

# **Appendix M – Public Hearing Presentation, Transcript, Annotated Comments and Comment Responses**

Public Hearing Presentation, May 11, 2017

Public Hearing Transcript

Annotated Comment Response Documents

Comment Response Document

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# **Public Hearing Presentation, May 11, 2017**



# Environmental Assessment Public Hearing



PRESENTED TO  
Town of Middlebury

PRESENTED BY  
VTrans and VHB

May 11, 2017



## Community Project Goals

- Protect safety of the community: people, property, environment
- Minimize project impact on vitality of the downtown community: businesses, residents, institutions
- Maintain traffic flow and pedestrian access
- Develop and maintain a credible schedule
- Engage with the local community and facilitate clear communication with all stakeholders



# Introductions





## Hearing Overview

- Review of Timelines
- Environmental Assessment Process
- Upcoming Next Steps
- Public Comment Period



## Overall Timeline

- Temporary bridges to be installed Summer 2017
- Current Project schedule
- Target Project construction schedule 2018–2021

2017

2018

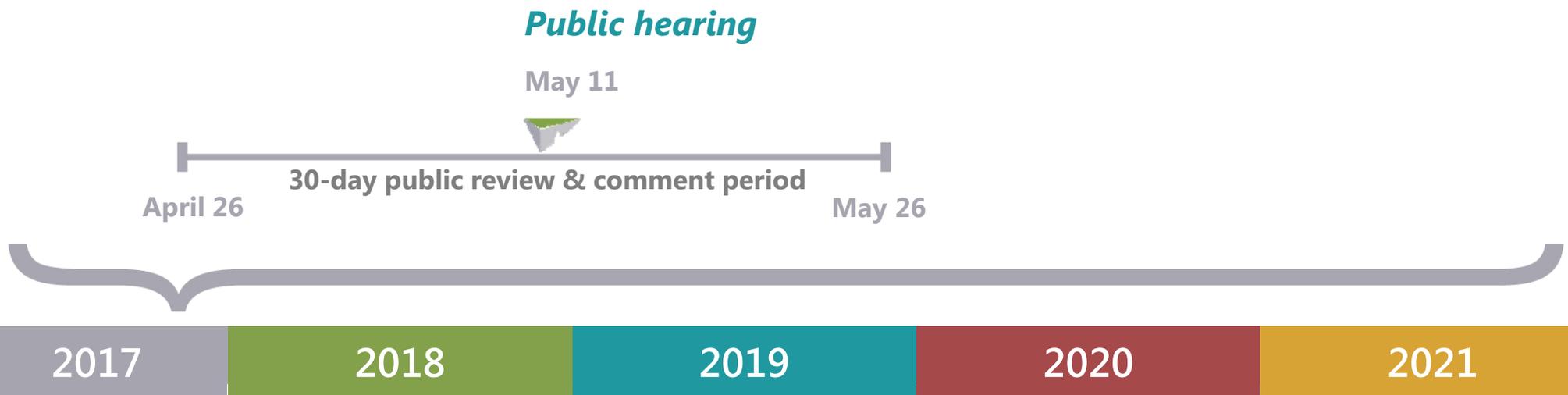
2019

2020

2021



# EA Public Review and Comment Period





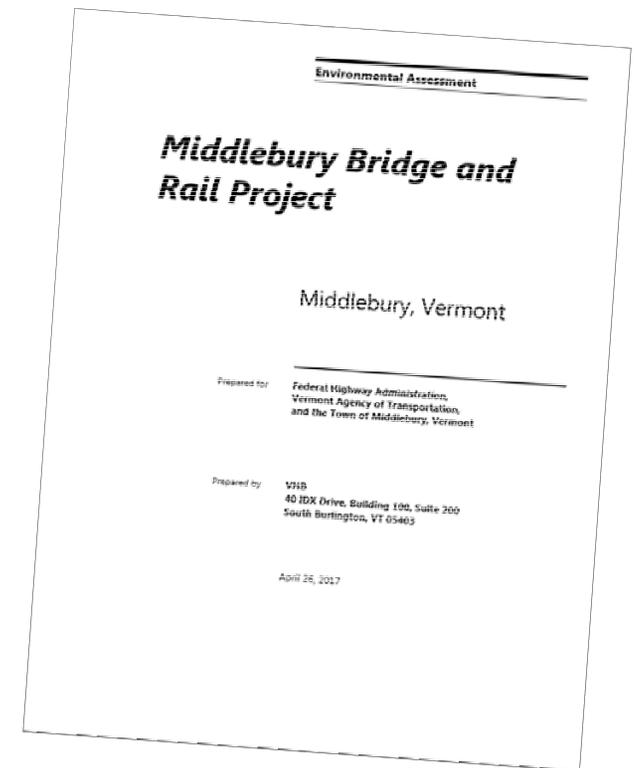
# National Environmental Policy Act (NEPA)

Federal requirement that federal agencies must assess the environmental effects of their proposed actions prior to undertaking major federal actions including expenditure of federal funds.



# National Environmental Policy Act (NEPA)

- Levels of NEPA environmental review
  - Categorical Exclusion (CE)
  - **Environmental Assessment (EA)**
  - Environmental Impact Statement (EIS)





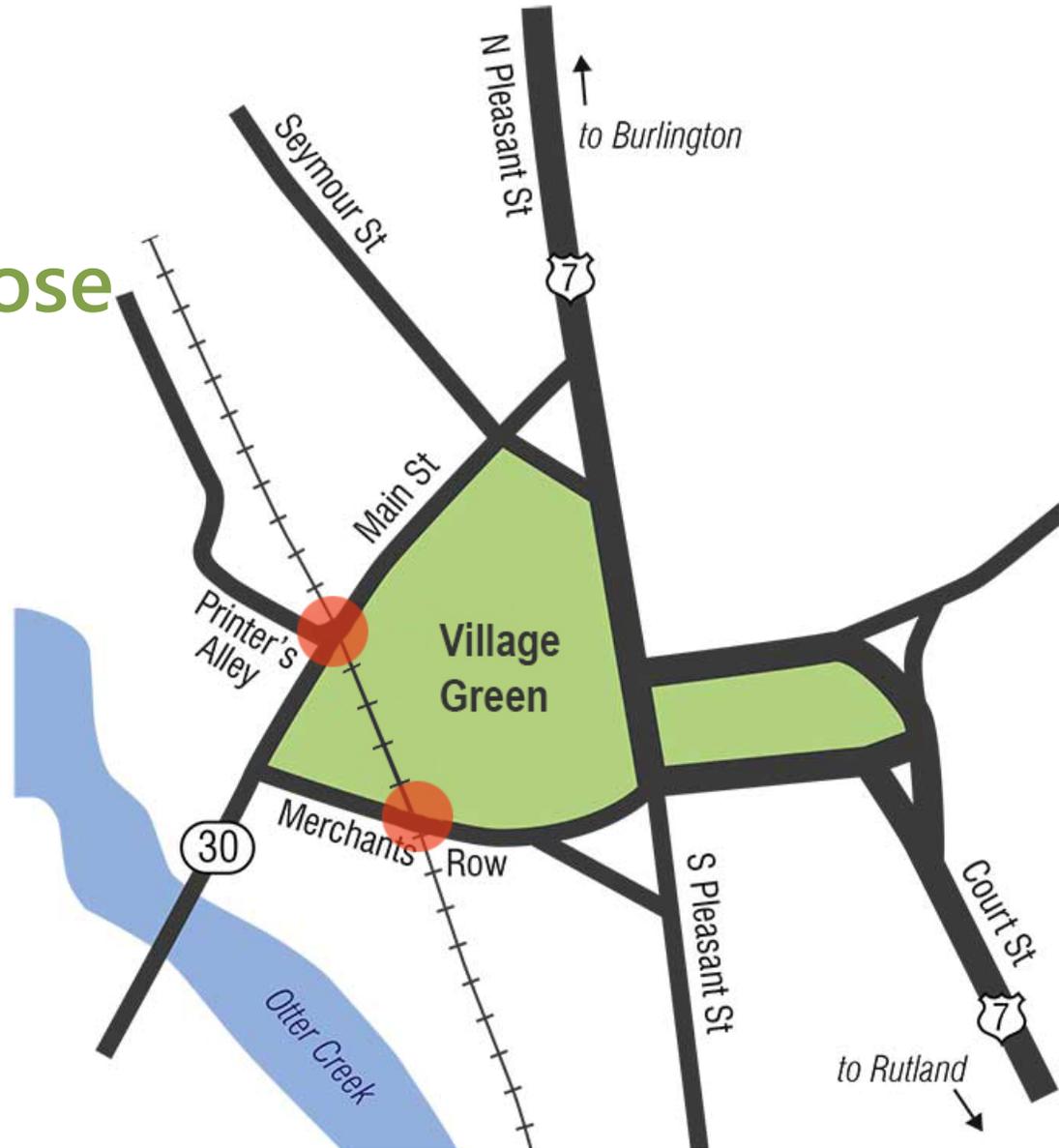
# Environmental Assessment Process

- ✓ **Purpose and need**
- ✓ Alternatives considered
- ✓ Identification of Proposed Action
- ✓ Resource assessment, effects & mitigation
  - Public Hearing & Comment Period
  - FHWA determination
    - Finding of no significant impact (FONSI)
    - Finding of significant impact





# Defining Purpose and Need



***“The purpose of the project** is to address the structural deficiencies of two rail-highway grade-separated bridges in downtown Middlebury where Main Street (VT 30/TH 2 Bridge 102) and Merchants Row (TH 8 Bridge 2) span the Vermont Western Rail Corridor track, to address rail safety concerns, and to provide appropriate vertical and horizontal rail clearances for the design service life of the structure(s) (100 years).”*

—Environmental Assessment  
Section 1.4, Project Purpose





Project Need: *Existing Conditions*  
**Main Street Bridge**



Project Need: *Existing Conditions*  
**Merchants Row Bridge**



Project Need: *Existing Conditions*  
**Vermont Western Rail Corridor Tracks**



# Environmental Assessment Process

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# Fundamental Planning and Design Criteria



Community



Roadway design



Bridge



Railroad



Village Green



Stormwater/Drainage



# Project Alternatives



No action



Bridge rehabilitation



New bridge(s) on new  
Downtown alignment



Eastern Rail bypass



Movable (lift) bridges



Two bridges



Tunnel



## How were alternatives assessed?

- Purpose and need
- Public input
- Planning documents
- Historic resources
- Environmental resources/permitting
- Right-of-way (ROW)
- Cost



# Environmental Assessment Process

- ✓ Purpose and need
- ✓ Alternatives considered
- ✓ **Identification of Proposed Action**
- ✓ Resource assessment, effects & mitigation
  - Public Hearing & Comment Period
  - FHWA determination
    - Finding of no significant impact (FONSI)
    - Finding of significant impact





## Selection of Proposed Action



No action



Bridge rehabilitation



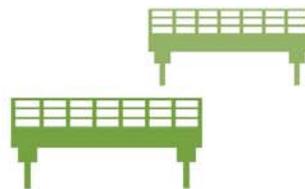
New bridge(s) on new  
Downtown alignment



Eastern Rail bypass



Movable (lift) bridges



Two bridges



Tunnel



## Proposed Action Overview

### Project Dimensions

Overall length: 3,550 feet

Tunnel length: 360 feet

Construction Area: 6.1 Acres



# Proposed Action Overview

- Permanent construction
  - Structures
  - Highway
  - Railroad
  - Utilities
  - Landscaping
- Temporary works
  - Access roads
  - Support of excavation
  - Waste, borrow, and staging





# Environmental Assessment Process

- ✓ Purpose and need
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- ✓ Identification of Proposed Action
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  - Public Hearing & Comment Period
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## Resources Assessed: Affected Environment, Environmental Consequences, and Mitigation

- Land use (*Section 3.1*)
- Traffic (*Section 3.2*)
- Wetlands (*Section 3.3*)
- Surface waters (*Section 3.4*)
- Groundwater and drinking water resources (*Section 3.5*)
- Floodplains and floodways (*Section 3.6*)
- Wildlife (*Section 3.7*)
- Threatened and endangered species (*Section 3.8*)
- Air quality (*Section 3.9*)
- Noise and vibration (*Section 3.10*)
- Parks, recreation, and conservation land (*Section 3.11*)
- Historic resources (*Section 3.12*)
- Archaeological resources (*Section 3.13*)
- Acquisitions (*Section 3.14*)
- Social and economic considerations (*Section 3.15*)
- Utilities and emergency services (*Section 3.16*)
- Hazardous/Contaminated materials (*Section 3.17*)



# Resources Assessed: Affected Environment, Environmental Consequences, and Mitigation

- Land use
- **Traffic (Mark Suennen)**
- Wetlands
- Surface waters
- Groundwater and drinking water resources
- Floodplains and floodways
- Wildlife
- Threatened and endangered species
- Air quality
- **Noise and vibration (Jason Ross)**
- Parks, recreation, and conservation land
- **Historic resources (Kaitlin O'Shea)**
- Archaeological resources
- Acquisitions
- **Social and economic considerations (Brad Ketterling)**
- Utilities and emergency services
- **Hazardous/Contaminated materials (Rachel Lomonaco)**



# Traffic

- Regulatory context: No permits required
- Traffic evaluated:
  - Vehicles
  - Bicycles
  - Business/Residential access
  - Bus transit
  - Pedestrians
  - Parking
  - Railroad





## Traffic

- Future traffic volumes
  - Status quo (No Action) = Proposed Action
- Permanent effects of Proposed Action
  - No change in capacity
  - No net change in available parking
  - Improvements to sidewalks and access
  - Improvements at Printers Alley

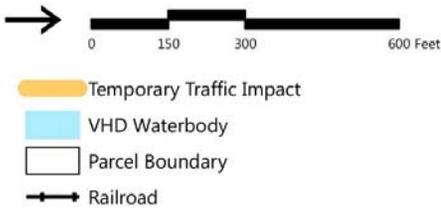
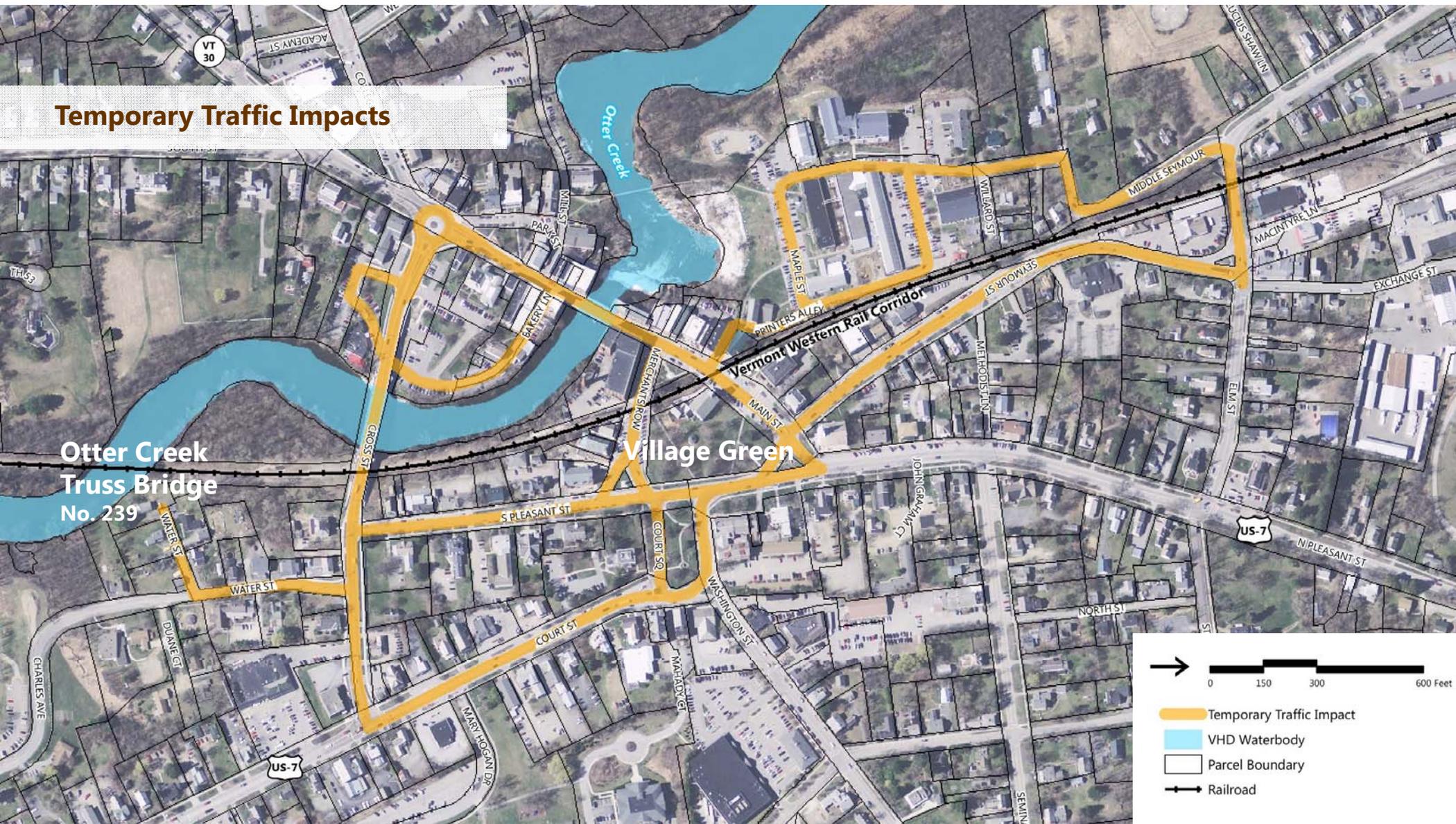


# Temporary Traffic Impacts

Otter Creek  
Truss Bridge  
No. 239

Village Green

Vermont Western Rail Corridor





## Traffic

- Temporary effects (construction effects)
  - 10-week full roadway, sidewalk, and rail closures
  - Printers Alley closed to vehicles (and occasionally pedestrians)
  - About 100 parking spaces closed or partially restricted
- Mitigation measures
  - Transportation Management Plan (TMP)
  - Detours established for vehicles, pedestrians, and rail traffic
  - Alternative parking options under consideration



## Noise and Vibration: Roadways

- Per VTrans policy, roadway noise not evaluated
  - Proposed Action would not increase capacity or substantially alter roadway alignment
- Future traffic will not increase with Proposed Action, so roadway noise will not change





# Noise and Vibration: Trains

## Permanent Project effects

- Replacing jointed track with continuous-welded rail will decrease noise and vibration
- Tunnel section will reduce noise in the Central Business District
- Lowering tracks and double-stack freight will not appreciably affect noise or vibration
- Higher allowable track speed could increase noise and vibration

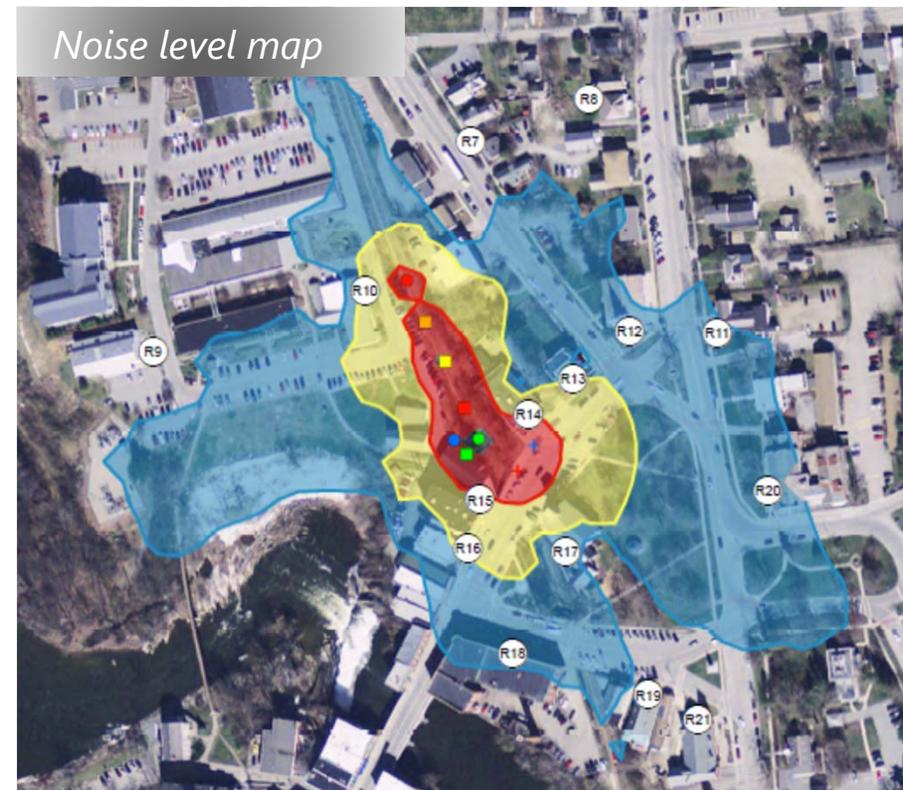
## Impact assessment

- Per Federal Transit Administration guidelines, no train noise or vibration impact
- Overall future train noise will not increase compared to No-Action conditions
- Overall future vibration will not have a perceptible increase over No-Action conditions



# Noise and Vibration: Construction (Temporary) Effects

- Federal Transit Administration noise and vibration guidelines
- Construction noise evaluated throughout study area during various phases of construction such as excavation, track construction
- Construction noise is not projected to exceed daytime limits
- Track construction at night may exceed FTA guidelines near residences on Middle Seymour Street





# Noise and Vibration: Construction Mitigation

- Best management practices implemented to minimize noise
  - Equipment functioning properly
  - Locating equipment away from receptors, as possible
  - Using portable enclosures for small equipment (jackhammers and concrete saws)
  - Maintaining strong communications with the public about time and nature of construction activities
- Historic Structures Management Plan to minimize risk of vibration damage





## Hazardous/Contaminated Materials

- Resources present
  - Soil and groundwater
  - Detailed assessment of these resources overseen by VT DEC
  - No hazardous materials present
- Regulatory background
  - On-going oversight by VT DEC
  - Requirements apply to the management/disposal of materials



# Hazardous/Contaminated Materials

- Effects of the completed project
  - Improve soil in the project area.
  - Improve shallow groundwater
- Construction (temporary) effects
  - Disturbance of contaminated materials
  - Construction phase dewatering





# Hazardous/Contaminated Materials

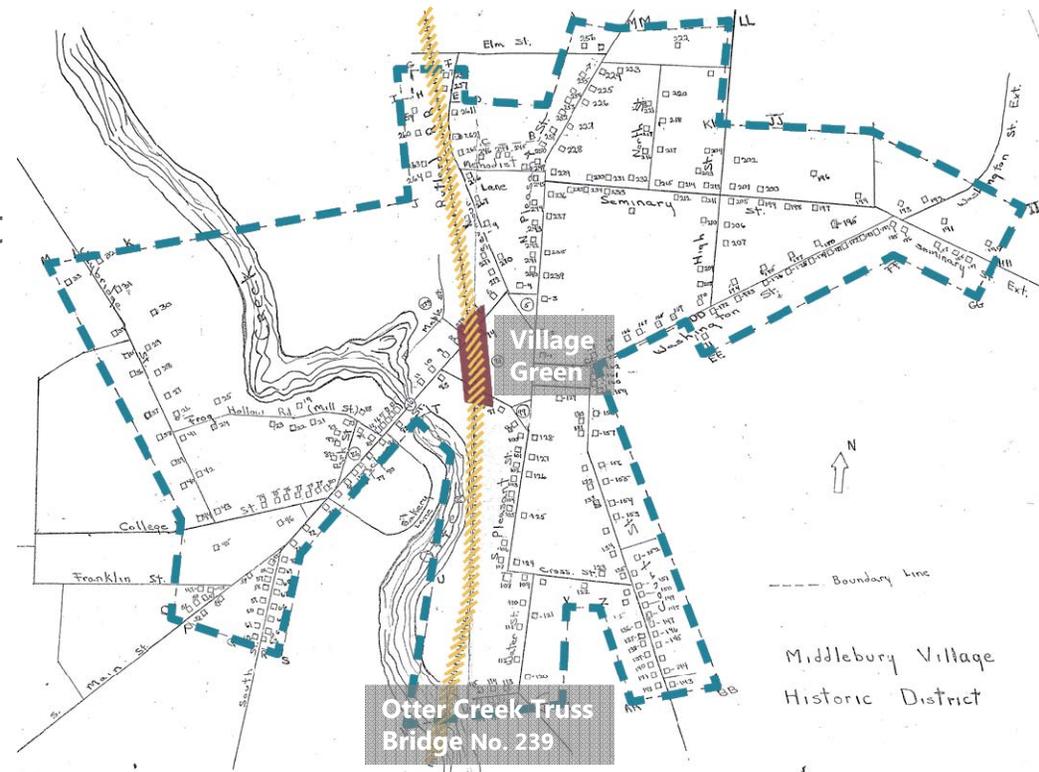
- Project mitigation
  - Corrective Action Plan
  - National Pollutant Discharge Elimination System (NPDES) Permit
  - Full-time monitoring personnel





# Historic Resources

- Resources present
  - Middlebury Village Historic District
  - Rutland Railroad Historic District
- Regulatory background
  - Section 106
  - Section 4(f)



*Middlebury Village Historic District/Rutland Railroad Historic District*



## Historic Resources

- Effects of completed project
  - Removal of historic bridges
  - Viewshed change
  - Reestablish historic Village Green (pre-railroad era)





Renderings by LandWorks, 2013



## Historic Resources

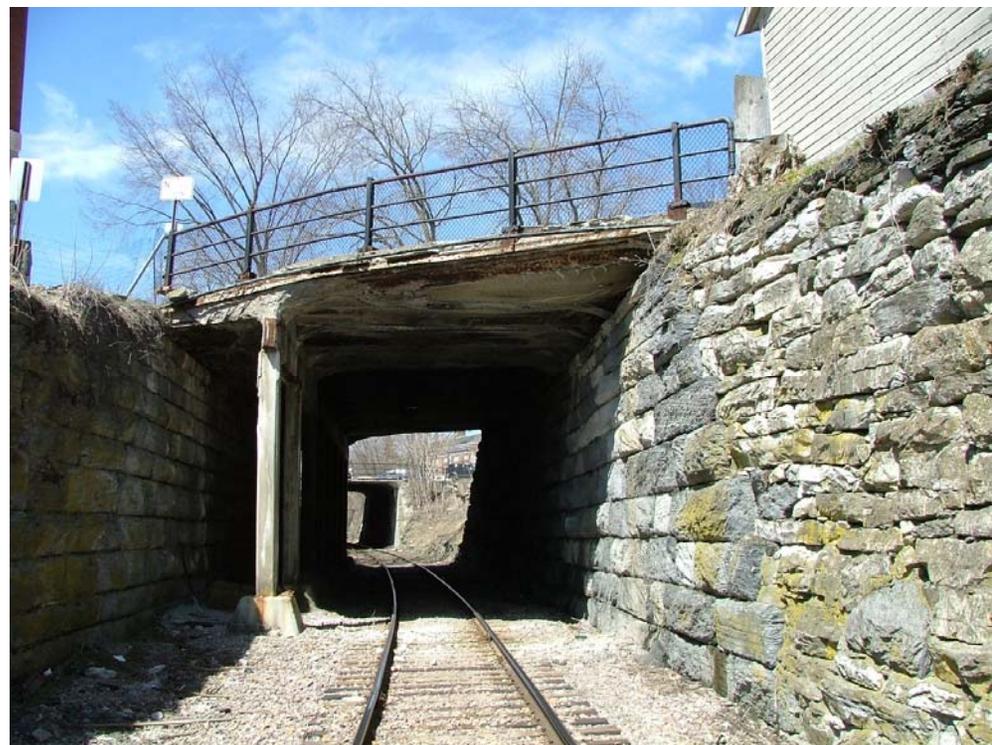
- Construction Effects (Temporary)
  - Vibration during construction





## Historic Resources

- Project mitigation
  - Photo documentation
  - Design of tunnel end caps
  - Salvage of bridge abutments and design of Village Green enhancements
  - Interpretive panels
  - National register historic district update





## Social & Economic Considerations

- Project is located in commercial and cultural core of Middlebury
- Construction-related effects on businesses and accessibility a major concern
- Regulatory background
  - NEPA





# Social & Economic Considerations

- Effects of Completed Project
  - Expanded Village Green
    - More green space
    - Event functionality
    - Pedestrian accessibility
    - Interpretive signage
  - Improved sidewalks and railings



Photo - <http://www.festivalonthegreen.org/>



## Social & Economic Considerations

- Construction phase effects
  - Duration of construction
  - Limited accessibility during 10-week closure period
  - Church services, ADA compliance, and the elderly
  - Events in Village Green





# Social & Economic Considerations

- Mitigation for construction phase effects
  - Train detour
    - Accelerated bridge construction vs. conventional
  - Accessibility plan (business/residences)
  - Learning from other communities
  - Project communications
  - Town efforts (Neighbors Together)



*3 years before the onset of planned closure period*



# Resources Effects Summary from EA: **Completed Project**

<b>Land use</b>		<b>Noise and vibration</b>	
<b>Traffic</b>		<b>Parks, recreation, and conservation land</b>	
<b>Wetlands</b>		<b>Historic resources</b>	
<b>Surface waters</b>		<b>Archaeological resources</b>	
<b>Groundwater and drinking water resources</b>		<b>Acquisitions</b>	
<b>Floodplains and floodways</b>		<b>Social and economic considerations</b>	
<b>Wildlife</b>		<b>Utilities and emergency services</b>	
<b>Threatened and endangered species</b>		<b>Hazardous/Contaminated materials</b>	
<b>Air quality</b>			

*Beneficial effect*

*No effect*

*Adverse effect*



# Resources Effects Summary from EA: **Construction**

<b>Land use</b>		<b>Noise and vibration</b>	
<b>Traffic</b>		<b>Parks, recreation, and conservation land</b>	
<b>Wetlands</b>		<b>Historic resources</b>	
<b>Surface waters</b>		<b>Archaeological resources</b>	
<b>Groundwater and drinking water resources</b>		<b>Acquisitions</b>	
<b>Floodplains and floodways</b>		<b>Social and economic considerations</b>	
<b>Wildlife</b>		<b>Utilities and emergency services</b>	
<b>Threatened and endangered species</b>		<b>Hazardous/Contaminated materials</b>	
<b>Air quality</b>			

*Beneficial effect*      *No effect*      *Adverse effect*



# Environmental Assessment Process

- ✓ Purpose and need
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- **Public Hearing & Comment Period**
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# Public Comments

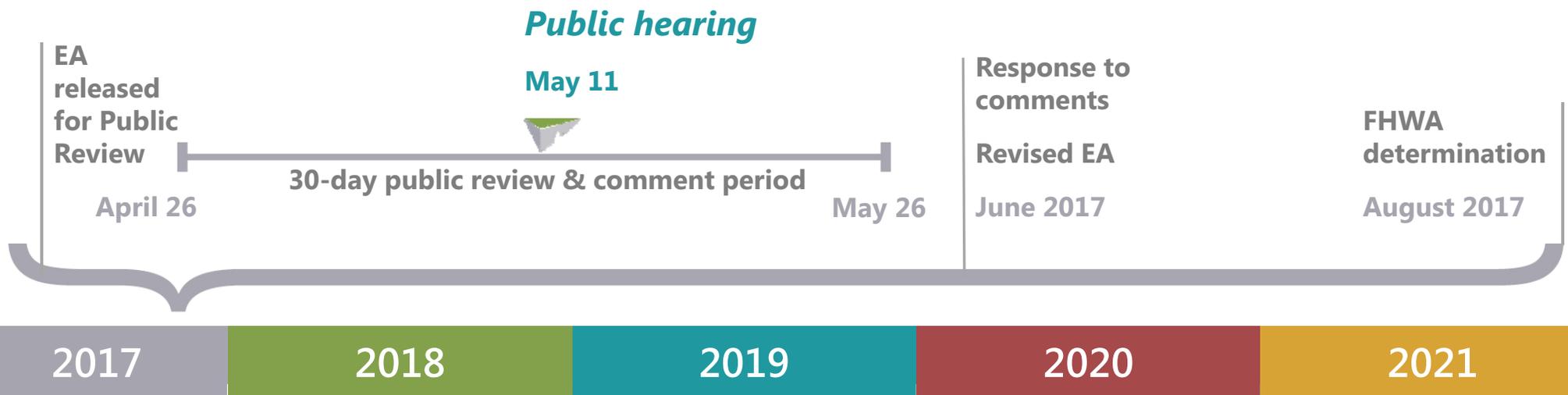
## Thank you for your participation!

