

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-444 (Sub No. 2)

ENTERED
Office of Proceedings
October 5, 2017
Part of
Public Record

MOTION TO DISMISS AND RENEWAL OF FEE WAIVER REQUEST

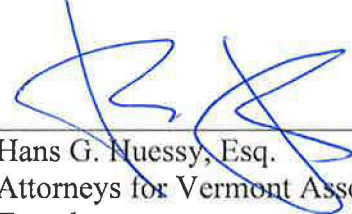
The Vermont Association of Snow Travelers (“VAST”) respectfully submits the following Motion to Dismiss and renews its request for a Fee Waiver pursuant to 49 CFR § 1002.2(e).

1. VAST filed a Petition for Declaratory Order seeking a ruling that work on the Lamoille Valley Rail Trail is exempt from Act 250, Vermont’s land use statute.
2. Service was made on the State of Vermont.
3. The Board extended the deadline for the State’s responsive pleading pursuant to the Parties’ request and in order to permit settlement discussions.
4. VAST and the State of Vermont, the Vermont Agency of Transportation, and the Vermont Natural Resources Board have entered into a settlement agreement resolving all of the issues raised in the Petition.
5. That settlement agreement contemplates the dismissal of VAST’s Petition without prejudice.
6. VAST has permission from all of the parties to represent to the Board that they support the Petition’s Dismissal.
7. VAST also filed a request for a fee waiver. In light of the forgoing, VAST renews its request and asks for the refund of the filing fee. *Exhibit A, Fee Waiver Request.*

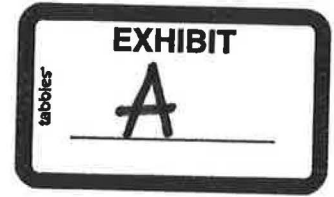
WHEREFORE, VAST requests the Dismissal of its Petition without prejudice and a refund of its filing fee.

Dated on the 4th day of October, 2017 at Burlington, Vermont.

MURPHY SULLIVAN KRONK



Hans G. Nuessy, Esq.
Attorneys for Vermont Association of Snow
Travelers



RE: Docket No. AB-444 (Sub-NO. IX)
Petition for Declaratory Order – Vermont Association of Snow Travelers

FEE WAIVER REQUEST

The Vermont Association of Snow Travelers (“VAST”) seeks a Fee Waiver pursuant to 49 CFR § 1002.2(e). VAST has simultaneously filed a Petition for Declaratory Order seeking a ruling that work on the Lamoille Valley Rail Trail is exempt from Act 250, Vermont’s land use statute. VAST advances two bases for the waiver. First, VAST is acting in the stead of Vermont Department of Transportation (“VTrans”), a State entity that would be exempt if filing this Petition itself pursuant to subpart (e)(1). In the alternative, VAST seeks a hardship waiver pursuant to subpart (e)(2).

On February 13, 2004, the STB approved Lamoille Valley Railroad Company’s (“LVRC”) abandonment of certain trackage rights in Caledonia, Washington, Orleans, Lamoille, and Franklin Counties in Vermont. *Lamoille County Railroad Company-Abandonment and Discontinuance of Trackage Rights Exemption- In Caledonia, Washington, Orleans, Lamoille and Franklin Counties, VT*, STB Docket No. AB-444 (Sub-NO. IX). The line is owned by the State of Vermont by and through the VTrans. *Id.* The order also granted VTrans’ request for the issuance of a notice of interim trail use (“NITU”) to allow VTrans to negotiate a trail use agreement with LVRC. *Id.* On February 23, 2004, VTrans and LVRC informed the STB that an interim trail use agreement had been reached. *Exhibit A to the Petition, Letter dated February 23, 2004 from T. Spear to Sec. Williams.* The trail is known as the Lamoille Valley Rail Trail (the “Trail”).

VTrans leased the Trail to the VAST (the “Lease”), a quasi-state agency established by Vermont statute and contracted with VAST to restore and maintain the Trail. *Exhibit B, Lease*

between VTrans and VAST and Exhibit C, Cooperative Agreement No. 4 (both submitted in support of the Petition). VTrans remains a party to the Trail Agreement.

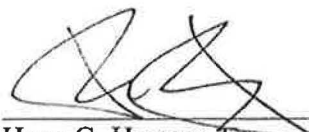
VAST seeks a waiver of the \$1,400 filing fee for its Petition for Declaratory Judgment filed simultaneously herewith. VAST is a quasi-state agency to whom the Trail has been leased and to whom the State has contracted with to repair and maintain the Trail.

VAST is a private non-profit organization qualified as a charitable organization. It is made up of 14 county snowmobile clubs and 151 local clubs. *Exhibit H to the Petition, Affidavit of Cindy Locke.* VAST is a member of the Governor's Snowmobile Council pursuant to 23 V.S.A. § 3216(a)(1)(A). 23 V.S.A. § 3214 authorizes VAST to retain a portion of all snowmobile registration fees for the purpose of developing and maintaining a Statewide Snowmobile Trail Program ("SSTP"), insuring the trail system, and contracting with law enforcement for the enforcement of laws and regulations related to trail use. Pursuant to Title 23, VAST acts as agent of the State for the purpose of collecting registration fees and trail maintenance fees. 23 V.S.A. § 3201 *et seq.* VAST also receives a small percentage of state gasoline tax. VAST is organized for a public purpose and the trail system exists for a public purpose. *Vermont Environmental Board, Re: Vermont Association of Snow Travelers (VAST)*, DR #430, FCO at 9 (March, 11, 2005)(copy attached to Petition). VAST also is involved the Vermont Trail System. 10 V.S.A. § 441 *et seq.*, see also 10 V.S.A. § 446(3). The Vermont Trail Systems Act expressly contemplates the State's purchase of discontinued railroad right-of-ways for the purpose of creating trails. 10 V.S.A. §§ 441(e) and 447(b). Accordingly, Vermont has delegated certain aspects of the management of its snowmobile and recreational trails to VAST and VAST acts a quasi-state agency in this respect. Accordingly, VAST stands in VTrans' shoes and should be entitled to a fee waiver pursuant to subpart (e)(1).

In the alternative, VAST seeks a fee waiver pursuant to subpart (e)(2). Under the Lease, VAST is responsible for the entire cost of repairing and maintaining the Trail to the extent that State and federal funds are not available. VAST will have to pay a minimum of 20% of the costs regardless of the availability of State or federal funding. VAST is a non-profit charitable organization and will have to raise these funds through charitable donations as it has no source of revenue adequate to pay for the necessary work¹. The projected total cost of completing the work on the Trail is in excess of fifteen million dollars. Therefore, the imposition of the filing fee will work a hardship on VAST and a fee waiver would be in the public interest.

Dated on the 4th day of April, 2017 at Burlington, Vermont.

MURPHY SULLIVAN KRONK

A handwritten signature in black ink, appearing to read 'H. Huessy', written over a horizontal line.

Hans G. Huessy, Esq.
Attorneys for Vermont Association of Snow
Travelers

¹ While VAST does receive revenues from the State, by law these revenues are not available for use for the purpose of repairing and maintaining the Trail.

RE: Docket No. AB-444 (Sub-NO. 2)
Petition for Declaratory Order – Vermont Association of Snow Travelers

CERTIFICATE OF SERVICE

I, Hans G. Huessy, Esq., hereby certify that I have served all parties of record in this proceeding with this document by United States Mail or electronic mail.

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Executed on the 4th day of October, 2017 at Burlington, Vermont.

MURPHY SULLIVAN KRONK

A handwritten signature in blue ink, appearing to read 'Hans G. Huessy', is written over a horizontal line.

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