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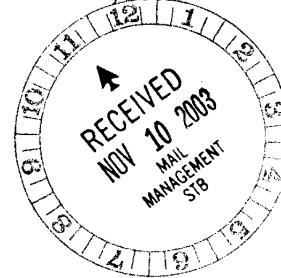
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Timothy D. Phelps
P. O. Box 67
East Hardwick, Vermont 05836
November 4, 2003

The Surface Transportation Board
Office of the Secretary,
1925 K Street, N.W., Washington, DC 20423

Re: LVRC and VTRANS
Notice of Intent to File for Abandonment Exemption
STB Docket No. AB-444 (Sub-No. 1X)



To The Board:

The Lamoille Valley Railroad Company (LVRC), acting in cooperation with the State of Vermont's Agency of Transportation (VTRANS) has published a NOTICE OF INTENT TO FILE for an Abandonment Exemption (STB Docket No. AB-444, Sub-No. 1X) for the 95.26 mile railroad line between St. Johnsbury, Vermont, and Swanton, Vermont, as well as various other short connecting tracks, totaling 96.78 miles overall and collectively identified as the Subject Line. The NOTICE OF INTENT TO FILE is attached (designated as Attachment 1), as it appeared in the *Hardwick Gazette* of October 29, 2003. It is my understanding that the State of Vermont is the Owner of the Subject Line, and that the Leaseholder/Operator is the LVRC, although the LVRC has made no attempt to actually operate rail freight service on the Subject Line since at least 1994, in spite of documented interest by on-line shippers for rail service.

With this letter, I hereby request that the Board disallow the LVRC and VTRANS petition for an Abandonment Exemption for out of service lines, as provided in 49CFR Part 1152 Subpart F, for the Subject Line. There are unique circumstances relating to this particular railroad due to the fact that both the Owner of the railroad line (the State of Vermont, represented by VTRANS) and the Leaseholder for the line (LVRC) have acted in such a way as to absolutely deny any railroad service to shippers on this rail line for a period of approximately 8 years, from 1995 continuing until the present, even though interest in rail freight service on the part of on-line shippers had been made known during this time. Also, throughout this same time, even as the LVRC and VAOT made no attempt to provide rail freight service to these identified shippers, other possible operators had expressed an interest in providing rail freight service on the line, with initial traffic (as verified by independent consultants retained by VTRANS) estimated to be between 750 and 1000 cars per year. As such, the total absence of rail freight traffic over this 8 year period has been to a large degree directly caused by the Operator and Leaseholder, since there had been documented interest in both the providing of and the receiving of rail freight service on this rail line, which was prevented from happening by the parties (VTRANS and LVRC) that controlled the operation of the line. Independent consultant studies made for the Owner (VTRANS) included documentation of interviews with

shippers indicating that no effort was made by the LVRC to contact and provide service to the known on-line shippers who desired rail freight service, yet based on this knowledge, the Owner made no effort to expeditiously correct this situation or to replace the Operator.

Furthermore, while making no effort to actually provide rail service, beginning in September 1996 the Owner began the abandonment of several bridges on the rail line, the dismantling of several sections of track to facilitate highway construction, and also proceeded to totally pave and/or grade over a large number of the highway grade crossings along the rail line. This destruction of specific elements of the rail infrastructure communicated a crystal clear message to the public that there was no intent or possibility that rail service would ever be provided by the Owner again. While it is true that in 1995 flooding had caused a number of washouts along the railroad, the additional, intentional man-made destruction of rail infrastructure absolutely cut the line in St. Johnsbury, denying access to some shippers that could still have been served, and generally served to discourage the resumption of service by substantially increasing the costs to restore the line, over and above those caused by the aforementioned Acts of God.

Also during this time, while absolutely no rail service was being provided, the Owner elected to begin a long, cumbersome process of "best-use" selection, encouraging both rail and non-rail proposals to compete for the use of the rail right-of-way, which effectively initiated an "alternative" abandonment process that was widely reported in the local press. This alternative abandonment process pitted potential rail operators against interest groups that were lobbying the state government specifically *for* the abandonment of the rail service so the line could be taken and converted to a recreational trail, and as time went on at least two rounds of mixed rail and non-rail "use" proposals were solicited. For the entire time that this rail versus trail evaluation process went on, no effort was made by VTRANS or LVRC to provide freight service to the shippers on the line that actually desired rail service. Finally, a citizens group was tasked to evaluate the most recent set of proposals, and to make recommendations for the future use for the right-of-way, which finally was to abandon the railroad service. From what little is known of this evaluation process, it is doubtful that the needs of present and future shippers were fully considered, and no "decision" report documenting the public input received, and defining the details of the process used to arrive at the final rail abandonment recommendation, has ever been made available to the public. This poorly documented recommendation, especially in the light of the failure of the Owner and Leaseholder to service the known shippers desiring to ship by rail, along with the preliminary abandonment of the rail infrastructure (which further increased the cost and difficulty of resuming rail operation), should not be allowed to become a substitute for a proper proceeding before the Board. Additional discussion of these several circumstances, with supporting cross-references, follows.

