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### Current Status

The Vancouver Island Rail Company (Island Rail), a privately owned operator, has identified an opportunity whereby Local Governments and First Nations can work collaboratively through a public private partnership to protect the integrity of the E&N Corridor and sustain the operation of rail services on Vancouver Island.

The model which is currently being implemented involves the creation of an Island Corridor Foundation (ICF) which will be a charitable society which will own and control the corridor and the essential rail assets. The ICF will enter into agreements and leases for the management of the corridor for the benefit of Vancouver Island communities. It is anticipated that Island Rail will assume operational responsibility for the line.

Canadian Pacific Railway (CPR) has offered to donate its Vancouver Island assets to the newly formed foundation, and negotiations about the terms of this gift are on-going.

The Island Corridor Foundation has been created for the charitable purposes outlined below. The membership is anticipated to include 5 Vancouver Island regional districts, and a minimum of 5 first nation communities. Through a collaborative process the following charitable objectives have been identified for the foundation:

- ?? to acquire, preserve and develop for purposes of the Corporation and its objects, but for no other purposes, the Island Corridor which lies North-South from Victoria to Courtenay and East-West from Nanaimo to Port Alberni on Vancouver Island, together with ancillary lands, structures and all other property rights attached thereto (the "Island Corridor") and the infrastructure and other assets that constitute the E & N Railroad and are located on the Island Corridor (the "Railroad");
- ?? to maintain the continuity of the Island Corridor as a contiguous special use connection for all communities, while respecting and supporting First Nations interests and traditional lands and uses;
- ?? to contribute to safe and environmentally sound passenger and freight rail services along the Railroad
- ?? to encourage a flexible infrastructure along the Island Corridor which will encourage a wide range of economic and trade activity for the benefit of all communities lying adjacent to the Island Corridor;
- ?? to preserve archaeological resources, historic landmarks, structures, artifacts, and historic routes along the Island Corridor for historical purposes and for ongoing and future use by the community;
- ?? to create trails, parks, gardens, greenways and other public areas for use of members of the public along the length of the Island Corridor;
- ?? to conserve the environmental and spiritual features and functions of the Island Corridor in respect of the land, water and natural resources for the general benefit of the public; and
- ?? to do all such charitable activities which are incidental to and beneficial to the attainment of the purposes stated above.

### Questions

As the planning work for the implementation of this community model proceeds, the ICF wishes to ask for the support on the following key points:

1. The foundation will be seeking an advance ruling from the Property Transfer Tax Administrator's Office. Exemption Code 22 of the tax return exempts "A transfer to a 'registered charity' as defined by s. 248 (1) of the Income Tax Act (Canada) if the land will be used for a charitable purpose".
2. As the ownership of the corridor is transferred from CPR to the ICF, the foundation will be seeking to have these lands reclassified under the Assessment Act from Class 2 - Utilities, to Class 8 - recreational property/non-profit organization. The directors of the foundation believe that this new classification accurately reflects the new 'not-for-profit' ownership and the broader charitable management of these lands.
3. The ICF is interested in understanding the province's position regarding this gift and is looking for visible support for this innovative solution that has been developed with the input of local government, first nations, and the private sector.
4. The success of this initiative is tied in part to the recognition of the charitable nature of the ICF and its activities. The foundation is interested in working with the province to identify and confirm federal support for the CCRA application for charitable status.

### Key Milestones

The formalization of the foundation, including constitution and bylaws has been ongoing since late summer 2003. The application for incorporation was submitted in Ottawa at the beginning of November. Work is proceeding on the preparation of supporting material for the CCRA and this will be submitted in the coming days.

To provide the basis for the CPR donation to the Foundation, an appraisal of the property that will be accepted by CCRA as a valid assessment of value has also been undertaken.

The IBI Group has been selected to provide an overall evaluation. IBI is an international firm with a depth of experience on linear evaluations of corridors and completed the evaluations for many of the major sections of the Trans-Canada Trail. Supporting this valuation work information on environmental and structural conditions is also being prepared. It is anticipated that the results of this valuation will be available on or before December 5 2003.

Negotiations between CPR, Island Rail and the foundation are to be concluded by the end of 2003, subject to the successful application for charitable status by the foundation.

**Background**

Substantial Work has been completed on this project and a great deal of supporting documentation is already in place. Some of these documents are listed below and copies of this supporting material can be made available upon request:

- ?? **Urban Transportation Showcase Project** - Expression of Interest, City of Nanaimo, 2001
- ?? **The Benefits and challenges of A partnership for Greater Community Control of the E&N Transportation Corridor**, Vancouver Island Rail Development Initiative, August 2002
- ?? **The Future of Rail on Vancouver Island**, Volume 1, Vancouver Island Rail Development Initiative, Industrial Adjustment Service Committee, Western Economic Diversification, December 2002
- ?? **Draft Status Report on the Implementation of the Community Partnership Model**, June 2003
- ?? **Establishing a Charitable Foundation for the Purpose of Owning and Operating the E&N Railway Corridor**, Vancouver Island Railway Co., July 2003
- ?? **Taxation Issues Affecting the Vancouver Island Railway**, Vancouver Island Railway Co., July 2003
- ?? **Railway Stations and Historic Structures on the Vancouver Island Railway**, Vancouver Island Railway Co., July 2003
- ?? **Regulations on Discontinuance Affecting the Vancouver Island Railway**, Vancouver Island Railway Co., July 2003
- ?? **The Management of Infrastructure on the Vancouver Island Railway**, Vancouver Island Railway Co., July 2003
- ?? **Construction and Maintenance of Railway Crossing on Vancouver Island**, Vancouver Island Railway Co., July 2003

**Conclusion**

The implementation of this Community model is well on its way. The local governments and First Nations involved in the process are optimistic that this approach represents an innovative alternative that will support the long term viability of this corridor and sustain rail transportation on Vancouver Island now and in the future. The directors of the foundation look forward to the opportunity to work with the provincial government on the items discussed above.

For more information please feel free to contact:

Mayor Jack Peake – Town of Lake Cowichan - [jpeake@town.lakecowichan.bc.ca](mailto:jpeake@town.lakecowichan.bc.ca)

Ron Rice – Cowichan Tribes - [rrice@islandrail.com](mailto:rrice@islandrail.com)

Mayor Graham Hill – Town of View Royal - [grah@shaw.ca](mailto:grah@shaw.ca)

Chief Judith Sayer - [judith@hupacaseth.ca](mailto:judith@hupacaseth.ca)

Joe Stanhope – Regional District of Nanaimo - [jstanhope@shaw.ca](mailto:jstanhope@shaw.ca)

Chief Terri Sampson – Chemanius First Nation - [tsampson@cfnation.com](mailto:tsampson@cfnation.com)

Mayor Ken McRae – City of Port Alberni - [davina\\_sparrow@city.port-alberni.bc.ca](mailto:davina_sparrow@city.port-alberni.bc.ca)

Chief Thomas – Halalt First Nation - [chief@cowichan.com](mailto:chief@cowichan.com)

Councillor Mark Ashley – District of Campbell River - [mlashley@island.net](mailto:mlashley@island.net)

# Island Corridor Foundation

## DRAFT APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT SHARE CAPITAL UNDER PART II OF THE *CANADA CORPORATIONS ACT*

To the Minister of Industry:

### I

The undersigned hereby apply to the Minister of Industry for the grant of a charter by letters patent under the provisions of Part II of the *Canada Corporations Act* constituting the undersigned, and such others as may become members of the Corporation thereby created, a body corporate and politic under the name of:

#### Island Corridor Foundation

The undersigned have satisfied themselves and are assured that the proposed name under which incorporation is sought is not the same or similar to the name under which any other company, society, association or firm, in existence is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof or so nearly resembles the same name as to be calculated to deceive and that it is not a name which is otherwise on public grounds objectionable.

### II

The applicants are individuals of the full age of eighteen (18) years with power under law to contract. The name, the address and the occupation for each of the applicants are as follows:

Name	Address	Occupation
[•]	[•]	[•]

The said [•], [•],[•],[•],[•],[•],[•],[•], and [•] will be the first directors of the Corporation.

### III

#### **The objects of the Corporation are to:**

1. to acquire, preserve and develop for purposes of the Corporation and its objects, but for no other purposes, the Island Corridor which lies North-South from Victoria to Courtenay and East-West from Nanaimo to Port Alberni on Vancouver Island, together with ancillary lands, structures and all other property rights attached thereto (the “Island Corridor”) and the infrastructure and other assets that constitute the E & N Railroad and are located on the Island Corridor (the “Railroad”);
2. to maintain the continuity of the Island Corridor as a contiguous special use connection for all communities, while respecting and supporting First Nations interests and traditional lands and uses;
3. to contribute to safe and environmentally sound passenger and freight rail services along the Railroad;
4. to encourage a flexible infrastructure along the Island Corridor which will encourage a wide range of economic and trade activity for the benefit of all communities lying adjacent to the Island Corridor;
5. to preserve archaeological resources, historic landmarks, structures, artifacts, , and historic routes along the Island Corridor for historical purposes and for ongoing and future use by the community;
6. to create trails, parks, gardens, greenways and other public areas for use of members of the public along the length of the Island Corridor;
7. to conserve the environmental and spiritual features and functions of the Island Corridor in respect of the land, water and natural resources for the general benefit of the public; and
8. to do all such charitable activities which are incidental to and beneficial to the attainment of the purposes stated above.

The above purposes of the Corporation shall be carried out without purpose of gain for its members and any profits or other accretions to the Corporation shall be used for promoting its purposes and all of the above purposes shall be carried on an exclusively charitable basis.

Without limiting the powers the Corporation possesses pursuant to the *Canada Corporations Act*, the Corporation possesses the power to do all such things as are incidental to the attainment of the above objects and, in particular:

1. to use, apply, give, devote, accumulate or distribute from time to time all or part of the fund or funds of the Corporation and/or the income therefrom by such means as may from time to time be determined by the board of directors for the objects of the Corporation;

2. to use, apply, give, devote, accumulate or distribute from time to time all or part of the fund or funds of the Corporation and/or the income therefrom by such means as may from time to time be determined by the board of directors to or for any organization or organizations which in the judgment of the board of directors of the Corporation will promote the objects of the Corporation;
3. to acquire by purchase, contract, donation, lease, legacy, devise, gift, grant, bequest or otherwise, real property or interests therein, and to enter into and carry out agreements, contracts, or undertakings incidental thereto, and to hold and manage the same for the actual use and occupation of the Corporation or for carrying on its objects, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease, or otherwise dispose of such real property or interests therein from time to time as occasion may require, and to acquire other real property or interests therein in addition thereto or in place thereof, as may be considered advisable;
4. to acquire by purchase, contract, donation, lease, legacy, devise, gift, grant, bequest or otherwise, any personal property or interests therein, and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease or otherwise dispose of such personal property or interests therein, from time to time as occasion may require, and to acquire other personal property or interests therein in addition thereto or in place thereof, as may be considered advisable;
5. to invest and reinvest the funds of the Corporation in such manner as determined by the board of directors from time to time pursuant to the provisions of the *Trustee Act* RSBC 1996 ch.464;
6. to employ and pay such professionals, assistants, representatives and employees and to incur such reasonable expenses as may be necessary therein;
7. to require payment of all sums of monies and claims to any real or personal property in which the Corporation may have an interest, and to compromise in any such claims, and generally to pursue payment in its corporate name through whatever means are available at law; and
8. to draw, make, endorse, execute and issue cheques and other negotiable instruments.

#### IV

The operations of the Corporation may be carried out throughout Canada and elsewhere.

#### V

The place within Canada where the head office of the Corporation is to be situated is the City of Nanaimo, in the Province of British Columbia.

#### VI

It is specifically provided that in the event of liquidation or winding up of the Corporation, the

assets of the Corporation, after payment of all liabilities, shall be distributed to one or more non-profit corporations as defined in the *Income Tax Act*, having the capacity to administer the assets of the Corporation and for purposes as close as possible to the Corporation, or to the Crown in Right of British Columbia and/or Local Governments and/or First Nations Governments if the transfer can be effected on terms which will, in the reasonable opinion of the Directors, result in the accomplishment of the objects of the Corporation. The recipients shall be chosen by resolution of two-thirds of the Directors of the Corporation and ratified by a vote of two-thirds of the Members at a General Meeting of the Members.

## **VII**

The by-laws of the Corporation shall be those filed with the application for letters patent until repealed, amended, altered or added to.

## **VIII**

The Corporation is to carry on its operation without pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.



**DATED** at the City of [•], in the Province of [•], this [•] day of [•], 2003.

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The benefits and challenges of  
**A Partnership for Greater Community Control of  
the E&N Transportation Corridor**

*A Discussion Paper prepared by Lanarc Consultants Ltd.  
for the Vancouver Island Rail Development Initiative*

**August 2002**





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## **The Issue**

In late November 2001 Rail America announced that it would be suspending regularly scheduled freight service on Vancouver Island, and served notice to Via Rail that it would no longer maintain the passenger rail line as of March 2002.

This was unexpected news for the communities, businesses and rail advocacy groups on Vancouver Island. The announcement kick-started the search for ways to provide a sustainable alternative for the continued operation of the line and the maintenance of this important transportation corridor.

Under the sponsorship of the Association of Vancouver Island and Coastal Communities (AVICC) and the Vancouver Island Railway Society, a Round Table on the future of rail on Vancouver Island was convened and held a series of meetings. From these meetings, an agreement was developed with the railway companies to leave the rail infrastructure intact and undisturbed until July 15, 2002.

A further development was the formation of the Vancouver Island Rail Development Initiative (VIRDI). It was created to maintain the current freight and passenger services and manage the planning process to identify sustainable and economic solutions for continued rail services.

VIRDI has worked over the last 6 months to develop a coordinated position on the future of the corridor. With funding from its investor group, local communities, Human Resources Development Canada (HRDC) and Western Economic Diversification Canada, VIRDI initiated a business planning process to identify long term, sustainable business models for Vancouver Island's railway services and corridor use. Based on these efforts, VIRDI also began negotiations with the current owners and provincial/federal transportation authorities regarding alternative ownership arrangements.

## **The Opportunity**

One of the results of the business planning process was to identify the potential benefits of greater community involvement in the management of the railway corridor or right-of-way. These benefits – many of which are discussed in this paper - go well beyond the continuation of rail services and represent an important community asset. The railway corridor has rarely been seen in this light; under the control of the corridor owner and rail operators, it was seldom considered in terms of its potential to support and stimulate community economic and land use planning.

Therefore, a second, significant consequence of maintaining rail services on the Island can be to realize the untapped potential of the E&N Corridor for the communities through which it runs. Should the rail line be shut down entirely, these potential benefits would be lost to the communities along with the rail service.<sup>1</sup>

The sustainable rail service model that VIRDI is exploring is premised on greater community involvement and support. It calls for rail services to be more accountable to

The Vancouver Island Rail Development Initiative (VIRDI) was created in early 2002 to identify long term, sustainable and economic options for continued rail services and use of the E&N Corridor.

Should the rail line be shut down entirely, the many other potential benefits of the Corridor would be lost to the communities, along with the rail service.

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<sup>1</sup> Under historic agreements made when the rail line was first established, the cessation of rail service causes rights to the right of way to revert to the Federal Crown. That, in turn, could trigger a variety of claims and obligations regarding the operation of the rail line and ownership of the Corridor, not the least of which would be the subject of First Nations land claims. In essence, the Corridor could be tied up in litigation for many years with no clear picture of who gains/loses in the end – with the possible exception of the legal profession.

the communities, businesses and individuals that it serves. Communities would have a much stronger voice in the development and management of the E&N Corridor and its use. This could include a form of local control that would have the communities along the line cooperatively assuming responsibility for and control of all or parts of the Corridor.

The idea is to effectively convert what is now privately held infrastructure controlled by the rail operator into a public-private partnership where decisions, ownership and control would be shared. Under this model, the communities would be more directly involved in the decisions on how the Corridor is managed not only for rail purposes but also to provide a range of community services – essentially, as a community asset.

## The Purpose

This discussion paper addresses three questions:

- *What is meant by a “public- private partnership” for the E&N Corridor?*
- *What are the potential benefits for greater community involvement in the ownership and management of the Corridor?*
- *What would be the liabilities and obligations that would flow from such a partnership?*

Building and operation of the E&N Railway “in perpetuity” was one of the conditions for B.C. joining Confederation.

## Basic Facts about the E&N Corridor

### The History

The E&N Railway is an important part of Vancouver Island’s history. The building of the railway and its operation “in perpetuity” was one of the conditions for BC to join Confederation. The Province made a significant grant of land and resources to the railway companies to encourage construction of the railway.

Since its inception, the Railway has been a source of both pride and controversy on the Island. There have been several occasions when the line was threatened with closure and each time, rail service was continued as a result of community pressure and support.

### What's included in the E&N Corridor?

The E&N corridor consists of the land, gravel rail bed, ties, tracks, culverts and related structures (bridges, trestles, and tunnels) that support rail service on the right of way. It also includes the historic train stations and the land that they sit on.

The corridor is normally about 30 m (100 feet) wide through most its length, and is sometimes wider where it includes adjacent land used for rail stations. In total, the corridor represents a significant amount of real estate both inside and outside the Island’s populated areas.

### Current ownership of the Corridor

*Canadian Pacific Railway* (CPR) owns the corridor (land) from Victoria to the beginning of the Marine Rail Service in Nanaimo (known as the Wilcox Spur), and from Parksville to Courtenay. As well, CPR owns additional right-of-way in Nanaimo, Port Alberni, and other parts of the line between Nanaimo and Parksville.

CPR and Rail America currently own different sections of the E&N Corridor.

*Rail America* (RA) owns the corridor from the Wilcox Spur in Nanaimo to Parksville and the east-west line from Nanaimo to Port Alberni.

### The Route

There are essentially two rail corridors on the Island: a North-South Line from Victoria to Courtenay, and an East-West Line from Nanaimo to Port Alberni. These lines intersect and share track in the middle of the North-South Line (see Figure 1).

These two corridors run through 5 regional districts, 9 First Nation communities, 10 municipalities and 13 unincorporated communities. The North South Line goes through the most populated sections, with approximately 85% of the Island's population living within 30 minutes of the corridor.

### The North-South line

- The current passenger service between Victoria and Courtenay operates on the North-South line. The remaining freight service is also on this line, concentrated in the middle section.
- Given that it goes through the most populated areas and most of the major communities on the Island, the potential for other uses of the corridor is higher on this line.
- This line requires some investment if it is to be sustained as rail infrastructure. It has been maintained to meet safety and rail regulatory standards. This maintenance has not included upgrades or facility improvements. Its primary use is for passenger rail with some limited freight.

### The East-West line

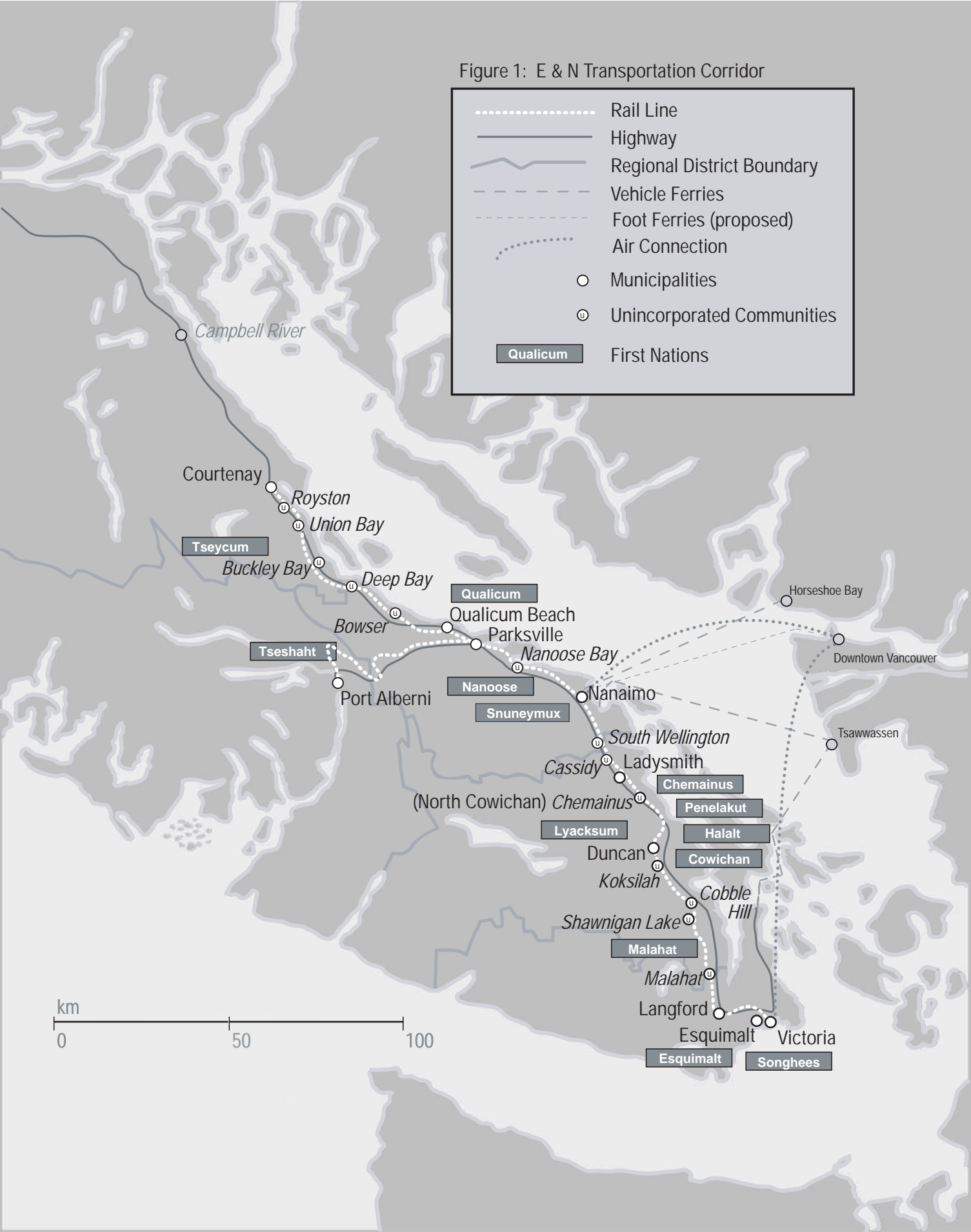
- There are presently no rail services on this line. The primary use of the rail line was for freight, with no passenger service either operating or contemplated.
- The line from Parksville to Port Alberni is rural and remote. Therefore, the potential for real estate development is less apparent than on the North-South line.
- The rail infrastructure has been idle since early January, and would require attention before it could again support rail traffic.
- It has been maintained to required safety and rail regulatory standards, but it has not been improved.

About 85% of the Island's population lives within 30 minutes of the Corridor.

The rail lines have been maintained to meet safety and regulatory standards, but need to be improved to support greater rail use.



Figure 1: E & N Transportation Corridor



## A Public-Private Partnership for the Corridor - What could it look like?

### What is meant by "Public, Private Partnership"

In the context of the E&N Corridor, *public* refers to the incorporated, unincorporated and First Nations communities that are situated along the E&N Rail line.

Each of these communities has an interest in the operation of the corridor as it affects the lives and livelihoods of local residents. These communities have a responsibility to think about the current operation of the corridor as well as managing for the long-term social and economic well-being of their constituents.

Within each of these communities it is anticipated that specific agencies or businesses will have a more direct interest in the day-to-day operation of the corridor. Some of these stakeholders may also play a role in the creation of a community partnership.

*Private* refers to the operating railway company that will provide services along the line. This company would continue to be responsible to maintain the line and manage the railway services but, as a partner with the communities, these services would have to be responsive to the needs of the community. As well, the company would potentially own parts of the rail infrastructure, such as yards, sidings and stations.

A *public private partnership* means that communities along the Corridor, the operating rail company and senior government transportation agencies would coordinate their collective objectives and resources to support a viable rail/transportation corridor. This would benefit the communities along the line and Vancouver Island generally. For an individual community, it would mean gaining a direct and meaningful voice in decisions regarding the E&N Corridor, and more direct access to the corridor within their community for planning and development purposes.

Individual communities may not necessarily own the corridor land within their boundaries; that is not a pre-requisite to participating in a partnership. The discussion that follows describes some of the options that can be considered in the creation of an appropriate partnership model aimed at maintaining, improving and promoting rail and other compatible uses of the Corridor.

### An E&N Transportation Corridor Trust - one model

The following is an example of how a partnership might work:

- The communities on the line, the federal and provincial governments and the railway company would support the creation of an organization that would control and manage the corridor - an *E&N Transportation Corridor Trust*<sup>2</sup>.
- The corridor would be acquired or leased from the current owners, CPR and Rail America. The communities may individually or collectively raise the funds to purchase the corridor; or a third party such as a development corporation, could purchase and own portions of the corridor. The third party would also become a member of the Trust.

A *Public-Private Partnership* would involve the communities along the corridor, the rail operator, senior transportation agencies and possibly major rail users on the Island.

Communities on the line, federal and provincial governments, the rail operator and other private users could create an E&N Transportation Corridor Trust to control and manage the Corridor.

<sup>2</sup> The term "trust" is used here to indicate an entity established to hold and maintain public infrastructure for the greater community good.

- The Trust would maintain control of the Corridor for some purposes; the communities on the line would have access to the corridor for other purposes.
- Management of the railway would be the responsibility of the operating railway company and would be subject to terms and conditions agreed to and established by the Trust.
- The Trust would collect all revenues related to the use of the Corridor, for example:
  - Access charges from scheduled rail operations by passenger and freight services on the line.
  - A negotiated percentage of other rail-related operations on the line; e.g., excursion, specialty and other services.
  - All other Corridor/right-of-way revenues, such as leases for easements for other linear services and crossings.
- Responsibility for developing a capital development plan to ensure the maintenance of the rail line in the longer-term would rest with the Trust.
- Funding of the necessary capital expenditures would be shared by the Trust, the operating company, the communities along the line, and federal and provincial transportation agencies. The Trust would facilitate the determination of costs and sources of funding, but would not be responsible for raising the necessary funds on its own. For example, depending on the nature of capital projects, some funding could be available through infrastructure grants.

A Trust would be responsible for formulating a capital development plan for the Corridor.

While there are many potential models for the creation of a Trust to manage the corridor, all would require the involvement and engagement of the communities.

## The Costs of Local Control through a Partnership

Communities supporting a Corridor Trust would potentially be giving up all or a significant part of the revenue they collect now from property taxes paid on the right-of-way. This would occur either as a result of the corridor being rezoned and its value downgraded, or because the Trust, as a quasi-public body, would not be required to pay municipal taxes.

For all of the communities along the corridor, the current taxes amount to about \$600,000. Since 50% of this total is transferred to the Province as school taxes, a collective deficit of \$300,000 would result if the taxes were no longer collected.

As a supporter of the Trust, communities would also potentially assume some of the administrative costs of creating and maintaining the Trust, at least in the short term. The Trust would aim to become self-sustaining in the longer term.

What would the communities gain in return?

Communities in a Corridor Trust would potentially give up the revenue from taxes paid on the right of way, and assume some of the administrative costs of creating and maintaining the Trust.

## The Benefits of Local Control through a Partnership

### No Access Charges

Communities now pay annual charges for access to the Corridor for road crossing, service line or culvert crossings, etc.<sup>3</sup> to the railway companies. These charges vary from community to community depending on the number and nature of crossings and access points. The following table illustrates revenues collected and charges paid by a sampling of communities along the Corridor. In some cases, charges cancel out and even exceed the revenue received through taxes.

<i>Community</i>	<i>Annual revenue (taxes) from corridor</i>	<i>Annual charges paid for corridor access</i>
Ladysmith	\$7,583	\$15,350
Victoria	\$35,500	\$21,500
Esquimalt	\$1,915	\$6,500
Langford	\$10,400	\$14,000
Duncan	\$1,150	\$6,750
Nanaimo	\$160,000	\$90,000
Parksville	\$4,280	\$8,560
Port Alberni	\$15,200	\$68,130
Courtenay	\$13,700	\$4,350

Under a Trust partnership, participating communities would not pay access charges.

### Revenue from Rail and Non-rail Uses

Revenues would come from:

- Rail access charges for scheduled services.
- Other rail-related operations.
- Non-rail services using the Corridor.

The Corridor Trust would receive revenues that, until now, have been paid to the owners and operators of the rail line. These revenues would be applied to the cost of acquiring the Corridor, to administer the Trust, and to promote the development of the Corridor for community purposes. The sources of revenue include:

- ***Rail access charges*** for scheduled passenger and freight services by private rail companies.
- Income from ***other rail-related operations***. These could include specialty or excursion services, such as special “theatre trains” to Chemainus, wine tour excursions, or tours for the passengers of the 100 or more cruise ships that visit Victoria each year. Revenue is typically in the form of a negotiated percentage of the total revenue of these operations.
- Charges for ***non-rail services***. These include both community-owned and private utilities for such services as fibre optics, natural gas, trail systems and other linear utilities, as well as services and uses of other Corridor-related lands. Revenue is generated in the form of easement leases. Currently, total non-rail revenue on the Corridor is close to \$700,000 per year, and there is considerable potential to increase the range and extent of these other services and their associated revenues.

<sup>3</sup> A few communities have recently consolidated their annual fees into a lump sum payment that provides them access “in perpetuity” – or at least while CPR still owns the corridor.

- **Alternative use** of excess property. Lands that are part of the right-of-way but not needed for its efficient use as a transportation and communication Corridor could be leased or sold. Even a small lot in an urban area can have significant value.

## Access to Infrastructure Funding

As a community-based organization, the Trust would be eligible for provincial and federal municipal funding programs to upgrade or expand the rail line and other services on the Corridor. This is a source of revenue that a private sector owner/operator would not be able to access. This is a significant advantage of a partnership.

There are a number of standing and special funding programs to which a Corridor Trust could apply on behalf of its member communities. For example, in October 2001, the City of Nanaimo submitted an application for funding through the federal *Urban Transportation Showcase Program*. If successful, this program could provide 5 to 7 million dollars of funding for transportation-related infrastructure that supports better land use-transportation planning and reduced greenhouse gas emissions.

**Studies in the U.S. show that closeness to rail service often increases the value of commercial and residential properties.**

## Property Value Enhancement

Increased use of transportation corridors has invariably translated into increased property development adjacent to the line. A variety of studies in the U.S. show that proximity to a rail service typically increases the value of properties. Studies in Los Angeles, Washington DC and Atlanta provide evidence of increased value for commercial properties. Examination of residential properties in Portland, San Diego, Philadelphia, San Francisco and New York found property values declined the further away they were from rail station areas. (Two studies found slight declines in the value of properties that were close to light rail lines but not stations).<sup>4</sup>

## Job Creation and Economic Development

As both rail use and other Corridor uses increase, communities would directly benefit from job creation related to the Corridor itself. This increased use would also have "spin-off" effects, contributing to greater economic activity and employment opportunities up and down the Corridor.

What's more, the presence of a linear corridor that is accessible for optical cable networks and other telecommunication systems can give communities a competitive advantage. Once such a corridor is lost, it is very difficult and expensive to recreate it.

## Business and Industry Recruitment

The Island communities would be able to offer an assured, convenient and cost-effective transportation option to attract businesses and industry. This has been a benefit to communities elsewhere (e.g., the Oil Creek and Titusville Railroad in Pennsylvania – see sidebar), especially when the rail service can be readily linked to other transportation (road, ferry) and industrial services.

### **Oil Creek & Titusville Railroad, Pennsylvania**

"And you couldn't have a better situation. Since we own the line, scheduling out of valley is personal and flexible. You never have to deal with a scheduler in some remote corner of the world."

(from [http://www.business Titusville.com/Discover\\_Titusville/Access\\_To\\_The\\_Region/Railways/railways.html](http://www.business Titusville.com/Discover_Titusville/Access_To_The_Region/Railways/railways.html))

## Tourism and Recreation

A burgeoning tourism and outdoor recreation industry relies on the Island's 'SuperNatural' qualities and pastoral character. A rail alternative to major tourist destinations, and one

<sup>4</sup> Parsons Brinckerhoff. 2001. The Effect of Rail Transit on Property Values: A Summary of Studies DRAFT. Research carried out for Project 21439S, Task 7 NEORail II, Cleveland, Ohio. 8 p.

that encourages enjoyment of the Island's attractions, is an obvious benefit to the Island's economy. There are two ways in which the Corridor can become a major tourism draw:

- **Rails:** Through its passenger service, the rail line can offer visitors an alternative way of "seeing the sights" on the Island that is both relaxing and scenic. Those who have ridden the E&N know that it goes through some of the most dramatic scenery along the southeast coast. The fact that the line passes through almost all major centers means that tourists have ready access to the major destinations and services that they need. As mentioned previously, opportunities for specialty tours also abound. Linked to the ferry service this can provide an obvious alternative for visitors over bringing a car to the island.
- **And Trails:** The corridor can also be used to provide trails for walkers and bikers who prefer to see the Island, or parts thereof, under their own steam. Given sufficient width for safety, Rail Corridors can be perfect environments for cycling because of their typically gentle grade and the fact that they are usually well separated from vehicle traffic. Nanaimo is already reaping the recreational rewards of developing a trail system on the existing Corridor.

## Reducing Greenhouse Gases

Greenhouse gases are implicated as the main cause of global warming. The transportation sector is currently responsible for approximately 41% of greenhouse gas emissions in Canada. Rail transport accounts for only 6% of that contribution, compared to 74% for vehicles.<sup>5</sup>

A direct consequence of recent reductions in freight rail service on Vancouver Island will be a substantial increase in truck traffic. This translates to substantial increases in fuel consumption (see sidebar) and associated air emissions - not to mention increased wear and tear on Island highways. Rail can be a significant contributor to a cleaner environment for the future of Vancouver Island communities.

## Preventing Environmental Impacts

All projections indicate that the Island population will continue to grow. Accommodating this growth while preserving SuperNatural Vancouver Island - providing mobility without paving and polluting paradise - is a major challenge.

With fewer transportation alternatives and a constant spread of low density, extensive development, the dependence on vehicles for transportation can only grow. Island communities and the Province can choose to simply react to traffic demand with more and bigger roads and vehicle facilities. The result would likely be a replication of sprawling strip development and ever expanding road systems.

There can also be another scenario that satisfies vehicle needs as well as offers affordable, convenient and viable alternatives. This is not a "no more cars" scenario, but rather one that includes rail and other, non-vehicular transportation along the Corridor. It is one that maintains road infrastructure while reallocating resources to support rail and other mobility options. This scenario ultimately results in fewer emissions, less impacts on the natural environment, greater choices and a high quality of life for Island residents.

### *Energy and Emission Savings with Rail*

- In 1993, the energy consumed in moving an Amtrak rail passenger averaged 1,995 British thermal units (Btu) per passenger-mile, about 58% of the energy required for the average automobile passenger and 45% of energy used by the average domestic airline passenger.
- According to a U.S. 1996 National Transportation Statistics Report, trucks used from 1.4 to 5.6 times more fuel than rail, carrying similar commodities over 32 routes. For routes less than 100 miles, trucks used from 4 to 9 times more fuel than rail.

(Federal Railroad Administration,  
U.S. Dept. of Transportation -  
<http://www.fra.dot.gov>)

<sup>5</sup> Environment Canada 1999, Canada's Greenhouse Gas Inventory

## Cheaper, Safer Freight Transport

Rail is consistently cheaper than trucking for transporting bulk freight. One railway car can hold the equivalent of 4 transport trucks, and one train can take as many as 280 trucks of the highway.<sup>6</sup> There is significantly less impact on vehicle traffic and no impact on road infrastructure.

By comparison, heavy trucks impose significant wear and tear on road systems. Significant road cost savings could be realized with reduced truck volumes.

Last but far from least, rail transport, particularly of hazardous substances, is considered to be safer than truck transport by a factor of 10 or more.

## Better Transportation Planning

The east coast of Vancouver Island is at a critical point in its development. What happens by way of land use and transportation planning over the next 10-20 years will profoundly affect the Island character that has drawn so many people to live here.

While the recently completed Inland Island Highway skirts urban areas, the E&N Corridor runs through the heart of most of the communities and many of the planned "urban nodes" along the corridor. This offers a backbone for developing a transportation corridor that is readily accessible to the majority of the population.

A thriving E&N Transportation Corridor also opens up a myriad of possibilities and benefits in developing an *integrated transportation system* up and down Vancouver Island:

- **Alternative to highway expansion:** The Malahat Pass north of Victoria presents a major bottleneck along the Inland Island Highway. The rugged terrain makes expansion particularly expensive, disruptive and impractical. On the other hand, the existing rail Corridor through the Malahat bypasses this bottleneck and provides an immediate and effective alternative.
- **Links to passenger ferry service:** A passenger-only ferry service between the Island and the Mainland becomes more viable and attractive to potential investors and owner/operators if it is part of an integrated system that provides many options for getting to destinations up and down the Island.
- **Links to public bus systems:** Bus systems are operated by BC Transit in all major communities and their immediate area. However, inter-community service is constrained by the jurisdictional boundaries under which these transit authorities operate. The local systems can be organized to provide efficient linkages to rail and ferries, to complement a full range of trans-regional passenger services.
- **Walk and bikeways:** Many communities are actively developing trail networks to provide local access alternatives. As discussed earlier, the rail corridor itself provides opportunities for "rails with trails". A passenger rail service can also provide access to networks such as the Galloping Goose Trail in the Capital Regional District, the Cowichan Valley Trail, the Nanaimo Parkway Trail, and the Trans-Canada Trail.

## A Commuter Alternative

A more community-oriented rail system can open up a viable alternative to the single-occupancy vehicle (SOV). The current once-a-day passenger service between Victoria and Courtenay does not meet the needs of residents, particularly those in "up-Island" communities wishing to spend a day in Victoria. Scheduled service that arrives in

There are significant geographical constraints to continued expansion of the Island highway. The Rail corridor provides an existing and effective alternative.

Scheduled service that arrives in downtown Victoria each morning and returns north each evening could be an appealing alternative to driving for commuters, shoppers and business travelers.

<sup>6</sup> Burlington Northern Santa Fe Railway: <http://www.bnsf.com/whyrail.html#safety>

downtown Victoria each morning and returns north each evening could be an appealing alternative to driving for commuters, shoppers and business travelers.

Shorter 'shuttles' could be considered between intermediate stations, such as Qualicum to Nanaimo – allowing foot passenger access to Vancouver; or from Cobble Hill to Victoria - providing a commuting alternative to the Malahat.

There would be many cost savings in reduced congestion and parking needs, and avoiding road widening and expansion. Over time, the Corridor can develop to be a safe, convenient transportation network from home to work, shop or recreate. Communities with rail stations will attract people to live in their communities. It can reduce need for cars and the expensive infrastructure to support their use.

### Better Community Planning

With its favorable climate and appealing natural setting, the east coast of Vancouver Island is among the fastest growing areas in Canada. The Nanaimo Region alone is expected to almost double in population by 2025 (BC Statistics). Accommodating this growth while preserving SuperNatural Vancouver Island from sprawl will continue to be a primary challenge faced by Island communities. Said another way, "let's not kill the goose that lays the golden egg".

**Growth Management:** An Island rail system can help to accomplish growth management by encouraging development around rail facilities and stations - typically the "nodes" that community land use plans support. It can also reduce the dependence on vehicle-based transportation – a major factor that feeds ongoing sprawl.

**Community Services:** From a community servicing perspective, being able to use the Corridor can provide increased flexibility in the development of municipal infrastructure. Each community can use its portion of the Corridor in planning municipal services, under specifications agreed to by the collective Trust. The Corridor can be used over "short haul" (within a community) as well as "long-haul" (inter-community) distances. This can help to rationalize and make these services more efficient.

Also, access to rail as a viable transportation mode means that budgets normally tied up in road expansion and upgrades can be used more widely for enhancing other municipal services.

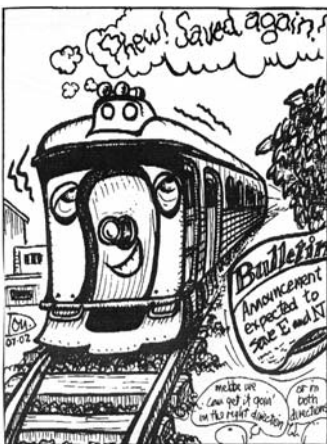
**Downtown Development:** Land development patterns over the past decades have seen a substantial shift from traditional downtowns. Several communities are making significant political and financial commitments to support their downtowns. The presence of a passenger rail service in the heart of these communities will provide a significant boost to these efforts.

### Community Accountability

For some time now, Island interests have not been in a position to have a say on the future of the railway on the Island. Decisions that have a profound impact on the service have been made elsewhere, without consideration of the needs here. As a result, there has never been the opportunity for Island, and for that matter British Columbian, interests to be effectively taken into account.

Management by a local Corridor Trust would be more accountable to the communities and the citizens that it is intended to serve. Making the system locally viable will demand listening to the needs of those communities and their citizens. Vancouver Islanders will be

Management by a local Corridor Trust – rather than from afar – would be more accountable to the Island communities and citizens that the Corridor is intended to serve.



"Maybe we can get it goin' in the right direction.."



able to call the shots with respect to rail scheduling, rail leasing, and use of the Corridor in general.

### **Growing Community Support**

Community control would also result in a fundamental shift in the perception of the rail line. The Corridor would become part of the local public infrastructure, in much the same way as roads and parks. The potential for public support and use increases as people recognize the Corridor and its service as a community asset over which they have some say.

With the passage of time, the inherent value of the corridor to each community and to the Island as a whole would rise.

## **Challenges to Creating a Partnership for the Corridor**

There are several hurdles to overcome in achieving a partnership for control of the Corridor. These challenges are similar to those faced when Harbour and Airport Authorities were created. While there are some significant differences in what would be established here, the objectives would be the same: local control and accountability for essential infrastructure.

### **Acquiring the Corridor at the Right Price**

The current owners must be prepared to convey the Corridor to the Trust at a price that would be acceptable to the parties involved, given the added responsibilities and obligations they would be taking on. However, the transaction must also result in fair compensation to the current owners. For the communities on the line, the highest and best use is as a transportation and community corridor, and it should be considered as such when determining the value of the land.

In addition, issues related to First Nation title and entitlement on the line would have to be resolved in the creation of the Trust. There is a real opportunity for cooperation and collaboration with First Nations to the mutual benefit of the Island.

### **Ongoing Costs**

On-going maintenance and the longer-term capital requirements of the line would become the responsibility of the Trust and, indirectly, the communities. These would have to be offset by direct revenues from the operation of the rail line, the use of the Corridor and related benefits.

### **Responsibilities and Liabilities**

As with any other publicly owned or controlled properties like parks and community facilities, the communities, through the Trust, would become responsible and liable for the safety of the Corridor and its non-rail uses. However, the liabilities and obligations for the rail operation would be the sole responsibility of the operating railway company, and would not be assumed by the Trust.

### **Establishing a Trust that Everyone can Live With**

Setting up a public/private partnership requires, in practical terms, the cooperation and participation of virtually all the communities along the line. It would not work if a few

The current owners must be prepared to sell the Corridor at a price that is acceptable to the parties involved in a Trust, but the price must also be fair compensation for the current owners.

Setting up a Corridor partnership requires the cooperation and participation of virtually all the communities along the Corridor.

communities along the Corridor could hold up its use, creating a missing link in Corridor services.

However, not all communities may see the Corridor as an advantage to them. Some may prefer to have the rail service removed and the land disposed of by the railway. Others may agree with the need for an Island-based transportation corridor but balk at the potential costs and liabilities of community-based responsibility. Agreement must be reached that will allow the corridor and the railway services to be preserved for community benefit.

All this will require sensitive development and negotiation of terms for the creation of the Trust and the relationships that would be created with individual communities. Mechanisms for sharing ownership, expenses and revenues will need to be formulated and discussed. What autonomy a community will have with respect to using the Corridor within its boundaries, versus what will have to be vetted by an Trust, will need to be defined.

### **Time Sensitivity**

At the same time, VIRDI is working within a limited timeframe. The remaining rail service and maintenance is operating only with financial assistance negotiated by VIRDI, to allow it time to develop a community-based alternative. The owners want out of what is now a money-losing operation.

## Benefits and Challenges of a Corridor Partnership – the bottom line

Keep in mind the following factors when evaluating the formation of a Partnership to manage the E&N Transportation Corridor:

*Communities lose tax revenue - about \$300,000 per year collectively.*

**BUT** *They incur no charges for Corridor accesses.*  
This can amount to a savings of \$200,000 or more per year.

*The communities will collectively (through a Corridor Trust) incur costs for infrastructure maintenance and upgrade.*

**BUT** *They accrue revenues* from rail leases and Corridor uses should ensure that the Trust is self-sustaining.

*Communities become more directly responsible for what happens with and on the Corridor.*

**BUT** *They gain control of the use of the Corridor.*  
As part of the "public" infrastructure, the Corridor could be used and managed to serve the collective and individual interests of the communities along it.

*Plus they have a greater say in how the rail service is operated.*

*PLUS communities along the Corridor, and all over Vancouver Island, can enjoy:*

- *A cleaner environment* with less dependence on vehicles, cleaner air and fewer impacts on the physical environment.
- *More jobs and economic opportunities* as businesses, recreation and tourism take advantage of rail transportation AND the presence of a linear corridor.
- *Savings in road and parking infrastructure and reduced traffic congestion.*
- *Safer, cheaper freight transportation*, with fewer trucks on the roads.
- *More choices and savings* for tourists, commuters, business and shopping travelers.
- *Better transportation planning* with a greater variety of options to connect up and down the Island and to the Mainland.
- *Enhanced community planning* and more efficient land use, through a Corridor that supports growth management, linear services, downtown development, commuter and recreational opportunities.

## Appendix 1: Examples of Trusts and Authorities

- The **Islands Trust** is a unique federation of local island governments with a mandate (from the Islands Trust Act) to make land use decisions that will "preserve and protect" British Columbia's Gulf Islands. The Trust Area covers the islands and waters between the British Columbia mainland and southern Vancouver Island, including Howe Sound and as far north as Comox. The area is approximately 5200 square kilometers in size and includes 13 major islands and over 450 smaller islands. There are two Local Trustees elected for each group of islands designated as a Local Trust Area. Together with an appointed Chair, Local Trustees are responsible for land use decisions within their respective Local Trust Area, excluding First Nation reserves. Each Local Trust Committee has land use jurisdiction over a major island, plus smaller islands and surrounding waters. To learn more about the Islands Trust, visit their website at [www.islandstrust.bc.ca](http://www.islandstrust.bc.ca).
- **Port and airport commissions** or authorities provide another example of collective control and management of common interests. In Canada, these bodies are typically established as not-for-profit corporations for the purpose of acquiring, owning and developing the lands on which a facility is based, and operating the facility for the benefit of the public. It also involves promoting the use and development of the facility to generate economic and social benefits for the communities involved. Authority members are directors are usually drawn from the local communities, including representatives of city councils and regional district boards as well as members at large. Examples within the E&N Corridor area include Port Authorities and Airport Commissions for both Nanaimo and Victoria.
- The **Municipal Finance Authority**, formed in 1970, is an independent body representing every regional district in the province. It acts like a collective credit union, providing long-term and interim financing, investment pooling, competitive leasing rates and other financial services to communities and public institutions. By pooling their resources, local governments and other public institutions can negotiate low interest rates and favorable terms on loans and better rates on investment funds – saving taxpayers millions of dollars in debt repayment. A body of members appointed from each regional district board directs the MFA. The number of members appointed by each regional district board is based on the population of the regional district; currently there are 27 regional districts and 35 members of the MFA. The members meet twice per year. The members elect a board of trustees from among themselves. The board is made up of a chair and nine trustees; four must be from the Greater Vancouver Regional District, one from the Capital Regional District and five from the remaining regional districts. The board works closely with MFA staff year round.
- The **Nature Trust of B.C.**, B.C.'s oldest and largest land conservation organization, is a non-profit, charitable organization dedicated to conserving areas of ecological significance in British Columbia. Since 1971, The Nature Trust and its partners have invested more than \$45 million to secure over 240 acquisitions covering 16,000 hectares. Typically, the Nature Trust leases or covenants with other agencies or organizations to manage their properties for conservation and public education purposes. For example, Buttertubs Marsh in Nanaimo is owned by the Nature Trust but managed for it by the Ministry of Water, Land and Air Protection. The Nature Trust and the Ministry have developed joint management plans with the City and the Nanaimo Field Naturalists for the Marsh.
- The **Greater Vancouver Transportation Authority**, also known as "TransLink", was created by the BC Greater Vancouver Transportation Authority Act (Bill 36) in 1998. It is a separate organization, and is not part of the provincial government or the Greater Vancouver Regional District (GVRD). Its mandate is to plan and finance a regional transportation system that moves people and goods efficiently and supports the regional growth strategy, air quality objectives and economic development of the GVRD. TransLink's subsidiary companies and contractors provide the following services:
  - Public transit - buses, SeaBus, SkyTrain, West Coast Express and HandyDART
  - Albion Ferry
  - AirCare

- Transportation Demand Management - trip reduction programs and promoting transportation alternatives such as cycling and carpooling.
- Major Road Network - in partnership with municipalities and other agencies, TransLink helps fund the maintenance, rehabilitation and improvement of 2,100 lane kilometers of roadways within the GVRD plus the Knight Street, Pattullo and Westham Island bridges.

TransLink's Board of Directors is made up of 15 elected officials, including mayors and councilors (appointed by the GVRD), and provincial MLAs (appointed by the provincial government). All revenues collected by TransLink are allocated to its transportation programs and services.

- "Translink" is also the corporate name for the **integrated transportation system in Northern Ireland**. It was created in 1995 when the national government announced comprehensive changes to the provision of public transport, with the principle objective of promoting the transfer of private to public transport and coordinating bus and rail services. This included a policy to coordinate the operations of Citybus, Ulsterbus and Northern Ireland Railways. The aim was to improve the services of these companies by offering coordinated timetables, through-ticketing, feeder buses to railway stations and joint development of facilities. The government created the Northern Ireland Transport Holding Company, whose Board is responsible to the Department for Regional Development for the operations of the three subsidiary companies. A common management structure has been developed that reports to this Board.
- The **Metropolitan Transportation Commission (MTC)** is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. Created by the state Legislature in 1970, MTC is responsible for the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle and pedestrian facilities. The Commission also screens requests from local agencies for state and federal grants for transportation projects to determine their compatibility with the plan. To foster consensus in spending priorities, MTC created The Bay Area Partnership -- a consortium of local, state and federal agencies. With the cooperation of these partners, MTC administers federal funds to combat congestion and air pollution in the Bay Area. MTC also administers state moneys under the State Transportation Improvement Program (STIP). A 19-member panel gives MTC policy direction. Fourteen members are appointed directly by local elected officials; two members represent regional agencies -- the Association of Bay Area Governments and the Bay Conservation and Development Commission; and three non-voting members represent federal and state transportation agencies and the federal housing department.
- There are many other **rail and transportation authorities in the United States**, operating transportation systems on a multi-county or state basis. Typically they are run by boards comprised of local government politicians and community/county representatives. They can provide useful information on potential models for an E&N Corridor Trust or authority. Examples include:
  - Oil Creek & Titusville Railroad, Pennsylvania: a community controlled system that provides freight service for the 17 miles between Rouseville and Titusville, and the 43 miles between Corry and Meadville, as well as passenger excursion service for the Oil Creek Railway Historical Society.  
[http://www.business Titusville.com/Discover\\_Titusville/Access\\_To\\_The\\_Region/Railways/railways.html](http://www.business Titusville.com/Discover_Titusville/Access_To_The_Region/Railways/railways.html)
  - Tri-County Commuter Rail Authority, Florida: commuter rail service from Miami to Fort Lauderdale to Miami and Palm Beach. Board is made up of county and state representatives. <http://www.tri-rail.com/>
  - Southern California Regional Rail Authority: formed in 1991 to plan, design, construct and administer the operation of regional passenger rail lines serving the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura; operates Metrolink, Southern California's commuter rail system.  
<http://www.metrolinktrains.com/about/>

## **Appendix 2: For Further Information and Useful Links**

Rail America - [www.railamerica.com/](http://www.railamerica.com/)

Canadian Pacific Railway - <http://www8.cpr.ca/cms/English/default.htm>

Vancouver Island Railway Society - for more information on the E&N Railway: [www.islandrail.bc.ca](http://www.islandrail.bc.ca)

"Rails with Trails: Lessons Learned", report by Alta Transportation Consulting for U.S. Department of Transportation, Jan. 2001: <http://www.altaplanning.com/projects/fhwa/>

# **Consulting Report for Vancouver Island Railroad**

**Submitted to:**

Association of Vancouver Island and Coastal Communities  
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# EXECUTIVE SUMMARY

## A. Introduction

The Vancouver Island Rail Company (VIRC), a privately owned rail operator has presented the Association of Vancouver Island and Coastal Communities (AVICC) with a proposal whereby VIRC and AVICC, through a private/public partnership, would work together to sustain the E&N Railway on Vancouver Island.

