

**A. Priority issues considered during the Town’s preparation of comments on Vermont’s 2015 Draft Rail Plan.**

During The Town of Charlotte’s review of the Draft Rail Plan, we noted that:

- Four times as many trains and twice as much freight will be passing through the State of Vermont—and all of this travelling at much faster speeds up to 79 mph.
- Some 6.7 million tons of freight are carried in Vermont annually. According to the information provided in the Draft Rail Plan, roughly 20% (1.3 million tons) of this freight currently consists of fuels and chemicals.
- Almost 70 percent of the freight traffic on the rail will consist of through-movements, with the majority of rail freight destined for all regions of the country.
- The Town of Charlotte is located on the State’s Western Rail Corridor, which the Draft Rail Plan has identified as the top-most priority for infrastructure improvements, especially for freight. The Plan calls for improving this corridor to be both compatible with and competitive to the rest of the rail network in the US.
- The Vermont Agency of Transportation has identified “the needs of resource-extraction industries” as one of its stated “purposes of the Draft Rail Plan”; and
- Through this Draft Rail Plan, the improved rail infrastructure will link Charlotte, along with the other towns on the Western Rail Corridor, to Albany, New York.

Although this information is not mentioned in the Draft Rail Plan, our research on the national issues around rail transportation and freight has revealed that Albany New York is the North Eastern regional hub for Bakken oil. The Town of Charlotte is consequently deeply concerned about the likelihood that an even greater percentage of the freight moving through our Town will not only be toxic, explosive and flammable chemicals and fuels—but may well include significant quantities of Bakken oil. This volatile fuel, as everyone is aware, has been the subject of ever-growing concern, controversy, and litigation across the country due to dangers of transporting this particular oil by rail, including a number of serious fires, explosions, and derailments. The Town of Charlotte further notes that the continued use of outdated and substandard tankers, including DOT-111s which are known to be easily prone to puncture, exacerbates the dangers of transporting highly volatile materials, such as Bakken oil, by rail.

With these issues in mind, the Town of Charlotte, along with the Charlotte Fire Chief, and a group of residents (Citizens for Responsible Railroads) have consolidated our comments under four priority areas:

1. Strengthen the Draft Rail Plan for a Safe Rail System
2. Add new goals to Protect the Public, Natural Resources and the Environment

3. Add Appropriate, Secure Designated Rail Yards as a top priority for the Western Rail Corridor
4. Identify Local and State Roles in Railroad Safety and Accountability

The Town of Charlotte strongly urges the Vermont Agency of Transportation to address these priority areas prior to finalizing the 2015 Rail Plan. The Town – along with an organized group of our citizens—stands ready to engage in further dialogue with the State to do so.

## **B. Comments and Recommendations on the Draft Rail Plan.**

### **PRIORITY # 1. Strengthen the Draft Rail Plan to assure that Vermont can attain its goal of a safe rail system.**

The Draft Rail Plan has stated 7 goals:

- i. Maintain the State’s rail system in a state of good repair
- ii. Expand the rail system’s capacity to accommodate growth objectives
- iii. Expand the rail system’s use
- iv. Provide a rail system that is financially sustainable
- v. Improve intermodal connectivity
- vi. Improve the rail system to support economic development
- vii. Enhance the safety of the rail system

Of these seven goals, the Town of Charlotte notes with great concern that the last goal—enhancing the safety of the rail system -- has received the least attention in the Draft Rail Plan.

#### **1. Enhancing The Rail System Safety Goal Through Prevention**

##### *Improving the safety of private and agricultural crossings*

1.1 The majority of the Plan’s discussion on the safety goal is limited to grade crossings or “public crossings”. For example:

- The Draft Rail Plan acknowledges the potential danger to large numbers of people at public crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/ or motor vehicle carrying hazardous materials.
- The Draft Rail Plan also cites the *FHWA Railroad-Highway Grade Crossing Handbook* , which states: “the prioritization of crossing improvements should be based on: The potential danger to large numbers of people at public crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/ or motor vehicle carrying hazardous materials.”

- Page 21 of the Plan states: “This funding program requires states to develop a methodology to prioritize crossings for improvement, based in part on an accident prediction model or a hazard index.”

1.2 Only on page 69 of the Plan does the plan allude to the importance of ensuring safety for other types of rail crossings: “Some states actively solicit input from local road authorities to identify hazardous crossings. Crossings may have low accident prediction rates but may nevertheless be hazardous...”