The Owner and Leaseholder were aware of shipper complaints and shipper letters of intent for service during this 8 year period, however made no attempt to correct the service deficiencies and to actually provide rail freight service. Although flooding in

1995 had caused a number of washouts on the line, there had been an expressed interest by several other potential operators to make repairs and resume some rail service, however these efforts were resisted by LVRC. This fact was repeatedly reported in contemporary newspaper accounts. Public testimony received by VTRANS in December 1996 and early 1997 included shipper complaints of very poor service and actual denial of service, dating to a time preceding the 1995 washouts. It should also be noted that FEMA funding to repair these washouts was denied because there was then no active rail freight service, so the end result of the prior discouragement of the freight business was to make it impossible to expeditiously repair the flood damage. In October of 2001, VTRANS retained an independent consulting firm, Stone Consulting and Design (SC&D), to evaluate a proposal by Vermont Rail Link to operate the rail line. The Freight Operations section of this report (*Vermont Rail Link Proposal, Letter Report* dated October 2001, pages 7, 8 and 9) is attached, designated as Attachment 2. The SC&D report verified that of 12 existing on-line shippers, which collectively had expressed an interest in shipping a total of from 750 to 1000 cars per year, none of these had even been contacted by the LVRC. If there is no current rail freight traffic on this line, it is clearly because LVRC and VTRANS made absolutely no effort to serve the shippers who actually desired service, made no attempt to seek new business, and in fact blocked all attempts by others to do so.

Even more disturbing, when it became apparent in 1996 that the Leaseholder had not been providing adequate service to the shippers on the line, and had no intention of providing rail freight service in accordance with the contract between LVRC and VTRANS, it appears that no action was taken on the part of the Owner to initiate an Adverse Discontinuance proceeding before the Board in order to replace the non-performing Leaseholder/Operator. Because of this, for seven more years the shippers that were known to have been interested in receiving rail freight service were denied this service, and of course absolutely no effort was made throughout this time period to build any additional traffic beyond this already identified shipper base.

It should be noted that the Leaseholder's unacceptable performance in the operation of the Lamoille Valley Railroad is apparently not unique, and the LVRC is also identified by name in an Adverse Discontinuance proceeding (STB Docket No. AB-848, decided June 26, 2003) initiated by the Maine Central Railroad (MEC) and the New Hampshire Department of Transportation in regard to the Twin State Railroad (TSR), which connects with the Lamoille Valley Railroad at St. Johnsbury, Vermont. According to the Board's decision relating to this docket, both LVRC and TSR share the same parent company, the Northern Vermont Corporation. Since the performance of this Operator, at least in the New England region, appears to follow a similar trend, it is noted that MEC and New Hampshire DOT have indicated "that TSR has not provided service on the line since October 1999, and has not made any effort to solicit traffic or re-institute service," that "the line has not been maintained as required by the lease agreement for several years" and proposed to "seek removal of the interests of the LVRC and TSR under state law and obtain a new operator to provide service." Since the conditions appear almost identical to what had been happening on the Lamoille Valley Railroad, it would seem that

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a similar Adverse Discontinuance proceeding should have been progressed by VTRANS in 1996 once it became known by VTRANS that the LVRC was failing in its obligation to provide the rail freight service that shippers desired.

