

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-265 (SUB-NO. 4X)

VERMONT RAILWAY, INC.
ABANDONMENT AND DISCONTINUANCE EXEMPTION
IN BENNINGTON COUNTY, VERMONT

246043

ENTERED

Office of Proceedings
July 5, 2018
Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

Vermont Railway, Inc.
Eric R. Benson, Esq., General Counsel
1 Railway Lane
Burlington, VT 05401-5290
(802) 658-2550

Dated: June 28 2018

FEE RECEIVED
July 5, 2018
SURFACE
TRANSPORTATION BOARD

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July 5, 2018
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VERIFIED NOTICE OF EXEMPTION

Vermont Railway, Inc. ("VTR") hereby files this Verified Notice of Exemption pursuant to 49 C.F.R. § 1152.50 for the discontinuance of service and trackage rights over approximately 1.57 route miles of rail line in Bennington County, Vermont. VTR seeks to discontinue service on a certain railroad right-of-way located between approximately Chatham Subdivision Milepost 57.35 (River Street) at Chatham Subdivision valuation stations 3028+08 and Chatham Subdivision Milepost 58.93 (northerly abutment of Bridge No. 56 over Furnace Brook, at valuation station 3111+30) in the Town of Bennington, Vermont (the "Subject Line").¹

The State of Vermont is the owner of a line of railroad, which is the remaining segment of the former Chatham Subdivision of the Rutland Railway Corporation, extending from River Street (TH #332) in Bennington village (Milepost 57.35) northerly approximately 4.47 miles to the junction with the former Main Line Subdivision in

¹ The Subject Line is owned by the State of Vermont ("Vermont") by and through the State of Vermont Agency of Transportation ("VAOT" or "VTrans"). See VTR's September 19, 1990 Lease and Operating Agreement with the State, a memorandum of which is recorded in the Town of Bennington land records at Book 0-228, Page 83, having been received for record on October 30, 1990 (the "Lease Agreement"). VTR holds a leasehold interest in the Subject Line, pursuant to the above-mentioned Lease Agreement. VTR has agreed to relinquish its leasehold interest and enter into a railbanking and trails use agreement with VTrans on the Subject Line.

North Bennington (Milepost 61.85). The remaining segment of the former Chatham Subdivision north of River Street (TH #332) (Milepost 57.35) continues to be included in VTR's grant of federal licensing authority from the federal Surface Transportation Board (STB). See *State of Vermont and Vermont Ry., Inc. – Exemption for Discontinuance of Service in Bennington, County, VT*, 51 Fed. Reg. 28,989 (Aug 23, 1986) (Docket No. AB-265 [Sub-No. 2X]) (discontinuance of service over 367 feet of former Chatham Subdivision between Milepost 57.29 and Milepost 57.36), and *Vermont Ry., Inc. – Modified Rail Certificate*, STB Finance Docket No. 34455 (served Jan. 27, 2004). However, the line segment between Milepost 57.35 and Milepost 58.93 has not been used to provide rail service for two or more years and therefore qualifies for the STB's exemption procedures. See 23 C.F.R. Part 1152 (Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903), Subpart F (Exempt Abandonments and Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10903 Exemption Procedure).

In accordance with 49 C.F.R. § 1152.50(d)(2), VTR submits the following information:

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

VTR intends to enter into a public use and interim trails use agreement with the Town of Bennington, in cooperation with VTrans, for ownership and use of the Subject Line, and intends to consummate discontinuance of its trackage rights over the subject segment of the Chatham Subdivision, soon after this Notice of Exemption becomes effective. The proposed consummate date is August 31, 2018, at least 50 days after the filing of this Verified Notice, as is required by 49 C.F.R. § 1152.50(d)(2).

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

VTR certifies that no local traffic of any kind has moved over the Subject Line for at least two (2) years and there is no overhead traffic on the Subject Line. In addition, no formal complaint filed by a user of rail service on the Subject Line (or a state or local governmental entity acting on behalf of such user) regarding cessation of service over the Subject Line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two (2) years. *See* Certification of David W. Wulfson, attached hereto as Exhibit A.