- When offering comments
  - Wait to be recognized before speaking
  - Approach microphone or wait for one to be handed to you
  - State your name and town of residence
  - Talk clearly and slowly (public hearing is being transcribed)
  - Keep comments 3 minutes or less
  
- Materials provided
  - Project informational summary and map
  - Comment sheet





# Upcoming Next Steps





# Public Comments

- Locations to view EA:
  - Ilsley Public Library** | 75 Main Street
  - Town Manager's Office** | 77 Main Street
  - <http://vtrans.vermont.gov/projects/middlebury>
- Send comments by US Mail to:
  - Kenneth Sikora**, *Environmental Program Manager*
  - Federal Highway Administration
  - Federal Building, Suite 216
  - 87 State Street | Montpelier, VT 05602-9505
- Send comments by Email to: [Middlebury@vhb.com](mailto:Middlebury@vhb.com)

Comment period closes: **May 26, 2017**

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# Public Hearing Transcript

G1, I1, I2, I3, I5, I8, I12, I13,

I15, I17, I19, I22, O1, O2

STATE OF VERMONT  
AGENCY OF TRANSPORTATION

MIDDLEBURY BRIDGE AND RAIL PROJECT

MAY 11, 2017

TOWN HALL THEATER  
MERCHANTS ROW  
MIDDLEBURY, VERMONT

REPORTED BY:

CAPITOL COURT REPORTERS, INC.  
P.O. BOX 329  
BURLINGTON, VERMONT 05402-0329  
(802/800) 863-6067  
E-mail: [info@capitolcourtreporters.com](mailto:info@capitolcourtreporters.com)

1                   MR. CARPENTER: So it's 7 o'clock and  
2 I'll go ahead and call the meeting to order. I'm  
3 Brian Carpenter, the Chairman of the Middlebury  
4 Selectboard. Welcome everybody to this evening's  
5 environmental assessment testimony and hearing. We  
6 -- I would like to start with a review of the  
7 community project goals. We did a reset a little  
8 under a year ago. Working with VTrans we established  
9 some specific community goals that we wanted the  
10 project to meet. One of those goals was to make sure  
11 that we did everything that we could to protect the  
12 community and the environment, and out of that came  
13 the desire to do an environmental assessment and make  
14 sure that we were doing that.

15                   The project team has worked hard. There  
16 have been a number of expert environmentalists in  
17 looking at the environmental impacts the project has  
18 on our community and the environment, and that's all  
19 been available in a number of different places;  
20 online as well as in print at the Town Offices, and  
21 so tonight's purpose of the meeting is to take the  
22 hearing for that.

23                   I would like to give my appreciation to  
24 a few people. Jim Gish, who is our community  
25 outreach project person, has done a phenomenal job of

1 making sure people knew where the information is and  
2 getting around the stakeholders to try to bring  
3 people into the loop and understand what's going on.  
4 Probably, you know, for profit the paper, but they  
5 also serve a very fundamental need of the community  
6 and I really appreciate the Addison Independent's  
7 efforts, especially this last week, to provide a  
8 recap of where the project was and where it currently  
9 is as well as ensuring people knew about tonight's  
10 hearing, and so, John, if you could please pass on my  
11 congratulations and appreciation. Thank you to  
12 Angelo Lynn.

13 With that I will introduce Wayne Symonds  
14 who is our lead project manager and to conduct the  
15 hearing and thank you for coming.

16 MR. SYMONDS: Yes. Hi everybody. Thank  
17 you for coming. As Brian said, my name is Wayne  
18 Symonds and I am the structures program manager for  
19 VTrans and I'm just going to do a couple of brief  
20 remarks. I'm going to turn it over to the team, but  
21 first of all I just wanted to thank everybody that  
22 came earlier for our informational meeting between 4  
23 and 6. I think we had a great turnout, lots of great  
24 questions, and you know I think that was fantastic.

25 So with me here tonight I have a team, a

1 large team, that's going to be presenting some  
2 information on the environmental assessment that we  
3 had and we're going to be listening to your comments  
4 on the environmental assessment. So just some quick  
5 introductions. First I would like to introduce Joel  
6 Perrigo and he is the project manager for this  
7 project from VTrans, and then from our partners at  
8 FHWA Ken Sikora, he's environmental program manager,  
9 Matthew DiGiovanni who is the field operations  
10 engineer and new on the job this week, Larkin  
11 Wellborn, he's a project engineer for FHWA.

12 Also key to the team is VHB. They are  
13 our consultant for the project. They are engineers  
14 and environmental scientists and there's a big team  
15 here, but I'm going to introduce two people  
16 especially. First I'm going to introduce Aaron  
17 Guyette, he's the project manager, and I'm going to  
18 introduce Jeff Nelson who is the environmental  
19 services manager for VHB, and Jim Gish has already  
20 been introduced. I feel like he should have a symbol  
21 up here, but we missed that.

22 So I do want to just call everybody's  
23 attention to there's going to be a little bit more  
24 formality to this because it actually is a hearing.  
25 We come to the town before and -- for a public

1 informational hearing and it's been sort of some back  
2 and forth and answering questions and -- but tonight  
3 is really structured to hear your comments and your  
4 questions on the environmental assessment. We're not  
5 going to get into a lot of detail on the project  
6 specifics, but really want to hear what you think  
7 about the environmental assessment that we put  
8 together and the EA for sure.

9 So first we're going to just briefly  
10 review some timelines and then we're going to talk  
11 about the process itself, and then quickly some  
12 upcoming steps, and hopefully get through all of that  
13 so there's a lot of time at the end for public  
14 comment. I should note that tonight's -- all the  
15 comments that are given are going to be recorded by  
16 the stenographer that's up here. They will become  
17 part of the comment record for the environmental  
18 assessment.

19 So overall timeline. Because  
20 everybody's interested in what is happening with the  
21 project I'm only going to mention temporary bridges  
22 here once tonight and this is the one time. We're  
23 scheduled to install temporary bridges beginning in  
24 June, and we have a period of construction in June  
25 and then a hiatus for a number of events in

1 Middlebury and the downtown area. Then we'll be back  
2 in late July and into August to actually install the  
3 temporary bridges with us out of town hopefully  
4 before the middle of August with the temporary  
5 bridges in place.

6 So when I say the current project  
7 schedule I'm talking about the overall project  
8 outside of the temporary bridges and, you know, our  
9 target schedule is still to begin construction of  
10 that project in 2018 and that construction would  
11 extend into 2021, but that is very contingent on this  
12 process that we're here in tonight, the environmental  
13 assessment, and it's pending a favorable outcome of  
14 that, and the folks will get into what that means a  
15 little bit later in the presentation.

16 So the good news is you're here tonight.  
17 You're not too late to make comments. We're in the  
18 middle of the comment period. We'll take verbal  
19 comments tonight, but there's still time to give us  
20 your written comments as well and time to finish your  
21 review of the EA and provide that. So with that the  
22 comment period does end on May 26th and, you know,  
23 that's a 30-day period and we're interested in  
24 wrapping up that right at that 26th period. So I  
25 think we'll take comments right until midnight of the

1 26th online.

2 So with that I'm going to turn the  
3 presentation over to Jeff to start the explanation of  
4 the EA.

5 MR. NELSON: Thanks, Wayne. So again  
6 I'm Jeff Nelson with VHB and over on the other side  
7 of the stage is Aaron Guyette who is going to be  
8 talking back and forth with me as we go through this.

9 So why are we here tonight? I think  
10 it's important to set the stage as to what this is  
11 all about, and so per the National Environmental  
12 Policy Act or NEPA, whenever a federal agency  
13 undertakes an action such as the expenditure of  
14 federal funds they need to do an analysis of what the  
15 impacts to environmental and cultural resources would  
16 be as a result of taking that federal action.

17 So in the context of going through the  
18 NEPA review there are essentially three levels of  
19 review. The first level is what's called the  
20 categorical exclusion. The second level is  
21 environmental assessment, and the third level is an  
22 environmental impact statement. As many of you will  
23 know this project was originally considered under a  
24 categorical exclusion, but VTrans decided that in  
25 order to provide a more thoughtful, more thorough

1 review of environmental and cultural effects, as well  
2 as to provide an opportunity for public comment,  
3 public input, that the review would be elevated to a  
4 EA or environmental assessment, and that's what we've  
5 now completed is the EA. We'll be going through  
6 parts of that here this evening.

7           So this slide is really a road map for  
8 what we're going to be talking about tonight, and  
9 we'll come back to this to see where we are in the  
10 context of the presentation because it really defines  
11 what the process is in going through the development  
12 and completion of the EA. So the first part of that  
13 is defining what the purpose and need is. Why are we  
14 doing this project? What is the purpose of it and  
15 what is the need for it? We'll talk about that, and  
16 then we're going to go through the alternatives that  
17 were considered as possibly meeting the purpose and  
18 need, and then going into what we have identified as  
19 the proposed action that will meet the purpose and  
20 need based on that review of alternatives.

21           Following that we're going to have some  
22 of our experts that have completed certain sections  
23 of the EA in terms of the resource assessment talk  
24 about what their analysis has been and what their  
25 results have shown, and then following that will be

1 the opportunity for you to comment as Wayne had  
2 indicated previously. So that's essentially what the  
3 evening will be.

4 Following the completion of the comment  
5 period FHWA will make a determination based on the  
6 results of the EA and based on the public comments  
7 received, and that determination will be either that  
8 the project does not result in a significant impact  
9 and the project will be able to move forward, or if  
10 FHWA were to determine that there would be a  
11 significant impact on one or more of the resources,  
12 then it would be elevated to an EA. So that decision  
13 has not been made yet. That's the decision that FHWA  
14 will make following the conclusion of the public  
15 process on May 26th.

16 So the first part of what we're going to  
17 talk about, as I just mentioned, is defining the  
18 purpose and need, and as you all know the project  
19 involves two existing bridges; one on Main Street,  
20 one on Merchants Row, shown here with the red dots,  
21 and this is actually text directly from the EA, and  
22 it really is the critical statement that defines what  
23 the purpose of the project is which I'll read aloud  
24 for everyone. The purpose of the project is to  
25 address the structural deficiencies of two rail

1 highway grade separated bridges in downtown  
2 Middlebury where Main Street and Merchants Row span  
3 the Vermont western rail corridor track, to address  
4 rail safety concerns, and to provide appropriate  
5 vertical and horizontal rail clearances for the  
6 design service life of the structures which is a  
7 hundred years.

8 So this statement really defines what  
9 the project has to do in terms of what its purpose is  
10 and what has to be the outcome of any alternative  
11 that's advanced for consideration.

12 The second part of the consideration is  
13 looking at the need and I'll let Aaron speak to what  
14 the -- how that consideration went.

15 MR. GUYETTE: So these next slides are  
16 to illustrate the need for the project. This is a  
17 picture of the Main Street bridge. You can see there  
18 is quite a bit of deterioration. I should note  
19 VTrans is monitoring these bridges on a regular basis  
20 and they still are currently safe to travel over, but  
21 that is a consideration, the safety of the traveling  
22 public.

23 This next slide is from the underside of  
24 the Merchants Row bridge. You can see the exposed  
25 rebar in this area here and there was a full depth

1 pole. This I think was from last year at some point.  
2 There's a plate over this now and it's paved over.  
3 Again VTrans is monitoring these, but these pictures  
4 illustrate the need to take action on these bridges.

5           And then this is the other part of the  
6 purpose to make sure we've got a safe railroad  
7 corridor and this is a picture illustrating some  
8 issues that are there today. The ponding water here,  
9 it's liquid in this photo, but during the winter  
10 months freezes; freeze frost cycle moves the ties,  
11 moves the railroad. You can see that the track is in  
12 not great shape through this area as well, and the  
13 other consideration is some of the obstructions that  
14 are to the left and to the right of this bridge they  
15 -- the clearance has become a constriction for the  
16 freight that's moving through this area.

17           MR. NELSON: Okay. So again coming back  
18 to our road map we've gone through a brief discussion  
19 of what the purpose and need of the project is and  
20 there's quite a more extensive discussion of that in  
21 the documents. So I'm just trying to give you some  
22 highlights of how the analysis has proceeded.

23           So the next step is to consider  
24 alternatives to meet the purpose and need, and in  
25 looking at what alternatives are out there that could

1 potentially meet the purpose and need there were  
2 several basic planning and design criteria that the  
3 project team used to look at those. Most importantly  
4 community, what the impact of any alternative would  
5 be on Middlebury and the existing center of town and  
6 the activities that occur here. Roadway design, it's  
7 an engineering criteria that's used in terms of how  
8 the roads will continue to operate following  
9 completion of the project; what the bridge criteria  
10 are and design criteria. The railroad -- the State  
11 owns the right-of-way tracks through here and part of  
12 the design is what needs to be -- (a) what the  
13 railroad needs to be able to function with going  
14 forward and then the village green. Obviously that's  
15 an important part of the downtown, part of the  
16 community that is the consideration in any  
17 alternative that we consider, and then finally  
18 stormwater and drainage. Aaron showed the picture of  
19 the existing ponding that turns to ice in the winter  
20 on the track. A key part of the design is what needs  
21 to be done to improve the existing drainage  
22 conditions. So I'll turn it to identify and Aaron  
23 will speak to those.

24 MR. GUYETTE: I quickly go through those  
25 are the alternatives we looked at and these are in

1 the environmental assessment report if you would like  
2 to read them in more detail. The no action  
3 alternative on the left here is a requirement of any  
4 scoping process or alternatives analysis process.  
5 Eventually the no action becomes the baseline for  
6 which the proposed action is compared to when we're  
7 looking at the environmental effects.

8 We looked at bridge rehabilitation which  
9 would be to keep the existing structures in place and  
10 then repair them, rehabilitate them, extend their  
11 service life. We looked at new bridges on a new  
12 downtown alignment and what that means is leaving the  
13 existing bridges in place, construct a new bridge  
14 either north or south on the railroad alignment or  
15 shifting the roadway -- and that would be shifting  
16 the roadway or shifting the rail alignment. Very  
17 constrained in downtown Middlebury. We did look at  
18 the eastern rail bypass. A lot of that work had been  
19 done as part of the 2008 Middlebury Eastern Rail EIS  
20 and we used a lot of that information which there was  
21 a lot of detailed information in that report.

22 The movable lift bridges with  
23 consideration which would be in basically the same  
24 footprint as the bridges today. The railroad track  
25 would essentially stay at the same level and then

1 bridges would move to accommodate the railroad  
2 traffic that would go underneath them, and then the  
3 two bridges and the tunnel are replacing the existing  
4 bridges on the same alignment and it's an option for  
5 the tunnel, an option for the two bridges.

6 MR. NELSON: So we've identified the  
7 group alternatives that Aaron just went through, and  
8 the next step in the evaluation was to look at each  
9 of those and these are the criteria that we used to  
10 evaluate different alternatives. Obviously does the  
11 alternative meet the purpose of need as it's been  
12 defined? What kind of public input has there been  
13 either supporting or opposing a particular  
14 alternative? What planning documents are out there  
15 that reflect the community preferences and community  
16 priorities?

17 So the Middlebury Town Plan and the  
18 Addison County Regional Plan are planning documents  
19 that went into the consideration of alternatives:  
20 What impacts an alternative would have on existing  
21 historic resources, what impact an alternative might  
22 have on environmental resources, what kind of  
23 permitting changes would there be, would a new  
24 right-of-way have to be acquired. In other words,  
25 would a new alternative require VTrans to acquire

1 parcels of land in order to implement it, and finally  
2 a relative look at the cost of different  
3 alternatives.

4 So these -- these were the factors that  
5 were used in looking at whether a given alternative  
6 was appropriate to move forward further consideration  
7 and that information about the assessment of these  
8 factors is included in the EA. So based on that  
9 we've identified the proposed action and Aaron will  
10 speak to that.

11 MR. GUYETTE: So the total selected  
12 proposed action meets the purpose and need for the  
13 project, it's consistent with planning documents, and  
14 it received strong public support both from the  
15 community and from the governance here in Middlebury.  
16 So we're just going to go through a quick overview of  
17 what that proposed action is before we get into some  
18 of the environmental effects.

19 Just to orient you north is to your  
20 right. South to your left. This is the rail  
21 corridor. This area Merchants Row, Main Street,  
22 Cross Street bridge over here. The area in red in  
23 the middle is the approximate location of the  
24 proposed tunnel and it's about 360 feet in length.  
25 The length of the railroad that would be part of this

1 project is just over 3500 feet, and the project  
2 includes lowering the railroad tracks with the  
3 deepest cut being in this downtown area and then  
4 extending to the south and extending to the north to  
5 be able to create that grade which the railroad can  
6 travel on that gradual grade. So when we get to the  
7 south and we get to the north matches that existing  
8 grade. Total construction area, which is outlined in  
9 yellow, is just over six acres.

10 The project has both permanent  
11 construction elements. There's the structure which  
12 is the tunnel, there's the highway elements and the  
13 sidewalk, and the elements at street level. There's  
14 the railroad portion which is to the south and to the  
15 north 3500 feet. There are utilities both above  
16 grade and below grade; electric, telecommunications,  
17 water, sewer, storm drainage, and there's landscaping  
18 in the village green area and proposed in the parcel  
19 that was formerly occupied by the Latches building,  
20 and then there's also the temporary works to make all  
21 these happen. Contractors need to build access roads  
22 to access the railroad. Supportive excavation is  
23 needed to be able to support the existing  
24 infrastructure that's in town; the buildings, the  
25 park areas, and then waste, borrow, and staging that

1 will be used by the contractor during the  
2 construction.

3 MR. NELSON: So now we're at the point  
4 in the presentation where we're going to switch to  
5 some of the experts that have done the individual  
6 analyses. Basically the heart of the EA is really  
7 the assessment of impacts to natural resources and  
8 cultural resources, and in the document there's 17  
9 sections within chapter 3 each of which deals with a  
10 different resource. So this is really the table of  
11 contents, if you will, of chapter 3 where we look at  
12 things like impact of the project, the proposed  
13 action, if you will, would have on things like  
14 wetlands or historic resources, et cetera. And so  
15 what we've done for tonight is chosen five of those  
16 17 resources and brought the experts who actually did  
17 those analyses and wrote those sections of the report  
18 here to be able to talk about what they did.

19 We chose five that we thought would be  
20 of importance and interest to the community given  
21 prior feedback and input from Jim and others. So  
22 first we'll talk about traffic. Mark Suennen is our  
23 traffic expert that did that analysis. We'll then  
24 switch to presentation by Jason Ross on noise and  
25 vibration that primarily obviously is during the

1 construction phase, but his analysis considered both  
2 construction and permanent impacts. We're going to  
3 go out of order a bit here. Then Rachel Lomonaco  
4 will talk about hazardous and contaminated materials,  
5 and then Kaitlin O'Shea will speak about historic  
6 resources, and then finally Brad Ketterling will  
7 cover social and economic considerations. So with  
8 that we will turn it over to Mark.

9 MR. SUENNEN: Okay. So the first thing  
10 we need to talk about with traffic is what is the  
11 regulatory context that we review traffic for the  
12 environmental impact -- the environmental assessment.  
13 The short answer is there is none. There are no  
14 permits required for the traffic operations  
15 associated with this project. So then we had to  
16 figure out well how are we going to assess the  
17 traffic. We had to define what the traffic is. The  
18 traffic is vehicles. The traffic is the active bus  
19 service. The traffic includes bikes and pedestrians  
20 and even traffic that doesn't move. Parking.

21 So the first thing we did then is to  
22 look at what the future traffic volumes would be  
23 under the status quo condition and then under the  
24 future condition where a tunnel was built. The short  
25 answer is the traffic volumes in the future whether

1 we build the tunnel or not are the same because we're  
2 not making any improvements -- not making any changes  
3 in the capacity of the roadway. The number of lanes  
4 you see out there today on Main Street and Merchants  
5 Row will be the same number of lanes that you will  
6 see out there in the future. The same sidewalks you  
7 see out there today will be the same sidewalks you  
8 see out there tomorrow after the tunnel is built.  
9 Beautified a bit. So the permanent effects of this  
10 proposed action no change to capacity, no net change  
11 in the available parking, and I say net change  
12 because the construction will reconfigure some of the  
13 parking, but we expect not to change the number of  
14 parking spaces in the downtown area.

15 We also have some positive impacts  
16 associated with this project which include, as I  
17 mentioned before, improvements to the sidewalk and  
18 improvements at the Printers Alley area.

19 This graphic is in the EA. If you can't  
20 read the labels, it's basically the downtown area  
21 plus the area highlighted in yellow are all the  
22 roadways that have some impact during the  
23 construction operations. Obviously the stuff that's  
24 here in Main Street and Merchants Row were impacted  
25 more than some of the roads out here like Seymour

1 Street area.

2 So let's talk about the construction  
3 aspect which is probably the part many of you are  
4 concerned about. There are some temporary impacts  
5 obviously to a construction project in the downtown  
6 area. The biggest, the most impactful, was going to  
7 be this 10-week full closure. It's full closure of  
8 the roadways, full closure of sidewalks, and full  
9 closure of the rail in the downtown in that core  
10 area; Merchants Row, Main Street, and the railroad  
11 through the downtown area. It's 10 weeks during the  
12 summer of 2020. It's been limited to 10 weeks. A  
13 project like this typically might be a whole  
14 construction season or possibly multiple construction  
15 seasons. VTrans recognizes how complicated this is  
16 and how impactful it is to the community and has  
17 asked the contractor -- working with the contractor  
18 to compress the schedule using accelerated techniques  
19 to hold it to 10 weeks.

20 In addition to the 10-week closure you  
21 will find Printers Alley will be closed to vehicles  
22 starting as soon as this summer when the temporary  
23 bridges are installed until the tunnel is built,  
24 however, it will also be closed to pedestrians  
25 occasionally. Generally it's going to stay open for

1 pedestrian access, and about a hundred parking spaces  
2 we're estimating will be either closed throughout or  
3 closed at some time during the construction period.  
4 Some of them may be closed for a couple days like on  
5 Seymour Street. Some of them may be closed much  
6 longer while the construction is ongoing.

7           So how are we going to get you around  
8 downtown when everything is closed? VTrans has asked  
9 VHB to prepare what we call a transportation  
10 management plan, a TMP. That transportation  
11 management plan will describe how traffic gets around  
12 the closures basically using detours that are  
13 established with vehicles, pedestrians, and even the  
14 rail. Mind you the rail corridor, the rail detour is  
15 a hundred miles. We're not asking the pedestrians to  
16 go quite that far. The transportation management  
17 plan also speaks to how emergency services are going  
18 to get around the closure area, and of course with a  
19 hundred parking spaces closed at some point here or  
20 there we also have some alternative parking options  
21 under consideration. With that I pass it on to the  
22 next person.

23           MR. NELSON: So our next speaker is  
24 Jason Ross who did the noise and vibration analysis  
25 in the EA.

1                   MR. ROSS: Thank you, Jeff. So as Mark  
2 explained, with the proposed action future traffic  
3 conditions will be similar to the existing traffic  
4 conditions. So that means the roadway noise is not  
5 going to change. In fact, with this project because  
6 there are not capacity improvements, because there  
7 are not new travel lanes being proposed or any  
8 substantial changes to the alignment of the roadway,  
9 it's actually the VTrans policy based on FHWA  
10 regulations to not evaluate noise impact from the  
11 roadway noise, and there isn't an eligibility of  
12 potential mitigation measures such as noise walls or  
13 traffic control devices.

14                   We also assessed the potential effects  
15 of the changes to the train noise and vibration, and  
16 so for this the proposed action will have some effect  
17 on train noise and vibration. One of the impacts  
18 that is most obvious with the replacement of the  
19 current track which is a jointed track to a  
20 continuous welded track, a very smooth track, the  
21 noise vibration is going to be reduced.

22                   Other factors that will come into the  
23 proposed action for train noise vibration is the  
24 tunnel section. The tunnel section will help reduce  
25 noise particularly in the central business district.

1 Now lowering the tracks and the ability to facilitate  
2 double stacked freight won't really have a very  
3 appreciable change on noise and vibration. If  
4 anything, with double stacked freight you actually  
5 could have shorter trains and less rail cars moving  
6 the same amount of freight.

7 What the improvements will do, though,  
8 to the track is allow potentially higher train speeds  
9 to be traveling through the study area and trains  
10 that generally make more noise create a little more  
11 vibration at higher speeds. So when we assessed all  
12 these effects cumulatively, according to the Federal  
13 Transit Administration guidelines, and these  
14 guidelines basically assess impact by comparing  
15 existing conditions to the future conditions with the  
16 proposed action, and with all these effects  
17 cumulative we find that the overall future noise  
18 conditions are not actually going to change very  
19 much. There's going to be quieter track. The trains  
20 may be a little faster overall. It's going to be  
21 basically the same as it is now.

22 For vibration very similar finding.  
23 There's going to be no real perceptible increase in  
24 vibration compared to the no action. So as you can  
25 imagine construction period noise vibration is a

1 significant concern -- is an important concern. The  
2 construction noise and vibration was assessed  
3 according to the Federal Transit Administration  
4 guidelines, and for this analysis we conducted noise  
5 measurements throughout the study area and then  
6 predicted what the construction noise vibration  
7 conditions would be for various phases of  
8 construction.

9 In particular, we were looking at  
10 excavation and track construction where some of the  
11 noisiest operations will be occurring. What you see  
12 here in this figure is the results -- one of the  
13 results of this construction noise analysis. These  
14 areas represent different sound levels that are  
15 generated by the construction activity and these are  
16 the construction -- these are the construction  
17 equipment here for supportive excavation period, and  
18 what we found is that during the daytime the  
19 construction noise is not projected to exceed FTA  
20 guideline criteria. During nighttime that may be  
21 needed, nighttime construction, in particular track  
22 construction, we found that there is potential for  
23 exceedences particularly near middle street -- middle  
24 Seymour Street where there are some homes that are  
25 within 30 feet of the tracks. So there is a

1 potential for some short term construction noise  
2 impacts.

3 So to mitigate this potential impact the  
4 contractor would be implementing best management  
5 practices, best construction practices, and these are  
6 pretty basic approaches to minimizing noise. One is  
7 to make sure that the construction equipment isn't  
8 making unnecessary noise, that it's operating  
9 appropriately, that it has mufflers installed.  
10 There's also an ability to locate certain pieces of  
11 equipment, say an air compressor, away from sensitive  
12 locations used for small portable equipment such as  
13 saws and jackhammers. There's also capacity to use  
14 small enclosures to help reduce the noise in the  
15 community.

16 One of the real key things, one of the  
17 real primary approaches to alleviating potential  
18 construction, those impacts, is to communicate with  
19 the community such as we're doing now. It's very  
20 important to get an understanding to know when the  
21 construction is going to occur, what the nature of it  
22 is, when it is going to cease, and that really helps  
23 to alleviate the annoyance and frustration that can  
24 occur during construction.

25 For vibration there's actually a very

1 robust plan for -- historic structures management  
2 plan that is in process -- that will be in process in  
3 the project, and what this does is it really creates  
4 a very detailed look at what type of equipment is  
5 going to be operating near the sensitive buildings,  
6 how sensitive are buildings to vibration. There  
7 would be special provisions to conduct pre and post  
8 surveys at these buildings, and then to monitor  
9 vibration during the construction activities to  
10 minimize the risk of any damage.

11 MR. NELSON: Thanks, Jason. So our next  
12 expert presenter is Rachel Lomonaco who is going to  
13 speak about her evaluation of hazardous materials.

14 MS. LOMONACO: Thank you, Jeff, and  
15 thank you everybody for coming. So because this  
16 project construction -- because project construction  
17 will include disturbance of soil and shallow  
18 groundwater throughout the project area it was  
19 important for the project team to understand the  
20 existing condition of materials within the project  
21 corridor. We also want to point out that, as many of  
22 you know, the project will proceed through a site  
23 that is related to a gasoline spill that occurred  
24 along the railroad tracks in 2007. That site is  
25 currently overseen by the Vermont Department of

1 Environmental Conservation, or the Vermont DEC, and  
2 because of that the project team has been working  
3 closely with the Vermont DEC regarding the  
4 contaminated materials aspect of the project.

5 As a part of that collaboration a  
6 detailed assessment of soil and groundwater has  
7 already completed -- already been completed in the  
8 project area, and that included the collection of  
9 over 130 soil samples and the data analysis from over  
10 30 groundwater monitoring wells. So what's -- what's  
11 the result? Based on the data that we've collected  
12 so far soil and groundwater in the project area  
13 exhibit contamination associated with historic  
14 railroad operations; things like elevated metal  
15 composition and combustion byproducts, and they also  
16 exhibit some lingering impacts or contamination  
17 associated with that prior gasoline spill.

18 We do want to stress that although the  
19 soil and groundwater in the project area is  
20 considered contaminated it is not considered to be  
21 hazardous. The condition of soil in the project area  
22 will be something that would be equatable to solid  
23 waste, meaning that it has some handling measures  
24 that would be associated with it, but it could  
25 ultimately be disposed of in something like a

1 landfill.

2 So what are the overall effects of the  
3 completed project? Because we will be removing so  
4 much soil to install the engineering structures we  
5 believe that the condition of soil throughout the  
6 project area would ultimately be improved. We'll be  
7 removing contaminated soils and replacing that with  
8 engineered structures or other clean materials. That  
9 removal of contaminated soil will also have an added  
10 benefit of improving the condition of groundwater in  
11 the project area. Removing those contaminated soils  
12 so they will no longer be able to leach contaminants  
13 into groundwater in the project corridor. Obviously  
14 there is some construction phase considerations to  
15 take into account for this project, namely the  
16 disturbance of contaminated materials as well as  
17 construction phase dewatering.