The proposed model suggests the creation of a Vancouver Island Corridor Foundation (the Foundation) which would be a charitable society to own and control the corridor and the essential rail assets. A corridor authority would be formed as a wholly owned subsidiary of the Foundation and would be mandated to enter into agreements and leases for the management of the corridor. VIRC would then enter into a long-term contract or lease of the railway assets for the purposes of operating rail services. VIRC would assume responsibility for the management of the infrastructure and its maintenance and would also assume full operational responsibility for the line.

The Canadian Pacific Railway Corporation (CPR) have offered to donate the portion of the railroad which it owns to the charitable Foundation. The gift would include the land, the rail infrastructure and some related assets on the corridor. CPR owns the rail corridor from Victoria to Courtenay except for the portion from the Wellcox Spur in Nanaimo to Parksville and the east/west line from Nanaimo to Port Alberni which is owned by RailAmerica. The portion of the corridor which is owned by RailAmerica would be leased to VIRC with an option to acquire. VIRC would assign this lease to the Foundation giving the Foundation control of this portion as well.

The document further suggests that the membership of the Foundation would be made up of individuals residing in the communities adjacent to the corridor. A group of individuals appointed by local governments and First Nations groups would make application to the federal government to form the Foundation and become the first board of directors of the corporation.

The firm of Meyers Norris Penny LLP, Chartered Accountants and Business Advisors (MNP) were engaged by AVICC on June 18, 2003 to provide the following:

- To determine whether a non-profit foundation is the most appropriate means whereby to participate in the proposed venture;
- To identify the financial and business risks that the municipal governments may face through participating in the proposed private/public partnership; and
- To identify the financial requirements and exposure of member governments within the next six months and over a longer term.

## B. Key Findings and Observations

### B.1 The Structure

The first component of the engagement was to identify whether the formation of a Foundation and an Authority was the most appropriate structure for the local government involvement in the project. After reviewing the alternatives, it was concluded that a Foundation is likely the most appropriate structure. There was however a question as to whether the formation of a second entity referred to as the Corridor Authority was necessary. No business or tax reasons were identified justifying this second tier.

During the engagement, it became apparent that local governments and First Nation groups do wish to retain control of the rail corridor as a continuous entity. The key to control rests in the initial drafting of the constitution and bylaws of the Foundation. In this respect, a number of specific recommendations were made under Section V of the full report.

The report also addresses a number of **recommendations to ensure that the Foundation does not lose its charitable status and thus risk the possible loss of the rail corridor.**

### B.2 Critical Risks

Six primary perspectives were examined in detail to evaluate the business risks faced by the members of AVICC and the Foundation. These six primary perspectives are environmental, economic, social, technological, political, and operational.

#### B.2.1. Environmental

a) *Environmental assessment:* The lack of a comprehensive environmental assessment prevents the Foundation and its members from fully understanding the environmental risks associated with the corridor. The directors of VIRC have offered to update a Level 2 Environmental Assessment performed by CPR in 1998 and to provide the results to the Foundation. **It is recommended that the Foundation obtain an independent analysis of the report to ensure that it will meet their needs.**

b) *Environmental clean up and remediation costs:* The proposed agreement between CPR, VIRC and the Foundation suggests that all environmental remediation costs will transfer with the property to VIRC and the Foundation. The results of the Level 2 Environmental Assessment will provide the Foundation with the ability to assess the cost of clean up. **It is recommended that the cost be compared to the value of the property and only then should the Foundation make a decision to accept or reject the donation.**

- c) *Fire caused by sparks:* The vegetation along the corridor has become overgrown and encroaches on the rail bed in many areas. The costs associated with a fire, clean up, and damages to cargo and surrounding areas are the responsibility of the rail operator and potentially of the landowner which will be the Foundation. **It is recommended that the agreement between the Foundation and VIRC require VIRC to undertake an annual maintenance program including the control and elimination of vegetation which is satisfactory to the Foundation. It is further recommended that to the extent insurance is available, VIRC be required to carry such insurance to cover the cost of clean up.**

#### B.2.2 Economic

- a) *Economic viability and sustainability of the operator (VIRC):* VIRC's business plan leaves little room for error and relies heavily on significant increases in passenger and freight traffic. If their business fails, the Foundation will have to make decisions as to whether a) it finds another operator; b) it takes over the operation; c) it dissolves the Foundation and disposes of its assets or d) it uses the corridor for other purposes. Whatever option is selected, the Foundation must be in a position to act quickly in order to minimize its losses and risks. **It is recommended that the Foundation develop a business plan to evaluate and examine each option with a process for decision-making. As part of this business plan, the Foundation should ensure that all key components such as full unencumbered access to the RailAmerica lease are available to them if required.**
- b) *Budgeting and costs:* The start up, capital, and operating costs involved with running and managing the corridor are unknown at this time. Without this information, it is difficult to assess what the short and long term financial requirements will be for the Foundation. The proposal identifies approximately \$250,000 of annual revenue for the Foundation. This includes the annual access fee proposed by VIRC plus certain right of way revenue. There is likely potential to increase the right of way revenue but nothing specific has been identified at this time. The Foundation will incur certain costs especially regarding the corridor from Duncan to Lake Cowichan where there is no rail service. **It is recommended that the business plan address activities the Foundation can undertake within the corridor alongside VIRC's rail operation and that financial projections and a sensitivity analysis be prepared.** The Foundation should strive to be self-sustaining while meeting its objectives.
- c) *Access to government subsidies:* VIRC has expressed plans to apply for federal government funding after moving the railroad back to federal jurisdiction. There is a risk that the funding for infrastructure upgrades may not be available when needed. The

financial risks will lie mostly with the operator, but the Foundation will have some financial responsibility to maintain its share of the maintenance costs of the corridor. These costs will depend on the cost sharing agreements between VIRC and the Foundation. **It is recommended that care be taken in negotiating the terms of the agreement with VIRC to ensure that the Foundation does not commit itself to expenses it may not have the resources to cover.**

#### B.2.3. Social

- a) *Public perception:* Municipalities along the corridor are in a difficult position. There will be negative public opinion if they do not try to help the railroad succeed but there will be negative public opinion if they do help the railroad and the venture fails. It is therefore important that decisions be made on a sound business plan which in turn will help communicate the goals and objectives of the Foundation to the general public.
- b) *Municipalities, First Nations and public support:* Support for the railroad must come from all levels. Only local governments have been involved in this current study. If the decision is to go forth, it is important for this group to contact other stakeholders such as the First Nations, economic development groups and other similar organizations to ensure that they have their support in this endeavor.
- c) *Public and investors emotional ties to the project:* Investors and persons close to the project have very strong emotional ties with the railroad which may not lead to the best business decisions. **It is recommended that decisions be based on a sound business plan for the Foundation.**

#### B.2.4 Technological

- a) *State of Repair:* The state of repair of the rail infrastructure, including, bridges, trestles and culverts is unknown. **It is recommended that prior to accepting the donation of the corridor, the Foundation determine the costs involved with bringing the railroad up to operational and safety standards. See B.2.6(a)**
- b) *Upgrading costs and ongoing maintenance:* The cost of upgrading the rail to current hauling standards and the ongoing maintenance costs are largely unknown at this time due to the unknown state of repair of the infrastructure and the lack of historical information. VIRC estimates there are \$10 million in deferred maintenance costs that should be performed on the E&N corridor. VIRC plans to pursue federal funding to assist it in doing the upgrades. The involvement of local government in the Foundation ownership of the corridor will be

## C. Conclusion

There are numerous current and potential benefits of a continuous rail corridor from Victoria to Courtenay and across to Port Alberni. The fact that these benefits have not been addressed in this report should in no way be taken as a suggestion that the benefits do not outweigh the costs. It was not within the scope of the report to identify the benefits. The purpose of the report was to identify the risks to the local governments and provide recommendations for mitigating these risks.

Special recognition should be given to the directors of VIRC and especially Mr. Tanner Elton who have devoted a great amount of time and money to bring this project to the current stage. This appears to be the organization which is most likely to succeed in continuing rail service on Vancouver Island.

The question being posed to the local governments is whether or not they are supportive of the idea and ready to support the formation of a Foundation. It has been made clear to the steering committee and to the consultants that VIRC has very tight time lines and if the local governments are to get involved, decisions must be made on a timely basis. If the decision is in the affirmative, the following are recommendations for action:

- Identify the parties who are ready to undertake the costs of set up and due diligence identified in section B.3.2;
- Appoint a group of individuals to be the founding directors of the Foundation. These individuals must be chosen carefully in order that they will maintain the interest of the local governments and First Nations because these individuals will set the constitution and bylaws which ultimately control the corridor assets;
- The individuals selected to be the first directors will make application to the federal government to form the Foundation. Reference should be made to the recommendations in Section V of the full report.
- While the Foundation is in its formation, the environmental study should be completed, an assessment of the state of repair of the railway undertaken and an appraisal done.
- If the environmental study and appraisals give favorable results, a business plan for the Foundation should be quickly developed simultaneous to the negotiations undertaken with CPR and VIRC. The business plan will provide support for clauses to be negotiated in the agreements.

## **I. INTRODUCTION**

The Association of Vancouver Island and Coastal Communities (AVICC) is a collective of local governments. The Vancouver Island Rail Company (VIRC) has presented this association with a proposal whereby VIRC and AVICC, through a private/public partnership, would work together to sustain rail service on Vancouver Island. The proposal suggests that a charitable foundation (the Foundation) be created to facilitate the transfer of a portion of rail corridor and its related assets from the current owner, Canadian Pacific Railroad (CPR). The remaining sections of the line (currently owned by RailAmerica) would be leased to VIRC to allow for full access and control of the corridor through the public/private partnership. VIRC would operate as a privately owned "for-profit" railway operating company and would be responsible for ongoing rail operations.

AVICC engaged the services of Meyers Norris Penny LLP, Chartered Accountants and Business Advisors (MNP) to provide an independent evaluation of the risks local governments may face through participation in a private/public partnership of this nature. In particular, these findings are to provide AVICC with enough information to determine whether they wish to proceed with this venture. The scope and objectives of the project, as detailed in the June 18, 2003 engagement letter, are as follows:

- To determine whether a non-profit foundation is the most appropriate means whereby to participate in the proposed venture;
- To identify the financial, business and other risks that the municipal governments may face through participating in the proposed private/public partnership; and
- To identify the financial requirements and exposure of member governments within the next six months and over a longer term.

MNP consultants liaised with members of AVICC, VIRC, as well as other key industry players, to obtain the information required to develop this evaluation. The process consisted of researching, investigating, analyzing, and evaluating each aspect associated with the key elements of the objectives listed above. The research and investigation processes consisted of internet based research, library research, literature reviews<sup>1</sup>, telephone conversations, and personal contact research.

The analyzing and evaluating processes used a number of methodologies to perform sensitivity and probability analysis. Six primary perspectives were examined in detail to evaluate the business risks faced by the members of AVICC. These six primary perspectives are environmental, economic, social, technological, political, and operational areas.

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<sup>1</sup> See Appendix 4 for a list of reference material

## **II. BACKGROUND<sup>2</sup>**

The following information is an excerpt from a study entitled "The Future of Rail on Vancouver Island". This study was completed by the Vancouver Island Rail Development Initiative (VIRDI) and funded by Western Diversification. This particular section of the report provides a brief history and current status of the rail line and forms the basis of our understandings.

### **A. The History**

The E&N Railway is an important part of Vancouver Island's history. The building of the railway and its operation "in perpetuity" was one of the conditions for BC to join Confederation. The Province made a significant grant of land and resources to the railway companies to encourage construction of the railway.

Since its inception, the Railway has been a source of both pride and controversy on the Island. There have been several occasions when the line was threatened with closure and each time, rail service was continued as a result of community pressure and support.

### **B. What's included in the E&N Corridor and who owns it?**

The E&N corridor consists of the land, gravel rail bed, ties, tracks, culverts and related structures (bridges, trestles, and tunnels) that support rail service on the right of way. It also includes the historic train stations and the land that they sit on.

The corridor is normally about 30 m (100 feet) wide through most its length, and is sometimes wider where it includes adjacent land used for rail stations. In total, the corridor represents a significant amount of real estate both inside and outside the Island's populated areas. Diagram II.1 provides a map of the line from an ownership point of view.

*Canadian Pacific Railway* (CPR) owns the corridor (land) from Victoria to the beginning of the Marine Rail Service in Nanaimo (known as the Wellcox Spur), and from Parksville to Courtenay. As well, CPR owns additional right-of-way in Nanaimo, Port Alberni, and other parts of the line between Nanaimo and Parksville as follows:

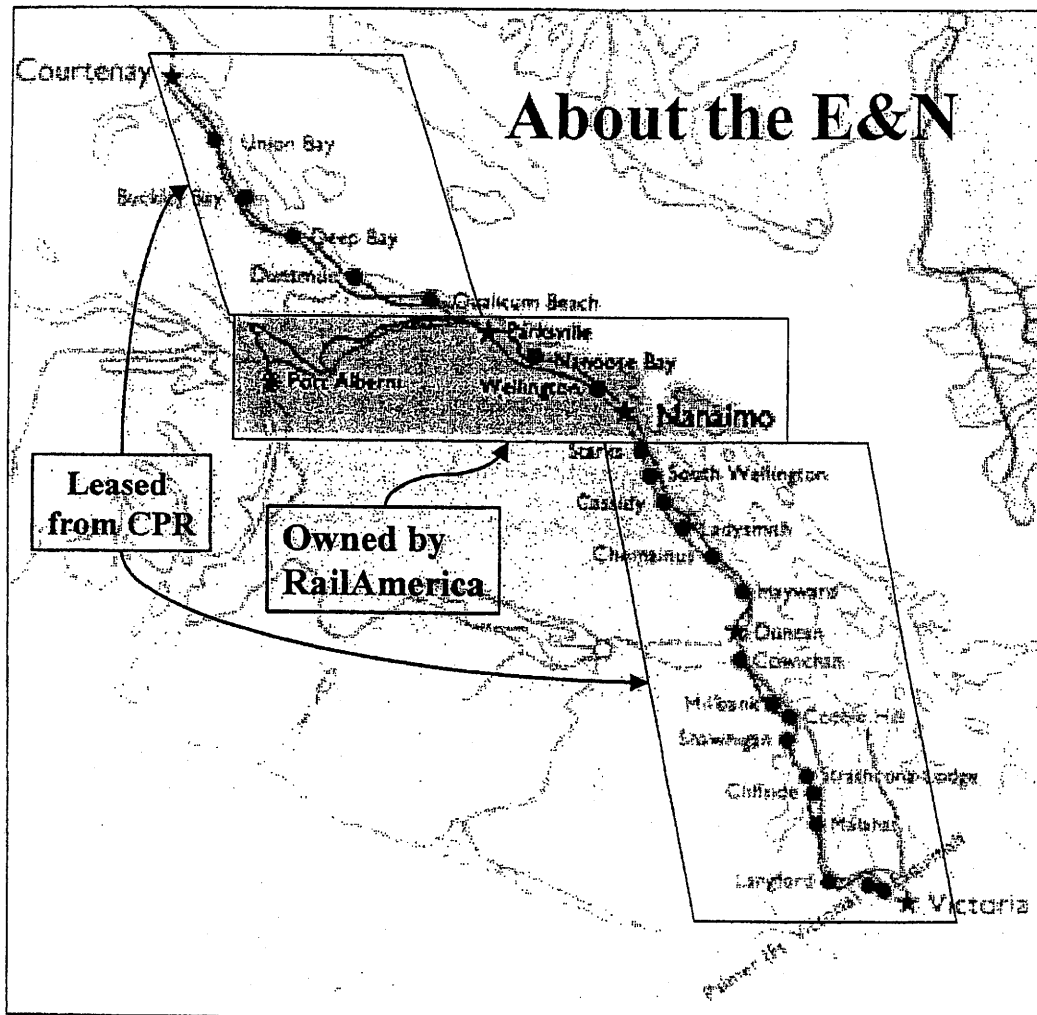
- The section running through the Nanaimo First Nation community on the Wellcox Spur;
- The section running through the Nanoose First Nation;
- The rail yard and a section immediately before the Rail Barge in Nanaimo;
- A section of track in Parksville; and
- A section of track in Port Alberni.

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<sup>2</sup> The Future of Rail on Vancouver Island. Volume 1, Chapter 2, pp. 14-17, December 5, 2002

RailAmerica (RA) owns the corridor from the Wellcox Spur in Nanaimo to Parksville and the east-west line from Nanaimo to Port Alberni less those parcels retained by CPR as set out above.

Diagram II.I



### C. Route and Services

There are essentially two rail corridors on the Island: a North-South Line from Victoria to Courtenay, and an East-West Line from Nanaimo to Port Alberni. These lines intersect and share track in the middle of the North-South Line. These two corridors run through 5 regional districts, 9 First Nation communities, 10 municipalities and 13 unincorporated communities. The North South Line goes through the most populated sections, with approximately 85% of the Island's population living within 30 minutes of the corridor.



#### *The North-South line:*

- The current passenger service between Victoria and Courtenay operates on the North-South line. The remaining freight service is also on this line, concentrated in the middle section.
- Given that the line goes through the most populated areas and most of the major communities on the Island, the potential for other uses of the corridor is higher on this line.
- This line requires some investment if it is to be sustained as rail infrastructure. It has been maintained to meet safety and rail regulatory standards. This maintenance has not included upgrades or facility improvements. Its primary use is for passenger rail with some limited freight.

#### *The East-West line:*

- There are presently no rail services on this line. The primary use of the rail line was for freight, with no passenger service either operating or contemplated.
- The line from Parksville to Port Alberni is rural and remote. Therefore, the potential for real estate development is less apparent than on the North-South line.
- The rail infrastructure has been idle since early January 2002, and would require attention before it could again support rail traffic.
- It has been maintained to required safety and rail regulatory standards, but it has not been improved.

There are three rail services namely freight, passenger and barge currently on the Island.

*Rail Freight:* Rail Freight services are offered on the line by RailAmerica's wholly owned subsidiary, E&N Railway (1998) and through CPR. The current rail freight on the line are CPR customers when the freight originates on the mainland or is destined for the mainland. There used to be some intra-Island freight, but not at this moment.

*Passenger Rail:* VIA Rail operates a passenger service on the Island as part of its regional and remote services. The local operator provides the crewing of the trains and access to the line.

*Rail Barge:* The rail barge service is in Nanaimo and provides the connection between the Island Railway and the Mainland. Coastal Marine, a division of the Washington Group, operates this service.

Overall management and maintenance of the rail infrastructure, whether on CPR or RailAmerica owned corridor, is the responsibility of RailAmerica. This includes

all maintenance and inspection services, switching and otherwise providing access to the railway.

### **III. SHORT LINE RAILROADS**

Class 1 railroads are defined as long haul, national railroad companies. Two Canadian companies are classified as Class 1 railroads and dominate the market in Canada. They are Canadian Pacific Railway (CPR) and Canadian National Railway (CN). Class 1 railroads have found it increasingly difficult to maintain profitability on short lines. Throughout the past fifteen years, the Class 1 operators have been divesting themselves of these shorter, less profitable lines in an effort to achieve efficiencies and cost savings within their own operations. During this time, minimum maintenance has been performed on these short rail lines. In fact VIRC estimates there are \$10 million in deferred maintenance costs on the E&N Railway.

Rail can be an efficient method of transportation, but the fixed costs of maintaining the infrastructure make it difficult for a short line operator to survive in the competitive market. For an overview of the Canadian rail market, see Appendix 2. There are now several short line tracks no longer in operation and are in the process of re-establishing themselves for purposes other than rail. For example, the Cold Lake, Alberta corridor is in the process of becoming a tourist attraction with hiking, biking, and walking trails.

### **IV. PRIVATE/PUBLIC PARTNERSHIP PROPOSED**

In a document entitled "Draft Status Report on the Implementation of the Committee Partnership Model", Vancouver Island Railways Company (VIRC) has proposed a private/public partnership to take ownership and operate the rail line on Vancouver Island.

The proposed model suggests the creation of a Vancouver Island Corridor Foundation which would be a charitable society to own and control the corridor and the essential rail assets. A corridor authority would be formed as a wholly owned subsidiary of the Foundation and would be mandated to enter into agreements and leases for the management of the corridor. VIRC would then enter into a long-term contract or lease of the railway assets for the purposes of operating rail services. VIRC would assume responsibility for the management of the infrastructure and its maintenance and would also assume full operational responsibility for the line as required under the Federal Railway Legislation.

The document further suggests that the membership of the Foundation would be made up of First Nations members and other individuals residing in the communities adjacent to the corridor. The group of individuals who first make application to the Federal Government to form the Foundation become the first Board of Directors of the corporation until their respective successors are elected.

The Canadian Pacific Railway Corporation has offered to donate the portion of the railroad which it owns to the charitable foundation. This includes the rail corridor outlined on Diagram II.1 plus the corridor from Duncan to Lake Cowichan. The gift would include the land, the rail infrastructure and some related assets on the corridor. The Foundation would then issue a receipt for the value of the donation. The value of the donation must be assessed by an experienced appraisal firm. The portion of the corridor which is owned by RailAmerica will be leased to VIRC with an option to acquire. VIRC will assign this lease to the Foundation giving the Foundation control of this portion as well.

The corridor authority would be a non-profit society responsible to put into operation the objectives of the Foundation. It would be the entity responsible for contracting services and entering into joint ventures. The document suggests that the governance of the authority would include representation from the five regional districts, the First Nations from each of the regions and VIRC.

The key shareholders of VIRC have not been formally identified but many have been introduced to the representatives of local government. However, VIRC assures us that it has sufficient rail experience, management experience and financing within its organization to implement its business plan.

Mr. Tanner Elton who is the spokesperson for VIRC has indicated a need to move fairly quickly on this proposal because RailAmerica plans to terminate service in the fall of 2003. According to Mr. Elton, VIRC has subsidized the operation of the E&N Railway in the amount of \$150,000 per month for several months. They have committed to do so until October 1, 2003.

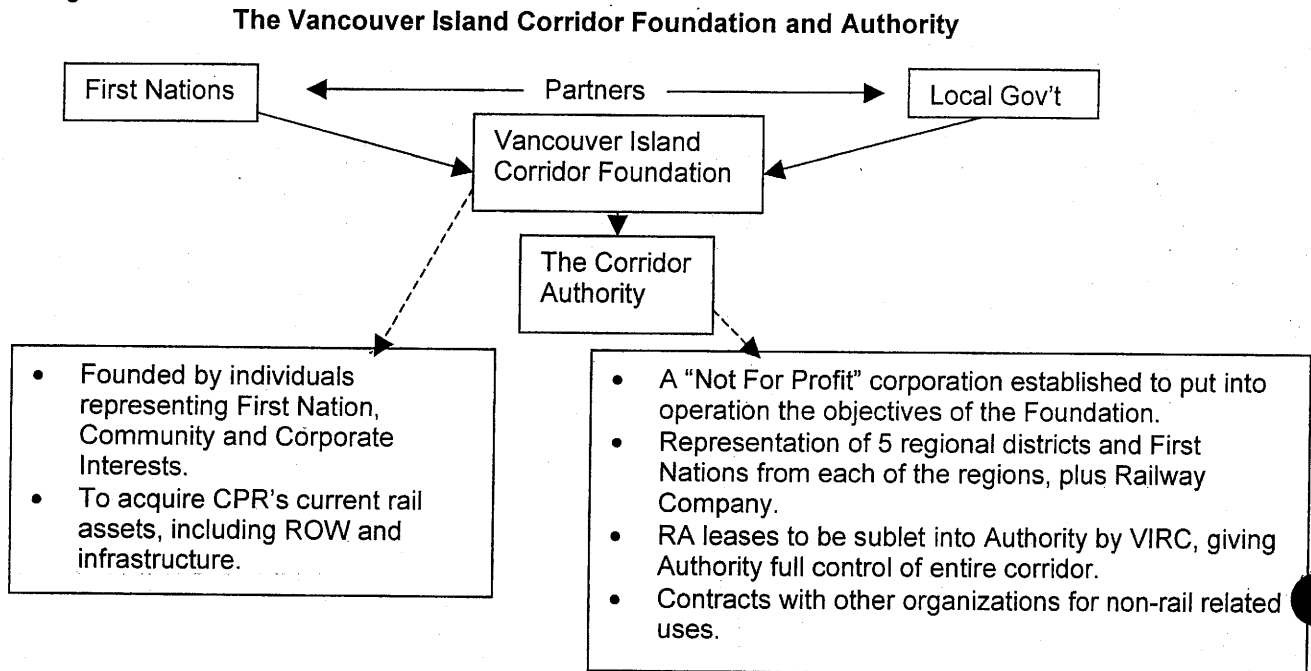
## ***V. ORGANIZATIONAL STRUCTURE REVIEW***

The first outcome of this report is a review of the proposed organizational structure. The organizational and operational structure proposed in the Status Report is shown in Diagram V-1. Tax issues relating to the structure and alternative structures have been considered and addressed in numbers 1 to 7 which follow.

## A. Foundation

The setting up of a charitable Foundation is an involved process which is detailed in a document created by VIRC<sup>3</sup> and made available to readers of this report. Therefore, the mechanics of setting up a charitable Foundation are not addressed within the scope of this engagement.

Diagram V-1



1. To be registered as a charity, the application must clearly identify its charitable purpose, which must fall within certain categories:
  - the relief of poverty;
  - the advancement of education;
  - the advancement of religion; or
  - certain other purposes that benefit the community in a way the courts have said are charitable.

The Foundation would likely fall within the scope of the final category. Examples of such purposes are preserving the environment and providing certain public amenities to benefit the community. The Foundation would have to indicate its long-term goals and objectives as part of its application, including its current and projected activities, and any current and projected financial information.

*Recommendation: Local governments and First Nation groups who wish to retain control of the rail corridor can do so by restricting the goals and*

<sup>3</sup> Establishing a charitable foundation for the purposes of community ownership and control of the E&N railway corridor. June 2003.

*objectives of the Foundation. Therefore it is important that the founding members and directors invest time and effort plus obtain appropriate legal advice in structuring this portion of the Foundation constitution and by-laws.*

2. The "Asset Purchase and Donation Agreement" between Canadian Pacific Railway Corporation, Vancouver Island Railway Company, and Vancouver Island Corridor Foundation contains various conditions regarding the purchase and donation, some of which relate to the payment of taxes.

For example, Articles 2.6 and 3.4 of the agreement make reference to the payment of taxes by VIRC, with respect to the "Purchased Assets". The current wording of these articles would appear to be broad enough to include taxes that would normally not be the responsibility of VIRC or the Foundation, such as income taxes payable by CPR on the sale of these assets.

*Recommendation: It is suggested that the wording of these articles, and any other articles that refer to the payment of taxes, be amended appropriately to limit the payment of taxes to only the ones that would normally be applicable to the recipient of the property such as GST. Donations to a charity are exempt from Land Transfer Tax.*

3. There are certain components of the railway line and adjacent properties that are owned by E&N Railway (1998), a wholly owned subsidiary of RailAmerica. It is understood that, unlike CPR, RailAmerica is not currently proposing to donate these assets to the Foundation, but to lease these assets to VIRC, who would in turn lease them to the Authority or the Foundation. As part of the arrangements with RailAmerica, the maintenance of these assets, including any potential improvements, would be the responsibility of VIRC.

Under current rules issued by CCRA, registered charities can undertake leasehold improvements that would benefit the charity and are essential to its operations. If there is a concurrent benefit to the landlord, the charity and the landlord would normally have some method of reimbursement or cost sharing of the improvements, and are addressed in the lease agreement.

In circumstances where a landlord would receive an undue benefit from the improvements made by the charity, and the charity and/or the landlord are not able to amend the lease agreement for the charity to be reimbursed for such benefits, the charity could potentially lose its charitable organization status.<sup>4</sup> If the leasing arrangements between VIRC and the Foundation require the Foundation to assume responsibility for improvements that ultimately would benefit either RailAmerica or VIRC there is the potential for the Foundation's charitable status to be revoked.

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<sup>4</sup> CCRA Policy Statement – CPS-006.


*Recommendation: Any arrangements with VIRC will therefore have to be properly drafted to ensure that there is no benefit being conferred to VIRC or RailAmerica, or in the alternative, that there is adequate reimbursement for such costs. For example, section 9.3 of the draft agreement between CPR, VIRC, and the Foundation, states that the Foundation will agree to improve the stability of the slope along the east rail track within the Nanaimo reserve. RailAmerica currently owns this property and may be deemed to have received a benefit from the improvement made by the Foundation. This is exactly the type of situation that may cause the Foundation to lose its charitable status.*

4. The Income Tax Act (Canada) provides for preferential income tax treatment to the donor, in the event that the donation consists of cultural property or ecologically sensitive land.<sup>4</sup> In such cases, there is no income tax payable by the donor on any inherent gain on the transfer of the property, while at the same time, providing for a donation receipt for the full fair market value of the property.

In this particular case, it is possible that the assets being donated by CPR could potentially qualify as ecologically sensitive land, provided the appropriate certification can be obtained from the Minister of the Environment, stating that the property is ecologically sensitive land, the conservation and protection of which is, in the opinion of the Minister, important to the preservation of Canada's environmental heritage. The Minister would also determine the fair market value of the gift. This will not have any impact on the Foundation, but may be beneficial to CPR, and could potentially also be a factor that can be used to persuade RailAmerica to donate their properties to the Foundation as well.

It should, however, be noted that the Foundation would have to retain the property for at least ten years, as there is a 30% penalty that would be assessed on the Foundation if it disposes of the property in less than ten years.

*Recommendation: If CP donates the property as ecologically sensitive land, the directors must take all precautions to ensure that the Foundation is not wound up within 10 years.*

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5. In the event the Foundation is dissolved, it is not permitted, as a registered charity, to make any distributions to its members. Any remaining assets of the Foundation would have to be disbursed by way of a transfer or donation to another registered charity as per the Foundation's by-laws. If such a transfer is not completed, any remaining assets would be required to be remitted to CCRA as a special tax applicable to charities that have been dissolved.

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<sup>4</sup> Income Tax Act (Canada) – subparagraph 39(1)(a)(i.1), section 118.1

Under the Income Tax Act, a municipality is considered a registered charity, and would therefore be able to accept the transfer of any of the Foundation's assets. However, only some First Nations are considered to be municipalities by CCRA, based on certain criteria CCRA has established that looks at the First Nations' operations and their ability to pass by-laws. Accordingly, if any property were to be transferred to a First Nation, its ability to be considered a municipality would have to be determined prior to such a transfer.

*Recommendation: The founding members and directors should ensure that the constitution and by-laws provide for the transfer of the Foundation's assets upon dissolution of the Foundation to the municipalities and those First Nation organizations which have charitable status. Legal assistance should be obtained in drafting these documents*

6. Since CPR would donate the line to the Foundation, any future distribution of the line upon the dissolution of the charity would need to address such factors as the potential First Nation land claims against the property, environmental issues that would flow with the transfer of the property, and distribution of the property to a municipality as outlined above. It should be noted that the draft incorporating documents prepared by VIRC indicate that the property would be transferred to First Nations, which would have to meet the definition of a municipality to ensure that the distribution conforms to CCRA's requirements.

*Recommendation: If the incorporating document prepared by VIRC is used, it should be updated to reflect the fact that upon dissolution of the Foundation, the assets should be transferred to another charity with the same or similar goals and objectives as the Foundation. The charities may include municipalities and First Nations that are considered to be municipalities by CCRA.*

## **B. Authority**

7. The current structure proposes that certain assets would be owned by the Foundation, to be managed by the Authority, and to be operated by VIRC. It is understood that VIRC would be entitled to any operating surplus, and be responsible for any operating deficit arising from the operation of the railroad line.

Under current rules set out by Canada Customs & Revenue Agency (CCRA), a charitable foundation is permitted to carry on a related business that can accomplish or promote its charitable objects. However, such related businesses are generally carried on directly by the registered charity, or operated by a related charity on its behalf.<sup>5</sup>

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<sup>5</sup> CCRA Policy Commentary CPC-002.

✓ *Recommendation: Given that the Foundation, as a registered charity, is entitled to carry on a related business, there is a question as to the need for the establishment of the Authority to manage the line. Consideration should be given to having the Foundation manage the line directly. This would simplify the operational structure, and eliminate the duplication of some costs associated with setting up and operating the Authority. Prior to making a final decision on this issue, legal advice should be obtained to ensure there are no limited liability issues or other legal reason for having this second entity.*

Other organizational structures such as societies, direct municipal ownership, municipal corporations and charitable trusts have been reviewed and dismissed for various reasons. Most of the reasons related to the lack of ability to obtain a charitable number and/or the potential transfer of risk to local governments.

## **VI. CRITICAL RISKS ASSESSMENT**

The second component of this study was to analyze the risks which municipal and local governments may face through participating in the proposed private/public partnership. The scope was extended to also review the risks faced by the proposed Foundation.

Within the restricted time lines and the limited information which was available, an extensive number of issues and concerns which could ultimately result in risk have been identified and listed in Appendix 1. From that listing, the following seventeen risks are viewed as critical to the success of this project. These are the most important risks and challenges facing the Foundation and the communities along the railway corridor. They are broken down into six focus categories (environmental, economic, social, technological, political, and operational).

### **A. Environmental**

#### **1. Environmental assessment**

Lack of a comprehensive environmental assessment prevents the Foundation and its members from fully understanding the environmental risks associated with the Corridor. A Level 2 assessment would involve soil samples and provide detailed information on the environmental state of the Corridor. It would provide suggestions regarding areas that may require environmental intervention and insight into the costs involved with the possible clean up. Without a Level 2 assessment, the Foundation and operator will not likely be able to obtain the appropriate amount of insurance coverage. While it may be possible to obtain insurance without a Level 2 assessment, insurance companies typically require it and without one, the likelihood of adequate insurance coverage is minimal and insurance premiums would be onerous. The directors of VIRC have indicated that CP does have a Level 2 environmental assessment



performed in 1998. VIRC has undertaken to get this assessment updated to a level satisfactory for insurance coverage.

*Recommendation: The Foundation should obtain an independent analysis of the report to ensure that it will meet their needs.*

2. *Environmental cleanup and remediation costs*

Environmental cleanup and remediation costs are ultimately the responsibility of the landowner, which will be the Foundation. In fact, the proposed agreement between CP and VIRC and the Foundation suggests that all environment remediation costs will transfer with the property to VIRC and the Foundation. Without a comprehensive environmental assessment, it is impossible to determine the environmental cleanup and remediation costs for the Corridor. These costs could range from minimal to several million dollars, and without an assessment, the total costs would be impossible to estimate.

*Recommendation: The results of the Level 2 environmental assessment will provide the Foundation with a cost of clean up prior to the Foundation accepting the land. The cost should be compared to the value of the property and only then should the Foundation make a decision to accept or reject the donation.*

3. *Fire caused by sparks from train*

The vegetation along the Corridor has become overgrown and encroaches on the rail bed in many areas. The vegetation will have to be dealt with as it poses a fire risk from the sparks that occur from the passing of a train. However, even after the vegetation along the track is destroyed, the remaining dead and dry branches, grasses, and weeds pose an even higher risk of a fire due to the dryness and combustibility of the vegetation. The costs associated with a fire, clean up, and damages to cargo and surrounding areas are the responsibility of the Operator and potentially the landowner (i.e., the Foundation). Costs to control and eliminate the vegetation along the corridor are approximately \$175/mile/year or \$25,000/year for the Corridor. The costs associated with a fire caused by sparks from a train range from several hundred thousand to several million dollars, depending on the size of the fire and the amount of damage caused.

*Recommendation: In the agreement between the Foundation and VIRC, VIRC should be required to undertake a maintenance program to control and eliminate vegetation on an annual basis which is satisfactory to the Foundation. To the extent that insurance is available, VIRC should be required to carry insurance to cover the cost of clean up.*

## B. Economic

### 1. *Economic viability and sustainability of Operator*

The viability of the Operator is a critical risk to the Foundation. VIRC's business plan leaves little room for error and relies heavily on significant increases in passenger and freight traffic. If the Operator fails, the Foundation will have several choices in regards to what actions to take. The options include (a) finding another Operator; (b) taking over the operation; (c) dissolving the Foundation and disposing of its assets, or (d) using the Corridor for other purposes. Whatever option is selected, the Foundation must be in position to act quickly in order to minimize its losses and risks.

*Recommendation: The Foundation needs a business plan to evaluate and examine each option with a process for decision making. The Foundation should ensure that all key components such as full unencumbered access to the RailAmerica lease are available to them.*

### 2. *Budgeting and costs*

The start-up, capital, and operating costs involved with running and managing the Corridor are unknown at this time. Without this information, it is difficult to assess what the short and long term financial requirements will be for the Foundation. The draft term sheet between VIRC and the Foundation suggests an annual access fee of \$150,000 to cover operating costs of the Foundation such as property taxes. In addition, VIRC has indicated that rights of way other than the Telus fibre optics lines produce \$100,000 in revenue per year for CP which will transfer to the Foundation with the donation of the corridor. The rights of way include truck crossing rights, utilities, parking lots and a number of other activities along the line. Without a market study, it is difficult to identify what potential there is in increasing the right of way revenue. The Foundation will incur certain costs especially regarding the corridor from Duncan to Lake Cowichan where there is no rail service. The extent of these costs have not been quantified as they are not within the scope of this engagement.

*Recommendation: As part of the business plan recommended in B.1, the plan should address business activities that the Foundation can undertake within the corridor along side VIRC's rail operation. Financial projections and a sensitivity analysis should be prepared. The Foundation should strive to be self-sustaining while meeting its objectives.*

### 3. Access to government subsidies

Currently, the railroad is under provincial jurisdiction and as such, does not qualify for federal funding for infrastructure improvements. The agreement between the CPR and RailAmerica indicates that should RailAmerica terminate the operation of the railroad, it will return to federal jurisdiction. VIRC has expressed plans to apply for federal government funding after moving the railroad back to federal jurisdiction. However, recent infrastructure proposals from Railway Association of Canada (RAC) make no mention of E&N railroad upgrades. While this does not preclude the E&N from qualifying for federal funding, once the jurisdictional change is approved, it does mean that the amount of time required to obtain the funding will be significantly increased. Therefore there is a risk that the funding for infrastructure upgrades may not be available when needed and may prevent the operator, VIRC, from using the track until the necessary upgrades are completed. The financial risks will lie mostly with the operator, but the Foundation will have some financial responsibility to maintain its share of the maintenance costs of the Corridor. These costs will depend on the cost sharing agreements between VIRC and the Foundation. As an example, if the annual maintenance costs are approximately \$1 million and the Foundation agrees to a 25% cost sharing arrangement, its annual costs would be \$250,000.

*Recommendation: Care must be taken in negotiating the terms of the agreement with VIRC to ensure that the Foundation does not commit itself to expenses it may not have the resources to cover.*

## C. Social

### 1. Public perception

Municipalities along the Corridor are in a difficult position. There will be negative public opinion if they do not try to help the railroad succeed, but there will also be negative public opinion if they do help the railroad and the venture fails. Positive perception and support are critical to the success of the railroad.

*Recommendation: Having a business plan helps communicate the goals and objectives of the Foundation to the general public and will assist the member communities by providing them a document upon which to base their decision on whether to get involved.*

### 2. Municipalities, First Nations, and public support

Support for the railroad must come from all levels including municipalities, First Nations, and the general public. Each group will have a different reason for supporting (or not supporting) this initiative. It will be important to determine how much support exists for the continuation of the railroad and what additional options exist. While the support for the railroad

appears strong, there is a lack of evidence such as a consumer survey or a market analysis to support this conclusion.

*Recommendation: Only local governments have been involved in this current study. It is important for this group to contact other stakeholders such as the First Nations, economic development groups and other similar organizations to ensure that they have their support in this endeavor. Although surveys and a market analysis would be great, time is of the essence and therefore there may not be time to solicit public support before the project goes forward. If the decision is to go forth with a Foundation, key contacts should be made and invitations extended to identify and approve the founding members and directors as soon as possible.*

3. *Public and investors emotional ties to the project*

The E&N Railroad is laden with history. Investors and persons close to the project have very strong emotional ties with the railroad and want to see it succeed. However, sometimes a strong emotional attachment may not lead to the best business decisions.

*Recommendation: A business plan will help identify the best plan of action for the Foundation and will solidify the positive emotion and support surrounding the railroad.*

## **D. Technological**

1. *Unknown state of repair of rail infrastructure*

The state of repair of rail infrastructure, including equipment, switching stations, maintenance yards, bridges, tressels, culverts, and internal control systems for scheduling, bookings and reporting, is unknown. Critical issues such as the state of repair of the 120 bridges, 400 culverts, and 139 miles of track, ballast, and ties along the railroad have not been confirmed or reviewed. One would assume that the British Columbia Ministry of Transport would have a fairly recent report detailing the state of repair for the Corridor as the E&N Railroad falls under provincial jurisdiction.

*Recommendation: The Foundation and the operator must assess the state of repair of the railway corridor and all related assets in order to determine the costs involved with bringing the railroad up to operational and safety standards. Prior to accepting the donation of the corridor, the Foundation should request the most recent BC Ministry of Transport report on the corridor and railroad.*

2. *Upgrading costs and ongoing maintenance costs cannot be determined*

The existing rail can accommodate weight up to 263,000 pounds on certain sections of the track while it can only accommodate 177,000 pounds in others. The proposed upgrade by VIRC would facilitate the use of large engines, etc. to a maximum weight of 286,000 pounds. The need to upgrade the track and bridges to handle this weight is required by RAC proposal under the Infrastructure Improvement Program. The costs of upgrading the rail to the new 286,000-pound hauling standard and the ongoing maintenance costs are largely unknown at this time due to the unknown state of repair of the infrastructure and the lack of historical information. A rule of thumb obtained from other short line rail operators indicates that the ongoing maintenance costs for a rail corridor is approximately \$7,500 to \$10,000 per mile per year (or \$1.04 to \$1.39 million per year in maintenance costs). The rail corridor appears to have been neglected over the past several years. VIRC estimates \$10 million in deferred maintenance costs should be performed on the E&N Corridor.

*Recommendation: VIRC plans to pursue federal funding to assist it in doing the upgrades. The involvement of local governments in the Foundation ownership of the corridor will be an asset for it in this process. The Foundation must investigate to what extent VIRC expects it to participate in such costs.*

**E. Political**

1. *Continuity of Charitable Status*

In order to maintain charitable status, the Foundation must continue its activities within the parameters of its founding charter. This includes retaining a Board of Directors consisting of more than 50% as arms length members and continuing to perform its charitable goals and objectives. In addition, any improvements made by the Foundation to land or assets not owned by the Foundation may affect its charitable status. This may become an issue with regards to the land that is currently owned by RailAmerica.

To prepare for the event that the Foundation loses its charitable status, the founding members must make a number of decisions in developing the Foundation's charters and by-laws. One option would be to transfer the assets to another registered charity with similar goals and objectives. The recipient could be a municipality or an approved First Nation; however, the environmental liabilities and other business risks would also flow through to the new owner. All residual assets and cash from the Foundation would need to be transferred to a registered charity or to CCRA. If the land donated to the Foundation was deemed to be ecologically sensitive land and the Foundation had not retained the property for at least ten years, a 30% penalty would be assessed against the Foundation.

*Recommendation: These issues should be kept at the front of mind in developing the Foundation constitution and bylaws, the business plan and negotiating all agreements with VIRC, CPR and RailAmerica.*

2. *Multiple levels of Government Ministry approvals*

Any changes to the existing and/or future use of the corridor and its infrastructure will require the approval of numerous levels of government and government departments. For instance, changes or improvements to existing culvert systems will require approval from the Fisheries department and the Water Conservation Boards. Other groups who may have a say or vested interest in changes made to the corridor could include First Nations, unions, various ministries such as Forestry, Mines and Minerals, Fisheries, Environment and sustainable resources to name a few.

*Recommendation: A business plan would address the implications of these challenges in each of the options identified.*

3. *Ownership and responsibilities*

There is conflicting information within the various reports and agreements provided by the operator. As a result, it is unclear as to the ownership structure of certain assets. Examples include timber rights along certain sections of the track, certain stations and station grounds, overpasses, and rights-of-way. One thing which was made clear by VIRC is that the revenue stream from Telus fibre optics right of way will be purchased from CP by VIRC.

*Recommendation: The Foundation and VIRC should enter into negotiations and complete a detailed term sheet or agreement, specifically outlining the proposed ownership of all land, infrastructure and related assets. Without this agreement, it is difficult to assess the liabilities and responsibilities (present and future) associated with the assets.*

4. *Union activity and influence*

The business plan of VIRC indicates that a revision to the existing passenger routing is required in order to meet passenger revenue expectations. This change will require an overnight stay in Duncan, which will ultimately affect the current employee union contract. The existing union contract will need to be renegotiated in order to facilitate this change. A significant portion of VIRC's future revenue is dependent on increased passenger service and therefore it is critical that a new agreement be consummated. Without union approval, VIRC will be unable to meet its business plan objectives and this will increase the probability of operator failure.

*Recommendation: All members of the Foundation should be fully informed of this process in order that they can deal appropriately with adverse publicity in this matter.*

## **F. Operational**

### **1. Deferred maintenance**

The cost associated with the deferred maintenance of the rail line is estimated at \$10 million. Without the benefit of a detailed baseline study or appraisal it is difficult to determine the actual state of the corridor and its related infrastructure, all of which will have a significant impact on the financial viability of the Foundation and the operator. VIRC's business plan makes reference to a 50/50 capital cost sharing arrangement between the parties involved. The Foundation's involvement in the capital program becomes an issue when taking into account the risks associated with its charitable status as it relates to engaging in the improvement of land owned by third parties.

*Recommendation: Before any decisions can be made, a full assessment and appraisal of the rail line and all of its assets should be completed, including an estimate of net salvage value. This, together with the level 2 environmental assessment, are viewed as the two most critical next steps in the due diligence process. The cost to complete the assessment, appraisal and environmental studies is estimated at \$300,000.*

The business plan of VIRC makes reference to the Canada Strategic Infrastructure Fund, a program specifically designed to assist short line railways with infrastructure upgrades and improvements. In May 2003 the Rail Association of Canada (RAC) complied and submitted a detailed summary and proposal for funding to Industry Canada. The submission proposed that the Government of Canada consider investing upwards of \$450 million into the infrastructure improvement of eighteen identified rail lines. The E&N railroad was not one of the rail lines identified by the RAC in the report. This does not mean that the line would not be considered for funding under the program guidelines; however, without the support of the RAC, the process will be more difficult and time consuming.

### **2. Liabilities and insurance**

Without a clear understanding of the ownership structure, and the environmental status of the corridor, it is difficult to assess the risks inherent with each aspect of the project. There are numerous risks pertaining to the proposed organizational structure and the fiduciary duties of the board members, which require an independent legal opinion. The majority of these risks can be managed through structured agreements and indemnities.

In terms of the environmental risks, it is likely that, even with the appropriate indemnity agreements from the operator, any residual costs associated with environmental damage will rest with the landowner.

*Recommendation: This risk can be mitigated through insurance coverage and it will be critical to review the policy on a regular basis to ensure sufficient coverage is in place, particularly in light of changing regulations. A detailed fully negotiated term sheet between the Foundation and VIRC would assist in determining each party's responsibilities.*

In addition to the Level 2 environmental assessment, there are numerous other factors that will ultimately determine the insurability of the project such as: the Operators experience, the accident history of the line, the environmental assessment, the condition of the assets, replacements costs, indemnities and policy deductibles. In speaking with Marsh Canada (a national insurer of railroads), it is difficult to estimate the cost of insurance without having the benefit of the environmental assessment and the appraisal of value.

## **VII. FINANCIAL REQUIREMENTS**

### **A. Long term obligation**

The third and final portion of the report addresses the financial risks and liabilities of the local governments.

It should be noted that the "public" partner in the proposed private/public partnership is a Foundation. The Foundation is a limited liability corporation which means that its debts and liabilities do not transfer to its members. Therefore, should the local governments choose to provide seed money to cover the due diligence and set up the Foundation, they will not extend their commitment to covering the future debts and liabilities of the Foundation.

Unless the local governments guarantee liabilities of VIRC, they will not be responsible for those debts and liabilities either.

As part of the plan, an application will be made to the BC Assessment Authority to change the classification of the property from a Class 2 which is for utilities to a Class 8 which is for recreational property/non-profit organization. The effect of this change in classification is to reduce the tax rate from .5947 per thousand dollar of assessed value to .1149. That reduction in rate would translate into a reduction in taxes from approximately \$700,000 per year to approximately \$150,000 per year. This loss in revenue to the local governments is in effect a cost of the venture. However, it should be noted that this loss in revenue would occur regardless of who establishes the Foundation.



As is the case in all corporations, there is a potential liability to directors of the Foundation for certain costs. Insurance is available to indemnify directors' liability. The cost of insurance would have to be determined and would become a cost of operation for the Foundation.

## **B. Long term commitment**

If the local governments do choose to support the Foundation, they may feel a moral obligation to subsidize it if it is not financially viable. This is in contrast with Section A where we address the legal obligation. As identified in the critical risk section of this report, the Foundation may find itself with some financial obligations regarding environmental remediation and/or capital upgrades. In addition to those risks identified, the cost of returning the corridor to a state acceptable to the provincial government would fall on the Foundation's shoulders if the rail operation is permanently terminated.

There does not appear to be any need for local governments to make a decision at this time whether they would help the Foundation should some of these liabilities arise. Information not yet available which may influence the decision would be the appraised value of the property in comparison to the cost of de-commissioning the railroad and remediating the property.

## **C. Costs to go forward**

Whoever takes control of the Foundation will need to invest some funds to take this project forward. The activities which will require an investment at this time include the following. In each of the activities, reference should be made to the recommendations in Section V and VI to ensure risks are mitigated.

- Set up Foundation: This would include the determination of who will be the first members and directors of the Foundation; the development of the charter and bylaws and the submission of an application to the federal government. There may be a need for a facilitator and certainly a need for legal advice in going through this process.

\$25,000

- Appraisal and environmental study: Prior to the Foundation accepting the property as a gift from CP, it must satisfy itself that the associated costs do not exceed the property value. Therefore an environmental study and an appraisal which include an assessment of the current state of the assets would be required. A company which undertakes such environmental studies and appraisals has estimated \$300,000 for this undertaking. However, VIRC has indicated that CP already has a Level 2 environmental study done in 1998 which could be updated at minimal cost. VIRC has undertaken to cover the cost of updating the study. The Foundation still would need its own independent consultant to

review the findings of this study. Therefore there could be estimated savings of approximately \$100,000 on the original estimate.

300,000

- Prepare a Business Plan: The Foundation needs a business plan as indicated in several instances under the recommendations to mitigate risk. The plan would address whether there is a need for an authority to be formed, would clearly address the relationship with VIRC, ensure all potential sources of revenue and expenditures are identified, identify risks faced by the Foundation by virtue of its involvement in the venture, develop risk management strategies and address the various options for the use of the corridor assets in addition to the rail operation as well as the use of the assets should VIRC cease to operate. 50,000
  - Negotiate agreements: The Foundation would have to spend some time to properly negotiate its agreement with CP and VIRC to minimize its risks. Business consultants and lawyers would be involved in the negotiation of these agreements. 50,000
  - Due Diligence: Other due diligence may be identified through the above process. Although the exact details of this due diligence have not yet been identified, an amount has been included as a contingency. 75,000
- Potential saving by using environmental study prepared by CP in 1998 and updated by VIRC in 2003 \$500,000  
(100,000)
- Total estimated costs not yet supported by specific quotes. \$400,000

## **VIII. CONCLUSION**

A lot of time, money and effort has been invested to date in the formation of this private/public partnership and the creation of VIRC to continue rail service on Vancouver Island. The question being posed to the local governments is whether or not they are supportive of the idea and ready to support the formation of a Foundation. It has been made clear to the Steering Committee and to the consultants that VIRC has very tight time lines and if the local governments are to get involved, decisions must be made on a timely basis.