Exact Name of Applicant; Common Carrier Status: 49 C.F.R. §

1152.22(a)(1)-(2)

The exact name of Applicant is "Vermont Railway, Inc." VTR is a Class III short line railroad subject to Surface Transportation Board ("STB" or "Board") jurisdiction.

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

VTR seeks authority to discontinue service over the Subject Line and discontinue trackage rights over the Subject Line segment of the Chatham Subdivision, under the STB exemption procedure of 49 C.F.R. § 1152.50. VTR, along with the Town of Bennington, also seeks approval of the accompanying Petition for Public Use Condition and Interim Trail Use Condition in this matter, rather than an outright abandonment authorization.

Map: 49 C.F.R. § 1152.22(a)(4)

A detailed map showing the location of the Subject Line and segment of the Chatham Subdivision, drawn to scale and with the scale shown thereon, is attached hereto as Exhibit B. The map shows, in clear relief, the exact location of the rail line to

over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers, as required by 49 C.F.R. § 1152.22(a)(4).

Applicant's Representative: 49 C.F.R. § 1152.22(a)(7)

Any questions concerning this application should be sent to VTR's legal representative, Eric Benson, at the following address:

Eric R. Benson, Esq., General Counsel
Vermont Railway, Inc.
1 Railway Lane
Burlington, VT 05401-5290
(802) 658-2550

Zip Codes of the Subject Line: 49 C.F.R. § 1152.22(a)(8)

The Subject Line traverses United States Postal Service ZIP code 05201.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

VTR believes that the right-of-way of the Subject Line is compatible with alternative public use under 49 U.S.C. § 10905; the Subject Line corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with State law and local plans.

In Section 48 of Act No. 164 of 2008 (eff. June 21, 2008), the Vermont General Assembly authorized rail-banking of a segment of the State-owned railroad line between River Street (TH #332) in Bennington village (Chatham Subdivision MP 57.35) and valuation station 3103+00 (Chatham Subdivision MP 58.77) in the Town of Bennington. The Subject Line is located within this segment on which the Vermont legislature has authorized rail-banking.

The Town of Bennington, in cooperation with VTrans, is entering into a rail-banking and trails use agreement with VTR on the Subject Line. Once developed, this new area of trail will extend the existing hiking and biking trail network in Bennington by connecting to the Walloomsac Pathway, which runs along the Walloomsac River in Downtown Bennington.

Based on information in VTR's possession, neither the Subject Line nor the surrounding Chatham Subdivision contain federally granted rights-of-way. Any information in this regard will be made available to those requesting it.

Labor Protection: 49 C.F.R. § 1152.50(d)(2)

The appropriate level of labor protection for the abandonment and discontinuance transaction proposed herein is that set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979). No employees will be adversely impacted by the discontinuance of service and trackage rights on the Subject Line.

Notice Requirements: 49 C.F.R. §§ 1152.50(d)(1), 1105.11, 1105.12, and 1152.27

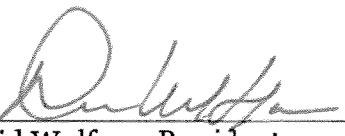
VTR certifies that it has complied with the notice requirements of §§ 1152.50(d)(1), 1105.11, 1105.12, and 1152.27, certificates for which are attached hereto as Exhibits C, D, and E. VTR also provides herein a draft Federal Register notice for the requirement of the Board to publish in the Federal Register under 49 C.F.R. § 1152.27, attached as Exhibit F.

Request for Waiver of Report of Environmental and Historic Impact

Pursuant to 49 C.F.R. § 1105.7(g) and 49 C.F.R. § 1105.8(e), VTR respectfully requests waiver of the Environmental and Historic Report requirements (49 C.F.R. § 1105) with respect to the discontinuance authority sought herein. The abandonment

would have no environmental impact insofar as the line has had no traffic for at least 33 years, and the proposed use following abandonment would be a public trail. Likewise, there will be no historic nor environmental impact. (See, determination of Categorical Exclusions issued by State of Vermont Agency of Transportation, appended hereto as Exhibit G).