In spite of the fact that VTRANS and LVRC had knowledge of the desire for rail freight service by on-line shippers, as described above, the Owner and Leaseholder proceeded to allow the removal of two bridges, the removal of track through several grade crossings, and to allow a great many other grade crossings to be totally paved and/or graded over. The attached item from the *Hardwick Gazette* dated October 2, 1996 (Photo with Caption, designated Attachment 3), shows and describes the Lamoille Valley Railroad bridge over Vermont Route 15 in Walden, Vermont, being removed during the previous week. Subsequently, a similar Lamoille Valley Railroad bridge in St. Johnsbury, Vermont, was also removed, totally severing and isolating the line between these points. In addition, even while resumption of operation was being discussed, some of the engine servicing facilities at Morrisville, Vermont, were removed. This abandonment of bridges and track, along with the other highway crossing changes that caused the rail line to become impassible at these locations, isolated additional portions of line and considerably increased the necessary cost and overall difficulty of resuming rail operation. Ironically, the several highway grade crossings described above (located in the Danville, Vermont, vicinity), which had been described as being in excellent condition by independent consultants retained by VTRANS itself, were actually being torn out by VTRANS (allegedly for "safety reasons") even as shippers were being "lined up" for inclusion in the rail "use" proposals for the Subject Line, then being solicited by VTRANS! Unfortunately, the public's perception of these VTRANS actions, owing to the naturally assumed credibility of any activity undertaken by the State of Vermont as Owner, was that the railroad had already been legally and properly abandoned, when in fact there had not been any legitimate process to permanently discontinue operation and abandon the line. In addition, these random abandonment activities, the other activities of dismantling and otherwise rendering impassable the track at grade crossings sent a totally erroneous message to prospective businesses that might locate along the railroad expecting to ship freight by rail, and even to the existing shippers that continued to be interested in rail service, that there was to be no chance for rail service in the future.

These unauthorized (and presumably illegal) facility abandonments have effectively assured that the railroad will be abandoned between the specific locations (St. Johnsbury to Walden) where the two railroad bridges have been removed, since there will now be considerable cost needed to restore these two bridges at a time when there is no funding available for such replacements. With this understanding, these actions have for all practical purposes superceded any legal abandonment proceeding that might otherwise occur before the Board. It is questionable that a private sector rail operator (such as BNSF or CSXT) would have been allowed to abandon rail infrastructure in this manner, especially while proposals for rail operation were still being solicited, and while interested shippers were being denied freight service at the same time, on the very line in question. I urge the Board to consider both private and public sector railroad Owners and Operators equally in this regard, in the interest of fairness in the protection of the public

interest. While I continue to believe that these unauthorized preliminary abandonments should never be allowed to force the final abandonment of any portion of the Subject Line, and that action should be taken to remedy the damage that has been done, this dismantling of the rail facilities has already occurred and will certainly have a real effect in the direction of encouraging abandonment of this section. With this in mind, I especially urge the Board not to allow the remainder of the Subject Line (which can still be returned to operation with repairs) to be denied a complete and proper abandonment proceeding, which will then provide the appropriate opportunity for public/shipper input and comment concerning the future of the rail line to the west of the abandoned bridge in Walden, which could be expected to still provide rail freight service from the one direction.

While the State of Vermont is to be commended for its actions since the early 1960's to save a number of rail lines that would otherwise have been abandoned, thereby enabling these lines to continue in rail operation, facilitating economic development and contributing as an important component of a balanced multi-mode transportation network, the process used to select a non-rail use for this particular rail line was unique and somewhat inconsistent with practices elsewhere in the state. As indicated by a 1996 newspaper article in the *Burlington Free Press* headlined **Caledonia Senator Hopes To Turn Old Rail Bed Into Recreation Path** (article attached, designated Attachment 4), the proponents for non-rail use of this line had set their sights on encouraging the abandonment of this railroad early on, as soon as it became apparent that LVRC had no interest in providing any service on the rail line, even while interested shippers were being denied rail service. This served to redirect the decision making process into more of a "popularity contest" between recreational use as opposed to continued rail operation of the railroad right-of-way. It should be noted that the actual rail traffic (in cars per year per mile of line) on some of the operating lines or branches of other rail lines owned by the State of Vermont appear to currently be equal or *less* than the traffic that has been predicted (and verified by independent consultants, as per Attachment 2) for the Lamoille Valley rail line, yet non-rail use was apparently never encouraged on these other lightly used lines. Examples of these currently operating light traffic rail lines presently owned by the State of Vermont are the former Canadian Pacific/Boston & Maine Connecticut River Line (White River Junction to Newport, Vermont) and the Bennington Branch (Rutland to Bennington, Vermont) of the Vermont Railway. The direction taken in regard to continued rail or trail encouragement apparently reflects purely the intent of each specific rail operator, rather than any uniform statewide policy. If a rail operator desires to operate or simply "keep" a line (such as the presently unused end of the Vermont Railway Bennington Branch), trail use does not seem to be entertained. It is my understanding that only for the Lamoille Valley Railroad line were non-rail proposals encouraged to compete with rail operation proposals, even while shippers still expressed an interest in receiving rail service. And similarly, only on the Lamoille Valley line was a citizen committee created to consider abandonment separately and apart from any other formal proceeding (as discussed below), also in spite of the documented desire by shippers for rail service. It would appear that a "double standard" was applied for this particular rail line.