18 So how do we decrease the risk. The  
19 contaminated soil aspect of the project would be  
20 mitigated through the implementation of what we call  
21 a corrective action plan. That corrective action  
22 plan would include procedures for soil excavation,  
23 soil handling, monitoring during construction, as  
24 well as disposal considerations, and would include a  
25 framework to report back information throughout the

1 life of the project, and that information would be  
2 conveyed back to the DEC, the Vermont DEC. That  
3 corrective action plan would be subject to the review  
4 and approval by a specialist at the DEC as well as it  
5 will undergo a public comment of its own.

6 Because we believe that there's a  
7 potential for groundwater to infiltrate some of the  
8 deeper excavation areas it's a necessity that that  
9 water would be removed during construction to  
10 maintain a safe working environment for construction  
11 crews. Based on the results that we have thus far  
12 the plan in place would be to remove that  
13 groundwater, collect it, treat it, and ultimately  
14 discharge it to the Otter Creek. Any of that  
15 activity would be subject to what we call a NPDES  
16 permit or a direct discharge permit, and that would  
17 also undergo review and approval by specialists at  
18 the Vermont DEC. That permit would include  
19 conditions for ongoing monitoring of groundwater and  
20 surface water during the life of the construction as  
21 well as treatments and precautionary measures put in  
22 place.

23 The last step for our mitigation  
24 forecast or for contaminated materials would be to  
25 have a full time person on site during construction.

1 VTrans believes this is the best management practice  
2 to have a person on site to ensure that the  
3 stipulations of the two -- of the corrective action  
4 plan and the NPDES directives permit that person  
5 would be there to ensure that the conditions outlined  
6 in those plans that they would be implemented during  
7 construction.

8 MR. NELSON: Thank you, Rachel. So I'm  
9 going to make one note here before we go to our next  
10 presenter. One of the things that Rachel did not  
11 touch on because it was not an existing contamination  
12 situation is what would happen following the  
13 completion of the project if there was to be some  
14 incident on the track, and obviously we have heard  
15 already that a key part of this project is to improve  
16 safety by rebuilding the railbed and going to the  
17 continuous welded rail rather than the existing rail  
18 which has a lot of joints. So minimizing the risk  
19 going forward, but in addition to that in a separate  
20 part of the document we have outlined the commitment  
21 by VTrans to work with the town, with the fire  
22 department, and other emergency responders on  
23 developing an emergency response plan that would be  
24 implemented following completion of the project so  
25 that if there was to be some kind of incident in the

1 future, that there's a very clear protocol that would  
2 be followed in terms of what gets done, who does it,  
3 how it gets communicated. So that's a piece that's  
4 really proactive to ensure that if there were to be  
5 any kind of train incident in the future, that  
6 everybody knows what has to happen.

7 So with that I'm going to turn it next  
8 to Kaitlin O'Shea who is the expert on historic  
9 resources and she will give a bit of an overview of  
10 her analysis.

11 MS. O'SHEA: Thank you, Jeff. If you  
12 were to say that almost every building in downtown  
13 Middlebury is historic, you would be correct.  
14 Middlebury is very fortunate to have such an intact  
15 historic district with almost all of the buildings in  
16 downtown contributing to the Middlebury Village  
17 Historic District whose boundary you can see on the  
18 screen up here. You can also see yellow lines which  
19 is the Rutland Railroad Historic District running  
20 through the Village District and contributing as  
21 well.

22 The project team understands the  
23 importance of these historic resources to the people  
24 of Middlebury as does your town plan, and these  
25 resources are protected under federal preservation

1 laws because this is a federally funded project.  
2 These laws include Section 106 of the National  
3 Historic Preservation Act and Section 4F of the  
4 Department of Transportation Act. Collectively these  
5 laws protect the historic and archeological resources  
6 as well as public parks, wildlife, and waterfowl  
7 refuges. You can read all the details of the  
8 historic resources and cultural resources in Sections  
9 3.12 and 3.13 of the EA. You can read about Section  
10 4F and all the resources in Section 4 of the EA.  
11 There is a draft Section 106 letter included in the  
12 EA appendices for public comment.

13 The end result of the completed project  
14 will have adverse effects as well as beneficial  
15 effects to the resources. The adverse effects result  
16 from the loss of the historic bridges which include  
17 the historic bridge railings and the underneath and  
18 the walls between the bridges. Additionally, the  
19 viewshed will be altered due to the loss of the  
20 railroad trench and the proposed action of the  
21 completion of the tunnel. However, the beneficial  
22 effects include the reestablishment of the village  
23 green to its prerailroad condition.

24 Prior to 1849 when the Rutland rail was  
25 constructed we did not have a hole in the middle of

1 your downtown. The village green was just one plot  
2 and the tunnel alternative allows for the  
3 reconnection of the village green and allows  
4 Middlebury to upgrade your use of it. As you  
5 probably can very well understand, village greens are  
6 vital components to Vermont's communities and as they  
7 have been historically and remain so in the present  
8 day.

9 This is just one example of a design for  
10 the village green, one particular section of it, and  
11 you can see that it uses the abutments, the stone  
12 blocks from the bridges that will be removed, as  
13 seating areas, and the final design will have plenty  
14 of opportunity for public comment and public input so  
15 feel free to get in on the design.

16 There is a potential for adverse effects  
17 during construction due to vibration. As Jason  
18 mentioned, there is a document prepared titled The  
19 Guidelines For Preparing An Historic Structures  
20 Monitoring Plan. This monitoring plan will be  
21 written by the contractor and approved by the VTrans  
22 historic preservation officer and will ensure that  
23 your properties are monitored and protected during  
24 the project construction.

25 And, lastly, because there are adverse

1 effects there's a long list of project mitigation  
2 measures. These are just a few of them, but they  
3 include photo documentation of these bridges which  
4 has been completed by VTrans already. It includes  
5 design of the tunnel end caps to be compatible with  
6 the historic districts, as well as salvage of the  
7 granite blocks to be used in the redesigned village  
8 green, along the stores throughout town.

9 Interpretive panels will be designed and added to the  
10 village green to understand the resources, and there  
11 will also be an update to the Middlebury Village  
12 Historic District National Register nomination.

13 MR. NELSON: Thanks, Kaitlin. So our  
14 final resource area presentation will be by Brad  
15 Ketterling who will be speaking about socioeconomic  
16 effects of the project.

17 MR. KETTERLING: Thank you. Good  
18 evening everyone. The project is being reviewed for  
19 social and economic considerations obviously because  
20 of its location right in the commercial and cultural  
21 corridor of downtown Middlebury. Construction  
22 related effects have obviously been something of  
23 concern that's been made public and potential effects  
24 on accessibility for the public in general and also  
25 for businesses in particular, especially during the

1 10-week closure period when you will have Main Street  
2 and Merchants Row being inaccessible for not only  
3 pedestrians but for vehicular traffic.

4 So with respect to the regulatory  
5 background of this project, the social and economic  
6 concerns, the answer is no. However, the document  
7 we're attesting to tonight, this NEPA document,  
8 certainly looks at social and economic  
9 considerations. It's one of the main issues that  
10 have been evaluated for this project.

11 So even though we recognize that there  
12 will be construction related effects on this project  
13 it's important to also have a look at what are the  
14 effects of the completed project once everything is  
15 buttoned up and it's actually operational. Of course  
16 the completed project will address, as Jeff pointed  
17 out, the project's purpose and need and will do so in  
18 a need that enhances the safety of the project area,  
19 but early in the design phase, as Kaitlin noted, in  
20 fact as part of the regulatory compliance process for  
21 the project VTrans, the town, and FHWA recognize  
22 there's an opportunity to really enhance the downtown  
23 corridor through the establishment, as Kaitlin noted,  
24 of the reconstructed village green by closing up the  
25 railroad trench. So this will have multiple and long

1 term efforts for the public. More green space means  
2 additional areas for appreciating the frontage on the  
3 park. It will also attract visitors and hopefully  
4 improve business -- use of businesses from the  
5 village green.

6 More green space means for event  
7 functionality. Also I noticed tonight some people  
8 walking across the village green. It was kind of  
9 nice to see people attending this meeting by foot.  
10 Pedestrian accessibility will be enhanced. You will  
11 be able to walk over what is now a railroad track,  
12 and as Kaitlin noted, interpretive signage will be  
13 employed. So that I'm sure a lot of people in this  
14 room can appreciate cultural heritage, but a lot of  
15 the visitors to Middlebury will have a better  
16 understanding of the importance of the village green,  
17 and Mark noted improved sidewalks, and of course  
18 we'll be putting in new bridge rail which will be  
19 significantly safer than what's there now and also  
20 aesthetically. So in a nutshell the completed  
21 project will have a number of beneficial effects both  
22 socially and economically.

23 So that being said, obviously there are  
24 some construction phase effects of this project.  
25 We've heard those through a variety of different

1 venues; through public meetings like we're having  
2 tonight, through newspaper articles, under public  
3 forums, as well as direct communication with Jim,  
4 VTrans, the town. So I've got a few of them up here.  
5 One of the principal concerns is actually the  
6 duration of construction. It's four years of  
7 construction. Four construction seasons, some of  
8 which are more intense than others. Limited  
9 accessibility during the 10-week closure period. You  
10 will see of course we've been talking about Main  
11 Street and Merchants Row being closed to both  
12 vehicles and pedestrians, but there will also be the  
13 loss of parking associated with that. So that may  
14 affect not only business owners, but business  
15 employees' access to these locations. Church  
16 services. There's a number of parking spots that  
17 will be lost temporarily during construction. So  
18 that will hinder access to some degree to the  
19 churches around.

20 The village green, similarly access for  
21 the elderly and handicap access, five parking spots  
22 will be lost temporarily during construction. So  
23 accessibility concerns there, and, lastly, events in  
24 the village green. Portions of the village green  
25 will remain open and maybe even the majority of it,

1 but a good part of it will be cordoned off around say  
2 St. Stephen's Church as well as the area immediately  
3 south of it as well as triangle park for the better  
4 part of construction, and that will likely affect the  
5 ability to hold events in the park. It may not be  
6 possible to do so. It may affect visitors in the  
7 park, either real or perceived, in accessibility of  
8 the use of the park, and there may be some effect on  
9 revenue streams from the lack or diminished  
10 visitation in the park.

11 So now construction events how do we  
12 mitigate some of those. This is really just a subset  
13 of the mitigation efforts that have been put into the  
14 EA. We encourage you to look at Section 3.15 for a  
15 lot more information, and there's some really good  
16 information in Appendix I of the EA which has a lot  
17 of mitigation efforts that have been developed to  
18 synthesize in one place. So look at those when you  
19 have an opportunity.

20 As previously mentioned, one of the main  
21 mitigation approaches is the train detour.  
22 Accelerated bridge construction using the train  
23 detour puts us at a 10-week closure period.  
24 Certainly I'm sure that feels like a long time.  
25 Conventional construction is estimated to take at

1 least one construction season, probably two, to  
2 achieve the same result.

3 Accessibility plans. There will be an  
4 accessibility plan for this project. Access to  
5 businesses, churches, and so on during construction  
6 be maintained through a contractual requirement  
7 between the State and the contractor. So that is an  
8 important consideration to look to. Learning from  
9 other communities I think is very important. There's  
10 a number of communities in Vermont and throughout New  
11 England that have withstood very disruptive  
12 construction projects such as St. Albans, nearby  
13 Brandon, and of course Barre City. The picture at  
14 the right is Barre City which experienced up to a  
15 year of closures permanently or intermittently on  
16 their Main Street. So I think there's a lot that  
17 could be learned from communities that withstood  
18 these downtown closures, the pros and cons, what are  
19 the lessons learned.

20 Project communications. Another very  
21 important thing both before construction is carried  
22 out as well as throughout construction. An example  
23 of that would be weekly meetings between VTrans, the  
24 contractor, the town, and of course the merchants and  
25 what could be discussed at these meetings. Well

1 simply the schedule of this week's coming events, is  
2 there a way to work around some of the events that  
3 are scheduled, how we mitigate effects to that  
4 matter, and simply just keep track of how the  
5 project's progressed. We learn what happened  
6 previously, apply that knowledge to the project as it  
7 moves forward, and maintain that kind of transparency  
8 throughout the process, and then, lastly, town  
9 efforts.

10           Lastly, most importantly, the town  
11 certainly realizes that there's a major opportunity  
12 here but also an obligation to coordinate with the  
13 community stakeholders, organizations, public in  
14 order to mitigate the effects of this project. Jim  
15 Gish has been providing a very valuable role  
16 coordinating with project engineers, but also VTrans  
17 and FHWA, and of course coordinating with all of you.  
18 So I think that will certainly continue going forward  
19 and working with neighbors together to come up with  
20 creative ways to -- creative ways, events to mitigate  
21 construction effects of the project, and I'm sure  
22 that will continue going forward.

23           And I guess one thing I would like to  
24 close on is that unlike the other resource topics  
25 that are discussed in the EA, mitigation for social

1 and economic considerations is really a creative  
2 process. It's something that should be a discussion  
3 that's ongoing between all the parties here. So we  
4 encourage you, as is coming up shortly, to provide  
5 your input. There's three years before the closure  
6 period comes in at a minimum. So in that period of  
7 time I think really innovative ways to mitigate  
8 construction effects could be determined.

9 MR. NELSON: Thanks, Brad. I'm going to  
10 grab that. So what I would like to do now is  
11 summarize where we ended up in the EA as far as the  
12 resource effects and so there's going to be two  
13 slides here. The first slide is the effects of the  
14 completed project. The next slide will be the  
15 effects of -- the temporary effects during  
16 construction.

17 So, again, you're looking here at the  
18 list of the 17 resource areas that we studied and the  
19 color of the symbol basically tends to summarize that  
20 whole chapter of the EA as to what the conclusion of  
21 the experts were that wrote those sections. So the  
22 green symbol indicates resources for which we see a  
23 beneficial effect of the completed project such as  
24 the example of the park and the ability to reoccupy  
25 the entire pre 1849 extent of the village green.

1 Other resources shown in yellow are areas where we  
2 did not see any significant effect one way or the  
3 other, and then the one resource for which we saw an  
4 adverse long term effect was with respect to historic  
5 resources and that is as Kaitlin described it a few  
6 minutes ago.

7 When we turn to the construction phase  
8 obviously it's a different picture. So that when you  
9 look here on virtually all of the resources there  
10 will be an adverse effect which is not surprising as  
11 you have heard, and as you know this will be a  
12 significant undertaking in downtown Middlebury.  
13 Having said that, in the manner that each of the  
14 presenters went through tonight for all of these  
15 other resources for which there's an adverse effect  
16 projected we've outlined in the document a whole  
17 series of mitigation measures to avoid or minimize  
18 those adverse effects during that time period of  
19 construction.

20 So what then will happen with this  
21 information? So obviously the environmental analysis  
22 it goes through what our experts determined for each  
23 of the resources. Obviously we're in the middle of  
24 the public comment period both by virtue of tonight's  
25 hearing and also the opportunity to provide written

1           comments until the 26th. All of that information  
2           will be subject to review and determination by FHWA.  
3           We expect to be making a recommendation to FHWA at  
4           the conclusion of the public comment period, but  
5           ultimately FHWA will make its determination, as I  
6           indicated earlier, about whether or not there would  
7           be a significant impact. So remember an adverse  
8           impact is different than a significant impact. So in  
9           this instance because there's an adverse impact what  
10          that's led us to do is to design mitigation to either  
11          avoid or minimize that impact.

12                        So we're now at the point of the evening  
13          where you get to comment. We have gone through the  
14          purpose and need, the alternatives, identification of  
15          proposed action, and then we've given you a review of  
16          some of the more critical resource areas, and so I'm  
17          going to turn back to Wayne who has a few words to  
18          say and then we're going to open it up to public  
19          comment.

20                        MR. SYMONDS: Okay. Thanks, Jeff. So  
21          as I started out with my discussion earlier, this is  
22          a hearing and we're going to have a little bit of  
23          formality so we have a few ground rules we would like  
24          everybody to respect.

25                        First of all, we would like to get to

1 everybody, but we would like to recognize you before  
2 you start to speak. So we're going to have a couple  
3 microphones we'll bring around and we ask that when  
4 you do speak please just give your name and where you  
5 reside. All of the comments that are given tonight  
6 are going to be recorded and they are going to be  
7 included in all the comments with responses after the  
8 comment period closes. So it's important for us to  
9 understand the context of those comments as well as  
10 what they are.

11 Second of all -- lastly, I should say,  
12 we're going to try to hold people to three minutes  
13 for your initial comments. If there's time happy to  
14 have another three minute, you know, opportunity to  
15 speak about your comments, and I just want to remind  
16 everybody that there are materials outside if you  
17 didn't get them coming in that you should look at,  
18 and one of those is a comment sheet. So feel free to  
19 put your comments in writing there as well. So with  
20 that we'll go ahead and start the comment period and  
21 we'll bring microphones around.

22 MR. HILAND: My name is Bruce Hiland.  
23 You will get a written copy of these comments. My  
24 name is a **Bruce Hiland**. I live in Middlebury. I was  
25 the owner and manager of the Battell Block for the

1 past 18 years until the building's sale in January of  
2 this year. I'm a 30-year member of the Middlebury  
3 community, former president of the Middlebury  
4 Business Association and the Better Middlebury  
5 Partnership.

6 I will tell you right now that the idea  
7 that we are limited to three minutes in carefully  
8 prepared remarks after plowing through a 200-page  
9 environmental assessment and then listening to a  
10 sales pitch for an hour I find very offensive. I'll  
11 try to summarize my comments in three minutes. The  
12 written record will have everything in it.

13 The reason we're here is because VTrans  
14 is seeking a -- what's I think referred to as a  
15 FONSI, finding of no significant impact. Two areas  
16 that deserve attention. Two major failings in the  
17 environmental assessment which should alone cause the  
18 FHWA to find there's a significant impact. First,  
19 the environmental assessment fails to critically  
20 analyze the fundamental premise of the project. The  
21 asserted need to lower two-thirds of a mile of track  
22 to increase the vertical clearance of two bridges.  
23 Lowering the track drives the design of VTrans'  
24 proposed project and directly produces a very  
25 significant negative environmental impact of this

PN7

1 project; the disruption of Middlebury's downtown for  
 2 what will be four years or more.

SE1

3 Second, the environmental assessment  
 4 fails to properly or adequately analyze the impact on  
 5 Middlebury's economic and social environment and  
 6 consequently dramatically understates the very  
 7 significant negative impact on VTrans' proposed  
 8 project. Regarding vertical clearance, environmental  
 9 assessment basically presents an apriori argument in  
 10 favor of the proposed project, specifically  
 11 incorporates without question and no evidence of  
 12 objective -- no evidence of objective analysis.

SE1

13 VTrans' assertions regarding the need for increased  
 14 vertical clearance while in fact there is no evidence  
 15 whatsoever for the need for double stacked freight  
 16 traffic in the foreseeable future. Increased

PN1

PN1

17 vertical clearance has no impact on providing  
 18 passenger rail service. Federal regulations are  
 19 cited and described as requirements despite the fact  
 20 that VTrans has already sought and been granted one  
 21 waiver for lower clearance. VTrans one hundred year  
 22 planning horizon is absurd. Given the pace of  
 23 technological change not even the largest global  
 24 institutions or enterprises are comfortable planning  
 25 for more than ten years. Similarly VTrans assumes

PN5

PN9

PN10

1 continued viability of the rail operator  
2 indefinitely.

3 As a consequence, the two common sense  
4 alternatives, the bypass and in-place bridge  
5 replacement, were not fully analyzed nor objectively  
6 assessed. Any bypass will eliminate the apparent  
7 safety threat of 350 gallons of petroleum products  
8 each day going through the center of our community. AT7  
9 In turn, a bypass would free up the rail right-of-way  
10 adjoining Otter Creek for more appropriate uses  
11 including recreation such as bike or hiking paths and  
12 appropriate development of valuable downtown  
13 property. The in-place bridge replacement option  
14 would meet immediate needs swiftly and minimize AT8  
15 disruption to the community while allowing for future  
16 clearance change.

17 Regarding the economic and social impact  
18 -- coincidentally the proposed project is PN11  
19 inconsistent with the Vermont State Rail Plan that  
20 was finalized last year. The economic and social  
21 impact of the community has not been competently SE1  
22 analyzed. Others will speak to the methodological  
23 shortcomings. The environmental assessment accepts  
24 at face value the VTrans story disruption will be  
25 largely confined to a 10-week period in construction

1 in year three. On the face of it this is nonsense.

2 At minimum this is a four-year project. The  
3 disruption in Middlebury's downtown begins the day  
4 the preparatory work for installing the temporary  
5 bridges begins. Currently planned for July of this  
6 year.

SE11

7 MR. SYMONDS: Bruce, I'm going to ask  
8 you to wrap it up.

9 MR. HILAND: I'm working on wrapping it  
10 up. Parking will be affected immediately.

11 Pedestrian traffic, essential to retail businesses,  
12 so too access to MarbleWorks will be affected with  
13 consequent traffic disruption. Temporary bridges  
14 will be, to say the least, unattractive and an  
15 implausible tourist attraction.

SE11

16 Loss of parking will increase the --  
17 will increase until the end of planned construction.  
18 A hundred spaces disappearing. Noise, dirt, and  
19 disorder for adjacent downtown residents and  
20 businesses will be part of daily life, and this will  
21 not be just during the 10-week 24/7 bridge  
22 construction. Apparently the environmental  
23 assessment preparers are ignorant of very thin profit  
24 margins of local retail businesses. For them revenue  
25 loss directly converts small profits to losses and

1 the losses are by no means only to business owners.  
2 When a retail business has to cut back jobs are lost.  
3 Mitigation proposals are by and large  
4 embarrassingly naive. For example, offering loans to  
5 failing small retail businesses burdens them with  
6 debt. This is in striking contrast to the 12 million  
7 dollars in the project's cost budget to avoid  
8 financial damage to the rail operator during the SE12  
9 10-week detour. The scale and scope of the project  
10 is such that comparisons to other communities are  
11 irrelevant. Citing as a benefit purchases by  
12 construction personnel as an offset for retailers is  
13 so naive as to be laughable. What will they buy?  
14 Fine art? Books? Office supplies? Women's  
15 clothing? The grand prize goes to the suggestion the  
16 construction site will be a tourist attraction, and  
17 to wrap up the impact on Middlebury downtown  
18 businesses will be, in your language, very  
19 significant. I could find nowhere in the  
20 environmental assessment any mention of the enormous  
21 difficulty of reestablishing a healthy downtown  
22 economy. To issue a finding of no significant impact  
23 would require willful disregard of the inescapable  
24 impact of this proposed project on the reality of our  
25 community. If that happens, I'll be appalled. Thank

1           you.

2                       MR. SYMONDS: Thank you, Bruce.

3                       MS. DAYTON: My name is Becky Dayton. I  
4           reside in Cornwall, but I own the Vermont Book Shop  
5           and the real estate at 38 Main Street at the  
6           intersection of Main Street and Merchants Row. My  
7           store has been in continual operation in Middlebury  
8           for 68 years. We're the largest retail business in  
9           the area bound by the railroad and the river at least  
10          in employment with three full time employees not  
11          including myself and 4 to 6 part-timers. I don't  
12          think it's a stretch to say that we are downtown's  
13          anchor retailer.

14                      Following on what Bruce said, like all  
15          independent book stores and most independent  
16          retailers Vermont Book Shop operates on razor thin  
17          margins and must borrow to survive the times between  
18          our busy seasons. As it is every year at this time  
19          I'm in debt. Now we face a summer-long construction  
20          project that will reduce foot traffic in the short  
21          term and result in the loss of nearly one-third of  
22          the desirable parking spaces for our business. That SE1  
23          impact is not short term. We're talking about four  
24          to five years. If I sound a little bit freaked out,  
25          it's because I am. There's no way around the fact

1 that my revenues will be significantly impacted by  
2 this project. As little as a three to five percent  
3 reduction could mean immediate layoffs of my staff  
4 and within months reaching the limits of my credit  
5 line. There's a very real possibility that well  
6 before the four years of this proposed action, as you  
7 call it, are over a 68-year-old institution will be  
8 lost. That will be terrible for me and worse for my  
9 employees, but mostly I fear it will trigger a domino  
10 effect along Main Street and Merchants Row leaving  
11 Middlebury a ghost town.

SE1

12 MR. BLAIR: May I request, as it's done  
13 in Congress of the United States, that I can give my  
14 time and three minutes back to Bruce Hiland please.  
15 My name is James Blair and I live in Middlebury.

16 MR. SYMONDS: I think we'll move on to  
17 somebody that hasn't spoken, and if there's time at  
18 the end, we'll come back.

19 MR. BLAIR: He's allowed to complete his  
20 remarks. It's not a matter of asking a further  
21 question. It's a matter of allowing him to complete  
22 his remarks.

23 MR. SYMONDS: Sir, you have three  
24 minutes if you would like to make a comment, and if  
25 you don't, we'll go to somebody else.

1 MR. BLAIR: All right. My comment is  
2 this that I think -- may I stand up? May it be  
3 agreed amongst the group that is here that this does  
4 not have to be required to give on to someone else  
5 something that Bruce has made an effort to take down  
6 the three minutes. He's clearly got at least six  
7 minutes to talk, and if everybody agrees, seems to me  
8 you have to agree too.

9 MR. SYMONDS: Go ahead, sir.

10 MR. BOUVIER: Joel Bouvier from Bristol,  
11 but I'm facilities manager for National Bank of  
12 Middlebury. Wayne, could you get the slide that  
13 shows the work in the tunnel, a couple back if  
14 possible? Right there. Has VTrans or VHB considered  
15 splitting this project in two parts starting in the  
16 middle where the fountain is by the St. Stephen's  
17 Church and going south, lower the tracks, do the  
18 drainage with the two temporary bridges in, and as  
19 you said months ago when we had a meeting in this  
20 room this was going to be a concrete tunnel going to  
21 be precast and set and they are going to be 20 feet  
22 or 30 feet long and they are going to hook together.  
23 Has there -- any thought been given to start in the  
24 middle by St. Stephen's and going south, finishing  
25 that project and then opening that bridge and

AT1

1 Merchants Row completely and then going north and  
2 moving the temporary bridge so you at least have one  
3 full access bridge on the downtown area? Has that  
4 ever been considered and looked at?

5 MR. SYMONDS: There have been a number  
6 of things that have been considered, and with respect  
7 to everybody's time I'm not going to spend 10 minutes  
8 talking about this, but we will respond to that  
9 question when we respond to the comments from the EA.  
10 It's a good question. There's a lot of stuff behind  
11 that so yes.

12 MR. BOUVIER: Thank you.

13 MS. MCGARRY: My name is Susan McGarry  
14 and I live on Rogers Road in Middlebury and I'm the  
15 director of the church right there right next to the  
16 tracks, St. Stephen's, and we don't operate in a way  
17 that we can evaluate our bottom line and our narrow  
18 retail margin very well, but you will see this church  
19 and the church right beyond the Battell Block are  
20 going to be in this construction zone for four years,  
21 and the loss of parking for us in particular has --  
22 is going to be significant and may challenge the  
23 viability of those two churches going into the  
24 future. Nonetheless, ours is the church that's  
25 getting the neighbors together to try to do some

SE2

1 mitigating for this construction period, but I'm  
2 sympathetic with the retail shop owners and their SE2  
3 concern, and I think it's a true concern for ours, in  
4 particular, the Baptist church across the street  
5 because we are going to be shut down in access for a  
6 long time and we don't measure it the same way, but I  
7 think it can be tremendously difficult for us, but I  
8 have a specific question because being that this is  
9 an historic building, we have already negotiated what  
10 I thought was a pretty concrete plan, and I'm  
11 disturbed to hear the preservation expert -- officer  
12 expert say one will be developed, and I'm going to  
13 have a question about what is yet to be developed  
14 that we haven't already been presented and agreed to  
15 around the historic preservation plan for these HR1  
16 fragile buildings that are in the historic district  
17 and may be damaged by the vibrations, blasting, if it  
18 should happen, and the construction itself. So  
19 that's one question. What is that that's going to be  
20 developed that hasn't been developed because I  
21 thought we were already presented with really firm  
22 plans going forward, and then the second question  
23 about that is in the pictures here there's something  
24 called long term noise monitoring and short term  
25 noise monitoring, and there's only one site in the

1 whole construction area for the long term, and I  
 2 guess I would like to know the difference between  
 3 long term noise monitoring and short term noise  
 4 monitoring, and I'm a little anxious that there may  
 5 be major changes in the plans that we've already  
 6 discussed and negotiated. I thought they were pretty  
 7 much done except figuring out the engineering exact  
 8 specifications for what had been promised. So those  
 9 are questions and also concerns.

NV1

10 MR. SAGE: Thank you. My name is Samuel  
 11 H. Sage. I'm the President of Atlantic States Legal  
 12 Foundation in Syracuse, New York and I come -- I've  
 13 looked at I don't know how many environmental  
 14 assessments and environmental impact statements over  
 15 the last -- since the law was written in 1969. So  
 16 this is not a new experience for me.

17 The -- this project is basically or  
 18 should be to replace two bridges that are in dire  
 19 need of work and the railroad work seems to be an  
 20 add-on to increase the cost of the project. The  
 21 environmental impact statement has lots of verbiage  
 22 but very little content. There's no real description  
 23 of alternatives. There's no analysis that gives  
 24 costs of the different alternatives or rather  
 25 something that I'm in favor of the energy

PN2

NP15

1 alternatives, which one is the most energy effective  
2 or ineffective. So there's no useful content. A  
3 full EIS is definitely required in this project.

4 Just a few other things. We will be  
5 submitting written testimony, but we're very  
6 concerned about what we might call FEMA issues,  
7 emergency management, what happens when there's an  
8 explosion, what is the chance of an explosion, that  
9 kind of an analysis could be done. There's no data  
10 in the environmental assessment. The stormwater  
11 impacts. We as an organization are spending an awful  
12 lot of time and some federal money on mitigating  
13 stormwater effects in central New York. Here you  
14 have the water that would be coming from the track.  
15 You're going to have more water if it's deeper in the  
16 tunnel. It's going to then be transferred to Otter  
17 Creek. It's going to go into Otter Creek in an eddy  
18 that's pretty stagnant. Whether there's going to be  
19 cumulative increase in pollutants in that pond I  
20 don't know. There's nothing in the assessment about  
21 that. There's also debris there that could serve to  
22 absorb and adsorb pollutants. So that needs to be  
23 analyzed.

HCI

SW1

24 We would suggest that a -- some sort of green  
25 infrastructure facility be used some -- either a rain

1 garden or something of that sort to further mitigate  
2 the pollutants. There are -- railroads contain lots  
3 of pollutants. We have had numerous lawsuits over  
4 the years demonstrating this, and even when trains  
5 are operating properly they drop oil, they drop bits  
6 of this and bits of that. So those are just a couple  
7 issues. We will, as I say, be sending further  
8 written comments.