The benefits of maintaining control of the corridor as one entity are numerous but have not been specifically identified in this report because it was not within the scope of the engagement. The report was intended to identify only the risks of the project to ensure local governments knew the worst-case scenario.

If the local governments make a decision to support this undertaking, they can either undertake to pay the costs identified in the previous section over the next

three months or identify sources of funding for these costs. Individuals must be appointed to be the founding members and directors of the Foundation. Other interest groups such as First Nations should be identified and invitations extended to these groups as well. Legal advice should be sought at this point to ensure the local governments and First Nations through the Foundation retain permanent control of the corridor.

## APPENDIX 1 – BUSINESS RISKS

The tables that follow show the most significant risks for each of the six primary perspectives (environmental, economic, social, technological, political, and operational), the probability of its occurrence (H is high, M is medium, L is low, U is unknown or undefined), and should it occur, the seriousness or impact (H, M, L, or U) on the strategies and expected results. Actions to mitigate or prevent the risks from occurring are summarized for reference. Lastly, the party or parties affected by the risks are noted in the last column. Parties in the assessment include:

- **Foundation** – The Foundation will be the organization responsible for issuing a tax receipt to CPR in consideration of the donation of land and right-of-way.
- **Operator** – The Operator will be the organization responsible for day-to-day rail operations, including freight and passenger services.
- **Directors** – Directors will be part of the Board of Directors for the Foundation.
- **Members** – Members will include individuals, groups, First Nations, and municipalities interested in furthering the objectives of the Foundation and shall be approved by the Board of Directors of the Foundation.

Environmental Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>Lack of comprehensive Environmental Assessment</b> The environmental condition of the rail line is unknown. There are two levels of environmental assessment. Level 1 involves management surveys while Level 2 involves soil surveys and analysis.	U	H	Level 2 Environmental Assessment is required to provide the comfort needed to ensure the property meets acceptable environmental standards and help qualify for insurance.	Foundation, Operator, Members, and Directors
<b>Environmentalists and other lobby groups</b> What will be the impact of environmentalists and lobby groups on the transaction? Will additional pressure from these groups be placed on the new owner or Operator?	U	H	Perform Level 2 Environmental Assessment and monitor environmental groups	Foundation and Operator
<b>Transportation of Hazardous Goods</b> Hazardous goods can create serious negative publicity and major environmental liabilities. Appropriate licensing, control, maintenance, and records will be required.	L	H	Adhere to safety, quality control, and quality assurance standards. Appropriate insurance will also play an important part.	Foundation and Operator

<b>Ongoing adherence to and knowledge of current and future environmental standards</b> Environmental standards are constantly changing and the Foundation and the Operator will have to keep up with changing standards.	L	M	Periodic review of environmental guidelines and adherence to these guidelines.	Foundation and Operator
<b>Environmental cleanup and remediation costs are unknown</b> What environmental liabilities is the Foundation assuming? Has there been derailments or spills in the past? If so, have they been resolved to legislative standards?	U	H	Perform Level 2 Environmental Assessment so as to provide a historical baseline	Foundation and Operator
<b>Possible issues with respect to wildlife</b> Wildlife and other animals on track as well as beavers, which cause havoc for railroads by blocking culverts and flooding track.	H	M	Monitor railroad and right-of-way for damage caused by animals. Ongoing maintenance program.	Foundation and Operator
<b>Greenhouse gas</b> Per passenger or per tonne, rail generates one-fifth the greenhouse gas emissions of trucking, one-quarter the emissions of urban autos, and one-third the emissions of planes.	L	L	Maintain and promote efficiencies of rail over other forms of transport	Operator
<b>Fire</b> Vegetation along the track is susceptible to fire caused by sparks from the train. All costs associated with a fire caused by the train are the responsibility of the Operator and possibly the Foundation.	M	H	Follow safety procedures and eliminate vegetation along the track.	Foundation and Operator

Economical Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>Financing options</b> What financing options are available to the Operator and where or who will the money come from?	U	M	Reasonable expectations that the Operator will eventually show a profit will help secure financing	Operator
<b>Ownership of rail assets</b> Fee simple title, liens, and charges on land.	L	L	Make transfer of assets subject to removal of liens and charges	Foundation
<b>Economic viability and sustainability</b> Projected operating revenues rely heavily on increased passenger and freight business, yet there is no marketing plan to support the projections.	M	M	Experienced management, sound business plan, and strong partners. Signed long-term contracts with freight customers.	Operator
<b>Historical operating financial statements</b> Both RailAmerica and CPR should provide historical financial statements for the E&N Railway. These statements would assist all parties in understanding the operating costs and the financial commitments associated therewith.	M	M	Require RailAmerica and CPR to submit historical financial statements for the E&N Railroad	Foundation, Operator, and Members
<b>Budgeting and costs</b> What are the start-up, capital, and operating costs involved?	U	L	Prepare business plan for the Foundation	Foundation and Operator
<b>Long term commitments</b> What long-term commitments will the Foundation and Operator be expected to honor?	U	M	Identify long-term commitments that must be honored. Negotiate indemnity agreements or obtain appropriate insurance coverage.	Foundation and Operator
<b>Access to government subsidies</b> Quebec provides a 75% rebate on rail corridor property taxes to all railways. It also provides grants to local short lines to assist with rehabilitation of track and bridges and for up to one-third of the cost of constructing reload centers, intermodal facilities or new industrial track.	H	M	The Operator has expressed plans to apply for federal government funding after moving the railroad back to federal jurisdiction. However, RAC infrastructure reports make no mention of E&N upgrades. <sup>6</sup>	Foundation and Operator

<sup>6</sup> The Railway Association of Canada Submits a Private Public Partnership Proposal on Short Line Infrastructure.  
[http://www.railcan.ca/documents/presentations/2003\\_06\\_04\\_SL\\_Submission.pdf](http://www.railcan.ca/documents/presentations/2003_06_04_SL_Submission.pdf) May, 2003.

Social Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>Community, First Nations, and public support</b> Each community will have a different reason for supporting (or not supporting) this initiative.	L	L	Solicit input from stakeholder groups	Members
<b>Public perception if venture fails</b> Municipalities along the corridor face difficulty in conveying an appropriate message to the general public if the railroad fails.	M	M	Have a backup plan in place. Prepare a business plan for the Foundation.	Foundation and Members
<b>The public and investors have very strong emotional ties to the project</b> Emotion and passion play a strong role in the railroad. The E&N Railroad is bursting with history. Positive perception and support are critical to the success of the railroad.	H	L	Solicit input from stakeholder groups. Have a backup plan in place. Prepare a business plan for the Foundation.	Foundation and Members
<b>Freight customers are vital to the operation</b> Current rail customers are subsidizing the operation of the railroad. How long will this continue? Will they be willing to continue to subsidize? Will they be asking for discounts in the future? How will new customers be attracted to use the railroad?	U	M	Prepare market analysis	Operator
<b>Consumer perceptions are unknown</b> No formal market analysis regarding passenger and freight demand seen.	U	L	Prepare market analysis	Operator
<b>Demographics</b> Demographics of the Island are such that access and convenience are critical points of consideration for travel.	M	L	Prepare market analysis	Operator

Technological Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>Unknown state of repair of:</b> Equipment, infrastructure, switching stations, maintenance yards, bridges, tressels, culverts, and internal control systems for scheduling, bookings and reporting	U	H	Assess the state of repair of the railway corridor and related assets	Foundation and Operator
<b>Upgrading costs and ongoing maintenance costs can not be determined</b> Without knowledge of the state of repair of the above items, upgrading costs and ongoing maintenance costs cannot be estimated. A significant challenge is in financing the upgrading and renewal of infrastructure to handle the 286,000-pound car loadings that now operate on main lines throughout North America.	H	M	Assess the state of repair of the railway. Determine upgrading costs and maintenance costs.	Foundation and Operator
<b>Advancement of the trucking industry creates increased competition</b> Trucks run on publicly funded infrastructure. Therefore, the tax base supports trucking, but not rail. Longer hauling hours for trucks, flexibility in scheduling, and efficiencies in short distances give trucking a competitive advantage over rail.	L	M	Maintain and promote efficiencies of rail over other forms of transport. Participate in government lobby efforts. Municipalities will experience costs savings from reduced truck traffic if rail services are competitive.	Operator and Members
<b>Geographic constraints require multi transport carriers</b> The only way to get rail freight off the island is via intermodal transport using air or water transport (ferries, barges, etc.). This will add to transportation costs. All goods produced, but not consumed, on the island are destined for intermodal transport.	H	L	Enter into agreements with other transporters on Vancouver Island such as ferry and shipping operators	Operator



Political Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>First Nations</b> First Nation land claims, cultural concerns, and participation in the Foundation.	H	M	Solicit input from First Nations and obtain agreement regarding control of the Corridor.	Foundation
<b>Inter provincial and federal jurisdictions</b> The E&N Railroad is contained entirely within BC, has several users and owners, and is under provincial jurisdiction. VIRC has plans to move the railroad back under federal jurisdiction.	H	L	Determine cost and benefits of moving to a federal jurisdiction. Seek cooperation and approval from Provincial and Federal governments.	Foundation and Operator
<b>Railway crossings and shared right-of-ways</b> Existing agreements between CPR and users of crossings will be assigned to the Foundation or Operator. Clarity around shared maintenance costs is required.	H	L	Examine existing agreements. Document any cost sharing agreements. Structure any new agreements between the parties involved.	Foundation and Operator
<b>Continuity of charitable status</b> There are several conditions that must be met in order for the Foundation to maintain its charitable status. Examples: More than 50% of the board members must be arms length parties. If the Operator fails, the Foundation cannot begin operating the railroad on its own without losing its charitable status.	L	H	Require that more than half of Directors be "arms length" parties. Have a backup plan in place. Prepare a business plan for the Foundation.	Foundation, Directors, and Members
<b>Regulatory requirements</b> Short line railroads have to maintain the knowledge and management of, and adherence to, guidelines outlined in the Canada Transportation Act. Transfer of title may be stalled due to deferred maintenance. May be subject to certain upgrades.	H	L	Periodic review of transportation guidelines and adherence to safety and quality controls. Experienced management and safety personnel. Ongoing training and upgrading.	Foundation and Operator
<b>Communities</b> Will the communities participate in the Foundation and support the ongoing operations of the railway?	U	L	Solicit input from communities, municipalities, and First Nations through ongoing meetings	Foundation and Members

<b>Current strike situation and ongoing union issues</b> BC is a heavily unionized environment and unions can play a significant role in the operation of a business.	H	M	Monitor union activity	Operator
<b>Agreement requires route change</b> A overnight stay in Duncan has been proposed to facilitate improved passenger service	H	L	Obtain union approval for route changes	Foundation and Operator
<b>Ownership and responsibilities</b> Determining "Who owns what?" and "Who is responsible for what?" will significantly impact risk.	H	H	Prepare a business plan for the Foundation. Prepare agreement between Foundation and Operator.	Foundation and Operator
<b>No term sheet seen between VIR and the Foundation</b> Must identify who is responsible for what.	H	M	Establish a term sheet between the Foundation and the Operator	Foundation and Operator
<b>Continuity and longevity of the Foundation</b> The Foundation and its members must share similar long-term goals, but be able to minimize the risks in obtaining these goals.	M	L	Structure the Foundation in such a way as to minimize risks for the members. Utilize liability insurance and indemnity agreements.	Foundation and Members
<b>Multi levels of government for approvals</b> If the Foundation decides to use the land for purposes other than a railroad, numerous levels of government must be consulted before approval is given.	L	H	Prepare a business plan for the Foundation. Review other business cases (e.g. Cold Lake/Edmonton corridor)	Foundation and Members
<b>Confederation issue</b> The legal issues appear to have been sorted out in the Supreme Court; however, there are still mixed feelings over the outcome of the case.	L	L	Solicit input from stakeholder groups. Have a backup plan in place. Prepare a business plan for the Foundation.	Members
<b>Cooperative spirit amongst industry leaders</b> Are the different industry players willing to cooperate with the new Operator in order to keep the railway on Vancouver Island?	U	M	Establish long-term contracts to haul freight for major clients	Operator

Operational Risk Assessment				
Issue or Concern	Pr	Impact	Actions to mitigate the risk	Affected
<b>Tax consequences of the transaction(s)</b> Tax consequences of the transaction is minimal assuming that a charitable foundation is the recipient of the donation.	L	M	Determine and clarify tax consequences before transaction occurs	Foundation, Operator, and Members
<b>Directors obligations and liabilities</b> What are the directors' obligations and liabilities?	U	L	Determine Directors liabilities. Purchase Directors insurance. Seek legal opinion.	Directors
<b>Foundation members obligations and liabilities</b> Foundation members' obligations and liabilities are minimal.	L	L	Determine Members liabilities. Seek legal opinion.	Members
<b>Organizational structure</b> Analysis of the structure indicates that a minimum of two organizations are required: a charitable foundation and an Operator for the railroad. Other organizations such as an authority may not be required.	L	L	Determine organizational structure. Currently being investigated as part of this report.	Foundation
<b>Board of Directors</b> Charitable status requires more than 50% of Board of Directors to be "arms length" parties.	L	L	Require that more than half of Directors be "arms length" parties	Directors
<b>Advisory Board for both entities</b> Will there be an independent Advisory board for the Foundation and the Operator?	U	L	Assess the need for an Advisory Board. Advisory Board does not have an "arms length" requirement	Foundation and Operator
<b>Continuance of the railway</b> Is the Foundation accepting a responsibility to keep the E&N Railroad running in perpetuity? What happens if the railroad (or portions thereof) is discontinued?	U	M	Have a backup plan in place. Prepare a business plan for the Foundation.	Foundation

<b>Liabilities and insurance</b> What liabilities will be covered by insurance? Who will be responsible for what? How will these responsibilities be determined and recorded? What will the cost of coverage be?	U	M	A copy of the existing or proposed insurance policies should be obtained and reviewed in detail. Unable to estimate premiums due to self-insurance, unknown track record of Operator, and missing Level 2 environmental assessment.	Foundation, Directors, and Operator
<b>Safety and accidents</b> Who is responsible for safety? Who is responsible for Quality Assurance and Quality Control? What happens if there is an accident?	U	H	Prepare and execute safety, quality control, and quality assurance procedures for the railway. Assign responsibility for safety to a qualified individual.	Foundation and Operator
<b>Strong local management, expertise and integrity</b> Management will be a critical success factor in this initiative. Integrity and customer service will also be important factors. Depth and breadth of technical knowledge is critical, but resumes have not yet been provided.	H	M	Obtain resumes, background and reference checks (in progress)	Foundation and Operator
<b>Labour shortages, wage pressures, threat of unions</b> BC is a highly unionized province and the pressure from unions will be significant. The Operator's business plans calls for a route change that will require union approval.	H	M	Monitor union activity. Pay reasonable wages to attract quality labour.	Operator
<b>Thorough due diligence</b> A Level 2 Environmental Assessment is required for insurance purposes, along with an assessment of the state of repair of the railway assets.	H	M	Perform thorough due diligence. Make sure enough time is given to perform this task and that all parties are willing to participate.	Foundation and Directors

<b>Unrealistic timelines to complete due diligence</b> The timelines for this project are very tight. There is a real sense of urgency and this is a good thing. However, the timelines to complete the due diligence phase of the project are unrealistic given the number of unknowns.	H	M	Set realistic timelines	Foundation
<b>Current value of the project is unknown</b> No appraisal report has been seen and the total value of the land to be gifted is unknown. This makes determining financial requirements more difficult.	H	L	Perform a valuation	Foundation
<b>No business plan</b> The Foundation does not appear to have a business plan.	H	H	Prepare a business plan to address issues such as financing, strategic plans, document assumptions, and identify back up plans.	Foundation
<b>Insurance</b> There is no guarantee that the Operator will be able to qualify for insurance. A Level 2 Environmental Assessment is required for insurance purposes.	M	H	Solid management and expertise will be required in addition to the ability to pay the premiums.	Operator
<b>Deferred maintenance</b> Insurance, approvals for ownership, and funding may all be withheld until deferred maintenance has been completed. The Operator may approach the communities for assistance in paying for deferred maintenance.	M	H	There is little that can be done about the holdbacks until the extent of maintenance required is determined. Clearly indicate who will be responsible for maintenance.	Foundation, Operator, and Members

## **APPENDIX 2 – MARKET ANALYSIS**

The railway industry in Canada historically comprised two dominant Class 1 rail lines, Canadian National (CN) and Canadian Pacific Railway (CPR), along with a handful of regional carriers. Canada has one of the lowest rail transportation costs in the developed world, and rail service is a vital contributor to Canada's GDP. Deregulation in the late 1980's witnessed the emergence of short line railways as a viable and strategic alternative to the national carriers. Through the 1990's, the number of short line rail companies continued to increase as a result of ongoing competitive restructuring within CN and CPR. Today, there are in excess of 40 short line railways operating in Canada, due in part to the transfer of over 8500km of track from CN & CPR to short line operators.<sup>7</sup>

Short line operations exist for a variety of purposes, including tourist service, commuter/passenger transport, and shipping/freight haul service. Short lines are typically customer service focused, and often provide the required partnering link between regional industry and the Class 1 rail lines leading to destination markets and ports. Other features of short line railways include:<sup>7</sup>

- Lower operating costs driven by fewer, generalist employees.
- Less locomotive power is required compared with Class 1 railways, resulting in overall lower capital and equipment costs. Rail cars are commonly supplied through Class 1 operators.
- Despite these lower costs, sufficient capital for reinvestment can be difficult to secure due to high taxes and low operating margins. For example, many operators must now upgrade their locomotive capabilities to meet the new standard for hauling 286,000 lb cars. (Formerly 263,000 lb)
- Competition is primarily with local and long haul trucking business.
- Increased vulnerability to economic downturns, due to high reliance on one or two commodity groups as a primary source of revenue.

### **Market Demand<sup>8</sup>**

The predominant long-term trend in the rail industry over the period 1992-2001 has been toward an increase in demand for rail services on all fronts. Generally, the past decade witnessed a 35% increase in revenue ton-miles (workload), despite a 34% decrease in railway workforce size and a 17% decrease in rail track mileage in use. The need for efficiency increased over this period as well, as incremental revenues typically fell from 3.54 cents per revenue ton-mile (RTM) in 1992 to 3.27 cents per RTM in 2001. Demand information for specific market segments is outlined as follows:

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<sup>7</sup> <http://www.railcan.ca>

<sup>8</sup> <http://www.railcan.ca/en/trends/default.htm>

## Freight

- Freight transportation has steadily increased from 1,176,000 containers and trailers in 1995 to 1,828,000 containers and trailers in 2001. The increase has resulted mainly from increased demand for container transport.
- The number of freight carloads increased from 2,860,000 carloads in 1992 to 4,017,000 carloads in 2001. Tons per carload increased in the same period from 73 to 80.

The following table presents information on Canadian national railroad commodity specific freight transportation trends from 1996-2001.

**Freight Transportation**  
**Originated carloads by commodity grouping <sup>(6)</sup>**

	Agriculture	Coal	Minerals	Forest Products	Metals	Machinery & Automotive
1996	400,377	318,539	399,208	274,362	260,706	154,277
1997	460,443	326,288	426,464	280,899	259,185	177,115
1998	385,955	361,256	477,630	315,058	260,211	165,714
1999	377,921	392,616	472,053	341,427	246,255	227,858
2000	457,089	370,467	479,240	398,466	282,470	266,912
<b>2001</b>	<b>452,423</b>	<b>349,992</b>	<b>495,078</b>	<b>398,430</b>	<b>250,153</b>	<b>247,438</b>

	Fuels & Chemicals	Paper Products	Food Products	Manufactured & Miscellaneous	Intermodal	Total
1996	275,250	191,870	27,441	59,451	433,797	2,795,278
1997	281,550	199,144	27,294	55,013	481,550	2,974,945
1998	372,289	192,410	30,468	60,548	498,752	3,120,291
1999	387,968	210,914	30,356	63,710	548,872	3,299,950
2000	445,575	240,624	33,894	68,346	611,765	3,654,848
<b>2001</b>	<b>425,976</b>	<b>237,380</b>	<b>38,322</b>	<b>56,269</b>	<b>646,692</b>	<b>3,598,153</b>

6. Not all member companies record originated carloads by commodity grouping.

Source: <http://www.railcan.ca/en/trends/default.htm>

## Passenger

- The number of passenger cars has fluctuated in the past ten years, averaging to be 447 cars. In 2001, 421 passenger cars were in service.
- The number of passengers carried has gradually increased from 3,852,000 in 1992 to 4,112,000 in 2001.
- Passenger miles traveled has also recorded steady gains from 821 million miles in 1992 (1321 million km) to 965 million miles in 2001 (1553 million km).
- Average length of journey has remained fairly steady over the past 10 years, at 237 miles (381 km).

- 94% of passenger activity in Canada is attributed to VIA Rail, predominantly in the southern Ontario-Quebec corridor (85%).

As can be seen from the table below, 90% of Canadian railway revenue arose from freight services in 2001, while 4% of revenue was derived from passenger transport. The remaining 6% was designated as 'other' revenue streams, assumed to be a collection of smaller activities including tourist operations.

#### Operating revenue (\$millions)

	Freight	Passenger <sup>7</sup>	Other	Total
1992	5,764	159	416	6,339
1993	5,842	174	460	6,476
1994	6,617	176	439	7,232
1995	6,485	180	390	7,055
1996	6,480	183	385	7,048
1997	7,137	197	394	7,728
1998	6,887	213	373	7,473
1999	6,922	227	431	7,580
2000	7,231	323	478	8,031
<b>2001</b>	<b>7,203</b>	<b>346</b>	<b>503</b>	<b>8,052</b>

7. Government funding for passenger services is excluded.

Passenger revenue is intercity only.

Source: <http://www.railcan.ca/en/trends/default.htm>

### Consumer Trends

The predominant trend in railway operations is the increased focus expecting to be directed towards passenger and commuter transport services. Federal government initiatives directed at reforming the national transportation system to address economic and social development will be forthcoming in the years ahead.<sup>9</sup> These initiatives will be favourable for passenger rail systems, including rail service as a strategic investment priority.

A sharp increase in commuter rail passengers from almost 47 million in 2000 to over 56 million in 2001 was the first significant increase in the past five years.<sup>10</sup> This number includes major metropolitan centres in British Columbia, Ontario and Quebec only, and reflects the expansion of commuter services in the above areas.

Another noticeable trend is the observed growth of intermodal traffic, from 433,797 carloads in 1992 to 646,692 carloads in 2001.<sup>10</sup> The integration of other modes of transportation into the freight rail system reflects ongoing activity in the trucking industry and the growing presence of global destination markets that are best served by seaport access.

<sup>9</sup> <http://www.arcc.ca/website/news.asp?nuid=74>

<sup>10</sup> [http://www.railcan.ca/documents/publications/trends2002/Trends2002\\_en.pdf](http://www.railcan.ca/documents/publications/trends2002/Trends2002_en.pdf)



Finally, the overall trend towards regional & short line railways has strengthened the opportunity for niche markets. With the market streamlining that occurred within the Class 1 rail carriers, regional & short line operators exist to continue to provide rail services to communities and industry beyond the major urban centres.<sup>11</sup>

In addition to owning rail line that has been divested by the major carriers, short haul railways are successfully operating through partnership agreements that see them sharing track mileage (running rights) with the Class 1 carriers. Such a cooperative arrangement allows each company to focus on its primary strategy while providing seamless service to customers.

### **British Columbia Rail Market**

The BC railway industry includes service by both CN and CPR, along with tourist, passenger, and short line/regional operators. Some of these include:<sup>12</sup>

- BC Rail (provincial freight/supply hauler from Fort Nelson to Vancouver)
- Great Canadian Railtour Company (Rocky Mountaineer tourist train service)
- Kelowna Pacific Railway (serving the Okanagan Valley)
- Southern Railway of British Columbia (Lower Mainland freight transportation)
- Via Rail (passenger service throughout BC)
- West Coast Express (commuter rail system in the Lower Mainland)
- White Pass & Yukon Route (tourist train serving Fraser BC and Bennett BC)

In addition, Ferroequus Railway Company is engaged in ongoing regulatory hearings in an attempt to secure running rights from North Battleford, Saskatchewan to Prince Rupert, BC.

A total of 4246 miles (6834 km) of track were operated in BC in 2001.<sup>8</sup> British Columbia's position as a coastal province and rugged terrain combine to make rail service an important component of Canada's economic competitiveness by shipping goods to markets domestically and abroad. Rail service is predominantly located on the province's mainland.

### **Environmental Issues**

Canada's ratification of the Kyoto Accord will have direct consequences on the transportation industry and its contribution to the country's greenhouse gas

<sup>11</sup> <http://www.arcc.ca/website/viability.asp>

<sup>12</sup> [http://www.railcan.ca/en/members/en\\_mem\\_rai\\_default.htm](http://www.railcan.ca/en/members/en_mem_rai_default.htm)

emissions. The rail industry stands to contribute positively towards reducing such emissions, as outlined by the following statistics:<sup>13</sup>

- From 1990-1999, railways recorded an 8.5% **decline** in greenhouse gas emissions (despite a 30% growth in business), while heavy-duty diesel trucks witnessed a 50% increase.
- Greenhouse gas emissions from railways were 6.5 megatonnes in 1999, compared to 36.9 megatonnes from heavy-duty diesel trucks.
- The rail industry has voluntarily agreed to limit nitrous oxide emissions to 115 kilotonnes per year.

The rail industry has been deemed by Environment Canada to be "Kyoto compliant",<sup>13</sup> and the performance of the industry in this regard is sustainable given the inherent efficiency of locomotive transport. For example, steel wheels on steel rails creates less friction than rubber on asphalt, and principles of kinetic energy mean that less horsepower is required to transport an equal size load by rail than by truck. Moreover, a reduced grade in rail lines also contributes to increased fuel efficiency by the rail industry, which translates into lower emissions overall. The results of such fuel efficiency will also imply a cost control benefit to a rail operator's bottom line performance, as market prices for fuel continue to rise.

The Railway Association of Canada has prepared an environmental review of the transportation sector, including the importance of railways for Canada's economic competitiveness. Entitled *A Response to the Discussion Paper on Canada's Contribution to Addressing Climate Change*, it can be found at: [http://www.railcan.ca/documents/2002\\_07\\_17\\_Climate\\_Change.pdf](http://www.railcan.ca/documents/2002_07_17_Climate_Change.pdf)

## Regulatory Analysis

### *Maintenance Standards*

The maintenance of a rail line is covered by a memorandum of understanding (MOU) agreement, adopted by all parties somehow involved in the maintenance process. Given the multiple scenarios that could potentially exist, these agreements are very individualized in nature. For example, some of the factors that can influence the structure of the maintenance MOU include:

- Public vs. private ownership of the land where the track lies.
- Pre-existing agreements between public/private owners and private operators (owner and operator are assumed to be different groups).
- Jurisdiction of rail track (federal, provincial, municipal).
- Level crossing rights issues & agreements.

Therefore, it is important to gather information about the track and surrounding area in question from all groups prior to negotiating an agreeable MOU. As this is

<sup>13</sup> [http://www.railcan.ca/documents/2002\\_07\\_17\\_Climate\\_Change.pdf](http://www.railcan.ca/documents/2002_07_17_Climate_Change.pdf)

a fairly common procedure, existing MOU's within the industry that involve other short line operators should also be researched to establish guiding standards common to the industry. Generally, a pre-existing track will already have an agreement of some form already in place. Therefore, updating the old agreement would be the focus of negotiations.<sup>14</sup>

Maintenance accountability reverts back to the jurisdiction of the track in question. The Railway Association of Canada has posted detailed standards and track safety rules (Transport Canada approved) for member companies that can be found at: [http://www.railcan.ca/en/legislation/default\\_rules.htm](http://www.railcan.ca/en/legislation/default_rules.htm)

While Transport Canada (or equivalent jurisdictional governing body) does not directly legislate or control maintenance standards, it should be noted that rail safety is prescribed by the Railway Safety Act and other accompanying legislation. A full listing of these federal documents is available at: [http://www.tc.gc.ca/railway/legislation\\_e.htm](http://www.tc.gc.ca/railway/legislation_e.htm) The British Columbia Ministry of Transportation could provide further information on relevant provincial equivalencies in place.

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<sup>14</sup> Based on conversation with persons at the Railway Association of Canada (Regulatory Affairs division).

## APPENDIX 3 – OBSERVATIONS ON VIRC BUSINESS PLAN

Through independent research, interviews, and information gathering, the general information noted below has been obtained and noted under the right hand column entitled "Observations". The left column contains the assumptions taken directly from VIRC's business plan.

### Revenue Assumptions

The following is a list of revenue assumptions made in the preparation of the VIRC business plan and the observations regarding those assumptions obtained through research.

Revenue Assumptions	Observations
<b>Timber Revenues:</b> The acquisition of the CPR assets includes the timber values on the line. Most of these values are on the Alberni line. The timber is valued at over 1 million dollars, but it is not clear how much of the timber can be reasonably harvested. VIRC projects annual revenue of \$500,000 as minimum and sustainable.	CPR/VIRC agreement indicates that the timber rights associated with the corridor will remain the property of CPR.
<b>Passenger Service:</b> Traditionally, the load factors have been around 30-35%. These are shown as increasing to 40% in the 1 <sup>st</sup> year, then increasing each year until a high of 55% is achieved. This projected increase will be as a result of marketing of the passenger services.	The business plan relies heavily on increased passenger and freight traffic and alludes to a marketing plan; however, there does not appear to be a marketing plan in place to support these increases.
<b>Rail Car Maintenance:</b> The rail car maintenance contract for the passenger rail division will provide revenue to Island Rail. This 3 year contract with VIA will require consent to transfer; however, this has been agreed in principle. The annual contract revenues paid by VIA for maintenance are approximately \$800,000. Gross margin is 35%.	It is unclear in the business plan whether or not VIRC has the expertise and capability to perform rail car maintenance services.
<b>Freight Services:</b> The current customer base will remain in place and, in the case of Top Shelf Seeds; will increase its loads with an improvement of service. There is a standard number	The business plan relies heavily on increased passenger and freight traffic and alludes to a marketing plan; however, there does not appear to be a marketing plan in place to support

of "other freight" that has been consistent and has been increasing. This is shown as existing traffic. There are three new customers that are ready to move to rail freight once the continuation of the service can be assured. Norske is shown as a customer starting in the 3 <sup>rd</sup> year.	these increases. A rule of thumb for short line railroads is about 10 cars/month/mile.
<b>ROW Easements:</b> Revenues that are derived as a result of allowing uses under, over, or along the right of way. These revenues have been reduced in recent years, but are a consistent and reliable revenue stream. This is being transferred as part of the assets from CPR.	CPR assets are being transferred to the Foundation, not VIRC. Therefore, the Foundation should be entitled to this revenue, not VIRC.
<b>Additional Lease Revenue:</b> There is the potential for additional revenues based on joint ventures involving the lease or sub-lease of parts of the right of way.	The Foundation should decide if VIRC will have the right to sub-lease or if that option will remain with the Foundation.
<b>Other Revenue:</b> Another source of anticipated revenue is the contributions from governments and other sources to supplement expenditures within the company. VIRC Corporate Services will be responsible for working with operations to find these sources of revenue and to maximize them.	While the federal government is supporting short-line infrastructure upgrades, the most recent document submitted to the federal government makes no reference to the E&N Railroad. This may increase the amount of time required to obtain funding.

### Expense Assumptions

The following is a list of expense assumptions made in the preparation of the VIRC business plan and the observations regarding those assumptions obtained through research.

Expense Assumptions	Observations
<b>Insurance:</b> The historical cost of insurance was around \$90,000 per year (about 2.5% of gross revenues). This has increased to 3%.	<p>Typical insurance coverage and costs are impossible to generalize due to several factors, including:</p> <ul style="list-style-type: none"> <li>○ Class 1 railroads typically "self-insure" themselves or qualify for group rates that are lower than the rates available to short line railroads.</li> <li>○ The expertise and historical</li> </ul>

	<p>accident record of the Operator factor heavily into the price of insurance. Since VIRC is a new Operator, premiums will be much higher than an older, established operator.</p> <ul style="list-style-type: none"> <li>o Standard insurance policy requires a Level 2 Environmental Assessment for all new insurance policies. Currently, there are no plans for a Level 2 assessment.</li> </ul>
<b>Maintenance:</b> \$400,000 to support the internal maintenance function. The expenses for maintenance of way are largely related to personnel, equipment and materials to support the internal maintenance function.	Deferred maintenance costs are estimated at \$10 million. Rule of Thumb for maintenance costs for tie, ballast, and rail replacement is about \$7,500/mile/year or \$1.04 million/year.
<b>Control of vegetation:</b> Not mentioned in VIRC business plan.	Costs to control and eliminate the vegetation along the corridor are approximately \$175/mile/annum or \$24,329/year.
<b>Taxes:</b> The property tax is shown as \$100,000.	VIRC would only be responsible for taxes on the track leased from RailAmerica.
<b>Access Charge:</b> VIRC has included a \$100,000 ROW access charge to reflect the anticipated initial cost for securing access to the ROW from the communities.	Since there is no term sheet between VIRC and the Foundation, it is difficult to assess if \$100,000 is a reasonable charge for ROW access. The amount charged should be related to the amount of responsibility each side will assume under the terms of the agreement.
<b>Marketing:</b> Currently there is not marketing of the line and the extent to which it exists at all is within the job descriptions of the general managers. The Plan shows 6% of gross revenues being allocated to marketing activities. This creates a budget of in excess of \$300,000 per year.	The business plan relies heavily on increased passenger and freight traffic and alludes to a marketing plan; however, there does not appear to be a marketing plan in place to support these increases. \$300,000 for marketing appears reasonable, depending on the media used to convey the marketing message.

## Other Benchmark Considerations

- Typical locomotive maintenance is \$2,000 - \$3,000/month/locomotive;
- Engine overhauls average \$12,000 - \$14,000, assuming work can be done locally. Costs increase significantly (for shipping) if the repairs cannot be done on Vancouver Island. Each locomotive has 4 engines ( $4 \times \$12,000 = \$48,000$ /locomotive);
- Overall costs of operating a short line railroad are approximately 70% of larger, Class 1 operators;
- Costs to tear up tracks and ties
  - \$3 per tie times 2,700 ties per mile = \$8,100 per mile;
  - Salvage value of rail is \$100 per tonne times 149 tonnes per mile = \$14,900 per mile;
  - Salvage value of ties is unknown. If clean, they can be resold at \$2 each but if they are treated with creosote, there is no recovery and they will add to the removal costs. The ties will need to be shipped to the mainland for destruction in compliance with current environmental guidelines;
- Costs associated with bridge "clean ups" – average \$125,000 per bridge. Each bridge will vary based on its current condition and the standard that is imposed by the Minister of Transport;

## APPENDIX 4 – REFERENCE MATERIAL

Document Name	Year/Month	Type of Publication / Document	Authors/Owners	
The Future of Rail on Vancouver Island, Volume 1, Report of the Planning Process,	2003/12	Report	(VIRDI)	
Establishing A Charitable Foundation For The Purposes Of Community Ownership And Control Of The E&N Railway Corridor	2003/6	Report	VIRC	
Vancouver Island Railway, Term Sheet	2003/5	Term Sheet	VIRC	
Vancouver Island Railway, Agreement in Principle between VIA Rail Canada and Vancouver Island Railway Corporation (Island Rail)	Unknown	Agreement	Unknown	
The Vancouver Island Railway Company, Draft Status Report On The Implementation Of The Community Partnership Model	2003/6	Draft Status Report	VIRC	
Vancouver Island Railway Inc., Business Plan (updated)	2003/2	Business Plan	VIRC	
Asset Purchase And Donation Agreement Draft	2003/7	Agreement Draft	VIRC	
RMA Volume 1, Medium and Large Firms, Financial Performance Indicators for Canadian Business	2000 - 1998	Statistical Website	RMA Website	
Assets For: 4011 - Railroads, Line-Haul Operating	2003/6	Statistical Website	RMA Website	<a href="http://www.rmahg.org/index_front.html">http://www.rmahg.org/index front.html</a>



Infrastructure Canada Program	2003/6	Government of Canada Website	Government of Canada Website	<a href="http://www.infrastructurecanada.gc.ca/icp/index_e.shtml">http://www.infrastructurecanada.gc.ca/icp/index_e.shtml</a>
Today's Railways , Kelowna Pacific Railway	2003/6	Website		<a href="http://www.trainweb.org/rosters/KPR.html">http://www.trainweb.org/rosters/KPR.html</a>
CPR Continues Productivity Drive With Restructuring Measures	2003/6	Website	Canadian Pacific Railway	<a href="http://www8.cpr.ca">http://www8.cpr.ca</a>
The Esquimalt and Nanaimo Railway	2003/6	Website	Trainweb	<a href="http://www.trainweb.org/canadianrailways/articles/EsquimaltAndNanaimoRailway.htm">http://www.trainweb.org/canadianrailways/articles/EsquimaltAndNanaimoRailway.htm</a>
Vancouver Island Railway Society , About E&N	2003/6	Website	VIRS About E&N	<a href="http://www.islandrail.bc.ca/aean/index.shtml">http://www.islandrail.bc.ca/aean/index.shtml</a>
Railway Costing	2003/6	Website	Canadian Transportation Agency	<a href="http://www.cta-otc.gc.ca/rail-ferro/finance/rail_cost_e.html">http://www.cta-otc.gc.ca/rail-ferro/finance/rail_cost_e.html</a>
Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations	2003/6	Website	Canadian Transportation Agency	<a href="http://www.cta-otc.gc.ca/rail-ferro/dosco/transfer_e.html">http://www.cta-otc.gc.ca/rail-ferro/dosco/transfer_e.html</a>
Decision No. 159-R-2002	2002/4	Website	Canadian Transportation Agency	<a href="http://www.cta-otc.gc.ca/rulings-decisions/decisions/2002/R/159-R-2002_e.html">http://www.cta-otc.gc.ca/rulings-decisions/decisions/2002/R/159-R-2002_e.html</a>
Canada Transportation Act List of Acts	2002/10	Website	Transport Canada	<a href="http://www.tc.gc.ca">http://www.tc.gc.ca</a>
About the Regional Transportation Organization (RTO)	2003/6	Website	Tri-County Commuter Rail Authority (TRI-RAIL)	<a href="http://www.tri-rail.com/about/rto/index.htm">http://www.tri-rail.com/about/rto/index.htm</a>
British Columbia (Attorney General) v. Canada (Attorney General); An Act respecting the Vancouver Island Railway (Re)	1994/5	Website	Court Appeal	<a href="http://www.lexum.umontreal.ca">http://www.lexum.umontreal.ca</a>
CP Rail fined nearly \$1M for toxic spill	2003/7	Newspaper Article	The Edmonton Sun, Wed, July 2, 2003	

Railway Trends	2002/12	Document	The Railway Association of Canada	
Strategic Infrastructure Investment Opportunities: Short Lines in Canada	2003/5	Document	Railway Association of Canada May 2003	
The benefits and challenges of A Partnership for Greater Community Control of the E&N Transportation Corridor, Volume II	2002/8	Discussion Paper	Lanarc Consultants Ltd.	
Vancouver Island Rail Development Initiative , Status Report	2003/4	Status Report	VIRC	
A Report On The Regulations Respecting Construction And Maintenance Of Railway Crossings On Vancouver Island	2003/6	Report	VIRC	
Memorandum to: Local Governments, First Nations and related bodies Information relevant to the creation of a Charitable Foundation	2003/7	Memorandum	VIRC	
Vancouver Island Railway Charitable Foundation Draft Bylaws		Draft Bylaws	VIRC	
Policy Paper, Taxation Issues Affecting the Vancouver Island Railway	2003/7	Policy Paper, Taxation Issues	VIRC	
Policy Paper, The Management of Infrastructure on the Vancouver Island Railway	2003/7	Policy Paper, Management of Infrastructure	VIRC	
Policy Paper, Construction And Maintenance Of Railway Crossings On Vancouver Island	2003/7	Policy Paper	VIRC	

Policy Paper, Railway Stations And Historic Structures On The Vancouver Island Railway	2003/7	Policy Paper	VIRC	
Policy Paper, Regulations On Discontinuance Affecting The Vancouver Island Railway	2003/7	Policy Paper	VIRC	
General Infrastructure Condition Benchmark, E&N Rail Line	2003/6	Report	VIRC	
CROR Rule 83 /Re-Issue of Bulletins for Month of June 2003	2003/6	Bulletins	E&N Railway Company	
Bridges & Tunnel list / Victoria Subdivision		Document	E&N Railway Company	
Bridge Inspection 2002	2002/1	Inspection	E&N Railway Company	
Signals & Communications		Document	E&N Railway Company	

## **APPENDIX 5 – GLOSSARY OF TERMS**

AVICC	Association of Vancouver Island and Coastal Communities
CCRA	Canada Customs and Revenue Agency
CN	Canadian National Railway
Corridor	The E&N Railroad corridor
CPR	Canadian Pacific Railway
E&N	Esquimalt and Nanaimo Railroad
Foundation	A charitable foundation that will control and own the land and associated railway assets along the Esquimalt and Nanaimo Railroad corridor.
MNP	Meyers Norris Penny LLP
Operator	The railroad operator of the E&N Railroad. Usually refers to the Vancouver Island Railroad Company.
RA	RailAmerica
RAC	Railway Association of Canada
RTM	Revenue Ton-Mile
VIRC	Vancouver Island Railroad Company
VIRDI	Vancouver Island Rail Development Initiative

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Vancouver Island Rail Development Initiative (VIRDI)  
Industrial Adjustment Service Committee, Human Resources Development Canada (HRDC)  
Western Economic Diversification Canada (WD)

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# THE FUTURE OF RAIL ON VANCOUVER ISLAND

VOLUME I

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REPORT OF THE PLANNING PROCESS

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December 5, 2002

# An Open Letter

**From: Scott Brown, Chair of the Planning Process**

**To: The Individuals, groups, communities, governments and other stakeholders interested in rail services on Vancouver Island**

**Re: Results of the Vancouver Island Rail Development Initiative Planning Process**

As the Chair of the Planning Process, it is with a great deal of satisfaction that I can convey to you the results of the Planning Process on the Future of Rail on Vancouver Island.

## **First, my thanks!**

So many different groups and individuals have unselfishly and with great energy supported this process. Without this assistance and understanding we would not have been able to get as far as we did.

I would also like to acknowledge the extensive direct support that we received. The Industrial Adjustment Service of Human Resource Development Canada, and the Western Economic Diversification Canada (WD), funded a number of external reports that contributed significantly to the process. As well, staff from these two programs attended many meetings and added their expertise to the process.

We received significant support through the provision of information and staff time from Canadian Pacific Railway, the E&N Railway (1998) and VIA Rail. Whenever we needed information or expertise, it was provided in a forthright and timely way.

We were also able to draw from the experience and knowledge of the broader VIRDI group, with many individuals having put in countless hours on various aspects of the process.

## **What we have accomplished**

We should all take pride in what has been accomplished. One of the difficulties that surfaced time and time again was inadequate, incomplete and sometimes inaccurate information. No longer. We now know just about everything that could be known about the operation of rail on Vancouver Island. We also have an informed understanding of both the tremendous potential that the line holds, and the very significant challenges that it now faces.

And we have succeeded. We have identified what we believe is a sustainable Model for rail services on the Island that will allow rail not only to continue, but to grow and thrive. This Model will require significant change and there is every indication that there is support on the Island to do what is required.

## **What remains to be done?**

The Planning Process has identified a sustainable Model that is described in some detail in the document. This is **not** a business plan. Within the model there are a number of possible

approaches that need to be developed and potentially a number of different outcomes. It is now up to the current operators, customers, clients, communities, and governments to develop the detailed business plans and make the investment necessary to ensure that this unique asset not only has an important role to play in Vancouver Island's past, but also in its future.

Sincerely,

Scott Brown  
Superior Propane  
Chair of VIRDI Planning Process



# Preface

## Objectives of the Report

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This Report has a number of objectives.

### Principal Conclusion

First, the Report sets out and supports its principal conclusion:

**There is a sustainable model  
for rail services on Vancouver Island.**

It describes the sustainable model, how it was developed and then reviews the various issues and challenges facing the rail services that must be addressed if rail is to have a future on Vancouver Island.

The Report also indicates where there are gaps in the information and where additional information would be desirable. When there is a range of opinion or differing opinions on a matter, these are set out.

### Organization of the Report

Second, the Report documents the methodology that led to the development of the report, and the major decisions that were taken, from the announcement that rail services were to cease, to the decision to continue service and the completion of this report. Volume I is the main document and sets out the findings and conclusions. Volume II is the discussion paper on community benefits to control and ownership of the railway corridor in partnership with the operating company. This paper stands on its own and provides a more extensive consideration of this important element of the report. Volume III is a compilation of the key documents on the development and proceedings of the Round Table on the Future of Rail on Vancouver Island.

### Basic Information on the E&N

Third, the Report pulls together some of the extensive information that was gathered as part of the Round Table Process and the Planning Process to ensure that it is accessible for future reviews, business plans and studies. One result of the Planning Process has been that we now have a much clearer understanding of the history, the roles and responsibilities of the principal players, and detailed

*The Round Table was a consensus process and was predicated on a cooperative and collaborative approach.<sup>1</sup> Part of this approach was to assume that all of the parties were participating in good faith and the positions and concerns of others needed to be carefully considered and treated with respect.*

*This approach was followed during the Planning Process.*

*Throughout this report, the words “community” or “communities” are often mentioned. This term is used in its broadest sense and includes all of the communities along and near the line, First Nations, municipalities, and regional districts.*

information on the status of ownership, operational responsibilities and other related facts and figures. Therefore, it was thought worthwhile that this information should be organized and shared.

## Approach Taken

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### Finding Solutions not Problems

To even the most casual observer, it should be evident that the issues around the E&N Railway can and have aroused many strongly held opinions and concerns. The report neither glosses over these nor attempts to reconcile opposing views and positions unless these are directly related to the future viability of the line. The Planning Process was focused on finding solutions and, to the extent possible, tried to avoid getting into issues that, while interesting, do not materially affect the development of a sustainable model for the future of rail on the Island.

### Consensus based

It was as a result of the deliberations of the Round Table<sup>1</sup> on the Future of Rail on Vancouver Island that the VIRDI<sup>2</sup> initiative was created and the business planning process was begun. The Round Table was a consensus process and was predicated on a cooperative and collaborative approach.<sup>3</sup> Part of this approach was to assume that all of the parties were participating in good faith and the positions and concerns of others needed to be carefully considered and treated with respect.

This approach was followed during the Planning Process.

### “Community”

Throughout this report, the words “community” or “communities” are often mentioned. This term is used in its broadest sense and includes all of the communities along and near the line, First Nations, municipalities, and regional districts. The inclusion of First Nations interests and concerns has been part of the process and the process has benefited as a result.

“Community” is also used to refer to the communities of interest that are potentially affected by the railway.

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<sup>1</sup> The Round Table on the Future of Rail on Vancouver Island was a consensus-based process that was initiated by the Vancouver Island Railway Society (VIRS) and sponsored by the Association of Vancouver Island and Coastal Communities (AVICC). Information on this process and its deliberations are set out in detail in a companion document,

<sup>2</sup> The Vancouver Island Rail Development Initiative.

<sup>3</sup> The Ground Rules that were agreed to as part of the Round Table are set out in the companion document on the Round Table Process.

# Introduction and Executive Summary

## Rail has a Future on Vancouver Island

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The objective of the Planning Process can be summarized in the following question:

**“Is there a sustainable<sup>4</sup> future for rail on Vancouver Island?”**

The answer is:

**“Yes, but only if there are significant structural and operational changes to how rail services are delivered.”**

The review of possible models also answered the other question that goes to the heart of the process: “Is the current service sustainable?”

The answer is: “No, it is not.”

Even with increased freight traffic and an improving passenger service, the line cannot be sustained in the mid or longer term. As currently constituted, the services simply do not generate sufficient revenues to maintain and bring back the rail infrastructure to sustainable levels.

At a more basic level, the current ownership and management structure of the line will not result in the level of commitment and support from the communities and governments for the line to develop to its full potential.

Therefore, the conclusion is that a completely new approach must be considered to deal with the major issues facing the line and create an environment for future growth and development.

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<sup>4</sup> “Sustainable” or “Sustainability” were two words that came up a lot in the process and it was clear that the continuation of the line depended on it being sustainable in a number of different ways. For the freight service to be sustainable, it means that it must be economically viable and competitive with other forms of freight transportation. For passenger service, “sustainable” means that it provides a viable service when compared to other similar passenger rail services in other parts of Canada. For the rail infrastructure, “sustainable” means that it can be maintained at an acceptable level on a continuous and on-going basis.

Chapter 2 “Planning Process Methodology” sets out the process followed and how the various models were developed and assessed.

Chapter 3, “Reaching Conclusions” sets out the consideration of the issues facing the line and groups them into key areas of concern.

Chapter 4 “Implementing the Community Model” summarizes the analysis of the models and the conclusion that only the Community Model would be sustainable in the immediate, mid and long-term.

The Report ends with the following conclusion.

*If business plans based on the Community Partnership Model are developed and implemented, rail service on Vancouver Island will not only survive, it will thrive. However, without fundamental change, it is equally clear that the current services are not viable and will not, even in the mid-term, survive.*

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The following paragraphs briefly summarize the key elements of each Chapter.

## Methodology

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Chapter 2 provides the context for the review and how the review proceeded.

### Some Basic Facts on the E&N Corridor

This Chapter starts with a brief description of the E&N, in terms of its history, what the railway consists of, where it is located, the ownership structure and how it is managed.

**History:** The E&N Railway is an important part of the history of Vancouver Island and Canada and the terms and conditions under which it was developed continue to have impacts today. This has affected and limited how it can be dealt with.

**The Line and Operation:** The railway corridor runs from North-South from Victoria to Courtenay and East-West from Nanaimo to Port Alberni. About 275 kilometers (172 miles) in length, it has a relatively complex infrastructure with numerous bridges, trestles, crossings, yards, sidings and passenger train stations.

The line is maintained and operated by E&N Railway (1998), a wholly owned subsidiary of RailAmerica as a consists of a freight service operated by RailAmerica, a passenger service operated by VIA Rail, and a rail barge service operated by Coastal Marine. Canadian Pacific Railway (CPR) is the Class 1 Railway partner of the E&N and is the connection to the mainland railway system. CPR has no operational responsibility on the Island.

**Ownership:** CPR and RailAmerica own the railway assets. Rail America owns the line between Nanaimo and Port Alberni. CPR owns the line from Victoria to Nanaimo in the South and from Parksville to Courtenay in the North. As well, CPR retained ownership of the yards, stations and other rail assets. All of CPR’s rail assets are leased to Rail America.

## What are we trying to save?

*This current effort is all about preserving that potential and building to a future that will be very much different than the present or the immediate past.*

*We need to keep it intact and operating. Once it is gone, it will be gone forever.*

**Future potential:** There is general agreement that current service is inadequate and not currently of relevance to the communities it is intended to serve. The Planning Process is not about keeping the status quo. It is all about the future potential of rail for environmentally friendly and safe rail freight, a scheduled passenger service that connects Island communities, commuter rail, and excursion rail that adds to the tourism and recreation sectors.

This current effort is all about preserving that potential and building to a future that will be very much different than the present or the immediate past.

We need to keep it intact and operating. Once it is gone, it will be gone forever.

**The Infrastructure:** The railway corridor and rail infrastructure is in one piece. It is showing wear and tear, but can be maintained. The replacement cost to assemble a continuous corridor and to replace the bridges, culverts, crossings, tracks, ties and ballast, would be very large<sup>5</sup> while the cost of preserving it is manageable.

**Keeping the Corridor Intact:** For the communities there is also value in keeping the railway corridor intact and functioning as a community and Island resource. It has a value and potential that goes well beyond rail services alone.