For the most recent round of submittals for "use" of the railroad right-of-way, VTRANS finally delegated an appointed citizens committee, designated the Mountain Valley Corridor Consortium (MVCC), to recommend the final "use" for the rail right-of-way. The MVCC chose non-rail use over continued rail use, as noted previously, without being required to produce a detailed "decision" report documenting any of the public input received or defining the decision making process utilized, and VTRANS subsequently accepted the MVCC recommendation to abandon the rail service. I continue to question how VTRANS, having (along with LVRC) failed to provide any rail service to shippers that it had known actually desired rail service, could accept an abandonment recommendation from a committee that surely considered the total lack of rail freight traffic itself the *major* reason for the abandonment recommendation. Would the MVCC have recommended abandonment if 1000 cars per year were being handled? Had a private rail carrier intentionally denied service to shippers and then attempted to use lack of traffic as the reason to abandon service, one would expect that the same agency (VTRANS) would have challenged that carrier's actions as being totally unethical.

The abandonment determination process undertaken by the Owner, which had involved several rounds of mixed rail and non-rail "use" proposals for the railroad right-of-way, starting back in 1998, has been reported for years now in the local press, and this has predictably given the public a somewhat misleading impression that the rail line already has been legally abandoned, when this in fact is not the case. This is clearly evident, for example, in an article from last year headlined **VAST Prepares To Rip Up The Railroad Tracks** from the *Hardwick Gazette* of July 10, 2002 (article attached, designated as Attachment 5), which is typical of many other reports that have appeared in newspapers across the territory served by the rail line. Similar articles with headlines **Lamoille Rail vs Trail Debate Continues** (*Hardwick Gazette* December 19, 2001) and **Rail Trail Work Expected Soon** (*Hardwick Gazette* July 9, 2003), have regularly appeared over a span of years, and have most generally mislead the public into thinking that approval to abandon the railroad is an accomplished fact. For this reason, due to the erroneous message that this long, slow, and often reported abandonment determination process has caused, it is even more important that a full and complete process before the Board be required, in order to allow for the proper public and shipper involvement. Unfortunately, while the bold headlines about tearing up the tracks regularly appear in the public eye, no detailed "decision" report for the MVCC recommendation has ever been made available to the public, so there is no way to know what public input was really received and what criteria was utilized for comparison of the vastly different rail and trail "use" proposals.

I urge the Board not to allow a largely secretive alternative abandonment process to be substituted for a full and complete process before the Board. Owing to the credibility that any state sponsored "process" is accorded by the public, even such a poorly defined and virtually undocumented one, the public in large part has been lead to believe that the railroad abandonment is an accomplished fact and already underway. For this reason also, I urge the Board to hold the present Owner to the same standards as a private sector

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owner in this regard, since it is doubtful the Board would allow a private sector owner of a rail line to substitute an arbitrary committee and an arbitrary alternative abandonment procedure to stand in place of a proper proceeding before the Board.

I have written this letter as an interested private citizen, who has closely watched this situation on the Lamoille Valley Railroad develop over the last nine years or so. I am aware that rail freight transportation provides a safe, low cost, energy efficient, and environmentally friendly mode of transportation, and I believe that as a society we should be doing everything possible to encourage its use in the overall transportation mix, and not to be doing the opposite as I have seen occur in this case, by intentionally doing things that are certain to destroy this rail line. I personally attended the early public input meetings concerning this railroad, arranged by VTRANS, and was alarmed to see trail interest groups (most notably the organized snowmobile group) immediately expressing their clear desire to rip the rail line up to use for their snowmobile trail, even though interest in shipping by rail still existed. To put this in perspective, with 6000 miles of snowmobile trail currently existing in Vermont, this rail line represents only 1.6% of the total snowmobile trail mileage, while representing 12.6% of the Vermont's total rail system mileage. Having been myself in favor of the early Rails-to-Trails movement, as a way to save rights-of-way that otherwise would have been lost, I am also aware of the original Rails-to-Trails philosophy from the 1970s, to "*never encourage in any way the thoughtless abandonment of additional miles of rail trackage*". I have now learned that this philosophy, while still given "lip service", is no longer applied, and that now the trail groups are actively seeking the abandonment of this railroad, and also seeking to deny it any chance to succeed. They clearly know that once it is ripped up, the rails will never be back. I have come to believe the trail conversion laws must be amended so as to absolutely and totally disqualify any group that is found lobbying to destroy or otherwise impair the rail line they seek to use, since this is a basic, fundamental conflict of interest. The Rails-To-Trails Conservancy has already been up here, in Vermont, "selling" this trail conversion, even as shippers are currently being denied the rail service they desire. This is wrong. Along with this, the playing field has not been level either. Consultant trail cost estimates, originally much higher than the rail operation proposals, were redone to cheapen them (although they still are higher than any of the estimates for continued rail use), while the rail cost proposals were challenged as being too low (and apparently higher costs were compared). The rail "use" proposals were subject to detailed cost audits, while no similar scrutiny was applied to the proposed trail "use" proposal costs. It is doubtful the ROI for the trail estimates actually comes anywhere near the rail proposals, as there is apparently no identifiable user-based revenue stream for the trail, yet the trail has been called economically viable. I continue to believe this railroad deserves a fair chance, which it has not been given up to now. The fact is, interest in shipping by rail still exists, as documented in Attachment 2. It is very disturbing to see a real desire for rail service totally ignored and unfulfilled, with the intentional result that absolutely no rail traffic is now being handled, and then see this very lack of traffic used by the many "rail opponents" as the *primary* excuse they use to destroy the rail line forever. And it should also be noted, while all of this is going on, the LVRC is still listed as though it was a real operating rail line in the *Official Railway Equipment Register*, with 451 freight cars in