Respectfully submitted,

By: 
David Wulfson, President

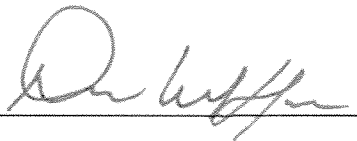
VERMONT RAILWAY, INC.
Eric R. Benson, Esq., General Counsel
1 Railway Lane
Burlington, VT 05401-5290
(802) 658-2550

Dated: June, __ 2018

VERIFICATION

State of Vermont)
) SS:
County of Chittenden)

David W. Wulfson, being duly sworn, deposes and says that he is President of Vermont Railway, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated, to the best of his knowledge, information and belief.



David W. Wulfson

COUNTY OF Chittenden, SS
STATE OF VERMONT

At Burlington, on this 27th day of June, 2018, personally appeared, before me, David W. Wulfson, and he thereupon made oath that the foregoing verification is true to the best of his knowledge as the authorized representative of the Vt. Railway in this matter.



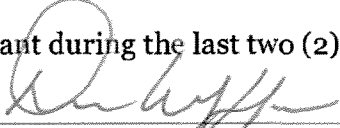
Notary Public
My commission expires 2/10/19

EXHIBIT A

**Certification of Qualification for Class Exemption
Under 49 CFR § 1152.50(d)(2)**

David W. Wulfson, being duly sworn, deposes and says that he is the President of VTR, and that to the best of his knowledge, information and belief:

No local traffic of any kind has moved over the Subject Line, a certain railroad right-of-way located between approximately Chatham Subdivision Milepost 57.35 (River Street) at Chatham Subdivision valuation stations 3028+08 and Chatham Subdivision Milepost 58.93 (northerly abutment of Bridge No. 56 over Furnace Brook, at valuation station 3111+30) in the Town of Bennington, Vermont, for at least two (2) years and there is no overhead traffic on the Subject Line. In addition, no formal complaint filed by a user of rail service on the Subject Line (or a state or local governmental entity acting on behalf of such user) regarding cessation of service over the Subject Line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two (2) years.



David W. Wulfson

COUNTY OF Chittenden, SS
STATE OF VERMONT

At Burlington, on this 27th day of June, 2018, personally appeared, before me, David W. Wulfson, and he thereupon made oath that the foregoing certification is true to the best of his knowledge as the authorized representative of the Vt. Railway in this matter.



Notary Public

My commission expires 2/10/19

EXHIBIT B

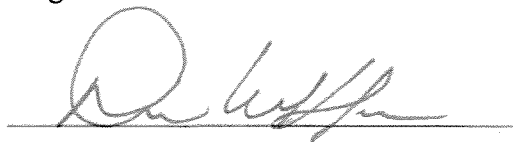
Detailed Map of Subject Line and Surroundings

Map on Following Page

EXHIBIT C

Certificate of Notification under §§ 1152.50(d)(1) and (2)

I hereby certify that on 6/22, 2018, a written notice containing the information specified in 49 C.F.R. § 1152.50(d)(1) was served by first class mail, postage prepaid, upon the following agencies as designated in that section:



David W. Wulfson

National Park Service, Recreation Resources Assistance Division	Department of Defense, Railroads for National Defense Program
Department of Defense, Military Traffic Management Command	Vermont Public Utility Commission
Department of Defense, Transportation Engineering Agency	U.S. Department of Agriculture, Chief of Forest Service
Vermont Transportation Board	

Dated: June 27th, 2018

COUNTY OF Chittenden, SS
STATE OF VERMONT

At Burlington, on this 27th day of June, 2018, personally appeared, before me, David W. Wulfson, and he thereupon made oath that the foregoing certification is true to the best of his knowledge as the authorized representative of VTR in this matter.