9 MS. DUNN: Nancie Dunn. I live in Middlebury  
10 and I have a store right on Main Street right next to  
11 Becky's store. I wondered if there was a plan for  
12 financial compensation for decline in profits for SE3  
13 some of the businesses in the crosshairs of this  
14 project that are not the low interest loans that were  
15 in the paper. The likelihood that some of these  
16 historic stores from Middlebury would not be there  
17 after all these years is fairly high, and my other  
18 question is will the Vermont Railroad be compensated SE4  
19 by the government for loss of profits during any part  
20 of this project, and if they are going to be  
21 compensated, it's only fair that we are too.

22 MR. SYMONDS: Thank you.

23 MR. JAEGER: George Jaeger. I live in  
24 New Haven which is part of Addison County and I think  
25 it would be useful to hear at least my voice from

1 someone who is not directly in Middlebury, but for  
2 whom this is the shiretown in which we live. I had  
3 the feeling in all this that this is a joke as in the  
4 environmental assessment. Everything is going to be  
5 okay folks. My sense about this is that it's not  
6 going to be okay, and I share the several views  
7 expressed here that four or five or six years of  
8 intermittent or mitigated this and that is going to  
9 cast a pall on this town. This is a town which in  
10 very large part lives from tourism and from the  
11 college. If I were a tourist and there's a big  
12 construction project going on in Middlebury, I  
13 wouldn't particularly want to spend time here. I  
14 wouldn't want to spend time on the green. I wouldn't  
15 want to spend time in Middlebury Inn and I wouldn't  
16 have many shops to go too. If I were a parent  
17 bringing students here to Middlebury College and I  
18 saw this big mess in town, I would look at some other  
19 colleges or at least I wouldn't spend much time here.

20 So what I'm basically trying to say, and I'll  
21 keep it as short as required, is that I think all of  
22 this is a wonderful bureaucratic defense of a project  
23 people have determined is going to happen. It is  
24 overlooking the fact that it's going to make a ghost  
25 town as somebody -- Bruce said a moment ago. It's

SE1 &  
SE5

SE1

1 going to make a ghost town for several years in the  
2 center of town because many of these businesses will  
3 fail. There's no money. There are not millions of  
4 dollars for businesses and for the community here as  
5 there are for the railway and for others. I think  
6 you should all go back to the drawing board. This is  
7 just a non-starter project and we should build the  
8 bridges and then worry about the railway if it still  
9 exists.

PN2

10 MR. ANDERSON: I'm Doug Anderson. I run  
11 this building and two things. I just have to  
12 challenge this notion that the railroad is an add-on  
13 to this project. I was sitting in this building 10  
14 years ago just before we opened it, very proud of  
15 what the community had done to restore it, spent five  
16 million dollars, people come running into my office  
17 saying get out, get out, get out this thing is going  
18 to blow. The train had derailed. Nothing  
19 significant has been done to those tracks in ten  
20 years. We have the most unsafe rail line running  
21 through any downtown of any community in this state.  
22 As a community we should demand the safest rail line  
23 possible going through this town, and the State comes  
24 to us and says we're going to give you that. It's  
25 going to be engineered within an inch of its life.

1 It's finally after 10 years going to be safe.

2 So I'm willing to listen to people  
3 opposed to the project, but I don't think it's about  
4 the bridges at all. I think the bridges are the easy  
5 part. I risk my life I think everyday sitting seven  
6 feet from trains going through here at five miles an  
7 hour wiggling back and forth and I think it endangers  
8 the community, I think it endangers downtown, it  
9 endangers my building, I think it endangers my life,  
10 and if you are going to oppose this project, great,  
11 but come up with a plan that's going to make this the  
12 safest rail line in the middle of any community.

13 I also want to say I think we are under  
14 selling the people of Middlebury, Vermont. They love  
15 Becky's store. They love Nancie's store. They love  
16 Town Hall Theater, and I think they are resilient and  
17 I think they will come to our aid and defense in  
18 tough times. I think other towns have seen this  
19 happen. I think it's unfortunate we have bad  
20 bridges. I think it's unfortunate we have the worst  
21 rail line in all of Vermont and I think it's going to  
22 cause some inconvenience, but I think we can work  
23 hard planning here to plan around this and to make it  
24 work. Can it be a two-year project? Three-year  
25 project? Four-year project? I don't know, but I

1 think we will survive it and any talk of this  
2 becoming a ghost town given the people I know in this  
3 community who love this community I think that's  
4 absurd. I think it's absurd. Thank you very much.

5 MR. SYMONDS: Thank you.

6 MS. QUIGLEY: Hi. My name is Megan  
7 Quigley and I'm a resident of 127 Water Street, one  
8 of the properties for which permanent right-of-way is  
9 being sought for access to construction access. I  
10 think that I come to this meeting on the tail of a  
11 recent previous railroad construction project. I  
12 understand this is a very different scope of project.  
13 There are different partners involved, but I think  
14 it's important to share just a little bit about our  
15 experience as property owners here in Middlebury.

16 I found out that the railroad bridge  
17 239, the trestle was going to be constructed or  
18 majorly refurbished when I was eight months pregnant  
19 and the project was starting in a month and a half  
20 and we were the access point for that project. I  
21 found out that the decibel level and the  
22 environmental sound that would be produced through  
23 hydraulic hammering of 5,000 rivets of the trestle  
24 was going to be happening for the entire daylight  
25 construction period during which I was going to be

NV2

1 home with a brand new infant, and the American  
2 Pediatrics appropriate sound level for permanent --  
3 for the risk of permanent damage is 45 decibels and  
4 the sound testing it was over 90, and then the data  
5 ended up not being available for us.

6 There were so many missteps in that process.  
7 I think that this project has been off to a much  
8 better start in terms of community involvement, but  
9 -- and I notice my neighbors aren't here tonight, but  
10 we -- I think a couple big things that stand out to  
11 me when I read the technical details of the  
12 environmental assessment. Number one is that there  
13 was no biological assessment and a survey of existing  
14 vegetation. One thing that we noticed when  
15 originally control measures were taking place which  
16 was essentially throwing a hay bale -- throwing three  
17 hay bales over where drain pipe came out and where a  
18 new drainage route had been dug introduced what has  
19 now in one winter period I've seen germination of six  
20 non-invasive species that are highly pervasive that  
21 I'm concerned about taking over lawn and embankments.  
22 I'm happy to list them. Stinging nettle, poison  
23 parsnip, Japanese knotweed, burdock, Canada thistle,  
24 and something I don't know the name of, but it's like  
25 a spiny cucumber weed, but pervasive real issues and

WL1

WL4

1 so I would be really interested in what's going to be  
2 done. There's a lot of fill that's going to be moved  
3 in this project and assurances that it will be clean  
4 fill and assurances construction vehicle tread will  
5 be, you know, as clean as it can possibly be.

WL4

6 In terms of the emergency response plan  
7 and in relation to Doug's comment I was really  
8 shocked when reading the environmental assessment in  
9 the safety section there was no mention of the  
10 derailment on October 22, 2007. That's shocking to  
11 me, and in terms of the emergency response plan that  
12 was in place during that development there was none,  
13 and I wasn't currently residing in the home where we  
14 live now, but I know that my neighbors were barely  
15 roused from their work to let them know there was a  
16 massive emergency.

HC2

17 In terms of traffic flow I'm just thinking  
18 about the timing. I know that the timing is trying  
19 to be sensitive to the closure of school, but I think  
20 in particular as we think about delivery trucks  
21 accessing the Battell Block via Water Street, the  
22 right-hand turn from Cross Street onto Water Street  
23 is a common turn made by school buses and it's really  
24 sketchy every single time. That's a major pedestrian  
25 route, it's major biking route, and I think that just

TR1

1 a close reevaluation of how tractor trailers are  
2 going to make that right-hand turn which is sharper  
3 than 90 degrees is difficult. I think those are my  
4 comments for now. Thank you very much.

5 MR. SYMONDS: Thank you.

6 MR. LOVE: Hi. My name is Matt  
7 Lafandra and I'll start by three minutes after my  
8 spell my name for the stenographer.  
9 L-A-F-I-A-N-D-R-A and I reside in Middlebury. I  
10 lived here my whole life. I'm a property owner in  
11 Middlebury.

12 In Section 2.2.2.1 the fundamental design  
13 criteria called for design specifications that  
14 accommodate current and quote reasonable foreseeable  
15 railroad traffic end quote. There is no evidence  
16 either expressly presented or referenced in the  
17 appendices, which include the Vermont State Rail Plan  
18 and the Western Corridor Plan, that supports double  
19 stacked plate H or auto rack plate K cars in the  
20 reasonably foreseeable future. Given how fundamental  
21 vertical clearance is to the cost, scope,  
22 environmental impact, economic impact, and social  
23 impact of the project the fundamental design criteria  
24 should be carefully reviewed and modified for actual  
25 supported needs. I should add that modifying those

PN3

PN8

1 fundamental design criteria does not preclude the  
2 very necessary safety upgrades, the horizontal  
3 clearance, alignment, and drainage for the future  
4 safe operations of the railroad.

5 In Section 2.3.4 the eastern rail bypass  
6 option does not address any of the economic or social  
7 benefits that result choosing only to focus on the  
8 costs. There's no discussion of the property values,  
9 the beneficial transition of former rail corridor to  
10 higher value use, improved parking, public space, and  
11 economic benefits of new commercial and industrial  
12 park on the bypass route. These are important  
13 considerations and addressing them objectively is the  
14 very purpose of the environmental assessment. The EA  
15 presented fails to address them and the proponent  
16 should be made to address them before the project is  
17 sanctioned by the Federal Highway Administration.

18 Lastly, in Section 3.15.4.2 the  
19 proponent states that quote the proposed action is  
20 fundamentally one of bridge replacements end quote.  
21 I agree wholeheartedly with the proponent that the  
22 proposed action should be fundamentally one of bridge  
23 replacement, however, what the proponent stated is at  
24 odds in my view with the tremendous effort put  
25 forward to justify costly and time consuming

AT2

PN12

1 improvements to the railroad for bridge replacement,  
2 and by improvements I mean improvements double  
3 stacked plate K passage not improvements to safety  
4 which are necessary and should be followed through  
5 on.

6 The FHWA should reject the environmental  
7 assessment as inadequate and compel the proponent to  
8 submit a project limited to bridge replacement or  
9 alternatively force the proponent to perform a  
10 complete environmental impact statement for a new  
11 railroad project governed under Vermont's Act 250  
12 without cover of federal preemption. Thank you.

13 MR. SYMONDS: So has everybody that  
14 wants to say something got an opportunity to speak  
15 because we can now go back and allow Bruce and others  
16 more time if there's nobody that has missed their  
17 chance.

18 MR. HILAND: Thank you. I took the time  
19 that I needed to go through this document and I'm  
20 submitting it. I've been very impressed with the  
21 comments of several thoughtful people here tonight.  
22 I would like to know specifically when the decision  
23 deadline is for the Federal Highway Administration  
24 regarding the finding of impact or no significant  
25 impact. When is the decision date? The reason I ask

1 -- do you know? Can you say?

2 MR. SYMONDS: No. Go ahead finish.

3 MR. HILAND: I have a followup question.  
4 When is the decision made on this proposal final?

5 MR. SYMONDS: So I'm not going to give  
6 you a time and a date because I don't have it. The  
7 comments close on the 26th of May.

8 MR. HILAND: You answered the question.  
9 You don't know when the decision date is.

10 MR. SYMONDS: Okay.

11 MR. HILAND: Given that you don't know

12 when the decision date is then I would like to know

13 how the Agency of Transportation or VTrans plans to

14 go out and put in temporary bridges starting in July

15 if the finding -- finding goes against you. Since

16 you're proposing this, if the finding goes against

17 you, then you have temporary bridges in place. It

18 would seem to me the essence of common sense and  
19 prudence to hold off on any work on temporary bridges  
20 until you know what the Federal Highway  
21 Administration's decision is. End of comment.

22 MR. SYMONDS: Anybody else?

23 MR. BLAIR: I would like to have another  
24 chance. Again Jim Blair of Middlebury. I'm just  
25 curious. There's been no talk of the distance from

1 the railroad track between here, this building, and  
2 the bridge, the new bridge, of the distance between  
3 the side of the railroad track and the beginning of  
4 Otter Creek. That looks to me from the plans I have  
5 seen and from looking up on Google is that it's not  
6 very much at all. Is there going to be any  
7 mitigation to that area in light of the fact we have  
8 a very high flood today this spring and could be the  
9 water would get high enough to take out the railroad  
10 track between here and the new bridge.

11 MR. SYMONDS: Just all the comments and  
12 all the questions -- we will answer that as part of  
13 our response to all of the questions. We will be  
14 able to answer that and we do have that information.

15 MR. BLAIR: Thank you.

16 MS. NUOVO: If you're going to answer  
17 just to one or two -- Betty Nuovo from Middlebury --  
18 how are the rest of us here going to get the answers  
19 to the questions that are actually made?

20 MR. SYMONDS: Great question. So when  
21 all the written comments, all the verbal comments  
22 that we receive tonight will be included in a  
23 document and added to the appendix of the  
24 environmental assessment with, you know, essentially  
25 here's a question and here is the response to those.

1 So those will be published with the final draft of  
2 the EA.

3 MR. NUOVO: When?

4 MR. SYMONDS: So if you will allow me, I  
5 will talk a little bit about this schedule that's up  
6 here behind me because I think that is important. So  
7 again public comments end on the 26th and, you know,  
8 it would be probably improper for me to set a date  
9 because I don't know the full extent of all of the  
10 questions and the rework that's going to be necessary  
11 based on these comments, but our intent is to  
12 immediately start putting the responses together and  
13 revising the EA based on the comments, and you know  
14 I'm hopeful as a project manager that within 30 days  
15 following the end of public comment period we'll have  
16 something out to address all of these and have the EA  
17 revised and be ready to submit it to FHWA, but that's  
18 why we've moved FHWA determination out as far as  
19 August because we don't yet know how much time it's  
20 going to take to address that, but I will say that  
21 our intent is to get that done this summer and  
22 hopefully earlier in the summer instead of later.  
23 I'm sorry. I don't have a firm date because I just  
24 don't know what the total amount of work that's going  
25 to be.

1 MS. MCGARRY: My name is still Susan  
2 McGarry and I live on Rogers Road and I know there's  
3 someone here way more competent than I am to ask this  
4 question, but in the same way I'm uncomfortable with  
5 being told the historic preservation protections will  
6 be developed, I really think they are, I'm also  
7 really uncomfortable with a plan and an emergency  
8 response plan that will be developed. Is that going  
9 to be fleshed out more concretely to give the  
10 community some sort of reassurance should another  
11 spill the kind of which Doug talked about should  
12 happen?

13 As I listen to this project, and I  
14 listened a lot over the four years that it has been  
15 developed, I'm not very confident in the kind of  
16 attention and time limit that's going to be allowed  
17 if there's a spill before it goes over into the  
18 creek. I'm not very confident that we will have the  
19 tankers available and our fire department and our  
20 responders will be able to get there fast enough to  
21 pump it out to get it some place safe without it just  
22 spilling over to the creek. It doesn't make sense to  
23 me and I'm a priest. There's someone here who knows  
24 about this way more than I do, but no one is asking  
25 the question so I would like it to be put into the

HC3

HC9

1 book. I am sure there's lots of other people who are  
2 -- really feel insecure when we're told a plan will  
3 be developed with your own emergency responders. So  
4 that's my question and I would like that response  
5 too, and I'm sure there are many others in the  
6 community that would as well.

7 MS. QUIGLEY: My name is Megan Quigley  
8 and I'm from Water Street here in Middlebury. I have  
9 a followup comment that I just forgot to add. I know  
10 this is a much higher priority project than rich 239,  
11 but the stated time line for that project was three  
12 months and it took 11 months. So that's on my mind  
13 as we approach this conversations as well.

14 The second question that I have is  
15 related. I was very surprised by the lack of  
16 description in the EA about the very narrow riparian  
17 corridor that's presently kind of low grade deciduous  
18 trees in between the -- where the current tracks are  
19 and the Otter Creek basically -- oh gosh, but there's  
20 a really narrow corridor and since that road is both  
21 going to be the construction site as well as the  
22 access to the Battell Block I'm just wondering where  
23 exactly that road is going to be. It's cut into a  
24 really steep hillside and the minimal erosion control  
25 that that riparian buffer is able to provide I think

1 is really important, and we all have seen what  
2 happens when we further generalize and reduce the  
3 riparian buffers as we look at how, even if it's a  
4 really small service that buffer provides, it's  
5 directly upstream of Battell.

6 MR. SYMONDS: Thank you. Anybody else?

7 MR. WINKLER: Frank Winkler. I live in  
8 Middlebury. I just have a procedural question. Once  
9 you have made your responses to the public comments  
10 that are now going on and will be until May 26th,  
11 will there be any -- for the public have any  
12 opportunity for rebuttal if there's something that  
13 people disagree with in your responses?

14 MR. SYMONDS: So the process that we use  
15 does not have like a second public meeting or a  
16 second comment period. We will be responding to all  
17 the comments and trying to address them as best we  
18 can in the document. Then we will be submitting that  
19 to FHWA and they will be the ones that are  
20 responsible for making that finding one way or the  
21 other on the EA that's prepared by our team, and so  
22 the short answer to the question is no there is not a  
23 rebuttal period for the following comment period,  
24 but, you know, I'm committed to following up with the  
25 community on concerns as we move forward with the

1 project assuming we get that finding, and if we  
2 don't, then we will regroup and look at the next  
3 level of NEPA. So the answer is no.

4 MR. LAFIANDRA: Matt Lafiandra again. I  
5 have a couple follow-up questions or comments I  
6 should say. This one is directed to FHWA. Neither  
7 the proponent nor the Vermont State Legislature has  
8 put in any evidence in the environmental assessment  
9 that any changes to the vertical clearances in the PA4  
10 railroad is in the public interest of the  
11 municipality, the state, or the federal government.  
12 FHWA forced the proponent to present credible  
13 vertical clearance alternative to the Legislature for  
14 consideration under the existing statutes of which  
15 the numbers and letters I'm not going to repeat here,  
16 but they are referenced in the EA for consideration  
17 and potential agreement, potential being the key  
18 word, in pursuit of the public interest.

19 And my last comment is one that is not a  
20 reference to the EA, but it talks about something  
21 that I have dealt with in the past, social license,  
22 and I'll be honest, you know, my whole life I frankly  
23 was prepared to grant the State of Vermont and its  
24 various agencies quite a degree of social license. I  
25 thought they looked out for our best interest.

1 Always been pleased with what they did. Generally  
2 it's always been a place that I loved to call home.  
3 This project for me personally has severely damaged  
4 any social license that I'm willing to grant agencies  
5 in the State of Vermont, and for what it's worth I  
6 believe that the proponent, VTrans in this case, will  
7 have to work very hard to regain at least my trust,  
8 if not the trust of some of my fellow townspeople,  
9 before they can receive the social license that will  
10 make projects like this a lot easier in the future.  
11 Thank you.

12 MR. SYMONDS: All right. So I'm not  
13 seeing any other hands so, Jeff, could you go to the  
14 last slide? I just want to -- so as I said we're in  
15 the middle of the comment period. There's a number  
16 of places that if haven't accessed the environmental  
17 assessment document, that you may. There's a hard  
18 copy in the library and in the Town Manager's office  
19 for viewing. Also I'm sure you're aware that it's on  
20 the web site. There's a comment form here tonight to  
21 send in comments, but you can send them in on any  
22 other form directly to Ken Sikora FHWA. There's a  
23 mailing address and then we also have a special  
24 dedicated e-mail address that we take those comments  
25 and forward those directly to Kenneth as well. And

1 again just to remind you that May 26th, 2017 is a  
2 hard date for the end of those comments.

3 So kind of looking around. Any last  
4 comments before we close the hearing?

5 MR. BLAIR: I have a comment again. I'm  
6 concerned there is apparently at the present time no  
7 emergency response plan, is that correct, or  
8 incorrect, for a spill on the railroad?

HC3

9 MR. SYMONDS: I'm not going to -- to get  
10 into what is or isn't in place tonight. Again that's  
11 a good question. We'll respond to that and we'll  
12 respond to the other comments.

13 MR. BLAIR: This particularly goes to  
14 your question why isn't there currently a response  
15 plan, whatever it is, 8 or 9 years after the big  
16 spill. Ask anybody who works for the Town of  
17 Middlebury that question.

18 MR. SYMONDS: Okay. I don't think we  
19 have any other comments so I'm going to close the  
20 hearing. Thank you all for attending.

21 (Whereupon, the proceeding was  
22 adjourned at 8:50 p.m.)

23  
24  
25

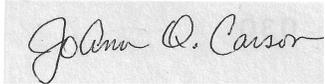
C E R T I F I C A T E

1  
2  
3  
4 I, JoAnn Q. Carson, do hereby certify that  
5 I recorded by stenographic means the public hearing re:  
6 Middlebury Bridge and Rail Project at the Town Hall  
7 Theater, Merchants Row, Middlebury, Middlebury, Vermont,  
8 on May 11, 2017, beginning at 7 p.m.

9 I further certify that the foregoing  
10 testimony was taken by me stenographically and thereafter  
11 reduced to typewriting, and the foregoing 75 pages are a  
12 transcript of the stenograph notes taken by me of the  
13 evidence and the proceedings, to the best of my ability.

14 I further certify that I am not related to  
15 any of the parties thereto or their Counsel, and I am in  
16 no way interested in the outcome of said cause.

17 Dated at Burlington, Vermont, this 17th day  
18 of May, 2017.

19  
20  
21 

22  
23  
24  
25 JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter

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# **Annotated Comment Response Documents**



**Town of Middlebury**  
 77 Main Street  
 Middlebury VT 05753

May 23, 2017

Kenneth R. Sikora  
*Environmental Program Manager*  
 Federal Highway Administration  
 Federal Building, Suite 216  
 87 State Street  
 Montpelier, VT 05602-9505

Sent via email: [Middlebury@vhb.com](mailto:Middlebury@vhb.com)

Mr. Sikora:

The Middlebury Selectboard is submitting the following two comments as part of the public review of the Environmental Assessment for Middlebury's Rail and Bridge Project.

**Comment One**

The Middlebury Selectboard supports the State's commitment to work with all stakeholders, including Middlebury emergency responders and Vermont Rail, to develop a written emergency response plan in the event of a spill of hazardous materials in the downtown rail corridor, both during construction of the project and once the tunnel is operational.

The plan should address the safety of emergency responders and individuals and properties in the downtown area as well as the impact on water quality of the Otter Creek. The Town is ready to initiate plan development with the State at the earliest opportunity.

HC6

**Comment Two**

The Middlebury Selectboard is concerned that noise levels at night are projected to exceed acceptable levels for area E5—the Middle Seymour Street neighborhood—since those residences sit less than 30 feet from the rail track. While the mitigation offered may be adequate for moderate to elevated noise levels, it does not appear to be adequate for exceeding levels, which are considered harmful.

The Middlebury Selectboard urges the State's project team to meet with the affected residents in order to discuss the projected noise levels, to develop a clear timeline of noise-generating

NV3

Letter to Kenneth R. Sikora  
Environmental Program Manager  
Federal Highway Division  
*Comments on Environmental Assessment*  
Page 2

activities, and, most important, to explore stronger mitigation measures than are provided for in the Environmental Assessment.

NV3

**Middlebury Selectboard**



Brian Carpenter, Chair



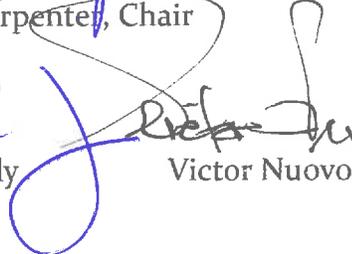
Susan Shashok, Vice Chair



Nick Artim



Laura Asermily



Victor Nuovo



Heather Seeley



Farad Khan

**O'Shea, Kaitlin**

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**From:** Ross Conrad <dancingbhoney@gmail.com>  
**Sent:** Thursday, May 18, 2017 4:32 PM  
**To:** Middlebury  
**Subject:** Middlebury Bridge and Rail Project Environmental Assessment comments

Dear Mr. Kenneth R. Sikora,

I am a certified Vermont beekeeper who has kept honey bees in Vermont for over 25 years. I am a past president of the Vermont Beekeepers Association and served the state of Vermont as a member of Vermont's Pollinator Protection Committee. I also serve the Town of Middlebury as a member of the Middlebury Energy Committee and as an alternate from Middlebury to the Addison County Regional Planning Commission.

With regard to the environmental assessment for the Middlebury Bridge and Rail Project I would like to make the following comments as they pertain to Sections 3.7 Wildlife and Section 3.11 Parks, Recreation and Conservation Land.

The EA states that following construction Triangle Park will "be returned to its pre-construction condition." (3-69) I would like to suggest that for very little extra expense this is an opportunity to improve on the current condition of the park through plantings that increase forage for native pollinators, reduce the town resources needed to maintain the park in the future, and have the potential to increase enjoyment of the park by town residents.

PL1

All plantings of trees and shrubs should be chosen to provide pollen and/or nectar for native pollinators. Given that some of Vermont's pollinators are listed as endangered, the more we can provide favorable forage the better Vermont's pollinator populations will be able to survive.

Tree and shrub plantings should include such species as red maple (*Acer rubrum*), linden or basswood (*Tilia*), honey locust (*Gleditsia triacanthos*), bunchberry dogwood (*Cornus canadensis*), American witch-hazel (*Hamamelis virginiana*), and black elderberry (*Sambucus canadensis*).

Flower plantings should be perennial, and include species such as red columbine (*Aquilegia canadensis*), flat-topped aster (*Doellingeria umbellata*), bergamont (*Monarda fistulosa*), and black-eyed susan (*Rudbeckia hirta*).

A mix of plantings such as mentioned above should be planned so that it provides sources of pollen and nectar forage for pollinators, as well as increase the aesthetic enjoyment of the park by residents, by ensuring that there is as wide variety of blossoms throughout as much of the growing season as possible. The choice of perennial flower plantings will prevent the Town of Middlebury from having to pay to have flowers replanted each spring.

PL1

By the same token, the grass used to replant Triangle Park should be a slow growing mix such as Pearls Premium. Pearl's Premium is not only a low maintenance grass consisting of native American grasses that only needs to be mowed once every 4-6 weeks, but it is extremely drought resistant and stays green all through winter. The location of the park in the center of town with its resulting heat-island effect, combined with projected climate predictions which take into account the dramatic increase in Green House Gasses in our atmosphere, mean that hot dry summers are predicted to become the norm in the Northeast and we should be preparing now instead of reacting later to insure our park and recreation areas are resilient in the face of climate destabilizing activities.

Thank you for your time and consideration in this matter.

Bees be with you,  
Ross Conrad  
Dancing Bee Gardens  
PO Box 443  
Middlebury, VT 05753  
802-349-4279 (cell)  
[www.dancingbeegardens.com](http://www.dancingbeegardens.com)

“The point is that the relative freedom which we enjoy depends on public opinion. The law is no protection. Governments make laws, but whether they are carried out, and how the police behave, depends on the general temper in the country. If large numbers of people are interested in freedom of speech, there will be freedom of speech, even if the law forbids it; if public opinion is sluggish, inconvenient minorities will be persecuted, even if laws exist to protect them.” - George Orwell: ‘Freedom of the Park’ - First published: *Tribune*. — GB, London. — December 7, 1945.

**"We don't have to engage in grand, heroic actions to participate in the process of change. Small acts, when multiplied by millions of people, can transform the world." – Howard Zinn**

*Any and all communications herein are the sole property of the email sender and originator. Any electronic intercept of this communication constitutes a violation of 50 U.S.C. § 1861(b)(2) of The Patriot Act. The use of this information in informal or formal proceedings, charges, investigations or indictments is strictly prohibited and rendered null and void if obtained without a warrant.*

**THIS MEANS YOU--NSA!**

O'Shea, Kaitlin

---

**From:** Donna Donahue <dld1north@yahoo.com>  
**Sent:** Friday, May 26, 2017 4:45 PM  
**To:** Middlebury  
**Subject:** Fwd: Middlebury rail/bridge project

Draft sent before proofing was finished. Please see below.

Sent from my iPad

Begin forwarded message:

**From:** Donna Donahue <[dld1north@yahoo.com](mailto:dld1north@yahoo.com)>  
**Date:** May 26, 2017 at 4:32:28 PM EDT  
**To:** [middlebury@vhb.com](mailto:middlebury@vhb.com)  
**Subject:** Middlebury rail/bridge project

To whom it may concern,

I am writing to state that after reading over 1000 pages of project and rail documents since 2012, I am absolutely appalled that this is the project the State of Vermont is inflicting on the Town of Middlebury under the guise that this is a plan designed to accommodate a vision for the next 100 years. **The plan is ill-conceived, ill-designed and ill-planned in terms of implementation.** If this is **AT4** the best the State has to offer in 100 year planning we are in great trouble. This project is a boondoggle and I wish I had funds and the time to pursue an audit of 4 years of engineering planning at a cost of over 4 million dollars. **I do ask why, despite many requests to do so, at no time was the State willing to do a reassessment of the project which includes appeals to both our former and current governors.** **AT4** This is a prime example of all that is wrong with government. Delaying tactics and public hearings seem to be a very effective method to wear down the public while pretending to listen to concerns. I do not have time to site the disinformation that has gone on. What I can point to is the project is longer, more disruptive and more costly than promised. It will be economically devastating to this community. In fact the effects have already been felt with a decline in tourism and tenancy problems in the downtown. This is an aberration of tax payer money. An alternative project for far less money, taking far less time was possible and would have addressed safety needs and future considerations. But embarrassment and stubbornness precluded any consideration of plausible alternatives. It is a travesty that the State has not only allowed but perpetrated this solution.

Sincerely,  
 Donna Donahue  
 Middlebury  
 Sent from my iPad

## Law Office of James A. Dumont, Esq., P.C.

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James A. Dumont, Esq.

Caroline F. Engvall, Legal Assistant

May 26, 2017

Mr. Kenneth R. Sikora  
 Federal Highway Administration  
 Federal Building  
 87 State Street, Suite 216  
 Montpelier, VT 05602-9505  
 Kenneth.sikora@dot.gov  
 middlebury@vhb.com

### Re: Environmental Assessment of Middlebury Bridge and Rail Project (WCRS 23)

Dear Mr. Sikora:

I write to you on behalf of residents of and property owners in Middlebury to address the Environmental Assessment (EA) dated April 26, 2017 for project WCRS-23, the Middlebury Bridge and Rail Project. You have already received technical comments on the EA from Matthew LaFiandra dated May 19, 2017. I incorporate those comments here, as discussed further below. **I also ask that the administrative record upon which the FHWA and the State based the decision to draft an EA be included in this record, including Mr. LaFiandra's letters dated October 27, 2016 and December 1, 2016, my letter to the Vermont Agency of Transportation and to the FHWA dated October 31, 2016, and its attachments, and the prior documents created by VHB, the State and the Town, that were cited in my letter. For ease of reference I attach to this letter copies of Mr. LaFiandra's October 27, and December 1 letters, my October 31, 2016 letter, and the memorandum from Town Manager William Finger quoted in that letter.**

NP16

**The EA is fundamentally flawed. It completely fails to perform the basic function that FHWA regulations explicitly require of an EA – it fails to determine whether an EIS is required. From its introductory overview, through each chapter, and ending in its conclusion, this basic function is ignored. The FHWA and Council on Environmental Quality regulations essential to this task are not mentioned or applied. The EA was written as if the FHWA and CEQ had not issued any regulations governing the function and requirements of an EA.**

NP12

**The EA also fails to perform the function required by § 4(f) of the Transportation Act. It fails to create a useful record upon which a determination can be made as to whether there exist prudent and feasible alternatives to use of historic resources and parks.**

SF1

A completely rewritten EA or an EIS now is needed -- unless the massive, expensive, environmentally harmful and unnecessary preferred alternative is rejected in favor of the alternative that is actually needed and appropriate, to wit, reconstruction of the two bridges with an 18-foot clearance as Mr. LaFiandra has explained in his prior submissions. That alternative would present no significant impacts and would require neither an EA nor an EIS.