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interchange service, so that LVRC is apparently continuing to profit in this manner from it's over 8 year non-operating association with this Vermont owned railroad line.

In conclusion, I again request that the Board disallow the LVRC and VTRANS petition for an Abandonment Exemption for out of service lines, as provided in 49CFR Part 1152 Subpart F, for the Subject Line as described above. Due to the fact that both the Owner of this railroad line (the State of Vermont, represented by VTRANS) and the Leaseholder for the line (LVRC) have acted in such a way as to absolutely deny any railroad service to shippers on this rail line for a period of approximately 8 years, from 1995 continuing until the present, even though the desire to receive rail freight service on the part of on-line shippers was made known to both parties during this time, the complete lack of rail traffic on this railroad has been, in large measure, caused by the Leaseholder/Operator and VTRANS themselves. Throughout this time, other possible operators had expressed an interest in providing rail freight service on the line, with initial traffic (as verified by independent consultants retained by VTRANS) estimated to be between 750 and 1000 cars per year. The lack of traffic on this railroad in no way represents a lack of either the need for or the desire for rail freight service, but rather reflects the failure of VTRANS and LVRC to supply the service clearly requested by the shipping public. As seen in attached references (SC&D Report, Attachment 2), both VTRANS and LVRC were made aware of this need, yet have failed to make any effort to serve the on-line shippers who desired service, and further, did dismantle and otherwise allow to become impassable additional sections of track and bridges, thereby increasing the difficulty (and making it virtually impossible in some instances) to resume or continue rail freight service. Because of this total failure to respond to a documented desire on the part of shippers for rail service, the inactivity of the line has in fact been caused by the actions of LVRC and VTRANS, and for this reason, the LVRC and VTRANS petition for an Abandonment Exemption for out of service lines should be disallowed.



Timothy D. Phelps, PE
East Hardwick, Vermont

Attachments:

- Attachment 1, *Notice of Intent to File for Abandonment Exemption, LVRC and VTRANS*
- Attachment 2, *Vermont Rail Link Proposal, Letter Report, SC&D, pages 7, 8 and 9*
- Attachment 3, Photo/Caption, *Hardwick Gazette*, removal of RR Bridge, Walden, VT
- Attachment 4, Article, *Burlington Free Press*, **Caledonia Senator Hopes To Turn Old Rail Bed Into Recreation Path**
- Attachment 5, Article, *Hardwick Gazette*, **VAST Prepares To Rip Up The Railroad Tracks**
- Certificate of Service - LVRC

Before the
Surface Transportation Board
Washington, D.C.

Docket No. AB-444 (Sub-No. 1X)

LAMOILLE VALLEY RAILROAD COMPANY - ABANDONMENT
EXEMPTION - IN CALEDONIA, WASHINGTON, ORLEANS,
LAMOILLE, AND FRANKLIN COUNTIES, VERMONT