Notary Public

My commission expires 2/10/19

EXHIBIT D

Certificate of Notification under §§ 1105.11 and 1105.7

I hereby certify that on 6/22, 2018, a written notice containing the information specified in 49 CFR §§ 1105.11 and 1105.7 was served by first class mail, postage prepaid, upon the following agencies as designated in that section:

Dated: June 27th, 2018

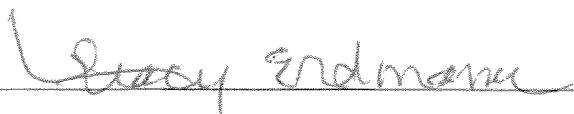


David W. Wulfson

Vermont Center for Geographic Information (State Clearinghouse)	Vermont Agency of Natural Resources
Vermont SHPO	US Environmental Protection Agency, Region 1
National Park Service	U.S. Fish and Wildlife Service
U.S. Army Corps of Engineers	Natural Resources Conservation Service (Former U.S. Soil Conservation Service)
National Geodetic Survey	Bennington County

COUNTY OF Chittenden, SS
STATE OF VERMONT

At Burlington on this 27th day of June, 2018, personally appeared, before me, David W. Wulfson, and he thereupon made oath that the foregoing certification is true to the best of his knowledge as the authorized representative of the VTR in this matter.



Notary Public
My commission expires 2/10/19

EXHIBIT E

**Certificate of Publication of Notice in Newspaper of General Circulation in
Bennington County under § 1105.12**

I hereby certify that on 6/26, 2018, a written notice containing the information specified in 49 CFR § 1105.12 Appendix was published in the Bennington Banner, a newspaper of general circulation in Bennington County, the county in which the line is located:

Dated: June 27th, 2018

A handwritten signature in dark ink, appearing to read "David W. Wulfson", is written over a horizontal line.

David W. Wulfson

EXHIBIT F

Draft Federal Register Notice

STB No. AB-265 (Sub-No. 4 X)

Notice of Petition for Exemption To Discontinue Service

On July 1, 2018 Vermont Railway, Inc. filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a line of railroad known as the Chatham Subdivision, extending from railroad Milepost 57.35 (River Street) at Chatham Subdivision valuation stations 3028+08 to Chatham Subdivision Milepost 58.93 (northerly abutment of Bridge No. 56 over Furnace Brook, at valuation station 3111+30) in the Town of Bennington, Vermont (the "Subject Line"). The Subject Line traverses through the 05201 United States Postal Service ZIP Code, a distance of 1.57 miles, in Bennington County, Vermont. The line for which the discontinuance exemption request was filed includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The line (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption. All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the FEDERAL REGISTER.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

EXHIBIT G
Determination of Categorical
Exclusions



State of Vermont
Agency of Transportation
Environmental Section
One National Life Drive
Montpelier, VT 05633-5001
www.aot.state.vt.us

[phone] 802-828-3963
[fax] 802-828-2334
[tdd] 800-253-0191

Matthew Hake, Division Administrator
Federal Highway Administration
P.O. Box 568, Montpelier, VT 05601

October 13, 2016

Attn: Kenneth R. Sikora, Environmental Program Manager
Re: Bennington STP BIKE(26)S: Pedestrian Pathway Project

Dear Mr. Hake:

A Categorical Exclusion (CE) for the above-mentioned project, per 23 CFR 771.117(c)(3), was issued on June 21, 2006, and Re-Evaluated on July 30, 2012. Currently, the changes in the scope of work qualify this project as a Programmatic CE (PACE).

There have been changes in the scope of work or the design of this project since the issuance of the original CE; currently the project scope will no longer include more than 5,000 square feet of wetland impacts.

The current Bennington STP BIKE(26)S project, a proposed rail-to-trail project located in the town of Bennington Vermont, consists of several segments, as follows:

- Vermont Railway, beginning at Depot Station extending to River Street;
- continuing on, the project now takes place entirely within the existing railroad Right of Way, stretching from River Street to Orchard Street;
- extending on from Orchard Street to Furnace Brook;
- and work will be completed north of the VT Route 279 overpass.

Work will consist of four phases, to include construction of paved path, aggregate shoulders, removal of rail and ties, construction of wooden rail bridge, construction of railroad run around track, and incidental items.