1. **The purpose of the EA was to determine whether impacts are significant as defined by the CEQ regulations -- but this EA does not do so.**

NP9

Of course, an EIS is required for every “major federal action” that may “significantly” affect the environment.

Under the FHWA’s regulation, 23 C.F.R. §771.115(c), if an EIS for a major federal action is not categorically required by paragraph (a), and if it is not categorical excluded by paragraph (b), then an EA must be developed to determine whether a project’s impacts may be significant. That determination of significance is the purpose of an EA.

It would be arbitrary, capricious and unreasonable for the Vermont Agency of Transportation, the FHWA or any other federal agency to rely on an EA to determine whether an EIS is required if that EA failed to apply the standards for determining significance promulgated by the agency charged with implementing NEPA – the Council on Environmental Quality.

These standards are found in 40 CFR § 1508.27.

Despite the intense public concern about this project, this EA fails to apply those standards.

The relevant standards are addressed here:

- **§§ 1508.27(b)(1) & (3) – both adverse and beneficial impacts of significance; proximity to cultural resources such as parks.**

NP7

This project includes substantial impacts on a park and a public trust resource. The EA, at pages 3-85 and 3-86, states:

Along the southern end of the Project corridor, there would be permanent easements to access the railroad corridor from Water Street as well as permanent easements for installation and maintenance of a sewer line along the east side of the railroad. In the area of the Merchant Row and Main Street Bridges there would be permanent easements for installation and maintenance of electrical and telecommunications utilities, both aerial and buried. In the northern Project corridor, there would be permanent easements for installation and maintenance of water, sanitary sewer, storm sewer, electrical and telecommunications utilities. In the Printers Alley area and Marble Works property there would be permanent easements for

installation and maintenance of electric, telecommunications, water, sewer, and storm sewer utilities.

A total of 28 properties would be subject to these easements. There will be construction within each one.

Two of the easements will traverse a park, the Marbleworks Park. The easements will authorize and cause activities that will be destructive of and harmful to the Park. The State will construct a riprap area on part of the slope of the Park down to the river, and will construct a stormwater outfall pipe within the riprap area. The State will also construct a permanent maintenance road through the Park to the area of the riprap and outfall. All of these changes will be highly visible, if not prominent, to users of the Park.

SF2

NP7

I enclose three photographs of the Park taken a few weeks ago. These photographs show the stone sign for the Park, a view down towards the river from uphill of the sign, and a view of the slope where the riprap and outfall pipe will be. The road will be built in the middle of the area shown looking down from uphill of the sign. See EA Map 1.2-1. At present, this is a lovely area.

The preferred alternative also calls for construction within the Otter Creek. The preferred alternative requires that the State fill in part of the Otter Creek, in two locations. Page 3-24 of the EA states:

The Proposed Action incorporates activities that would result in direct effects to the Otter Creek, including the placement of temporary and permanent fill below the delineated OHW, as discussed below.

PA2

The drainage design for the Proposed Action has been advanced through many of the phases of Project planning. The principal stormwater outfall was initially designed so that drainage pipe would be installed via an excavated trench, with the outfall terminating along the bank of the Otter Creek. This preliminary design anticipated that outfall construction could proceed from upland areas and that no fill would be required below the OHW of the Otter Creek.

Subsequently, and facilitated in part by the removal of the Lazarus Building, the design for the stormwater pipe discharging to the Otter Creek was refined, and will now be installed by microtunneling through bedrock, thus avoiding excavation within the Marble Works Riverfront Park (see **Map 2.5-1**). This approach changed the orientation of the outfall pipe somewhat so that it terminates farther south and within a slope above the Otter Creek downstream (north) from the Otter Creek Falls. Access to this location for outfall construction is not possible from upslope locations. An access road is required to be constructed along the north (right) bank of the Otter Creek to the outfall location so that a crane can be positioned to install a pre-cast concrete headwall. This access road is to be 16 feet in width for construction

access, then scaled back to 10 feet in width for post-construction maintenance access. Both the temporary (16 foot) and permanent (10 foot) access road will result in the placement of fill material below the OHW of the Otter Creek.

Accordingly, the Proposed Action will entail both temporary and permanent adverse effects from the placement of stone fill below the OHW of the Otter Creek. An unavoidable temporary impact of less than 800 square feet and permanent impact of approximately 500 square feet below the OHW would result from construction of the access road needed to build and maintain the drainage outfall.

Additionally, the southern stormwater outfall (adjacent to the Cross Street bridge) would result in approximately 15 square feet of permanent fill placed below the delineated OHW of the Otter Creek. This outfall location is needed to enable gravity drainage of stormwater from the southern portion of the Study area.

The people of the State of Vermont are the owners of the Otter Creek and of the land beneath its waters, *i.e.*, below the OHW. It is held in trust for them under the public trust doctrine and Chapter II, § 67 of the Vermont constitution. *City of Montpelier v. Barnett*, 191 Vt. 441 (2012).

NP11

These changes in and to the Park and the river are set forth, in describing the project, but their impacts are never mentioned or evaluated. There is no assessment of the visual impact on Park users. There is no assessment of the impacts on the Otter Creek. The EA does not weigh whether these impacts are significant and therefore require an EIS.

NP7

•§1508.27(b)(2) – **public health and safety.** The project will trigger exposure of the public, adjoining landowners and the Otter Creek to soils, dust and/or groundwater contaminated with toxic chemicals. See the letter submitted 10/31/16 and supporting materials, raising these issues. The EA promises that there will be mitigation of these harms, in § 3.9.5. Apparently in reliance on this mitigation, the EA dismisses these concerns.

NP8

Federal court decisions, including some issued in the District of Vermont, bar reliance on mitigation to avoid a finding of significance unless there has been a clear showing that the mitigation will be effective. Absent this showing, it is unlawful to rely on mitigation to support a finding of no significant impacts. Yet that is what this EA does. It proposes mitigation but contains no evaluation of its efficacy.

NP8

Public health and safety also are jeopardized by lowering of the track, discussed below.

•§1508.27(b)(4), (b)(5) – **highly controversial and uncertain nature of the project and its impacts.** An EIS is required where impacts are highly controversial or uncertain. CEQ regulations provide that within an EIS, the degree and risks of those uncertain impacts are to be evaluated. 40 C.F.R. §§ 1502.16, 1502.22.

NP9

An EA suffices where impacts are not controversial or uncertain. The Council on Environmental Quality regulations therefore require that an EA must be “concise.” 40 C.F.R. § 1508.9.

NP9

The CEQ has explained that where a project or its impacts are sufficiently complex or uncertain that an EA exceeds “10 to 15 pages,” that fact alone “indicates that an EIS is needed.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Questions*, 40 FR 18026 March 23, 1981, Answers 36.a and b.

NP9

Here, the subject matter is extraordinarily complex and uncertain, resulting in an EA that is not 10 or 15 pages in length but 196 pages, not counting the appendices. Its appendix of maps is 32 pages. Its appendix of tables, charts and reports is 733 pages.

There is substantial uncertainty and dispute about the size, nature and effects of the project. Its size, nature and effect have changed substantially over time. Dozens of public meetings and thousands of pages of reports have increased, not lessened, the uncertainty. The project is so complex, and its consequences are potentially so severe, that a large engineering team has been assembled to manage it. An EIS is required.

One aspect of the project is particularly uncertain. The lowering of the track will cause the floor of the tunnel to be well below the 100-year flood level, with little separating the tunnel from the Otter Creek. A 100-year flood could inundate the tunnel and the foundations of the buildings that adjoin the railroad right of way. AoT’s and VHB’s Section 106 Determination of No Effect, dated 9/6/13, at p.7, stated that “approximately 860 feet of the proposed finished track elevation south of the low point of the proposed vertical alignment will lie at an elevation below that of the Zone AE special Flood Hazard Area.... Accordingly, an earthen berm and a concrete wall with a top elevation of 350.2 feet... will be constructed between the railroad tracks and Otter Creek south of Merchants Row to mitigate the risk of flooding within the sag of the track profile.” The Section 106 report described the proposed berm as extending 300 feet south of the Cross Street bridge pier and the concrete wall as extending 500 feet from the Cross Street bridge to the Merchants Row bridge, 15 feet west of the centerline of the track.

NP9

A later VHB report, in 2014, however, stated that a different plan had been arrived at, using a u-wall structure.

The current plans, in the EA, now include a u-wall plus a flood berm. Pages 3-34 and 3-35 describe and portray a “flood berm with sheet pile core” that will be sunk into the ground between the rail bed and the river at unspecified locations where there are “irregularities” in the river bank. The EA does not specify the depth of the sheet pile at the unspecified locations, or the length of the sheet piling. (The EA specifies only the width of the area that would be flooded.) The EA also does not allege that any site investigation has been performed at each of the unspecified locations to determine whether driving sheet piles into the ground is feasible, or how flooding will be prevented if driving of sheet piles at each location is not feasible.

FP2

The nature of this critical mitigation remains uncertain. And its efficacy has not been clearly shown. As noted above, federal court decisions hold that mitigation can be relied upon to conclude that impact will not be significant only where there has been a clear showing that the mitigation will be effective. An EIS is required to address these impacts.

NP8

**•§§ 1508.27(b)(1) & (8) – both adverse and beneficial impacts of significance; proximity to historic resources; adverse impacts on listed historic structures.**

The tunnel will be a massive concrete structure in the middle of downtown Middlebury, which will remove from public view both the historic railroad grade and its historically significant stonework. A planned beneficial impact is the pedestrian area that is planned for the surface of the tunnel, where the open, historic railroad grade now is. The entire project area runs from the Cross Street bridge, through the downtown, and then west of Main Street, as shown in the Appendix 1 of the EA. The historic visual landscape of the Town will be altered forever. See our 10/31/16 letter and supporting materials. The EA does not mention or apply §§ (b)(1) and (8).

NP10

**•§ 1508.27(b)(10) – whether the action threatens violation of federal, state or local environmental protection laws or requirements.** Whether a proposed project complies with, or would depart from, state and local land use laws and plans is an important factor in determining whether its impacts are significant. If a state or local law or plan is preempted, that heightens the need for an EIS. Decision-makers (and the public) need to know if a proposed action would depart from the standards that a local government has duly adopted. See, for example, the Court of Appeals’ decision in *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service*, 487 F.2d 1029, 1036-37 (D.C.Cir. 1973).

NP11

Section 4413(a) of Title 24 authorizes towns to regulate the location, size, bulk, landscaping and traffic impacts of state-owned or state-operated land development. Sections 510 and 610, and associated sections, of the Middlebury zoning ordinance require that a conditional use permit be obtained for these aspects of the project. The ordinance has specific standards that will govern that conditional use approval.

Going forward without that review “threatens a violation of... local law or requirements imposed for the protection of the environment.” The project also would constitute a “violation of... state law... imposed for protection of the environment.” The CEQ regulations state that this threat is a factor weighing in favor of preparation of an EIS. The EIS will then inform the decision-maker and the public of the possible conflict, and of possible means to resolve the conflict, under 40 C.F.R. §§ 1502.16(c) and 1506.2.

NP11

The EA, however, does not mention the zoning ordinance other than to say it is preempted by the Interstate Commerce Termination Act. Pages 3-3, 3-4. Nor does it discuss or apply § (b)(10).

NP11

This is error for several reasons. It turns NEPA on its head. Under NEPA, if there is preemption, that renders the conflict more significant, not less, and the need for an EIS

greater. The decisionmaker and the public must be informed of the conflict, by way of the EIS, as part of their review of the project. *Maryland-National Capital Park and Planning Commission, supra.*

But there is no preemption. This project must undergo local zoning approval. **The purpose of the ICCTA, and its jurisdictional limits, are confined to regulation of railroad projects conducted by interstate railroad corporations. Even if this were considered a railway project, the State owns the railbed, not the Vermont Railway.** The decisions of many courts and of the Surface Transportation Board hold that ICCTA preemption does not apply to states when the states are managing or constructing state-owned railroad facilities.<sup>1</sup> Section 1508.27(b)(10) required that the EA consider whether the project may conflict with the zoning ordinance and if so how the project would be affected by the ordinance.

NP11

**The EA also fails to recognize the significance of the proposed filling of the Otter Creek. These are public trust lands. Filling any part of the river without legislative authority to do so would be a violation of state law and Chapter II, § 67 of the Vermont constitution. City of Montpelier v. Barnett, supra. This is the kind of conflict with state law that renders impacts significant.** It is not mentioned.

NP11

Conclusion.

**The EA is 196 pages long, but it fails to fulfil its lawful purpose. It contains no analysis of whether an EIS is required.** The governing standards are not mentioned, much less applied. An EIS is required.

NP5

**2. The analysis of alternatives is flawed.**

Our 10/31/16 letter laid out why the then-existing record failed to comply with standards for evaluation of alternatives under NEPA, § 4(f) and SAFETEA-LU. We incorporate that letter here, because the same errors continue. **The determination of de minimis impact on historic resources continues to violate FHWA regulations implementing § 4(f) and SAFETEA-LU for the reasons previously submitted.** See also Mr. LaFiandra's recent letter, explaining why the alternatives analysis is irrational.

SF1

Some additional discussion is needed, however, to address three new issues in the Agency's analysis and the record.

The Statement of Purpose and Need.

**The alleged purpose and need for the project has changed – without any explanation of why.** Section 1.4 now states (new matter underlined):

PN3

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<sup>1</sup> And even were this a railroad project being conducted by a railroad, the Vermont Supreme Court has held that ICCTA preemption does not apply to the traffic impacts components of local zoning, and many courts have held that ICCTA preemption does not apply to any aspect of local zoning.

The purpose of the project is to address the structural deficiencies of two rail-highway grade-separated bridges in downtown Middlebury where Main Street (VT 30/TH 2 Bridge 102) and Merchants Row (TH 8 Bridge 2) span the Vermont Western Rail Corridor track, to address rail safety concerns, and to provide appropriate vertical and horizontal rail clearances for the design service life of the structure(s) (100 years).

The new language departs from every prior statement of the need for the project. As our 10/31/16 letter explained, the fundamental purpose of the project, since the 1990s, has been the repair of two dangerous bridges. A memorandum written by the former Town Manager explains the “historical context and need for this project.” The memo explained that the bridges “have been rated poor and in need of replacement for decades.”

The bridges are now in a state of rapid deterioration with concrete chunks falling on the track on a regular basis and gaping holes appear regularly in the sidewalks, large enough to cause severe injury or worse to pedestrians and vehicles. These holes are patched by VTrans District 5 personnel using metal plates, plywood, and other materials that may be at hand.

After explaining that the project’s goal was bridge repair, Mr. Finger’s memo explained that the project became immensely more complicated, four times more expensive, and far more time-consuming to plan and construct when the State proposed, in 2002, using the bridge-repair project to increase the clearance distance over the track. The State represented this change as “necessary” according to the memorandum. Then, in 20012, the tunnel idea was added on, again with the intent of obtaining the allegedly necessary increased clearance by lowering the track. One paragraph of Mr. Finger’s memorandum states:

By any measure, this project which initially seemed like a relatively simple installation of precast concrete components, is far more complex not only in terms of actual construction but in terms of maintaining public access to downtown, satisfying public transit needs, keeping public events and performances alive and well and maintaining an acceptable quality of life for those who live and work in close proximity.

Mr. Finger concluded his memorandum with this sentence: “The bridges are much closer to collapse than ever before.” Bill Finger memo 1/6/16 (attached to 10/31/16 letter). See also page 6 of AoT’s February power point presentation to the town. This page consists of photographs showing the horrendous condition of the bridges, and surface water ponding within the track.

**The presence of concrete chunks on a rail line poses enormous public safety risks, both to the personnel on the train and to the public. The train carries large quantities of gasoline under those bridges every day. The last gasoline tanker derailment in Middlebury posed potentially catastrophic risk to the people and properties in the town.**

SE17

The public safety problems Mr. Finger summarized were memorialized in the formal “Purpose and Need Statement” that was found in the administrative record prior to our

10/31/16 filing. The “Purpose and Need Statement” for the project was “To address the structural deficiencies and existing pedestrian facilities of two roadway bridges in downtown Middlebury where Main Street and Merchants Row span the Vermont Railway, Inc. track.” Mr. Finger’s memorandum laid out the “structural deficiencies” and “pedestrian facilities” that the project is intended to address.

The record before we filed our 10/31/16 comments erroneously asserted that a 21-foot vertical clearance is legally required and relied on that alleged legal requirement to justify the massive bridge-and-tunnel project, as opposed to just reconstructing the two decrepit bridges, which would satisfy the “Purpose and Need Statement” that then existed.

Our 10/31/16 submission demonstrated that a 21-foot vertical clearance is not legally required.

In response, the EA now includes an amended purpose and need statement that creates a new alleged need. The purpose and need statement now states that the project’s purpose is not just safety but also to meet horizontal and vertical clearances for the next 100 years.

PN3

The EA then proceeds to assert – without any foundation – that over the next 100 years, the 21-foot clearance will be appropriate. See EA pages 2-4, 2-5.

PN3

Therefore, reconstructing the bridges while maintaining their present clearance level is not even considered in the EA. The only two alternatives considered that do not achieve the 21-foot clearance are “rehabilitating” the existing bridges (not reconstructing them) and the Eastern Bypass. Rehabilitation is rejected because it will not meet the 21-foot clearance and because the bridges are beyond rehabilitation. The bypass is rejected because of cost. Reconstructing the two bridges, again, is not even mentioned.

PN7

As Mr. LaFiandra has pointed out in his May 19, 2017 letter, there is basis for assuming that 21 feet will be appropriate for 100 years. It is just asserted.

PN3

A reasonable analysis that was based on need over the coming 100 years would include information about not just the costs but also the benefits of the bypass alternative over the coming decades. The EA selectively uses the unsupported 100-year 21-foot need to reject the reconstruction alternative, while ignoring the benefits of the by-pass alternative over the coming decades. Mr. Sage discussed this during the public hearing.

AT6

The newly narrowed need – the project now must both address safety and provide clearance for 100 years – combined with the unsupported assertion that a 21-foot clearance will be appropriate for 100 years, has made the consideration of alternatives nothing more than a sham. The EA is a textbook example of crafting of the Purpose and Need Statement with the intent to justify the alternative that the agency already has chosen. This is unlawful. *Citizens Against Burlington, Inc., v. Busey*, 938 F.2d 190, 196, (D.C. Cir. 1991).

PN17

*Failure to address the 18-foot clearance bridge reconstruction alternative*

AT3

Mr. LaFiandra's December 1, 2016 letter explained in detail why reconstructing the two bridges while maintaining an 18-foot vertical clearance would, at a fraction of the cost and delay, and without any significant environmental harm, meet all of the safety needs of the project.

PN7

The EA does not address this alternative. An EA that does not address a feasible, cost-effective alternative, with no environmental harm, while supporting a massive, expensive, uncertain, prolonged alternative with possibly severe environmental harm, can only be described as arbitrary, capricious and unreasonable under the Administrative Procedure Act, NEPA and § 4(f).

PN7

The impacts on Marbleworks Park.

Sections 4.7 and 4.8 recognize that there will be a permanent maintenance road across the Park. The EA dismisses the impact of the permanent maintenance road because the State plans to re-plant the road with grass after construction is over.

The road is a permanent maintenance road, however, not a temporary construction road. It will be used in perpetuity to bring to the outfall the equipment needed to maintain the outfall. What is now a Park dedicated to pedestrian visitors will be dissected by a road used by cars, trucks and heavy equipment, for as long as there is a railroad through Middlebury.

PL2

The EA also does not address the visual impacts of the riprap or the outfall.

NP7

The EA does not include the documentation and analysis required by the FHWA regulations governing constructive use of parkland and de minimis impact determinations. 23 C.F.R. §§ 774.7, 774.13 and 774.17. The EA therefore is arbitrary, capricious and unreasonable. *See Mullin v. Skinner*, 756 F.Supp. 904, 924 (E.D. No. Caro. 1990) (“...the determination as to what constitutes a ‘use’ under Section 4(f) is essentially the same as the determination as to what constitutes a ‘significant impact’ under NEPA.”)

SF1

**Conclusion**

On behalf of my clients, I ask that no contracts be entered into by the Agency of Transportation, the town or the FHWA, and that no construction commence, and that no commitment or decision to go forward with the tunnel project be made until there has been an Environmental Impact Statement and a finding of no prudent and feasible alternative under § 4(f).

We also ask that I be provided with actual notice, by mail or email, of all proposed and actual rulings and determinations under NEPA and § 4(f).

Sincerely,  
*James A. Dumont*  
James A. Dumont, Esq.

Attachments: 10/31/16 Dumont to Cole letter  
1/6/16 Bill Finger Memorandum  
10/27/16 LaFiandra letter  
12/1/16 LaFiandra letter  
Three photographs of Marbleworks Park

23 May 2017

Kenneth R. Sikora  
Environmental Program Manager  
Federal Highway Administration

Dear Mr. Sikora:

My husband and I own The Inn on the Green, a small inn/B&B located at 71 South Pleasant St. in Middlebury, a short block from the Merchant's Row railroad bridge. Because of our location, we have a considerable interest in the Middlebury Bridge & Rail Project. My husband has participated in many of the stakeholder information sessions held locally, and I attended the May 11 EA report public hearing and heard the presentations offered, as well as the comments offered by many other town and village residents and business owners.

I have the following comments for inclusion in the final EA report to the FHA and for your consideration:

- With the March 2017 decision to demolish the old bridges and install temporary bridges this summer, the urgency of commencing work on the larger project has essentially become moot. The safety issue has been "solved" for the short term; installation of temporary bridges means that there is no continuing danger of either of the bridges falling down. NP14
- Inasmuch as the urgency has essentially gone away, doesn't it make sense to revisit the project scope and also re-consider alternative solutions? I will elaborate on each of these aspects. AT4

#### Project scope

It is in large part the expansion of the scope of the project beyond the original aim to replace the deteriorating bridges that has caused the most concern in the community. We all recognized that the bridges were not sustainable, and a simple project to replace them over the course of one construction season – while disruptive and noisy – would have met with widespread local support. It was the proposed expansion of the project to lower the rail bed and create a tunnel through the village, with its vastly expanded cost and construction timeframe, that provoked almost universal pushback. We business owners in the village especially recognize that surviving a project of this scope over the course of 4 construction seasons will severely tax our individual and collective resources. Virtually all of us will suffer loss of business because of the noise, traffic impact, parking loss, and general disruption during our busiest season(s) of the year(s), and some of us won't survive at all. PN2 SE4

I agree with the May 11 speaker who noted that there is no true need for a 21-foot clearance tunnel at this time or indeed for at least a decade, as there are no trains requiring 21 feet of clearance planned to move along the rail corridor during that timeframe. Although the federal guideline points to planning for needs for the next 100 years, we all know that with technology racing ahead at a fast pace, we cannot predict needs or propose realistic solutions more than just a few years out. Anything further out is purely guesswork. PN1

Out of consideration for local concerns and because we now have the luxury of time to make a sensible decision, please consider re-evaluating the real need here. Fix what's broken, don't speculatively build something that *might* address future needs we can't realistically predict.

PN1

### Alternative solutions

I also agree with the speaker who noted that the EA fails to report on, or indeed to show any consideration of, the positive aspects of the proposed railroad bypass as an alternative solution to fixing the rail bed that passes through the middle of the village adjacent to Otter Creek. One of the main concerns regarding this possible solution expressed in 2013 was that in the face of the rapidly deteriorating bridges, a solution to create an eastern bypass was unrealistic because it would take too long to acquire land and build the railroad line; however, the urgency of finding a solution has now been deferred, as the immediate safety issue has been solved by replacement of the bridges in question with temporary bridges. While use of temporary bridges is not an ideal solution, aesthetically or functionally, it does address the immediate safety issue that prompted the start of this entire project. It is entirely appropriate to re-consider the merits of moving the rail line to the eastern bypass location identified on Middlebury Bridge and Rail NEPA EA Vol 2 Maps Public Comment Edition map 2.3-1. These merits include:

AT2

- Movement of the rail line out of the dense village center greatly mitigates the risk of extensive damage to structures and people should a derailment of dangerous materials similar to the 2007 incident occur.
- Movement of the rail line away from Otter Creek through the village mitigates the danger of damaging the river and its ecosystem from both routine rail use and in case of derailment and spill.
- Eliminating rail traffic through the village center removes the noise of routine rail traffic and track maintenance from the peaceful, bucolic village.
- Eliminating rail traffic from the village center opens up development possibilities that would benefit the village, its citizens, and business owners by enabling re-use of the current railbed and the land along Otter Creek that currently is in use by the railroad; in particular, the possibility of creating a rails-to-trails route along Otter Creek is extremely desirable.

AT2

Thank you for your consideration.

Sincerely,

Brenda K. Grove, Innkeeper  
The Inn on the Green  
71 South Pleasant St.  
Middlebury, VT 05753

O'Shea, Kaitlin

---

**From:** dhallam10@gmail.com  
**Sent:** Saturday, May 13, 2017 6:04 PM  
**To:** Middlebury  
**Subject:** Environmental Assessment Middlebury Bridge Project

I have a couple of questions and comments.

I understand that Vermont Railway has agreed to re-route their trains during the 10-week downtown tunnel construction phase. If this is correct, is Vermont Railway receiving any form of compensation for the inconvenience of having to re-route it's train traffic during that phase of the project? SE4

If the answer is yes, then the local business owners need to be compensated for the loss of business as a result of this project. It would be unfair to treat one entity differently then the other entities that will be directly impacted by this project. We need to keep the downtown businesses whole because we do not want to loose a business as a result of this project. SE4

Thank you for considering my questions and comments.

David Hallam, PE  
170 Chipman Park  
Middlebury, VT 05753  
(802) 922-4330  
Sent from my iPad

FHWA Environmental Assessment Hearing  
Middlebury Bridge and Rail Project  
May 11, 2017

My name is Bruce Hiland and I live in Middlebury. I was the owner/ manager of the Battell Block for the past 18 years until the building's sale in January this year. I'm a 30 year member of the Middlebury community, former President of the Middlebury Business Association and the Better Middlebury Partnership.

The following comments refer to the Environmental Assessment document dated 4/26/17. Hard copy of my comments will be provided.

We are here because VTrans offers this Environmental Assessment as it seeks from the Federal Highway Administration a FONSI – a Finding of No Significant Impact - to proceed with their proposed project.

#### DEFINITIONS

First, some definitions:

“Environmental Assessment” (EA) is an environmental analysis prepared pursuant to the National Environmental Policy Act to determine whether a federal action would significantly affect the environment and thus require a more detailed Environmental Impact Statement (EIS).

By definition “Assessment” requires “analysis” which in turn is defined as a detailed examination of anything complex in order to understand its nature or to determine its essential features.

Since VTrans wants the FHWA to issue a Finding of No Significant Impact understanding what constitutes “significant Impact” is key. A given situation could have a ‘significant impact’ on one individual but not on another.

Therefore professional judgment and analysis of the information gathered in the assessment are crucial to establishing whether there is indeed 'significant impact' on the affected party. In this case the affected party is our community of Middlebury.

### EA DEFICIENCIES

I will limit my comments to two major failings of the EA which alone should cause the EA to fail any reasonable, objective FONSI test:

- First, the EA fails to critically analyze the fundamental premise of the project, the asserted need to lower 2/3rds of a mile of track to increase the vertical clearance of the two bridges. Lowering the track drives the design of VTrans' proposed project and directly produces the very significant negative environmental impact of this project, the disruption Middlebury's downtown for what will be 4 or more years.

PN7

- Second, the EA fails to properly or adequately analyze the impact on Middlebury's economic and social environment and consequently dramatically understates the very significant negative impact of VTrans' proposed project.

SE1

### Vertical Clearance

Regarding increasing vertical clearance to 21 feet - the EA presents an a priori argument in favor of the proposed project. Specifically, the EA incorporates without question and with no evidence of objective analysis VTrans' assertions re the "need" for increased vertical clearance. In fact:

PN1

- There is no evidence whatsoever of a need for double stack freight traffic in the foreseeable future;

- Increased vertical clearance has no impact on providing passenger rail service;

PN5

- Federal regulations are cited and described as "requirements" despite VTrans having already sought and been granted one waiver for lower clearance;

PN9

- VTrans 100 year planning horizon is absurd. Given the pace of technological change not even the largest global institutions/enterprises are comfortable planning beyond 10 years;

PN10

- Similarly, VTrans assumes continued viability of the rail operator indefinitely.

As a consequence the two common sense alternatives – the easterly by-pass and the in-place bridge replacement – were not fully analyzed or objectively assessed. An easterly by-pass would eliminate the inherent safety threat of 350,000 gallons of petroleum products each day going through the center of our community. In turn, a by-pass would free up the rail right of way adjoining Otter Creek for more appropriate uses including recreation, e.g. bike and hiking paths, and appropriate development of valuable downtown property.

AT7

The in-place bridge replacement option would meet immediate needs swiftly and minimize disruption to the community while allowing for future clearance change should any need every materialize.

AT8

It is also worth noting that the EA fails to mention that the proposed project is inconsistent with the Vermont State Rail Plan finalized last year.

PN11

### Economic and Social Impact on the Community

Neither economic nor social impact was competently analyzed. (Others will speak to the methodological deficiencies.)

SE1

The EA accepts at face value the VTrans' story that "disruption" will be largely confined to the 10 week bridge construction event in year 3. On the face of it this is nonsense. At a minimum this is a 4 year project. The disruption to Middlebury's downtown begins the day that preparatory work for installing the temporary bridges begins, currently planned for July this year. Parking will be affected immediately. Pedestrian traffic – essential to retail businesses

SE11

– will be affected immediately. Access to MarbleWorks will be affected with consequent traffic disruption. The temporary bridges will be, to say the least, unattractive and an implausible tourist attraction.

SE11

Loss of parking will increase until the end of planned construction. The EA estimates loss of 100 parking spaces. Loss of parking reduces “walk in” traffic in all retail businesses. Noise, dirt and disorder for adjacent downtown residents and businesses will be part of daily life. And this will not be just during the 10 week, 24/7 bridge construction in Year 3.