## Critical Success Factors

**An immediate solution:** It was clear from the outset that the model had to be sustainable in the near term. The Planning Process did not have the luxury of considering potential and possibilities that could be brought to fruition well into the future. If there were no immediate prospect for the line to be financially viable, then rail services would cease.

**Keep rail services operating:** As part of the Round Table review, it was agreed that the search for alternatives would be enhanced if the current operation continued. As a result, a major effort was made to ensure that the services were maintained during the Planning Process. It was generally agreed that if the service did stop, it would be very unlikely that it could be started again.

As a result, over \$600,000 from investors and others<sup>6</sup> was contributed to the current operator to ensure that the service continued while the Planning Process was going on.

<sup>5</sup> There have been many different estimates as to what it would cost to put the current rail infrastructure in place if it was not already there. A number of papers were recently done for Transport Canada as part of its Transportation Blueprint Project, and these all concluded that it was important to hang on to corridors because it is very difficult now to assemble the land. The rail infrastructure, in terms of starting from scratch, would be at least 1 million/kilometer, and that is without taking into account the structures, of which there are many. So, it would be expensive. Estimates range from a low of \$200,000,000 to more than \$500,000,000 if land and structures for the full line is included. Basically, it would be so costly as to make it unrealistic. Keeping it going, however, is quite feasible.

<sup>6</sup> In addition to the VIRDI Investors, Superior Propane, CPR, VIA, and a number of small contributions were made to keep the service going.

**Develop a model from which to build:** The Planning Process was focused on a practical review of how the current service could be made viable in the near term. This would then provide a base on which the future potential of rail could then be built.

In practical terms, the focus was on increasing revenues, reducing costs and considering the potential for enhanced services only to the extent that they could make a relatively immediate and positive contribution to the overall operation.

**An Eye to the Future:** Although not included in developing the models, identifying the future potential of the line was an important part of the Planning Process. The potential for additional services and, with them, revenues and costs, were carefully considered and these are noted throughout the review and, where appropriate, considered as part of a longer-term plan for the line. They were not, however, factored into the Model if it was concluded that they would not have an immediate and positive impact on the model.

### **Gathering Reliable Information**

The Planning Process needed reliable and meaningful information. The consideration of possible models could not be based on conjecture or untested assumptions.

**Information on the Line and Rail Expertise:** The current operators provided a great deal of information that would not have otherwise been shared and they also shared their expertise and knowledge of rail operations generally.

**Existing Studies and Reports:** Also of great utility were the reports and studies that had been done on the railway. Particular attention was paid to the studies directly related to the operation of the E&N.

**External Consultants:** As a result of the financial assistance to the Planning Process from the Federal Government, a number of external consultants were engaged to assist in developing and analyzing different models and approaches. This assistance was essential to the completion of the process.

### **Models considered**

Two models were considered:

- The Status Quo or a variation on the Status Quo, and
- The Community Model.

**The Status Quo or a variation on the Status Quo** assumes that the business model for the current service is sound and that with increased traffic and changes to operations and marketing, the line will be viable.

**The Community Partnership Model** assumes that there must be fundamental changes to the current operation and to the underlying structures that support the services. The most significant change would be the direct involvement of the communities along the line in the control and ownership of the infrastructure.

## Building the Model

The first step was to develop a financial model of the line that was based on the current operation and then to consider how that model could realistically be changed, in terms of costs and revenues, to make it more viable.

This base model was then modified on the basis of assumptions and conclusions that were then incorporated into the model.

## Reaching Conclusions

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Chapter 3 sets out the overall conclusions and is organized into four areas or categories, these being:

- The Broader Context: The Future of Rail in Canada
- The Overall Management of Rail Services.
- The Passenger Service
- The Freight Operation

### The Broader Context: The Future of Rail in Canada

**Vancouver Island has a Railway:** For some time it has been evident that the E&N was no longer being considered in the development of Canada's railway policy. It had largely become a historical sidebar that stubbornly refused to fade into rail history as an interesting footnote. This was occurring at a time when nationally, the future of rail was being actively pursued. The Island is missing both the debate and the benefits. This needs to change.

**The Policy Deficit:** Generally, there is now recognition that rail needs to be better integrated into Canada's national transportation policy. In other jurisdictions, Railway infrastructure is considered as an essential part of the transportation network, and it is treated in much the same way as highway infrastructure. This has not been the case in Canada, although there are signs that this is now beginning to change.

Rail on Vancouver Island needs to benefit from the renewed interest in rail as a safe, reliable and environmentally friendly form of transportation that is and should remain an important part of Canada's national system. The E&N is an example of what can happen to railways if this policy deficit is not addressed. It can also be an example of how railways can be supported and revived when the right policies are in place.

**Conclusion # One – *Railways are now being recognized as an important part of Canada's Transportation Infrastructure and are starting to benefit from the same level of policy, regulatory and financial support as other related transportation services. The Railway on Vancouver Island must also benefit from these changes.***

*Rail on Vancouver Island needs to benefit from the renewed interest in rail as a safe, reliable and environmentally friendly form of transportation that is and should remain an important part of Canada's national system*

## The Overall Management of Rail Services on the Island

The current management is fractured between too many players too far away. It needs to be consolidated and managed locally from the Island.

The current services are not, by any standard, accountable to the communities, the passengers who ride the trains and the rail freight shippers, which they are ostensibly intended to serve. They must be if the services are to continue.

Greater community and government involvement in the railway is one of the fundamental shifts that must occur if the line is to be maintained and developed.

There has not been a positive working relationship between the communities and the railway operator for some time. This needs to change. There should be a partnership between the operator and the communities along the lines of the current move toward Private Public Partnerships generally.

**Conclusion # Two – *The Rail Services on Vancouver Island must be Integrated into a single company and managed locally.***

**Conclusion # Three – *Rail Services must be accountable to the individuals, businesses and communities they were originally intended to serve.***

**Conclusion # Four – *Community control of the railway Corridor must be part of the future of the railway.***

**Conclusion # Five – *A Public, Private Partnership with a sharing of risk and benefits between the communities and the operating company needs to be explored as a way of not only making the line financially viable, but also accountable.***

## The Importance of Infrastructure

**Maintaining the Infrastructure:** Sustainable maintenance of the Infrastructure is key to the long-term viability of the line. The line is not being sustainably maintained and is slowly deteriorating. If this is not remedied, the line will fail.

There is significant deferred maintenance on the line that must be dealt with in the coming years to bring the infrastructure back to health. This will take time and resources but must be done.

There also needs to be provision for dealing with the repair and maintenance of the significant number of bridges and trestles on the line. This is a problem for short lines everywhere and is of grave concern on the Island. The line cannot be allowed to be discontinued due to a problem with a major structure.

Finally, the maintenance of the infrastructure should be viewed as a shared responsibility that starts with the operator and then extends to the communities and senior levels of government. All need to be involved in assisting in the maintenance and development of rail infrastructure. There are programs available and precedents for this kind of involvement in other parts of the country. The Island Railway needs to put itself in a position to be able to attract this kind of support.

*The current services are not, by any standard, accountable to the communities, the passengers who ride the trains and the rail freight shippers, which they are ostensibly intended to serve. They must be if the services are to continue.*

*There is significant deferred maintenance on the line that must be dealt with in the coming years to bring the infrastructure back to health. This will take time and resources but must be done.*



**Conclusion # Six -- *While safely maintained to current regulatory requirements, the infrastructure has not been sustainably maintained and will eventually fail if current practices continue.***

**Conclusion # Seven -- *There is substantial deferred maintenance on the line that must be dealt with over the next five to ten years for the line to survive.***

**Conclusion # Eight -- *There are some repairs that need to be made immediately and there needs to be a provision to deal with the capital requirements of the many bridges and other support structures of the railway.***

**Conclusion # Nine -- *The Line requires infrastructure support and investment to upgrade and maintain the railway line.***

### **The Role of Freight**

*Rail freight services need, over time, to be put on a more equal footing with other modes of transportation, particularly trucking on the Island.*

**Rail Freight is essential to achieve long-term Sustainability:** the line requires both freight and passenger services to survive and thrive.

It should be remembered that it was the loss of a key railfreight customer, representing almost 85% of the freight traffic that triggered the initial decision to shut down the line. It has also been the desire of the remaining freight customers, particularly Superior Propane, to remain on the line that has been a sustaining force to continue the current operations and to develop new models.

In terms of developing the models this means that:

- Current freight customers must be maintained.
- New traffic needs to be added.
- The East-West Line to Alberni needs to be revived for freight use.

**Conclusion # Ten -- *Railfreight is essential to the long-term sustainability of the line.***

**Significant improvements need to be made to keep and attract rail freight business:** Shippers require stability; secure infrastructure, certainty and attention to their needs.

Rail freight requires different systems and infrastructure than trucks. Without solid guarantees that rail freight is going to be there in the future, companies are not likely to make the investments needed to use rail freight. Also important is that the service is reliable and current. It is not lost on shippers that the infrastructure on the Island is at least one evolution behind the mainland railways and that it cannot support the heavier cars that are now coming into service. This is a major deterrent to attracting long-term shippers to the line and removes the potential efficiencies of the heavier cars from the decision.

And it must be cost competitive. This in part requires that some of the inequities with respect to highways be addressed.

**Conclusion # Eleven – *Rail Freight customers require: secure infrastructure, certainty, consistency and attention to their issues for the current business to be maintained and grow.***

**Level the Playing Field:** Rail freight services need, over time, to be put on a more equal footing with other modes of transportation, particularly trucking on the Island. This is a complex and at times contentious debate that has been going on for some time and will continue for some time. This is part of the policy deficit mentioned earlier, but requires additional attention here.

**Conclusion # Twelve -- *The playing field for “rail versus trucks” must be leveled to take into account the full costs of each mode of transportation.***

## **The Role of Passenger Rail**

**Significant Potential:** The Passenger Service has tremendous potential on Vancouver Island. However, much of this potential is in the future and requires significant changes to the operation before it can be realized.

**Currently Supports the Line:** The passenger service is now an important revenue source for the line and it is important that it continue. The current revenues from VIA and other sources makes Passenger Rail the largest contributor to the line.

**Much more can be done:** It is also agreed that much more can be done. Both Transport Canada and VIA have agreed that the full potential of the line would be best served if it were devolved to a local operator. The terms and conditions under which this could occur have been generally set out but the current uncertainty around the future of the line has postponed any moves in this direction.

The potential for the passenger service is in four areas. These are:

- A scheduled passenger service (the current community connector service)
- Excursion and recreation services built around the scheduled service.
- Commuter Rail, and
- Specialty Trains.

Only the first two could have any immediate impact on the viability of the line. The last two can make a contribution but only after a number of other matters fall into place.

**Conclusion # Thirteen – *There is significant potential on Vancouver Island for all aspects of passenger rail including the growth of the current community connector service, excursion and specialty services, commuter rail and specialty trains.***

**Improving the Local Service:** There are a number of important changes that need to be made to improve the current service and to increase the excursion and recreational rail opportunities. These include:

- Revitalizing the Passenger Stations,
- Developing a locally focused booking system, and

*The passenger service is now an important revenue source for the line and it is important that it continue. The current revenues from VIA and other sources makes Passenger Rail the largest contributor to the line.*

- Aggressive local and regional marketing.

**Conclusion # Fourteen – *A number of related changes need to be made to enhance the passenger service. These include; revitalization of the train stations, provision of on-board services, a locally based booking system and local marketing***

**Maintaining Financial Support:** Passenger rail currently benefits from federal financial support to operate, including the service on Vancouver Island. As this service is moved to local control, it is imperative that the current level of federal financial support continue and that additional investment be made.

**Conclusion # Fifteen – *Current financial support must be maintained and additional financial support secured for the passenger service to realize its full potential. While some financial support is available to some of the services, the Passenger Service overall must be financially viable.***

**Passenger Rail must become part of the Total Rail Solution:** To make a more significant contribution to the viability of the Island's railway, the following needs to be taken into account:

- The passenger service alone is unlikely to generate sufficient revenue to sustain the required infrastructure. Passenger rail must, therefore, be part of an integrated approach where passenger, freight and infrastructure fit together and support one another.
- The passenger service must become more responsive and accountable to those it is intended to serve to both rejuvenate the service and to make a more substantial contribution to sustaining overall rail services.
- A new approach, with improved services that are more responsive to consumer needs, can be successfully developed. The new service:
  - Must continue to act as a community connector, providing a convenient and cost-effective service to the communities to bring people up and down the Island.
  - Must focus more attention on connecting to the large and growing recreation and tourism sector on the Island through the development of excursion and recreational rail services.
  - Must be responsive to efforts to develop an effective commuter service in cooperation with the general planning for commuter and transit planning within the more populated areas.
  - Must coordinate and manage all passenger rail activity on the Island whether delivered directly or through third parties.

**Conclusion # Sixteen – *If the current passenger service is devolved or franchised to local management prepared to make an investment in improving the service, the current passenger service can form the basis for dramatic and significant improvement as part of an integrated service.***

The objective should be that the Island passenger services meet and exceed all standards for supported services, and that overall, the passenger services make a significant financial contribution to the bottom line viability of the overall rail services.

## Implementing the Community Partnership Model

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Chapter 4 sets out how the models were assessed and why the Community Partnership Model was considered the only sustainable model.

### Assessing the Models

When the various models were assessed, only the Community Partnership Model met the objectives of the Planning Process and the criteria of sustainability. The status quo Model did not meet the criteria for near term viability and long-term sustainability and cannot be maintained over time. A new approach is required.

### The Community Partnership Model

The Community Model is the “break the mold” model. It assumes that fundamental change is required to turn the fortunes of the railway around.

It has the following components:

- **Integration:** All rail and rail related services must be integrated into a single, coordinated operation that would control all aspects of rail service on the Island;
- **Accountability:** The rail service must be accountable to the communities, citizens and businesses that it serves. This must not be an empty slogan. Accountability must be an element of every aspect of the operation.
- **Financial Viability:** The rail services must be economically sustainable when measured against the standards normally applied to similar services. The line should become a model of sound financial management and meet and exceed performance levels normally associated with the line.
- **Community Control:** The communities must have a direct say and control over the railway corridor on which the services operate. This will ensure accountability and it will also fundamentally change the relationships among the major players. It will also create a situation in which the line can be dealt with on an economic basis and it will enhance the potential of attracting investment and funding for the line.
- **A Public Private Partnership with the Rail Operator:** There must be a close relationship between the rail operator and the communities.

The Railway Company would own the operation and much of the rail related assets including the infrastructure, the stations, yards, rolling stock

*The Community Model is the “break the mold” model. It assumes that fundamental change is required to turn the fortunes of the railway around.*

and everything else required to make a railway run. The communities would own and control the corridor and this would include the revenues that the corridor would generate.

This relationship can take many forms, but would be based on the principles of P3's. The communities would support and sustain the operation and expect that it would respond to community needs. The private operator would assume all of the financial and business risks associated with the operation of the line and the benefits from the operation.

These changes are significant but can be realized within a reasonable period of time. The Model requires that the current owners and operators be prepared to make the services available to be consolidated. It requires that the communities become more involved and involved in a more direct way than has been the case in the past. There are also several different ways of proceeding that would be consistent with this model and the challenge over the coming months will be to work with the key parties to ensure that the potential of the Community Partnership Model is realized.

## Conclusion

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*Of the various models considered, only the Community Partnership Model met the requirements of the Planning Process.*

Rail services can be maintained and developed on Vancouver Island. They potentially have an important role to play in the economic and social development of the Island. Rail services, if maintained, will benefit from a number of important changes that are occurring at the national and international level that is making rail freight and passenger rail services increasingly attractive.

The current service, however, is not sustainable and will ultimately fail if significant changes are not made in the very near future.

Of the various models considered, only the Community Partnership Model met the requirements of the Planning Process.

This Model, however, requires changes that will only be possible if the communities on the Island and the current owners and operators work together, with the interests of the Island railway foremost in mind, to make the implementation of the sustainable option possible.

With a number of fundamental changes to the structure and management of rail services, the Island has a base from which to build a vibrant and relevant service.

# Planning Process Methodology

This Chapter reviews the methodology of the Planning Process. It includes:

- Some basic facts on the current operation in terms of ownership and management.
- A clear statement of why the process was launched and what it is trying to save.
- A consideration of the critical success factors that must be met if the line is to be sustained into the future.
- The information that was gathered or accessed as part of the Planning Process, including the work of consultants hired specifically for the review.
- How the models were developed and assessed.
- A review of the possible models that were considered.

*The E&N corridor consists of the land, gravel rail bed, ties, tracks, culverts and related structures (bridges, trestles, and tunnels) that support rail service on the right of way. It also includes the historic train stations and the land that they sit on.*

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## Basic Facts about the E&N Corridor

### The History

The E&N Railway is an important part of Vancouver Island's history. The building of the railway was one of the conditions for BC to join Confederation. Since its inception, the Railway has been a source of both pride and controversy on the Island. There have been several occasions when the line was threatened with closure and each time, rail service was continued as a result of community pressure and support.

### What's included in the E&N Corridor?

The E&N corridor consists of the land, gravel rail bed, ties, tracks, culverts and related structures (bridges, trestles, and tunnels) that support rail service on the right of way. It also includes the historic train stations and the land that they sit on.

The corridor is normally about 30 m (100 feet) wide through most its length, and is sometimes wider where it includes adjacent land used for rail stations. In total, the corridor represents a significant amount of real estate both inside and outside the Island's populated areas.

### Current ownership of the Corridor

The following diagram provides a view of the line from an ownership point of view.



**Canadian Pacific Railway (CPR)** owns the corridor (land) from Victoria to the beginning of the Marine Rail Service in Nanaimo (known as the Wilcox Spur), and from Parksville to Courtenay. As well, CPR owns additional right-of-way in Nanaimo, Port Alberni, and other parts of the line between Nanaimo and Parksville. These include:

- The section running through the Nanaimo First Nation community on the Welcox Spur;
- The section running through the Nanoose First Nation;
- The rail yard and a section immediately before the Rail Barge in Nanaimo.
- A section of track in Parksville, and
- A section of track in Port Alberni.

These rail assets are all leased to RailAmerica.

**Rail America** (RA) owns the corridor from the Wilcox Spur in Nanaimo to Parksville and the east-west line from Nanaimo to Port Alberni less those parcels retained by CPR as set out above.

*There are essentially two rail corridors on the Island: a North-South Line from Victoria to Courtenay, and an East-West Line from Nanaimo to Port Alberni. These lines intersect and share track in the middle of the North-South Line.*

## The Route

There are essentially two rail corridors on the Island: a North-South Line from Victoria to Courtenay, and an East-West Line from Nanaimo to Port Alberni. These lines intersect and share track in the middle of the North-South Line.

These two corridors run through 5 regional districts, 9 First Nation communities, 10 municipalities and 13 unincorporated communities. The North South Line goes through the most populated sections, with approximately 85% of the Island's population living within 30 minutes of the corridor.

### The North-South line:

- The current passenger service between Victoria and Courtenay operates on the North-South line. The remaining freight service is also on this line, concentrated in the middle section.
- Given that it goes through the most populated areas and most of the major communities on the Island, the potential for other uses of the corridor is higher on this line.
- This line requires some investment if it is to be sustained as rail infrastructure. It has been maintained to meet safety and rail regulatory standards. This maintenance has not included upgrades or facility improvements. Its primary use is for passenger rail with some limited freight.

### The East-West line:

- There are presently no rail services on this line. The primary use of the rail line was for freight, with no passenger service either operating or contemplated.
- The line from Parksville to Port Alberni is rural and remote. Therefore, the potential for real estate development is less apparent than on the North-South line.
- The rail infrastructure has been idle since early January 2002, and would require attention before it could again support rail traffic.



- It has been maintained to required safety and rail regulatory standards, but it has not been improved.

## The Rail Services

There are three rail services currently on the Island. These are:

- A Rail Freight Service
- A Passenger Service
- A Rail Barge Service

**Rail Freight:** Rail Freight services are offered on the line by RailAmerica's wholly owned subsidiary, E&N Railway (1998). CPR is the mainland partner of the E&N and is involved when the freight originates on the mainland or is destined for the mainland. There used to be some intra-Island freight, but not currently.

**Passenger Rail:** VIA Rail operates a passenger service on the Island as part of its regional and remote services. The local operator provides the crewing of the trains and access to the line. Maintenance of the passenger rail equipment is contracted to Point Hope Maritime in Victoria.

**Rail Barge:** The rail barge service is in Nanaimo and provides the connection between the Island Railway and the Mainland. Coastal Marine, a division of the Washington Group, operates this service.

Overall management: Management and maintenance of the rail infrastructure, whether on CPR or Rail America owned corridor, is the responsibility of Rail America. This includes all maintenance and inspection services, switching and otherwise providing access to the railway.

## What are we trying to save?

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*Why all this effort to save a Budd car running half full in the wrong direction?*

### Future potential

**“Why try and save an inadequate service?”** One of the issues that the Round Table and then the Planning Process had to deal with was the widely held view that there was little about the current service worth saving. An early editorial in one of the Island papers wondered why all this effort to save a Budd car running one third full in the wrong direction?

Other observers have chronicled the on-going decline of the line, the deterioration of the stations and the track, and have asked, legitimately, is it worth the effort to try and save the current service?

If that were the question, then the answer would be “No, it wouldn't be worth it.”

But that is not the question that the Planning Process set out to answer.

**Save the potential of the line:** The Planning Process Review is not about the past; it is about the future. And it is not about keeping the status quo. It is all about the potential of the line.

*The Planning Process Review is not about the past; it is about the future. And it is not about keeping the status quo. It is all about the potential of the line.*

*Maintaining the rail infrastructure will ensure that when the time for commuter rail comes, there will be track on the Island for it to run on.*

There is general agreement that the current service is inadequate and not currently relevant to the economic and social life of the Island. But it could be.

So, this effort is all about keeping the potential of rail and building to a future that will be very different than the present or the immediate past.

The Round Table Forum and many other similar reviews have set out the potential of rail for Vancouver Island. What follows is a brief summary of the major reasons why the service should be saved.

**The potential for rail freight:** Rail Freight has an important place in Canada's transportation system and could potentially play a more important role on Vancouver Island than is currently the case.

The "Trains versus Trucks" debate is well engaged and documented. Trains are safer and more environmentally friendly than trucks in most instances. Cost and convenience have tended to be the principal factor in moving freight from one mode of transportation to another.

The issues that have led to the decline of freight traffic on the Island are real and require attention. But the situation can be turned around, particularly as the relative advantages of rail freight are better understood at a national level. With changing policies and programs, and with heightened environmental and safety concerns, rail freight will become increasingly important and with the rail infrastructure still intact, the Island will also benefit.

**Passenger Rail:** We have a passenger rail service on the Island. If we keep it, it can be built on. The renaissance of passenger rail that is occurring elsewhere in Canada and in other jurisdictions can happen here with local focus, management and new investment.

**Commuter Rail:** Getting people to and from work without cars is now attracting more attention. There are several areas on the Island where the potential for commuter rail has been considered. Maintaining the rail infrastructure will ensure that when the time for commuter rail comes, there will be track on the Island for it to run on.

**Excursion and Specialty Rail:** This is also an area of tremendous potential. Tourism is the fastest growing industry on Vancouver Island. Excursion rail is burgeoning in other areas and it can have an important impact here as well.

## Infrastructure

**Maintaining the Rails:** The first priority was to keep the corridor intact as a rail asset. The line, on average 100 feet<sup>7</sup> wide is a ribbon of land and infrastructure that stretches from Victoria to Courtenay and from Parksville to Point Alberni – approximately 200 miles or 2500 acres in total. On the North South Line alone

<sup>7</sup> Our apologies to the metric system. Unfortunately, Railways have always operated in miles and feet and acres and the conversion of these measures to meters, kilometers and hectares would be confusing and, in the end, unhelpful. We have continued, therefore, to use the imperial measures in the paper when that is the unit of measurement in the historical documents.

(139 miles) there are: over 100 bridges, several of which are major structures; 400 culverts; 150 level crossings; 400,000 rail ties; as well as steel rails and ballast (gravel aggregate).

The corridor is currently whole and the rail infrastructure is in place. It is showing wear and tear, but it can be maintained. If, today, the line did not exist and it was decided to assemble the land and put the infrastructure in place, the cost would be prohibitive. The replacement cost would be too high. While it is not inexpensive to maintain rail infrastructure, the maintenance cost is a tiny fraction of the cost of assembly and construction. If possible, we need to keep it intact and operating.

This is not something that can put to one side and come back to at a later date. If the corridor is broken up, and if the track is lifted, even on a part of the line, the railway corridor, for which this Province paid so dearly, will cease to exist. Once it is gone, it will be gone forever.

### Keeping the Corridor Intact

The corridor itself should be considered an important community asset, with or without the rail infrastructure. Having a contiguous corridor from Victoria to Courtenay and from Parksville to Port Alberni provides a way of getting all kinds of services up and down the Island.

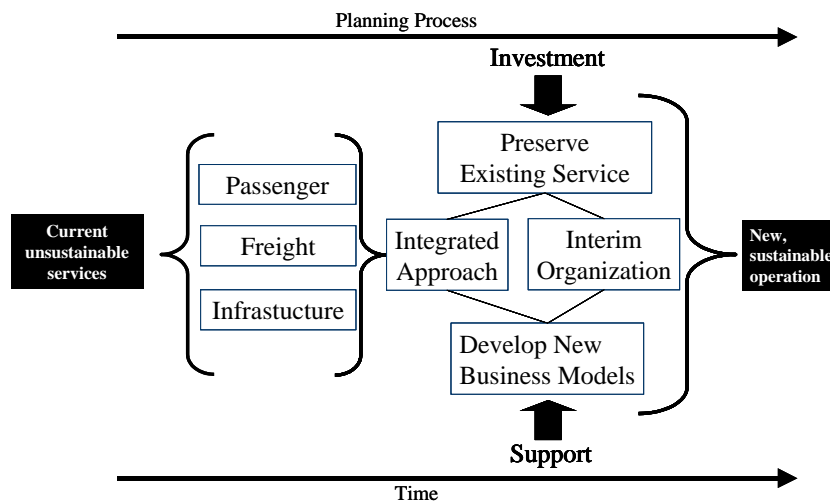
It already has a fibre optics cable that runs most of its length. It has the potential for local, regional and Island uses that will be lost if the line is broken up.

*If the corridor is broken up, and if the track is lifted, even on a part of the line, the railway corridor, for which this Province paid so dearly, will cease to exist. Once it is gone, it will be gone forever.*

## Critical Success Factors

### The Process

The Process followed is set out in the following diagram. It shows the two thrusts, being the continuation of the services and the search for a sustainable model. The last step, the move to a more sustainable model, is still in the future.



## An immediate solution

The Round Table on the Future of Rail set the objective for the Planning Process. It can be stated as follows: “Is there a sustainable model for rail services on Vancouver Island in the near term?”

“In the near term” had to be added to underline the fact that the Planning Process did not have the luxury of considering potential and possibilities that could be realized some time from now. It was made abundantly clear by the principal operator and the relevant governments that if there was no immediate prospect for viability of the line, then rail services would cease.

## Keep rail services operating

In the early stages, it was suggested that the services would be discontinued and that the search for rail options should look at what would be required to revive the services at a later date. Under this approach, the existing passenger and freight services would stop, to be revived later if a model could be developed, investors attracted and a new service put in place.

As a result of the Round Table discussions it became clear that while it was not impossible that the services could be restarted once stopped, this would not be advisable.

It would be somewhat like allowing a patient to die and then freezing the body with the prospect that when a cure is identified, the body will be thawed out and the cure applied. Not impossible, but not likely.

Once rail freight customers switch to trucks, it is very difficult to get them back. Once the passenger service stops, the equipment leaves the Island and the specific financial support for the Island is absorbed into the overall support for VIA, it would be difficult to revive. Once the trains stop running, the infrastructure would deteriorate very quickly, the level crossings would no longer be functional and the interest of the communities and organizations that have lobbied to have the line continue, would falter.

Far better to keep the services operating while the search for alternatives continued.

Ensuring sufficient financial support for the current operator to keep the services running was, therefore, part of the mandate and was considered, from the outset, to be an integral part of the Planning Process.

The current operator, RailAmerica, demanded that a contribution be made to them for the services to continue. This amount was initially \$153,000 a month and was later reduced somewhat. Without this amount, the service was to stop.

*It would be somewhat like allowing a patient to die and then freezing the body with the prospect that when a cure is identified, the body will be thawed out and the cure applied. Not impossible, but not likely.*

*In total, more than \$600,000 was raised and sent to RailAmerica to keep the line running.*

This amount was initially put together by a number of the different parties, with the VIRDI Investors providing the funds from March through to September.<sup>8</sup> In total, more than \$600,000 was raised and sent to RailAmerica to keep the line running.

To underline their resolve, RailAmerica sent lay-off notices to the employees every month for the entire interim period, until the payment for the next period was received.

A major focus, during the planning process, therefore, was to raise the necessary contribution each month and, given the amount involved and the immediacy of the demand, this tended to distract from the planning process but was necessary if a sustainable model was to be identified.

### **Develop a model from which to build**

Given the constraints on the Planning Process, the sustainable model had to be one based largely on existing services and on changes that could reasonably be put in place in the near term.

On this basis, the following criteria were used to determine if a particular approach or model was sustainable:

- **For the freight service to be sustainable**, it meant that it must be economically viable and competitive on the basis of the existing traffic and other traffic that could be attracted within a relatively short time and be dealt with using currently available resources.
- **For the passenger service**, “sustainable” meant that it must be based on the existing service and changes to that service that could be reasonably implemented with current resources or resources readily available, and within existing contractual and service arrangements.
- **For the rail infrastructure**, “sustainable” means that it must be maintained at level that meets current railway standards on a continuous and on-going basis.

Taken together, the entire operation must be economically sustainable in the near term.

What this meant, in practical terms, was that the focus had to be on the potential for increasing revenues and reducing costs, building from the existing services and the potential for enhanced services only to the extent that they could make a relatively immediate and positive contribution to the overall operation.

Once the operation was operating on a sustainable basis, it would provide the base from which to build.

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<sup>8</sup> Initial amounts came from a variety of sources and then the on going funding was arranged by the VIRDI investors. At the outset, contributions from CPR and VIA were absolutely essential to keeping the service running.

## **An Eye to the Future**

This did not mean that the longer-term potential of the line was ignored. It is, after all, this potential that makes the line worth saving.

The potential for additional services and, with them, revenues and costs, were carefully considered and these are noted throughout the review and, where appropriate, considered as part of a longer-term plan for the line. They were not, however, factored into the Model if they would not have an immediate and positive impact on the model.

## **Gathering Reliable Information**

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To determine whether there was a sustainable model for rail on Vancouver Island the Planning Process first needed to ensure that it had reliable and meaningful information. The analysis could not be based on conjecture or untested assumptions.

### **Information on the Line and Rail Expertise**

As a first step, there was agreement that the current operators would share all relevant information to the Planning Process. There were initially some reservations with respect to information that normally would be considered confidential and not normally subject to disclosure, but all agreed that given the current circumstance, the information would be provided. It was agreed, however, that the information would only be used as it related to the assessment of the various models that were developed.

On this basis, a great deal of current and historical information on the line was shared by; Canadian Pacific Railway, RailAmerica and VIA Rail. This information was crucial in developing the Full Rail Vision that is set out in this document.

In addition to the specific information on the line, the railways were also assisted by the sharing of expertise on rail operations from the three railways. This was also invaluable and greatly appreciated.

### **Existing Studies and Reports**

We also benefited from a number of the studies and reports that had been done with respect to this particular line and on various aspects of rail generally. The Market Study and the “A Proposal to rejuvenate Passenger Rail on Vancouver Island” of the Vancouver Island Railway Society, and other reports and reviews on the E&N were very useful.

As well, there was a good deal of information available on the development of rail services generally. For example, the report of the Standing Committee on Transportation (SCOT) and the documentation that was generated by the Federal Passenger Rail Task Force were useful. Most recently, the Transportation Blueprint

initiative of Transport Canada, and the Transportation Act Review Process<sup>9</sup> provided a great deal of additional information on matters of direct relevance to this review.

### **External Consultants**

Finally, as a result of the financial support that was received from the IAS Program of Human Resources Development Canada (HRDC) and the Western Economic Diversification Canada (WD)<sup>10</sup>, we were able to engage a number of outside consultants to assist in the analysis of information and the development of the Models.

**PricewaterhouseCoopers (PwC)** was engaged to assist in developing a High Level Cash Flow model of the line against which a number of different scenarios could be tested. This model was to be based on the current information on all aspects of the line, and then be used to test a number of the assumptions on the operation of the line and how it could be changed and improved.

The PwC consultants worked closely with the Planning Process and developed the model on the basis of the information provided.

**Actran and Excel Rail Consultants**, two experienced, Island based rail and transportation consulting firms, were jointly engaged to develop a number of models on the passenger service, as directed by the Planning Group. This was to assist us in determining the extent to which the current passenger service could be revised to increase service and revenues and what the cost implications would be. They also supplied information on industry standards with respect to benchmarks and unit costs in the running of a passenger service like this one.

The information that related to the expansion of the Southern routes of the scheduled passenger service and the addition of some specialty and excursion capacity was then added to the PwC model.

Additional information on other passenger rail potential in the area of commuter services and other possible scheduled routes were useful in assessing the potential in this area, but were not reflected in the model.

In addition to the specific modeling, they supplied information on the general standards and issues that need to be taken into account in the development of the passenger service.

**Lanarc Consulting Ltd** was also engaged to consider a specific aspect of the emerging model, which was to assess the potential benefits and obligations that

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<sup>9</sup> Of particular interest was the “Vision and Balance: Report of the *Canada Transportation Act* Review Panel”, June 2001, ISBN 0-662-30668-6, Catalogue No. T22-107/2001E and the many studies that were commissioned to support the Panel’s review.

<sup>10</sup> In total, \$25,000 was received from Western Diversification and \$50,000 from HRDC, and this was allocated through the IAS Committee structure established as part of the Industrial Adjustment Program of HRDC. These resources were invaluable to complete a number of the studies by external consultants that greatly enhanced the quality of the review.

would result from greater community control over the railway corridor and the collateral benefits that could result through community control of the corridor. Their report “**A Partnership for Greater Community Control of the E&N Transportation Corridor**” is available as a separate companion document to this report

## Models that were considered

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*The Model is based on the premise that even if additional business were secured and new management were put in place, the line would ultimately fail. The problem, then, is not with the operation, but with the current structure under which the line is operated. Sustainability would only be achieved if there were a number of fundamental changes to the relationships and structures that currently support the operation*

Two models were considered:

- The Status Quo or a variation on the Status Quo, and
- The Community Partnership Model.

These were then developed and measured against the criteria of sustainability that had been determined at the beginning of the Planning Process.

A third model, the Historical Entitlement Model, was reviewed but not considered as it was not based on economic sustainability.

### **The Status Quo or some variation on the Status Quo**

Under this model, the current lack of success is attributed largely to the significant loss of freight traffic and the manner in which the line was operated. With more freight and some different arrangements, the line would be successful. Basically, the Model suggests that the problems can be solved without fundamental change, by increasing the volume of business and, accordingly, the revenue. Operations could be made more efficient and costs reduced, but within the current structure. With these changes, the line would be viable.

### **The Community Partnership Model**

This Model had a number of different titles during the planning process. These included “The Full Rail Option” and the “Public Private Partnership Model”. “Community Partnership” was settled on as being the best description.

The Model is based on the premise that even if additional business were secured and new management were put in place, the line would ultimately fail. The problem, then, is not with the operation, but with the current structure under which the line is operated. Sustainability would only be achieved if there were a number of fundamental changes to the relationships and structures that currently support the operation. This model would entail:

- An integration of the current rail services under one roof, with the passenger services, freight services and the care and maintenance of the required rail infrastructure being managed to support and sustain one another.
- Community control and potential ownership of the right-of-way.
- A close partnership between the private sector operator of the line with the communities in a form of Public Private Partnership, with significantly more



support for the line coming from the communities and with greater accountability for the quality and nature of the services provided to the communities.

### **The Historical Entitlement Model**

This model was reviewed largely because it tended to come up so frequently in discussions around the future of the railway. Under this model, it is argued that the railway must be maintained as a matter of historical right, constitutional and contractual obligation. This model is not based on economic or social viability and, therefore, would not meet the criteria that had been established for the Planning Process.

While it is important that all the various parties take into account the very important historic antecedents of the E&N, the issue of viability must be determined on the basis of current and future economic and community benefits. This model, therefore, is not considered sustainable and was not considered further.

The Model is also not relevant if, as the Planning Process suggests, there is a sound model to continue the Rail operation. So long as the line continues to operate, the historical requirements, whatever the position taken by the various parties, is met.

## **Building the Model**

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### **The Base Model**

There was a great deal of information already available on the line and any additional information that was required was supplied in a timely way.

The first step, therefore, was to develop a financial model of the line that was based on the current operation and then to consider how that model could realistically be changed, in terms of costs and revenues, to make it viable.

The base model of the existing line was developed by the consultants from PricewaterHouseCoopers, and was based on the information that was provided from the three railway companies that had the most familiarity with the line: ENR/RailAmerica, VIA Rail and CPR.

### **Reaching Conclusions**

This base model was then modified on the basis of assumptions and conclusions that were then incorporated into the model. Information from a number of sources were used including the work of the three Task Groups that were formed by the Round Table to specifically consider freight, passenger service and funding options.

The overall findings and conclusions are set out in the Chapter 3. The details of the sustainable model are set out in Chapter 4.

## Reaching Conclusions

*It was clear that the E&N was no longer being considered in the development of national railway policy. It had largely become a historical sidebar that stubbornly refused to fade into rail history as an interesting footnote. And has been the case for the last several years, at a time when railways generally were getting substantial attention and consideration.*

This Chapter sets out the major findings and conclusions that were reached in five areas of consideration. These are:

- **The Overall Management of Rail Services on the Island** – This section deals with the management requirements for the Island Railway to succeed.
- **The Importance of Infrastructure** – This section deals with the importance of the underlying infrastructure and the corridor itself.
- **The Role of Freight** – This section considers the role that rail freight must play to sustain the line.
- **The Role of Passenger Rail** – This section deals with the role that passenger rail can potentially play to sustain the line.

In each area a series of conclusions were reached. These were then used to develop the sustainable Model set out in Chapter 4.

### The Broader Context: The Future of Rail in Canada

#### Hey, Rest of Canada! There is a railway on Vancouver Island!

From the outset of the Planning Process, it was clear that the E&N is no longer being considered in the development of national railway policy. It is being treated as a historical sidebar that stubbornly refuses to fade into rail history as an interesting footnote. This has been the case for the last several years, at a time when railways generally are getting substantial attention and consideration. This must change.

It also became clear that many of the factors that were contributing to the “renaissance of rail” that was driving the national agenda, could be applied to the situation on the Island. But the focus and the analysis were simply not being applied in a way that would affect the key decision-makers at the provincial and federal levels.

Therefore, an important objective of the Planning Process was to make the national effort on rail applicable to the Island Railway.

## The Policy Deficit

Railways played an important role in building the country; they should also be part of our future.

In other countries, Railway infrastructure is considered as an essential part of the transportation network and receives significant support in a manner similar to other forms of transportation. This has not been the case in Canada, although there are signs that this is now changing.

This policy deficit is an accumulation of decisions and practices that have occurred over an extended period of time, and there should be no expectation that it can or will be totally rectified in the near term. There are, however, encouraging signs that the potential and the need for support of rail is being recognized. This recognition is resulting in a number of programs and approaches that are starting, slowly, to address the situation.

Rail on Vancouver Island needs to benefit from the renewed national interest in rail. The E&N is an example of what can happen to railways if the policy deficit is not addressed. It can be an example of how rail can be revived and supported as the policy environment changes. The areas requiring attention include:

- Recognition that rail infrastructure must be supported as an essential transportation service and that it should benefit from the same policies and funding support provided in other areas, particularly with respect to trucks and highway infrastructure. This would include reducing or eliminating taxes on rail infrastructure and making infrastructure support available to rail as well as highways.
- Acknowledgement of the safety and environmental benefits of rail freight and the need for a policy environment that encourages greater use of rail for these reasons.
- Recognition of the potential of rail as a community connector and as an important part of commuter services to move people, in a convenient, cost efficient and environmentally friendly manner.
- Understanding of the importance that rail can play in the development of the tourism and recreational industries of regions fortunate enough to have retained their rail infrastructure.

Over time, rail services on Vancouver Island will benefit from the changes in attitudes, policies and programs that are now occurring. National rail transportation policy should take into account that Vancouver Island has a railway with much of the same potential as is being recognized elsewhere.

**Conclusion # One – Railways are now being recognized as an important part of Canada's Transportation Infrastructure and are starting to benefit from the same level of policy, regulatory and financial support as other, related transportation services. The Railway on Vancouver Island must also benefit from these changes.**

*Rail on Vancouver Island needs to benefit from the renewed interest in rail. The E&N is an example of what can happen to railways if the policy deficit is not addressed.*

## The Overall Management of Rail Services on the Island

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### A Fractured System

When Railways were first established, they managed all aspects of the rail service. They owned and managed, the rail barge, the yards, the freight service and the passenger service. They owned the stations and they had significant interests in many of the companies that used rail.

Over time that all changed.

- Passenger service between the two national railways was consolidated into VIA Rail, including the service on the Island.
- The freight service and the operation of the line were sold to RailAmerica that currently operates the line as the E&N Railway (1998), a wholly owned subsidiary.
- The rail barge service was sold to Coastal Marine.
- The middle of the railway right-of-way was sold to RailAmerica by CPR, with CPR keeping the North and South portions of the main line, and important other rail assets such as the rail yards in Victoria and Nanaimo.
- There is a complex set of relationships defined by leases, statutory rights-of-way, contracts and agreements between the various parties.

As a result, what was once managed as a single service is now fractured between several different companies, and there is no overall management of the line. This fracturing of services has been an important contributing factor to the slow, incremental but exorable decline of rail services on Vancouver Island.

### The Power of an Integrated and Locally Managed Service

**The services need to be gathered under one roof:** As a first step, rail operations must once again be integrated and managed as an overall system. The scale of operation requires that the services support and amplify one another.

**There needs to be local management:** The management of the service must also be located on Vancouver Island.

The people making the decisions should be living in or near the same communities that are being impacted by them. When the train is late, the line is in poor repair, or when a business complains about the lack of freight service, they should hear about it on the radio, at Rotary and on the street, not as part of a clipping service.

To survive and thrive, the Island needs a freight service, a scheduled passenger service, excursion services, a commuter service and a host of related services. It also needs viable stations and well cared for infrastructure. These cannot be realized given the current fracturing of services and responsibility.

*This fracturing of services has been an important contributing factor to the slow, incremental but exorable decline of rail services on Vancouver Island.*

All the various parts of an integrated service are needed, and they need to work together and support one another. Without the contributions of freight, and scheduled passenger, and excursion and the host of other services that make up a full rail service, the line will have difficulty sustaining itself. When combined, the services are much stronger and provide a solid foundation from which to build and expand.

**Conclusion # Two – The Rail Services on Vancouver Island must be Integrated into a single company and managed locally.**

### **A Lack of Accountability**

Elected leaders are accountable to their constituents. CEO's are accountable to Boards of Directors and Boards of Directors are accountable to their Shareholders. Employees are accountable to their employers. Normally, services should be accountable to the customers they are to serve and to those that provide the funding for the service. This is not the case with rail services on Vancouver Island.

*By any reasonable standard, the Island's rail services are not accountable to the communities or customers that they were originally intended to serve.*

By any reasonable standard, the Island's rail services are not accountable to the communities or customers that they were originally intended to serve. As a result, over an extended period of time, the services have become largely irrelevant to both. This irrelevance is due to the lack of connection to the communities and businesses that they were originally intended to serve.

There are many reasons for this situation, and much of it simply arose over time and will take time to correct. The first step back is to make the services more directly accountable at many levels.

Accountability must be real. It must mean more than token consultation. It must mean that when a community raises concerns with a service, action is taken. Accountability starts to mean something when there are consequences if it is not met.

The support of the local communities and all levels of government is essential to the success of the railway and that support will start when the communities have more of a direct say and involvement with the operation of the services and in the management of the railway corridor.

Once accountability is in place, community and government support will follow. Presently, it is difficult for a local community to assist or support rail services that have not been integrated into community and regional planning and when the services are not seen as currently delivering value to the community. As accountability increases, so also will the level of support.

**Conclusion # Three – Rail Services must be accountable to the individuals, businesses and communities they were originally intended to serve.**

## Community Control of the Right-of-Way

*Greater community and government involvement in the railway is one of the fundamental shifts that must occur if the line is to be maintained and developed. Community support, as set out in more detail later, will positively change the economics of the line.*

Rail on Vancouver Island started through a grant of land from the Provincial Government to the Federal Government, who then passed it on in a series of land grants to companies controlled by the Dunsmuir family. CPR then purchased the railway with its rights and obligations intact.

As a result of these land grants there is virtually no Crown Land in the South-East of Vancouver Island and there is now a contiguous corridor from Victoria to Courtenay and from Parksville to Port Alberni.

Greater community and government involvement in the railway is one of the fundamental shifts that must occur if the line is to be maintained and developed. Community support, as set out in more detail later, will positively change the economics of the line.

This corridor has value to the communities that include rail but go well beyond rail services alone. For the full potential of the corridor to be realized there needs to be greater community control over the corridor, up to and including ownership.

To consider why communities should consider becoming more involved in the ownership of the right-of-way and how this might be achieved, a discussion paper was prepared.<sup>11</sup> This discussion paper was developed with the input of several of the municipalities and the approaches outlined were favourably received.

The discussion paper sets out the pros and cons of greater community involvement and suggests that the positive benefits far outweigh the attendant risks and costs.

### **Conclusion # Four – Community control of the railway Corridor must be part of the future of the railway**

## **A Partnership for Greater Community Control of the E&N Transportation Corridor**

This same study also suggests a Public Private Partnership model whereby the “communities”, defined as municipalities, regional districts and First Nation communities on or near the line<sup>12</sup> would work closely with the operating railway company to form a true, public private partnership.

The public private partnership is defined as follows:

*“A **public private partnership** means that the communities along the Corridor, the operating rail company and senior government transportation agencies would coordinate their collective objectives and resources to support a viable rail/transportation corridor. This would*

<sup>11</sup> “The Benefits and Challenges of a Partnership for Greater Control of the E&N Railway Corridor” is a discussion paper that was prepared by Lanarc Consultants Ltd and is a companion document to this Report.

<sup>12</sup> These two corridors run through or near 5 regional districts, 9 First Nation communities, 10 municipalities and 13 unincorporated communities. The North South Line goes through the most populated sections, with approximately 85% of the Island’s population living within 30 minutes of the corridor.

*benefit the communities along the line and Vancouver Island generally. For individual communities, it would mean gaining a direct and meaningful voice in decisions regarding the EC&N Corridor, and more direct access to the corridor within their community for planning and development purposes.”*

**The Benefits of Local Control through Partnership:** The discussion paper outlines a significant number of benefits and discusses each. They include:

- Better Community Planning
- Community Accountability
- A Commuter Alternative to road and highway travel
- Better Transportation Planning
- Cheaper, Safer Freight Transport
- Job Creation and Economic Development
- Business and Industry Recruitment
- Tourism and Recreation
- Reducing Greenhouse Gases
- Preventing Environmental Impacts
- Revenue from Rail and Non-rail Uses
- Access to Infrastructure Funding
- Property Value Enhancement

This discussion paper mirrors a broader discussion that is occurring throughout Canada. The importance of preserving these railway corridors for community and social purposes has become a focus of the review of transportation legislation federally, in the many reviews that are now occurring as a result of the Kyoto Protocol on greenhouse gas emissions reductions, and community planning agencies.

All agree that these corridors should be considered as community assets.

**An issue affecting most communities and individuals on the Island:** In terms of the potential impact, the number of communities directly on or near the line is very significant. Over 85% of the population of the Island lives within a 30-minute drive to the railway. It is one of the few issues on the Island that has such potential to affect so many individuals and communities.

**A Partnership and Collective Control:** One model for management and control of the corridor is set out in the discussion paper. There are potentially many other models, but all need to embody the same features. These are:

- Partnership with the private sector
- Collective control, ensuring that the corridor is managed to the benefit of all the communities.

From a railway perspective, local control will ensure that the line is accountable to the communities. It will also allow the line to be restructured on a more economic, performance basis.

Community control of the right-of-way is, therefore, key to the future of rail services.

This is, perhaps, the most fundamental change that must occur. It has an impact on many different areas:

- It automatically makes the services more accountable to the communities.
- It makes the right-of-way a public asset to be managed to the benefit of the communities on the line. This goes well beyond the maintenance of rail services.
- It fundamentally changes the economics of the line, with issues around taxes, access fees and other matters being seen in completely different lights.
- It enhances the prospect of assistance for maintaining the infrastructure and other related matters.

**Conclusion # Five -- A Public, Private Partnership with a sharing of risk and benefits between the communities and the operating company needs to be explored as a way of not only making the line financially viable, but also accountable.**

***“Without rails, there is no railway.”***

## The Importance of Infrastructure

“Without rails, there is no railway.” An obvious but important statement that reflects the importance of maintaining in a sustainable way the rail infrastructure that is necessary for the delivery of rail services.

This, in fact, is perhaps the single most important issue that requires attention and which led directly to the need for fundamental restructuring of rail services on the Island.

### A National Concern<sup>13</sup>

The infrastructure issues facing the Island Railway are not unique. In Canada many of the smaller, short line operations are experiencing difficulty in terms of long-term viability and, as a result, in sustainably maintaining their rail infrastructure. Given

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<sup>13</sup> There is a great deal of information on the state of the Short Line industry in Canada and it all points in the same general direction. The two documents that were of the most use in completing this section were the submission of the ARRC (Association of Regional Railways of Canada) to the Blue Print Initiative of Transport Canada, and the background paper prepared by the Research and Traffic Group for the Canada Transportation Act Review Panel, entitled, “SUSTAINING CAPITAL REQUIREMENTS FOR THE SHORTLINE RAILWAY INDUSTRY”.



the growing importance of the Short Line Carriers to the national transportation system, this is of national concern.

In 1996 changes to the Canada Transportation Act made it easier for the two major railways, CN and CPR, to abandon and transfer less efficient track to smaller operators. The results were:

- **Withdrawal and decommissioning of a significant amount of track:** Between 1996 and 1999 more than 3,500 km were abandoned, the track taken up and the land sold or left unused.
- **The transfer of significant track and traffic to Short line operations:** Between 1996 and 1999 more than 8,500 km of rail line were transferred from CN or CPR to other operators. This has made the Short line rail industry much more important in the overall transportation system.
- **Capital Spending by the Class 1 Railways increased:** Capital Spending by the Class 1 Railways dramatically increased: Both CP and CNR dramatically increased investment in rolling stock, locomotives and infrastructure improvements, with significant gains in productivity for the now streamlined main lines.
- **Capital Spending by Shortlines has not kept pace:** For the most part, Short line railways have not kept pace with the necessary capital improvements. Capital expenditures on infrastructure, on average, went down over the same period.

The result has been an increasingly profitable and dynamic Class 1 rail industry, with the Short Lines lagging far behind. This has broad implications for transportation policy generally. Those related to infrastructure are set out here.

### Capital Expenditure Requirements

**When problems arise, efforts are needed to preserve the railway**

**infrastructure and corridors:** Maintaining track infrastructure through capital expenditures is a primary requirement of sustainable railway management. Tie, ballast and rail renewal must be undertaken to ensure safe operations and the ability of a railway to stay in business.

However, companies can “stay in business” for some time by deferring maintenance. When revenues fall, capital can be reduced against better times in the future. But if those times don’t come, then the line will continue to deteriorate until the infrastructure is at the point of collapse. The line is then decommissioned, the infrastructure salvaged and the property broken up and sold.

While this may make business sense in some instances, it is not sustainable rail management and could result in the unnecessary loss of essential rail infrastructure in instances where the line could have been maintained and kept in service for rail purposes. This is an issue that requires attention from a policy perspective.