Combined segment lengths total approximately 9,870 feet (1.869 miles); further detailed description and layout is found on the attached Section 106 Review and project plan set.

The Vermont Agency of Transportation (VTrans) has considered the potential environmental consequences of the project in accordance with the National Environmental Policy Act (NEPA). VTrans has determined that this project meets all of the criteria specified in the Programmatic Agreement entitled "Processing of Projects Eligible for Categorical Exclusion," executed 06/25/99. The project qualifies for Categorical Exclusion pursuant to 23 CFR 771.117(c)(3) "Environmental Impact and Related Procedures - Categorical Exclusions" as the project consists of construction of paved pedestrian/bicycle path.

The project will not involve substantial planning, resources, or expenditures; nor is it likely to induce significant alterations in land use, planned growth, development patterns, traffic volume, or traffic patterns. No significant environmental impact is expected to result from construction or maintenance of this facility.

Programmatic CE

Page 1 of 8

VTrans has determined that the FHWA wetland finding contained in the Programmatic Agreement of 06/25/99 is applicable to this project.

Respectfully,

Julie Ann Held 10/13/2016

Julie Ann Held

VTrans Environmental Specialist

Attachments:

cc: Tina Bohl, Project Manager
Project File

PROGRAMMATIC CATEGORICAL EXCLUSION CRITERIA

VTrans has determined that this project will NOT:

- A. X Require a temporary detour outside existing right-of-way, or a temporary wetland or stream crossing which will require non-routine mitigation, or a ramp closure, unless the following conditions are met :
 - (1) provisions are made for access by local traffic and the facility is posted accordingly.
 - (2) businesses dependent upon through traffic will not be unduly affected.
 - (3) the temporary detour or ramp closure will not interfere with local special events,
 - (4) the temporary detour, ramp closure, wetland or stream crossing will not substantially increase the environmental consequences of the action (project).
- B. X Involve construction in wetlands totaling more than 5,000 square feet of permanent impacts, requiring the Army Corp of Engineers to coordinate with resource agencies per the General Permit.
- C. X Require a Risk Analysis for an increase in 100-year flood water surface elevations, per EO 11988.
- D. X Involve construction within, or alter drainage patterns so as to adversely affect, a Sole Source Aquifer.
- E. X Require coordination with the US Fish and Wildlife Service for the preparation of a Biological Assessment for Threatened and Endangered Species, per 16 CFR Section 7.
- F. X Require acquisition of additional right-of-way (including permanent or temporary construction easements) involving: more than three acres of land per mile of roadway, or a total of 10 acres or more for a non-linear improvement (such as a bridge or an intersection), or any relocation of residences or businesses.
- G. X Require FHWA approval for changes in access control.
- H. X Involve acquisition of, or impacts upon Prime or Unique Farmland, unless a USDA Farmland Conversion Impact Rating Part VI Site Assessment has been completed and indicates Total Site Assessment Points less than 160 (doesn't apply to designated urban areas).
- I. X Adversely Effect a historic or archaeological resource on, or eligible for inclusion on, the National Register of Historic Places.
- J. X Require use (permanent or temporary) of a Section 4(f) resource, unless that use meets the criteria for a de minimis or Programmatic 4(f); or involve the use of a Section 6(f) resource when compensation is required (property acquired or improved using Land and Water Conservation Funds).
- K. X Involve hazardous or residual waste liabilities subject to CERCLA and/or RCRA requirements.
- L. X Require a bridge permit from the US Coast Guard, per 23CFR 650 Subpart H.
- M. X Qualify as a Type I project and require analysis of noise abatement measures, per 23 CFR 772 and the FHWA approved VTrans Noise Policy.