The Town of Charlotte agrees whole-heartedly with this last statement. The dramatic increase in freight volume and speed, along with more and faster passenger trains, increases the potential for collisions or derailments along the line. With the impending changes in the traffic on the railroad, those who use public as well as private crossings face a significantly increased risk to their safety. Given that much of the train traffic includes hazardous freight, there is also an increased risk of accidents and collisions that could include fires, leaks and explosions at these crossings.

1.3 It is short-sighted and dangerous to ignore the inherent risks to all crossings—public and private—that come along with the faster, longer, heavier, and more frequent passenger and freight trains moving along the rails in greater numbers. The Town of Charlotte has at least seven private/agricultural crossings which are used by heavy and slow-moving farm vehicles and equipment, livestock, pedestrians, bikers, and horse riders. Many of these crossings are unmarked, and trains currently do not slow down or blow the whistle consistently at most of these crossings. One of the private crossings has stop signs, none of the others have had any brush clearing done or have warning signs in place.

Improving the safety of public crossings

1.4 Presently there is only one gated crossing on the Western Rail Corridor south of Harbor Road in Shelburne, which is located at Ferry Road in Charlotte.

Improving the safety of railroad bridges, underpasses and culverts

1.5 The Draft Plan (p. 158) states that:

*VTrans could look for areas where investments provide a level of service that is “good enough” for rail asset users rather than necessarily deal. As an example, in order to accommodate 286,000 pound railcars, railroad track infrastructure generally must have rail of at least 100 pounds per yard, two-thirds of ties in good condition, and ballast in good condition. While trackage meeting these minimum conditions may not be ideal, it could suffice for railroads to operate 286,000 pound railcars. The same may be the case*

*for railroad bridge upgrades, where the scope of improvements may range from upgraded replacement to good enough to meet users' needs.”*

The Town of Charlotte interprets ‘users’ in the above statement to mean the railroad companies and possibly the owners of the freight cargo transported by the railroad companies. The Town therefore considers this statement to fall short of the mark in terms of achieving the goal of a safe rail system. Railroad bridge upgrades and improvements in Charlotte need to go beyond being “good enough” to meet ‘users’ needs and absolutely must meet public safety needs. The railroad bridge in Charlotte must be “good enough” to ensure that the Town, its residents, and those travelling on the road near and under this railroad bridge are safe. The Town of Charlotte notes that this bridge dates to the year 1910, and is in need of considerable improvements to support heavier, longer, faster, and more trains passing on it and to assure that people and vehicles passing under it are protected.

### **1.5 RECOMMENDATIONS:**

- 1.5.1 Install gates at all public road crossings
- 1.5.2 Install crossing markings at all private/farm crossings so as to be visible to train operators
- 1.5.3 Implement appropriate and ongoing brush clearing at all public and private crossings.
- 1.5.4 Install and maintain appropriate warning signs at all public and private crossings
- 1.5.5 Identify bridges, underpasses and culverts along the rail corridors that must be upgraded and provide every community along the rail corridor with the details for the repair or replacement schedules for the bridges and culverts in their community.
- 1.5.6 State of Vermont to insist on regulations requiring slower train speeds at all crossings
- 1.5.7 State of Vermont to insist on standards for train brakes follow newest guidelines (still being debated nationally between legislators and railroad companies)
- 1.5.8 Include clear regulations related to blowing the warning whistle before reaching a private or farm crossing
- 1.5.9 The Town of Charlotte to work with the State to identify all private and farm crossings, meet with the residents, farmers and property owners who use these crossings to discuss additional recommended safety measures to improve rail safety at these crossings.
- 1.5.10 The Town of Charlotte further recommends that these and any additional recommendations are presented to the Agency of Transportation, discussed, finalized and incorporated into the Draft Rail Plan along with a budget that will cover the necessary safety measures for these crossings.

## **2. Enhancing the rail system safety goal through disaster preparation and response**

2.1 Local emergency response agencies in Charlotte, Chittenden and Addison counties, as well as any Towns and emergency response agencies in Vermont that have a rail line in use in their communities must be prepared to respond to the following risks:

- 2.1.1 Increased rail traffic and speed on the rails per the plan increases the risk of a collision, derailment, a hazardous material spill or a fire for Charlotte or any town

with a rail line. The risk levels are especially high at public road and private farm crossings.