It should not be easy for Short Line operations to abandon rail corridors where sustainable alternatives are available. When these corridors have been established

*Maintaining track infrastructure through capital expenditures is a primary requirement of sustainable railway management. Tie, ballast and rail renewal must be undertaken to ensure safe operations and the ability of a railway to stay in business.*

the “highest and best use” should be for rail use first, other transportation second, community uses third and all other uses should be considered a poor fourth.

**Sustainable Rail Infrastructure:** For a line to be sustainable, expenditures are required to maintain the longer-term condition of the track. At times, such expenditures can be deferred in response to a lack of resources, but eventually deferral results in:

- lower speeds,
- degradation of service and
- higher operating costs.

Higher levels of expenditure are required to recover from periods of deferred maintenance or to improve track conditions and speed.

**New infrastructure requirements:** Capital investment must also be made to keep pace with changes in freight practices. The best example of this is the move to heavier freight cars, requiring substantial change to the infrastructure to accommodate the additional weight. Of less concern to this line are the demands for greater speed, which apply largely to the long-haul sections of the Class 1 railways.

*A lack of resources has resulted in some short lines operating a line at a lower classification to avoid the needed investment. This results in slower speeds, more interruptions, and eventually, higher running costs*

### **On average, what does it cost to maintain rail infrastructure?**

**Ties, Ballast and Track:** There are differing opinions on this, depending on use, climate and terrain. A nominal capital expenditure in the range of \$2,500 to \$7,500 per km per year might be expected for all but the lightest density and the heaviest density shortlines.

A lack of resources has resulted in some short lines operating a line at a lower classification to avoid the needed investment. This results in slower speeds, more interruptions, and eventually, higher running costs. Such an approach, however, cannot last forever. While it might take up to a decade for the track to deteriorate, capital investment will eventually be necessary if the line is to remain in service.

**Impact of deferred maintenance:** Unfortunately, the longer maintenance is deferred, the more it may cost to bring the line back. Expenditures on many short lines have been deferred and higher investments in the shorter-term will be required to maintain operations at the specified level.<sup>14</sup> Maintenance deferrals of as high as \$20,000 to \$25,000 per km have been mentioned.

**What about Structures?** Bridges are a particular concern. For the major carriers, their large capital plans can absorb one-time requirements or unforeseen problems. For the smaller short lines, capital requirements can be more concentrated and often cannot be spread out in time. Very few maintain capital funds for repairs to major structures.

In some instances, the need for major bridge rehabilitation has led to partial closure and abandonment of lines since the traffic base did not justify the costs. This is

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<sup>14</sup> Rail Traffic Group Document.

unfortunate and avoidable if the depreciation of those assets had been managed to ensure replacement.

Major structure replacement and repair is a major concern for Short Lines and for the rail industry generally.

## The Short Line Industry and Infrastructure

**The overall state of the Short Line Industry:** This is a growing area with the Short Line Companies becoming increasingly important to the overall rail freight service. This is a relatively new development and legislation, regulations and policies are only now taking into account this new situation.

While this section deals with only the infrastructure issues, these are tied to the overall relationship between short line railways and Class 1 Railways and their commercial relationships. This is an evolving relationship and one of mutual interdependence and benefit. There has been movement, through regulation, policy and mutual self interest to strengthen the financial viability of Canada's short line industry, and this should be considered a positive development overall and one which will be of benefit to rail on Vancouver Island. As a result, there should be a strengthened short line sector in the future.

Financial viability is important if the necessary maintenance and upgrades are to take place. Whenever an industry of a sector is having difficulty, one of the first areas to be cut is the capital plan. Deferral of capital can go on for some time before it starts to be felt.

**The demands to upgrade infrastructure:** Nothing stands still, and the demands on rail infrastructure are no exception. If the Short Lines do not keep pace with the Class 1's and the demands of the industry generally, there will soon be fewer lines, a reduction in coverage and the elimination of rail freight as an option in many parts of the country.

**Infrastructure issues facing Short Lines:** Many of the demands are the same as for the Class 1 Railways. Others are created by the Class 1 railways as they move the industry to different standards that improve efficiency but also create demands for infrastructure upgrades. Some of the difficulties are unique to Short Lines and relate to the lack of economies of scale that frequently affect smaller operations.

- **Deferred Maintenance:** Generally speaking, there is a growing issue of deferred maintenance with Short Line operations. If this is not dealt with, the affected lines will ultimately fail.
- **Major structures:** Short Lines are not well positioned to deal with structural upgrades and failures of bridges, trestles and tunnels. This is particularly the case for the smaller railways.
- **Rail Crossing Maintenance:** Short Lines must build and maintain grade crossing warning systems, but only federally regulated railways have access to the federal grade crossing fund. Many of the Short Lines, which were part of the "national system" when owned by Class 1<sup>st</sup>, can now no longer access these funds as they are now considered "provincial" railways. The

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*Railways are required to not only maintain the infrastructure, but also pay taxes on it as private property. This is in stark contrast to highways, which are not taxed and are maintained at public expense.*

need is still there and perhaps even greater than before, but the funding is not.

- **Taxes on Right-of-Way:** Railways are required to not only maintain the infrastructure, but also pay taxes on it as private property. This is in stark contrast to highways, which are not taxed and are maintained at public expense. This is dealt with in detail in the section on leveling the playing field.
- **Upgrade to the 286 Cars:** The Short Line operators are currently faced with the need to upgrade track structure and bridges to handle a new North American standard for four-axle freight cars weighing 286,000 lbs. The North American Class 1 railways drove this increase of 9% over the old standard of 263,000 lbs. in response to market pressures to improve productivity and pricing.

This requires an extraordinary upgrading of plant that is beyond the financial capability of most of the Short Line operations. It is, however, potentially of benefit to the Class 1s and the communities and industries served.

## The Infrastructure of the Island Railway

Given the above, what is the state of the Island's Railway?

**What is the state of the infrastructure currently?** Although a relatively short line, there is considerable infrastructure on it. The line, which was formerly considered as a single entity when owned by CPR, is now in three parts. These are:

- The Southern Line, from Victoria to the City Limits of Nanaimo, which still belongs to CPR, leased to RailAmerica.
- The Northern Line, from Parksville to Courtenay, which still belongs to CPR, leased to RailAmerica.
- The East West Line, from the Rail Barge in Nanaimo to Port Alberni, comprised of the Welcox Spur to the North South Line from Nanaimo to Parksville on the North South Line and from Parksville to Port Alberni on the East-West line, which belongs to RailAmerica.

For the review of the infrastructure, the Planning Process concentrated on just the North-South Line running from Victoria to Courtenay. This line, largely owned by CPR with the middle section owned by RailAmerica, is still active and is frequently inspected due to the passenger service on the line. This line, therefore, had the best information on which to assess the infrastructure.

In terms of the North-Line, the infrastructure consists of:

- Bridges ..... 120
- Culverts..... 400
- Level crossings..... 150
- Ties ..... 389,200
- Ballast (miles)..... 139

- Rail (miles)..... 139

**About Bridges:** The bridges range from relatively straightforward road crossings, to major Canyon crossings involving spans of several hundred feet. Generally, because the line goes against the natural terrain, there are a significant number of major bridges across rivers and canyons.

**About Level Crossings:** About half of the level crossings are controlled with electronics that must be maintained. This number should increase as the line becomes more active.

**Rails:** For the most part, the line is single railed with a few areas with double track.

### **What factors need to be taken into account when assessing the state of the line and the requirements of sustainable management?**

**A matter of some controversy:** There is a wide divergence of opinion on the current state of the infrastructure and not all of what follows will be fully agreed to. However, the state of the infrastructure that is described below represents the consensus of those who have considered the line. There is no question that the line requires attention and that there is deferred maintenance that has accumulated on the line.

**Current Railway Standards:** The expertise of the experienced railway personnel available to the review was invaluable here. The following were the “rules of thumb” that were used.

- Railway ties, installed, cost, on average about \$60/tie.
- Ballast, to replace, costs on average about \$40,000 a mile.
- Rail replacement was difficult due to the fact that the line is largely 85 lbs rail and this is no longer used. There is sufficient rail available and stockpiled to deal with rail requirements for the foreseeable future. Rail maintenance, therefore, consists largely of labour costs. It was difficult to assess the need and so the cost of rail replacement was not factored into the overall costs. This was in part due to the conclusion that a major rail program would be needed to upgrade the rail to a heavier weight and that this could not be related directly to maintenance.

**Renewal Rate:** The following rates of renewal were used.

- For ties, the industry standard would be to replace them every 30 years. Due to the wet climate on Vancouver Island, and the intrusive vegetation, this was reduced to 25 years.
- For ballast, the industry standard is between 40 and 50 years. Due to the climate and vegetation, the lower end of that range was adopted.

### **The Annual Cost of Sustainable Renewal of the Infrastructure**

**Methodology:** What appears below is an average and it should be pointed out, as did the rail experts who assisted in the review, that there are no “average” years. Upgrades tend to be done as major projects and then left alone for several years.

*There is no question that the line requires attention and that there is deferred maintenance that has accumulated on the line.*

However, over time, there is an “average” annual expenditure required to maintain the line and this is what has been calculated.

*The required expenditure for sustainable maintenance for the North South Line in the Model, was \$1,200,000 per year.*

### Ties and Ballast

North - South Line					
	Unit	Life in years	Average annual Replacement	Unit cost in \$\$	Cost/year
Ties	389,200	30	15,568	60	934,080
Ballast (miles)	139	40	3.48	40,000	139,000
<b>Total</b>		-			<b>1,073,080</b>

Therefore, on average, an investment of about 1 million dollars a year would have to be made to simply sustain the ties and ballast. To this would be added the costs of maintaining the rails and culverts.

The required expenditure for sustainable maintenance for the North South Line in the Model, was \$1,200,000 per year.

**Has the line been sustainably maintained?** There was not access to the full records for the maintenance of the line or to the inspections that had been done by government inspectors, but on the basis of the information available, the following can be concluded:

- The line has been kept safe and all regulatory requirements have been met, but the line has not been maintained on a sustainable basis.
- If the maintenance is not increased to a sustainable level the essential infrastructure will slowly decline to the point that it will no longer be safe and it will be shut down.

**Conclusion # Six -- While safely maintained to current regulatory requirements, the infrastructure has not been sustainably maintained and will eventually fail if current practices continue.**

### Deferred Maintenance

The result of the maintenance not being kept at sustainable levels in the past has been that there is significant deferred maintenance accumulated on the line.

While opinions vary as to the extent of the deferral, the calculations below are based on the assumption that, on average 20-25% percent of the current ballast and ties are compromised and require replacement over time. This, then, represents the deferred maintenance on the line. For the table below, 25% deferral was used.

North - South Line - Deferred Maintenance							
	Unit	% Def. Main.	Def. Main.	Unit cost	Total Def.	5 year	10 year
Ties	389,200	0.25	97,300	60	5,838,000	1,167,600	583,800
Ballast (miles)	139	0.25	35	40,000	1,390,000	278,000	139,000
<b>Total</b>					<b>7,228,000</b>	<b>1,445,600</b>	<b>722,800</b>

*[T]he total deferred maintenance on the line for ballast and ties is approximately 7.2 million dollars.*

On this basis, the total deferred maintenance on the line for ballast and ties is approximately 7.2 million dollars. It takes time for the rail to get in this state, and it would take time to put it back into sustainable shape. A five-year catch-up plan would add approximately 1.5 million to the annual maintenance cost. A ten-year plan would add approximately 750,000 per year.

**Conclusion # Seven -- There is substantial deferred maintenance on the line that must be dealt with over the next five to ten years for the line to survive.**

### Capital Requirements for Major Structures

Given all of the bridges and level crossings there is also a concern that there needs to be a plan to deal with the eventual need to replace the current structures. There is not one currently in place.

- There is no plan in place to ensure the repair and replacement of major structures on the line, major structures being bridges, trestles and tunnels.
- With the number of bridges and trestles on the line, some kind of capital plan is required. For larger railways like CPR, there is a large enough capital budget and a sufficiently large operation that capital upgrades and unexpected requirements can be managed.
- For a smaller operation like the Island Railway, there needs to be some provision for a sinking fund or a revolving fund that will ensure both routine maintenance and capital sufficient to deal with major issues when they occur.

*The current situation, without any provision or a fund for capital replacement, will ultimately result in the line closing due to the failure of a major structure.*

The current situation, without any provision or a fund for capital replacement, will ultimately result in the line closing due to the failure of a major structure.

This potential for substantial capital improvements is referred to as a “capital overhang”. The extent of this capital overhang is difficult to determine without detailed, independent inspections of the structures. Current inspections have confirmed that the railway is safe. It also suggests, given the number of “go-slow” orders, that there are problems with some of the structures. For the purposes of this study, there was neither the time nor the resources to complete an independent inspection.

In terms of some sense of the immediate requirement, there is thought to be at least \$200,000 to \$300,000 in need repairs and maintenance to remove a number of the go-slow orders on the bridges.

Given that the concern with major structures is an issue on many of the smaller lines, there should be an industry-wide approach developed. In other sectors with similar issues, there have been funds established to spread risk on an industry-wide basis.

Short of that, there must be a capital fund or access to capital for the Island railway that anticipates, on average, an expenditure of at least 200,000 a year, with the

expectation that there would also be funding assistance from public sources should these be required.

**Conclusion # Eight -- There are some repairs that need to be made immediately and the needs to be a provision to deal with the capital requirements of the many bridges and other support structures for the railway.**

## A Shared Responsibility

**Rail Infrastructure is the responsibility of the operator:** Obviously, railway companies, whether Class 1's, a large regional carrier or a Short Line, must take steps to ensure that the rail infrastructure on which their business depends, is maintained in a secure, safe and sustainable way.

**Rail Infrastructure has an important economic and social dimension:**

Although largely privately owned, Canada's rail corridors are and should be considered as important assets in the same way as any other part of the rest of the essential transportation infrastructure.

To the extent that rail infrastructure is, on the basis of public policy, subject to restrictions and requirements with respect to use and disposition; then public policy must also provide support, incentives and financial assistance for rail infrastructure.

**Government also has a role to play:** Consistent with treating rail infrastructure as essential rail infrastructure, there is an important role for governments to support funding for rail upgrades and access to infrastructure programs.

This is a theme that has been underlined throughout the review of Federal transportation policy and in similar reviews in provincial jurisdictions. There has been a response in several areas. These include:

- Rail infrastructure upgrades are eligible for federal infrastructure funding.
- Programs to encourage rail freight have been put in place.
- There are a number of federal and provincial programs that support rail use.

More needs to be done, such as reducing discriminatory property and fuel taxes, and there are encouraging signs that further changes are occurring. .

**Vancouver Island's Railway Assets are important to the well being of the Island and require the support of Governments at all levels to maintain them:** All of these national trends are very important for the Island Railway.

Right now, given all that has occurred, the line on Vancouver Island cannot generate enough revenue to deal with the deferred maintenance, the capital overhang and required changes to upgrade the infrastructure to new industry standards. It requires an overall approach, with all of the involved parties working together, including the assistance of government.

If, as has been amply demonstrated by the Planning Process review, maintaining the railway corridor and the essential railway infrastructure is in the interests of the

*Although largely privately owned, Canada's rail corridors are and should be considered as important assets in the same way as any other part of the rest of the essential transportation infrastructure.*



community, then the community, through its representative governments, need to play a role, in partnership with the communities and the operators of the line.

Creating a model that will ensure maximum community support and access to relevant government programming to deal with the upgrading and repair of the infrastructure is essential to the future of the line.

**Conclusion # Nine – The Line requires infrastructure support and investment to upgrade and maintain the railway line.**

## The Role of Freight

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### Rail Freight is essential to the long-term Sustainability

For many, the rail service is identified with the passenger train that is frequently seen and heard as it makes its daily run up and down the Island. Often lost in the discussion of the line is the importance of rail freight.

It should be remembered that it was the loss of a key railfreight customer that triggered the initial decision to shut down the line. It has also been the desire of the remaining freight customers, particularly Superior Propane, to remain on the line that has been a sustaining force to continue the current operations and to develop new models.

*What was concluded early on in the analysis, was that freight is at least and perhaps more important than the passenger service to the viability of the line.*

The development of the Sustainable Model actually started with the passenger service and then considered the potential contribution of freight. Two possible models that had been suggested by a number of groups in the early stages were to consider the viability of a passenger only service on the either the entire North-South Line, or on the Southern portion of that line only.

For reasons that will be set out later, these models were unlikely to be sustainable and were not considered further.

What was concluded early on in the analysis, was that freight is at least and perhaps more important than the passenger service to the viability of the line.

It was concluded, therefore, that the line required both freight and passenger service.

When the potential of the line is considered, rail freight is essential to the long-term viability of the line. This is particularly the case for the Parksville to Alberni line that is currently inactive due to the loss of freight.

Therefore:

- **Current rail freight must be maintained:** Maintaining current freight, re-attracting former freight customers back to rail and getting additional freight customers onto the rail, is considered by many to be an important part of sustaining rail operations on the Island.

Although diminished, the remaining freight is sufficient to support a small but viable freight operation on the North-South line, given a number of other changes.

- **New traffic on the North-South Line and the East West Line need to be added:** There are a significant number of potential customers and services that can be added. This is particularly the case for long-haul materials and for dangerous and volatile goods that are best shipped on Rail.

A review of past rail freight customers and an appraisal of freight inquiries suggests that with a commitment to rail freight as set out later, additional freight could be added to the North-South line.

The East-West line is going to be more of a challenge, but the potential is there, particularly with a number of changes to the way things are currently managed.

### **Conclusion # Ten -- Railfreight is essential to the long-term sustainability of the line**

*Rail Freight, by its nature, is more complex than trucking, and this is made even more complex when it is being shipped to an Island and there are at least three different suppliers involved: the mainland railway, the rail barge, and the short line on the Island.*

#### **Factors affecting the use of Rail Freight**

Shipping by rail is on of several options available to “shippers” who are generally very demanding when it comes to the service they would like. Consider the following description of what shippers require.

*In a dream world, one would expect that shippers want:*

- *fast, on-time delivery all the time;*
- *an unlimited supply of clean, well-maintained equipment;*
- *no loss or damage;*
- *instant, accurate, on line tracing information in a form compatible with each shippers data processing system;*
- *simplified billing and other paperwork and electronic data interchange;*
- *easy to reach, knowledgeable, contact people who are always on duty, are never promoted, never leave and who know and can anticipate each shippers' needs;*
- *fast, accurate rate and route quotations; and,*
- *all this at a low, low price.<sup>15</sup>*

Virtually none of this wish list can be applied to rail freight on Vancouver Island. Rail Freight, by its nature, is more complex than trucking, and this is made even more complex when it is being shipped to an Island and there are at least three different suppliers involved: the mainland railway, the rail barge, and the short line on the Island.

Even with this complexity, for some products rail freight has advantages in terms of cost, safety, environmental impacts, and others, depending on the nature of the

<sup>15</sup> From Presentation of ARRC to Canadian Transportation Association, Toronto, September 10, 2002.

product, the distance shipped, etc. Given all of the above, the major issues for freight on the Island are the following:

- Certainty
- Reliability
- State of the Infrastructure
- Cost
- Attention.

**Certainty:** Rail freight requires different systems and infrastructure than trucks. Without solid guarantees that rail freight is going to be there in the future, companies are not likely to make the investments needed to use rail freight. These investments will only be made if there is not a firm commitment to the future of rail freight on the Island. A long-term plan and a commitment to rail freight are essential to getting more freight off the highways and on to the tracks.

**Reliability:** This goes to both on-time delivery and frequency of service. As the rail freight operation was scaled back, so was the frequency of deliveries, removing a number of possible clients.

**State of the Infrastructure:** It is not lost on shippers that the infrastructure on the Island is at least one evolution behind the mainland railways and that it cannot support the heavier cars that are now coming into service. This is a major deterrent to attracting long-term shippers to the line and removes the potential efficiencies of the heavier cars from the decision.

**Cost:** Cost is a relative matter and is measured against other modes of transportation. In part, cost is a factor of structural inequities that disfavour rail over trucks and will only be remedied when all the current externalities of freight are factored into the determination of cost.

There remain, however, a number of steps that can be taken to ensure that the cost of rail freight is kept competitive.

**Attention:** A review of the concerns of current and past freight customers suggests that part of the problem has to do with the amount of attention shippers were receiving and the efforts that were being made to keep and attract their business.

*Rail freight services need, over time, to be put on a more equal footing with other modes of transportation, particularly trucking on the Island.*

**Conclusion # Eleven – Rail Freight customers require: secure infrastructure, certainty, consistency and attention to their issues for the current business to be maintained and grow.**

### Leveling the playing Field

Rail freight services need, over time, to be put on a more equal footing with other modes of transportation, particularly trucking on the Island. This is a complex and at times contentious debate that has been going on for some time and will continue

for some time.<sup>16</sup> This is part of the policy deficit mentioned earlier, but requires additional attention here.

While there are always two sides to any debate, there does appear to be an issue here in Canada that has not been addressed as well as in other countries with similar development and issues.

Currently, public policy tends to subsidize trucking through providing free access to the publicly financed and maintained system of highways, while imposing costs on the privately held rail infrastructure. While it is understood that there are many and complex issues that are raised in this discussion, it will be important, over time, that the relative costs and benefits of various modes of transportation will be taken into consideration along with the social benefits and costs.

Rail service on Vancouver Island provides an excellent opportunity to start to address some of the issues in this area, particularly with greater community involvement.

*VIA made an early commitment to maintain service on the current basis so long as there was safe access to the railway. As a result, the Island still has a passenger service that is part of the national system.*

**Conclusion # Twelve -- The playing field for "rail versus trucks" must be leveled to take into account the full costs of each mode of transportation.**

## The Role of Passenger Rail

### Passenger Rail has an important future on Vancouver Island

**The current service is continuing:** Most of the focus of public attention and complaint, particularly in the South Island, has been on the passenger service or, more pointedly, what has been perceived as a lack of passenger service. For at least the last 10 years there have been studies and recommendations on how to improve the service, but to little effect.

However, it was not the passenger service that triggered this most recent review, it was the threatened loss of all service and the VIA service was going to stop only because there would be no railway to run on.

As well, VIA made an early commitment to maintain service on the current basis so long as there was safe access to the railway. As a result, the Island still has a passenger service that is part of the national system.

And there have been recent improvements. There are fewer breakdowns and interruptions of service due to better maintenance of the equipment. As well, one refurbished unit has been added to the service with another to follow.

*The passenger service contributes approximately 1.6 million a year, making the passenger service the largest customer on the line.*

<sup>16</sup> There is an impressive body of literature both International and Canadian, on the relative merits of rail freight. This debate has become more focused in Canada as a result of the recent adoption of the Kyoto Accord. A good summary of the advantages of rail is contained in the publications of the Canadian Centre for Sustainable Transportation.

The service continues and there is a base from which to build.

**Passenger Rail currently supports the line:** As currently operated, the passenger train makes a significant contribution to the line.

Under a rail services agreement, the current operator provides crews and track access for the service. To this is added an additional amount by CPR to support the passenger rail. The passenger service contributes approximately 1.6 million a year, making the passenger service the largest customer on the line.

As well, there are additional revenues spent on the Island with the trains now being serviced here rather than in Vancouver.

Overall, this contribution is key to maintaining the line and the mix of services.

**There is general agreement that more could be done:** The issue to be considered in the planning process was whether or not the passenger service could be making a more important contribution to the viability of the line than is currently the case. The answer is that it could.

The current operator, VIA Rail and Transport Canada both agree that the passenger service would more be more likely to improve if it were managed in a way more responsive to local conditions and requirements. This is consistent with the conclusions reached as part of the Passenger Rail Task Force<sup>17</sup>, and as a result of the earlier work of the SCOT<sup>18</sup> Committee.

### VIA's current focus

**After some uncertainty, a VIA Renaissance:** After a period of hiatus due to uncertainty around federal policy on passenger rail<sup>19</sup>, VIA's mandate was renewed for a 10 year period, its long-term funding was secured, and funds were made available to recapitalize the fleet.<sup>20</sup>

As a result, VIA is currently leading a significant rejuvenation of passenger service in other parts of Canada. With 85% of the current services in Central Canada, the primary focus has been on the main routes where the majority of the traffic occurs. While some improvements have been made in other areas and there have been

*After a period of hiatus due to uncertainty around federal policy on passenger rail<sup>1</sup>, VIA's mandate was renewed for a 10 year period, its long-term funding was secured, and funds were made available to recapitalize the fleet,<sup>1</sup>*

<sup>17</sup> The Passenger Rail Task Force was formed to oversee the complete privatization of VIA Rail. Its mandate was described as follows in the 1998-99 Annual Report of Transport Canada "To develop options for revitalized passenger rail in Canada in response to the report on rail passenger service by the Standing Committee on Transportation"

<sup>18</sup> The Standing Committee on Transportation of the Federal Parliament.

<sup>19</sup> The Report of the Standing Committee on Transportation (SCOT) on passenger rail recommended that the VIA Passenger Rail service be franchised and that VIA in its current form, be phased out. These recommendations were initially accepted by the Minister of Transport and led to the creation of the Passenger Rail Task Force. However, after some deliberation, the decision was taken to rejuvenate the current VIA model. However, the recommendations that the Regional and Remote lines be devolved or franchised to local control were to be pursued.

<sup>20</sup> In April 2000, the Government of Canada announced \$400 million in capital funding to improve VIA Rail passenger services over a five-year period.

some improvements to the Island service, as mentioned above, these have been relatively minor.

**A different approach for regional services:** This situation, however, should be considered in light of the policy direction that has been given VIA with respect to the management of regional services and the recent uncertainty around the future of the line on Vancouver Island.

In terms of the regional lines not connected to the mainline service, Minister Collette directed VIA to continue to explore devolution and franchising as recommended in the SCOT Report, with particular attention to be focused on the Island Railway. These efforts were set to one side when it appeared that the future of the line was in jeopardy.

VIA Rail, and Transport Canada have both acknowledged that the passenger service on the Island will only meet its full potential when it is devolved to local control and responsibility. The Minister of Transportation has also generally set out the terms under which this can occur.

***There is significant potential to grow the passenger service on the Island.***

### **The potential for Passenger Service on Vancouver Island**

The Planning Process concluded that there is significant potential to grow the passenger service on the Island. This potential is in at least four areas, these being:

- Strengthening the current scheduled “community connector” service.
- Excursion and recreation services built around the current service.
- Commuter passenger rail.
- Specialty services.

**The Scheduled, “Community Connector” Service:** In this report, the current service is designated as a “community connector” service to distinguish it from excursion or commuter services. As the title suggests, it connects the Island communities with a scheduled passenger service.

The potential for this kind of service is considered on the Island to be quite significant, but the schedule would have to be augmented and the frequency increased.

The potential of the service on the Island is clear when it is compared to the other services currently being offered by VIA. The following chart compares the various VIA routes for 1998<sup>21</sup>.

<sup>21</sup> This chart was part of the information that was developed by the Passenger Rail Task Force and provides a useful comparison of the various lines and the category of services. It should be taken into account that there have been a number of important changes since 1998 and these are not reflected in this information. More current comparative information was not available.

Operating Line	Load Factor	Revenue	Operating Cost	Share Cost	Operating Subsidy	Subsidy Per Passenger (\$)
Montreal-Quebec City	45%	10.1	(4.4)	(6.2)	(10.6)	\$38.49
Montreal-Ottawa	42%	7.7	(4.5)	(5.2)	(9.7)	\$39.79
Montreal-Toronto	61%	46.7	4.7	(18.0)	(13.3)	\$14.79
Toronto-Ottawa	54%	25.0	1.7	(10.0)	(8.3)	\$15.79
Toronto-Windsor	51%	21.5	(3.8)	(10.8)	(14.6)	\$23.18
Toronto-Sarnia	48%	6.7	(4.0)	(4.6)	(8.6)	\$26.64
Toronto-Niagara	43%	2.2	(2.2)	(1.9)	(4.1)	\$21.55
<b>Corridor</b>	54%	120.0	(12.4)	(56.6)	(69.1)	\$22.60
<b>Long-haul East</b>	65%	19.0	(12.4)	(5.4)	(20.3)	\$79.33
<b>Long-haul West</b>	69%	40.2	(6.2)	(9.6)	(15.8)	\$107.44
Montreal -Senneterre	21%	0.6	(2.4)	(0.6)	(3.0)	\$139.66
Montreal-Jonquiere	32%	0.4	(1.9)	(0.5)	(2.4)	\$129.30
Sudbury-White River	18%	0.2	(1.2)	(0.3)	(1.5)	\$219.61
Winnipeg-Churchill	29%	3.0	(7.9)	(2.0)	(9.9)	\$290.25
The Pas-Lynn Lake	33%	0.2	(0.6)	(0.2)	(0.8)	\$102.15
Jasper-Prince Rupert	42%	2.0	(3.0)	(1.0)	(4.0)	\$163.29
Wabowden -Churchill	2%	0.0	(0.1)	(0.0)	(0.1)	\$442.53
<b>Victoria-Courtney</b>	<b>37%</b>	<b>0.6</b>	<b>(1.7)</b>	<b>(0.5)</b>	<b>(2.1)</b>	<b>\$55.90</b>
<b>Regional/Remote</b>	29%	6.0	(18.8)	(5.0)	(23.8)	\$157.28
Corporate and Other	-	15.0	15.0	(68.5)	(53.5)	-
<b>Total</b>	56%	200.2	(37.2)	(145.2)	(182.4)	

**Revenue** = ticket and on-board revenue; **Operation Cost** = direct costs less revenue; **Shared Costs** = booking system, insurance, overhauls, etc.; **Operating Subsidy** = sum of operating and shared costs less revenue.

When the Victoria-Courtenay run is considered, a number of factors become clear.

- First, the Island Service is the star run of the regional and remotes, with the highest load factors, the highest revenues, the largest number of trips and the lowest subsidy per passenger.
- Second, it would appear to have more in common with the central core operating lines than with the regional and remote. It is clearly not remote, running through many of the major communities on the Island. It also attracts the same mix of, business, inter-city, tourism and recreational business as the main line services. It connects communities that are already serviced by an adequate and improving highway system.
- Third, although lower in terms of load factors, and higher in terms of per passenger subsidy, the Island service compares very favourably with several of the mainline services.

The Island Railway is the only line among the regional and remote lines that provides a service that can be compared to the central lines. The potential for improving the scheduled service is, therefore, as significant as is the case for the lines in central Ontario and Quebec.

*The Island Railway is the only line among the regional and remote lines that provides a service that can be compared to the central lines.*

*The potential for improving the scheduled service*

**Excursion and recreation services built around the scheduled service:** These are services that are built around the scheduled service, using the same personnel and equipment and, at times, coordinating with the scheduled service.

There is some of this now but it could be expanded. The two best examples have been the Mount Washington Ski Train and the Cowichan Valley Wine Train. Both were modest successes.

This is an area where there is significant potential and which can make a difference in the near term.

**Commuter passenger rail:** The potential for commuter rail on the Island has been the subject of some considerable debate. Some would contend that the expansion of the Island Highway has provided the necessary link between Island communities and that this has removed any need for commuter rail services.

Others argue that with the continued growth of the Island's communities and with the changing demographics toward an aging population more likely to seek alternatives to car travel, there is a significant potential for commuter rail.

What is clear is that without the rail infrastructure in place, there is no prospect for future commuter rail. It is also clear that commuter rail must be part of an integrated transportation plan and that for the moment, the potential for the use of the railway corridor has not been factored into these plans.

Any move in this direction will require the coordination with other modes of transportation and, in particular, the city bus services. As well there are issues with respect to reliability and pricing that need to be taken into account.

However, the future prospect is there and so is the incentive to develop this kind of service further.

Environmental concerns, urban sprawl and congestion issues all point in this direction.

The following chart was taken from one of the submissions to the Transportation Blue Print initiative.

Of the 10 fastest growing cities from 1991 to 1996, 9 were in BC and 3 were on Vancouver Island.

Name	Pop 1991	Pop 1996	% Growth
Courtenay (B.C.)	44,523	54,912	23.3
Barrie (Ont.)	97,150	118,695	22.2
Kelowna (B.C.)	111,846	136,541	22.1
Chilliwack (B.C.)	54,962	66,254	20.5
Abbotsford (B.C.)	113,562	136,480	20.2
Nanaimo (B.C.)	73,547	85,585	16.4
Duncan (B.C.)	30,924	35,803	15.8
Penticton (B.C.)	35,823	41,276	15.2
Vernon (B.C.)	48,139	55,359	15
Kamloops (B.C.)	74,353	84,914	14.2

That growth has slowed now due to the problems with the softwood lumber industry and the current slow down in the BC economy generally. However, most planners on the Island anticipate continued growth, particularly in the Comox Valley, the Cowichan Valley, and in the Western Communities near Victoria. All are potentially serviced by the Railway.

With the kind of growth that is expected in the South Island, there is going to be a future for commuter rail services.

*What is clear is that without the rail infrastructure in place, there is no prospect for future commuter rail. It is also clear that commuter rail must be part of an integrated transportation plan and that for the moment, the potential for the use of the railway corridor has not been factored into these plans.*



The study makes the following prediction with respect to urban areas generally.

*“We are very likely, over the next twenty years, to experience:*

- *increased levels of travel that will cause an increasing extent and degree of traffic congestion;*
- *the continued focus of growth at suburban and ex-urban nodes – edge cities and satellite cities;*
- *a consequent demand for an expanded commuter rail network to offer an alternative to auto travel between and among these areas and from these areas to city cores.*

*This future is extremely likely to occur because significant changes to travel patterns occur only very slowly, and because, in many urban centers, land use patterns are already established through planning policy. All current indicators point to these trends continuing for the foreseeable future.<sup>22</sup>*

This is one of the areas where keeping the line intact and available is important. The Island will not have commuter rail in the immediate, but if the infrastructure is kept in place and the services operating, it will eventually come.

This is an important area of potential but it was not taken into account in developing the sustainable model, which required that any of the services factored into the model had to be able to have a positive impact immediately.

**Specialty services:** This deals with passenger services that go beyond the regular services that are currently in place. They usually involve specialized equipment and approaches.

The Pacific Wilderness Train that operated on the Island for two years out of Victoria is an example. Dinner trains, steam trains, and other specialty services are others. There is potential for this kind of service as well, and with refurbished stations, quality infrastructure, and rail management that encourage this kind of rail, there will be many opportunities for these types of services in the future.

In the immediate, however, this is only potential and will not factor into the immediate need to rejuvenate the line.

**Conclusion # Thirteen: There is significant potential on Vancouver Island for all aspects of passenger rail including the growth of the current community connector service, excursion and specialty services, commuter rail and specialty trains.**

<sup>22</sup> “Potential Use of Abandoned Rail Corridors for Regional Rail Purposes” A report for the Canada Transportation Act Review, Author – Bob Lehman, Metropolitan Knowledge International

## Other passenger related issues

**Where you start and where you stop counts:** The passenger experience does not start when the passenger enters the train and it does not end when they leave the train. The rail travel experience begins when the passenger arrives at the station and it ends when the passenger leaves the station.

*The passenger experience does not start when the passenger enters the train and it does not end when they leave the train. The rail travel experience begins when the passenger arrives at the station and it ends when the passenger leaves the station.*

Currently, the state of the passenger stations distracts from the rail experience.

One of the advantages of passenger rail travel is that it is more likely to be accessible to the elderly and disabled passenger. This is not the case for the Island Service where there are no passenger platforms that allow entrance into the train without climbing into the car, or for wheel chair and related access. This would be remedied with proper stations.

As part of increasing passenger volumes, attention must be paid to the state of the stations, and this will be important for all of the passenger related services.

**On-board services:** There are currently no on-board services. No food, no drinks, no magazines. Apart from the added revenue that these services could generate, they also add to the quality of the passenger rail experience.

**The booking system:** VIA is served by a booking system designed for the national service. While doubtlessly a valued tool for the mainline system, it does not serve the Island service well. Because the line is on an Island and self contained, there is no potential to book connections to the rest of the VIA system.

The VIA call centres are situated in New Brunswick and other Eastern locations and when calls are made from the Island that is where the phone rings. There is no knowledge of local conditions or any ability to assist potential passengers with anything other than fares. It also appears to be virtually impossible for the system to book tickets for trips that originate and end in other than Victoria, Nanaimo or Courtenay.

VIA's ticketing practices are also national in scope, in terms of discounts and specials. The current system cannot handle local approaches if these differ from the national approach.

A locally based booking system would enhance the current and future services. It would provide local employment. It could provide local information and connections. It would support local initiatives to increase loads. It would enhance the service in many ways.

**Local Marketing:** VIA markets its services nationally and these ads are regularly seen on Island based media. As well, there is international marketing. Most of this marketing is irrelevant to the Island service.

The market for the Island passenger service is largely local and regional. The vast majority of the current passengers are residents of the Island. The next most significant group is residents of the Pacific North-West.

In the summer, the line attracts a number of tourists. All of these are in the region for other reasons and learn of the train while they are here.

Marketing of this line should, therefore, be local and regional. Local, to attract the traveling public that wishes to get up and down the Island without a vehicle; regional, to ensure residents of the rest of BC, Alberta, Washington State, and Oregon State, know that when they visit the Island, there is a train.

A targeted marketing campaign focused on the local and regional markets will enhance current services.

Another aspect of local marketing is the facility with which the passenger service can be integrated into other services on the Island. While it is not impossible to make these connections now, it is difficult. A locally based marketing capacity will enhance the ability to make links with the ferry and inter-city bus systems. Even more important are the links that need to be made with the large tourism and recreation markets to make it easier for them to incorporate train travel into their packages.

**Conclusion # Fourteen – A number of related changes need to be made to enhance the passenger service. These include: revitalization of the train stations, provision of on-board services, a locally based booking system and local marketing.**

### **Financing Passenger Rail**

**Current Federal support must be maintained:** Passenger Rail currently benefits from federal financial support to operate passenger services in Canada, including the service on Vancouver Island. This support was under some scrutiny and pressure over the last few years but has now been stabilized and increased in some areas. As this service is moved to local control, it is imperative that the current level of federal financial support continue and that additional investment be made. This means that:

- Federal financial support for passenger rail must continue and, in fact, should increase somewhat to take into account some of the additional costs that will result from the service when separated from VIA. This must be done in a way that does not adversely affect the operations of VIA elsewhere in Canada.
- The current operating subsidy of 1.8 million per annum would continue to be received from VIA Canada.
- The additional .5 million of annual subsidy that reflects the shared costs that cannot be readily separated from the rest of VIA's budget, would be made up in some way in the initial years of the service.

**Additional financial support must be secured:** Significant new resources need to be secured to improve the service. This will, in turn, allow for the generation of additional revenues and attract new investment in the service. As an example, if the scheduled service was to move to a three-train schedule as recommended in several

of the studies, this would require at least four RDC's<sup>23</sup> and a spare, in contrast to the two and a spare now in the Island fleet. When excursion trips are added, the minimum fleet is six units. These additional cars must be paid for.

There are a number of additional sources of revenue that should be available to the line. These include:

- **Increasing the load factors and longer trips:** The train is currently running at around 34-37% occupancy. If this were increased to 50%, the revenues would go up accordingly. Marketing should also target the longer trips and trips above the Malahat. This would increase fare revenues substantially without adding direct operational costs.
- **Additional collateral passenger revenue:** Currently the only revenue from the line is in the form of ticket revenue. There are no on-board services to generate revenue -- no coffee, no Danish, no newspaper, no magazine, no advertising, no T-shirts. This revenue could make a significant contribution to the service and enhance the quality of the service.
- **Station Revenue:** The only manned station is in Victoria and only tickets are sold. Station revenues could be significant depending on the relationship between the stations and the passenger service and the ability to attract services to the stations.
- **Related Marketing:** With improved marketing, there should be an increase in revenues from related services such as hotels, taxis and others.

All of this must come from changes to the current system, private sector investment and the revenues that can be generated from a revamped and improved service.

**The Service must be financially viable:** The viability of passenger services needs to be considered on the basis that parts of the service will receive some financial assistance from communities and government on the same basis as these services tend to be supported elsewhere.

Having said that, there are a number of other rail related services that should stand alone and only be offered if they meet the standard business test with respect to return on investment (ROI).

The objective should be that the Island passenger services meet and exceed all standards for supported services, and that overall, the passenger services make a significant financial contribution to the bottom line viability of the overall rail services.

**Conclusion # Fifteen -- Current financial support must be maintained and additional financial support secured for the passenger service to realize its full potential. While some financial support is available to some of the services, the Passenger Service overall must be financially viable.**

*The objective should be that the Island passenger services meet and exceed all standards for supported services, and that overall, the passenger services make a significant financial contribution to the bottom line viability of the overall rail services.*

<sup>23</sup> Rail Diesel Car

### **What is needed, in the near term, to make the passenger service an important part of the sustainable model?**

The following generally summarizes the concerns and potential for passenger service.

- The passenger service alone is unlikely to generate sufficient revenue to sustain the required infrastructure. Passenger rail must, therefore, be part of an integrated approach where passenger, freight and infrastructure fit together and support one another.
- The passenger service must become more responsive and accountable to those it is intended to serve to both rejuvenate the service and to make a more substantial contribution to sustaining overall rail services.
- A new approach, with improved services that are more responsive to consumer needs, can be successfully developed. The new service:
  - Must continue to act as a community connector, providing a convenient and cost-effective service to the communities to bring people up and down the Island.
  - Must focus more attention on connecting to the large and growing recreation and tourism sector on the Island through the development of excursion and recreational rail services.
  - Must be responsive to efforts to develop an effective commuter service in cooperation with the general planning for commuter and transit planning within the more populated areas.
  - Must coordinate and manage all passenger rail activity on the Island whether delivered directly or through third parties.

**Conclusion # Sixteen -- If the current passenger service is devolved or franchised to local management prepared to make an investment in improving the service, the current passenger service can form the basis for dramatic and significant improvement as part of an integrated service.**

# Implementing the Community Partnership Model

This Chapter briefly sets out conclusion of the Planning Process that the only sustainable business model in the immediate, mid and long-term, is the Community Partnership Model.

## Assessing the Models

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### The Approach

As was set out earlier<sup>24</sup>, two business models were looked at. These were:

- The Status Quo, or a variation of the Status Quo
- The Community Partnership Model.

### What the Models are and what they are not

Business Models are not business plans. Within each of the Models there are potentially many different ways of proceeding and these require the more detailed and rigorous planning that goes into an investment quality business plan.

What a Business Model can do is to set out a framework, a set of assumptions and guidelines that, if followed, should lead to a successful business plan. The Model must be sufficiently detailed to provide clear direction for the more detailed business and financial planning that will need to take place.

The conclusions and assumptions that were made in each of the key areas were built into each model and then assessed against the criteria of sustainability and the critical success factors..<sup>25</sup>

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<sup>24</sup> See page 20, in Chapter 2, “*Planning Process Methodology*”.

<sup>25</sup> See page 16.

## **Applying the Critical Success Factors**

Given the need to demonstrate both immediate viability and long-term sustainability, the following had to be achieved for any of the Models to be successful.

### **On the management of the line generally:**

- There must be much better and closer coordination of rail services.
- There needs to be a supportive and mutually beneficial relationship with the communities and businesses the rail services are intended to serve.

### **On Infrastructure:**

- The overall operation of the line must be able to keep up a sustainable level of maintenance
- In a reasonable period of time, the operation must catch up the deferred maintenance.
- The operation must develop a contingency plan to deal with the replacement and repair of bridges and trestles.
- Upgrading the infrastructure to handle the newer, heavier freight cars will be required in a reasonably short period of time.

### **On Cost Reduction:**

- There must be a significant reduction in the cost of operating the line, particularly in the next few years.

### **On Capital Costs:**

- The line will require external assistance to deal with the deferred maintenance and upgrades required to the infrastructure. Without external support, the infrastructure problems will eventually overwhelm any business plan. Programs are available and support can be secured with the right approach.
- Additional capital is also required for the passenger service and to upgrade the stations and related facilities.

### **On Freight:**

- The operation must maintain current levels of freight and increase the level of freight use over time.
- The East-West freight traffic that was sustaining the line is not likely to return to rail for some time and the line must be initially sustained without the addition of that traffic. The East-West line, however, must remain an integral part of the service to retain the potential of that part of the line.

### **On Passenger Rail:**

- Passenger rail services must be integrated into the overall operation by assuming responsibility for the passenger service. Given the significance of the changes required to develop the passenger service, this needs to be done on an incremental basis.

- Current levels of support from all sources must be maintained.
- New services need to be carefully developed building from the current service, in close cooperation with the communities and the tourism and recreational sectors on the Island.
- Key to the passenger service is the revitalization of the stations. This will only occur if the current passenger service is shown to be viable.

On this basis, it was concluded that only the Community Partnership Model would result in a sustainable rail service that would realize the potential of the line.

*When the dynamics of the line and the current circumstances were fully taken into account, the status quo simply does not work.*

## Why the Status Quo Model is not sustainable

When the dynamics of the line and the current circumstances were fully taken into account, the status quo simply does not work. A dramatic increase in freight traffic could, in theory, make the line viable, there is no prospect for this in current situation. While some increases in freight and some reductions in costs would help the current operation, this of itself will not make the line sustainable.

Sustainability requires that in the near term the cost of operation must be reduced and the issues with the infrastructure must be dealt with. Infrastructure support must come from government and community sources. This is not likely given the current structure of the service.

Additional revenue, therefore, would help but without other changes would only postpone dealing with the underlying problems of the line with respect to the state of the infrastructure and would not deal with very high fixed costs that are currently in place.

*In the near term, the cost of operation must be reduced. While there are many areas where some efficiency could be achieved, the one with the most potential is to deal with the current tax burden on the line.*

### Cost reduction

In the near term, the cost of operation must be reduced. While there are many areas where some efficiency could be achieved, the one with the most potential is to deal with the current tax burden on the line.

The reduction and/or elimination of taxes is critical to the near term survival of the rail service. Currently, there is little reason why communities would reduce taxes, given the lack of accountability and the absence of any relationship with the current operators. As well, reducing taxes is not straightforward and cannot be easily achieved in the current circumstances.

While there could be other, additional savings that could be realized through different operating approaches, these would require a new operator with considerably more flexibility than is currently in place, and the anticipated savings would not be sufficient to make a major difference in the viability of the line.

Changes to the tax regime are difficult to achieve in the best of circumstances. They cannot be obtained under the Status Quo Model.



### **Infrastructure support**

Even when the line had a more substantial freight operation, the infrastructure was not being sustainably maintained.

To deal with the current infrastructure issues, there needs to be greater assistance from government and the communities. While there are examples of assistance being offered to lines from municipal and senior levels of government, this requires the full support of the communities and a sound business plan. Those relationships do not currently exist.

This is not likely to occur without significant changes in the current operation that go well beyond a change in the current operator.

### **Consolidation of the Services**

The Status Quo Model cannot consolidate all of the necessary services under one roof and make the kinds of changes required to develop the services.

This would require the acquisition of the CPR properties by the operator, assumption of responsibility for the passenger service and significant new investment. None of this is likely to occur.

### **Increased freight**

The Model shows the potential for additional freight and this would help and would improve the financial position of the line. However, in the near term, the gains in this area will be relatively modest. Even if the freight revenues are substantially increased on the assumption that the East-West Line would come back into service within the first year, the increase in revenues would not be sufficient to sustain the line.

There would still have to be significant changes to add revenues and contain costs that are not likely to occur given the limitations of this Model.

### **Passenger Service**

The Status Quo Model is not likely to increase the contribution of passenger services to the viability of the line.

While there is a desire on the part of Transport Canada and VIA to have the Island Passenger Service locally operated, this is not likely to occur without significant changes to the current operation. Simply taking over responsibility for the passenger service without other changes does not help. When assumption of responsibility for the current passenger service was factored into this Model without other changes, it actually added more to costs than to revenues and decreased the viability of the line.

### **More is needed than a new operator**

While it is always possible to improve and with the value of hindsight, the current operator did not acquire the service only to see it fail in a relatively short period of time. Clearly, this is not simply a case of managing the current service more effectively. More than a different operator is required.

There is no question that had the freight traffic been maintained, or if a different operator with a different cost structure were to take over the operation, it could have continued for a time. It is also possible that some of the critical success factors that have been identified could also be realized with either the current or a different operator. However, when variations of this model were tested against the hard financial realities facing the line, it always came up short. It also did not provide the environment or the support from which to build the line.

It also provided little prospect for dealing with the infrastructure concerns.

A change of operators and some other improvements in approach and management would not result in a long-term successful rail operation.

It was concluded, therefore, that the Status Quo or a variant of the Status Quo, would not meet the sustainability or critical success factors required to be successful, even in the near term.

## The Community Partnership Model

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*A new beginning, founded on a different operating model and on a different relationship with the communities, is more likely to be successful than to try and continue with the current operation or any model based on the current operation.*

### A New Approach is required

The Community Model is the “break the mold, get out of the box” approach. It starts with the premise that fundamental change is required to turn the fortunes of the railway around. A new beginning, founded on a different operating model and on a different relationship with the communities, is more likely to be successful than to try and continue with the current operation or any model based on the current operation.

The community model has the following key components:

- **Integration:** All rail and rail related services must be integrated into a single, coordinated operation that would control all aspects of rail service on the Island.
- **Accountability:** The rail service must be directly accountable to the communities, citizens and businesses that it serves. This must not be an empty slogan. Accountability must be an element of every aspect of the operation.
- **Community Control:** The communities must have a direct say and control over the railway corridor on which the services operate. This will ensure accountability and it will also fundamentally change the relationships among the major players. It will also create a situation in which the line can be dealt with on an economic basis and it will enhance the potential of attracting investment and funding for the line.
- **A Private Public Partnership with the Rail Operator:** There must be a close relationship between the rail operator and the communities. A Private Public Partnership would be formed to define and anchor this relationship.

- **Financial Viability:** The rail services must be economically sustainable when measured against the standards normally applied to similar services. The line should become a model of sound financial management and meet and exceed performance levels normally associated with the line.

### **Integration: A single rail operation**

*All rail operations need to be brought under a single roof, and they should support one another, not compete with one another.*

The fractured ownership and control of the rail assets has contributed directly to the long-term, incremental decline of the line. Right now, in terms of the future of the line, no one is fully in charge and no one is fully responsible. A symptom of the current situation has been the confusion around who owns what, who does what, who regulates the line – in brief, who is responsible.

While there are important differences between the various services, it is clear that they need to work together and be coordinated according to a common set of goals and objectives. All rail operations need to be brought under a single roof, and they should support one another, not compete with one another.

These operations include the development of the railway stations and other rail related services that have been allowed to disappear over time.

This does not mean that a single company must deliver every service. Once the overall vision for the line has been established, it would be expected that a number of different companies and services would become part of the overall delivery of the services.

### **Accountability: Responsible to the Communities it serves**

The service must be accountable to the communities, citizens and businesses that it serves.

This accountability must be more than superficial consultation. It must be real, meaningful and at several levels. More community control of the infrastructure will bring with it a large measure of accountability. So will a more focused and open management that is based on Vancouver Island.

There should also be disclosure and accountability mechanisms to provide routine and detailed comment on the services.

This accountability will be enhanced if the communities directly control the corridor.

### **Community Control: A Public Service**

The essential asset of the railway, the actual railway corridor on which the service operates, should be owned and/or controlled by the communities.

This is the most fundamental change and the most important. Once the corridor is controlled by the communities, it will be the communities that will determine if they want rail to continue and if so, how. It will no longer be up to an external group or another level of government to make that call.

The relationship between the rail operations and the communities will be fundamentally different. A true public, private partnership should result.

Among the differences that will result are the following:

- Taxes on the line will be dealt with differently when the infrastructure is controlled by the communities. The relationship with the operators of the services will be on a sound, service delivery and economic basis. Rather than a mill rate determining the cost to the line, it will be through agreement on the use of the line and the mutual benefits that can result.
- Use of the corridor will fundamentally change. The corridor will be treated as a community asset, to be managed to the benefit of the community. Rail services will be one of several of the uses that will be permitted and encouraged.
- The corridor and rail services will start to again be reflected in community planning with the integration of rail into regional and local transportation planning.
- The ability of the communities and the rail operators to attract infrastructure and related funding from senior levels of government will be greatly enhanced.

In effect, the fundamental character of the E&N Corridor will have changed. It will have become public infrastructure.

This is the most significant single change that will result from the implementation of the community model.