(NOTE: If coordination with the FHWA was required to reach this determination attach concurrence memo)

**Categorical Exclusion
Environmental Analysis Sheet**

Town Bennington Project No. STP BIKE(26)S Route Vermont Railway

Project Setting: Urban X Village _____ Rural _____
Traffic N/A Year N/A Typical Railway
AASHTO Functional Classification Rail-to-Trail

Project Purpose & Need:

The purpose of the project is to construct a new pedestrian pathway between Depot Street and Furnace Brook in the rail-to-trail transformation. The new pedestrian pathway will provide a largely off-street alternative transportation corridor for bicycles and pedestrians in order to enhance public transportation safety. The need for the project is due to the lack of a cohesive pathway system for pedestrians and bicycles to utilize, and the need to provide a safe, efficient roadway for pedestrians and bicyclists.

Project Description:

The current Bennington STP BIKE(26)S project, a proposed rail-to-trail project located in the town of Bennington, Vermont, consists of several segments, as follows:

- Vermont Railway, beginning at Depot Station extending to River Street;
- continuing on, the project now takes place entirely within the existing railroad Right of Way, stretching from River Street to Orchard Street;
- extending on from Orchard Street to Furnace Brook;
- and work will be completed north of the VT Route 279 overpass.

Work will consist of four phases, to include construction of paved path, aggregate shoulders, removal of rail and ties, construction of wooden rail bridge, construction of railroad run around track, and incidental items.

Combined segment lengths total approximately 9,870 feet (1.869 mile); further detailed description and layout is found on the attached Section 106 Review and project plan set.

CRITERIA OF 23 CFR 771.117 (C) APPLICABLE? X YES _____ NO

NOTE: PROJECTS THAT MEET THE CRITERIA OF 23 CFR 771.17 (C) NEED ONLY ADDRESS THOSE ISSUES MARKED WITH AN ASTERISK (*). THIS DOES NOT PRECLUDE THE NEED TO OBTAIN APPLICABLE STATE & FEDERAL CONCURRENCES & PERMITS.

1. Air Quality
Ten year increase in ADT _____ (10,000 allowed maximum per MOA)
Urban intersection improvement Yes _____ No _____
2. Noise
Type I Project (VTrans Noise Policy) Yes _____ No _____
If yes, number of receptors impacted _____
Mitigation Requirements _____
3. Water Quality
Lakes or Ponds
VANR Lakes & Ponds permit Yes _____ No _____ Acquired _____
Rivers or Streams

Programmatic CE

Page 4 of 8

VANR Title 19 Consultation Yes _____ No _____ Completed _____

Wetlands

* Wetland Impact area Temporary 0 Permanent 0

* Buffer Impact area Temporary 1,771 Square Feet Permanent 1,861 Square Feet

* VANR Wetland Permit Yes X No _____ Acquired TBD

401 Water Quality Certification Yes X No _____ Acquired TBD

Stormwater Discharge Permit Yes TBD No _____ Acquired TBD

Flood plains Encroachment Yes X No _____ Volume TBD

Describe Hydraulic Changes Consultation with floodplain manager. John Broker-Campbell is
advised to determine if there is need for any floodplains permits.

Ground Water/Surface Water Well Impacts Yes _____ No X

(Describe) _____ N/A

ANR Comments _____ N/A

Construction Stormwater Comments via Jon Armstrong on email dated 09/26/2016 Contrary to
the opinion of the report, the project may not, likely does not trigger an operational stormwater
permit. If the existing Railroad bed surface where the path is to be constructed is fairly
impervious at this time, then the addition of the path on top may be considered resurfacing/
maintenance and not creation of a new impervious surface. I'd like to explore this further before
agreeing that a permit is needed. We were able to make this case for the Lamoille Valley Rail trail
project and did not obtain an operational stormwater permit (with ANR's concurrence).