- 2.1.2 The Draft Rail Plan does not specify what kind of cargo will be shipped through the dramatic increase in rail traffic and freight cargo in Vermont-- but as noted earlier, the Town of Charlotte is making an educated guess its plans include the through-movement of Bakken oil via Albany, as well as other explosives and flammables.
- 2.1.3 While the Draft Rail Plan does occasionally mention *training* for first responders, there is insufficient detail in the Plan regarding how many first responders will be trained, what Towns and local agencies will be prioritized, how often the training will occur, and whether this training will be sufficient to prepare first responders to potential disasters related to Bakken oil and other toxics and explosives.
- 2.1.4 Beyond *training* first responders, the Draft Rail Plan does not describe or indicate in the general budget, the amount of resources that will be available to Towns, and local response agencies to handle disasters—in terms of equipment, supplies, materials, and man/woman power.
- 2.1.5 The Plan does not address additional costs and resources that would be required to assist in emergency evacuations, liability insurance, and resources to cover the potential loss of life and property as a result of any rail accident-related disaster in the Town of Charlotte or other towns through which hazardous materials are transported by rail.

## 2.2 RECOMMENDATIONS:

- 2.2.1 The Town of Charlotte strongly urges the Vermont Agency of Transportation to include more discussion in the Draft Rail Plan specifically on the matter of hazardous materials, critical precautions that will be taken to transport these through Vermont, and plans to both mitigate and respond to potential disasters.
- 2.2.2 In addition, given the national debate around the risks and liabilities of oil-by-rail (particularly Bakken oil, but other explosives and toxics as well), the Town strongly urges the Agency of Transportation to include a discussion in the Draft Rail Plan that demonstrates that the Agency has studied nation-wide trends on this issue, and has considered these trends in the development of this Plan. Examples of nation-wide trends include legislation underway to require railroad companies to carry liability insurance, and State-led regulations imposing improved speed controls, brake systems, and more regular inspections of trains and tracks—after findings revealed numerous violations of federal regulations (see recent news coverage on measures taken by the State of New York to strengthen rail safety, on recent legal cases against the USI Agency of Transportation and the transport of Bakken oil by rail, etc.).
- 2.2.3 Provide funding in the budget of the Draft Rail Plan for the Towns and emergency responders in communities where rail lines exist for the following:

- Appropriate training of all Towns and first responder agencies for rail related emergencies
  - Identification of the resources that any community with a rail line running through it would need in order to adequately respond to a passenger or freight derailment, collision, hazardous material spill or fire—and to handle the aftermath of these events.
- 2.2.4 Every community along the rail corridor should be provided with the State’s emergency response plan, as well as revised All Hazards Mitigation Plans, for rail related emergencies in their community, as well as specific information on who is responsible for what parts of an emergency involving a collision, derailment, hazardous material spill or a fire, and who pays for it when any of the above occurs.
- 2.2.5 If the State is unable to provide a detailed plan containing all of the above information, then funding should be provided so that each Town or community can draft their own plan. Funding to these communities should include covering the cost of purchasing the specific equipment, rescue tools, protective gear, vehicles (such as off-road ATV’s), to develop accessible water sources near the rail lines, spill containment products, and foam concentrate specifically designed for the hazardous cargos that the railroads will be transporting in appropriate quantities to deal with a worst case derailment and fire.
- 2.2.6 Within the identified evacuation distances for a major spill or fire at the present Charlotte siding are more than one hundred residents, a Velco substation, a community health care center, the fire station, the town office, a daycare center, a commercial business center, the post office, the library and two retail markets.
- 2.2.7 A copy of the State’s emergency response plan for rail related emergencies in Charlotte which shall include specific information on who is responsible for what parts of an emergency involving a collision, derailment, hazardous material spill or a fire, and who pays for it when any of the above occurs.
- 2.2.8 If the State is unable to provide a detailed plan containing all of the above information, then funding will be provided so that Charlotte can draft their own plan.
- 2.2.9 State funded training for Charlotte emergency responders to deal with rail elated derailments, spills and fires.
- 2.2.10 State funded study to identification the resources that Charlotte and its emergency responders would need to adequately deal with a passenger or freight derailment, collision, hazardous material spill or fire.
- 2.2.11 State of Federal funding to purchase the specific equipment, rescue tools, protective gear, vehicles (such as off-road ATV’s), to develop accessible water sources near the rail lines, spill containment products, and foam concentrate specifically designed for the hazardous cargos that the railroads will be transporting in appropriate quantities to deal with a worst case derailment and fire.