### **A Private Public Partnership**

**A Current Trend:** Private Public Partnerships or P3's as they are usually called, are currently one of the new themes that is forming the relationship between various levels of government and the private sector. This is, however, more than just a passing fad.

The sense of a P3 is to combine the investment, management and flexibility of the private sector and combine it with the support, policy objectives and needs of the public sector.

**“Back to the Future”** In the case of the Island Railway, the line becomes a P3 when the corridor itself becomes a public rather than a private asset, and the railway becomes a shared endeavour and concern. This, in effect, is where railways started.

Public assets were made available to the private sector and the railway was built. Since that time there has been a relationship between governments, communities and the railways that has, for the most part, served the country well.

**Different time, same objectives:** What is being proposed here is to get back to these relationships with several important differences. These include:

- “Communities” now include First Nations, which have been largely excluded in the past.
- The transfer of assets is from the Private Sector to the Public Sector.

- The principal focus will be on the local community partnership.

Where it is the same, however, is in the objective of working together to ensure that the railway thrives and is managed to the benefit of those it is intended to serve.

### **Financial Viability: A “going concern”**

Rail services must be capable of “paying their way”. This does not mean that current support should be withdrawn or curtailed.

Current financial assistance for passenger rail from the Federal Government would be maintained. The service should benefit from the same level of support as is available to similar services – no more, and no less.

For other services, they must be competitive and cost effective. For freight and related services, revenues generated by the services should meet the company’s operating requirements.

## **Why the Community Model will succeed**

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The following paragraphs set out the main areas where this model will make the line immediately viable and sustainable in the future.

### **New Operations, New Relationships, New Approaches**

The Planning Process outlined a number of areas of concern that, if they are to be dealt with, require very different approaches. This Model presents that opportunity.

**A new relationship with the communities:** Key to the success of the line is a fundamentally different relationship with the communities. This relationship has not been very good for a very long time and there is a pervasive sense that the railway companies have not been receptive to the needs of the communities. It is very difficult to solicit the support of the communities in these circumstances. There simply is no relationship to build on.

The Community Model strikes an entirely different relationship, and gives the primary role to the communities. By making the operations accountable to the communities, it allows the operator to ask for the communities’ support. It also ensures that the potential benefits of the corridor and the rail services will be responsive and accountable to the communities.

**Government Support:** This Model is also more likely to garner support from government programs. This is particularly key with respect to the Federal Government and the current support that is being offered for infrastructure, community development and job creation.

**Addressing the Policy Deficit:** The Community Model changes the nature of the debate. It is no longer public infrastructure versus private infrastructure. The rail corridor will be owned and controlled by the communities. This will provide a new dimension to the debate that is not currently there.

*Key to the success of the line is a fundamentally different relationship with the communities.*

**Issues related to implementing the Community Model:** There are many:

- Will the communities support the model and become actively involved in owning the corridor?
- How will the corridor be managed?
- What will be the relationship with the operator?
- Will the current owners of the corridor be prepared to sell the property for an affordable amount that reflects its use as a corridor?
- Will VIA and Transport Canada support the transfer of the passenger service to the local operator?
- Will the senior levels of government respond favourably to this new approach to the line?
- Will the necessary support for infrastructure be available?

All of these issues must be addressed in the more detailed business planning that must be pursued.

### **Cost Reduction**

The most important impact of this Model will be to reduce the cost of operating the service. This will occur in a number of areas, but the most significant is directly related to the new relationships that will be established through this Model.

Under this model, taxes are either eliminated entirely, or dramatically reduced. Because the corridor is now publicly owned, there is no tax due. This allows the line to be managed on the basis of economic benefits and impacts, rather than a mill rate.

The management of the corridor and the relationship between the communities and the operator should result in significant community support for the line and the reduction of costs, particularly in the near term.

### **Infrastructure Support**

With the support of the communities and the fact that the community controls the corridor, the opportunity to increase external support for infrastructure upgrades increases dramatically. This should allow the current resources allocated to infrastructure upgrades to be leveraged against programs that provide funding for this purpose. There are many possibilities in this area.

This external support is crucial and will only be possible if there is the kind of support and community involvement that is at the heart of this Model.

### **The Integration of the Services and Local Management**

The Model took into account that there would be additional associated with creating and locating management of the new service on the Island. For the most part, these costs are new, given that senior management currently is located elsewhere. However, within the current operation, both for freight and passenger,

*With the support of the communities and the fact that the community controls the corridor, the opportunity to increase external support for infrastructure upgrades increases dramatically.*

there were charges associated with management that significantly offset the additional cost.

Developing an integrated and coordinated approach to all aspects of rail services on the Island will make the line more viable. Much of this is difficult to quantify but reasonably easy to predict. There will be important synergies that result from the integration of the services with local management in place.

This is, actually, quite key to several of the other areas. For example, three of the areas that have been largely neglected to this point will receive much more attention and, therefore, results.

The Model calls for a small but effective management team, with leader in key areas. These are:

- Government Relations
- Community and Business Relations
- Marketing and Sales.
- Financial control and management.

**Government Relations:** The potential for greater support from all levels of government is something that requires constant attention. It must be worked at. There are significant dividends to be gained here, particularly with respect to the attraction of funding for infrastructure upgrades and support for other activities.

**Community and Business Relations:** With the communities as partners in the management of the corridor and with the company now accountable to the communities for the quality of the service, this will be an important function. It will also be important to forge links with the business community if the freight and tourism services are to expand and develop.

Community relations also mean more than occasional presentations or an annual report. The Model anticipates the use of several advisory councils, with some funding to ensure that the various advocacy and interest groups that have supported rail will be in a position to have their say.

**Marketing and Sales:** This has been a neglected area for all of the current services. In the current services there are virtually no sales and marketing. The Model allocated 5% of gross revenues to this effort. This will allow for a number of well financed and sustained campaigns to increase all aspects of the rail business.

**Financial control and management:** Railways are capital and labour intensive and require attention to all costs. The viability of the line will require a pre-occupation with the bottom line results and sound financial management. This will be enhanced by the appointment of an external auditor and a Board of Directors with extensive rail and financial experience.

## **Freight Service**

**Hang on to the current freight and build from there:** The assumptions with respect to the freight service were modest and realistic.

The freight operation would largely focus on the North-South Line and consist of:

- The maintenance and management of the North-South rail right-of-way
- Dispatch services

The Model assumes that all current freight customers remain and that there will be some growth within this group.

It also assumes that in the three year of operation, there will be at least an additional 300 cars added each year. These were not “pie-in-the-sky” projections. They were based on an analysis of the past customer base, current inquiries and a number of interviews. This is an area that can grow.

This volume and the prospect for more is sufficient to maintain the rail barge service to the Island.

The model did not take into account additional freight that will eventually come on line. For example:

- On the North South-Line there is good potential for additional “on-Island” freight in a number of areas.
- On the East-West line, it is expected that it will take a number of significant changes and infrastructure upgrades, but that freight will be reestablished on that line within three years.

This is the kind of added potential that can be added from the base that will be maintained and developed in the near term.

#### **Freight Issues to be addressed**

- What is the potential for additional freight customers for the North-South Line?
  - Are there additional freight customers that could be added immediately to the current freight customers?
  - Is the freight of the current customers secure and can it be expanded?
- What is the prospect of re-establishing freight traffic on the East West Line?
  - Can the Norske business be brought back to rail freight for all or some of their business? How quickly could this occur? What changes to the current operation are needed to bring them back on line?
  - Is there other business on the East West line that could add to the freight traffic?

#### **Passenger Service**

The Model assumes that for the first two years the VIA service would not be immediately integrated into the overall operation, but that steps could be taken to immediately improve the service and increase the contribution that passenger services make to the line. This would require:



- **The renegotiation of the current Rail Services Agreement:--** No one is very happy with the current agreement and VIA has indicated that it would be prepared to look at the agreement so long as the financial ceiling is not increased. In other words, changes can be considered if they do not result in additional costs to VIA.
- **Greater direct management of the service under the Rail Services Agreement:** Again, this is consistent with the direction that Transport Canada has set out and is consistent with the wisdom of a phased approach for the take over of the service by a local provider. Given the number of issues that must be resolved, this is a sensible approach.

With these changes, a number of modest but positive changes could be made that would improve the bottom line in the near term. This would include additional revenues for on board services, an increase in the number of specialty trains that would be offered.

**Future Potential:** Significant additional passenger revenues, however, will only occur after the assumption of full responsibility for the service, and this would occur later and was not factored into the Model.

Once the passenger service has been transferred to local control, very significant changes should occur, requiring substantial new investment, additional equipment, the refurbishment of stations, new routes and intense marketing. Additional investment will also be required. This represents the potential of passenger rail that can be built from the current base. None of this, however, was factored into the Model.

#### **Passenger Rail Issues to be addressed:**

- Will VIA Rail and Transport Canada support the transfer of the passenger service to local operation on a phased basis?
- How will the common services that are provided on a national basis be dealt with? This would include provision for insurance, the national booking system and capital to acquire and refurbish equipment.
- Will a new Train Services agreement result in better service and cost savings?

#### **The Results of the Modeling**

The base Model, when adjusted to reflect the Community Partnership Model, showed that the line was economically viable and sustainable. The model was based on the following assumptions:

- There would be an increase in freight traffic on the North-South Line in the first, second and third years. This increase would result from the attraction of at least two new customers and additional loads from existing customers. The projections are modest and could be exceeded given the interest in rail freight once the uncertainty has been removed.
- The passenger service would remain “as is” for the first and second years, with the service being assumed by the new operation in the second year,

with operations being changed in the third year. The passenger revenues and costs were largely flat for the first two years, with some increases anticipated as a result of the assumption of some passenger related services by the operator, but with the service remaining with VIA.

- On the basis of a new arrangement with municipalities and regional districts, taxes would be largely abated.
- On infrastructure maintenance, the expenditures were increased above current levels. There was also the anticipation that there would be external funding available to assist in upgrades in some areas. The model show the operation moving to sustainable levels in years four and five.
- Headquarter, marketing, and other costs were increased to reflect that management and activities now performed elsewhere would now be located on the Island.

On the basis of these assumptions, the line was economically viable. It is largely a “break-even plus” situation. What it does, however, is to provide the base from which the line could then resurrect itself and move into many of the areas of potential growth that have been identified.

# Conclusion

Rail services can be maintained and developed on Vancouver Island.

When all the factors for and against are taken into account, the potential is there for rail to make an important contribution to the economic and social development of the Island.

This potential is benefiting from the renewed attention that rail is receiving as a result of a number of national and international trends. These are making rail freight and passenger rail services increasingly attractive.

The current service, however, has become largely irrelevant and does not benefit from the kind of support that it now needs to be successful. Fractured management and an ownership structure that militates against success hamper progress.

The service is not currently sustainable and it will ultimately fail if significant changes are not made in the very near future.

Of the various models considered, only the Community Partnership Model met the requirements of the Planning Process.

This Model, however, requires changes that will only be possible if the communities on the Island and the current owners and operators work together, with the interests of the Island railway foremost in mind, to make the implementation of the sustainable option possible.

With a number of fundamental changes to the structure and management of rail services, the Island has a base from which to build a vibrant and relevant service.

# **POLICY PAPER**

## **ESTABLISHING A CHARITABLE FOUNDATION FOR THE PURPOSE OF OWNING AND OPERATING THE E & N RAILWAY CORRIDOR**



Prepared by Vancouver Island Railway Co.

July 2003

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## **ESTABLISHING A CHARITABLE FOUNDATION TO OWN AND MANAGE THE RAILWAY CORRIDOR ON VANCOUVER ISLAND**

The first section of this report outlines the process of establishing a charitable foundation under federal law. This section will cover the initial application process, including the advantages of federal application over provincially registered status. The report will also examine the benefits and liabilities of incorporation, incorporation time-lines and finally the continued requirements to maintain such status under federal law.

### ***Advantages of Being a Registered Charity***

Federally, charitable organisations are registered under the Canada *Income tax Act*. There are two basic advantages for being a registered charity. Registration allows an organisation to issue official receipts for gifts received. This reduces the individual donor's income tax payable, and reduces the taxable income of a corporate donor. Of key interest is that once an organisation is registered it is exempt from paying income tax. In direct application to the proposed foundation, the ability to issue tax receipts allows for a mechanism of acquiring the corridor assets that it within the means of the communities. The exemption from federal income tax would also allow a foundation to affordably manage the assets for future development.

At the federal level, registered charities have to meet the requirements of the good and services tax (GST) or the harmonized sales tax (HST) and may need to register for these purposes. However, once an organisation is registered as a charitable organisation it may be able to claim a rebate for a part of the GST and HST it paid on goods and services it purchased for use in its activities. A summary of the application of the GST to charitable organisations and rebatable items is contained in at <http://www.ccra-adrc.gc.ca/E/pub/gp/rc4082/rc4082-e.html>.

### ***Federal vs. Provincial Incorporation and Registration***

The proposed Vancouver Island Railway Society would have the choice of incorporating under provincial or federal regimes. The provincial registration

process for a registered charitable organisation is covered under the British Columbia *Societies Act*.<sup>1</sup>

Incorporation under federal regulations would be preferable to provincial status for several reasons. The primary benefit to federal status involves the time requirements for recognition under each regime. The provincial regulations require that a charitable organisation must wait before it can issue tax receipts for donations. The federal regulations require no such delay. Tax receipts for donations can be made immediately upon receiving charitable status.

Given the high urgency in moving forward with this initiative, as well as the details of pending deal with CPR, the federal route is clearly the best route to take of the two alternatives. When combined with the fact that much of the railway operation and regulation is to be conducted under the federal umbrella, the logic of incorporating under the federal regime is clear.

### ***Obtaining Recognition as a Federally-Registered Charity: The Application Process***

Canada Customs and Revenue registers charities if they meet certain criteria. The application and registration process requires two main steps. The first is federal incorporation as a Not-for-Profit Company. Following, or, in conjunction with this process, the newly formed organisation can apply for recognition as a charitable organisation by Customs and Revenue Canada.

### **Application for Non-Profit Incorporation**

The requirements for incorporation are outlined under the *Canada Corporations Act*, Part II.<sup>2</sup> In order to obtain Letters Patent of incorporation a Corridor Foundation would file certain documents with Corporations Canada. These requirements are summarised and listed on the Industry Canada website, as:

1. Two original copies of 'An Application for Letters Patent' in the format set out by Revenue Canada.
2. An affidavit or statutory declaration of one of the applicants, sworn before a commissioner for taking oaths, stating that the contents of the application are true.
3. A \$200 filing fee (cheque payable to the Receiver General for Canada)

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<sup>1</sup> Society Act, [RSBC 1996] c.433

<sup>2</sup> *Canada Corporations Act*, R.S.C. 1970, c. C-32

4. A Canada-biased NUANS name search report not more than 90 days old, of the proposed name, or one \$15.00 filing fee per search so that the NUANS search or searches may be made in Corporations Canada. A bilingual name normally requires 2 searches

The applicants may wish to consider adopting a bilingual corporate name if they intend to carry on business in a bilingual region.

5. One copy only (unsigned) of the proposed By-laws of the corporation, with IDENTIFIER, if applicable
6. A covering letter specifying the street address of the Head Office of the corporation.<sup>3</sup>

Industry Canada also lays out strict requirements as to what must be dealt with in the bylaws of the proposed Corporation. Not-for-Profit By-laws must deal with at least the following matters:

1. Conditions of membership
2. Whether and how membership may withdraw
3. Mode of holding directors' meetings (including provision for notice, quorum and voting rights)
4. Mode of holding members' meetings (including provision for notice, quorum and voting rights)
5. Mode of holding executive committee meetings (including provision for notice, quorum and voting rights)
6. Directors
  - their appointment or election
  - their term of office
  - their powers
  - their remuneration
  - their removal
7. Officers
  - their appointment or election
  - their term of office
  - their powers
  - their remuneration
  - their removal
8. Committee members
  - their appointment or election
  - their term of office
  - their powers
  - their remuneration

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<sup>3</sup> Industry Canada – Corporations Canada website. <http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/vwGeneratedInterE/cs00022e.html>.



- their removal
- 9. The appointment of an auditor to be appointed by the members at each annual meeting to audit the books for report to members at the annual meeting
- 10. The mode of repealing or amending by-laws including a clause to say that no repeal or amendment shall be enforced or acted upon until it has received the approval of the Minister of Industry
- 11. Custody of the corporate seal (ie: with which officer?)
- 12. Mode of certifying that a particular document is a document of the corporation (signing authority)<sup>4</sup>

A listing of these requirements and sample examples of these documents can be found at the Customs and Revenue Canada Website at <http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/vwGeneratedInterE/cs00022e.html>.

A Vancouver Island Railway Corridor Foundation would have to meet each of these requirements before incorporation could occur. Attached to this report are drafts of an 'Application for Incorporation without Share Capital', and potential bylaws for the Foundation. These documents were prepared by Winestein-Lebargé in Ottawa and could serve as a starting point for the Society in their application.

Once the information has been received by Corporations Canada, the review process generally takes about 20 days, after which letters patent are issued to the new corporation.

## **Membership, Obligations and Liability of Members**

The Community Partnership Model envisioned by VIRDI involved the Foundation having ownership of the corridor and related assets as a whole. It was envisioned that no one first nation or municipality would have control over any segment of the line. Control and management of the corridor would be conducted through agreement of the membership.

Once signed on as members of the corporation, no one member would assume any individual obligations or liabilities. Section 21(3) of the *Canada Corporations Act*, R.S.C. 1970, c. C-32 states,

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<sup>4</sup> Industry Canada – Corporations Canada website <http://strategis.ic.gc.ca/epic/internet/incd-dgc.nsf/vwGeneratedInterE/cs00022e.html>.

21 (3) No person so acting as such agent, officer or servant of the company is thereby subjected individually to any liability whatever to any third person.<sup>5</sup>

This section applies to both for profit and not-for profit companies incorporated under the Act. This absence of liability on any individual person, or member community would continue once charitable status had been granted. In much the same regard as no individual board member is personally financially responsible should a corporation fail, failure or dissolution of the society would not result the assumption of liability by any individual municipality or first nation.

## **Application for Charitable Status**

Three types of charity are recognised by Customs and Revenue Canada. The type depends on its structure, its source of funding and the charity's mode of operation. A foundation set up to manage the Vancouver Island Railways would classify as a 'charitable organisation'. Foundations fitting in to this category are those that carry on their own activities, have less than 50% of its directors as related persons and for which at least 50% of the funds it receives are from donors who are not related persons.

A corporation seeking registration as a federal charity under the Income Tax Act must complete Form T2050, 'Application to Register a Charity Under the Income Tax Act.' (See Appendix D). A copy of this form can be obtained from the Canada Customs and Revenue Website. Detailed information on completing the application can be found on the Canada Customs and Revenue website at <http://www.ccra-adrc.gc.ca/E/pub/tg/t4063/t4063eq.html>. The review process for an application is typically one to four months, depending on the complexity of the application.

The requirements are for a detailed outline of the structure of the organisation, including name, purposes, administration, membership, and assurances as to disposition of assets. Among the requirements is the specification that every registered charity must be legally established by a governing document that legally establishes the charity and that identifies the objects or purposes for which the organisation is established. Most of these requirements would be included under

the bylaws of the applying corporation and these documents could be submitted as part of this application.

A key aspect of the application is that the governing document must demonstrate that the organisation seeking registration would meet a public benefit test and has a clear charitable purpose. To qualify as passing a public benefit test the organisation must show that:

- Its activities and purposes provide a tangible benefit to the public
- Those people who are eligible for benefits are either the public as a whole, or a significant section of it.

An application to Revenue Canada must also show how the organisation and the method through which it intends to meet its goals will meet a charitable purpose as accepted by Revenue Canada.<sup>4</sup> general categories of charitable purposes are accepted by revenue Canada. These are:

- Relief of poverty
- Advancement of education
- Advancement of religion
- Certain other purposes that benefit the community in a way the courts have said are charitable.

A charitable organisation controlling the Vancouver Island Rail Corridor would clearly fall within the last of these four categories.

### **Examples of ‘purposes beneficial to the community’**

Organisations that have been recognised in this category typically involve purposes that do not fall within the other recognised categories, but which the courts have accepted as valid charitable purposes. The Canada Customs and Revenue website provides a list of these recognised categories. Of application to the present initiative would be the category listed as ‘providing certain public amenities to benefit the community’.

Appendix C contains a draft of a possible summary of purposes of the foundation. The maintenance of the historic rail corridor on the island, the

safeguarding of landmarks, creation of trails, parks and public spaces, and promotion of economic development on the island would all allow the foundation to fall within this category recognised by Customs and Revenue Canada.

### **Obligations and Requirements Post-Registration**

Once it is registered, the organisation must devote its resources to charity, and continue to meet all the other requirements of registration as previously listed. Within 6 months of the organisation's year-end, the organisation must also file Form T3010, 'the Registered Charity Information Return'. The form requires detailed information as to the operations carried out by the organisation within the calendar year, as well as detailed financial operation on gifts, expenditures and administrative costs. A copy of the form can be found at <http://www.ccradrc.gc.ca/E/pbg/tf/t3010-2001/t3010-01e.pdf>.

Failure to meet these obligations can result in a loss of charitable status.

## APPENDIX A

### DRAFT APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT SHARE CAPITAL UNDER PART II OF THE CANADA CORPORATIONS ACT

To the Minister of Industry:

#### I

The undersigned hereby apply to the Minister of Industry for the grant of a charter by letters patent under the provisions of Part II of the *Canada Corporations Act* constituting the undersigned, and such others as may become members of the Corporation thereby created, a body corporate and politic under the name of:

#### **Vancouver Island Railway Society**

The undersigned have satisfied themselves and are assured that the proposed name under which incorporation is sought is not the same or similar to the name under which any other company, society, association or firm, in existence is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof or so nearly resembles the same name as to be calculated to deceive and that it is not a name which is otherwise on public grounds objectionable.

#### II

The applicants are individuals of the full age of eighteen (18) years with power under law to contract. The name, the address and the occupation for each of the applicants are as follows:

Name	Address	Occupation
[•]	[•]	[•]


The said [•], [•] and [•] will be the first directors of the Corporation.

### III

**The objects of the Corporation are to:**

1. to acquire for the purposes of the Corporation and its objects, but for no other purposes, the transportation corridor that runs from North-South from Victoria to Courtenay and East-West from Nanaimo to Port Alberni on Vancouver Island, ancillary lands, structures and all other property rights attached thereto (the “Property”) [NTD may need to expand this description] and the infrastructure and other assets that constitute the C&R Railroad and are located on the Property (the “Railroad”);
2. to benefit the community by ensuring the continuation and provision of rail services to rural communities and First Nation reserves served by the Railroad;
3. to benefit the community by promoting communication and involvement of the First Nations and rural inhabitants served by the Railroad by ensuring the maintenance of both the Railroad and the right of way (the “Right of Way”) allowing travel in and out of such areas, and thus allowing the communities served by the Railroad to participate more fully in the greater Canadian community;
4. to promote and encourage the retention and creation of railway structures, rolling stock, rights of way and artifacts for historical purposes, ongoing use and future use by the community;
5. to protect and encourage the preservation of historic structures relevant to the historical role of railways in British Columbia;
6. to protect land, water and timber resources on the Property for the general benefit of the public by regulating land use;
7. to benefit the community by preserving the Right of Way and creating trails and other public areas with the purpose of promoting tourism;
8. to promote the preservation and enhancement of the environment for general benefit of the community by encouraging public transport and, thereby, reducing greenhouse gasses; and

9. to do all such charitable activities which are incidental to and beneficial to the attainment of the purposes stated above.

The above purposes of the Corporation shall be carried out without purpose of gain for its members and any profits or other accretions to the Corporation shall be used for promoting its purposes and all of the above purposes shall be carried on an exclusively charitable basis.

Without limiting the powers the Corporation possesses pursuant to the *Canada Corporations Act*, the Corporation possesses the power to do all such things as are incidental to the attainment of the above objects and, in particular:

1. to use, apply, give, devote, accumulate or distribute from time to time all or part of the fund or funds of the Corporation and/or the income therefrom by such means as may from time to time be determined by the board of directors for the objects of the Corporation;
2. to use, apply, give, devote, accumulate or distribute from time to time all or part of the fund or funds of the Corporation and/or the income therefrom by such means as may from time to time be determined by the board of directors to or for any organization or organizations which in the judgment of the board of directors of the Corporation will promote the objects of the Corporation;
3. to acquire by purchase, contract, donation, lease, legacy, devise, gift, grant, bequest or otherwise, real property or interests therein, and to enter into and carry out agreements, contracts, or undertakings incidental thereto, and to hold and manage the same for the actual use and occupation of the Corporation or for carrying on its objects, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease, or otherwise dispose of such real property or interests therein from time to time as occasion may require, and to acquire other real property or interests therein in addition thereto or in place thereof, as may be considered advisable;
4. to acquire by purchase, contract, donation, lease, legacy, devise, gift, grant, bequest or otherwise, any personal property or interests therein, and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, grant, convey, mortgage, hypothecate, pledge, charge, lease or otherwise dispose of such personal property or interests therein, from time to time as occasion may require, and to acquire other personal property or

interests therein in addition thereto or in place thereof, as may be considered advisable;

5. to invest and reinvest the funds of the Corporation in such manner as determined by the board of directors from time to time pursuant to the provisions of the *Trustee Act* RSBC 1996 ch.464;
6. to employ and pay such professionals, assistants, representatives and employees and to incur such reasonable expenses as may be necessary therein;
7. to require payment of all sums of monies and claims to any real or personal property in which the Corporation may have an interest, and to compromise in any such claims, and generally to pursue payment in its corporate name through whatever means are available at law; and
8. to draw, make, endorse, execute and issue cheques and other negotiable instruments.

#### **IV**

The operations of the Corporation may be carried out throughout Canada and elsewhere.

#### **V**

The place within Canada where the head office of the Corporation is to be situated is the City of [•], in the Province of [British Columbia].

#### **VI**

It is specifically provided that in the event of liquidation or winding-up of the Corporation, all its remaining assets, after payment of its liabilities, shall devolve to the [First Nations].



## VII

The by-laws of the Corporation shall be those filed with the application for letters patent until repealed, amended, altered or added to.

## VIII

The Corporation is to carry on its operation without pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.

**DATED** at the City of [•], in the Province of [•], this [•] day of [•], 2003.

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[•]

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[•]

## **APPENDIX B – DRAFT BYLAWS**

### **VANCOUVER ISLAND RAILWAY CHARITABLE FOUNDATION (the "Corporation")**

#### **BY-LAW NUMBER 1**

being a by-law relating generally to the conduct of  
the business and affairs of the Corporation

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#### **SECTION ONE CONDITIONS OF MEMBERSHIP**

- 1.1 **Members:** Membership shall be limited to persons interested in furthering the objects of the Corporation and shall consist of anyone invited and consenting to apply for admission as a Member and approved by the Board of Directors of the Corporation, [NTD provided that such person is a member of a community adjacent to the transportation corridor that runs North-South from Victoria to Courtenay and East-West from Nanaimo to Port Alberni on Vancouver Island (the “Corridor”), or such person is a nominee of a community adjacent to the Corridor.]
- 1.2 **Membership Fees:** There shall be no membership fees or dues unless otherwise directed by the Board of Directors.
- 1.3 **Voting Rights:** Each Member shall be entitled to exercise one vote at meetings of Members.

- 1.4 **Withdrawal of Membership:** Any Member may withdraw from the Corporation by delivering to the Corporation a written resignation and lodging a copy of the same with the secretary of the Corporation.
- 1.5 **Resignation of Member:** Any Member may be required to resign by a vote of three-quarters (3/4) of the voting Members at an annual or special general meeting provided that any such Member shall be granted an opportunity to be heard at such meeting.

## SECTION TWO

### MEMBER'S MEETINGS

- 2.1 **Annual Meeting:** The annual or any other general meeting of the Members shall be held in the city where the head office of the corporation is situated or at any place in Canada and on such date as the Board of Directors may at its discretion determine. The Members may resolve that a particular meeting of Members be held outside Canada.

At every annual meeting, in addition to any other business that may be transacted, the report of the Directors, the financial statement and the report of the auditors shall be presented and auditors appointed for the ensuing year. The Members may consider and transact any business either special or general at any meeting of the Members.

- 2.2 **Calling of Meetings:** The Board of Directors shall have power to call, at any time, a general meeting of the Members of the corporation. The Board of Directors shall call a special general meeting of Members on written requisition of Members carrying not less than 5% of the voting rights.
- 2.3 **Quorum:** Twenty percent (20%) of the Members entitled to vote shall constitute a quorum at all meetings of the Members. In the event that the quorum for the transaction of business at any meeting of Members is not constituted, the Facilitator at such meeting may call for an adjournment and announce thereat the time and place to reconvene a new meeting to transact the same matters of business and, for such reconvened meeting, no notice shall be required.

- 2.4 **Notice of Meetings:** Fourteen (14) days' written notice shall be given to each voting Member of any annual or special general meeting of Members. Notice of any meeting where special business will be transacted shall contain sufficient information to permit the Member to form a reasoned judgement on the decision to be taken. Notice of each meeting of Members must remind the Member if he has the right to vote by proxy.

No error or omission in giving notice of any annual or general meeting or any adjourned meeting, whether annual or general, of the Members of the corporation shall invalidate such meeting or make void any proceedings taken thereat and any Member may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat. For purpose of sending notice to any Member, director or officer for any meeting or otherwise, the address of the Member, director or officer shall be his last address recorded on the books of the corporation

- 2.3 **Voting Rights:** Each voting Member present at a meeting shall have the right to exercise one vote. A Member may, by means of a written proxy, appoint a proxyholder to attend and act at a specific meeting of Members, in the manner and to the extent authorized by the proxy. A proxyholder must be a Member of the corporation.
- 2.4 **Voting:** A majority of the votes cast by the Members present and carrying voting rights shall determine the questions in meetings except where the vote or consent of a greater number of Members is required by the Act or these By-laws.

### **SECTION THREE**

#### **BOARD OF DIRECTORS**

- 3.1 **Number:** The property and business of the Corporation shall be managed by a Board of Directors, comprised of a minimum of five (5) Directors [NTD how allocate among municipalities and First Nations?].

The number of Directors shall be determined from time to time by a majority of the Directors at a meeting of the Board of Directors and sanctioned by an affirmative vote of at least two-thirds (2/3) of the

Members at a meeting duly called for the purpose of determining the number of Directors to be elected to the Board of Directors.

The Directors shall have all the powers and duties of Directors pursuant to the *Canada Corporations Act*.

- 3.2 **Qualifications:** No person shall be qualified for election on the Board of Directors if such person is less than 18 years of age, is of unsound mind and has been so found by a court in Canada or elsewhere, has the status of a bankrupt [NTD or holds political office]. Directors need not be Members.
- 3.3 **Quorum:** The quorum for the transaction of business at any meeting of the Board of Directors shall consist of at least fifty (50%) percent of the Members of the Board of Directors.
- 3.4 **Selection of Directors:** The applicants for incorporation shall become the first Board of Directors of the Corporation whose term of office on the Board of Directors shall continue until their respective successors are elected. The Selection Committee shall, in its respective sole discretion, appoint such respective Directors to fill the vacancies on the Board until Members elect the Board of Directors.
- 3.5 **Term of Office:** Directors shall be elected for a term of two years. The Board of Directors may fill vacancies on the Board of Directors for the remainder of the unexpired term of office created by such vacancy. [NTD – do we want a rotating board?]
- 3.6 **Remuneration:** The Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit from his position as such; provided that a Director may be paid reasonable expenses incurred by him in the performance of his duties. Nothing herein contained shall be construed to preclude any Director from serving the corporation as an officer or in any other capacity and receiving compensation therefor.

Nothing herein contained shall be construed to preclude any Director from serving the Corporation as an officer or in any other capacity and receiving

compensation therefor. In addition, any firm or corporation with which a Director is associated may be compensated for rendering services to the Corporation.

3.7 **Retirement:** A retiring Director shall remain in office until the dissolution or adjournment of the meeting at which his retirement is accepted and his successor is elected.

3.8 **Removal of a Director:** The office of Director shall be automatically vacated if,

- (a) if at a special general meeting of Members, a resolution is passed by of the Members present at the meeting that he be removed from office;
- (b) if a Director has resigned his office by delivering a written resignation to the secretary of the corporation;
- (c) if he is found by a court to be of unsound mind;
- (d) if he becomes bankrupt or suspends payment or compounds with his creditors;
- (e) [NTD if he is elected to a political office];
- (f) on death;

provided that if any vacancy shall occur for any reason in this paragraph contained, the Board of Directors by majority vote, may, by appointment, fill the vacancy with a Member of the corporation.

## **SECTION FOUR**

### **POWERS OF DIRECTORS**

4.1 **Administration of Affairs:** The Board of Directors of the Corporation shall administer the affairs of the Corporation in all things and do all such other acts and things and make or cause to be made for the corporation, in its name, any kind of contract which the corporation may lawfully enter into and, save as hereinafter provided, generally, may exercise all such other powers and do all such other acts and things as the corporation is by its charter or otherwise authorized to exercise and do.

- 4.2 **Authorization of Expenditures:** The Directors shall have power to authorize expenditures on behalf of the Corporation from time to time and may delegate by resolution to an officer or officers of the Corporation the right to employ and pay salaries to employees.

The Directors shall have the power to enter into a trust arrangement with a trust company for the purpose of creating a trust fund in which the capital and interest may be made available for the benefit of promoting the objects of the Corporation in accordance with such terms as the Board of Directors may prescribe.

- 4.3 **Specific Powers:** The Board of Directors is hereby authorized, from time to time,

(a) to borrow money upon the credit of the corporation, from any bank, corporation, firm or person, upon such terms, covenants and conditions at such times, in such sums, to such an extent and in such manner as the Board of Directors in its discretion may deem expedient;

(b) to limit or increase the amount to be borrowed;

(c) to issue or cause to be issued bonds, debentures or other securities of the corporation and to pledge or sell the same for such sums, upon such terms, covenants and conditions and at such prices as may be deemed expedient by the Board of Directors; and

(d) to secure any such bond, debentures or other securities, or any other present or future borrowing or liability of the company, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the corporation, and the undertaking and rights of the corporation.

- 4.4 **Grants and Donations:** The Board of Directors shall take such steps as it may deem requisite to enable the Corporation to acquire, accept, solicit or receive legacies, gifts, grants, settlements, bequests, endowments and donations of any kind whatsoever for the purpose of furthering the objects of the Corporation.

- 4.5 **Agents and Employees:** The Board of Directors may appoint such agents and engage such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the Board of Directors at the time of such appointment.
- 4.6 **Remuneration:** Remuneration for all officers, agents and employees and committee Members shall be fixed by the Board of Directors by resolution. Such resolution shall have force and effect only until the next meeting of Members when such resolution shall be confirmed by resolution of the Members, or in the absence of such confirmation by the Members, then the remuneration to such officers, agents or employees and committee Members shall cease to be payable from the date of such meeting of Members.
- 4.7 **Books and Records:** The Board of Directors shall see that all necessary books and records of the Corporation required by the by-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

## **SECTION FIVE**

### **MEETINGS OF THE BOARD OF DIRECTORS**

- 5.1 **Calling of Meetings:** Meetings of the Board of Directors may be held at any time and place to be determined by the directors provided there is at least one (1) meeting in each calendar year.
- 5.2 **Notice of Meetings:** Two clear days' written notice, by facsimile or electronic transmission or by personal delivery, or fourteen (14) clear days' written notice, by mail, of any meeting of the Board of Directors shall be given to Directors and such notice shall designate a time and place for such meeting, unless the meeting is an emergency, as defined below.

No error or omission in giving notice of any meeting of the Board of Directors or any adjourned meeting of the Board of Directors of the Corporation shall invalidate such meeting and any Director may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.



- 5.3 **Voting Rights:** Each Director is authorized to exercise one (1) vote at all meetings of the Board of Directors.
- 5.4 **Voting:** Questions arising at all meetings of the Board of Directors shall be decided by consensus, unless otherwise determined in the by-laws. When all efforts at achieving consensus have been exhausted without success, the decision shall be made by a majority of the Directors.
- 5.5 **Meetings by Other Communications:** If all the Directors of the Corporation consent thereto generally or in respect of a particular meeting, a Director may participate in a meeting of the Board or of a committee of the Board by means of such conference telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a Director participating in such a meeting by such means is deemed to be present at the meeting.
- 5.6 **Quorum:** A majority of directors in office, from time to time, but no less than two directors, shall constitute a quorum for meetings of the Board of Directors. Any meeting of the Board of Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the by-laws of the corporation.
- 5.7 **Minutes of Meetings:** The minutes of the Board of Directors shall be available to the general Membership of the Corporation and the minutes shall be provided to each of the Directors.
- 5.8 **Place of Meetings:** Meetings of the Board of Directors may be held at any place in or outside Canada.
- 5.9 **Unanimous Resolutions:** A resolution in writing, signed by all Directors entitled to vote on that resolution at a meeting of Board of Directors or committee of the Board of Directors, is as valid as if it had been passed at a meeting of Board of Directors or committee of the Board of Directors duly called.

## SECTION SIX

## COMMITTEES

- 6.1 **Appointment:** The Board of Directors may appoint committees whose Members will hold their offices at the will of the Board of Directors. The directors shall determine the duties of such committees and may fix by resolution, any remuneration to be paid.
- 6.2 **Quorum:** The powers of a committee of the Board of Directors may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all Members of such committee who would have been entitled to vote on that resolution at a meeting of such committee.
- 6.3 **Advisory Bodies:** The Board of Directors may from time to time appoint such advisory bodies as it may deem advisable.
- 6.4 **Meetings:** Meetings of a committee shall be held at any time and place to be determined by the Members of such committee provided that two clear days' written notice, by facsimile or electronic transmission, or 14 clear days' written notice, by mail, of any meeting of the committee shall be given to all Members of the committee and shall designate a time and place for such meeting.
- No error or omission in giving notice of any meeting of a committee or any adjourned meeting of a committee of the Corporation shall invalidate such meeting or make void any proceedings taken thereat and any Member of such committee may at any time waive notice of any proceedings taken or had thereat.
- 6.5 **Minutes of Meetings:** The minutes of a committee shall not be available to the general Membership of the Corporation but shall be available to the Board of Directors, each of whom shall receive a copy of such minutes.
- 6.6 **Remuneration:** Members of a committee shall receive no remuneration for serving as such, but are entitled to reasonable pre-authorized expenses incurred in the exercise of their duties.

[NTD – do we wish to propose any specific executive committees]

## **SECTION SEVEN**

### **OFFICERS**

- 7.1 **Offices:** The officers of the Corporation may consist of a shall be a president, vice-president, secretary and treasurer and any such other officers as the Board of Directors may by by-law determine. Any two offices may be held by the same person. Officers need not be directors, nor Members of the Corporation.
- 7.2 **Appointment:** All officers shall be appointed by resolution of the Board of Directors at the first meeting of first meeting of the Board of Directors following an annual meeting of Members.
- 7.3 **Term of Office:** The officers of the Corporation shall hold office for one year from the date of appointment or until their respective successors are appointed in their stead. All officers shall be subject to removal by resolution of the Board of Directors at any time.

## **SECTION EIGHT**

### **DUTIES OF OFFICERS**

- 8.1 **The President:** The president shall be the chief executive officer of the corporation. He shall preside at all meetings of the corporation and of the Board of Directors. He shall have the general and active management of the affairs of the corporation. He shall see that all orders and resolutions of the Board of Directors are carried into effect.
- 8.2 **The Vice-President:** The vice-president shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties as shall from time to time be imposed upon him by the Board of Directors.
- 8.3 **The Treasurer:** The treasurer shall have the custody of the funds and securities of the corporation and shall keep full and accurate accounts of all

assets, liabilities, receipts and disbursements of the corporation in the books belonging to the corporation and shall deposit all monies, securities and other valuable effects in the name and to the credit of the corporation in such chartered bank of trust company, or, in the case of securities, in such registered dealer in securities as may be designated by the Board of Directors from time to time. He shall disburse the funds of the corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meeting of the Board of Directors, or whenever they may require it, an accounting of all the transactions and a statement of the financial position, of the corporation. He shall also perform such other duties as may from time to time be directed by the Board of Directors.

- 8.4 **The Secretary:** The secretary may be empowered by the Board of Directors, upon resolution of the Board of Directors, to carry out his affairs of the corporation generally under the supervision of the officers thereof and shall attend all meetings and act as clerk thereof and record all votes and minutes of all proceedings in the books to be kept for that purpose. He shall give or cause to be given notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be. He shall be custodian of the seal of the corporation, which he shall deliver only when authorized by a resolution of the Board of Directors to do so and to such person or persons as may be named in the resolution.
- 8.5 **Other Officers:** The duties of all other officers of the corporation shall be such as the terms of their engagement call for or the Board of Directors requires of them.
- 8.6 **Remuneration:** A reasonable remuneration for all officers, agents and employees may be fixed at the discretion of the Board of Directors by resolution; provided, however, that such resolution shall have force and effect only until the next meeting of Members when such resolution shall be confirmed by resolution of the Members. In the absence of such confirmation by the Members, then the remuneration to such officers, agents or employees shall cease to be payable from the date of such meeting of Members.

## SECTION 9

## INDEMNITIES TO DIRECTORS AND OTHERS

- 9.1 Every director or officer of the corporation or other person who has undertaken or is about to undertake any liability on behalf of the corporation or any company controlled by it and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the corporation, from and against;
- (a) all costs, charges and expenses which such director, officer or other person sustains or incurs in or about any action, suit or proceedings which is brought, commenced or prosecuted against him, or in respect of any act, deed, matter of thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office or in respect of any such liability;
  - (b) all other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

## SECTION TEN GENERAL

- 10.1 **Corporate Seal:** The seal of the Corporation shall be in such form as adopted by the Board of Directors of the Corporation.
- 10.2 **Head Office:** The head office of the Corporation shall be in the City of [&] in the Province of British Columbia or, if authorized by by-law, at such other location in Canada.
- 10.3 **Execution of Instruments:** Contracts, documents or any instruments in writing requiring the signature of the Corporation, shall be signed by any two officers and/or Directors and all contracts, documents and instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality.

The Board of Directors shall have power from time to time by resolution to appoint officers or other persons on behalf of the Corporation to sign specific contracts, documents and instruments in writing. The seal of the Corporation when required may be affixed to contracts, documents and instruments in writing signed as aforesaid or by any officer or person designated by the Board of Directors.

- 10.4 **Fiscal Year End:** The fiscal year of the Corporation shall be [December 31].
- 10.5 **Auditor:** The Members shall at each annual meeting appoint an auditor to audit the accounts of the Corporation for report to the Members at the next annual meeting. The auditor shall hold office until the next annual meeting provided that the Board of Directors may fill any casual vacancy in the office of auditor. The remuneration of the auditor shall be fixed by the Board of Directors.
- 10.6 **Minutes:** The minutes of the Board of Directors shall not be available to the general Membership of the corporation but shall be available to the Board of Directors, each of whom shall receive a copy of such minutes.

## **SECTION ELEVEN**

### **RULES AND REGULATIONS**

- 11.1 The Board of Directors may prescribe such rules and regulations not inconsistent with these by-laws relating to the management and operation of the Corporation as they deem expedient, provided that such rules and regulations shall have force and effect only until the next annual meeting of the Members of the Corporation when they shall be confirmed, and failing such confirmation at such annual meeting of the Members, shall cease to have any force and effect.

**SECTION TWELVE**  
**AMENDMENT OF BY-LAWS**

- 12.1 The by-laws of the Corporation not embodied in the letters patent may be repealed or amended by by-law enacted by a majority of the Board of Directors at a meeting of the Board of Directors and sanctioned by an affirmative vote of at least two-thirds (2/3) of the Members at a meeting duly called for the purpose of considering the said by-law; provided that the repeal or amendment of such by-laws shall not be enforced or acted upon until the approval of the Minister of Industry (or any successor government department) has been obtained.

**SECTION THIRTEEN**  
**INTERPRETATION**

- 13.1 In these by-laws and in all other by-laws of the Corporation hereafter passed unless the context otherwise requires, words importing the singular number or the masculine gender shall include the plural number or the feminine gender, as the case may be, and vice versa, and references to persons shall include firms and corporations.

**DATED** at the City of [•], in the Province of [•], this [•] day of [•], 2003.

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[•]

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## **APPENDIX C: Draft Purposes of the Trust**

This trust's purpose would be to preserve and develop the current corridor for the environmental, economic, recreational and spiritual benefit of the communities along the corridor and all Vancouver Island. More specifically, this would include:

- Acknowledging the importance of the corridor to all communities along its length and, in particular, the importance of the trust to First Nations Communities and the need to acknowledge First Nations interests in the corridor and adjacent resources.
- Maintaining the integrity of the corridor as a contiguous, special use community connection and economic enhancement.
- Maintain and encourage the development of environmentally friendly and safe rail freight and passenger rail services of all kinds.
- Create trails, parks, gardens, greenways, and other public spaces along the length of the corridor.
- Safeguard the character of the corridor by preserving historic landmarks, structures, buildings and landscapes.
- Conserve the corridor and adjacent lands for the protection watersheds, scenic beauty, close-to-home recreation and to generally preserve and enhance environmentally sensitive areas and resources along the corridor.

**POLICY PAPER**  
**Taxation Issues Affecting the Vancouver Island  
Railway**



**Prepared by Vancouver Island Railway Co.**

**July 2003**

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## PURPOSE AND INTRODUCTION

The purpose of the paper is to consider the issue of taxation of rail infrastructure generally and then deal specifically with how taxes will be dealt with on the corridor once under the control of the foundation.

**The importance of rail to Canada's Transportation Infrastructure:** The Canadian Rail Industry makes a significant contribution to the nation's economy and competitiveness as a trading nation. Rail presents the safest, most cost-efficient and environmentally-friendly form of surface transportation available. Rail has the ability to move large quantities of goods and people quickly, with minimal environmental impact. These benefits are not confined to the large railway lines.

**The potential benefit to Vancouver Island:** The railway on Vancouver Island provides all of these benefits. It is an invaluable transportation, recreational and tourism-generating asset that will only grow in importance as communities along the corridor expand and develop. However, despite its value, the rail line on Vancouver Island is inhibited by taxation and regulatory policies that unfairly advantage competing forms of freight and passenger travel, while hindering the growth and profitability of the line.

Many of the issues facing Vancouver Island Railway are the same as those facing rail industry as a whole in Canada. Many of these, such as the fuel tax and allocation of government funding to roads while railways must pay for the upkeep of their own infrastructure are policy questions that must be addressed on an ongoing basis with all levels of government.

However, there are a number of issues that are particular to the E & N Railway that are not policy concerns so much as a desire to seek appropriate classification of the line under the existing regulations. Of particular concern to the railway are the property taxes levied on the line by the Provincial government, as well as the provisions of the *Esquimalt and Nanaimo Railway Belt Tax Act*<sup>1</sup>.

The purpose of this report is to examine the taxation scheme that is currently levied on the Vancouver Island Railway Corridor, and to outline how taxation on the line will change once the corridor is owned and/or controlled by the Foundation. This new taxation regime will put the the corridor into an assessment category that more accurately reflects in the realities of the corridor's varied uses and ownership following transfer of the corridor assets into a charitable foundation.

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<sup>1</sup> *Esquimalt and Nanaimo Railway Belt Tax Act*, RSBC 1996, c.21

## CLASSIFICATION OF THE LINE

The B.C. *Assessment Act*<sup>2</sup> outlines the assessment process for valuation and taxation of properties in British Columbia. B.C. Reg. 438/81, the *Prescribed Classes Of Property Regulations*<sup>3</sup> filed under the authority of the Assessment Act, outlines the prescribed categories of property to which different rates of taxation are levied under the Act.

The prescribed categories of land are as follows:

Class 1 - residential

Class 2 – utilities

Class 3 - unmanaged forest land

Class 4 - major industry

Class 5 - light industry

Class 6 - business and other

Class 7 - managed forest land

Class 8 - recreational property/non-profit organization

Class 9 - farm

The Vancouver Island Railway corridor is classified within Class 2 - 'Utilities', and is thus subject to the second highest rate of property tax of all assessed properties.

Section 2 of the Regulations outlines the parameters of this category and reads as follows:

### Class 2 - utilities

#### 2. *Class 2 property includes only*

- (a) *land or improvements used or held as track in place, right of way or a bridge for the purposes of, or for purposes ancillary to, the business of transportation by railway, and*
- (b) *land or improvements used or held for the purposes of, or for purposes ancillary to, the business of*
  - (i) *transportation, transmission or distribution by pipeline,*

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<sup>2</sup> *Assessment Act*, RSBC 1996, c.20

<sup>3</sup> *Prescribed Classes Of Property Regulations*, BC Reg. 438/81. (*Assessment Act* RSBC 1996 c.20)

- (ii) *telecommunications, including transmission of messages by means of electric currents or signals for compensation,*
- (iii) *generation, transmission or distribution of electricity, or*
- (iv) *receiving, transmission and distribution of closed circuit television,*

*except that part of land or improvements*

- (c) *included in Classes 1, 4 or 8,*
- (d) *used as an office, retail sales outlet, administration building or for an ancillary purpose, or*
- (e) *used for a purpose other than a purpose described in paragraphs (a) or (b).<sup>4</sup>*

Under the British Columbia Assessment Authority Bylaw No.44, property classified under the assessment act as a Utility is applied a tax rate of .5947 against each \$1000 of Net Taxable Value of Property.<sup>5</sup> This represents a significant tax burden for any party that acquires ownership of the line.

While potentially appropriate for the corridor in the past, this classification would no longer be appropriate for the corridor once the Vancouver Island Railway Charitable Foundation acquires ownership of the line. The *Prescribed Classes Of Property Regulations* also outline another class titled ‘Recreational Property/Non-Profit Organization’. Section 8 of the Regulations reads:

**Class 8 - recreational property/non-profit organization**

8. *Class 8 property shall include only:*

- (a) *land, but not improvements on that land, used solely as an outdoor recreational facility for the following activities or uses:*
  - (i) *golf;*
  - (ii) *skiing;*
  - (iii) *tennis;*
  - (iv) *ball games of any kind;*
  - (v) *lawn bowling;*

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<sup>4</sup> *Prescribed Classes Of Property Regulations*, BC Reg. 438/81. (Assessment Act RSBC 1996 c.20), s. 2

<sup>5</sup> *British Columbia Assessment Authority Bylaw No.44*. In accordance with section 17(2) of the *Assessment Authority Act*, RSBC 1996, c. 20

- (vi) *public swimming pool;*
- (vii) *motor car racing;*
- (viii) *trap shooting;*
- (ix) *archery;*
- (x) *ice skating;*
- (xi) *waterslides;*
- (xii) *museums;*
- (xiii) *amusement parks;*
- (xiv) *horse racing;*
- (xv) *rifle shooting;*
- (xvi) *pistol shooting;*
- (xvii) *horse back riding;*
- (xviii) *roller skating;*
- (xix) *marinas;*
- (xx) *parks and gardens open to the public;*
- (xxi) *hang gliding.*<sup>6</sup>

The tax rate levied on this class is only .1159 per \$1000 value of property.<sup>7</sup> This is significantly less than the rate applied to Class 2 properties. Other than the reference made in the title, the regulations do not specify how ownership by a non-profit group affects these requirements.

As part of its mandate, the Vancouver Island Railway Charitable Foundation would greatly diversify the use of the corridor property. The foundation's purpose would be to preserve and develop the current corridor for the environmental, economic, recreational and spiritual benefit of the communities along the corridor and all Vancouver Island. More specifically, this would include:

*Acknowledging the importance of the corridor to all communities along its length and, in particular, the importance of the trust to First Nations Communities and the need to acknowledge First Nations interests in the corridor and adjacent resources.*

*Maintaining the integrity of the corridor as a contiguous, special use community connection and economic enhancement.*

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<sup>6</sup> *Prescribed Classes Of Property Regulations*, BC Reg. 438/81. (*Assessment Act* RSBC 1996 c.20)

<sup>7</sup> *British Columbia Assessment Authority Bylaw No.44*. In accordance with section 17(2) of the *Assessment Authority Act*, RSBC 1996, c. 20

*Maintain and encourage the development of environmentally friendly and safe rail freight and passenger rail services of all kinds.*

*Create trails, parks, gardens, greenways, and other public spaces along the length of the corridor.*

*Safeguard the character of the corridor by preserving historic landmarks, structures, buildings and landscapes.*

*Conserve the corridor and adjacent lands for the protection watersheds, scenic beauty, close-to-home recreation and to generally preserve and enhance environmentally sensitive areas and resources along the corridor.*

In addition, railway services themselves would be operated by Vancouver Island Railway Company, with which the foundation would have a memorandum of understanding.