4. U.S. Army Corps of Engineers
 Section 10 and/or Section 404 Permit Required Yes X No _____ Acquired TBD
 Permit Type General Permit
 COE Comments _____ N/A

5. U.S. Coast Guard
 Navigable Waters Yes _____ No _____ Involved Waterway _____
 Rivers & Harbors Act Section 9 and/or
 Bridge Act of 1946 Permit(s) Required Yes _____ No _____ Acquired _____
 Section 144(h) "Exemption" Yes _____ No _____ Acquired _____
 USCG Comments _____

* 6. Threatened and Endangered Species and Habitat
 Present in Project Area Yes _____ No X
 ANR Non-Game and Natural Heritage Program comments None at this time
 USF&WS comments None at this time
 Natural Resource Clearance Comments by James Brady on 08/08/2016 If there will be limited
tree clearing for this project, coordination with VT Department of Fish & Wildlife and the US Fish
& Wildlife Service can occur to adjust time of year restrictions for tree clearing. This is the
responsibility of the Town of Bennington.

7. Agricultural Land
 Prime/secondary/locally important soils affected Yes _____ No _____
 Current land use _____
 Form 1006 Parts I, III, VI, VII, completed (FHWA) Yes _____ No _____
 Form 1006 Parts II, IV, V completed (NRCS) Yes _____ No _____
 Vermont Department of Agriculture comments _____

8. Hazardous/Residual Waste Liabilities
 Present in project area Yes _____ No _____

Programmatic CE

Determination from VANR list Yes _____ No _____
 Determination from field visit Yes _____ No _____
 Borings completed Yes _____ No _____
 Petroleum related wastes Yes _____ No _____
 CERCLA involvement Yes _____ No _____
 Remediation required Yes _____ No _____
 Describe _____

- * 9. **Historical or Archaeological Resources (Section 106)**
 Historic Resources: Present in project area Yes X No _____ Exempt _____
 Archeological Resources: Present in project area Yes X No _____ Exempt _____
 Section 106 determination No Adverse Effect Issued: 10/12/2016
 Memorandum of Agreement needed Yes _____ No X Executed _____
 SHPO coordination completed per VTrans SHPO PA
 Advisory Council coordination completed N/A

Historic Comments via Judith Ehrlich on 10/12/2016 The location, feeling, setting, and design of a potential Rutland-Vermont Railway Linear Historic District, including Bridges No. 55 and No. 56 – the assembly of planned, developed, and constructed elements that convey the relationship of the railroad to the landscape – will not be affected by this project. This project will preserve the integrity of a potential Rutland-Vermont Railway Linear Historic District by ensuring the Vermont Railway remains recognizable as a rail transportation corridor through the retention of character-defining features that convey its historic function and significance, while also bolstering a robust system of public trails that helps to prolong the useful economic life of the Vermont Railway and its historic resources through the 21st century.

Archaeology Comments via Jeannine Russell on 10/12/2016 Archaeological resource assessments were previously conducted in 1997, 2002 and 2006. Each assessment took into account known Precontact sites in the project area as well as historical archaeological research using maps and archives. It was determined (2006) that the immediate railbed footprint is highly disturbed and that any work outside of this area will require Ph1 testing in zones deemed sensitive based on the potential for large multi-component prehistoric sites found within the drainage of the Walloomsac River and its tributaries.

Plans dated 10/2015 show limited areas of new disturbance along the proposed rail-to-trail corridor, and the project can be cleared as currently planned. If project plans change to include impacts beyond the railroad footprint, additional review and possible testing will be required. Please refer to Werner Archaeological Consulting's 2002 report (included in project package) for further background and details.

- * 10. **Section 4(f) and 6(f) Resources**
 Section 4(f) Resource(s) present in project area Yes X No _____
 Nature of Section 4(f)
 Parks/Rec. Areas _____ Wildlife and Waterfowl Refuge _____ Historic Property X
 Temporary use of 4(f) resource Yes _____ No X
 Permanent use of 4(f) resource Yes _____ No X
 Section 4(f) Approval (check one)
 Negative Declaration de minimis 4(f) Programmatic 4(f) _____ Circulated 4(f) _____
 Section 4(f) Comments This project will not adversely affect or "use" a Section 4(f) resource.
 Section 6(f) involvement (LWCF Funding) Yes _____ No X
 National Park Service Conversion Approval N/A

Section 6(f) Comments There aren't any 6(f) resources within the project limits.