NOTICE OF INTENT TO FILE

The Lamoille Valley Railroad Company ("LVRC"), in cooperation with the State of Vermont's Agency of Transportation ("VTrans"), gives notice that it expects shortly to file with the Surface Transportation Board ("Board"), Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F - Exempt Abandonments permitting the abandonment of: (1) a 95.26-mile line of railroad between approximately railroad milepost 0.057 (SJLC valuation station 3+00), near St. Johnsbury, VT; and approximately railroad milepost 95.324 (SJLC valuation station 5033+10), near Swanton, VT, which traverses through United States Postal service ZIP Codes 05819, 05828, 05647, 05873, 05843, 05842, 05843, 05860, 05661, 05655, 05656, 05464, 05444, 05441, 05455, 05483, 05459, and 05488, in Caledonia, Washington, Orleans, Lamoille and Franklin Counties, VT, and (2) the Hardwick & Woodbury ("H&W") Connecting Track, a 1.52-mile line of railroad between approximately H&W valuation station 0+00 (Granite Junction) and approximately H&W valuation station 80+48 (Buffalo Road) in Hardwick, VT, which traverses through United States Postal Service ZIP Code 05843, in Caledonia County, VT (collectively, the "Subject Line"). The total distance of the Subject Line is approximately 96.78 miles. The proceeding will be docketed as No. AB-444 (Sub-No. 1 X).

LVRC also will seek Board approval for discontinuance of its trackage rights over the former Central Vermont Railway, Inc. ("CVR") line between approximately CVR milepost 9.9 at the north abutment of the Missisquoi River Bridge at Sheldon Junction, VT, and approximately CVR milepost 27.4 at Richford, VT (the "Richford Subdivision"), which traverses through United States Postal Service ZIP Codes 05483, 05450, 05447, and 05476 in Franklin County, VT. On February 6, 1992, CVR filed a notice of exemption to abandon the Richford Subdivision. The notice became effective on March 28, 1992. LVRC did not seek discontinuance authority at that time. VTrans currently owns and manages a rail trail on the Richford Subdivision. The notice of exemption will be filed pursuant to 49 C.F.R. § 1152.50.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Room 500, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-927-6211.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-927-7597. Copies of any comments or requests for conditions should be served on the applicant's representative: James B. Fitzgerald, Lamoille Valley Railroad Company, c/o VTrans Rail Section, National Life Building, Drawer 33, Montpelier, VT 05633-5001 (802-828-3628).

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.

Vermont Joint Fiscal Office
Vermont Rail Link Proposal – Letter Report
Attachment #3 October 2001

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

Vermont Joint Fiscal Office
Vermont Rail Link Proposal – Letter Report
Attachment #3 October 2001

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.'s 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.

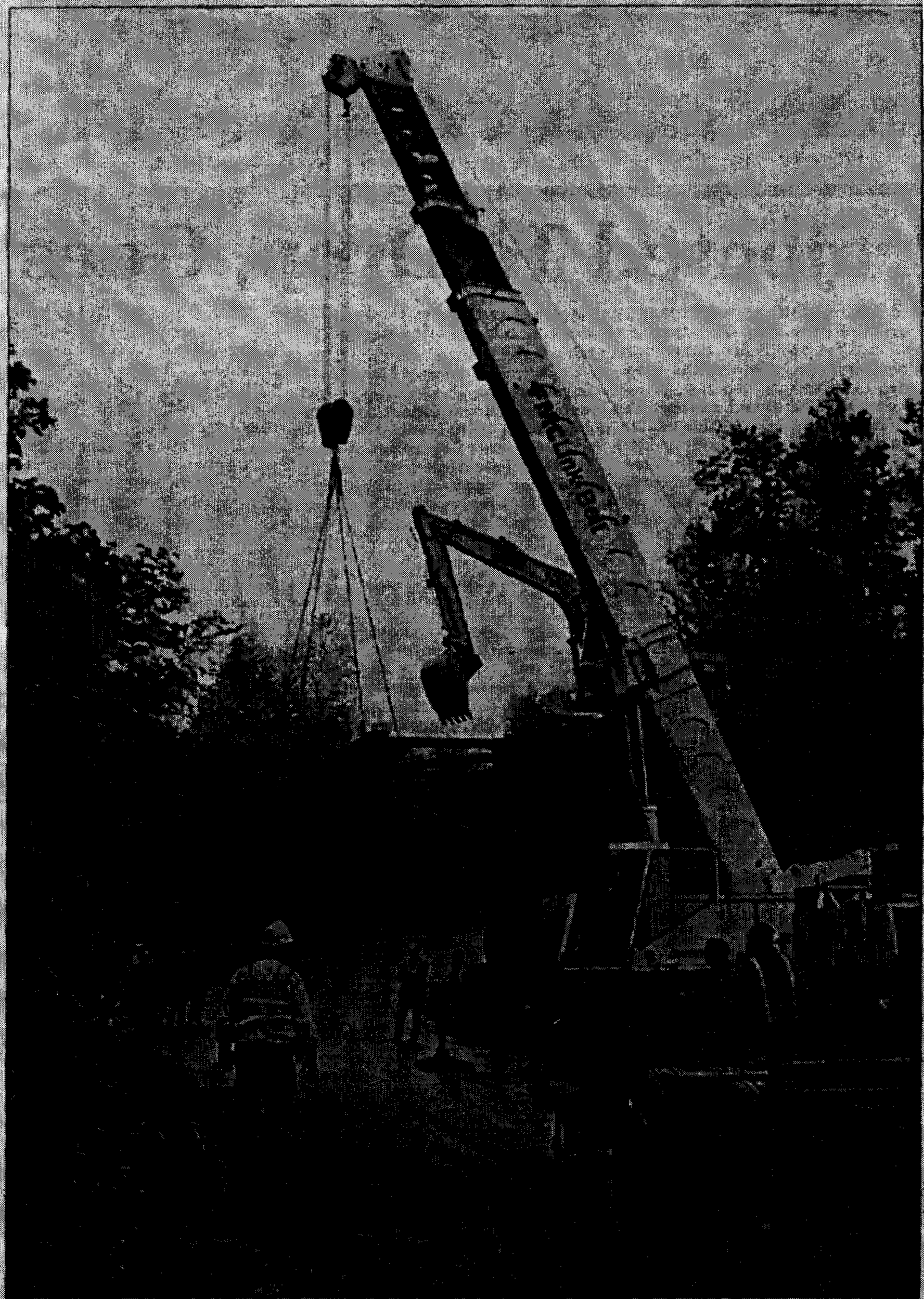
Though many freight shortline railroads have attempted intermodal (truck trailer or container) operations, margins on these activities have been so small as to virtually wipe them off the shortline railroader's opportunity list. Equipment necessary to load, unload and handle intermodal equipment makes 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.

