the Line arises that would require any Unbudgeted Management Expense, or if any changes in, additions and betterments to or retirements from the Line are required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction over the Line, LVRC shall promptly confer with VTrans. VTrans may elect to perform such work with its own forces or with those of contractors, provided always that LVRC is fully protected from any liability resulting from the presence of such forces on the Line. If VTrans does not so elect, then LVRC shall use commercially reasonable efforts to perform such work and/or construct such additional or altered facilities, and VTrans shall

pay to LVRC the cost thereof, including the expense of maintaining, repairing and renewing such additional or altered facilities throughout the term of this Agreement.

Before performing such work, LVRC shall have the right to seek assurance from VTrans as to the mutually agreeable reimbursement rates for the time, materials and other expenses involved in performing such work, and the scheduling of payment for the same. LVRC shall cooperate with VTrans in applying for and securing any force account funds or other State funds that may be available for such work.

SECTION 10. MANAGEMENT AND OPERATIONS

(a) LVRC shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Line. LVRC shall indemnify, protect, defend, and save harmless VTrans and its executives, agents and employees from and against all fines, penalties and liabilities imposed upon LVRC or its parent corporation, subsidiaries and affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction over the Line, when attributable solely to the failure of LVRC to comply with its obligations in this regard.

(b) LVRC's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Line as published in Railway Line Clearances.

SECTION 11. LIABILITY

(a) LVRC shall be solely responsible for: (i) any loss and/or liability for loss of, damage to, or destruction of the property of VTrans, its employees, agents, contractors or invitees, to the extent caused by the negligence or wilful misconduct of LVRC or LVRC's material breach of the terms and conditions of this Agreement; (ii) any loss and/or liability for loss of, damage to or destruction of the property of any other person, entity, agency, firm, partnership or corporation whatsoever to the extent caused by the negligence or wilful misconduct of LVRC or LVRC's material breach of the terms and conditions of this Agreement; or (iii) any liability for injury to or death of any person whomsoever, in each case relating to, resulting from or arising out of LVRC's negligence or wilful misconduct in its use, maintenance of or operations on the Line or LVRC's material breach of the terms and conditions of this Agreement. It is agreed and understood that LVRC shall not be responsible for any landowner liability not involving LVRC's use, maintenance of or operations on the Line. Nor shall LVRC be liable for any loss and/or liability as contemplated by this Section 11(a) to the extent caused by the negligence or wilful misconduct of VTrans or VTrans' material breach of the terms and conditions of this Agreement.

(b) LVRC hereby releases VTrans, its officers, agents, and employees from, and agrees forever to protect, indemnify, defend, and hold harmless VTrans, its officers, directors, agents, and employees from and against, any and all claims, actions, costs, damages, losses, and expenses in any manner caused by, arising out of, or connected with LVRC's assumption of liability under Section 11(a), above. The foregoing release shall not apply with respect to any claim to the extent caused by the negligence or wilful misconduct of VTrans or by VTrans' material breach of the terms and conditions of this Agreement.

SECTION 12. REIMBURSEMENT

(a) For the duration of this Agreement, VTrans shall reimburse LVRC the sum of \$5,000 per month, or pro rata portion thereof, which, subject to the provision of Section 1, above, the parties agree is a reasonable estimate of expenses likely to be incurred by LVRC under this Agreement, including but not limited to liability insurance, franchise taxes, legal advice, and the monitoring of and occasional minor repairs to the Line contemplated hereunder (the "Management Fee").

(b) Within thirty (30) days of the execution of this Agreement, VTrans shall pay a lump sum of \$85,000, representing payment of the \$5,000 monthly Management Fee for the 17-month-period extending from September 1, 2000 through January 31, 2002. The lump-sum payment shall be by way of a check made payable to "David H. Anderson, IOLTA Account, as Attorney for Lamoille Valley Railroad Company." It is agreed and understood that the Trustee shall use the check proceeds first to satisfy the outstanding obligations of LVRC and affiliated corporations to the State of Vermont's Department of Taxes. Following satisfaction of these tax obligations to the State of Vermont, the remainder of the check proceeds may be disbursed in such manner as LVRC and Attorney Anderson may agree between themselves. The payments for the remaining period of this Agreement shall be invoiced by LVRC on the first day of each month, and shall be due and payable by VTrans within thirty (30) days of receipt of such invoices.

SECTION 13. INSURANCE

During the entire term of this Agreement, LVRC shall continue to keep and maintain in force all insurance policies specified in the Lease. The insurance policy shall continue to include the State of Vermont as additional insured.

SECTION 14. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of LVRC to perform its obligations under this Agreement and its continuance in such default for a period of thirty (30) days after written notice thereof by certified mail from VTrans, then VTrans shall have the right at its option, and notwithstanding any waiver by VTrans of any prior breach thereof, to terminate LVRC's right to use the Line under this Agreement, subject to and in accordance with any applicable laws or government regulations.