Apparently EA preparers are ignorant of the very thin profit margins of local retail businesses. For them, revenue loss directly converts small profits to losses. And the losses are by no means only to business owners. When a retail business has to cut back, jobs are lost.

SE11

“Mitigation” proposals are by and large embarrassingly naïve. For example, offering loans to failing small retail businesses burdens them with debt. This is in striking contrast to the \$12,000,000 in the project’s cost budget to avoid financial damage to the rail operator from the 10-week detour. The scale and scope of the proposed project is such that comparisons with other communities cited are irrelevant. Citing as a benefit “purchases by construction personnel” as an offset for retailers is so naïve as to be laughable. What will they buy? Fine art? Books? Office supplies? Women’s clothing? But the grand prize goes to the suggestion that the construction site will be a tourist attraction.

SE12

To sum up, the impact on Middlebury’s downtown businesses will be, in your language, very significant. I could find nowhere in the EA any mention of the enormous difficulty of re-establishing a healthy downtown economy. To issue a Finding of No Significant Impact would require a willful disregard of the inescapable impact of this proposed project on the reality of our community. If that happens I will be appalled.

May 24, 2017

Kenneth R. Sikora  
 Environmental Program Manager  
 Federal Highway Administration  
 Federal Building, Suite 216  
 87 State Street  
 Montpelier, VT 05602-9505

Dear Mr. Sikora:

Section 3.15.4.2 of the Environmental Assessment Proposed Action/Completed Project states: "The Proposed Action is fundamentally one of bridge replacements." The scope of the project certainly belies that statement. The plan has mushroomed into one of major **upgrades** (not replacements or maintenance) to the rail line piggybacking on the bridge replacements and track improvements, which are urgently necessary because of inaction on the part of VTTrans for at least two decades.

PN12

I most strongly urge the FHWA to demand evidence from existing planning documents indicating the need for such vertical clearances, since existing clearances and properly repaired and maintained track adequately address passenger and freight needs foreseen in this corridor.

PN13

I love trains, and my property abuts the rail line, so I observe the one loaded train a day north and the empty train south daily. I would love to be able to travel by rail from Middlebury in my lifetime. I acknowledge that repairs to the bridges and rails are urgently necessary, but the scope of the significant improvements in this proposal will have an economic and social impact that will reduce Middlebury's vibrant town center to a shell, a pretty but glorified intersection.

SE14

Respectfully yours,

Ann C. LaFiandra  
 Adjoining Railroad Property Owner  
 2 Lantern Lane  
 Middlebury, VT 05753  
 aclafiandra@gmail.com

May 3, 2017

Kenneth R. Sikora  
Federal Highway Administration  
Federal Building, Suite 216  
87 State Street  
Montpelier, VT 05602  
middlebury@vhb.com

Mr. Sikora:

I've reviewed the Middlebury Rail Project WCRS-23 (the "Project") extensively over the last 18 months out of personal and professional interest.

I hold a BS.e in Structural Engineering from the University of California-San Diego. I also hold a Master's Degree in Engineering Management from Duke University. As a Project Manager, I recently completed a 5-year, \$210 million industrial construction project. I oversaw and was responsible for navigation of Federal regulatory process in Canada, including a thorough environmental assessment, impacts of rail and marine traffic increases, negotiation with aboriginal communities and local stakeholders, and ongoing responsibility for Health, Safety, Environment, and Quality programs during construction. The physical works I was responsible for included over 20 km of railroad work (new railroad construction, track realignment, drainage installation and repair, tie replacement, rail grinding, ballast replacement, etc.). I oversaw the levelling of approximately 50 acres of land, requiring daily drilling and blasting of over 700,000 cubic meters of rock in total, extensive evacuation and safety protocols, and precise operational planning. Over the course of construction, the industrial facility continued operations processing approximately 100,000 railroad cars/year (275 cars/day).

After review of the Middlebury Bridge and Rail NEPA EA Vol 1-3 ("the EA") submitted by VTrans ("the Proponent"), I have several comments for consideration.

1. In Section 2.2.2.1, **the underlying project requirement to achieve a 21' vertical clearance is unsupported by any evidence of commercial or social benefit to either freight or passenger cargo.** PN1  
The "requirement" referenced in the EA is per VSA 3670(a), Sec. 17 of Act No. 40, and 5 VSA 3670(c)(2) and establishes that VTrans, the railroad, and the Municipality (collectively "the Parties") may agree to a minimum vertical clearance of less than 23'-0". In fact, the Parties have agreed to a minimum of 21'-0" and could, via the same legislation, agree to a vertical clearance of 18'-0". **The reduction of the vertical clearance requirement to 18'-0" accommodates all the existing freight traffic and all forecast Amtrak service,** while significantly reducing the excavation volumes for the rail bed. A reduction in excavation may translate to reduced costs, reduced construction schedule, and reduced environmental impact while achieving the same project goal of replacing the dangerously deteriorated bridges in downtown Middlebury. **The EA fails to address the option of an 18'-0" vertical clearance solution or provide a credible assessment of the economic benefits or costs of designing the bridges for double-stack (Plate H) or Autorack (Plate K) freight.** PN5  
PN16
2. **In Section 1.3, the Proponent fails to mention that the Vermont State Rail Plan (Parsons Brinkerhoff 2015) identifies the NECR as the #1 priority for unrestricted double-stack clearance at a total interstate initiative cost of \$25.8M. The Proponent fails to mention that Vermont's share of the NECR improvement cost is estimated at \$5.7M. The Proponent fails to mention that the #2 priority is the Green Mountain Railroad and Clarendon & Pittsford Railroad at a total initiative cost of \$10.3M. The Proponent fails to mention that the Vermont Railroad, which is the subject of the EA, is not listed in the VT State Rail Plan as a priority for double-stack clearance. The underlying "requirement" in the Project Background & Planning Documents section fails to justify or explain how double-stack clearance (21'-0") is required by the VT State Rail Plan, the Vermont Western Corridor Transportation Management Plan, or by FHWA funding requirements.** The failure by the EA to address this critical design requirement in an objective fashion does not serve the PN1

Municipal, State, or Federal best interest. The Proponent should be forced to address this before the EA is accepted by the FHWA and any project is sanctioned.

3. In the second-to-last paragraph of Section 2.2.2.1, the Proponent cites the Vermont Legislature's writing into law of a 21'-0" clearance requirement. The Legislature's action was taken based on a recommendation from the Proponent, contingent on written agreement between the Proponent, VTR, and the Town (Railroad Clearance Variance Agreement dated March 2, 2016). The Proponent made the recommendation to the Legislature and reached a written agreement with the Town BEFORE the EA was complete and the environmental impacts were known. It is very clearly NOT IN THE PUBLIC INTEREST for the Legislature to sign anything into law before the Proponent has presented the clear costs and benefits. **Neither the Proponent nor the Legislature has presented evidence in this EA that any changes to the vertical clearance of the railroad is in the public interest of the Municipality, the State, or the Federal Government. The FHWA should force the Proponent to present a credible 18'-0" vertical clearance alternative to the Legislature, the Town, and the FHWA for consideration and potential agreement in pursuit of the Public Interest.** PA4
4. In Section 2.2.2.1, double-stack freight transits through the State of Vermont and has only minimal impact on the State's economy (VT State Rail Plan, 2015, Parsons Brinkerhoff et al). The NECR, GMR, and C&P RR offer interstate connections that are unique and suited to accommodate the growth in intermodal traffic. **The VTR, which is the subject railroad of the EA, is not mentioned anywhere in the VT State Rail Plan as a conduit for intermodal freight. Commercially, the VTR connects to Burlington, VT and Whitehall, NY (in addition to the southern leg that connects Rutland to Hoosick Junction, NY), offering a less direct and less efficient movement of intermodal through-traffic than the existing Class 1 CP line that runs from Montreal, QC to Albany, NY along the western bank of Lake Champlain. In short, there is no commercial justification for intermodal through traffic to transit the VTR and thus no requirement for a vertical clearance to support it. The EA erroneously cites the VT State Rail Plan to support the 21'-0" vertical clearance requirement. That error should be corrected.** PN1
5. In Section 1.4, the Project Purpose calls for "appropriate vertical and horizontal rail clearances for the design service life of the structure(s) (100 yrs)". **There is no support in the EA for the 21'-0" vertical clearance as a 100-year service requirement. Additionally, the EA fails to identify an alternative that accommodates all current rail traffic and provides an option to modify for additional vertical clearance as needs dictate in future years.** Such an option may be substantially less expensive and substantially less impactful to the economic and social vitality of downtown Middlebury. PN1
6. In Section 1.5, the Project Need cites a 25-year history of inspection chronicling the deterioration of the bridges leading to the emergent replacement need today. **VTrans was derelict in their responsibility to maintain the bridges in a safe condition or replace them before they became dangerous. The limited replacement options presented in the EA appear to be an attempt by VTrans to reach a foregone conclusion and push through a project serving special interests in Burlington at the expense of the Federal coffers and the economic and social vitality of Middlebury, all under the cover of responding to an emergency of their own creation.** PN4  
PN18
7. In Section 1.3, the VT State Rail Plan prioritizes the establishment of passenger Amtrak service through Middlebury, connecting to Burlington in the north and to New York City in the south. **I support this goal and note that a vertical clearance of 18'-0" (compared to the existing 17'10" and 17'-8.5") on the route is sufficient for Amtrak's entire national fleet of locomotive and passenger cars.** PN5
8. In Section 2.2.2.1, the Fundamental Design Criteria call for design specifications that accommodate current and "reasonably foreseeable railroad traffic". **There is no evidence, either expressly presented or referenced in the appendices, that supports doublestack (Plate H) or Autorack (Plate K) cars in the reasonably foreseeable future. Given how fundamental the vertical clearance is to the cost, scope, environmental impact, economic impact, and social impact of the project, the Fundamental Design Criteria should be carefully reviewed and modified per actual supported needs.** PN3
9. **In Section 2.3.4, the Eastern Rail Bypass option erroneously claims that the opportunity for future passenger service would be eliminated. Passenger service opportunity to the downtown could in fact remain, with the existing rail line remaining as a spur originating from the main line to the** AT2

- north and terminating at the County Tire Track depot. This should be corrected in the EA for proper consideration.
10. In Section 2.3.4. the Eastern Rail Bypass option does not address any of the economic and social benefits that would result. There is no discussion of improved property values, the beneficial transition of former rail corridor into higher-value use, improved park and public space, and the economic benefits of a new commercial and industrial park along the new bypass route. These are important considerations and addressing them objectively is the purpose of an EA. The EA presented fails to address them and the Proponent should be made to address them before the project is sanctioned. AT2
  11. In Section 2.3.4, the Proponent claims "it is unlikely that the major investment needed to implement [the Eastern Rail Bypass] could be justified", yet provides no analysis or support for this conclusion before dismissing it out of hand. Simultaneously, the Proponent fails to justify the major investment required and economic benefits of their recommended option. It is inappropriate to recommend the best option unless all the options are evaluated on the same criteria. The Proponent's failure to objectively evaluate the multiple options fails to pass the FHWA requirements for an EA. AT2  
PA1
  12. In Section 3.10.4.2 the Proponent claims that "if anything, double-stack freight would reduce the number of railcars needed to transport equal amounts of freight." This claim is anecdotal, unsupported in any way, and contrary to the apparent reality. The overwhelming traffic currently carried on the VTR is dry bulk (mineral products, stone, grains, etc) or liquid bulk (refined petroleum products, LPG, etc.). They are not containerized cargos, but bulk cargo carried in specialized bulk cars. The Proponent should remove the quoted passage entirely and avoid unsupported opinions entirely. Alternatively, the Proponent should demonstrate the cargo carried specifically on the VTR and demonstrate which goods or commodities are expected to transition to containerized freight and reduced traffic volumes. PN19
  13. In Section 3.15.4.2, the economic benefit to Middlebury is limited to the hypothetical benefits to local businesses from the improved amenity in the downtown core of the re-connected Triangle Park. Socially and economically this is the only long-term benefit articulated by the Proponent. It is worth noting that the Town of Middlebury's taxpayers, not VTrans or the FHWA, are the source of the \$500,000 in funds paying to reconnect Triangle Park. The Proponent's usurpation of this benefit as a salve to the social and economic costs to downtown Middlebury is disingenuous at best, and deliberately misleading at worst. It should be removed from the EA as a benefit before final consideration of the costs and benefits of the project is presented to the FHWA. SE9
  14. In Section 3.15.4.2, it is the Proponent's contention that the temporary benefits from construction personnel purchases and "project tourism" will more than offset the business and social costs of a 10-week closure during the peak visitor and shopping season. I believe this is simply false and the costs to Middlebury from this project are an order of magnitude larger than any benefit from the project. Given the substantial difference in the costs and benefits, this EA should result in an outright rejection by FHWA of the Proponent's permit to proceed. SE10
  15. In Section 3.15.4.2, the Proponent states "the Proposed Action is fundamentally one of bridge replacements." I agree with the Proponent that the Proposed Action SHOULD be fundamentally one of bridge replacement. However, the Proponent's statement is at odds with the tremendous effort put forward to justify costly and time-consuming improvements to a railroad during the bridge replacement. If the Proposed Action is fundamentally a bridge replacement, then this EA fails completely to identify the most reasonable action. The FHWA should reject the EA as inadequate and force the Proponent to submit a project limited to bridge replacement, or force the Proponent to perform a complete Environmental Impact Statement for a new railroad project governed under Vermont's Act 250 and without cover from Federal exemption. PA4  
PN12

Sincerely,

Matthew LaFiandra  
2 Lantern Lane  
Middlebury, VT 05753



Please send or email any additional comments by May 26, 2017 to:

Kenneth R. Sikora  
 Environmental Program Manager  
 Federal Highway Administration  
 Federal Building, Suite 216  
 87 State Street  
 Montpelier, VT 05602-9505

Email: [Middlebury@vhb.com](mailto:Middlebury@vhb.com)

Meeting date: May 11, 2017

**Remarks :**

Dear Manager Sikora,  
 Having attended the public hearing, we feel even more strongly about seeking an alternative plan to the Bridge and Rail Project. Please read the enclosed article on what we feel is definitely <sup>not</sup> pursuing for many reasons. The safety of the town being the key issue! Looking forward into the future is also imperative. Ben's Wilson's alternative would definitely be beneficial for the town's economy and tourist population, too. It's a WIN-WIN without the 4 year plus, total disruption to our pristine and lovely historical town (that would most definitely have disastrous economic casualties). Otter Creek is a gem and has already been compromised TOO MUCH! Let the sincere voices of the townspeople be heard, please. Federal money and corporate gain should NOT override the will of the people. It's time to get back to a pure democracy NOW. Local action counts, and ripple effects will go on positively for years to come. Thank you!

**Name:** Jenn and Bob Nixon **Affiliation:** Middlebury residents

Email Address or Phone Number (optional) [jandbnixon@gmail.com](mailto:jandbnixon@gmail.com)  
1-802-989-7068

AT11

# Scrap bridges: Bypass is the way to go

The \$52 million plan to construct new rail bridges in downtown Middlebury should be scrapped. The project is fraught with safety, economic, and environmental issues that will devastate Middlebury's business and tourism community. Furthermore, after a four-year construction debacle VTrans will leave the town with an expensive piece of infrastructure that will not solve key safety and environmental issues.

I have followed the course of this project closely because I served as president of the Better Middlebury Partnership (BMP) from 2012 to 2015. The BMP has worked with the town and VTrans to minimize the project's impact upon our community. While the BMP must continue in this role, I can no longer stay silent regarding the project's tremendous flaws. Therefore, before issuing this letter, I resigned from the BMP's board to avoid undercutting its work and avoid any conflicts of interest. The ideas contained in this letter are my own.

The current incarnation of the project is the epitome of bad government. Instead of strategically envisioning Middlebury's needs for the next 100 years, and deliberately planning a cost-effective and safe solution, VTrans has lumbered forward with a cascading series of haphazard decisions that has led to unnecessary uncertainty and expense for taxpayers. The project began years ago because the highway bridges on Main Street and Merchants Row needed repair. VTrans then morphed the highway project into a rail project. Then it became bridges, rail, and a tunnel for \$18 million. Next, it was bridges, rail, a tunnel, and a massive drainage system emptying directly into Otter Creek for \$65 million. Then VTrans lowered the proposed budget to \$40 million, before recently pushing the estimate back up to \$52 million. What the final price tag will be is anyone's guess, but we know for sure that VTrans's utter lack of planning and poor execution has already wasted millions of dollars of Vermont taxpayers' money.

It should not surprise anyone that VTrans is struggling so badly to design this project. The simple truth is that the existing rail tracks are in a horrible location. Because the tracks run along Otter Creek, drainage will always be an issue. Not only is an-

other storm like Tropical Storm Irene a threat, but the unstable soil along the creek means the foundation of the project must be excessively deep. Further complicating the site is the extremely close proximity of Middlebury's historic downtown. These issues will lead to a multi-year construction project that will disrupt our downtown, devastate local businesses, and damage our tourism industry.

Furthermore, the location of the tracks ensures that there will be continuing safety and environmental issues no matter what VTrans does. On a daily basis, the railroad ships hundreds of thousands of gallons of gasoline to Burlington. Even with updated infrastructure, there will always be risks of a catastrophic explosion in the heart of Middlebury. Should a train simply spill gasoline, the massive drainage system proposed by VTrans will deliver the fuel directly into Otter Creek and Lake Champlain. VTrans can engineer the project all it wants, but it will never eliminate these serious safety and environmental risks.

The good news is there is an alternative solution that will give Middlebury the transportation infrastructure it needs for the next 100 years.

First, VTrans should immediately fix the failing highway bridges on Main Street and Merchants Row. We should replace these bridges as economically as possible without wasting money updating the existing rail system. Even if Amtrak service should commence from Burlington to New York in the next few years, its rail cars should be able to fit under our existing highway bridges.

Second, VTrans should expedite planning and construction of an eastern rail bypass around the backside of Chipman Hill. The southern portion of the bypass is already permitted to the Omya quarry so only three or four miles of new track would need to be designed. Based on satellite imagery it appears that a rail line could make it around Chipman Hill to the Exchange Street business district without affecting too many property owners. Obviously, anyone affected by the project would need appropriate compensation, but these costs pale in comparison to the long-term economic harm that the existing plan will inflict upon our community.

This bypass would also help Ver-

mont Railroad. Trains would be able to operate at a higher speed outside of town, and those cars could carry oversized loads that could never fit through the tight bridge abutments of downtown Middlebury. Furthermore, Middlebury could build a new Amtrak train station near Exchange Street, which would create a host of additional economic opportunities in the business district.

The hidden jewel of a rail bypass would be the bike path that would connect East Middlebury with Exchange Street. Paving over the unused rail tracks would give Middlebury a bike corridor that would pass near many of its important businesses and institutions. One could bike from Exchange Street, through the downtown, past Middlebury College, Porter Hospital, the high school, and the new town gym, without crossing a single road. With a pedestrian bridge over Route 7 and a new linking bike path, a child could safely ride from East Middlebury to downtown. Such a bike path would increase property values all along its length and it would serve as another outdoor attraction to draw people to Middlebury.

A rail bypass/bike corridor will likely cost more money on paper than the existing rail project, but this should not deter us from moving forward. The decision we make now will shape Middlebury's transportation infrastructure from the next hundred years. Taking the long view, the economic, environmental and safety benefits of a bypass/bike corridor make it a far better option than VTrans's latest creation. Furthermore, given the project's chaotic history, why should we have any confidence that VTrans will be able to stay on budget?

When this project began years ago, the Middlebury selectboard rightfully attempted to collaborate with VTrans to come up with an effective solution. However, in the intervening years as VTrans has bumbled through this project, the selectboard has shown too much deference to the state. It is time for the selectboard to step up and advocate for a better alternative solution.

Long-term vision has been a hallmark of our community. When the town burned in the late 19th century, civic leaders rebuilt in brick and stone. For over 100 years, we have all been the beneficiaries of that vision and foresight. In that spirit, we need to do the right thing again. We must fix the highway bridges immediately and begin moving forward on a rail bypass/bike path solution. Future generations will thank us.

## Community Forum

*This week's writer is Ben Wilson of Middlebury, former president of the Better Middlebury Partnership.*

*M*

Ms. Jerin M. Nixon  
42 Kestrel Ln  
Middlebury, VT 05753-4602



WHITE RIVER JUNCTION  
VT 050 2 L  
22 MAY 2017 PM

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056029505

056029505

O'Shea, Kaitlin

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**From:** chris robbins <a.c.robbins73@gmail.com>  
**Sent:** Thursday, May 25, 2017 4:01 PM  
**To:** Middlebury  
**Subject:** Comment on Bridge and Rail EA

VHB:

Thank you for your work on the EA. I am submitting the following comments. A quotation from the EA is in italics, followed by my comment.

Sincerely,  
 Chris Robbins  
 8 Gorham Ln., Middlebury

***Wildlife:** While tree clearing will reduce available habitat, the amount of clearing (approximately 0.70 acres) is minimal and negligible compared to the remaining wooded area located in close proximity to the Study Area. Furthermore, the proposed reestablishment of the original extent of the Village Green may provide new habitat, depending on the landscape design and plantings. (p. 3-39)*

Woody vegetation in and around the downtown will be removed in connection with this project. Although it may comprise a small extent within the larger area, it is important in the downtown. The new portion of the Green may provide new habitat, although in the pictures you show it as a grassy lawn. You state correctly that no decisions have been made concerning the landscaping of the Green, but presumably the area above the tunnel will not be suitable for large trees. I think you should provide funding for replacement of all the trees removed, to be located where the Town sees fit somewhere along the project corridor.

WL3

***Threatened and Endangered Species:** The overall effect determination for the Proposed Action is that the Proposed Action is unlikely to adversely affect the Indiana and northern long-eared bats for the following reasons:*

→ bats were excluded from bridge roosts before demolition on March 27, 2017 in response to an Emergency Declaration;

→ the amount of tree clearing (approximately 0.7 acres) represents just 0.09 percent of the wooded acreage within a mile of the Proposed Action and PRTs will be felled in accordance with time-of-year restrictions; and

→ sufficient naturally occurring and supplemental alternate roost sites are available in close proximity to the proposed Project. (p. 3-44)

I don't buy this reasoning. Bats were living under the bridges, and their habitat should be replaced. You went to a great deal of trouble to assess the bat population, and then you propose to do nothing. Perhaps bat houses could be located on trees or other structures in the area. You should spend at least as much money replacing bat habitat as you spent observing the bats and preparing Appendix D. I'm sure that sum could buy a lot of bat houses.

TE1

***Social and Economic Considerations:** In order to greatly shorten the duration of construction activities and road closures resulting in limited access to the Middlebury Downtown Area, VTrans and VTR have come to an agreement in principle to detour train traffic around Middlebury for the 10-week period of tunnel construction. (p. 3-92)*

It concerns me to see the words "in principle." Has this agreement been signed and will the detour occur? If it does not, I think this project will definitely have a "significant impact."

SE7

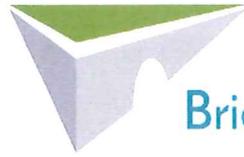
*...the Middlebury Selectboard is considering the possibility of using the Town's Revolving Loan Fund to provide working capital loans for downtown businesses that may be impacted by construction of the Project, and the Town's Downtown District Improvement Commission has earmarked funds for marketing the downtown during construction. The Town will actively research sources of grants to support downtown life during the Project. (p. 3-97)*

It does not seem fair that the Town should have to make loans or seek grants to support the businesses that will be affected. Although I did not see this in the EA, I have heard that Vermont Railway will be compensated for detouring its freight during the 10-week construction period. Why compensate one business and not others, especially since VT Railway will be the major beneficiary of the project, whereas Middlebury businesses will be collateral damage? Middlebury businesses (and churches) should be compensated. Perhaps the Project could pay half their rent or mortgage during the construction, or some other means could be found to make sure they are not unduly injured and the building owners can continue to maintain their buildings.

SE3

SE4

SE8



## Middlebury Bridge & Rail Project

Please send or email any additional comments by May 26, 2017 to:

Kenneth R. Sikora  
Environmental Program Manager  
Federal Highway Administration  
Federal Building, Suite 216  
87 State Street  
Montpelier, VT 05602-9505

Email: [Middlebury@vhb.com](mailto:Middlebury@vhb.com)

Meeting date: May 11, 2017

### Remarks :

I attended the public hearing at Town Hall Theatre on May 11. Having been only on the fringes of this ongoing conversation, I was interested to see how the project was going to impact this wonderful town that I live in.

My impression is this: It seems that <sup>the</sup> very real, day-to-day impact of this very long project is not regarded as more important than the potential new use of the railroad. This impact on the town is a huge burden to bear, all in ~~face~~ <sup>name</sup> of something which may never be realized. (i.e. double decker RR cars)

SE6

This is a charming town center and should be protected at all costs. It speaks to the charm of Vermont, a state that has worked hard to resist sprawl and big box consumerism.

SE1

~~Safety of the rail & bridges is paramount. Any more~~

Name: Julian Snow Affiliation: gardener, resident

Email Address or Phone Number (optional) snowlilypea@gmail.com

PN2

~~part that, though, is at the expense of this fragile, precious college town. It is not worth destroying. I urge for a direct, simpler plan that will not be such a big impact.~~ Sincerely,

---

place  
stamp  
here

**Federal Highway Administration**

Federal Building, Suite 216

87 State Street

Montpelier, VT 05602-9505

Attn. Kenneth R. Sikora

RE: Middlebury Bridge and Rail Project EA

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Tape or Staple, and Mail

**RECEIVED**

MAY 19 2017

VERMONT DIVISION

**O'Shea, Kaitlin**

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**From:** Wilson, Benjamin L. <bwilson@middlebury.edu>  
**Sent:** Monday, May 22, 2017 12:50 PM  
**To:** Middlebury  
**Subject:** Middlebury Rail Bridges Comments  
**Attachments:** Rail bypass and new bike corridor way to go -- Ben Wilson 4 11 17.docx

Dear Mr. Sikora,

Attached please find a letter to the editor that I sent to the Addison Independent. I would like to submit this letter for the record.

In addition to my letter to the editor, I have the following question/comments:

1. Has VTRANS assessed the potential damage from a train accident in Downtown Middlebury? If it hasn't, I fail to see how the Agency can appropriate make any sort of a cost/benefit evaluation of the project. HC1

Specifically, the public should know the blast radius of one train car of gasoline and the potential economic harm of such an incident. HC1

Additionally, what is the blast radius if all of the gasoline carrying train cars exploded (the average numbers of gasoline cars pulled on a daily basis)? What is the blast radius? What are the potential economic harms of such an incident?

2. I know at the public hearing VTRANS indicated that it would put together an emergency response plan should there be an incident in Downtown Middlebury. While such a plan is no doubt a good idea, it will in no way prevent our citizens from consequences of an explosion. It will simply help alleviate the consequences of an explosion. We need to know more about how a train wreck might impact the town. Furthermore, our firehouse is adjacent to the rail tracks – would an explosion engulf our fire services? This is information that I believe the VTRANS and the public needs to assess the project.
3. The environmental assessment glosses over the fact that VTRANS has never fully investigated the costs and benefits of an Easterly rail by-pass. This option needs to be fully vetted. At the initial project meeting that Sue Minter attended in Middlebury, VTRANS engineers made it extremely clear that they had not bothered to vet an easterly bypass. What has changed in the interim? If nothing has, how can VTRANS suggest that this option has been vetted? AT2

Thank you for your attention to this matter.

Sincerely,

Ben Wilson

**O'Shea, Kaitlin**

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**From:** chris zeoli <cz@nbnworks.net>  
**Sent:** Friday, May 26, 2017 8:20 PM  
**To:** Middlebury  
**Cc:** Basi Tate  
**Subject:** Rail Bridges

To whom it may concern:

We write to express our concerns regarding the rail bridge project. If Vermont Rail is going to be compensated then the merchants should be too. This is only fair. The disruption to downtown Middlebury will make business unsustainable. The 23 foot clearance is unnecessary. The potential damage to historic downtown Middlebury is an unacceptable risk. The safety and other contingency plans are inadequate at best. SE4 PN14

Sincerely,  
Charlotte Tate and Chris Zeoli  
Middlebury, Vermont

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# Comment Response Document

**Middlebury Bridge & Rail Project  
Revised Environmental Assessment  
Identified Comments & Responses  
July 21, 2017**

Comments identified in the letters, and emails received during the Environmental Assessment (EA) public comment period from April 26, 2017 to May 26, 2017, and those expressed verbally at the public hearing that was held on May 11, 2017 are grouped into resource or discipline categories. Similar comments were combined where appropriate. The table below includes the name of the government entity (Source Code "G"), individual ("I"), or organization ("O") that provided comments, how the comment was received (e.g., email), and the Comment Code that cross-references the comment with the associated response.

Each commenter is assigned a Source Code. This alpha-numeric designation appears in the top-right corner of the received document. Within each document, those comments that were determined to require a response are demarcated with the Comment Code. The Comment Code is alpha-numeric code, the letter components of which correspond to the applicable resource or discipline category in the EA.