- 2.2.12 Provide specific details of the plan for upgrading or replacing the Greenbush Road & Lake Road 1911 underpass and any culverts along the rail corridor in Charlotte. When the 1911 underpass is closed for repair or replacement a significant population of Charlotte residents must take a significant detour.

## **PRIORITY #2: INCLUDING TWO ADDITIONAL GOALS TO PROTECT THE PUBLIC, NATURAL RESOURCES AND THE ENVIRONMENT**

### **1. Public health and safety, and protecting natural resources and our environment**

1.1 Even if it is strengthened as recommended above, The Draft Rail Plan's Goal #7 (safety of the rail system) does not go far enough to protect communities and the environment from the risks and impact inherent in quadrupling the number of trains, doubling the cargo, and dramatically increasing the speed of train traffic on the rails.

1.2 While the Draft Rail Plan does suggest that an increased use of the rail system will reduce the amount of congestion, pollution, and cargo on roads and highways, it does not provide sufficient information about any public health and environmental impact studies that would shed light on the implications of increased train traffic, fuel emissions from trains, and the potential for leaks, fires, explosions or contamination from the chemicals contained in the tankers.

1.3 Vermont's railroad system runs through town centers, adjacent to residences and neighborhoods, and through farmlands and environmentally sensitive areas. In the Town of Charlotte, specifically, the railroad runs near a Velco station. The implications of even one single derailment of a longer and heavier train carrying hazardous materials, and travelling at speeds that are faster than vehicles travel on Vermont's highways, are extremely serious—and far outweigh the outcomes that a single accident with a truck or a car carrying hazardous materials could ever have.

### **2. Property values and quality of life**

2.1 For those who own property adjacent to the rails, there are concerns about property values and the potential damage to crops and soils due to toxic freight and engine exhaust.

2.2 For those residing in homes and neighborhoods near the railroad—or within a 1-mile evacuation radius-- there are quality of life concerns tied to noise, fumes, and once again-- dangers related to the increased risk of derailments and subsequent fires, explosions or toxic fumes.

2.3 All of the above items result in a negative impact on property values, agricultural use and development potential for owners of land adjacent (minimum of half of a mile) to the rails, and indirectly to the entire Town due to increased risk and potential liability should an accident, spill of fire occur involving moving trains or parked rail cars.

2.4 The Draft Rail Plan is virtually silent on all these issues. The Town of Charlotte consequently recommends more time and attention be paid to understanding the concerns of Vermont's citizens, and adding a discussion of these concerns—and ways that the State of Vermont and the railroad companies can address them—in the Draft Rail Plan.

### **3. RECOMMENDATIONS:**

3.1 The Town of Charlotte recommends that the Draft Rail Plan add the new goal: *Goal #7: Protect the health, quality of life, and welfare of individuals and communities who live, work, and own property near the rail system.*

3.2 Although the Vermont Agency of Transportation has held four public meetings, these meetings were in Essex Junction, White River Junction, Brattleboro and Rutland. Towns in the middle and northern parts of the Western Rail Corridor, including Charlotte—had little to no awareness of these meetings and participation was therefore very limited. The Town of Charlotte therefore recommends that the Vermont Agency of Transportation take more time to engage Towns and citizens along the Western Rail Corridor to discuss their concerns and to formulate recommendations that can be addressed in the Draft Rail Plan.

3.3 The Town of Charlotte recommends that the Draft Rail Plan add the new goal: *Goal #8: Protect the wildlife and environment from potential impacts of the changes in the infrastructure and use of Vermont's rail system.*

3.4 The Town of Charlotte recommends that the Vermont Agency of Transportation engage other State Agencies and environmental protection groups to review the Draft Plan and provide recommendations to support proposed goal #8.

### **PRIORITY #3: ADD RAIL YARDS AS A PRIORITY FOR THE WESTERN RAIL CORRIDOR**

#### **1. Storage of hazmat tankers on side rails**

1.1 Of particular concern to the Town of Charlotte is the freight tankers that are used to carry hazardous materials, along with the practice of using the side rails in Charlotte to store the tankers, cars and their contents.