Wednesday
October 2, 1996
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HARDWICK

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Attachment 3, Letter T.D.Phelps to STB 11/04/03 Re: Docket No. AB-444 (Sub-No. 1X) Page 1 of 1



Horses and trains built the Walden overpass 82 years ago, but it took a crane to remove the railroad bridge last week. Construction to widen the overpass and improve visibility continues this week with removal of the concrete abutments and making a wider road. Transportation officials expect the work to be completed by the end of the month.
(photo by Kristine Mercier)

Caledonia senator hopes to turn old rail bed into recreation path

By Anne Wallace Allen
The Associated Press

DANVILLE — When state Sen. Robert Ide thinks about the future of the Lamoille Valley Railroad, he remembers a bicycle path he recently rode in Florida.

The 25-mile former rail bed spawned several businesses along the route, Ide said. They catered to path users with food, services, and equipment rentals.

He thinks the same thing could happen on Vermont's 92-mile right-of-way between St. Johnsbury and Swanton.

"It will be a rival to the Long Trail," said Ide, a Republican from Caledonia County. "I think in time it will be a multi-season recreational trail. I don't know if it will be in a year or in 10 years."

Ide and others who want to see the tracks ripped up have a tough job ahead. Many other politicians, business leaders and residents want to see rail service restored to the Lamoille Valley.

More than 100 people braved snowy roads Thursday to attend a state-run public hearing in Danville on the railroad.

The state billed the hearing as a chance for people to share plans for preserving the tracks on the corridor. Most of the speakers merely reiterated arguments for why the tracks should remain — even if an economic reason for doing so doesn't immediately materialize.

"Forever is a long time, and if the rails come up it is forever," said Carl Fowler, a rail travel agent from St. Albans. "We should bear in mind that the economic future of Vermont is much more than a few years."

Barbara Emch, a Sheldon resident whose yard is bisected by the Lamoille Valley's tracks, said she did not want snow machines, all-terrain vehicles, joggers or bicyclists using the path past her house.

"I'd rather see 10 trains go by every day than put up with snow machines and everything else," Emch said.

Brian Watson, executive director of the Vermont Association of Snow Travelers, said a recreation trail would bring millions of dollars to the communities along the tracks.

The railroad's future is largely in the hands of Clyde Forbes, a Florida operator who has held the lease on the state-owned route for several years. He said Thursday he has no plans to relinquish it.

"We're in this for the long haul," Forbes said.

Forbes, who this fall applied to abandon the western half of the route and then withdrew the application, said someday the eastern half would be used for freight, and the western half would become a trail.

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July 10, 2002
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THE Hardwic

Hardwick • Greensboro • Craftsbury • Wolcott • Walden

VAST Prepares To Rip Up The Railroad Tracks

by Kelly E. Papke

HARDWICK — The Lamoille Valley Railroad Corridor has seen brighter days with trains running through Hardwick loaded with granite and passengers riding to and from school.