<b>List of Government Entities, Individuals, and Organizations Providing Comments during Public Comment Period</b>					
<b>Source Code</b>	<b>Name</b>	<b>Organization/Address</b>	<b>City/State</b>	<b>Date Postmarked</b>	<b>Comment Code(s) for Comments Receiving Responses*</b>
G1	Middlebury Selectboard	77 Main Street	Middlebury, VT	email received 5/24/2017	NV3, HC6
I1	James Blair		Middlebury, VT	public hearing comment	HC3, FP1
I2	Joel Bouvier		Bristol, VT	public hearing comment	AT1
I3	Megan Brakeley		Middlebury, VT	public hearing comment	NV2, HC2, WL1, WL2, WL4, TR1
I4	Ross Conrad	PO Box 443	Middlebury, VT	email received 5/18/2017	PL1
I5	Becky Dayton	VT Bookshop & Real Estate owner	Cornwall, VT	public hearing comment	SE1
I6	Donna Donahue	none given	Middlebury, VT	email received 5/26/2017	AT4,
I7	James Dumont	15 Main Street, PO Box 229	Bristol, VT	emailed received 5/26/2017	NP5, NP7, NP8, NP9, NP10, NP11, NP12, NP16, SF1, SF2, PA2, PN3, PN7, PN17, SE17, AT3, AT6, PL2, FP2
I8	Nancie Dunn		Middlebury, VT	public hearing comment	SE3, SE4
I9	Caroline Engvall	15 Main Street, PO Box 229	Bristol, VT	email received 5/26/2017	<i>(n/a - on behalf of Dumont)</i>
I10	Brenda Grove	71 South Pleasant Street	Middlebury, VT	email received 5/23/2017	NP14, AT2, AT4, PN1, PN2, SE4

Revised Environmental Assessment – Middlebury Bridge and Rail Project  
Middlebury, Vermont  
Identified Comments & Responses  
July 21, 2017

Source Code	Name	Organization/Address	City/State	Date Postmarked	Comment Code(s) for Comments Receiving Responses*
I11	David Hallam	170 Chipman Park	Middlebury, VT	emailed received 5/13/2017	SE4
I12	Bruce Hiland		Middlebury, VT	public hearing comment and email received 6/1/2017	PN1, PN5, PN9, PN10, PN11, SE1, SE11, SE12, AT7, AT8, NP2, NP13
I13	George Jaeger		New Haven, VT	public hearing comment	SE1, SE5, PN2
I14	Ann LaFiandra	2 Lantern Lane	Middlebury, VT	email received 5/24/2017	PN12, PN13, SE14
I15	Matt Lafiandra	2 Lantern Lane	Middlebury, VT	public hearing comment and email received 5/19/2017	PN1, PN3, PN4, PN5, PN8, PN12, PN16, PN18, PN19, PA1, PA4, AT2, SE9, SE10
I16	Jenn & Bob Nixon	42 Kestrel Lane	Middlebury, VT	email received 5/24/2017	AT11
I17	Betty Nuovo		Middlebury, VT	public hearing comment	no response warranted
I18	Chris Robbins	8 Gorham Lane	Middlebury, VT	email received 5/25/2017	SE3, SE4, SE7, SE8, WL3, TE1
I19	Samuel H. Sage		Syracuse, NY	public hearing comment	PN2, HC1, SW1, NP15
I20	Lillian Snow	none given	Middlebury, VT	received 5/19/2017	SE1, SE6, PN2
I21	Ben Wilson	none given	Middlebury, VT	email received 5/22/2017	HC1, AT2
I22	Frank Winkler		Middlebury, VT	public hearing comment	NP4
I23	Chris Zeoli and Charlotte Tate	none given	Middlebury, VT	email received 5/25/2017	SE4, PN14
O1	Doug Anderson	Town Hall Theater	Middlebury, VT	public hearing comment	<i>n/a (only positive comments)</i>
O2	Susan McGarry	St. Stephen's Church	Middlebury, VT	public hearing comment	SE2, HR1, NV1, HC3, HC9

\* Two-letter suffixes correspond to the following: PN = Purpose and Need; AT = Alternatives; PA = Proposed Action; SE = Social and Economic Considerations; HR = Historic Resources;

NV = Noise and Vibration; HC = Hazardous and Contaminated Materials; FP = Floodplains; SW = Stormwater; SA = Surface Waters; WL = Wildlife and Wildlife Habitat;

TE = Threatened and Endangered Species; PL = Parks, Recreation, and Conservation Land; SF = Section 4(f); NP = NEPA Process

### **PURPOSE AND NEED (PN)**

**PN1 Comment:** There is no commercial justification for intermodal through traffic to transit the VTR and thus no requirement for a vertical clearance to support it. The EA erroneously cites the VT State Rail Plan to support the 21'0" vertical clearance requirement.

The EA does not include the need for the increased vertical clearance or the double stack railroad car. The EA does not establish where in the VT State Rail Plan or where in the Vermont Western Corridor Management Plan, the 21'0" is required for this rail line.

There is no need for 21' clearance at this time or for at least a decade. Although federal guideline points to planning for needs for the next 100 years, we all know that with technology racing ahead at a fast pace, we cannot predict needs or propose realistic solutions more than just a few years out. Anything further out is purely guesswork. Please consider re-evaluating the real need here. Fix what is broken, don't speculatively build something that might address future needs we can't realistically predict.

The EA incorporates without question and with no evidence of objective analysis VTrans' assertions re the "need" for increased vertical clearance.

There is no evidence whatsoever of a need for double stack freight traffic in the foreseeable future.

The underlying project requirement to achieve a 21' vertical clearance is unsupported by any evidence of commercial or social benefit to either freight or passenger cargo.

*Comment Source: I15, I12, I10*

**PN1 Response:** The design vertical clearance for this Project was determined through careful investigation of all freight and passenger guidelines, standards, and requirements. The summary of this information is provided in Section 2.2.2.2 of the revised EA.

The design vertical clearance of 21'-0" was ultimately determined based on the current and reasonably foreseeable use on the Vermont Western Rail Corridor (VWRC). Although there are no current businesses along the VWRC that require shipping of freight with Plate H (20'3") or Plate K (20'3") railcars, it is reasonably foreseeable that during the 100-year design service life of this structure there would be demand for either of these railcar sizes.

The current standard for railroad overpass construction in Vermont is to allow for a minimum of 23'-0" for the vertical clearance. This Project has already gone through an exhaustive effort to determine the optimal vertical clearance, which has resulted in a reduction of 2'-0" in the design vertical clearance (from 23'-0" to 21'-0").

It would be irresponsible of VTrans to build a project that has less than the design vertical clearance with the knowledge that they would need to come back to the community before the design service life is concluded to make modifications to the structures to accommodate and reconstruct the rail road. In addition, based on prior assessments and input from the Town, the only feasible way to achieve increased vertical rail clearance would be to lower the rail bed, as oppose to raising the roadway grades. Such a

scenario of conducting a second major downtown construction project on the railroad would cause unnecessary impacts to the Middlebury downtown area and result in expenditure of funds well beyond the current estimated construction costs.

With respect to the 2015 Vermont State Rail Plan, this is a document that is used for planning effort across the state. The purpose of the plan is to define strategies for investment in railroad infrastructure increasing the viability of passenger and freight railroad options. The plan includes as a Multimodal Transportation System Goal “Eliminate vertical clearance obstacles” (see Sec. 1.1, page 2).

The strategies of the plan result in specific projects programmed to achieve those desired outcomes. For example, the plan has identified high priority corridors for increasing the vertical clearance throughout. To achieve this outcome, specific projects are programmed to directly address vertical height deficiencies.

The Middlebury Bridge and Rail Project was not programmed specifically to address the vertical height deficiency; however, it is the intent of the State of Vermont to eliminate vertical clearance obstacles as construction projects occur to allow for increased viability of passenger and freight rail throughout all railroads in the state. Even though the VWRC is not identified as highest priority for vertical clearance enhancement, the proposed vertical clearance is consistent with the State Rail Plan.

**PN2 Comment:** The Project should be to replace two bridges. The project scope is too large. The railroad seems to be an add-on to increase the cost of the project. The bridges should be built first, and the railroad completed after.

It is in large part the expansion of the scope of the project beyond the original aim to replace the deteriorating bridges that has caused the most concern in the community. We all recognized that the bridges were not sustainable, and a simple project to replace them over the course of one construction season – while disruptive and noisy – would have met with widespread local support. It was the proposed expansion of the project to lower the rail bed and create a tunnel through the village, with its vastly expanded cost and construction timeframe, that provoked almost universal pushback.

Safety of the rail and bridges is paramount. Any more past that, though, is at the expense of this fragile, precious college town. It is not worth destroying. I urge for a direct, simpler plan that will not be such a big impact.

*Comment Source: I10, I13, I19, I20*

**PN2 Response:** Refer to Purpose and Need, revised EA Sections 1.4 and 1.5. See also response to PN1.

**PN3 Comment:** The EA fails to address why the P&N changed from the 18’0 vertical clearance to include the 21’0 vertical clearance as necessary for the 100-year design life of the structure.

There is no evidence presented that supports Plate H or Plate K cars in the reasonably foreseeable future.

*Comment Source: I7, I15*

**PN3 Response:** The comment that the Purpose and Need Statement at one time called for a vertical clearance of 18'-0" is incorrect. The Purpose and Need Statement in both the public comment version and revised EA does not identify 21'-0" as the vertical clearance.

See also response to PN1.

**PN4 Comment:** The Project Need cites a 25-year history of inspection chronicling the deterioration of the bridges leading to the emergent replacement need today. VTTrans was derelict in their responsibility to maintain the bridges in a safe condition or replace them before they became dangerous.

*Comment Source: I15*

**PN4 Response:** The current bridges are nearly 100-years old and have remained in service well beyond their original design life. While VTTrans was not the owner of the bridges until 1964 when the State of Vermont acquired the VWRC, the maintenance that has been performed since that time has kept them open to the public and the operating railroad in a safe condition. VTTrans has programmed several projects to replace the bridges and due to several factors, the replacement of the bridges has been delayed.

**PN5 Comment:** 18' clearance is sufficient for Amtrak's entire national fleet of locomotive and passenger cars fleet.

Increased vertical clearance has no impact on providing passenger rail service.

*Comment Source: I12, I15*

**PN5 Response:** Comment noted but deemed incorrect based on reference to Amtrak clearance information provided in Table 2.2-1 of the revised EA.

See also response to PN1.

**PN7 Comment:** The EA fails to critically analyze the fundamental premise of the project, the asserted need to lower 2/3 of a mile of track to increase the vertical clearance of the two bridges. The EA fails to address reconstructing the bridges while maintaining their present clearance level.

*Comment source: I7*

**PN7 Response:** See response to Comments PN1 and AT3.

The fundamental premise of the Project is the need to replace the bridges, to construct new bridges that are designed to the current standards, and to provide a safe railroad corridor through the Project area.

The suggestion that the design vertical clearance is the fundamental premise of the Project is incorrect. The design vertical clearance is one aspect of the design criteria that is incorporated into the Project along with providing bridges that are designed and constructed in accordance with the current design code, new railing that meets current design standards, new drainage that is designed to the current standards,

along with many additional elements that are intended to be designed and constructed to meet current standards.

Drainage, subbase, track grade, and track improvements span from one end of the Project corridor to the other. Despite the assentation by the commenter that this work will make the Project a longer duration and cause additional impacts, the work is intended to be completed simultaneously with the bridge replacements and not have an appreciable impact on the duration of construction.

**PN8 Comment:** Given how fundamental vertical clearance is to the cost, scope, environmental impact, economic impact, and social impact of the project the fundamental design criteria should be carefully reviewed and modified for actual supported needs. I should add that modifying those fundamental design criteria does not preclude the very necessary safety upgrades, the horizontal clearance, alignment, and drainage for the future safe operations of the railroad.

*Comment source: I15*

**PN8 Response:** See responses to PN1 and PN7.

Modifying the fundamental design criteria to reduce the vertical clearance does not eliminate the need to excavate the railroad corridor through the Project Area, with associated community effects. The scope of the Proposed Action also includes installation of drainage along the railroad corridor, reconstruction of the railroad subbase, installation of new ballast material, new ties, and new track materials to improve the safety of the railroad corridor through this Project.

Since establishing an appropriate vertical clearance for the Project is included in the Project Purpose (see Section 1.4 of the revised EA), any alternative that does not achieve that outcome must, of necessity, be rejected from further consideration.

**PN9 Comment:** Federal regulations are cited and described as “requirements” despite VTrans having already sought and been granted one waiver for lower clearance.

*Comment Source: I12*

**PN9 Response:** This comment is incorrect as Section 2.2.2.2 of the revised EA clearly states that VTrans selected the design vertical clearance based on the consideration of state and Federal design standards and guidelines.

**PN10 Comment:** VTrans 100-year planning horizon is absurd. Given the pace of technological change not even the largest global institutions/enterprises are comfortable planning beyond 10 years. Similarly, VTrans assumes continued viability of the rail operator indefinitely.

*Comment Source: I12*

**PN10 Response:** See response to PN1. In addition, as described in Section 2.2.2.1, 100-years is the design life of the Project, and does not represent a planning horizon with respect to types of rail freight that might be carried. See Section 2.2.2 of the revised EA.

**PN11 Comment:** The EA fails to mention that the proposed project is inconsistent with the 2015 Vermont State Rail Plan.

*Comment source: I12*

**PN11 Response:** See response to Comment PN1. With respect to the 2015 Vermont State Rail Plan, this is a document that is used for planning effort across the state. The purpose of the plan is to define strategies for investment in railroad infrastructure increasing the viability of passenger and freight railroad options. The plan includes as a Multimodal Transportation System Goal “Eliminate vertical clearance obstacles” (see Sec. 1.1, page 2).

The strategies of the plan result in specific projects programmed to achieve those desired outcomes. For example, the plan has identified high priority corridors for increasing the vertical clearance throughout. To achieve this outcome, specific projects are programmed to directly address vertical height deficiencies.

The Middlebury Bridge and Rail Project was not programmed specifically to address the vertical height deficiency; however, it is the intent of the State of Vermont to eliminate vertical clearance obstacles as construction projects occur to allow for increased viability of passenger and freight rail throughout all railroads in the state. Even though the VWRC is not identified as highest priority for vertical clearance enhancement, the proposed vertical clearance is consistent with the State Rail Plan.

**PN12 Comment:** Section 3.15.4.2 of the Environmental Assessment Proposed Action/Completed Project states: “The Proposed Action is fundamentally one of bridge replacements.” The scope of the project certainly belies that statement. The plan has mushroomed into one of major upgrades (not replacements or maintenance) to the rail line piggybacking on the bridge replacements and track improvements, which are urgently necessary because of the inaction on the part of VTTrans for at least two decades.

Lastly, in Section 3.15.4.2 the proponent states that quote the proposed action is fundamentally one of bridge replacements end quote. I agree wholeheartedly with the proponent that the proposed action should be fundamentally one of bridge replacement, however, what the proponent stated is at odds in my view with the tremendous effort put forward to justify costly and time consuming improvements to the railroad for bridge replacement, and by improvements I mean improvements double stacked plate K passage not improvements to safety which are necessary and should be followed through on.

*Comment source: I14, I15*

**PN12 Response:** See responses to Comment PN1 and PN4

**PN13 Comment:** I most strongly urge the FHWA to demand evidence from existing planning documents indicating the need for such vertical clearances, since existing clearances and properly repaired and maintained track adequately address passenger and freight needs foreseen in this corridor.

*Comment source: I14*

**PN13 Response:** Refer to Table 2.2-1 in the revised EA.

**PN14 Comment:** The 23' clearance is unnecessary.

*Comment Source: I23*

**PN14 Response:** A 23' clearance is not proposed by the Project. The design clearance is 21'.

**PN16 Comment:** The EA fails to discuss the benefits or cost of designing the bridge to include Plate H or Plate K freight.

*Comment Source: I15*

**PN16 Response:** See Section 2.2.2.2 of the revised EA. See also response to Comment PN1.

**PN17 Comment:** The newly narrowed need – the project now must both address safety and provide clearance for 100 years – combined with the unsupported assertion that a 21-foot clearance will be appropriate for 100 years, has made the consideration of alternatives nothing more than a sham. The EA is a textbook example of crafting of the Purpose and Need Statement with the intent to justify the alternative that the agency already has chosen. This is unlawful. *Citizens Against Burlington, Inc., v. Busey*, 938 F.2d 190, 196, (D.C. Cir. 1991).

*Comment Source: I7*

**PN17 Response:** Comment does not specify how the Purpose and Need was crafted in such a manner, and thus it represents an unsubstantiated assertion. The Purpose and Need for the Project could be realized by other alternatives and the Proposed Action was selected on its merits. The Purpose and Need does not prescribe the Proposed Action, the *analysis* results in the Proposed Action.

**PN18 Comment:** The limited replacement options presented in the EA appear to be an attempt by VTrans to reach a foregone conclusion and push through a project serving special interests in Burlington at the expense of the Federal coffers and the economic and social vitality of Middlebury, all under the cover of responding to an emergency situation of their own creation.

*Comment source: I15*

**PN18 Response:** See response to Comment PN17. The emergency situation resulted in replacing the bridge decks on an interim basis, and is not the basis for identifying a Proposed Action under this EA.

**PN19 Comment:** In Section 3.10.4.2 the Proponent claims that “if anything, double-stack freight would reduce the number of railcars needed to transport equal amounts of freight.” This claim is anecdotal, unsupported in any way, and contrary to the apparent reality. The overwhelming traffic currently carried on the VTR is dry bulk (mineral products, stone, grains, etc.) or liquid bulk (refined petroleum products, LPG, etc.). They are not containerized cargos, but bulk cargo carried in specialized bulk cars. The Proponent should remove the quoted passage entirely and avoid unsupported opinions entirely. Alternatively, the Proponent should demonstrate the cargo carried specifically on the VTR and demonstrate which goods or commodities are expected to transition to containerized freight and reduced traffic volumes.

*Comment source: I15*

**PN19 Response:** The commenter quoted a single sentence in the EA from the Train Noise Impact Assessment section, which is taken out of the context of the section of the EA where the statement appears. It is preceded by the sentence “The use of double-stack railcars would not affect noise conditions as the primary noise source is the wheel/rail interface.” The very next sentence is that which was quoted by the commenter “If anything, double-stack freight would reduce the number of railcars needed to transport equal amounts of freight.”

The language from the EA was part of the noise assessment addressing the potential use of double stack railcars along this rail corridor. In short, if double stack railcars are used for certain types of freight, they will not create any more noise and in fact they would result in a reduction in noise due to the reduced number of railcars needed to ship the same amount of freight, which is a factually correct statement.

## **ALTERNATIVES (AT)**

**AT1 Comment:** Has VTrans considered splitting the project into two parts, such as one bridge will remain open at all times?

*Comment Source: I2*

**AT1 Response:** VTrans has considered splitting the Project into two parts to construct one bridge at a time, however in consideration of the increased construction duration relative to a ten-week closure period and the associated anticipated impacts to the downtown area, as well as the extended interaction with the railroad corridor, it was determined that a short duration impact to the downtown was least impactful to all Project stakeholders.

The condensed schedule calls for a simultaneous ten-week closure of both bridges and the railroad and is intended to balance the needs of all the Project stakeholders and to complete the construction in an expeditious manner.

**AT2 Comment:** The EA fails to fully assess the Eastern Rail Bypass, including social and economic benefits, and costs. One benefit includes establishing a rails-to-trails network on the former railroad bed. How has the bypass been fully vetted since the 2015 meeting, at which VTrans engineers said it had not been fully analyzed? The Rail Bypass is worth pursuing. The urgency of finding a solution has now been deferred, as the immediate safety issue has been solved by replacement of the bridges in question with temporary bridges.

The environmental assessment glosses over the fact that VTRANS has never fully investigated the costs and benefits of an Easterly rail bypass. This option needs to be fully vetted. At the initial project meeting that Sue Minter attended in Middlebury, VTRANS engineers made it extremely clear that they had not bothered to vet an easterly bypass. What has changed in the interim? If nothing has, how can VTRANS suggest that this option has been vetted?

In Section 2.3.4, the eastern rail bypass option erroneously claims that the opportunity for future passenger service would be eliminated. Passenger service opportunity to the downtown could in fact remain, with the existing rail line remaining as a spur.

In Section 2.3.4 the eastern rail bypass option does not address any of the economic or social benefits that result from choosing only to focus on the costs. There's no discussion of the property values, the beneficial transition of former rail corridor to higher value use, improved parking, public space, and economic benefits of new commercial and industrial park on the bypass route.

The proponent claims "it is unlikely that the major investment needed to implement the eastern rail bypass could be justified", yet provides no analysis or support for this conclusion before dismissing it out of hand.

While the use of temporary bridges is not an ideal solution, aesthetically or functionally, it does address the immediate safety issue that prompted the start of this entire project. It is entirely appropriate to re-consider the merits of moving the rail line to the eastern bypass location identified on Middlebury Bridge & Rail NEPA EA Vol 2 Maps Public Comment Edition Map 2.3.1. These merits include:

- Movement of the rail line out of the dense village center greatly mitigates the risk of extensive damages to structures and people should a derailment of dangerous materials similar to the 2007 incident occur.
- Movement of the rail line away from Otter Creek through the village mitigates the danger of damaging the river and its ecosystem from both routine rail use and in case of derailment and spill.
- Eliminating rail traffic through the village center removes the noise of routine rail traffic and track maintenance from the peaceful, bucolic village.
- Eliminating rail traffic from the village center opens up development possibilities that would benefit the village, its citizens, and business owners by enabling re-use of the current rail bed and the land along Otter Creek that currently is in use by the railroad; in particular, the possibility of creating a rails-to-trails route along Otter Creek is extremely desirable.

*Comment Source:* I10, I15, I21

**AT2 Response:** Refer to Section 2.3.4 of revised EA which provides a full description of the multiple issues with an Eastern Rail Bypass, including the need for numerous property acquisitions, major natural resource impacts (stream, wetland), several road crossings and cost, among other factors, which make this an infeasible alternative.

**AT3 Comment:** The EA fails to fully assess the in-situ bridge replacement at their current clearance level (18').

*Comment Source:* I7

**AT3 Response:** 18' is not selected as the design clearance for the Project. See Section 2.2.2.2 of the Revised EA. See also response to Comment PN1.

**AT4 Comment:** Inasmuch as the urgency has essentially gone away, doesn't it make sense to revisit the project scope and also re-consider alternative solutions?

The plan is ill-conceived, ill-designed, and ill-planned in terms of implementation.

Why, despite many requests to do so, at no time was the State willing to do a reassessment of the project which includes appeals to both our former and current governors.

*Comment Source:* I6, I10

**AT4 Response:** The completion by FHWA of an EA for the Project, which has included an extensive public outreach component, represents a reassessment of the plan for construction. This has resulted in substantial changes, for example the use of an Accelerated Bridge Construction approach to reduce the time period of temporary disruption in downtown Middlebury. This process has been done in a collaborative manner with the Town Selectboard and has resulted in the mitigation measures described in Section 3.19 of the revised EA.

**AT6 Comment:** The EA selectively uses the unsupported 100-year 21-foot need to reject the reconstruction alternative, while ignoring the benefits of the bypass alternative over the coming decades.

*Comment Source:* I7

**AT6 Response:** See Section 2.2.2.1 of the revised EA. See also responses to Comments PN7 and AT2.

**AT7 Comment:** An easterly by-pass would eliminate the inherent safety threat of 350,000 gallons of petroleum products each day going through the center of our community. In turn, a by-pass would free

up the rail right of way adjoining Otter Creek for more appropriate uses including recreation, e.g. bike and hiking paths, and appropriate development of valuable downtown property.

*Comment source: I12*

**AT7 Response:** Improving track safety is a fundamental component of the Project Purpose and Need. In addition to the evaluation of the Eastern Rail Bypass in Section 2.3.4 of the revised EA, which concluded that this alternative would be infeasible, the Eastern Rail Bypass would not remove risk but rather relocate risk to other communities. The alignment would abut and cross through a portion of an area zoned as High Density Residential, which includes existing single family homes. Additionally, the risk posed by freight rail can be considered equal regardless of alternative, because track structure would be the same. However, due to the number of at-grade crossings on Eastern Rail Bypass (other than the US Route 7 crossings, which would be grade separated), there is potentially a higher risk due to potential conflicts between rail and roadway traffic. The right-of-way being made available to Middlebury for recreational use is a false premise and much of the existing trackage would have to be maintained to serve existing freight rail customers.

**AT8 Comment:** The in-place bridge replacement option would meet immediate needs swiftly and minimize disruption to the community while allowing for future clearance change should any need every materialize.

*Comment source: I12*

**AT8 Response:** See responses to comments AT4 and PN7.

**AT11 Comment:** An eastern rail bypass, as described in Mr. Wilson's April 13, 2017 editorial in the Addison Independent, is definitely worth pursuing for many reasons. The safety of the town being the key issue! Looking forward into the future is also imperative. Ben Wilson's alternative would definitely be beneficial for the town's economy and tourist population, too. It's a win-win without the 4 year plus, total disruption to our pristine and lovely historical town (that would most definitely have disastrous economic casualties).

*Comment source: I16*

**AT11 Response:** See responses to Comment AT2 and AT7.

### **PROPOSED ACTION (PA)**

**PA1 Comment:** The EA does not justify the major investment required and the economic benefits of the proposed action.

*Comments Source: I15*

**PA1 Response:** This Project is not considered a “major investment”, which is defined by FHWA as equal to or greater than \$100M. Economic benefits are not a fundamental component of the Project need. However, the long-term local, regional, and statewide benefits of the Project are noted in revised Section 3.15 of the EA. The public investment in the Proposed Action represents a benefit via greater future flexibility insofar as conveying a wider range of freight and passenger traffic.

**PA2 Comment:** The Proposed Action incorporates activities that would result in direct effects to the Otter Creek, including the placement of temporary and permanent fill below the delineated OHW.

*Comment Source: 17*

**PA2 Response:** These effects are considered minor and as described in Section 3.3 of the revised EA, impacts to federally regulated waters will require authorization from the U.S. Army Corps of Engineers for the placement of fill below OHW.

**PA4 Comment:** Neither the Proponent nor the Legislature has presented evidence in this EA that any changes to the vertical clearance of the railroad is in the public interest of the Municipality, the State, or the Federal Government. The FHWA should force the Proponent to present a credible 18’0” vertical clearance alternative to the Legislature and the Town, and the FHWA for consideration and potential agreement in pursuit of the Public Interest.

*Comment Source: 115*

**PA4 Response:** See Section 2.2.2.2 of the revised EA. See also response to Comment PN1.

## **SOCIAL & ECONOMIC CONSIDERATIONS (SE)**

**SE1 Comment:** The EA fails to properly or adequately analyze the impact on Middlebury’s economic and social environment and consequently dramatically understates the very significant negative impact of the VTrans proposed project. There has not been enough consideration of the small downtown businesses. It will be difficult for businesses to survive due to the construction and lack of access that will deter people from visiting downtown and shopping downtown.

This is a charming town center and should be protected at all costs. It speaks to the charm of Vermont, a state that has worked hard to resist sprawl and big box consumerism.

I’m in debt. Now we face a summer-long construction project that will reduce foot traffic in the short term and result in the loss of nearly one-third of the desirable parking spaces for our businesses. That impact is not short term. We’re talking about four to five years.

I fear it will trigger a domino effect along Main Street and Merchants Row leaving Middlebury a ghost town.

Lowering the track drives the design of VTrans' proposed project and directly produces the very significant negative environmental impact of this project, the disruption of Middlebury's downtown for what will be 4 or more years.

It is overlooking the fact that it's going to make a ghost town as somebody – Bruce said a moment ago.

*Comment Source: I5, I12, I13, I20*

**SE1 Response:** FHWA and VTrans shares the concerns over the temporary construction impacts on downtown Middlebury and its businesses. Based on these and other comments received from the public, Section 3.15 of the revised EA has been expanded to provide more robust information on construction timeline and effects, mitigation measures proposed during different phases of construction, and proposed accessibility plan.

**SE2 Comment:** Loss of parking could be detrimental to the viability of the churches downtown (and other businesses). I'm sympathetic with the retail shop owners and their concern, and I think it's a true concern for ours, in particular, the Baptist church across the street because we are going to be shut down in access for a long time and we don't measure it the same way, but I think it can be tremendously difficult for us.

*Comment Source: O2*

**SE2 Response:** The revised EA fully describes the proposed construction timeline and associated mitigation measures to minimize the impacts of temporary losses of parking spaces during Project construction. See Section 3.15 of the revised EA.

**SE3 Comment:** It does not seem fair that the Town should have to make loans or seek grants to support the businesses that will be affected. What is the plan for financial compensation for some of the businesses in the project, beyond low interest loans?

*Comment Source: I8, I18*

**SE3 Response:** The Project will compensate affected property owners according to established principles of eminent domain law. Moreover, because the Project is receiving Federal assistance, it is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The Uniform Act provides important protections and assistance for people affected by Federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy. See response to Comments SE4 and SE8.

**SE4 Comment:** Is Vermont Railway receiving any form of compensation for the inconvenience of having to re-route its train traffic during that phase of the project? If yes, then the local business owners need to be compensated for the loss of business as a result of this project. It would be unfair to treat one entity differently than the other entities that will be directly impacted by this project.

Why compensate one business and not others, especially since VT Railway will be the major beneficiary of the project, whereas Middlebury businesses will be collateral damage? Middlebury businesses (and churches) should be compensated.

We business owners in the village especially recognize that surviving a project of this scope over the course of 4 construction seasons will severely tax our individual and collective resources. Virtually all of us will suffer loss of business because of the noise, traffic impact, parking loss, and general disruption during our busiest season(s) of the year(s), and some of us won't survive at all.

*Comment Source: 18, 110, 111, 118, 123*

**SE4 Response:** VTrans has not agreed to and is not providing any form of payment to compensate VTR for any business losses. VTrans is assuming the cost of the ten-week railroad detour in order to provide continued rail service as required. Vermont Railway, Inc. (VTR) is a Federally licensed common carrier by railroad, which is required to provide rail freight service unless authorized to discontinue service by the federal Surface Transportation Board (STB). Under applicable Federal statutes and regulations, projects for reconstruction of existing rail-highway grade separations are deemed to be generally of no ascertainable net benefit to the railroad. Accordingly, there is no required railroad share of Project costs. See 23 U.S.C. § 130(b) and 23 C.F.R. § 646.210(b)(2). Although the Project is being designed to minimize impacts to rail service (except during the ten-week detour period), there are no guarantees to VTR relating to possible loss of profits. Like other service industries, VTR is under relentless pressure from its customers to provide timely, reliable service at competitive prices. See response to Comments SE3 and SE8.

**SE5 Comment:** The four years of construction will deter tourists and potential students and parent visitors from visiting downtown.

*Comment Source: 113*

**SE5 Response:** See Section 3.15 of the revised EA. Also, as presented in Section 2.5 of the revised EA, relatively minimal work and disruption would occur in Years 1 and 4. The revised EA includes a comprehensive mitigation strategy to further minimize disruption to downtown Middlebury during periods of more intensive Project construction activities.

**SE6 Comment:** My impression is this: it seems that the very real, day-to-day impact of this very long project is not regarded as more important than the potential new use of the railroad. This impact on the town is a huge burden to bear, all in name of something which may never be realized (*i.e.* double decker RR cars).

*Comment Source: 120*

**SE6 Response:** FHWA and VTrans are concerned about construction-related effects of the Project on downtown Middlebury. See Section 3.15 of the revised EA. Also, note that the Proposed Action is not anticipated to, in and of itself, cause a new use or change in railroad use post-construction. Rail

traffic may or may not change (increase or decrease) depending on the commodities being transported and market demand.

**SE7 Comment:** With regard to the agreement to detour train traffic around Middlebury for the ten-week period of tunnel construction, it concerns me to see the words "in principle." Has this agreement been signed and will the detour occur? If it does not, I think this project will definitely have a "significant impact."

*Comment Source: I18*

**SE7 Response:** Comment is noted but is beyond the scope of NEPA review. The issue will be revisited in a re-evaluated EA if no agreement is reached.

**SE8 Comment:** With regard to Middlebury businesses and churches: Perhaps the Project could pay half their rent or mortgage during the construction, or some other means could be found to make sure they are not unduly injured and the building owners can continue to maintain their buildings.

*Comment Source: I18*

**SE8 Response:** The comment is beyond the scope of NEPA review. VTrans' ability to provide compensation to businesses and other entities is constrained by established principles of eminent domain law and the Federal Uniform Act. It is well-settled that changes in traffic flow or temporarily preventing access to properties in the vicinity of a public works project is not a "taking" which must be compensated by the entity exercising eminent domain authority. As a rule, a public works project undertaken with reasonable diligence cannot entitle property owners or tenants to damages from temporarily restricted access. Claims that a project unreasonably, unnecessarily, arbitrarily, or capriciously restricts access are determined on a case-by-case basis, dependent on the actual level of impact to the business and the reasonableness of the governmental action. *See, generally, Walker Motors v. City of Montpelier*, No. 921-12-10 Wncv (Toor, J., Dec. 30, 2013). The Project will mitigate potential impacts by providing additional wayfinding signage, alternative parking locations, an ADA-compliant shuttle bus, and an alternate access road to the Battell Block. After construction, the Project will restore full access to businesses and existing parking spaces (including ADA-compliant spaces). Because the Project will maintain reasonable access to Middlebury businesses and other entities, there is no entitlement to compensation. See response to Comments SE3 and SE4.