1.2 The Town of Charlotte's 2011 All-Hazards Mitigation Plan specifically states:

**16. The Town prohibits the long-term storage of rail cars in Town as this diminishes the scenic value of the rural character of the Town, creates safety hazards from the potential exposure of hazardous chemicals, and can invite vandalism, trespassing and unlawful conduct.**

- 1.3 The Town of Charlotte furthermore vehemently objects to the current practice—as well as any future practice-- of using side rails in our Town for the temporary or long-term storage of hazmat tankers and rail cars—regardless of whether these tankers are “empty” or full.
- 1.4 In Charlotte, hazmat rail tankers are being consistently stored on the side rails in the Town. Although Vermont Railway has publically stated that this practice is seasonal or only “occasional”, The Town of Charlotte maintains that for the past several years, the presence of these tankers is consistent—they are present every day, every season on the side rails in Charlotte. When a particular line of tankers is removed, it is immediately replaced with another line of tankers.
- 1.5 The tankers and their contents are close to residences, conserved land, wetlands, and active farmland.
- 1.6 Some of Charlotte’s residents who live near the rails have reported noticing substances from the freight cars that have flowed into ditches, streams, and wetlands that are tributaries to Lake Champlain.
- 1.7 Residents of Charlotte have communicated with Vermont’s Department of Natural Resources on several occasions to request formal inspections of the potential harm to the natural resources and environment caused by the tankers and their contents. To date, no inspection of environmental impact—not even a site visit-- has been conducted.
- 1.8 The current controversies arising over plans to store hazardous material freight tankers in the Adirondack Park in New York have raised concerns by environmental agencies that even if considered “empty”, these freight tankers can contain residues and fumes that are harmful to the environment. The Town of Charlotte is taking this current dialogue, and the environmental concerns, in our consideration of the practice of storing similar hazmat freight tankers on the side rails in our community.

2. Rail yards v. Side rails as *quasi* rail yards

2.1 The Town of Charlotte is aware of a study-- “Evaluation of Potential Sites for the Relocation of the Burlington and Rutland Railyards” (2000) -- that assessed 16 locations for rail yards in Vermont, including locations along the Western Rail Corridor, based on these criteria:

- Size (acreage) and availability
- Potential for adjacent industrial development
- Municipal and State permit requirements
- Compatibility with local land use and development planning
- Availability of power, water and sewer
- Access and proximity to municipal and State highways

- Environmental impacts including wetlands, flood plains, archeological and historical resources, contaminated soils and topography.

2.1 Side rails, such as those in Charlotte, do not meet any of the above criteria set for the identification of viable rail yards—and yet these side rails are essentially being used as quasi rail yards in lieu of bona fide rail yards.

2.2 Because side rails are not official rail yards, the usual standards and regulations governing due diligence and oversight, including environmental impact studies, safety standards, permits, and so on that are in place to regulate the safety of rail yards—are all bypassed, and neither residents and abutting property owners, the Town of Charlotte, nor the State have any jurisdiction over how these side rails *cum quasi* rail yards are actually used.

2.3 The Town of Charlotte therefore notes with great concern that the Draft Rail Plan offers no clear plan for rail yards to assure the temporary and long-term storage of rail cars and tankers along the Western Rail Corridor. The Plan instead mentions constructing more side rails for the Western Rail Corridor. Based on the Town’s own experience—the present side rails in Charlotte—and any additional side rails built through the resources provided under the Draft Rail Plan-- are at risk of being used to store even more hazmat tankers and other rail equipment, and potentially for even longer periods of time.

2.4 The Town of Charlotte states unequivocally here that this loophole—of using side rails as quasi rail yards—is inappropriate, unsafe, and unacceptable.

### **3. RECOMMENDATIONS:**

3.1 Immediate removal and future prohibition of the storage of hazardous material railcars (empty or full) on the former passenger rail siding in Charlotte where they present a significant safety risk to the residents in the West village.

3.2 Based on the above concerns and observations, The Town of Charlotte notes that the increased amount of trains foreseen under the Draft Rail Plan points to an urgent need for designated rail yards throughout the state, in appropriate locations. Hazardous material tankers and other equipment should be stored in secure locations, safely away from residences, town centers, schools, day cares, other critical public infrastructures such as fire stations, town offices, medical facilities and electrical substations, and away from environmentally-sensitive areas.