The purposes described above clearly move the lands of the corridor beyond the definition of Class 2 properties. The foundation's varied purposes would bring it more appropriately under Class 8 of these same regulations, resulting in a significantly reduced rate of property taxation for the railway. The Vancouver Island Railway Corridor Foundation would be greatly served in this regard by seeking a more appropriate classification of the corridor property through the *Assessment Act* appeal process.

## **APPEALING PROPERTY TAXATION CLASSIFICATION**

### **The Property Assessment Review Panel**

The E & N Railway is still currently classified as a Utility under the *Prescribed Classes Of Property Regulations*. Reclassification of the property can be sought through an appeal process outlined in the *Assessment Act*.

Parts 4 and 5 outline of the Act outline the Appeal Process. Section 32(1) states that:

*32 (1) Subject to the requirements in section 33, a person may make a complaint against an individual entry in an assessment roll on any of the following grounds:*

- (a) there is an error or omission respecting the name of a person in the assessment roll;*
- (b) there is an error or omission respecting land or improvements, or both land and improvements, in the assessment roll;*
- (c) land or improvements, or both land and improvements, are not assessed at actual value;*



- (d) *land or improvements, or both land and improvements, have been improperly classified;*
- (e) an exemption has been improperly allowed or disallowed.<sup>8</sup>

Section 32(3) goes on to state that these complaints can also be made by local governments in regards to property in their municipality or regional district. This means that communities along the line, including first nations, could instigate this appeal process. Section 32(5) further clarifies that appeals by municipalities can be made “in respect of a class, category or type of property or interest in land or improvements, or both land and improvements.”<sup>9</sup>

The Assessment Review panel consists of three members, with one member designated as chair by the Minister.

Sections 35 to 42 outline the procedure and requirements necessary to file an appeal with the Review Panel. In summary, notices of complaint must be filed with the assessor no later than January 31<sup>st</sup> of the year following the year in which the assessment roll was completed under section 3, or changed or amended under section 12. Upon receiving a complaint, the assessor must schedule a time with the Review Panel that must adjudicate the matter before March 16<sup>th</sup> of that year, with authentication of the changes to the assessment role required by April 1<sup>st</sup>.

### **The Property Assessment Appeal Board**

Section 50 of the *Assessment Act* states that individuals who are dissatisfied with a decision of the Review Panel or wish to appeal a refusal of the Panel to adjudicate a complaint, can appeal to the Property Assessment Appeal Board. The Board consists of 5 members. Section 50 states:

*50 (1) Subject to the requirements of subsections (2) to (4), a person may appeal to the board if the person is dissatisfied*

- (a) *with a decision of a review panel, or*
- (b) *with an omission or refusal of the review panel to adjudicate a complaint made under section 33 (1).*

*(2) The appeal must be based on one or more of the grounds referred to in section 32 (1).*

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<sup>8</sup> *Assessment Act*, RSBC 1996 c.20, s. 32(1)

<sup>9</sup> *Assessment Act*, RSBC 1996 c.20, s. 32(5).

*(3) A notice of appeal under this section and the prescribed appeal fee must be filed with the board on or before April 30 following the sitting of the review panel.*

*(4) The notice of appeal must*

- (a) clearly identify the property in respect of which the appeal is made,*
- (b) include the full name of the appellant and a telephone number at which the appellant may be contacted during regular business hours,*
- (c) indicate whether or not the appellant is the owner of the property to which the appeal relates,*
- (d) if the appellant has an agent to act on the appellant's behalf in respect of the appeal, include the full name of the agent and a telephone number at which the agent may be contacted during regular business hours,*
- (e) include an address for delivery of any notices in respect of the appeal,*
- (f) state the grounds on which the appeal is based, and*
- (g) include any other prescribed information.*

*(5) If a notice of appeal is deficient or if the prescribed appeal fee is outstanding, the chair of the board may in his or her discretion allow a reasonable period of time within which the notice may be perfected or the fee is to be paid.<sup>10</sup>*

If a group is unsatisfied with the decision of the Board, further appeals as to a matter of law can be made to the Supreme Court of British Columbia.

### **Split Classification of the Corridor**

A close examination of Class 8 of the property classes outlined in the *Prescribed Classes Of Property Regulations* reveals that this classification applies, in the words of the Regulations, to property that is used *solely* for the purposes outlined above. The section does not go into detail as to how this classification is influenced by the Non-profit nature of an ownership group, despite its title.

Even if a reassessment of the corridor's designation did not result in a full reclassification of the corridor property, the assessment board would have little choice but to reclassify those portions of the property that do not meet the Class 2

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<sup>10</sup> *Assessment Act*, RSBC 1996 c.20, s. 50

definition. The definitions of the categories as outlined in the regulations indicate that different segments of the corridor would potentially fall under different classification schemes. Section 10 of the Regulations allows for this fact, and indicates:

#### Split classification

10. *Where a property falls into 2 or more prescribed classes, the assessor shall determine the share of the actual value of the property attributable to each class and assess the property according to the proportion each share constitutes of the total actual value.*<sup>11</sup>

Thus, it should be mentioned that even if an appeal for reclassification of the entire corridor should be unsuccessful, in the alternative, the corridor would clearly apply for split classification. While this would not represent as significant a tax relief as complete reclassification under section 8, it would still represent a significant savings to the line.

## THE E & N RAILWAY BELT TAX ACT

In addition to issues related to property taxation of the Corridor Property, it should be mentioned that the E & N Railway is subject to a piece of legislation known as the *Esquimalt and Nanaimo Railway Belt Tax Act*. Under this Act, if any portion of the lands granted to the E & N Railway are at any point alienated, which includes sale, lease, transfer or reallocation by the operating railway company to non-railway purposes, “the owner in fee simple of the alienated land must, on and after the date of alienation be assessed and taxed on the alienated land and is liable for payment of the tax.”<sup>12</sup>

Sections 6 and 7 of the act indicate that:

*6(1) Alienated land must be assessed at its actual value as at the date of alienation*

*(2) The assessment must include the value of timber on the land.*

*7 The Tax on alienated land is 25% of the assessed value of the land.*<sup>13</sup>

Section 9 of the act further states that “tax imposed under this Act is in addition to any other tax imposed on the land under and other Act.”<sup>14</sup>

The assessed amount can be paid within 3 months of the assessment date, for which the payer would receive a 10% discount, or in instalments over a period of ten years.

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<sup>11</sup> *Prescribed Classes Of Property Regulations*, BC Reg. 438/81. (*Assessment Act* RSBC 1996 c.20)

<sup>12</sup> *Esquimalt and Nanaimo Railway Belt Tax Act*, RSBC 1996. c. 121, s.4

<sup>13</sup> *Esquimalt and Nanaimo Railway Belt Tax Act*, RSBC 1996. c. 121, s.6-7

<sup>14</sup> *Esquimalt and Nanaimo Railway Belt Tax Act*, RSBC 1996. c. 121, s.9

It would appear from the wording of this act, that the Foundation would be liable for the assessment and resulting tax following alienation by CPR. It is uncertain how the Foundation's status as a non-profit organisation would affect the levying of this tax.

It should be noted that section 13(2)b of the Act states that the Lieutenant Governor in Council may make regulations, "relaxing the strictness of the incidence or the collection of the tax under this Act in cases where great public hardship or injustice could not otherwise be avoided."<sup>15</sup>

The purpose of this Act seems to have been to dissuade CPR from alienating the land, or converting it to use for another purpose in the interest of long-term protection of the line. On this basis, there is a strong argument under section 13 of the Act, that this tax should be in part, or completely forgiven considering the charitable and community-benefiting objectives of the foundation.

## CONCLUSION

As currently classified, the E & N Railway is subject to high levels of property taxation that are inconsistent with the current state of the line and the industry generally and further penalize rail vis-à-vis cars and trucks. In addition, the railway lands are subject to the imposition of a tax upon alienation under the *Esquimalt and Nanaimo Railway Belt Tax Act*.

Much of the current regime is based on the private ownership of the land and the retention of the now improper classification of railways as utilities.

The acquisition of the corridor by the Foundation changes all of this.

First, the infrastructure is no longer private, it is public

Second, the land is restricted to a set of public purposes that prevent alienation and development except as consistent with the objectives set out all of which are public purposes.

The Foundation is a "not for profit" which tend to be treated differently.

The use of the line will be many faceted.

The Vancouver Island Railway Corridor Foundation would have as its object a variety of purposes beyond the provision of rail services. A variety of community interests and objectives would be served. It is our position that the change in ownership of the line should be accompanied by a reclassification of the assessed property tax that more appropriately suits these diverse and community-benefiting aspects of the Foundation's objectives.

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<sup>15</sup> *Esquimalt and Nanaimo Railway Belt Tax Act*, RSBC 1996. c. 121, s.13

Furthermore, while the line is subject to the provisions of the *Esquimalt and Nanaimo Railway Belt Tax Act*, these same objectives make a strong case that part or all of the taxes should reflect the public nature of the infrastructure, the community benefits, the nature of the owning body and the best interests of the communities along the Island.

Taxation will be adjusted to reflect the “not for profit”, public and controlled nature of the corridor.

# **POLICY PAPER**

## **The Management of Infrastructure on the Vancouver Island Railway**



Prepared by Vancouver Island Railway Co.  
July 2003

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## **PURPOSE**

The purpose of the policy paper is to outline the importance of the rail infrastructure to the railway on Vancouver Island and the manner in which the infrastructure will be dealt with under the new arrangements being proposed for the line.

The transition from private to public infrastructure and the involvement of community interest directly in the objectives and management of the Foundation fundamentally change the nature of the line and should result in better access to public support for the development of the infrastructure.

Maintenance of the line becomes a shared responsibility of the operating railway company, the corridor, the communities and the three levels of government.

There are now significant funds being expended on the maintenance of the line by the operator and this will continue. These can now be matched with other funds from senior levels of government and the communities where applicable.

The capital plan for the line would be developed by the Railway Company in consultation with the communities and the Foundation and would seek significant support to deal with the required upgrades and the catch-up of maintenance. The plan would be developed as a shared responsibility between the operating company and the Foundation.

## **THE MANAGEMENT OF INFRASTRUCTURE ON THE VANCOUVER ISLAND RAILWAY**

“Without rails, there is no railway.” An obvious but important statement that reflects the importance of maintaining in a sustainable way the rail infrastructure that is necessary for the delivery of rail services.

This, in fact, is perhaps the single most important issue that requires attention and which led directly to the need for fundamental restructuring of rail services on the Island.

## **A NATIONAL CONCERN<sup>1</sup>**

The infrastructure issues facing the Island Railway are not unique. In Canada many of the smaller, short line operations are experiencing difficulty in terms of long-term viability and, as a result, in sustainably maintaining their rail infrastructure. Given

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<sup>1</sup> There is a great deal of information on the state of the Short Line industry in Canada and it all points in the same general direction. The two documents that were of the most use in completing this section were the submission of the ARRC (Association of Regional Railways of Canada) to the Blue Print Initiative of Transport Canada, and the background paper prepared by the Research and Traffic Group for the Canada Transportation Act Review Panel, entitled, “SUSTAINING CAPITAL REQUIREMENTS FOR THE SHORTLINE RAILWAY INDUSTRY”.



the growing importance of the Short Line Carriers to the national transportation system, this is of national concern.

In 1996 changes to the Canada Transportation Act made it easier for the two major railways, CN and CPR, to abandon and transfer less efficient track to smaller operators. The results were:

- **Withdrawal and decommissioning of a significant amount of track:** Between 1996 and 1999 more than 3,500 km were abandoned, the track taken up and the land sold or left unused.
- **The transfer of significant track and traffic to Short line operations:** Between 1996 and 1999 more than 8,500 km of rail line were transferred from CN or CPR to other operators. This has made the Short line rail industry much more important in the overall transportation system.
- **Capital Spending by the Class 1 Railways increased:** Capital Spending by the Class 1 Railways dramatically increased: Both CP and CNR dramatically increased investment in rolling stock, locomotives and infrastructure improvements, with significant gains in productivity for the now streamlined main lines.
- **Capital Spending by Shortlines has not kept pace:** For the most part, Short line railways have not kept pace with the necessary capital improvements. Capital expenditures on infrastructure, on average, went down over the same period.

The result has been an increasingly profitable and dynamic Class 1 rail industry, with the Short Lines lagging far behind. This has broad implications for transportation policy generally. Those related to infrastructure are set out here.

### **Capital Expenditure Requirements**

**When problems arise, efforts are needed to preserve the railway infrastructure and corridors:** Maintaining track infrastructure through capital expenditures is a primary requirement of sustainable railway management. Tie, ballast and rail renewal must be undertaken to ensure safe operations and the ability of a railway to stay in business.

However, companies can “stay in business” for some time by deferring maintenance. When revenues fall, capital can be reduced against better times in the future. But if those times don’t come, then the line will continue to deteriorate until the infrastructure is at the point of collapse. The line is then decommissioned, the infrastructure salvaged and the property broken up and sold.

While this may make business sense in some instances, it is not sustainable rail management and could result in the unnecessary loss of essential rail infrastructure in

instances where the line could have been maintained and kept in service for rail purposes. This is an issue that requires attention from a policy perspective.

It should not be easy for Short Line operations to abandon rail corridors where sustainable alternatives are available. When these corridors have been established the “highest and best use” should be for rail use first, other transportation second, community uses third and all other uses should be considered a poor fourth.

**Sustainable Rail Infrastructure:** For a line to be sustainable, expenditures are required to maintain the longer-term condition of the track. At times, such expenditures can be deferred in response to a lack of resources, but eventually deferral results in:

- lower speeds,
- degradation of service and
- higher operating costs.

Higher levels of expenditure are required to recover from periods of deferred maintenance or to improve track conditions and speed.

**New infrastructure requirements:** Capital investment must also be made to keep pace with changes in freight practices. The best example of this is the move to heavier freight cars, requiring substantial change to the infrastructure to accommodate the additional weight. Of less concern to this line are the demands for greater speed, which apply largely to the long-haul sections of the Class 1 railways.

### **What does it cost to maintain rail infrastructure?**

**Ties, Ballast and Track:** There are differing opinions on this, depending on use, climate and terrain. A nominal capital expenditure in the range of \$2,500 to \$7,500 per km per year might be expected for all but the lightest density and the heaviest density shortlines.

A lack of resources has resulted in some short lines operating a line at a lower classification to avoid the needed investment. This results in slower speeds, more interruptions, and eventually, higher running costs. Such an approach, however, cannot last forever. While it might take up to a decade for the track to deteriorate, capital investment will eventually be necessary if the line is to remain in service.

**Impact of deferred maintenance:** Unfortunately, the longer maintenance is deferred, the more it may cost to bring the line back. Expenditures on many short lines have been deferred and higher investments in the shorter-term will be required to maintain operations at the specified level.<sup>2</sup> Maintenance deferrals of as high as \$20,000 to \$25,000 per km have been mentioned.

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<sup>2</sup> Rail Traffic Group Document.

**What about Structures?** Bridges are a particular concern. For the major carriers, their large capital plans can absorb one-time requirements or unforeseen problems. For the smaller short lines, capital requirements can be more concentrated and often cannot be spread out in time. Very few maintain capital funds for repairs to major structures.

In some instances, the need for major bridge rehabilitation has led to partial closure and abandonment of lines since the traffic base did not justify the costs. This is unfortunate and avoidable if the depreciation of those assets had been managed to ensure replacement.

Major structure replacement and repair is a major concern for Short Lines and for the rail industry generally.

## **THE SHORT LINE INDUSTRY AND INFRASTRUCTURE**

**The overall state of the Short Line Industry:** This is a growing area with the Short Line Companies becoming increasingly important to the overall rail freight service. This is a relatively new development and legislation, regulations and policies are only now taking into account this new situation.

While this section deals with only the infrastructure issues, these are tied to the overall relationship between short line railways and Class 1 Railways and their commercial relationships. This is an evolving relationship and one of mutual interdependence and benefit. There has been movement, through regulation, policy and mutual self interest to strengthen the financial viability of Canada's short line industry, and this should be considered a positive development overall and one which will be of benefit to rail on Vancouver Island. As a result, there should be a strengthened short line sector in the future.

Financial viability is important if the necessary maintenance and upgrades are to take place. Whenever an industry of a sector is having difficulty, one of the first areas to be cut is the capital plan. Deferral of capital can go on for some time before it starts to be felt.

**The demands to upgrade infrastructure:** Nothing stands still, and the demands on rail infrastructure are no exception. If the Short Lines do not keep pace with the Class 1's and the demands of the industry generally, there will soon be fewer lines, a reduction in coverage and the elimination of rail freight as an option in many parts of the country.

**Infrastructure issues facing Short Lines:** Many of the demands are the same as for the Class 1 Railways. Others are created by the Class 1 railways as they move the industry to different standards that improve efficiency but also create demands for infrastructure upgrades. Some of the difficulties are unique to Short Lines and relate to the lack of economies of scale that frequently affect smaller operations.

- **Deferred Maintenance:** Generally speaking, there is a growing issue of deferred maintenance with Short Line operations. If this is not dealt with, the affected lines will ultimately fail.
- **Major structures:** Short Lines are not well positioned to deal with structural upgrades and failures of bridges, trestles and tunnels. This is particularly the case for the smaller railways.
- **Rail Crossing Maintenance:** Short Lines must build and maintain grade crossing warning systems, but only federally regulated railways have access to the federal grade crossing fund. Many of the Short Lines, which were part of the “national system” when owned by Class 1<sup>st</sup>, can no longer access these funds as they are now considered “provincial” railways. The need is still there and perhaps even greater than before, but the funding is not.
- **Taxes on Right-of-Way:** Railways are required to not only maintain the infrastructure, but also pay taxes on it as private property. This is in stark contrast to highways, which are not taxed and are maintained at public expense. This is dealt with in detail in the section on leveling the playing field.
- **Upgrade to the 286 Cars:** The Short Line operators are currently faced with the need to upgrade track structure and bridges to handle a new North American standard for four-axle freight cars weighing 286,000 lbs. The North American Class 1 railways drove this increase of 9% over the old standard of 263,000 lbs. in response to market pressures to improve productivity and pricing.

This requires an extraordinary upgrading of plant that is beyond the financial capability of most of the Short Line operations. It is, however, potentially of benefit to the Class 1s and the communities and industries served.

### **The Infrastructure of the Island Railway**

Given the above, what is the state of the Island’s Railway?

**What is the state of the infrastructure currently?** Although a relatively short line, there is considerable infrastructure on it. The line, which was formerly considered as a single entity when owned by CPR, is now in three parts. These are:

- The Southern Line, from Victoria to the City Limits of Nanaimo, which still belongs to CPR, leased to RailAmerica.
- The Northern Line, from Parksville to Courtenay, which still belongs to CPR, leased to RailAmerica.
- The East West Line, from the Rail Barge in Nanaimo to Port Alberni, comprised of the Welcox Spur to the North South Line from Nanaimo to Parksville on the North South Line and from Parksville to Port Alberni on the East-West line, which belongs to RailAmerica.

For the review of the infrastructure, the Planning Process concentrated on just the North-South Line running from Victoria to Courtenay. This line, largely owned by CPR with the middle section owned by RailAmerica, is still active and is frequently inspected due to the passenger service on the line. This line, therefore, had the best information on which to assess the infrastructure.

In terms of the North-Line, the infrastructure consists of:

- Bridges..... 120
- Culverts ..... 400
- Level crossings ..... 150
- Ties ..... 389,200
- Ballast (miles)..... 139
- Rail (miles) ..... 139

**About Bridges:** The bridges range from relatively straightforward road crossings, to major Canyon crossings involving spans of several hundred feet. Generally, because the line goes against the natural terrain, there are a significant number of major bridges across rivers and canyons.

**About Level Crossings:** About half of the level crossings are controlled with electronics that must be maintained. This number should increase as the line becomes more active.

**Rails:** For the most part, the line is single railed with a few areas with double track.

**What factors need to be taken into account when assessing the state of the line and the requirements of sustainable management?**

**A matter of some controversy:** There is a wide divergence of opinion on the current state of the infrastructure. However, the state of the infrastructure that is described below represents the consensus of those who have considered the line. There is no question that the line requires attention and that there is deferred maintenance that has accumulated on the line.

**Current Railway Standards:** The expertise of the experienced railway personnel available to the review was invaluable here. The following were the “rules of thumb” that were used.

- Railway ties, installed, cost, on average about \$60/tie.
- Ballast, to replace, costs on average about \$40,000 a mile.
- Rail replacement was difficult due to the fact that the line is largely 85 lbs rail and this is no longer used. There is sufficient rail available and stockpiled to deal with rail requirements for the foreseeable future. Rail maintenance, therefore, consists largely of labour costs. It was difficult to assess the need and so the cost

of rail replacement was not factored into the overall costs. This was in part due to the conclusion that a major rail program would be needed to upgrade the rail to a heavier weight and that this could not be related directly to maintenance.

**Renewal Rate:** The following rates of renewal were used.

- For ties, the industry standard would be to replace them every 30 years. Due to the wet climate on Vancouver Island, and the intrusive vegetation, this was reduced to 25 years.
- For ballast, the industry standard is between 40 and 50 years. Due to the climate and vegetation, the lower end of that range was adopted.

### **The Annual Cost of Sustainable Renewal of the Infrastructure**

**Methodology:** What appears below is an average and it should be pointed out, as did the rail experts who assisted in the review, that there are no “average” years. Upgrades tend to be done as major projects and then left alone for several years.

However, over time, there is an “average” annual expenditure required to maintain the line and this is what has been calculated.

### **Ties and Ballast**

<b>North - South Line</b>					
	Unit	Life in years	Average annual Replacement	Unit cost in \$\$	Cost/year
Ties	389,200	30	15,568	60	934,080
Ballast (miles)	139	40	3.48	40,000	139,000
<b>Total</b>		-			<b>1,073,080</b>

Therefore, on average, an investment of about 1 million dollars a year would have to be made to simply sustain the ties and ballast. To this would be added the costs of maintaining the rails and culverts.

The required expenditure for sustainable maintenance for the North South Line in the Model, was \$1,200,000 per year.

**Has the line been sustainably maintained?** There was not access to the full records for the maintenance of the line or to the inspections that had been done by government inspectors, but on the basis of the information available, the following can be concluded:

- The line has been kept safe and all regulatory requirements have been met, but the line has not been maintained on a sustainable basis.
- If the maintenance is not increased to a sustainable level the essential infrastructure will slowly decline to the point that it will no longer be safe and it will be shut down.

## Deferred Maintenance

The result of the maintenance not being kept at sustainable levels in the past has been that there is significant deferred maintenance accumulated on the line.

While opinions vary as to the extent of the deferral, the calculations below are based on the assumption that, on average 20-25% percent of the current ballast and ties are compromised and require replacement over time. This, then, represents the deferred maintenance on the line. For the table below, 25% deferral was used.

North - South Line - Deferred Maintenance							
	Unit	% Def. Main.	Def. Main.	Unit cost	Total Def.	5 year	10 year
Ties	389,200	0.25	97,300	60	5,838,000	1,167,600	583,800
Ballast (miles)	139	0.25	35	40,000	1,390,000	278,000	139,000
<b>Total</b>					<b>7,228,000</b>	<b>1,445,600</b>	<b>722,800</b>

On this basis, the total deferred maintenance on the line for ballast and ties is approximately 7.2 million dollars. It takes time for the rail to get in this state, and it would take time to put it back into sustainable shape. A five-year catch-up plan would add approximately 1.5 million to the annual maintenance cost. A ten-year plan would add approximately 750,000 per year.

## Capital Requirements for Major Structures

Given all of the bridges and level crossings there is also a concern that there needs to be a plan to deal with the eventual need to replace the current structures. There is not one currently in place.

- There is no plan in place to ensure the repair and replacement of major structures on the line, major structures being bridges, trestles and tunnels.
- With the number of bridges and trestles on the line, some kind of capital plan is required. For larger railways like CPR, there is a large enough capital budget and a sufficiently large operation that capital upgrades and unexpected requirements can be managed.
- For a smaller operation like the Island Railway, there needs to be some provision for a sinking fund or a revolving fund that will ensure both routine maintenance and capital sufficient to deal with major issues when they occur.

The current situation, without any provision or a fund for capital replacement, will ultimately result in the line closing due to the failure of a major structure.

This potential for substantial capital improvements is referred to as a “capital overhang”. The extent of this capital overhang is difficult to determine without detailed, independent inspections of the structures. Current inspections have

confirmed that the railway is safe. It also suggests, given the number of “go-slow” orders, that there are problems with some of the structures. For the purposes of this study, there was neither the time nor the resources to complete an independent inspection.

In terms of some sense of the immediate requirement, there is thought to be at least \$200,000 to \$300,000 in need repairs and maintenance to remove a number of the go-slow orders on the bridges.

Given that the concern with major structures is an issue on many of the smaller lines, there should be an industry-wide approach developed. In other sectors with similar issues, there have been funds established to spread risk on an industry-wide basis.

Short of that, there must be a capital fund or access to capital for the Island railway that anticipates, on average, an expenditure of at least 200,000 a year, with the expectation that there would also be funding assistance from public sources should these be required.

### **A Shared Responsibility**

**Rail Infrastructure is the responsibility of the operator:** Obviously, railway companies, whether Class 1’s, a large regional carrier or a Short Line, must take steps to ensure that the rail infrastructure on which their business depends, is maintained in a secure, safe and sustainable way.

**Rail Infrastructure has an important economic and social dimension:** Although largely privately owned, Canada’s rail corridors are and should be considered as important assets in the same way as any other part of the rest of the essential transportation infrastructure.

To the extent that rail infrastructure is, on the basis of public policy, subject to restrictions and requirements with respect to use and disposition; then public policy must also provide support, incentives and financial assistance for rail infrastructure.

**Government also has a role to play:** Consistent with treating rail infrastructure as essential rail infrastructure, there is an important role for governments to support funding for rail upgrades and access to infrastructure programs.

This is a theme that has been underlined throughout the review of Federal transportation policy and in similar reviews in provincial jurisdictions. There has been a response in several areas. These include:

- Rail infrastructure upgrades are eligible for federal infrastructure funding.
- Programs to encourage rail freight have been put in place.
- There are a number of federal and provincial programs that support rail use.

More needs to be done, such as reducing discriminatory property and fuel taxes, and there are encouraging signs that further changes are occurring. .



Vancouver Island's Railway Assets are important to the well being of the Island and require the support of Governments at all levels to maintain them: All of these national trends are very important for the Island Railway.

Right now, given all that has occurred, the line on Vancouver Island cannot generate enough revenue to deal with the deferred maintenance, the capital overhang and required changes to upgrade the infrastructure to new industry standards. It requires an overall approach, with all of the involved parties working together, including the assistance of government.

If, as has been amply demonstrated by the Planning Process review, maintaining the railway corridor and the essential railway infrastructure is in the interests of the community, then the community, through its representative governments, need to play a role, in partnership with the communities and the operators of the line.

Creating a model that will ensure maximum community support and access to relevant government programming to deal with the upgrading and repair of the infrastructure is essential to the future of the line.

## **POTENTIAL SOURCES OF FUNDING FOR THE LINE**

There are a number of potential funding sources for infrastructure on the line. The majority of these are federal programs, although there is a possibility of accessing provincial funds as well. The four most promising sources of funding are:

- Canada Strategic Infrastructure Fund
- Infrastructure Canada Program
- Kyoto Climate Change Fund

Each of these are considered in turn.

### **Canada Strategic Infrastructure Fund**

The \$2 billion **Canada Strategic Infrastructure Fund**, announced in Budget 2001 was designed to respond to the fact that some large-scale infrastructure projects across the country are beyond the scope and capacity of existing programs.

The new Strategic Infrastructure Fund complements Canada's other infrastructure programs but differs in its orientation. It emphasizes partnerships with any combination of municipal, provincial, territorial governments, as well as the private sector, and each partnership is governed by specifically tailored arrangements. Investments are directed to projects of major national and regional significance, and are made in areas that are vital to sustaining economic growth and supporting an enhanced quality of life for Canadians.

The new Strategic Infrastructure Fund has been structured to better respond to existing and emerging needs of Canadians.

**Funding and Investment Criteria:** Under the new Strategic Infrastructure Fund, the Government of Canada will agree to fund to a maximum of 50 per cent of total eligible costs. In addition, the fund is geared towards embracing a broader range of partnerships to fulfil regional priorities. The fund incorporates a threshold formula for defining "large-scale" projects.

In Quebec, Ontario, Alberta and British Columbia where populations are over 1.5 million, the threshold is at least \$75 million of total costs. This is done in an attempt to ensure that funded projects are large-scale and strategic within the context of the province or territory in which they are housed.

The new program invests in five categories of infrastructure. Of these, there are several that are applicable to the infrastructure of the Vancouver Island Railway. These are:

- **Highway and Railway Infrastructure:** Large-scale projects that facilitate the movement of goods and people on Canada's National Highway System, or highways that connect to the National Highway System and mainline rail network for the purposes of increasing the productivity, economic efficiency, and safety of Canada's surface transportation system.
- **Local Transportation Infrastructure:** Large-scale projects that facilitate the safe and efficient movement of goods and people, ease congestion, or reduce the emission of greenhouse gases and airborne pollutants. Of particular focus are major investments in public transportation in Canada's major urban centres which are geared towards helping communities work better and be healthier places to live.
- **Tourism or Urban Development Infrastructure:** Large-scale projects that promote Canada as a leading destination for tourists or which promote urban development.

The rail infrastructure on Vancouver Island would fit all three of these categories. The long-term plan for the line would greatly expand the tourism resources on the island as well as promote urban development in Island communities along the line. The improvement of the line would also get people off the roads, and create a more efficient commuter network on the Island.

### **The Infrastructure Canada Program**

r. Priority projects are target water and wastewater systems, water management, solid waste management and recycling. However, other program priorities include local transportation, roads and bridges, affordable housing, telecommunications and tourist, cultural and recreational facilities.

The Infrastructure Canada Program (ICP) was confirmed in Budget 2000, when \$2.65 billion in funding for the program over six years was announced.

The ICP has two components: municipal infrastructure, called Infrastructure Canada, and a highways component, administered by Transport Canada. Up to \$600 million of the \$2.65 billion total may be spent on the highways component.

Individual agreements detailing how the program will be implemented and managed have been negotiated with each province and territory.

Federal departments and regional agencies are responsible for program delivery and oversee program administration in each province.

Infrastructure priorities for First Nations communities are funded through a separate allocation of funds, administered by Indian and Northern Affairs Canada.

ICP agreements have been signed between the Government of Canada and all ten provinces and three territories. These agreements define the relationship between the federal government and each provincial/territorial government. Each agreement includes program objectives, funding allocation, project selection criteria, cost-sharing principles, communication protocols, general administrative procedures, and the audit and evaluation process.

Joint federal-provincial and federal-territorial management committees have been established in each jurisdiction to review and select projects using the selection criteria detailed in each ICP agreement. Each Management Committee is co-chaired by a representative of the federal government and one from the provincial or territorial government. On the federal side, the following federal departments and agencies are responsible for program delivery and represent the Government of Canada on the management committees:

- Atlantic Canada Opportunities Agency (for Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador)
- Canada Economic Development (for Quebec)
- Indian and Northern Affairs Canada (for Yukon, Northwest Territories, Nunavut and First Nations component)
- Industry Canada (for Ontario)
- Western Economic Diversification Canada (for British Columbia, Alberta, Saskatchewan, and Manitoba)

Infrastructure Canada provides leadership and coordination to the ICP at the national level, providing advice and support to the Minister of Infrastructure and Crown Corporations, operations and policy advice, information management and reporting, communications planning and coordination, and audit and evaluation.

**The ICP – Project Selection Criteria:** The selection criteria against which project proposals are measured were developed in negotiations with our provincial and

territorial partners, and are designed to support the overall goals and objectives of the Infrastructure Canada Program (ICP).

Broadly speaking, project proposals are ranked according to how well they advance the objectives of the program:

Enhancement of the quality of the environment (water and wastewater management, solid waste management, more efficient energy use)

Support for long-term economic growth (increasing economic opportunity in communities, access to the new economy through improved telecommunications, and tourism opportunities)

Improvement of community infrastructure (increasing community safety and access to local recreational facilities, supporting Canadian heritage and culture, and the development of minority English and French linguistic communities)

Innovation, partnerships, the use of new approaches and best practices, and more efficient use of existing infrastructure

There is a clear potential for funding for infrastructure development from this fund. The new Railway management model would meet many or not all of the above criteria.

### **The Kyoto Protocol Climate Change Fund**

The Climate Change Action Fund (CCAF) was established in 1998 by the federal government to help Canada meet its commitments under the Kyoto Protocol to reduce greenhouse gas emissions. It is intended to support early actions to reduce greenhouse gas emissions. The fund involves approximately 1.7 billion in new funding to help support initiatives that help Canada meet its Kyoto commitments. Public transportation is one of the key areas the fund was designed to support, and as such, the funding has clear application to infrastructure improvements on Vancouver Island. Exact details and criteria of the fund are still being determined.

## **DEVELOPING THE CAPITAL PLAN**

The operating railway company would take the lead in developing the capital plan. This plan would be a 10 year plan and deal with the major infrastructure requirements of the line with respect to the rail infrastructure. It would not deal with the other infrastructure matters not related directly to rail (such as the development of paths or parks) or with the upgrades that would be related to a specific need of the for a specific purpose (such as the need to upgrade a section of the line to bring on an additional freight customer).

The plan would deal directly with the issues of deferred maintenance and the upgrading of the line for current uses (largely, increasing safety and speed).

The plan would look for matched funding against the expenditures of the operating railway company and whatever additional funds that would be available from the communities (if, for example, the CRD wanted to see the line upgraded for commuter service and this required capital adjustment, these funds would be added and matching funds would be requested.)

The target for the capital plan over the 10 years would be 25-30 million dollars with 50% or 12.5-15 million being contributed by the federal government. This would amount to 1.5 million a year, with the early years expected to be more.

The contribution from Island sources would be primarily from the Railway Company with some additional contribution where appropriate from the Foundation and the communities.

This is a realistic and reachable target.

**POLICY PAPER**  
**CONSTRUCTION AND MAINTENANCE OF**  
**RAILWAY CROSSINGS ON VANCOUVER**  
**ISLAND**



Prepared by Vancouver Island Railway Co.

July 2003

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# **A REPORT ON THE REGULATIONS RESPECTING CONSTRUCTION AND MAINTENANCE OF RAILWAY CROSSINGS ON VANCOUVER ISLAND**

## **Purpose and Introduction**

The purpose of this report is to summarize current legislation and policy on Railway Crossings under both Provincial and Federal regulatory regimes and to determine how these standards would apply to the railway on Vancouver Island. The report will first examine the regulatory regime surrounding construction and maintenance costs for the crossing themselves, before examining the accompanying regulations for electronics and safety equipment that may be present at these locations. The report concludes with an assessment of the benefits of reclassification federal crossing improvement programs that would be potentially available to the railway following reclassification.

Prior to 1998, the E & N Railway was always regulated as a federal railway. An Act of Parliament established the Esquimalt and Nanaimo Railway to be in the general interests of Canada.

In 1870, British Columbia put forth its terms of Confederation with Canada. One condition called for the construction of a railway to connect the seaboard of British Columbia with the railways system of Canada. The phrase ‘seaboard of British Columbia’, as contained in the Confederation document, was clearly defined as referring to the Victoria/Esquimalt area on the Island. At the time, the Island had a larger population than the mainland, a thriving coal and lumber industry and a Royal Navy base at Esquimalt, which influenced this determination. The construction and expansion of the railroad involved substantial grants of land between from both federal and provincial governments, and the obligations that flowed from these transfers continue to have influence today.

Upon purchasing the line from CPR in 1998, RailAmerica decided to operate the railway under provincial jurisdiction. At present, the E& N Railway is a provincially regulated railway. However, many of the determinations as to the construction and maintenance of crossings on the line were made prior to 1998, when the Railway was subject to federal jurisdiction as it was owned and operated by CPR. As previously mentioned, these rulings continue in effect despite the change in classification of the railway. In addition, pending changes to the Canada Transportation Act and the original asset purchase agreement between RailAmerica and CPR also mean that should RailAmerica cease operations, the leased portions and full running right would revert back to CPR, thus bringing the railway back under federal jurisdiction. Thus, a thorough assessment of the regulations



surrounding crossings on the island requires an understanding of both federal and provincial regimes. An understanding of federal regulations becomes particularly important given the fact that a return to federal classification will be sought following completion of the transfer of the railway assets to the new initiative.

## **Construction and Maintenance of Crossings**

### ***Federal Regulatory Regime***

The rules surrounding the construction and maintenance of a crossing of a federally regulated railway and a highway at grade are found in Section 11 (a) of the Railway-Highway Crossing at Grade Regulations, enacted under the *Canada Transportation Act*<sup>1</sup>. (hereafter the CTA). Section 11, titled “Apportionment of Construction and Maintenance Costs” reads as follows:

11. Unless otherwise ordered by the Committee,

- (a) when a new crossing is constructed, the following costs are payable by the junior party, namely,
  - (i) the cost of construction of the crossing, and
  - (ii) the cost of future maintenance of the crossing

Under these regulations, “Junior” means the railway company or road authority that is junior in title at the crossing. A road authority seeking to construct a crossing across a pre-existing railway line would thus be required to pay the costs of such a crossing, and vice-versa. The ‘Committee’ refers to the Canadian Transport Commission, which has since been reorganized. These duties are now the responsibility of the Canadian Transport Agency (hereafter the ‘Agency’). It is important to note that the determination of who is the junior party is not necessarily determined based on construction. A railway seeking to cross an area that has been surveyed for road construction but where no railway has been built, may still be classified as the Junior party under the regulations. The regulations also stipulate that the costs of widening and future maintenance of the widened crossing are payable by the junior party. However, when the railway company is the junior party, it is not responsible for construction or maintenance costs beyond the original width of the highway right-of way.

Most of the crossings along the E & N corridor listed in Appendix A were constructed prior to reclassification of the railway as a provincially regulated line, and thus were subject to federal regulation and demonstrate the construction and maintenance regime set out above. The *Railway-Highway Crossing at Grade Regulations* clearly indicates that usually, the junior party would be made to pay the construction and maintenance costs of such a crossing. On Vancouver Island, in

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<sup>1</sup> *Canadian Transportation Act*, S.C. 1996, c. 10

most areas, it is the road authority that is the junior party. This is reflected in the list of crossings found in Appendix A.

However, under the *Canadian Transportation Act*, road authorities may enter into, or amend, agreements with railway companies to construct, maintain or apportion the costs of road crossings of railways. This includes both grade, or level crossings, and grade separations, which includes overhead bridges and subways. These agreements are then filed with the Canadian Transport Agency, at which point they become orders of the Agency authorizing the project as per terms of the agreement. An Agency order establishes the statutory right to cross at that location, is binding upon the parties and can only be amended or rescinded using procedures set out in the *CTA*.

This sort of arrangement has been made a number of times on Vancouver Island, and explains why the payment and maintenance regime in some locations is not always as set out by the Junior-Senior arrangement.

If the parties cannot agree on any issue related to constructing, maintaining or apportioning the costs of the crossing, either party may ask the Agency to resolve the dispute and to issue an order authorizing the crossing. Disputed issues may include the necessity of the crossing, the location, the costs of construction, the costs of maintenance, which party shall maintain the crossing, what rates are to be charged for construction or maintenance work, the type or size of crossing or supporting structure, the limits of a project, the project costs that will be shared, the duration of the agreement, liability, and other terms and conditions. An interested party may also ask the Agency to amend or rescind an existing order respecting road crossings of railways. Only through demonstration that the project would disproportionately benefit the senior party would an appeal of this arrangement be likely to be successful.

When a railway changes ownership, and is subsequently transferred to an alternate level of governmental jurisdiction, the rulings made prior to transfer remain in place on the line. Furthermore, both the Agency, and the Provincial Ministry of Transport will consider rulings made prior to transfer in subsequent decisions on the line.

### ***Provincial Regulations***

The Provincial regulations surrounding the construction and maintenance of crossing are essentially the same as their federal counterparts. Like the federal regulations, the junior party at a crossing is responsible for paying the costs of construction and future maintenance of the crossing. In the same manner as above, parties which fail to reach agreement on can appeal for a ruling by the Ministry. In addition, as previously mentioned, should a federally controlled railway be reclassified as a provincial operation, the Ministry of Transport does not reconsider the rulings of the federal Agency.

## **Highway Crossing Protective Devices**

The distribution of costs becomes more significant when discussing the construction and maintenance of protective devices on the line. Given the lack of attention to the line in recent years, much of the protective signalling equipment on the island is in need of upgrading or improvement. Under provincial regulations, this would represent a significant financial cost to the communities and the railway. As is the case with the crossings themselves, provincial regulations surrounding maintenance of protective devices on crossings mirror those of the federal government.

Maintenance of the existing signalization is generally split equally between the railway and the municipalities, although as with the construction and maintenance of the crossing itself, the final determination is made by the Agency, or in the case of a provincially regulated railway, the Provincial Ministry of Transport.

However, a federally classified railway is eligible for funds to offset the cost classification of construction or upgrading of protective devices. Under Transport Canada's grade crossing improvement program, eligible railway crossings are either upgraded, relocated or closed. Improvements may include installing flashing lights and gates, adding gates or extra lights to existing systems, linking crossing signals to nearby traffic lights, modifying operating circuits, or adding new circuits or timing devices.

The department finances up to 80 per cent of the total cost of the improvements, with the balance provided by the railways, municipalities or provinces. Transport Minister David Collenette recently announced that the Government of Canada will provide more than \$10.2 million to improve safety at 92 railway crossings across Canada.

This program has previously provided funding to the E & N line. On Vancouver Island, most of the signalization was constructed prior to the takeover by RailAmerica. As such, most of the funding for signalization came from the Federal Grade Crossing Improvement Fund. In those cases, the funding split for signalization construction under the federal system was as follows:

- Federal Government 80%
- Municipal 12.5%
- Railway Company 7.5%

A similar split of costs could be expected once the Railway again came under federal jurisdiction.

## **CONCLUSION**

The current maintenance arrangements for crossings and protective devices on the line are the result of agreements between the operating railway at the time of construction, and exist in accordance with federal, and/or provincial regulations. Transfer of the line to new ownership would not affect these agreements. Only an

appeal to the Ministry of Transport, or, once the railway comes under federal classification, the Agency could alter the funding plan. Only in extreme circumstances does this occur.

The upgrading and modernization of the railway is a matter that will affect all communities along the line. As traffic grows on the line, the crossings and safety equipment would need to be upgraded in following with other improvements to the railway and these costs would have to be shared. These costs could not be borne entirely by the communities or the railway, and is therefore an area where the two groups should be working closely. It is the intention of Vancouver Island Railway to develop a Capital Plan in conjunction with Island communities detailing future investment on the line.

The decision by Vancouver Island Railway to apply for reclassification as a federal railway will mean several positive things for the line. In respect to crossings and safety on the line, following reclassification as a federal railway, the Vancouver Island Railway would again be eligible for funding from the Federal Grade Crossing Improvement Program. The availability of federal funding will be especially significant as traffic on the railway increases along with the growth of Island communities and with the attraction of new customers to the line. Federal classification will also mean that issues related to safety and speed orders on the line will be treated more favourably.

**POLICY PAPER**

**RAILWAY STATIONS AND HISTORIC  
STRUCTURES ON THE VANCOUVER ISLAND  
RAILWAY**



Prepared by Vancouver Island Railway Co.

July, 2003

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## RAILWAY STATIONS ON VANCOUVER ISLAND

### **PURPOSE AND INTRODUCTION**

One of the more exciting aspects of the new interest in the railway on the Island is the potential development of railway stations and other historic structures on the line.

At one time there were more than 50 stations on the line that served the passenger and freight service and were also community-gathering places. There are currently only a handful of stations, many of them in a state of disrepair, frequently boarded up and not in use. In other locations where there are now only foundations to mark these sites.

The location of these station sites, which lie in the heart of the downtown core in many communities, presents a number of interesting development possibilities that would benefit both the Railway initiative and the communities. However, in some cases, the development or modification of these sites would have to take into consideration their possible historic designation, and what effect this would have, if any, or plans for future development.

In addition to the stations, there are the historic railyard buildings on the Songees site in Victoria, and a number of historic bridges on the line. The focus here is on the stations.

Currently, the stations and station sites are largely redundant to the current rail service and not taken into account in the development of the line. Under the new arrangement with the corridor and most of the historic sites owned by the Corridor Foundation and the current stations and several of the sites owned by Vancouver Island Railway, there is the potential for a new approach that will revitalize the stations and once again make them an integral part of the railway, a community centre and a point of community pride once again. It will also enhance the railway service and provide revenue to the Corridor Foundation.

The purpose of this report is to outline the regulations and restrictions that exist concerning the transfer, modification, or development of stations along the line, so as how to best manage these sites while preserving their historic character.

It also sets out the position of the Vancouver Railway Company with respect to the development of the stations and the historic buildings.

### **HERITAGE DESIGNATION**

Over time, many of the stations had been demolished, or taken out of use. The continuing loss of heritage stations has resulted in a response from governments at all levels.

## ***Municipal***

In the interest of protecting the remaining stations, a number of the stations along the line have been designated as heritage structures by their respective municipalities under the provincial *Heritage Conservation Act*<sup>1</sup>. These are

- Duncan,
- Nanaimo,
- Qualicum Beach and
- Courtenay.

Under the Act, municipalities can seek to designate buildings as heritage sites, which are then registered with the provincial government. The level of protection sought will depend on the community's objectives. In Nanaimo, the railway station is one of only six buildings in the community to be afforded the highest level of municipal protection. This means that any demolition or requests for alterations to the exterior must be approved. There are no regulations relating to the interior of the station, although the community has stated an interest in being a part of any plans for redesign or alteration of the interior.

The station in Duncan was granted municipal heritage status in 1980 under the same Act. Although still owned by CPR, the city of Duncan is currently operating a civic museum at the site.

The city of Courtney has recognised the station as a heritage location, but the station does not have any registered status under the provincial *Heritage Conservation Act*.

## ***Federal – The Heritage Railway Stations Protection Act.***

In addition to municipal measures, the railway stations in Nanaimo, Qualicum, Courtney and Duncan were accorded additional federal protection under the *Heritage Railway Stations Protection Act*<sup>2</sup>.

Under the Act, the Heritage Minister, on recommendation of the Historic Sites and Monument Board of Canada, may designate railway stations or features of railway stations as heritage sites. Designation under this act exists independently of any municipal heritage designations, and carries with it different obligations.

Section 5 of the Heritage Railway Stations Protection Act states,

*5.(1) Unless authorized by the Governor in Council, no railway company shall*

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<sup>1</sup> *Heritage Conservation Act*, RSBC 1996 c. 187

<sup>2</sup> *Heritage Railway Stations Protection Act*, R.S.C. 1985, c.52 (4<sup>th</sup> Supp.)



- a) remove, destroy or alter or sell, assign, transfer or otherwise dispose of a heritage railway station owned by it, or otherwise under its control; or*
- b) alter any of the heritage features of a heritage railway station referred to in paragraph (a).*
- (2) Any railway company that contravenes subsection (1) is guilty of an offence and liable to a fine of not less than fifty thousand dollars and not more than one million dollars....*
- (4) Subsection (1) does not apply in respect of sale, assignment, transfer or other disposition of a heritage railway station to a railway company.*

Section 6 of the Act goes on to outline the procedure necessary to obtain permission to 'remove, destroy, alter, or to sell, assign, transfer or otherwise dispose' of a railway station. These requirements are further laid out in the *Heritage Railway Stations Regulations*, enacted under the Act. They specify that any group wishing to perform any of the above actions on a railway station must submit an application to the Minister detailing the following:

- Street address of station building. If no street address provide an appropriate land description (i.e. legal or descriptive).
- Type of disposition, i.e. sale, lease, donation etc. Specify if land and building not to be treated the same.
- Recent photographs showing the condition of the building (inside and out if possible).
- Date of proposed disposition (subject to federal approval) - could be as soon as possible following approval.
- Name and address of purchaser.
- Any relevant correspondence or documents available indicating purchaser's intended use and alteration of the building. Historic Sites/Parks Canada will request an undertaking to respect the station's "heritage character" as outlined in the Heritage Character Statement for each station issued by Historic Sites & Monuments Board. (If purchaser has plans showing work they should contact Historic Sites & Monuments Board to discuss the nature of the proposal.)
- Any correspondence received from municipality, other government bodies (including heritage department), cultural/heritage/citizens groups or individuals commenting on the proposed sale or alterations.
- Historic Sites/Parks Canada may ask municipal or provincial authorities to designate the building under applicable heritage preservation legislation.

- Name, title, business address and telephone number of the railway official responsible for the planned activity (i.e. disposition).
- Cost Centre number for charging notices of application to be published in newspapers.

Collectively, these sections indicate that a company seeking to buy, lease, and/or subsequent alter a federally designated station must apply in the manner outlined above. However, Section 5(4) would seem to indicate that this specific consent is not necessary for sales or transfers between railway companies, provided no alterations to the structures are made.

In the case of Vancouver Island Railway's acquisition from CPR of the historic stations on Vancouver Island, this would mean that this process must only be followed if substantial alterations to the structure intend to be made. Mere sale from CPR to Vancouver Island Railway would likely not require this application process.

The designation of the train stations as protected structures was made prior to the transfer of the railway to RailAmerica in 1998. The E & N, as currently operated, is a provincially regulated railway. It is important to note that Section 3 of this act specifies that this act applies only to railway companies to which Part II of the *Canada Transportation Act*<sup>3</sup> applies. In other words, the regulations only apply to federally classified railways. It is thus, possible at present, that the stations are not afforded the additional protection of the federal Act. It is unclear whether designation under the Act, once granted, is removed following a switch to provincial classification and regulation. It is the intention of Vancouver Island Railway to seek a reinstatement of the E& N Railway's federal designation.

However, it is not certain that, if lost, this status would be automatically regained following a switch back to federal classification. In order to best preserve the historic character of the line, it would be highly desirable to clarify the stations status under these regulations once federal classification of the railway had been regained.

Regardless of the uncertain application of federal regulations to the line, any planned development or upgrades of the stations would still have to meet local requirements. The majority of the additional requirements stipulated by the federal Act regard public consultation and notice. Given the multiple interests associated with the initiative, as well as the uncertainty surrounding the Act's application, it would be important that any development proposal for the heritage railway sites on the island consider the additional requirements of the federal regulations to the line.

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<sup>3</sup> *Canada Transportation Act*, S.C. 1996, c. 10

## POSITION OF ISLANDRAIL ON THE DEVELOPMENT OF RAILWAY STATIONS

### ***Ownership under new arrangement***

Under the proposed arrangement, IslandRail will be acquiring the railway stations, the two yards and collateral railway property not on the right-of-way. In terms of railway stations, it is important for the Railway company, the communities on the line and the Foundation, that the railway stations be developed consistent with the purposes and objections of the Foundation.

In the proposed draft purposes of the Foundation, the following are the objectives that should be considered here:

- *Maintaining the integrity of the corridor as a contiguous, special use community connection that will enhance the social and economic development of the Island.*
- *Maintain and encourage the development of environmentally friendly and safe rail freight and passenger rail services of all kinds. ... ..*
- *Safeguard the character of the corridor by preserving historic landmarks, structures, buildings and landscapes.*
- *Conserve the corridor and adjacent lands for the protection watersheds, scenic beauty, close-to-home recreation and to generally preserve and enhance environmentally sensitive areas and resources along the corridor.*

Most of the historic railway sites are on the corridor that will belong to the Foundation. Of the stations and buildings being acquired by Vancouver Island Railway, the status is as follows:

<b>Station Site</b>	<b>Building</b>	<b>Land</b>	<b>Historic</b>	<b>Ownership</b>
- Victoria	Yes	VIR	No	VIR
- Cobble Hill	No	Foundation	No	VIR
- Duncan	Yes	Foundation	Yes	VIR
- Chemainus	Partial	Foundation	No	VIR
- Ladysmith	Yes	Foundation	No	VIR
- Nanaimo	Yes	VIR	Yes	VIR
- Qualicum Beach	Yes	Foundation	Yes	VIR
- Parksville	Yes	VIR	Yes	VIR
- Courtenay	Yes	Foundation	Yes	VIR
- All other sites	No	Foundation	No	Foundation

This represents an odd mix of ownership. It also presents enormous opportunities for the railway company, the Foundation and the communities to collaborate in the redevelopment of the stations in a way they will meet the objectives of all of the parties.