**SE9 Comment:** In the EA, the economic benefits to Middlebury are limited to hypothetical benefits to local businesses from the improved amenity in the downtown core of the re-connected Triangle Park. Socially and economically this is the only long-term benefit articulated by the proponent. It is worth noting that the Town of Middlebury's taxpayers, not VTrans or the FHWA, are the source of the \$500,000 in funds paying to reconnect Triangle Park. It should be removed from the EA before final consideration of the costs and benefits of the project is presented to the FHWA.

*Comment Source: I15*

**SE9 Response:** See Section 3.15 of the revised EA.

**SE10 Comment:** It is the proponent's contention that the temporary benefits from construction personnel purchases and "project tourism" will more than offset the business and social costs of a ten-week closure during the peak visitor and shopping season. I believe this is simply false and the costs to Middlebury from this project are an order of magnitude larger than any benefit from the project.

*Comment source: I15*

**SE10 Response:** This comment does not accurately reflect the language of the revised EA. The anticipated temporary economic benefits to Middlebury due to construction spending are described in revised Section 3.15.4.2.

**SE11 Comment:** The disruption to Middlebury's downtown begins the day that preparatory work for installing the temporary bridges begins, currently planned for July this year. Parking will be affected immediately. Pedestrian traffic – essential to retail businesses – will be affected immediately. Access to MarbleWorks will be affected with consequent traffic disruption. The temporary bridges will be, to say the least, unattractive and an implausible tourist attraction.

Loss of parking will increase until the end of planned construction. The EA estimates loss of 100 parking spaces. Loss of parking reduces "walk in" traffic in all retail businesses. Noise, dirt and disorder for adjacent downtown residents and businesses will be part of daily life. And this will not be just during the 10 week, 24/7 bridge construction in Year 3.

Apparently, EA preparers are ignorant of the very thin profit margins of local retail businesses. For them, revenue loss directly converts small profits to losses. And the losses are by no means only to business owners. When a retail business has to cut back, jobs are lost.

*Comment source: I12*

**SE11 Response:** See Sections 3.2 and 3.15 in the revised EA. The revised EA addresses the replacement of the pre-existing bridges with a new tunnel alternative. The installation of temporary bridges is not a part of this Project and was required to be done independent of the Proposed Action. The installation of the temporary bridges was an emergency response to the continuing deterioration of the pre-existing bridges to maintain cross-rail connections until the Proposed Action can be implemented. In accordance with FHWA precedent, the revised EA does not consider the impacts of the temporary bridges; only the Proposed Action existing status quo bridge condition.

The revised EA estimates that approximately 100 parking spaces throughout the downtown area will be temporarily closed or have access restrictions throughout the construction period. It is only during the 10-week closure period when all 100 parking spaces identified in the revised EA may be closed. For most of the affected parking spaces identified, the closures will occur only during limited time periods during

the four years of construction. More specifically, approximately 10 to 15 parking spaces will be closed for up to four months in Year 1; fewer than eight parking spaces will be closed for several weeks in Year 2; approximately 100 parking spaces will be closed for the ten-week roadway closure period, with about 40 to 50 of these spaces additionally closed in the few weeks before and few weeks following the ten-week roadway closure; and approximately 50 to 65 parking spaces will be closed in a staggered manner for not more than two weeks at a time in Year 4 during final paving. Several additional parking spaces will not be closed but will have access restrictions, which include the use of Water Street to access parking behind the Battell building and the use of Maple Street to access parking behind the National Bank of Middlebury.

Parking closures and restrictions will be partially mitigated by increasing parking along South Pleasant Street, which will be converted to one-way operations and the establishment of remote parking areas with shuttle bus access to downtown.

**SE12 Comment:** “Mitigation” proposals are by and large embarrassingly naïve. For example, offering loans to failing small retail businesses burdens them with debt. This is in striking contrast to the \$12,000,000 in the project’s cost budget to avoid financial damage to the rail operator from the ten-week detour. The scale and scope of the proposed project is such that comparisons with other communities cited are irrelevant. Citing as a benefit “purchases by construction personnel” as an offset for retailers is so naïve as to be laughable. What will they buy? Fine art? Books? Office supplies? Women’s clothing? But the grand prize goes to the suggestion that the construction site will be a tourist attraction.

*Comment source: I12*

**SE12 Response:** See response to Comment SE4 regarding compensation and risk to VTR, response to Comment SE10 and revised Section 3.15 of the revised EA.

**SE14 Comment:** I acknowledge that repairs to the bridges and rails are urgently necessary, but the scope of the significant improvements in this proposal will have an economic and social impact that will reduce Middlebury’s vibrant town center to a shell, a pretty but glorified intersection.

*Comment source: I14*

**SE14 Response:** See Section 3.15 of revised EA.

**SE17 Comment:** The presence of concrete chunks on a rail line poses enormous public safety risks, both to the personnel on the train and to the public. The train carries large quantities of gasoline under those bridges every day. The last gasoline tanker derailment in Middlebury posed potentially catastrophic risk to the people and properties in the town.

*Comment source: I7*

**SE17 Response:** Comment noted. As described in Sections 1.4 and 1.5 of the revised EA, the Purpose and Need for the Project includes the need to address safety issues.

### **HISTORIC RESOURCES (HR)**

**HR1 Comment:** I have a question because the church is a historic building. I thought that there was a monitoring plan in place and I'm disturbed to hear the preservation expert say that one will be developed. What has yet to be developed that we haven't already been presented?

*Comment Source: O2*

**HR1 Response:** The document, *The Guidelines for Preparing a Historic Structures Management Plan* has been developed and provided for public comment. These guidelines allow the contractor to spell out the specifics in terms of vibration monitoring levels, Area of Potential Effect (APE), and other relevant considerations. All will be approved by the VTrans Historic Preservation Officer (HPO). The guidelines could not include the specific levels of vibration because the levels depend on the building specifics, which could only be completed after an inventory.

The steps are outlined on pages 5-6 of the above-mentioned document under "anticipated next steps" (See Appendix G of the revised EA). Currently the Project is at Milestone B: Approval of APE. Next, there will be initial building inventories conducted by the Project Engineer and/or its subcontractors. The results of this inventory will be used in part for developing the specific survey and monitoring requirements of the special provisions.

### **NOISE & VIBRATION (NV)**

**NV1 Comment:** In the EA there's something called long term noise monitoring and short term noise monitoring, and there's only one site in the whole construction area for the long term, and I guess I would like to know the difference between long term noise monitoring and short term noise monitoring, and I'm a little anxious that there may be major changes in the plans that we've already discussed and negotiated. I thought they were pretty much done except figuring out the engineering exact specifications for what had been promised.

*Comment Source: O2*

**NV1 Response:** Long-term noise monitoring was conducted in the range of existing ambient noise levels in the Study Area during an entire 24-hour period to understand daytime and nighttime levels. Short-term noise monitoring was conducted at several locations within the Study Area to understand the range of existing ambient noise conditions in different areas. See also response to comment HR1.

**NV2 Comment:** The Bridge 239 project had higher level decibels of noise than projected, and were not safe for infants.

*Comment Source: I3*

**NV2 Response:** Noise associated with construction-period activities and long-term operations of the bridges and rail line have been assessed according to criteria established by the Federal Transit Administration (FTA). These criteria were based on a study conducted by the United States Environmental Protection Agency (EPA) in 1974 to establish noise level criteria that would protect public health and welfare against hearing loss, annoyance and activity interference. Therefore, noise has been evaluated for this Project in regard to protection of public health.

**NV3 Comment:** The Middlebury Selectboard is concerned that noise levels at night are projected to exceed acceptable levels for area E5 – the Middle Seymour Street neighborhood – since those residences sit less than 30 feet from the rail track. While the mitigation offered may be adequate for moderate to elevated noise levels, it does not appear to be adequate for exceeding levels, which are considered harmful.

The Middlebury Selectboard urges the State’s project team to meet with the affected residents in order to discuss the projected noise levels, to develop a clear timeline of noise-generating activities, and, most important, to explore stronger mitigation measures than are provided for in the EA.

*Comment Source: G1*

**NV3 Response:** Noise associated with construction-period activities have been assessed according to criteria established by the FTA. This includes limiting noise (Leq) over an 8-hour period to 80 dBA during the day and 70 dBA during the night at residential locations and 85-dBA at commercial locations. These limits are consistent with or below the United States Occupational Safety and Health Administration (OSHA) threshold (90 dBA 8-hour time-weighted average) and the National Institute of Occupational Safety and Health (NIOSH) threshold (85 dBA 8-hour time-weighted average) for minimizing the risk of hearing loss. Therefore, implementing mitigation to maintain noise levels below the FTA criteria should be sufficient to noise levels that would be considered harmful. Nevertheless, the Project team is committed to maintaining communication with potentially-affected residents, informing them of clear timelines of noise-generating activities and implementing mitigation measures to meet the FTA noise limits.

## **HAZARDOUS/CONTAMINATED MATERIALS (HC)**

**HC1 Comment:** What is the chance of explosion from RR cars? What happens if there is one? What is the potential for a train accident?

Has VTrans assessed the potential damage from a train accident in downtown Middlebury? If it hasn’t, I fail to see how the Agency can appropriately make any sort of a cost/benefit evaluation of the project. Specifically, the public should know the blast radius of one train car of gasoline and the potential economic harm of such an incident.

*Comment Source: I19, I21*

**HC1 Response:** It is difficult and is beyond the scope of the revised EA to calculate such probabilities, however it should be noted that the Project will substantially improve railroad safety from existing conditions.

**HC2 Comment:** Why was there no mention of the 2007 derailment and spill in the EA?

*Comment Source: I3*

**HC2 Response:** The 2007 derailment is mentioned in the revised EA in Sections 3.5.3 and 3.17.3 and supports the need for safety improvements to the railroad, which the Proposed Action would achieve.

**HC3 Comment:** Will there be an Emergency Response Plan developed for the community?

*Comment Source: I1, O2*

**HC3 Response:** The Town has adopted a local emergency operations plan (LEOP). VTrans and VTR will work with the Town in amending the LEOP to include details associated with the built Project. A construction-related Emergency Response Plan (ERP) will also be developed by VTrans with input from the contractor and emergency response personnel as referenced in Section 3.16 in the revised EA.

**HC6 Comment:** The Middlebury Selectboard supports the State's commitment to work with all stakeholders, including Middlebury's emergency responders and Vermont Rail, to develop a written emergency response plan in the event a spill of hazardous materials in the downtown rail corridor, both during construction of the project and once the tunnel is operational. The plan should address the safety of the emergency responders and individuals and properties in the downtown area as well as impact on water quality of the Otter Creek. The Town is ready to initiate plan development with the State at the earliest opportunity.

*Comment Source: G1*

**HC6 Response:** See response to Comment HC3.

**HC9 Comment:** I'm not very confident in the kind of attention and time limit that's going to be allowed if there's a spill before it goes over into the creek. I'm not very confident that we will have the tankers available and our fire department and our responders will be able to get there fast enough to pump it out to get it some place safe without it just spilling over to the creek.

I am sure there's lots of other people who are --- really feel insecure when we're told a plan will be developed with your own emergency responders.

*Comment source: O2*

**HC9 Response:** See response to Comment HC3.

### **FLOODPLAINS (FP)**

**FP1 Comment:** There's a short distance between the railroad track and the Otter Creek. Will there be mitigation to that area in case of a high flood?

*Comment Source: 11*

**FP1 Response:** Refer to Section 3.6 of the revised EA, which indicates there is no increase to flood elevations as a result of the Project. Although the track will be lowered, the elevation of the existing ground surface between the track and the river will be restored to prevent the track from being flooded. See Figure 3.6-1.

**FP2 Comment:** The EA does not specify the depth of the sheet pile, its locations, or the length for the flood berm with sheet pile core. The EA does not discuss how flooding will be prevented if driving sheet piles is not feasible at those locations.

*Comment Source: 17*

**FP2 Response:** The revised EA is based on a conceptual design level. The level of detail contained in the comment will be addressed during final design. Even if sheetpiling is not possible, other means of engineering design can accommodate subsurface site conditions.

### **STORMWATER (SW)**

**SW1 Comment:** The potential increase in pollutants and debris that would transfer from the tracks/tunnel and go into the Otter Creek. It should be analyzed. Green infrastructure such as raingardens should be included.

There's no data in the environmental assessment. The stormwater impacts. We as an organization are spending an awful lot of time and some federal money on mitigating stormwater effects in central New York. Here you have the water that would be coming from the track. You're going to have more water if it's deeper in the tunnel. It's going to then be transferred to Otter Creek. It's going to go into Otter Creek in an eddy that's pretty stagnant. Whether there's going to be cumulative increase in pollutants in that pond I don't know. There's nothing in the assessment about that. There's also debris there that could serve to absorb and adsorb pollutants. So that needs to be analyzed.

*Comment Source: 119*

**SW1 Response:** The proposed Project stormwater design is consistent with current engineering design criteria and appropriate for the site and setting. Also, see Chapter 5 of the revised EA which documents the coordination that has been occurred with the DEC Stormwater program.

### **WILDLIFE AND WILDLIFE HABITAT (WL)**

**WL1 Comment:** Surprised that there was no biological assessment in the EA, no survey of existing vegetation.

*Comment Source: I3*

**WL1 Response:** See Section 3.7 of the revised EA for this information. Note that no protected flora has been identified in the Study Area. Therefore, no coordination with USFWS or preparation of biological assessment of vegetation is required.

**WL2 Comment:** Where exactly will the access road be from Water Street? It is a narrow corridor between the tracks and the Otter Creek, and the riparian buffer has not been mentioned.

*Comment Source: I3*

**WL2 Response:** There will be an extension of Water Street towards the VWRC, to be used temporarily for construction traffic and access to the Battell Block during construction. See Section 2.5.1.2 and Map 3.2.1 in the revised EA.

**WL3 Comment:** Woody vegetation in and around the downtown will be removed in connection with this project. Although it may comprise a small extent within the larger area, it is important in the downtown. The new portion of the Green *may* provide new habitat, although in the pictures you show it as a grassy lawn. You state correctly that no decisions have been made concerning the landscaping of the Green, but presumably the area above the tunnel will not be suitable for large trees. I think you should provide funding for replacement of all the trees removed, to be located where the Town sees fit somewhere along the project corridor.

*Comment Source: I18*

**WL3 Response:** Proposed mitigation measures can only be tied to Project-related impacts. However, a riparian buffer restoration plan along Otter Creek where the temporary access road to the Battell Block will be located will be included in the final restoration plan for that area.

**WL4 Comment:** Assurances are needed for clean fill and clean construction treads, in order to prevent introduction of non-native invasive species.

*Comment Source: I3*

**WL4 Response:** The contract specifications will include procedures related to clean fill and construction tracking in accordance with construction industry standards.

### **THREATENED & ENDANGERED SPECIES (TE)**

**TE1 Comment:** Bat habitat should be replaced. The bat habitat has been assessed, but then you propose to do nothing. Bat houses could be located on trees or other structures in the area. You should spend as much money replacing the bat habitat as you spent observing the bats and preparing Appendix D.

*Comment Source: I18*

**TE1 Response:** See Section 3.8.5, which describes the number of mitigation approaches proposed, including the installation of artificial bat roosting sites (including bat houses and artificial bark structures), adherence to time-of-year restrictions on tree cutting, and additional surveys and studies.

### **TRAFFIC (TR)**

**TR1 Comment:** Delivery trucks that need to access Battell Block via Water Street will have to make a right hand turn from Cross Street to Water Street. It is a difficult turn. It is also a major pedestrian and biking route. It should be reevaluated.

*Comment Source: I3*

**TR1 Response:** Deliveries to the Battell Block storefronts along Merchants Row: There will be a ten-week period during Year 3 when deliveries to Battell Block businesses, as well as other Main Street and Merchants Row businesses, will have the option of delivering in smaller vehicles or stopping farther away from the store fronts to make the deliveries. Additional consideration will be given to requiring deliveries to be made at times of the day when pedestrian, bicycle, and vehicle traffic is less.

Deliveries to the parking area behind Battell Block: In the same way that the existing Battell Block rear parking area is not conducive to tractor-trailer truck access, the Water Street access was never intended to provide tractor-trailer truck access to the Battell Block rear parking area. If deliveries are to be made to the rear parking area at the Battell Block, it has been assumed that nothing larger than a single unit box truck could make the Water Street access and effectively turn around in the Battell Block parking area. The existing corner radius at Cross Street and Water Street is sufficient for turning this size vehicle.

### **PARKS, RECREATION, CONSERVATION LAND (PL)**

**PL1 Comment:** A mix of plantings such as mentioned above should be planned so that it provides sources of pollen and nectar forage for pollinators, as well as increase the aesthetic enjoyment of the park by residents, by ensuring that there is as wide variety of blossoms throughout as much of the growing season as possible. The choice of perennial flower plantings will prevent the Town of Middlebury from having to pay to have flowers replanted each spring. By the same token, the grass used to replant Triangle Park should be a slow growing mix such as Pearls Premium. Pearl's Premium is not only a low maintenance grass consisting of native American grasses that only needs to be mowed once every 4-6 weeks, but it is extremely drought resistant and stays green all through winter.

*Comment Source: I4*

**PL1 Response:** See Section 3.11 of the revised EA, which describes the public's ability to participate in future process to be followed for design of Village Green reconnection. The commenter is encouraged to participate in this process.

**PL2 Comment:** The EA dismisses the impact of the permanent maintenance road because the State plans to re-plant the road with grass after construction is over.

The road is a permanent maintenance road, however, not a temporary construction road. It will be used in perpetuity to bring to the outfall the equipment needed to maintain the outfall. What is now a Park dedicated to pedestrian visitors will be dissected by a road used by cars, trucks, and heavy equipment, for as long as there is a railroad through Middlebury.

*Comment Source: 17*

**PL2 Response:** The plans for the permanent maintenance road have been revised and it is no longer a part of the Proposed Action. After careful consideration, it was determined that routine maintenance could be performed without a permanent road to the new outfall. The temporary access road will be grassed over following the completion of the stormwater outfall.

#### **SECTION 4(F)**

**SF1 Comment:** The EA fails to perform the function required by Section 4(f) of the Transportation Act. It fails to create a useful record upon which a determination can be made as to whether there exist prudent and feasible alternatives to use of historic resource and parks.

The EA does not include the documentation and analysis required by the FHWA regulations governing constructive use of parkland and *de minimis* impact determinations.

*Comment Source: 17*

**SF1 Response:** Section 4(f) is a separate law, and, in accordance with FHWA guidance, can be incorporated into the EA or be a separate document. For historic resources, Section 4(f) relies on the Section 106 process. The Section 106 analysis was included in the EA for public comment, as public comment is part of the Section 106 process. Following the completion of the Section 106 process, the Section 4(f) evaluation was able to be completed.

Based on FHWA guidelines, for projects processed with an Environmental Impact Statement (EIS) or an EA, the evaluation should typically be submitted as a subsection of the NEPA document where pertinent summaries from various sections of it are included.

Because the Section 4(f) uses of the parks and historic resources are considered to have *de minimis* impacts, they do not require the consideration of avoidance alternatives. The only exception is the Section 4(f) use of the remaining portions of the historic bridges, which did consider feasible and prudent avoidance alternatives.

**SF2 Comment:** Easements in Marbleworks Park will authorize and cause activities that will be destructive and harmful to the park, including the riprap area, the stormwater outfall, and the permanent maintenance road.

*Comment Source: I7*

**SF2 Response:** See response to Comment SF1. The Section 4(f) use of Marble Works Riverfront Park has been determined to have *de minimis* impacts and does not require the consideration of feasible and prudent avoidance alternatives. Also, VTrans has determined that a permanent maintenance road will not be required.

### **NEPA PROCESS (NP)**

**NP2 Comment:** Why is FHWA/VTrans planning to put in the temporary bridges in July when the EA has not yet been approved? It would seem to me the essence of common sense and prudence to hold off on any work on temporary bridges until you know the FHWA's decision is.

*Comment Source: I12*

**NP2 Response:** The project to place temporary bridge decks on an interim basis is considered a separate project under NEPA and is not a part of the revised EA. The existing bridges have experienced an increased rate of deterioration this past year with new full depth holes appearing in the sidewalk areas of both bridges. VTrans has determined that demolishing the bridges now and replacing them with temporary bridges until permanent structures are constructed is in the interest of public safety and mobility.

**NP4 Comment:** Will the public have a chance for rebuttal if the public disagrees with VTrans responses?

*Comment Source: I22*

**NP4 Response:** FHWA's decision to make a Finding of No Significant Impact, or to elevate the level of NEPA to an Environmental Impact Statement, is administratively final. No further review process of the revised EA is required or intended.

**NP5 Comment:** The EA does not contain an analysis as to whether an EIS is required; thus not meeting the purpose of an EA.

*Comment Source: I7*

**NP5 Response:** The revised EA for each resource does include an analysis of the context, duration and intensity of effects as required per 40 CFR §1508.27. However, the determination of whether an EIS is required is the responsibility of FHWA based on the analyses provided in the revised EA.

**NP7 Comment:** The EA fails to determine whether impacts are significant as defined by CEQ regulations: 1508.27(b)(1) & (3) – both adverse and beneficial impacts of significant; proximity to cultural resources such as parks -

- Two permanent easements will traverse across a park, Marbleworks Park. The easements will authorize and cause activities that will be destructive of and harmful to the Park. The State will construct a riprap area on part of the slope of the Park down to the river, and will construct a stormwater outfall pipe within the riprap area. The State will also construct a permanent maintenance road through the Park to the area of the riprap and outfall. All of these changes will be highly visible, if not prominent, to users of the Park.
- The preferred alternative calls for construction within the Otter Creek. The preferred alternative requires that the State fill in part of the Otter Creek, in two locations.

The people of the State of Vermont are the owners of the Otter Creek and of the land beneath its waters, *i.e.* below OHW. It is held in trust for them under the public trust doctrine and Chapter II, Section 67 of the Vermont constitution. *City of Montpelier v. Barnett*, 191 Vt. 441(2012).

- The changes in and to the Park and the river are set forth, in describing the project, but their impacts are never mentioned or evaluated. There is no assessment of the visual impacts on Park users. There is no assessment of the impacts on the Otter Creek. The EA does not weigh whether these impacts are significant and therefore require an EIS.

*Comment Source: 17*

**NP7 Response:** See response to Comment NP5. In addition, in response to the specific impacts listed in the comment, the Project was determined to have a *de minimis* impact to Marble Works Riverfront Park; the impacts to the Otter Creek are considered minor, and will be permitted by the USACE; and the EA has been revised to include an analysis of Visual and Aesthetic Resources (see Section 3.18 of the revised EA).

**NP8 Comment:** The EA fails to determine whether impacts are significant as defined by CEQ regulations: – 1508.27(b)(2) – public health and safety

- The project will trigger exposure of the public, adjoining landowners, and Otter Creek to soils, dust and/or groundwater contaminated with toxic chemicals. The

EA promises that there will be mitigation of these harms, in § 3.9.5. Apparently in reliance on this mitigation, the EA dismisses these concerns.

- Federal court decisions, including some issued in the District of Vermont, bar reliance on mitigation to avoid finding of significance unless there has been a clear showing that mitigation will be effective. Absent this showing, it is unlawful to rely on mitigation to support a finding of no significant impacts. Yet that is what this EA does. It proposes mitigation but contains no evaluation of its efficacy.

*Comment Source: I7*

**NP8 Response:** See response to Comment NP5. In addition, mitigation for temporary construction impacts consists of standard methods to control and/or treat exposed soils, dust, and groundwater that are incorporated on VTrans projects per applicable regulations and contract specifications, and have been developed in coordination with resource agencies. These measures are intended to limit the public's exposure to these effects.

**NP9 Comment:** The EA fails to determine whether impacts are significant as defined by CEQ regulations: 1508.27(b)(4), b(5) – highly controversial and uncertain nature of the project and its impacts.

- The CEQ regulations require that an EA must be concise. The CEQ has explained where a project or its impacts are sufficiently complex or uncertain that an EA exceeds 10 to 15 pages, that fact alone indicates that an EIS is needed.
- The lowering of the track will cause the floor of the tunnel to be well below the 100-year flood level, with little separating the tunnel from the Otter Creek. A 100-year flood could inundate the tunnel and the foundations of the buildings that adjoin the railroad right of way.

*Comment Source: I7*

**NP9 Response:** See response to Comment NP5. The EA has been prepared in accordance with CEQ regulations and FHWA regulations and guidance. The Project will maintain the elevation of the existing topography between the Otter Creek and the track. The drainage design for the tunnel allows for appropriate water management. It is unclear the mechanism by which water in the tunnel would inundate the foundations of adjoining buildings given the proposed design of the tunnel.

**NP10 Comment:** The EA fails to determine whether impacts are significant as defined by CEQ regulations: 1508.27(b)(1) & (8) – both adverse and beneficial impacts of significance; proximity to historic resources; adverse impacts on listed historic structures.

- The tunnel will be a massive concrete structure in the middle of downtown Middlebury, which will remove from public view both the historic railroad grade

and its historically significant stonework. A planned beneficial impact is the pedestrian area that is planned for the surface of the tunnel, where the open, historic railroad grade is now. The historic visual landscape of the town will be altered forever. The EA does not mention or apply b(1) or b(8).

*Comment Source: 17*

**NP10 Response:** See response to Comment NP5. In addition, the reestablishment of the Village Green over the existing railroad cut is considered by many people to have a beneficial visual impact. The revised EA acknowledges that the loss of the view contributes to the Section 106 adverse effect for the Project. Mitigation measures, such as reusing some of the ashlar blocks from the bridge wingwalls have been incorporated into the Section 106 letter. Views of the depressed railroad track will remain at both ends of the tunnel. It is worth noting that the reestablishment of the Village Green over the railroad would recreate the historic view that existed prior to the construction of the railroad in 1849. The revised EA contains an analysis of Visual and Aesthetic Resources. See Section 3.18.

**NP11 Comment:** The EA fails to determine whether impacts are significant as defined by CEQ regulations: 1508.27(b)(10) – whether the action threatens violation of federal, state, or local environmental protection laws or requirements.

- If a state or local law or plan is preempted, that heightens the need for an EIS.
- The CEQ regulations state that the threat of violating local law requirements imposed for the protection of the environment is a factor weighing in factor of preparation of an EIS.
- The EA does not mention the Middlebury zoning ordinance other than to say it is preempted by the ICCTA, nor does it apply § (b)(10).
- Under NEPA, if there is preemption, that renders the conflict more significant, not less, and the need for an EIS greater.
- The purpose of the ICCTA, and its jurisdictional limits, are confined to regulation of railroad projects conducted by interstate railroad corporations. Even if this were considered a railway project, the State owns the railbed, not the Vermont Railway.
- EA fails to recognize significance of the proposed filling of Otter Creek. These are public trust lands. Filling any part of the river without legislative authority to do so would be a violation of state law and Chapter II, § 67 of the Vermont Constitution. *City of Montpelier v. Barnett, supra*. This is the kind of conflict with state law that renders impacts significant.

*Comment Source: I7*

**NP11 Response:** See response to Comment NP5. In response to the points raised in the bulleted portion of Comment NP11, in spite of the preempted status of the Proposed Action, VTrans and the Town have worked closely with ANR officials with regards to avoiding and minimizing impacts to natural resources; the Proposed Action does not violate any local law and the revised EA states that the Proposed Action is consistent with local regional and state planning; VTrans legal counsel has determined that the ICCTA applies to the Proposed Action; and concerning the Otter Creek, see response to Comment NP7.

**NP12 Comment:** The EA is fundamentally flawed. It completely fails to perform the basic function that FHWA regulations explicitly require of an EA – if fails to determine whether an EIS is required. From its introductory overview, through each chapter, and ending in its conclusion, this basic function is ignored. The FHWA and Council on Environmental Quality regulations essential to this task are not mentioned or applied. The EA was written as if the FHWA and CEQ had not issued any regulations governing the function and requirements of an EA.

The purpose of the EA was to determine whether impacts are significant as defined by the CEQ regulations – but this EA does not do so.

*Comment Source: I7*

**NP12 Response:** See response to Comment NP5. The revised EA assesses the effects of the Proposed Action for 18 resource areas (including an evaluation of the context, duration and intensity of all effects) and includes an assessment of cumulative impacts.

**NP13 Comment:** The FHWA should reject the environmental assessment as inadequate and compel the proponent to submit a project limited to bridge replacement or alternatively force the proponent to perform a complete environmental impact statement for a new railroad project governed under Vermont's Act 250 without cover of federal preemption.

*Comment Source: I12 and I15*

**NP13 Response:** The purpose of the EA is solely to determine if the Proposed Action has significant impacts requiring the preparation of an EIS or not. It is not intended to compel any specific alternative or require compliance with inapplicable laws and regulations. FHWA is independently evaluating the revised EA to assist its decision making. See responses to Comments PN1, PN2 and NP5.

**NP14 Comment:** With the March 2017 decision to demolish the old bridges and install temporary bridges this summer, the urgency of commencing work on the larger project has essentially become moot. The safety issue has been “solved” for the short term; installation of temporary bridges means that there is no continuing danger of either of the bridges falling down.

*Comment source: I10*

**NP14 Response:** We concur that the temporary bridges effectively address the emergency condition that developed in the spring of 2017. However, that project was considered a separate project under NEPA and had a separate purpose and need than the Project as addressed in the revised EA.

**NP15 Comment:** There's no real description of alternatives. There's no analysis that gives the cost of the different alternatives or rather something that I'm in favor of the energy alternatives, which one is the most energy effective or ineffective. So there's no useful content. A full EIS is definitely required in this project.

*Comment source: 119*

**NP15 Response:** See Section 2.3 of the revised EA. Order of magnitude costs were one of the evaluation criteria used for the consideration of alternatives, and costs were in fact part of the decision making to eliminate certain alternatives. The design vertical clearance was selected in part to accommodate double-stack freight and Amtrak use in the future, which collectively contribute to the cost-effective movement of freight and people. A cost/benefit analysis is not required for the revised EA.

**NP16 Comment:** I ask that the administrative record upon which the FHWA and the State based the decision to draft an EA be included in this record, including Mr. LaFiandra's letters dated October 27, 2016 and December 1, 2016, my letter to the Vermont Agency of Transportation and to the FHWA dated October 31, 2016, and its attachments, and the prior documents created by VHB, the State and the Town, that were cited in my letter. For ease of reference I attach to this letter copies of Mr. LaFiandra's October 27, and December 1 letters, my October 31, 2016 letter, and the memorandum from Town Manager William Finger quoted in that letter.

*Comment source: 17*

**NP16 Response:** The comments in these earlier filings were considered in the course of preparing the public comment edition of the EA and the revised EA.