3.3 The Town of Charlotte urges the Vermont Agency of Transportation to include in the Draft Rail Plan clear and specific language that assures that designated rail yards—or the refurbishment/expansion of existing rail yards—are available and used along the Western Rail Corridor, and that these rail yards will be prioritized to accommodate present and future storage needs for any and rail equipment, and especially hazmat tankers.

- 3.4 Include in the Draft Rail Plan clear and specific language to either prohibit the use of side rails for long-term storage of tankers and rail cars—or to otherwise include *disincentives* for railroad companies to use side rails for the storage of hazmat tankers. This language should be clearly included in the Draft Rail Plan as well as in the State of Vermont’s lease with Vermont Railway or other railroad companies using the Western Rail Corridor.
- 3.5 Disincentives to store tankers on side rails could, for example, include requirements for environmental impact studies, more regular inspections of stored tankers, storage fees imposed by the Town of Charlotte and/or by the State of Vermont, and requirements for the railroad company to carry liability insurance related to the storage of equipment in areas that are not formally designated rail yards.
- 3.6 Disincentives for the use of side rails to store hazmat tankers, such as those suggested above are currently either under review or being implemented by other States—the Town of Charlotte therefore urges the Vermont Agency of Transportation to review and learn from successful practices—or regulations and practices under development-- in other States to address this critical issue.
- 3.7 In the event of a disaster involving the hazardous material tankers stored in Charlotte, the Draft Rail Plan must indicate where the liability will lie: Does it lie with the State of Vermont, who owns the rails and who is shepherding the Draft Rail Plan through to its completion? Does it lie with the Federal Government, who governs the rails? Does it lie with Vermont Rail company or any other rail company who autonomously decides to use the side rails in Charlotte for storage purposes?
- 3.8 The Vermont Agency of Transportation should provide the Town of Charlotte with clear information in advance on any projects for new side rails—or for the extension or refurbishment of the existing side rails-- in Charlotte, and provide the Town officials, residents and property owners the opportunity to review, discuss, revise or reject these plans with the Vermont Agency of Transportation before they are implemented.

**PRIORITY #4: IDENTIFYING LOCAL AND STATE ROLES IN RAILROAD SAFETY AND ACCOUNTABILITY**

1. Learning lessons from other States

1.1 The Draft Rail Plan is essentially silent on any role for local governments (Towns) and the State of Vermont, in terms of ensuring railroad safety and accountability.

1.2 One of the main goals of the Draft Rail Plan is to build a rail infrastructure that will make the State of Vermont’s rail network compatible with that of the rest of the country. While achieving this goal opens Vermont up to the many advantages of being more competitive in the national rail network, it also opens Vermont up to the same level of risks, disasters, and controversies around rail transportation that are embroiling the rest of the nation.

1.3 Vermont has the opportunity to be proactive in preventing or mitigating the problems that other States are grappling with right now, to learn from national concerns on 21<sup>st</sup> century railroad transportation and what other States are doing to address them, and to assign local and State roles that ensure greater accountability.

1.4 The State of Vermont owns roughly half of the railroads in the State, including the Western Rail Corridor's tracks which run through the Town of Charlotte.

## **1.5. RECOMMENDATIONS**

1.5.1 The Town of Charlotte urges the Vermont Agency of Transportation to avoid accepting statements that “the railroad is only under the jurisdiction of the federal government” on the one hand, while pushing through a Draft Rail Plan that will be paid for by Vermonters' taxpayer dollars on the other hand. Where the Agency of Transportation has no jurisdiction, creative efforts must be made to engage other State agencies, including the Agriculture, Natural Resources, and others, to identify areas where some measure of regulation and oversight may apply

1.5.2 The Town of Vermont urges the Vermont Agency of Transportation to study current events, issues and trends related to the increased use of the railroad in the state of New York, and in other states around the country, and to learn from their experiences.

1.5.3 The Town of Charlotte urges that the Draft Rail Plan add a narrative that demonstrates the Vermont Agency of Transportation's awareness and understanding of the nation-wide priority concerns regarding the increased risks and dangers around the use of rail transportation in the 21<sup>st</sup> century—including the transportation of Bakken oil and other hazardous materials, safety issues arising from increased incidents of derailments, etc.-- and how these concerns are now being addressed in different states.

