

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 21, 2020
Part of
Public Record

Docket No. FD 36403

**TRANS RAIL HOLDING COMPANY
-CONTINUANCE OF CONTROL EXEMPTION-
MERRIMACK & GRAFTON RAILROAD CORPORATION**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §§ 1180.2(d)(2) and 1180.4(g), Trans Rail Holding Company ("TRHC"), a non-carrier railroad holding company incorporated under the laws of the State of Vermont, hereby files this Verified Notice of Exemption to exempt it from the prior approval requirements of 49 U.S.C. §§11323-11325 for TRHC's continuance in control of the Merrimack & Grafton Railroad Corporation ("MGRC") once it becomes a Class III carrier with authority to operate a line of railroad owned by the State of New Hampshire. In accordance with the requirements of 49 C.F.R. § 1180.4(g), TRHC submits the following information:

A. Description of the Proposed Transaction: 49 C.F.R. §1180.6(a)(1)(i)

TRHC currently controls five (5) Class III railroads through ownership of their controlling stock as follows:

1. Vermont Railway, Inc.
2. The Clarendon and Pittsford Railroad Company
3. Washington County Railroad Company
4. The New York & Ogdensburg Railway Company, Inc.

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5. Green Mountain Railroad Corporation

On April 30, 2020 TRHC entered into an agreement to purchase some of the business assets of the New England Southern Railroad Co. (NESR),¹ a Class III rail carrier that is the designated operator of an approximately 73-mile long line of railroad that runs between Milepost P 21.30 at Lincoln, New Hampshire to Milepost C 0.58 at Concord, New Hampshire and which is owned by the State of New Hampshire (the “Line”). The NESR provides common carrier rail operations over the Line pursuant to an Operating Agreement between NESR and the New Hampshire Department of Transportation (“NHDOT”), dated November 14, 2012.

As part of NESR’s agreement with TRHC, NESR will assign all of its rights and obligations under the Operating Agreement to the MGRC, a non-carrier subsidiary formed by TRHC for the purpose of becoming the new designated operator of the Line. Prior to the commencement of service on the Line TRHC and MGRC will have obtained the required consent of NHDOT to the assignment of the Operating Agreement to MGRC. The NESR will remain an independent Class III rail carrier after the transaction is closed.

MGRC has filed a separate notice of exemption in Docket No. FD 36405 pursuant to 49 C.F.R. §1150.31(a)(3) to become the new operator of the Line. Upon obtaining the right to operate over the Line MGRC will become a Class III carrier. Therefore, TRHC has filed this notice of

¹ NESR was originally created in 1982 as the New England Southern Railroad Co., Inc. (NESRCI), a Nevada corporation, and the railroad obtained operating authority from the Interstate Commerce Commission under that name. The Nevada corporation was administratively dissolved in 1987. However, the NESRCI continued rail operations under the same reporting marks (NESR). In 1994 the railroad was reincorporated as the New England Southern Railroad Co., as a Delaware corporation, and still operated under the NESR reporting marks. The railroad was then registered as a foreign company in New Hampshire as New England Southern Railroad Co., Inc. The Business Asset Purchase Agreement for this transaction is between TRHC and all three entities out of an abundance of caution, but for purposes of this petition the seller is New England Southern Railroad Co.

exemption to continue to control MGRC after the transactions have closed and MGRC replaces NESR as the new operator of the Line.

The Line does not connect with any of the tracks of the other five railroads controlled by TRHC. Moreover, the involved transaction is not part of a series of anticipated transactions that would connect the Line to any of the tracks of the other railroads. Neither MGRC nor any of the carriers controlled by TRHC are Class I rail carriers. Accordingly, this transaction falls within the class of transactions described under 49 C.F.R. § 1180.2(d)(2) and is exempt from prior approval by the Surface Transportation Board (“Board”).

The full name and address of the applicant herein is as follows:

Trans Rail Holding Company
1 Railway Lane
Burlington, VT 05401
802-658-2550

Any questions concerning this Notice should be sent to counsel for TRHC at the following address:

Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson St. NW
Suite 500
Washington, D.C. 20007
(202) 342-5248
twilcox@gkgglaw.com

B. Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

TRHC intends to consummate the Business Asset Purchase Agreement and the assignment of NESR’s operating rights to MGRC thirty days after this Notice is filed, or on or about June 30, 2020.

C. Purpose Sought to be Accomplished: 49 C.F.R § 1180.6(a)(1)(iii)

The requested exemption will allow TRHC to have continued control of its subsidiary MGRC to assist the latter in replacing NESR as the operator of the Line in order to ensure freight rail operations and service to rail shippers continue on this rail line for State of New Hampshire. The transaction will also provide efficiencies and operating economies, as well as improve the financial viability of both TRHC and NESR, the latter of which has been in need of operating capital.

D. States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

The properties of the rail carriers controlled by TRHC are located in the following states: New York, Vermont, and New Hampshire.

E. Maps: 49 C.F.R. § 1180.6(a)(6)

Maps of the rail lines operated by the carriers controlled by TRHC and the Line at issue in this notice are attached as Exhibit A.

F. Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)

Because TRHC already controls MGRC no additional agreement is needed for TRHC to continue to control MGRC after it becomes a Class III carrier.

G. Labor Protection Conditions; 49 C.F.R § 1180.4(g)(2)(i)

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

H. No Interchange Commitment; 49 C.F.R. §1180.4(d)(4)

The proposed transaction does not involve a provision or agreement that may limit future interchange between MGRC and a third-party connecting carrier.

I. Environmental and Historic Impacts: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e. changes that exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b)(1), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed acquisition will not change any current rail operations nor substantially change the level of maintenance of rail property. Further, Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Respectfully submitted,



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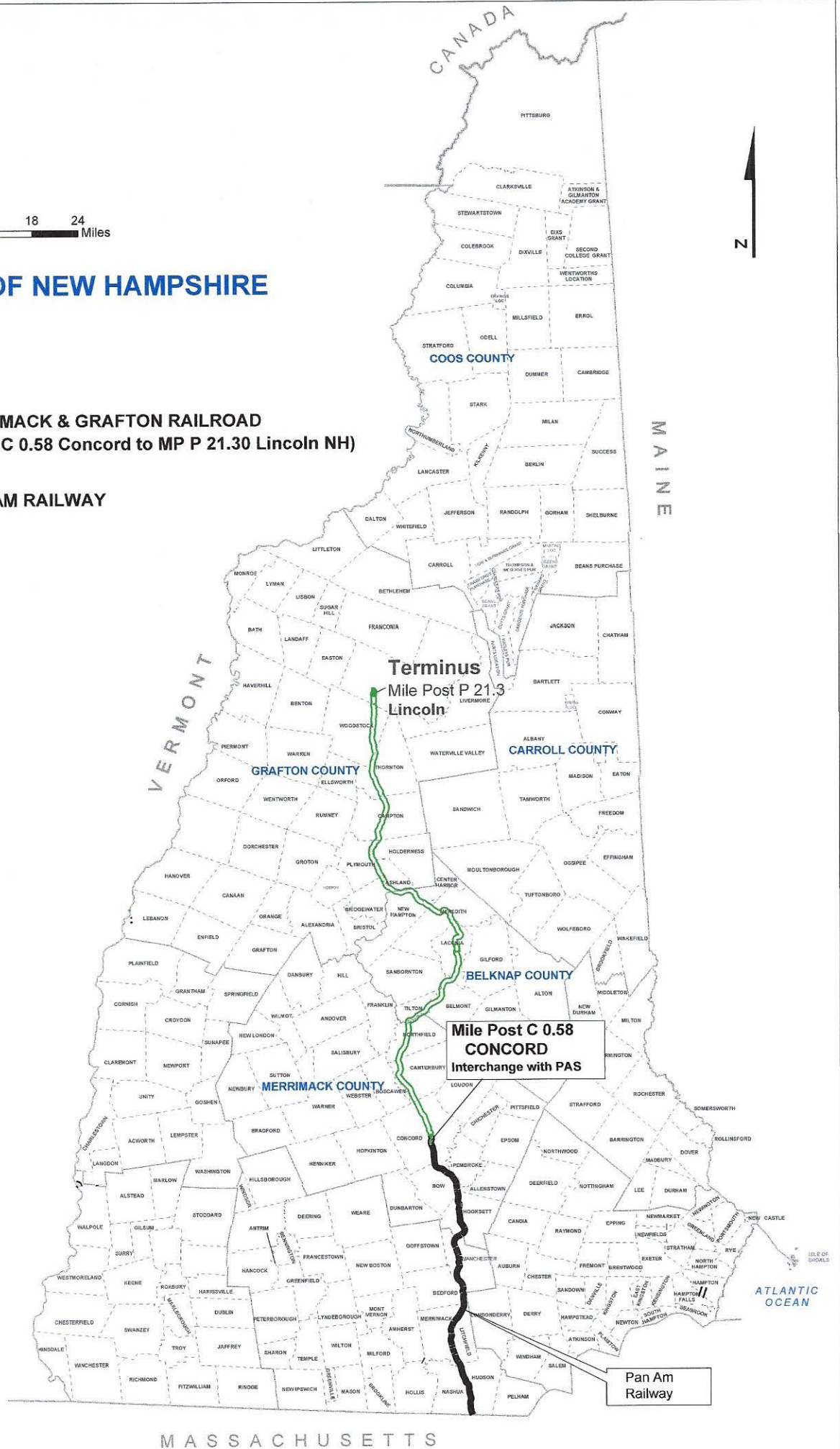
Dated: May 21, 2020