* 11. **Right of Way**

New ROW Acquisition fee simple Yes _____ No X
 permanent easement Yes X No _____
 temporary easement Yes _____ No X

Description of taking The project limits lie entirely within VTrans and Railroad ROW. The town will negotiate a lease agreement with the State of Vermont for the use of the railroad bed corridor.

Improved properties acquired Yes _____ No X
Displacements: Rental Units 0 Private Homes 0 Businesses 0
Relocation services to be provided _____ N/A
Properties available for relocation _____ N/A

12. **Public Participation Opportunity**

Pre-Design Site Meeting Yes _____ No _____ Date _____
Public Information Meeting Yes _____ No _____ Date _____
Public Hearing Required (502) Yes _____ No _____ Date _____
Comments by Local Officials/RPC's _____

13. **Social and Economic Concerns**

Project consistent with Local and Regional Land Use Plans Yes _____ No _____

Describe _____ (Attach correspondence from official(s))

Neighborhood and Community Concerns Yes _____ No _____

_____ Churches _____ Elderly
_____ Schools _____ Handicapped
_____ Low Income Housing _____ Environmental Justice Exec. Order 12898
_____ Emergency Services _____ Other

Describe _____

Effect on local business Yes _____ No _____ (Describe) _____

Temp. effect on business Yes _____ No _____ (Describe) _____

Loss of parking Yes _____ No _____ (Describe) _____

Pedestrian Facilities Sidewalk Widths Existing _____ Proposed _____

Bicycle Facilities Paved Shoulder Widths Existing _____ Proposed _____

If not minimum standard (sidewalk 5ft, paved shoulder 4ft), explain _____

14. **Aesthetic Concerns**

Scenic Byway/VT Scenic Highway Yes _____ No _____

Describe _____

15. **Effects of Temporary Detour/Bridge**

Detour required Yes _____ No _____ Length _____ (Attach Plans)

Temporary bridge required Yes _____ No _____ (Attach Plans)

Impacts of Detour/Bridge _____

Public notification of detour _____

Field Inspection Comments: See supporting documentation.

Summary of Commitments and Mitigation

Describe:

Northern long-eared bat Consideration:

Notice to Bidders: This project shall be subject to Avoidance and Minimization Measures to protect the habitat and hibernacula of the northern long-eared bat. Measures applicable to this project include, Time-of-Year (TOY) restrictions for any potential impact: to suitable bat habitat, which include, but are not limited to trees $\geq 3"$ and/or habitat features on bridge structures.

Suitable habitat features have been identified inside of the project limits, and therefore the project is subject to TOY restrictions. The Contractor shall not cut trees $\geq 3"$ in diameter from April 15 through August 31. Should the Contractor propose to cut trees $\geq 3"$ in diameter within the restricted timeframe they must first hire a qualified biologist to conduct a suitable habitat assessment and acoustic monitoring as necessary. A report shall be submitted to the VTrans Biologist for review. No impacts to suitable habitat in the restricted timeframe shall occur until permission is granted by the VTrans Environmental Section. In accordance with this requirement, and with reference to Subsection 108.09(d), work impacting suitable habitat features will be allowed during the seasonal closure period.

The Contractor is hereby made aware of the potential for TOY restrictions related to proposed Waste, Borrow and Staging areas. Cutting trees $\geq 3"$ in diameter outside of the contract project limits shall require review under Section 105.25 Control of Waste, Borrow, and Staging Areas.

Historic Stipulations:

1. At Bridges No. 55 and No. 56, any hardware or other project-related additions, including new decking and pedestrian railings, must be constructed and installed in a manner that will not adversely affect the character-defining features of either structure;
2. At Bridges No. 55 and No. 56, any hardware or other project-related additions, including new decking and pedestrian railings, must be reversible in a manner that if removed, the essential form, integrity, and environment of each historic structure will not be adversely affected;
3. Work to and around Bridges No. 55 and No. 56 must not affect the marble abutments at each structure.

Prepared by: Julie Ann Held 10/13/2016
Signature Date

Reviewed by: Lee Goldstein 10/13/2016
Signature Date

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