1.5.4 The Draft Rail Plan should subsequently describe how it will proactively address these nation-wide concerns--- which are being fervently debated around the country by federal and state government officials, environmental experts, legal experts, and citizens' advocacy groups-- including:

- The wide-spread acknowledgement that current federal regulations governing railroads are antiquated and are grossly insufficient in assuring 21<sup>st</sup> century priorities for railroad safety, particularly given issues of new kinds of hazardous materials and high-speed trains.
- The current debate over oil-by-rail and ongoing litigations involving State and federal governments and their liability in authorizing what many experts consider to be unacceptably high-risk practices related to the transport and storage of dangerous materials on the rail.
- Loopholes in the jurisdiction and oversight of the use of rails to assure that public safety and the protection of the environment are not jeopardized. The case of the hazmat

tankers stored in Charlotte defines this point. The Federal Railroad Association apparently has jurisdiction to inspect the actual tankers, but does not regulate the decision on where and how long to store the tankers, and does not regulate measures to assure that these tankers do not represent a danger, threat, risk or harm to public health, public safety, public or private property, or the environment. Meanwhile, neither the Town of Charlotte, nor other State Agencies, such as the Department of Natural Resources, have jurisdiction over the presence and safety of these tankers either.

- With wide-spread acknowledgement that an increase in train traffic, speed, and hazardous freight means an increase in the risk of disasters, loss of life, and damage to property and the environment, it is vital that the Draft Plan include a discussion of liability, accountability and responsibility.
- There is nation-wide dialogue around the critical concerns regarding the release of critical information about hazardous materials to first responders, Town officials and residents to enable them to prepare for emergencies and disasters. The Town of Charlotte notes that, according to recent reports by the Wall Street Journal, Vermont and Maine were the only two states in the Northeast—and among a total of 14 states in the contiguous United States-- who refused to release data on the transportation of oil-by-rail.
- The state of New York, and other states, are in the process of instituting state requirements for environmental impact studies related to the transportation of Bakken oil and Tar Sands oil. The Town of Charlotte urges the Vermont Agency of Transportation to gather information on the processes underway and apply the lessons learned to improve the Draft Rail Plan to address environmental impact concerns.
- A number of States, including the state of New York, have recently initiated State-led improvements for safety regulations for railroads, including regulating speed, requiring improved brake systems, and requiring better and more frequent inspections. Vermont's Draft Rail Plan should identify successful practices in other States and assure that these are discussed and included for Vermont's own rail network.

## 2. Performance measures

2.1 The Draft Rail Plan has established performance measures whose targets “provide a benchmark for assessing the return on investments to the State’s rail infrastructure”. These measures are currently grouped into three categories:

- Rail system effectiveness performance measures
- Rail system condition performance measures; and
- Rail system initiative performance measures

2.2 The Draft Rail Plan further states that the performance categories match Vermont rail system goals developed from “public input for the Rail Capital Investment Plan (2001) and the State of Vermont State Rail & Policy Plan, 2006. Notwithstanding this earlier public input, the Town of Charlotte notes the absence of performance measures that sufficiently address public safety concerns—in terms of greater efforts to prevent, prepare for, and respond to disasters- discussed in our preceding comments. Also absent are performance measures that sufficiently address the proposed goals of protecting the public and protecting the

environment. Finally, there are no performance measures addressing the issues of liability, accountability, and improved communication and relationships with the public—and particularly with Towns along the railroads—like the Town of Charlotte-- and their citizens.

**2.3** The Town of Charlotte has learned that the Vermont Agency of Transportation’s next steps for the finalization of this Draft Rail Plan may be limited to preparing a “FAQ” (Frequently Asked Questions”) document based on the review of public comments. Given the importance of this Plan, and the fact that it was circulated for public review and comment during a relatively short timeframe over the summer months, The Town of Charlotte strong urges the Vermont Agency of Transportation to include additional steps and opportunities to allow more dialogue with Towns and their residents on the comments and recommendations provided, in order to make meaningful modifications to the Draft Rail Plan that incorporate this feedback.

## **2.4 RECOMMENDATIONS**

2.4.1 Include additional performance measures to increase accountability on safety, protecting the public, and protecting the environment.

2.4.2 Include in the Plan the establishment of formal structures and systems to streamline communication and improve relationships with Towns and their citizens, particularly to handle questions, concerns, and to solicit occasional feedback and suggestions.