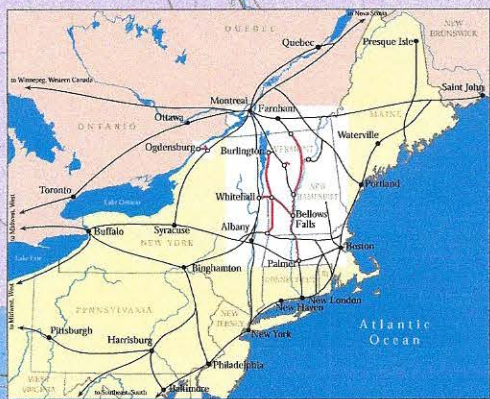
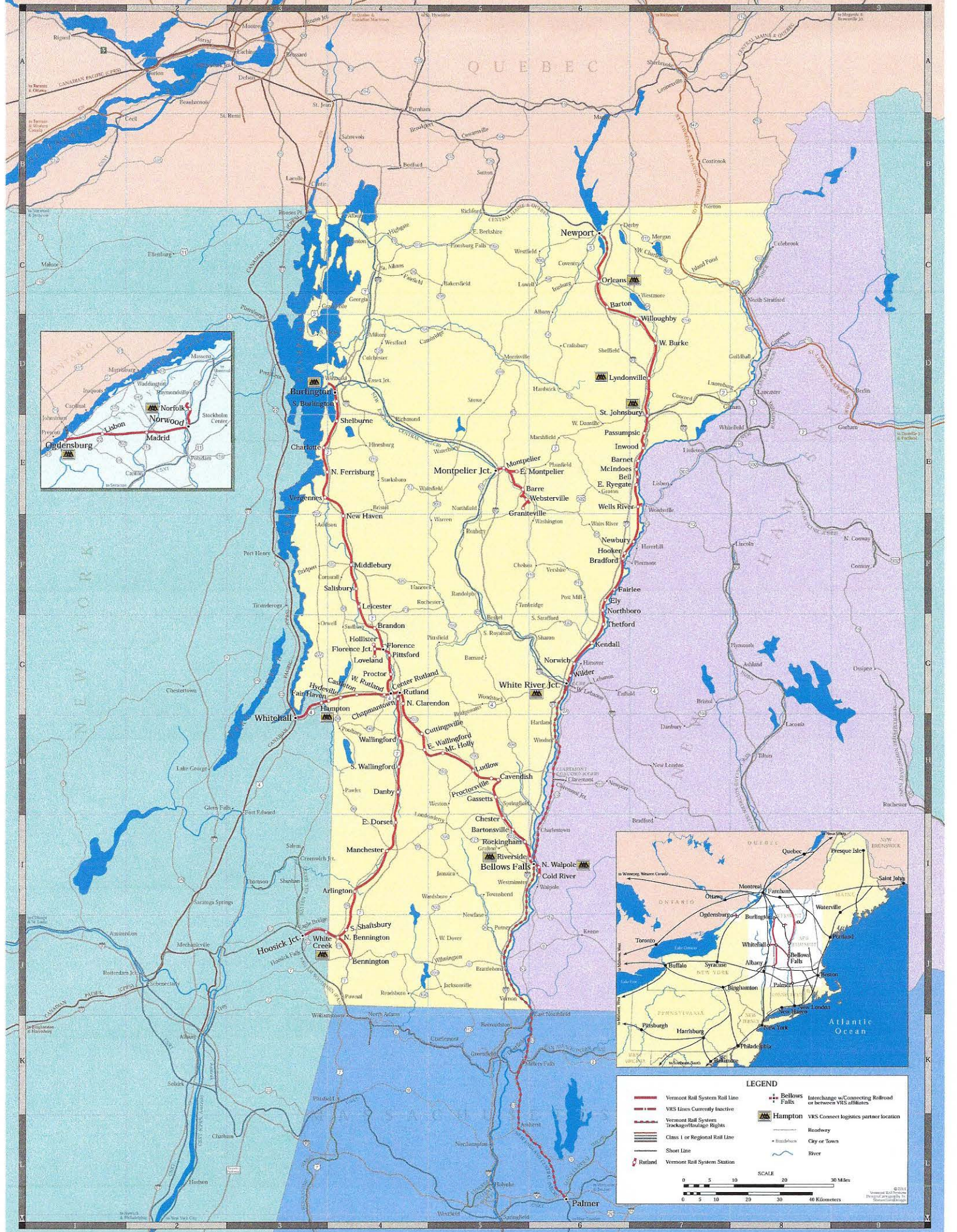
EXHIBIT A – MAPS

0 3 6 12 18 24 Miles

STATE OF NEW HAMPSHIRE

-  **MERRIMACK & GRAFTON RAILROAD**
(MP C 0.58 Concord to MP P 21.30 Lincoln NH)
-  **PAN AM RAILWAY**





LEGEND

- Vermont Rail System Rail Line
- VRS Lines Currently Inactive
- Vermont Rail System Trackage/Right of Way
- Class I or Regional Rail Line
- Short Line
- Railroad
- Vermont Rail System Station
- Bellevue Falls
- Hampton
- Interchange w/Connecting Railroad or between VRS affiliates
- VRS Connect logistics partner location
- Roadway
- City or Town
- River

SCALE

0 5 10 20 30 Miles

0 5 10 20 30 40 Kilometers

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VERIFICATION

I, Selden Houghton, declare under penalty of perjury that the factual information contained in the foregoing Verified Notice of Exemption is true and correct.

Executed: May 21, 2020

By: 
Selden Houghton
Title: President
Trans Rail Holding Company