SECTION 15. DISPUTE RESOLUTION

(a) All questions or disputes arising under the terms of this Agreement shall, in the first instance, be referred to the Director of VTrans' Rail Division (the "Director").

(b) If LVRC is aggrieved by the Director's decision, then LVRC may appeal in writing to VTrans' Secretary of Transportation (the "Secretary") through the Director. Any such notice of appeal must be filed with the Director within 30 days of the decision from which the appeal is taken and shall fully describe the nature and extent of the question or disputes appealed, together with any supporting documentation.

(c) If LVRC is aggrieved by the Secretary's decision, then LVRC may appeal in writing to the State Transportation Board (the "Board") under 19 V.S.A. § 5(d)(4). In accordance with 19 V.S.A. § 5(h), the notice of appeal must be filed with the Secretary within 30 days of the decision from which the appeal is taken. The Secretary shall promptly forward the notice of appeal to the Board, together with the Agency's record of decision.

(d) In accordance with 19 V.S.A. § 5(c), a final order of the Board may be reviewed on the record by the superior court pursuant to Rule 74 of the Vermont Rules of Civil Procedure.

SECTION 16. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that LVRC shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, or its Operating Rights or any of its rights, interests or obligations thereunder, to any person, firm, or corporation without obtaining the prior consent of VTrans, which consent may be withheld by VTrans in its sole discretion. LVRC covenants and agrees, however, to transfer and assign its Operating Rights and any of its rights, interests or obligations thereunder to VTrans' Designated Operator upon expiration or termination of this Agreement.

SECTION 17. VERMONT STATE TAX CERTIFICATION

Pursuant to 32 V.S.A. § 3113, LVRC hereby certifies, under the pains and penalties of perjury (maximum penalty: 15 years in prison, a \$10,000 fine, or both), that it is in good

standing with respect to, or in full compliance with a plan approved by the Commissioner of Taxes to pay, any and all taxes due the State of Vermont.

Note: See paragraph 12(c) above regarding satisfaction of outstanding tax obligations to the State of Vermont.

SECTION 18. NOTICE

Any notice required or permitted to be given by any one party to any other party under this Agreement shall be given to all parties to the Agreement and shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to VTrans:

State of Vermont – Agency of Transportation
National Life Building
Drawer 33
Montpelier, VT 05633
Attention: Charles F. Miller, Director of Rail

with copy to:

John K. Dunleavy
Assistant Attorney General
Vermont Agency of Transportation
Drawer 33
Montpelier, VT 05633

If to LVRC:

Clyde S. Forbes, President
Lamoille Valley Railroad Company
c/o CSF Acquisition, Inc.
416 Main Street
Trenton, FL 32693

with copy to:

David H. Anderson
Attorney at Law
288 Littleton Road, Suite 21
Westford, MA 01886

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

SECTION 19. GENERAL PROVISIONS

(a) This Agreement and each and every provision of this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing contained in this Agreement shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties to this Agreement.

(b) In case of discrepancy, precedence of lease and other documents between the parties shall be determined in the following order:

Lease and Other Document Precedence

- (i) This Agreement;
- (ii) Settlement Agreement of February 19, 1998, as amended as of the date hereof;
- (iii) Lease Agreement of December 31, 1977

(c) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings among the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.

(e) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(f) All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

SECTION 20. REGULATORY APPROVAL

The parties acknowledge that transfer and assignment of LVRC's Operating Rights to VTrans' New Designated Operator, as well as abandonment or discontinuance of service over the Line or Line segments, may require STB approval. The parties shall cooperate, to the extent necessary, to obtain such approval in a timely fashion and LVRC will not have to pay any expenses or fees in connection with any STB proceeding which may be required to effectuate the transfer and assignment of its Operating Rights or to abandon or discontinue service over the Line or Line segments. In the event that this Agreement expires or terminates and VTrans fails to select a New Designated Operator within one hundred twenty

(120) days thereafter or to designate the Line segments to be abandoned or over which service should be discontinued, then VTrans will pay for any reasonable expenses or fees that LVRC may incur in connection with an STB abandonment or discontinuance proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

Joanina M. Lito

LAMOILLE VALLEY RAILROAD
COMPANY

By: *Clyde S. Forbes, Jr.*
Clyde S. Forbes, Jr., President

WITNESS:

John K. Dunbar

STATE OF VERMONT
AGENCY OF TRANSPORTATION

By: *Charles J. Moore*
Name:
Title: *Director & Atty*

APPROVED AS TO FORM:

DATED: 1-5, 2002

John K. Dunbar
ASSISTANT ATTORNEY GENERAL

g:\wptext\LVRC - Management.doc 01-03-2002