By next spring, the tracks from St. Johnsbury to Morrisville will probably be torn up to make way for a multi-use recreational trail. The trail will be operated by the Vermont Association of Snow Travelers and hikers, bikers, walkers and snowmobilers will have access to the corridor.

"This opens up a new opportunity for VAST to work with other trail users since the trail will be used also by bikers and hikers for three seasons throughout the year," said Hal Coughlin, VAST vice president.

The rest of the 96-mile corridor from Morrisville to Swanton will also be stabilized under a lease from VAST, but the ties and rails will stay in place. VAST did not receive permission from the Legislature to remove the rails and ties at the western end.

"We did not get everything that we wanted this year, but we will be able to go forward with the beginning of the conversion to a recreational trail that should add considerably to snowmobiling opportunities and preserve a key corridor for future use," Bryant Watson, VAST executive director, wrote in a newsletter. "It is hoped that as time goes on and VAST has proved itself as a viable multiple use trail manager, we will be able to remove the rails and ties between Morrisville and Swanton as well."

Before major extrication work may begin, the Vermont Agency of Transportation has to take the cor-

ridor through a discontinuance and railbanking process. Rail banking means the entire railbed right-of-way is preserved for future rail use, but may be used for other purposes in the interim. Charlie Miller, of AOT rail division, said the process could take three-six months to complete, leaving VAST and AOT unable to touch the rail infrastructure this summer.

The Legislature did not appropriate funds for the corridor this year. Miller said there is a line item in his budget that will cover the railbanking application to the Surface Transportation Board in Washington, D.C.

Miller said AOT will put together a project to remove all rail material throughout the eastern end by asking a contractor to come in without any compensation to remove the rail and use the salvaged material as payment. After the rail material is removed, VAST will step in and begin restoration.

"This year, we had to work hard to gain language that would allow VAST to start the conversion of the rail bed into a multiple use recreational trail," Watson wrote. "We succeeded!"

Watson considered it a "great win" for VAST and is the result of the group's decision to create a closer working relationship with the Legislature and governmental agencies.

VAST will receive a long-term lease on the eastern end and run on a year-to-year basis on the western end, Miller said.

Brad Worthen, of Vermont Rail Link Inc., fought to return rail-use to the line. He said he is satisfied the Legislature did not decide to rip up the tracks from the Morrisville to Swanton section because Rail Link

has argued all along that section has the most potential for rail-use.

Worthen said the concept behind the Legislature's decision is there is so much work to be done on the eastern end, let the trail advocates start there and stabilize washouts and the structure on the west end. Worthen said for now he will sit back and see what happens until next January when the Legislature reconvenes.

"The bottom line is the rail is staying in place in the most important sections," said Worthen.

Worthen still hopes rail use is reintroduced on the western end in the future.

The next step forward is the culmination of a long battle over use and operator between the long-time leaseholder Clyde Forbes and the AOT when the railroad ceased operation in the mid-1990s.

Last year, VRL and VAST submitted separate proposals for the use of LVRC. VAST proposed to turn the corridor into a multi-use recreation trail while VRL proposed to reintroduce rail in three phases along the line. Prior to that, a study was conducted by M.I.T. researchers, which recommended giving the rail corridor about five years for rail use before moving in a different direction. Bids were taken for rail use, a short list was made but no one was offered a lease for the corridor's use.

A Mountain Valley Consortium, made up of business representatives along the corridor, was then formed about two years ago. That body recommended AOT turn the corridor into a multi-use trail. In 2001, the Legislature was skeptical the consortium did not look closely at the economic feasibility of the VRL proposal and put the project on hold.

Timothy D. Phelps
P. O. Box 67
East Hardwick, Vermont 05836
November 4, 2003

The Surface Transportation Board
Office of the Secretary,
1925 K Street, N.W., Washington, DC 20423

Re: LVRC and VTRANS
Notice of Intent to File for Abandonment Exemption
STB Docket No. AB-444 (Sub-No. 1X)

Certificate of Service - LVRC

This will certify that one copy of this letter (protest) and all attachments have been served on the LVRC through the applicant's representative, sent to the address included in the published NOTICE OF INTENT TO FILE for an Abandonment Exemption, STB Docket No. AB-444, Sub-No. 1X (Attachment 1 to the original letter), which address is as follows:

James B Fitzgerald,
Lamoille Valley Railroad Company
c/o Vtrans Rail Section,
National Life Building,
Drawer 33, Montpelier VT 05633-5001

Signed:



Timothy D. Phelps

Date:

11/04/03