### ***Objectives of IslandRail with respect to the Stations***

IslandRail has a number of objectives both with respect to all the stations on the line, as well as objectives for specific classes of stations.

### **Requirements for all stations**

For all stations, or any area where there train would have a scheduled stop, we would want to see the following:

- **A platform:** One of the potential advantages of passenger rail travel is ease of access for older and physically challenged individuals. This requires the ability to get on the train “at grade” which means that there needs to be a proper platform with handicap accessible ramps.
- **Comfort:** Wherever possible, we would want the platform covered, a place where individuals could sit and wait.
- **Security:** We would want to ensure that the station is attended, possibly as a result of some other activity (like a convenience store, for example), that it be properly lit, and that there are pay phones available.
- **Connection:** Preferably there would also be some kind of connection to the local community, through a transit stop, or a taxi stop, or some community linkage.

For some stations, all of the above would be a given. For others, it will be a challenge.

### **Classes of Stations**

IslandRail would like to see three different kinds or categories of stations. These are as follows:

- Stations that are key to rail operations
- Stations that support rail operations
- Stations that are important to the communities and are supported by rail.

**Stations that are key to rail operations:** There are at least five stations that are essential to the Railway Operation. These are stations, which are in some way a terminal on the line in the sense that trains would start or end their runs at the station. This requires that the trains overnight either at the station or in the vicinity, that there be maintenance capacity to clean, restock and fuel the trains,

that there be railway employees to operate the trains, sell tickets, etc. These stations are:

- Victoria
- Duncan
- Nanaimo
- Courtenay
- Port Alberni

Currently, the station in Victoria is clearly inadequate and would need to be replaced or relocated. The train station in Port Alberni is owned by the City and only services an excursion train. A new location needs to be considered.

We anticipate major development of the following stations:

- **Victoria:** Needs a new station, possibly at a new location. We would work with the City and transit authorities to develop a plan for a new station. A possible option would be to relocate the station to the rail yard as part of the redevelopment of that site.

This would be a longer term project and interim arrangements would have to be considered. As the Southern terminus of the line and as the station that needs to accommodate potentially the scheduled passenger, commuter and excursion services, the station would have to have considerable capacity and be tightly linked into the regional transportation system. Parking and station access would be major concerns that would have to be resolved.

IslandRail is committed to working with Victoria and the Regional Interests to develop a station that would serve the variety of needs that are being identified.

- **Duncan:** In addition to being an important stop on the Southern line in terms of the scheduled and passenger services, we expect Duncan to be a location where the railway company would overnight and service trains. We also expect to develop a railfreight and rail maintenance facility in Duncan in one of the industrial areas. Duncan would also be the Northern terminus for the morning Southbound trains.

The current station is a museum and on the corridor. The parking lot is currently leased to the City of Duncan and is the location of a large part of the Duncan Market on Saturdays. The adjacent property is owned by the City of Duncan.

We would like to see a development that would result in a proper platform, double tracking at the station site to allow trains to pass and, a waiting and

ticket facility. The development of the station and station area will require the collaboration of the City, the Foundation and IslandRail.

- **Nanaimo:** This is the largest of the stations on the Island and in the middle of the line. Nanaimo is also where the rail yard and barge are located and is currently the headquarters of the ENR. We anticipate that the IslandRail will be located in Nanaimo and we would locate the corporate offices of VIR in a renovated Train Station.

The Station and its lot will be owned by IslandRail. The corridor in front of the station will be controlled by the Foundation through a lease with RailAmerica, assigned to the Foundation by IslandRail. The adjacent property is either owned by the City or by private landowners.

We would see a major redevelopment of the station with the creation of a platform and double tracking. Nanaimo would be a terminal with significant train personnel in place. This would be where the Northern and Southern Trains would meet and we anticipate significant activity for the trains.

We would also see the Nanaimo Station become an integral part of the “Old Nanaimo” development in that area and an attraction of its own. There would be considerable space in the building for other organizations, and this would be an ideal location for Tourism Nanaimo and related organizations.

Development would require the cooperation of the Foundation, IslandRail, the City and adjacent land-owners.

- **Courtenay:** This station is owned by IslandRail but is located entirely on the Foundation owned Corridor. As the Northern Terminal for the Railway, we would like to see a substantial redevelopment of the site to allow for much greater capacity, the ability to receive larger trains (more cars) and to accommodate larger numbers of passengers. We would also want the new complex to be able to overnight equipment.

The station itself is in good condition but too small for the above. The additional capacity and the addition of a platform would have to be compatible with the historic station.

Redevelopment would require the collaboration of the City, the Foundation and IslandRail.

- **Port Alberni:** IslandRail does not own a station or station site in Alberni, but it needs one. While we do not anticipate a regularly scheduled service for Alberni, we consider this area to be one that will support excursion rail and linkages to the passenger vessels that use the port.

There are several locations on the current corridor that would lend themselves to a station development and there is the potential to create additional capacity at the current, historic station owned by the City.

IslandRail would want to work with the City and the District to develop a new station or add on to the existing station.

### **Stations that support rail operations**

This second category is of stations that would not necessarily be manned by IslandRail personnel, and would not be a place where we would overnight trains, but where the location of a station would be desirable and would add to and support the train operation.

This would include four of the stations or station sites currently owned by IslandRail. These are:

- Cobble Hill,
- Chemainus,
- Ladysmith, and
- Qualicum Beach.

The other locations where new stations would be desirable would be:

- Esquimalt
- Langford
- Shawigan Lake
- Cassidy

These locations would be developed either by the local governments, by local entrepreneurs or the IslandRail. Each would meet the criteria for stations set out above.

### **Stations that are important to the communities and are supported by rail**

This third category of stations are similar to the second, but of less immediate importance to rail operations. They may be important to the communities for recreational and related purposes, or they may be a sight where a local developer, entrepreneur or land owner would consider locating a station.

Locations would include:

- Niagra (Above Goldstream Park)
- Cliffside
- Crofton
- Wellington (Close to the Nanaimo Ferry)

- Coombes
- Cameron Lake
- Cowichan Station
- Nanoose
- Union Bay
- Buckley Bay
- Fanny Bay
- Others

IslandRail would work with the local communities and developers to create stations at these locations based on the potential of the station. Several of these locations would have significant recreational interest.

### **Funding Revenues**

The station sites and related development represents the potential for significant economic develop and enhancement of rail services. It also represents one of the areas where the Foundation would develop significant and on-going revenues from the developed stations.

There is also the prospect of significant financial support for station development. Softwood Lumber diversification funds would be available for station development and redevelopment in several areas. Historic stations could also access additional support.

However, the primary source of funding would be through partnerships and joint ventures which would be conventionally financed.

### **SUMMARY AND CONCLUSION**

The railway stations on Vancouver Island are a significant asset to the new rail initiative. Their locations and historic character offer a number of development opportunities. Much of the potential of these stations surrounds their historic character and placement within the heart of island communities.

While there are five stations that will be the primary focus of IslandRail in the initial stages, there are many development opportunities in other areas. F

The historic stations have local, and possibly federal regulations surrounding their development, these regulations are not overly onerous and largely concern preservation of the buildings' historic character which would be of high interest to both the Railway and the communities along the line.

As long as the municipal and federal requirements are carefully considered, there is nor reason why these assets cannot be developed to their maximum potential.





**POLICY PAPER**  
**REGULATIONS ON DISCONTINUANCE**  
**AFFECTING THE VANCOUVER ISLAND**  
**RAILWAY**



Prepared by Vancouver Island Railway Co.

July 2003

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## **INTRODUCTION**

The E & N railroad is currently operated by RailAmerica (RA) as a provincially regulated railroad and as such the operation of the railway is governed by the provincial *Railway Act*.<sup>1</sup> Although the current operation of the E & N Railway is subject to provincial regulation, the fractured ownership of the E & N means that should an attempt be made to abandon the line, the rules governing this process would end up being split between Federal law, which offers extensive protection for the line, including public input and dispute resolution where required, and the Provincial law, which, on its surface, offers virtually no protection for an abandoned line.

The purpose of this report is to develop a clear understanding of the Federal and Provincial regimes around the decommissioning and abandonment of rail corridors, and to then understand how these would apply to this line. The report will demonstrate that the current provincial regulatory regime in British Columbia is inadequate when compared to the more onerous obligations required under federal law, and that at very least new regulations should be considered to govern similar situations of mixed ownership in order to best protect the community and business interests in the line.

## **DISCONTINUANCE PROCESS UNDER FEDERAL REGULATIONS**

The process under which federal railway companies may seek to discontinue or transfer railway lines is contained in sections 141 to 146.1 of Division V, Part III of the *Canada Transportation Act*<sup>2</sup>. (CTA). The railway line transfer and discontinuance process provided for in the CTA applies to all railway lines held by railway companies that are under the jurisdiction of the Parliament of Canada.

The attached excerpts from the Canadian Transportation Agency's guide *Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations*<sup>3</sup> outline this process. In brief the regulations dictate that any federal

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<sup>1</sup> *Railway Act*, RSBC, c.395, s.10

<sup>2</sup> *Canadian Transportation Act*, S.C. 1996, c. 10

<sup>3</sup> *Transfer and Discontinuance of Railway Line Operation and Railway Track Determinations*. Taken from the Canadian Transportation Agency website. [http://www.cta.gc.ca/rail-ferro/disco/transfer\\_e.html](http://www.cta.gc.ca/rail-ferro/disco/transfer_e.html).

company seeking to transfer or discontinue a line must first publicly advertise the availability of the line, or any operating interest that the railway company has in it, for sale, lease or other transfer for continued operations. This advertisement must include the company's intention to discontinue operating the line if it is not transferred. A railway company cannot advertise the line until it has indicated its intention to discontinue the line in its three-year plan for at least 12 months.

The regulations further dictate that the railway company must offer the railway line for no more than net salvage value to the federal, provincial or municipal governments through whose territory the railway runs. Public consultation is an important and required part of the entire process.

## ***DISCONTINUANCE PROCESS UNDER PROVINCIAL REGULATIONS***

### ***The Railway Act***

In comparison with the detailed procedure for companies wishing to discontinue operations on a federal railway, provincial requirements are much less onerous. The regulations governing the obligations of a company wishing to discontinue operations on a provincially regulated railroad are found in the British Columbia *Railway Act*. Section 160(2) of the Act states:

“A company must not abandon a line of railway without first giving 30 days notice to the minister of the proposed abandonment.”<sup>4</sup>

On first examination, this provision would appear to make discontinuance extremely easy under provincial regulations. However, although the provincial requirements are clearly less onerous than their federal counterparts, other portions of the *Railway Act*, as well as Environmental Assessment Legislation would appear to make the process more difficult than simply giving 30 days notice. Section 160(1) of the *Railway Act* also outlines that a company seeking to abandon a line must, upon being ordered to do so by the Minister, ‘remove every bridge, structure or other thing that in the opinion of the minister is likely to menace public safety, create a fire hazard or obstruct a stream.’<sup>5</sup>

On Vancouver Island, this requirement would make decommissioning the railway especially onerous, given the number of trestles and bridges on the line.

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<sup>4</sup> *Railway Act*, RSBC c.395, s.160(2)

<sup>5</sup> *Ibid.*, s. 160(1)

Coincidentally, this would be especially significant on the RA-owned Parksville to Port Alberni portion of the line.

Section 24 of the *Railway Act* concerns changes or alterations made to provincial railways. Section 24(1) states that if any “deviation, change or alteration” is required by a company to be made in a “railways or any portion of it already constructed” a “plan profile and book of reference” that shows the proposed changes must be submitted for the approval of the minister similar to that submitted on original construction of the line.<sup>6</sup>

Section 25(2) goes on to emphasise that “A company must not make any change alteration or deviation in a railways or a portion of it until section 24 has been fully complied with.”<sup>7</sup>

Although these sections do not specifically refer to the full removal of structures that would accompany decommissioning, the language of the section is broad enough to capture this occurrence. It is hard to see how tearing up rail or removing bridges and trestles could not fall under the language of the section, as a “deviation change or alteration”. Thus a company seeking to discontinue and therefore, remove rail infrastructure would appear to be caught by the requirement to submit a full plan of the proposed changes for approval by the minister. It is unclear how this would change the notice period of 30 days outlined in section 160, but it would likely have the effect of delaying the process considerably. Whatever the notice given, a company could not begin tearing up the track until the Minister had given his approval.

## PROVINCIAL ENVIRONMENTAL ASSESSMENT LEGISLATION

Provincial Environmental Assessment legislation encompasses far more than straightforward environmental protection. This type of legislation has evolved to become a process of broad based project review that includes consideration of economic, social heritage and community interests.

A decision by RA to discontinue rail operations and remove rail infrastructure would also likely fall within the list of projects subject to the provincial *Environmental Assessment Act*<sup>8</sup>, and thus be subject to a lengthy review process before any action could be taken. The new Environmental Assessment Act encompasses modified regulations as to what can be classified as ‘reviewable

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<sup>6</sup> Ibid., s. 24

<sup>7</sup> Ibid., s.25(2)

<sup>8</sup> *Environmental Assessment Act*, SBC, 2002. c.43

projects' by the office. According to the Ministry's own guide to the Environmental Assessment process, there are three ways a project may be considered as reviewable.

- If it falls within a category of projects that is included in the Reviewable Projects Regulations (RPR) and meets or exceeds the prescribed thresholds
- The Minister of Sustainable Resource Management designates it as reviewable; or
- At the request of the proponent, the Environmental Assessment Office designates it as reviewable.<sup>9</sup>

Construction of a new railway line or modifications of such a line are both included as projects that are subject to environmental review. The regulations are less clear as to whether dismantling of a line would automatically be included, although given the scale of such a operation, and the large undertaking in terms of removal of bridges and other structures that would be required, it is likely the regulations cover this aspect. Table 14 of the RPR states that an assessment for modification of an existing facility 'does not include the dismantling and abandonment phases.' This would apparently indicate that the dismantling of a railway would require separate consideration from other modifications to the line.

Should dismantling of the line not fall within the list of 'reviewable projects' it could still be designated as such by the Minister under the regulations. Section 6(1)a of the Environmental Assessment Act states the Minister may designate a project as reviewable if:

6(1)(a) The minister is satisfied that the project may have a significant adverse environmental, economic, social, heritage or health effect, and that the designation is in the public interest.

Section 7 of the Act further states that an individual or organisation seeking a project to be classified as a reviewable project must apply to the Minister in writing and state the reasons for which the applicant wishes the project to be designated as a reviewable project. In the past, it has been municipalities who have applied to the minister for review under this section in the goal of protecting community interests.

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<sup>9</sup> *Guide to the British Columbia Environmental Assessment Office, March 200.* Government of British Columbia. p. 13.

A strong case could be made to the minister on this basis should any provincially regulated railway seek to discontinue operations. This would particularly be the case in dealing with a line of as great historical and community importance as the E & N Railway.

### **WHOSE LINE IS IT ANYWAY?**

Although the current operation of the E & N Railway is subject to provincial regulation, the fractured ownership of the E & N means that the rules governing discontinuance and abandonment could end up being split between Federal law, which offers extensive protection for the line, including public input and dispute resolution where required, and the Provincial law, which, on its surface, offers virtually no protection for an abandoned line. The Canadian Transportation Agency's regulations and policy indicate that the E & N Railway could again gain federal classification. It is the intention of Vancouver Island Railway Co. to seek this status. Such a move would have clear advantages for the business, maintenance and the conducting of operations on the line and would, more generally, bring the railway under the jurisdiction that more positively supports the future of rail.

The application of the CTA to the E& N Railway was made clear in a previous ruling by the agency. Decision No. 159-R-2002 of the CTA, dated April 9<sup>th</sup>, 2002, titled *In the matter of an enquiry by Top Shelf Feeds Inc. relating to any obligations that the Canadian Pacific Railway Company may have regarding the discontinuance of rail freight service on Vancouver Island*, the Agency ruled that

“As for the discontinuance of railway operations on Vancouver Island by E & N, the agency has no jurisdiction over this matter given that E & N is and operates a provincial railway pursuant to Certificate Nos. 6229 and 6226 issued by the Province of British Columbia”.

However, RA only owns the middle portion of the line, as well as all but small portions of the Parksville to Port Alberni Corridor. The remainder of the line is operated pursuant to a lease from CPR, which retains ownership of those segments of the line. As the above ruling reflects, the CTA clearly indicates that any obligations CPR had under the Act ceased at the moment of transfer through lease. Should RA abandon operations, those leases would revert back to CPR, and these portions of the line would again fall under the jurisdiction of the CTA. Discontinuance of these portions of the line would thus be subject to the more onerous obligations and lengthy consultation process described above. Amendments



to the *Canadian Transportation Act* now before Parliament would also require that should CPR attempt to discontinue and dismantle their portions of the line, it must first advertise the line for sale on a commercial basis, and if a sale is not possible, it must then offer it to governments. These provisions were meant to preserve rail corridors for future use by communities as urban transport systems. The wisdom of such forward thinking is clear. The preservation of such corridors would be invaluable to the rapidly growing communities of Vancouver Island.

Unfortunately, the RA owned portions of the line are not subject to these new regulations. Only limited notice is required before dismantling can begin, barring application of other provisions in the B.C. *Railway Act* or provincial environmental assessment legislation.

## **RECOMMENDATIONS**

It seems unreasonable that two portions of a continuous rail corridor could be subject to differing regulations concerning abandonment and dismantling of infrastructure. It is precisely this situation that exists on Vancouver Island. Not only does this raise serious practical questions, but also demonstrates a severe lack of foresight. We strongly urge the provincial government to adopt more onerous regulations surrounding the discontinuance of provincially regulated lines. Provincial Railways have taken on an application far beyond their original purpose as small line resource roads. Throughout the province, and on Vancouver Island in particular, railway lines have taken on new importance as links between remote communities, commuter and tourist networks, instigators of economic growth, and an environmentally sound alternative to car and truck transport. It is thus vitally important that every effort be made to strengthen and preserve these lines for the future. At very least, efforts must be made to bring such requirements up to the level of the federal regulations. Such an expanded protective structure would be in line with new thinking on the subject of transportation and economic development in Canada and would best protect the heritage, and continued growth of communities along such lines.

Efforts should also be made to clarify the situation when a line is under fractured ownership, such as is the case with the E & N Railway. The present lack of a clear guideline as to how this situation would be resolved is extremely troublesome. A solution to this problem could be accomplished by clearly providing under which jurisdiction a line of mixed classification or ownership would be regulated or by providing special regulations for such a line. This would clearly be in the best interest of communities and businesses dependent on the line, and would best protect the interest of all owners of the line.

## **CONCLUSION**

Throughout the province railway lines have taken on new importance as links between remote communities, commuter and tourist networks, and instigators of economic growth. They have also received new attention as an environmentally sound alternative to car and truck transport following the passage of the Kyoto Accord. On Vancouver Island in particular, the E& N Railway has been identified as a vital community asset to encourage growth in business and tourism, as well as serving as a vital transport link for a growing and ageing population.

The present provincial regulatory scheme does not do enough to protect these railway lines. What little protection that is offered is unclear and largely subject to the discretion of the Minister. By setting out clear regulations in line with the strict federal requirements surrounding decommissioning and regulation of mixed ownership lines, the province would be sending a strong message to their belief in the importance of rail networks to the growth and development of British Columbia communities. It is vitally important that every effort be made to strengthen and preserve these lines for the future.



**VIA FACSIMILE**

December 1, 2001

**Ministry of Transportation**  
PO Box 9055,  
STN PROV GOVT  
Victoria, BC, V8W 9E2

**For the Attention of the Hon. Ms. Judith Reid**

Dear Ms. Reid:

**Re: Urban Transportation Showcase Program – Friday November 30, 2001 Headline – Nanaimo Daily News**

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I am pleased to offer the following package of information - recently submitted to the Federal Urban Transportation Showcase Program - on behalf of the City of Nanaimo.

The attached proposal highlights an innovative alternative for use of the E&N Railway Corridor. In light of the recent headlines and announcement of a cessation of freight service on this corridor we hope this proposal might offer a positive and timely suggestions for action.

This proposal was initiated by the City of Nanaimo's strategic planning department as a visionary approach to dealing with transportation and community planning issues. Specifically the submission was intended to attract up to \$10 million dollars of federal funding to Vancouver Island as part of an Urban Transportation Showcase Program.

The preparation of this expression of interest was developed through a broad consultation with local regional and provincial agencies with mandates affecting transportation issues within this corridor. These consultations were undertaken within a focus group format with representation from: Rail America, The City of Nanaimo, Regional District of Comox Strathcona, Regional District of Nanaimo, Cowichan Valley Regional District, Capital Regional District, BC Transit, RTL Consulting Ltd., the Land Use Coordination Office, and the Nanaimo Port Authority.

The ideas presented in this expression of interest are based on innovative but practical solutions driven and developed through existing programs and with the support and leadership of private sector partners such as Rail America.

Expressions of interest submitted under the UTS program are now under review with the intent of selecting 12 – 15 projects for further development as a more formal and complete project proposal. Selection as one of this group will provide \$30,000.00 of UTS funding to support the further development of these ideas. Additional offers of funding and in-kind services have also been made by focus group members in the event that this project is selected for this shortlist. Decisions are expected on short listed candidates by December 31<sup>st</sup>, 2001.

I would be pleased to have the opportunity to discuss this exciting, positive, and proactive idea with your Ministry in the coming days.

Sincerely,

**LANARC CONSULTANTS LTD.,**

**Douglas Backhouse, Landscape Architect, Principal**

**NANAIMO**

# Daily News

**Friday, November 30, 2001**

**Since 1874**

**(incl. GST) \$1.00**



## RailAmerica cuts Vancouver Island freight service

**By NELSON BENNETT**  
Daily News

RailAmerica is suspending regular freight service on Vancouver Island. And the Vancouver Island Railway Society is saying "I told you so."

Florida-based RailAmerica made the announcement by press release Thursday afternoon.

A company spokesperson could not be reached for comment.

"We are disappointed that the discontinuance of freight service will result in significant staff reductions and destroy our ability to continue serving rail freight customers on the Island," said senior E&N vice-president Robert Parker.

It's not yet known how many jobs will be lost.

Wayne Stewart, of the Vancouver Island Railway Society, was not surprised at the announcement.

Stewart said his society cautioned the CPR against selling out the E&N Railway on Vancouver Island in 1998, when RailAmerica first took over.

Stewart said he met with Transportation Minister Judith Reid Nov. 9.

"We told them this was coming, and what are you, the province, going to do? It was a bad move from Day 1."

Stewart said Reid gave assurances she would be pressuring her federal counterparts to live up to their respon-

sibility to provide passenger and freight service on the island. Reid could not be reached Thursday.

According to its press release, RailAmerica will discontinue regular freight service in January because major shippers on the island have been lost, making the freight service "uneconomical."

The company blamed a Powell River pulp mill that closed recently, and "a major shipper" from Port Alberni

that has started shipping by truck.

Stewart said the major shipper is the Norske Skog paper mill in Port Alberni. Stewart said RailAmerica wanted to up rates, so the mill opted to ship by truck.

RailAmerica said it will continue to provide tracks and crews to operate VIA Rail's passenger service between

Victoria and Courtenay, but would be talking with VIA about future passenger service.

## **The E&N Corridor -- Showcasing a Trans Regional Transportation Strategy**

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An Expression of Interest for an Urban Transportation Showcase  
for the East Coast of Vancouver Island

Submitted to the Urban Transportation Program of Transport Canada  
Submitted by the City of Nanaimo, B.C.

October 31, 2001

## The E&N Corridor -- Showcasing a Trans Regional Transportation Strategy

### The Idea

With this submission, the City of Nanaimo is expressing its interest in developing a project that showcases the adaptive, enhanced use of an existing rail corridor that connects every major population centre on the east coast of Vancouver Island -- from Victoria to Courtenay. Known as the Esquimalt and Nanaimo (or E&N) Railway, the goal is to transform an under-utilized rail corridor into a viable passenger facility with long term benefits to the Island's environment, economy and quality of life.

This showcase project is presented within the context of an integrated 'trans-regional' transportation strategy. While it is being submitted by the City of Nanaimo, it includes broad support from municipal and regional governments, federal and provincial agencies, and private sector interests along this populated corridor.

In this expression of interest, we will:

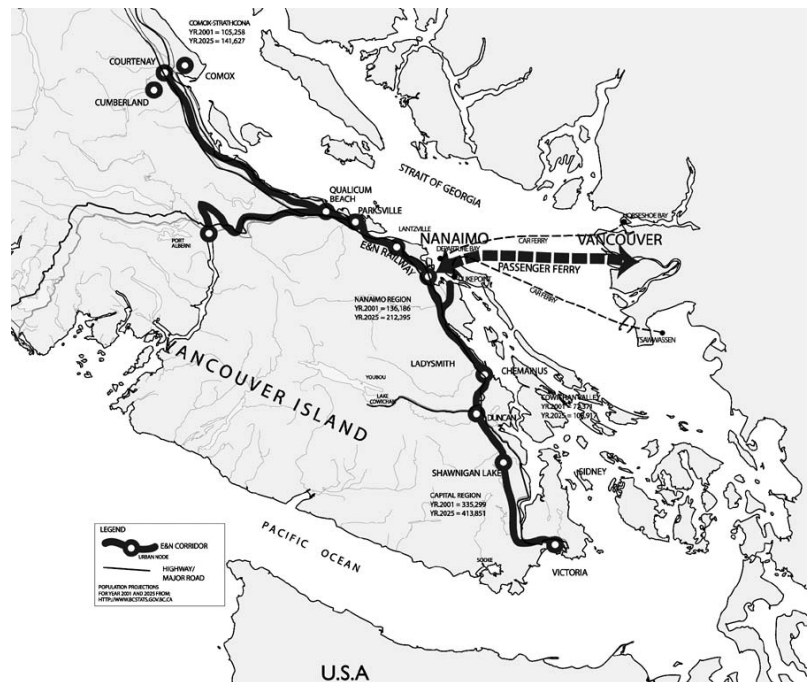
- Present an outline of the proposed trans-regional transportation strategy that forms the foundation for the showcase project.
- Illustrate how the existing E&N corridor can be adapted to provide a viable transportation alternative that can substantially reduce greenhouse gas emissions.
- Describe how the showcase project will also provide direction about infrastructure priorities, land planning, financial commitments, public information and monitoring to support a sustainable transportation strategy that continues to incrementally reduce greenhouse gas emissions for many years to come.
- Demonstrate how our detailed proposal in stage two will leverage Urban Transportation Showcase Program funding to advance a business plan for this showcase project including budget commitments, financing plans, and implementation milestones.

### The Goal

This showcase project – transforming the E&N corridor into a viable passenger service – is a key component of an East Vancouver Island transportation strategy. Its primary goals are:

- To more effectively use this existing transportation corridor as a more sustainable means of reducing greenhouse gas emissions and responding to growth on Vancouver Island than continuing to add more highways and "black top".
- To coordinate the efforts of 4 regional districts and their member municipal governments, 2 provincial government agencies, 3 Crown corporations and 2 (or more) private corporations to meet common goals around transportation, land use and sustainability on Vancouver Island.

In the long term, the E&N corridor is one component of a trans-regional transportation strategy. This strategy builds on a vision of an integrated, sustainable transportation network supported by on-going partnerships and committed reorganization of resources.



## The Vision

*The Urban Transportation Showcase Program provides a unique opportunity to develop an integrated transportation strategy for east coast Vancouver Island - one that guides decisions that affect the form of our communities and transportation infrastructure for the next 20 years. Many examples already exist where the absence of a visionary strategy has produced unlivable communities. In the absence of a vision of the longer view, we may also be on that default trajectory. On the other hand.... IMAGINE what we could look like in 2025.....*

Along the east coast of Vancouver Island, most development has been contained in urban nodes separated by well-defined rural resource lands and green space, and linked by an efficient, multi-modal transportation network.

OR...

*Eastern Vancouver Island has developed like so many North American situations, as a continuum of urban, suburban and commercial sprawl along the Island Highway corridor.*

Traffic along the Inner Island Highway, though at high volume, is running smoothly. The original road configuration, built 25 years ago, has been able to support a steadily increasing population.

OR...

*Road rage reigns on the Inner Island Highway with bumper-to-bumper traffic from Qualicum to Duncan, despite the expansion to three lanes and addition of several expensive fly-overs.*

It's 7:30am, and passengers in Courtenay are boarding the E&N commuter train, heading for Nanaimo by 8:30am for business there or to connect to the passenger ferry to Vancouver - or on to Victoria by 9:30am. A few cyclists are securing their bikes in the stalls at the end of the train car. Some passengers are already working away at laptop computers and cell phones, but others are relaxing in the comfortable surroundings, enjoying the Island scenery.

OR...

*It's mid-afternoon, and that lone passenger rail car jolts its way along the E&N line on its once-a-day run from Victoria to Courtenay. There's one patron on board – the schedule is ill suited to commuters needing same-day service, so most are battling the highway traffic.*

In Nanaimo, the train passes the Go-bus travelling along the now tree-lined "old" Island Highway (19A), filled with commuters heading downtown. Walkers and cyclists are enjoying their ride to work along the ever-popular E&N Trailway.

OR...

*The old Island Highway through Nanaimo is choked with vehicles during rush hour. Walkers and cyclists have abandoned the E&N Trailway during most times of day because of vehicle exhaust and increasing conflicts with cars at road crossings.*

Along with the regular floatplane schedule, a thriving passenger ferry offers almost hourly service from downtown Nanaimo to downtown Vancouver. The passenger system has relieved the pressure on the BC Ferry vehicle service in Nanaimo. That infrastructure runs smoothly with few bottlenecks at terminals and no major capital outlays in 10 years.

OR...

*Car ferry service between Nanaimo and Horseshoe Bay had to be expanded significantly at great expense to BC taxpayers, to service the ever-increasing flow of vehicles to and from the Island. Even so, there are still long line-ups, traffic snarls, grinding gears and choking exhaust around terminals, and interminable conflicts with surrounding neighbourhoods. AND NOW - construction of a fixed link to the mainland has commenced, at huge cost and after years of battling over environmental impacts and fears of the effect that a 10-20-fold increase in traffic will have on the quality of life on the Island.*

Pat McCommuter leaves his home in Chase River to walk over to the train station in the Town Centre. A 10-minute ride takes him to downtown Nanaimo, where he takes the Fitzwilliam Street tram to the waterfront to board the passenger ferry to Vancouver, then on to Burnaby by Sky Train for a 10 AM meeting on zero-emission transit. Chase River to Vancouver in 2 hours without a car has made living on the Island affordable for Doug and his family.

OR...

*Pat McCommuter has been sitting in the ferry line-up since 5 AM. If he can squeak on to the 8 AM ferry, he might be only 1 hour late for his meeting on traffic disaster planning in Burnaby. He would have preferred to walk on to the ferry, but parking within a reasonable distance is impossible, and the ferry terminal is such a hostile environment for walking that he gave up that approach. Alas, if they had only listened to him 20 years ago.*

## The Context - the Opportunity

The east coast of Vancouver Island is among the fastest growing regions in Canada. With a population of about 560,000 only 10 years ago, local governments within this corridor have been faced with the constant and growing challenge of providing transportation and other infrastructure services to a population that will be over 800,000 ten years from now.

With more people comes the demand for increased mobility. More trips, more cars. Infrastructure development supporting this traffic has already changed the landscape of east Vancouver Island dramatically. To date, trans-regional transportation planning has focused on the Inland Island Highway, which has undergone major expansions over the last 5 years. More are identified to address traffic "bottlenecks". Local and provincial agencies are asking if there are other ways of meeting mobility demands without the high financial and environmental costs associated with this approach.

The E & N rail corridor, established at the time of Confederation, passes directly through the downtown cores of the major population centers along the east coast of the Island. However, it is strangely disconnected from the people and economic activities that sustain these communities. Substantially under-used, this corridor serves a small amount of industrial freight and an even lesser amount of passenger traffic.

In spite of this disconnection, the rail corridor provides significant opportunities for providing transportation alternatives and reducing greenhouse gases. Some of the elements that can propel this idea are:



- *An existing link among major communities on Vancouver Island.* The E & N runs from the centre of Victoria, over the Malahat to the Cowichan Valley and the centre of Duncan. It then travels north to Nanaimo, Parksville, Qualicum Beach and on to Courtenay.
- *A viable private sector partnership with the current line owner, Rail America.* Rail America has acknowledged that its current freight business is unlikely to increase and has expressed interest in reviewing opportunities for commuter traffic along this line.
- *A substantial federal transportation subsidy that could be redirected toward effective reduction in greenhouse gas emissions and a progressive transportation alternative.* This corridor presently has one VIA 'bud car' that makes a daily round trip from Victoria to Courtenay and back. This project will review the current VIA service, seeking options that support more attractive passenger services.
- *Strong interest from regional transit authorities in finding ways to serve a growing interurban transportation demand.* Public bus systems operate within all major communities and their immediate area. However, inter-community service is constrained by the jurisdictional boundaries under which these transit authorities operate. The local systems can be organized to provide efficient linkages to rail and ferries, to complement a full range of trans-regional passenger services.
- *Support from regional governments grappling with growth management.* Each of the four regional districts has been working on growth management strategies over the past 5 years. A key aspect of their strategies is transportation planning and its linkage to land use decisions. The opportunity to develop a viable and robust passenger service along this corridor will support these planning objectives.
- *Support from municipal governments looking for ways to rejuvenate downtown areas.* The current form of land development has seen a substantial shift from traditional downtowns. Several communities are making significant political and financial commitments to support their downtowns. The presence of a passenger rail service in the heart of these communities will provide a significant boost to these efforts.
- *Local and regional planning that focuses on nodal development.* Both municipal and regional land use planning emphasize urban containment and nodal development around community cores. Within these nodes, development potential adjacent to the existing corridor can support corridor redevelopment through increased valuations and tax revenues.
- *A direct passenger link between Nanaimo and downtown Vancouver.* Ferry service between Nanaimo and the lower mainland, which serves the mid and north island, currently emphasizes vehicle transport with walk-on passenger as an ancillary service. An attempt some 10 years ago to provide a passenger-only service from downtown to downtown was short lived, but is now regaining interest. The viability of such a service increases if it can be integrated with a passenger service that links to destinations up and down the Island.



- *Significant geographical constraints to continued expansion of the highway.* The Malahat Pass north of Victoria presents a major bottleneck along the Inland Island Highway. The rugged terrain makes expansion particularly expensive, disruptive and impractical. On the other hand, the existing rail corridor through the Malahat bypasses this bottleneck and provides an immediate and effective alternative.
- *An important tourism and recreational economy interested in unique, multi-modal transportation experiences.* A burgeoning tourism and outdoor recreation industry feeds off the Island's 'supernatural' qualities and rural character. A rail alternative to major tourist destinations, and one that encourages enjoyment of the Island's attractions, is an obvious boon to the Island's economy.

## The Approach

The adaptive reuse of this existing corridor will require coordinated planning and joint public and private sector financing. In preparing this expression of interest, the City contacted and hosted a focus group of key decision-makers from local and regional planning, engineering, and administration departments, transportation authorities, provincial agencies, and private sector transportation and business interests (see Appendix A). We intend to broaden this representation in stage 2 of the project.

The approach outlined below is led by the City, but has been crafted through the wisdom and understanding of these decision-makers. Although many of the details of this approach will be developed in greater detail through the submission of a second stage proposal, we have identified a six-part framework for planning the showcase project and developing the integrated transportation strategy. The framework consists of six components (the framework is summarized schematically in Appendix B):

- Transportation Infrastructure and Operations.
- Public and Private Sector Financing.
- Administration.
- Transportation and Land Use Planning.
- Public Information and Involvement.
- Greenhouse Gas Assessment and Monitoring.

### I. Transportation Infrastructure and Operations

The adaptive redevelopment of the existing rail corridor to support greater passenger use may take a variety of forms. It can initially be a simple redeployment of the existing passenger service, through to infrastructure upgrades for quicker, more frequent trains. During the development of the stage two proposal, we will work with the current rail owner and VIA Rail to investigate the viability of options for project phasing including:

- Develop a business case for service upgrades based on consultations with current operators and market surveys.
- Review operational changes to the existing service such as scheduling to support commuter routes and timetables. For example, service frequency could be increased on individual sections of the corridor where studies indicate high levels of inter-community traffic (e.g., between Duncan and Victoria).
- Create a development plan for infrastructure upgrades over a 4-year period to improve service times and safety.
- Investigate private sector partnerships for station upgrades in conjunction with new land development proposals around these stations.

In the context of an integrated transportation strategy, ancillary services that would support use of the rail corridor will also be examined. These include:

- An existing proposal for a passenger-only ferry. This proposal to link downtown Vancouver with downtown Nanaimo has high potential to provide "greener" transportation alternatives for residents commuting to and from the mainland as well as for tourists visiting the Island. Establishing a direct link to the rail corridor at the Nanaimo end would support the financial viability of both services.



- Bus/transit service: Discussions with BC Transit have identified a mutually beneficial relationship where a rail connection can provide service between communities that is not easily managed by individual transit authorities.
- Trails and pathways: Many communities are actively developing trail networks to provide local access alternatives. The E & N corridor itself provides opportunities for "rails with trails", such as is being developed by the City in cooperation with Rail America. A passenger rail service can also provide access to "active" transport networks and major commuter and recreational destinations, such as the Galloping Goose Trail in the Capital Regional District, the Cowichan Valley Trail, the Nanaimo Parkway Trail, and the Trans-Canada Trail.

*The detailed proposal in stage 2 will contain:*

- *Terms of agreement and financial commitments of the stakeholders involved in the design of an upgraded rail corridor.*
- *Proposed major milestones in upgrading the rail corridor, including budget estimates for each milestone.*
- *Terms of reference for market and physical and technical feasibility studies for each milestone, and schedules for their completion.*
- *An outline of a "business plan" for completion of each milestone, which would be adapted to the results of market and feasibility studies.*

## 2. Public and Private Sector Financing

*"With a growing population we need to look at transportation alternatives. There are real challenges in coordination between the municipal and provincial levels of government. The way it is now, the Ministry of Transportation and Highways can develop highways with little attention being paid to regional planning. And we're told by the provincial government that we'll have to put in \$8 million for a parking lot at a new cancer clinic, when \$2 million could be spent on better transportation services to the hospital."*  
Jacques Campbell, Capital Regional District (speaking at Vancouver Island Futures Forum, 1999)

An important motivating factor in the development of this expression of interest is the requirement to provide transportation solutions through more effective *financial* partnerships. Under this component, the capital and operational costs would be explored with all stakeholders. It would involve:

- Regional and municipal governments: review of current transportation budgets with the objective of identifying opportunities to redirect existing funds or services to support efficient operation of the corridor within their respective jurisdictions; e.g., upgraded road crossings and/or improving connections to the corridor.
- Provincial Ministry of Transportation and Highways: review and potential redirection of highway construction budgets that recognize cost savings by reducing demand on the highway infrastructure. For example, a more active rail alternative through the Malahat could reduce the need to spend many millions of dollars to upgrade road connections through this section.
- Transport Canada: replacing the current VIA rail subsidy for running this system with funding to support its transformation to a more effective and self-sustaining service.
- Rail America: As the current rail operator, this company will have an important role in the development of the financial and operational aspects of this proposal.
- BC Transit: budget reconsideration in light of the rail service providing the inter-community connections of the larger region.
- Other private sector funding sources: Current literature points to opportunities for joint venture projects for passenger facilities,

stations, etc. The central location of existing stations makes them ideal candidates for urban development and redevelopment in the context of an improved passenger service. These partnership dollars will provide an effective catalyst for supporting infrastructure development.

- Provincial and federal infrastructure funding sources: Both senior levels of government offer municipal infrastructure grants. Conceivably, local governments along the corridor could apply to these programs to support its transformation.

*The detailed stage 2 proposal will contain:*

- *Confirmed budget allocations, staff and other in-kind resources from project partners, equivalent to 2/3 of the total project budget for the timeframe of the UTS funding.*
- *Funding being applied for or confirmed from other funding programs.*
- *The budget support from the UTS program and how it would be applied over the timeframe of the program.*

*"Addressing the needs of regional travelers will be an important issue for transit during this period.... One solution may be for local transit service to feed into the regional services, including private inter-city buses and the E&N Railroad. Operation of the E&N was recently taken over by Rail America. Although they are focusing on freight service, there are also likely to be changes in the passenger service. ... If commuter service on the E&N is introduced, changes in local transit service to better serve stations at Shawnigan Lake, Cowichan Station, Duncan, and Ladysmith would be required. This could likely be accomplished through readjustment and reallocation of existing service rather than a service expansion."* BC Transit Cowichan Valley Transit Business Plan, August 2000

### 3. Administration

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A follow-up to the focus group discussion held in the preparation of this expression of interest is planned between now and December, to broaden the range of partner involvement and to deepen the understanding of the critical elements of this project. One outcome of these sessions is intended to be the establishment a more formal steering committee to coordinate and oversee this project, with an initial mandate to assist in developing a detailed stage 2 proposal.

In the longer term, the initial focus group identified the need to establish a coordinating body to oversee planning, funding and implementing an integrated Vancouver Island transportation strategy. Many possible forms of a "transportation authority" were described, but all agreed to the need to create a semi-autonomous body with independent funding and public/private representation. Possible models to be researched in parallel with this project include: Translink (the current transportation authority in the Lower Mainland); the Greater Nanaimo Water District; the Fraser River Estuary Management Program; and the Fraser Basin Council Society.

*The detailed stage 2 proposal would contain:*

- ❑ *Firm indication of the parties committed to the project.*
- ❑ *An outline and terms of reference for a coordinating body, and the organizational model describing how this project will be managed.*

### 4. Transportation and Land Use Planning

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Integrating the planning and development of the rail corridor with land uses along its length would focus on a "collaborative review" with local governments of official community plans and regional growth strategies in the project area. The objective would be to come up with common policies that reflect the strategic requirements to support the rail corridor. Many existing community and regional planning documents already include policy statements supporting the development of this corridor.

Through a coordinated review of these policies, attention could be focused on protecting the rail corridor from encroachments by other land uses, and the application of "nodal" development to support the use of the corridor. Ultimate implementation would be in the form of bylaw and plan amendments by member local governments.

*The detailed proposal would contain:*

- ❑ *A complete listing of local and regional plans to be included and the planning agencies to be involved.*
- ❑ *The components and timing of the review process.*

*"Policy 5A. Development in nodes will be designed to minimize dependence on the automobile, and will emphasize walking, cycling and transit.*

*Policy 5D. Residential and commercial densities in nodes and along transit routes and the E&N corridor will be designed to support economical, convenient transit service."*  
Regional District of Nanaimo  
Growth Management Plan,  
Bylaw no.985 adopted Jan.14,  
1997

### 5. Public Information and Involvement

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Implementing the changes anticipated by this showcase project will require an ongoing communication program that is aimed at supporting community and regional planning objectives and promoting the marketing and business development of the rail service. The major elements in promoting public awareness, comment and buy-in might be:

- Creating and promoting a "vision" that describes the benefits of these transportation alternatives - what a future Vancouver Island could look like under this scenario. This vision could be communicated through this project directly, but also through the ongoing community plan processes undertaken by each of the four regional districts and their member municipalities.
- Market surveys that explore transportation preferences the public: "which ones are of greatest interest to you? Which ones would you use and for what purposes?"
- Assessing the project steps as they are implemented: determining customer satisfaction and what improvements are needed.

Public input is vital to the project, and a variety of methods will be used strategically, based on past experience as to "what works". These methods can include: open houses, newspaper articles, videos that can be aired on community cable stations and in public forums, focus groups, questionnaires and market surveys, TV talk/phone in shows.

*The detailed stage 2 proposal would contain:*

- ❑ *Timeline of public involvement stages.*
- ❑ *Audiences at each stage.*
- ❑ *The methods to be used at each stage.*
- ❑ *Results of each stage and how they would be fed into the project to adapt its development.*

## **6. Greenhouse Gas Assessment and Monitoring**

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In spite of the dramatic increases in population and transportation use along the east coast of Vancouver Island, very little baseline data exists to identify useable indicator or to construct a monitoring system that tracks and reports on increases or reductions in greenhouse gases.

Identifying appropriate indicators is key to this component. Initially, we can rely on accepted "formula-based" indicators; e.g., increases in rail ridership extrapolated to the number of single-occupant-vehicles replaced and the consequent reduction in greenhouse gas emissions.

At the present time, there is little air quality monitoring in this region. The Ministry of Water, Land and Air Protection (MWLAP) operates one PM2.5 analyzer on the roof of their office building in north Nanaimo. Data are available from 1998 onward, and reported in terms of frequency with readings reached "good", "fair" and "poor" ranges. To date, most readings in the fair and poor levels appear to be related to localized burning periods. Air quality monitoring occurs in other spot locations related to regulated emission sources (e.g., pulp and paper mills), and are unlikely to be useful in measuring ambient air quality.

A component of this project will be to explore with MWLAP, and other appropriate agencies, ways of establishing a baseline data collection program that can subsequently be used to measure and calibrate greenhouse gas emissions.

*The detailed stage 2 proposal would contain:*

- ❑ *Identification of appropriate indicators for increased/reduced greenhouse gas emissions, and methods for measuring those indicators.*
- ❑ *A proposed program for monitoring the indicators and compiling and analyzing the results in terms of their effect on greenhouse gas emissions.*
- ❑ *Proposed indicators of other impacts: e.g., relative financial costs of the rail versus other transportation modes; nodal development trends; rail safety trends.*
- ❑ *Methods for assessing the effectiveness of chosen indicators, and refining or replacing them as needed.*

## **The Outcomes**

**Reductions in Greenhouse Gas Emissions** - In building a major component of an integrated transportation system for Vancouver Island, this project provides opportunities for substantial reductions in greenhouse gases. These will occur directly through the reduction in interurban single-occupant vehicle trips as commuters and visitors select an increasingly convenient and attractive rail alternative. It will also indirectly affect greenhouse gas emissions by: a) enhancing connections to other transportation services such as regional bus systems and passenger ferry connections; b) over time, supporting walkable and transit-friendly communities in nodes along the corridor. Together, these options will provide a significant and viable alternative that can create a future with dramatically reduced greenhouse gas emissions than the "default" scenario.

**Economic and Land Use Co-benefits** – The project gathered substantial early support primarily because of the way in which it supports many aspect of the region's community and economic development aspirations. For example, this project supports significant and ongoing efforts by the City of Nanaimo to redevelop its downtown core. The Cowichan Valley Regional District sees an enhanced rail service as providing the mobility that residents want without despoiling the largely rural

character with endless increases in pavement. Almost everyone attending the focus group saw the rail alternative as one way to continue to improve transportation on the Island without "killing the goose that laid the golden egg".

The development of the Island's economy is very sensitive to the considerable cost of moving cars back and forth across the Strait of Georgia. The addition of this rail passenger service combined with the proposed passenger ferry service will provide a convenient and cost effective alternative for businesses and individuals based on Vancouver Island but with business interests in the Lower Mainland.

Built around these public commuting alternatives the City of Nanaimo envisions an increased demand for compact development built around service nodes that will support their community plan goals.

**Public Outreach** – In preparing this expression of interest, the City has already initiated a public outreach program to support the development of these ideas. As noted previously, the City is planning a second broader focus group session to stimulate interest and buy-in to the project. This very early response has been supportive as people recognize quickly the opportunities to solve present and future needs (better transportation with less greenhouse gas emissions) using yesterday's legacy (the E&N Corridor).

**Lessons Learned** - This project provides a unique opportunity to learn ways of *preventing* increases in greenhouse gas emissions while providing for current and future transportation demands. The situation being addressed here on Vancouver Island is mirrored in many small to medium size communities and linear urban/suburban regions across the country: what to do to prevent becoming just another urban pollution problem as we grow.

The specific lessons to be learned include:

- How to lure people out of their cars in meeting their need to move between spread-out communities.
- How to coordinate planning and financial priorities among a variety of government agencies, private companies and volunteer/non-profit interests in the interests of a common goal.
- Developing a rail system within a multi-modal transportation system that involves land, water and air-based components.

**Relationship to Existing and Proposed Planning Frameworks:** The relationship to existing local/regional government planning processes and private corporate plans is illustrated above under element 4 "Transportation and Land Use Planning". This relationship will be strengthened as the project moves into cooperative ventures such as establishing a united administrative function and common public outreach programs.

## Other Aspects

While the City of Nanaimo is leading this initial development of the project, specific roles and responsibilities will be defined as partnerships crystallize and an administrative framework is established. Detailed financial plans and a step-by-step schedule for the showcase project will be an outcome of a detailed stage 2 proposal.

## Contacts

Sharon Fletcher, Manager of Community Planning Division  
City of Nanaimo  
238 Franklyn St., Nanaimo, B.C. V9R 2X4  
Tel (250)755-4483 fax (250)755-4479  
[sfletche@city.nanaimo.bc.ca](mailto:sfletche@city.nanaimo.bc.ca)

Doug Backhouse, Principal, Lanarc Consultants Ltd.  
375 Franklyn St., Nanaimo, B.C. V9R 2X5  
Tel (250)754-5651 fax (250)755-1990  
[backhouse@lanarc.ca](mailto:backhouse@lanarc.ca)

## **Appendix A: Focus Group - October 3, 2001**

Brian Smith, Rail America

Jon Lampman, RTL Inc.

Brian Springinotic, Ministry of Sustainable Resource Management

Jerry Berry, City of Nanaimo

Sharon Fletcher, City of Nanaimo

Tom Moscrip, City of Nanaimo

Larry Roberts, Capital Regional District

Tom Anderson, Cowichan Valley Regional District

Mike Donnelly, Regional District of Nanaimo

Doug Backhouse, Lanarc Consultants Ltd. (facilitator)

Harriet Rueggeberg, Lanarc Consultants Ltd. (recorder)

*The following provided initial comments on the project but were unable to attend the focus group meeting :*

Harry Harker, Comox Strathcona Regional District

Chris Hall, District of North Cowichan

Mike Kent, Ministry of Transportation and Highways

John Ruttan, Harbour Commission

Steve New, BC Transit

Richard Harding, City of Nanaimo

Christina Thomas, Regional District of Nanaimo

TRANSPORTATION INFRASTRUCTURE	PUBLIC & PRIVATE SECTOR FINANCING	ADMINISTRATION (GOVERNANCE)	TRANSPORTATION & LAND USE PLANNING/ INTEGRATION	PUBLIC INFORMATION, INVOLVEMENT, & BUY-IN	GREENHOUSE GAS ASSESSMENT & MONITORING
<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>⇨ Rail options: Seen by most participants as the most effective region-wide option for reducing greenhouse gas emissions, given the existing rail infrastructure that is currently underutilized for passenger service. Possible options to consider:             <ul style="list-style-type: none"> <li>○ Upgrade current service using existing facilities (e.g., revising schedule, providing for bicycles on railcars).</li> <li>○ Upgrade system to commuter service standard (new facilities)</li> </ul> </li> <li>⇨ Passenger ferry options: Also viewed as having high potential to provide "greener" transportation alternatives for residents commuting and tourists visiting the island.</li> <li>⇨ Bus/transit options: Potential improvements to services within and between major nodes; public and private sector options. Particular attention to connections between rail, ferry and other pedestrian service. One option being considered is a "tram" service connecting a passenger ferry to rail station in Nanaimo.</li> <li>⇨ Trails, pathways options: a) facilities connecting to rail and ferry services; b) networking to major destinations (e.g., Galloping goose trail, Cowichan Valley trail, trans-Canada trail).</li> <li>⇨ Road/highway options: effect of transferring some transportation demand to alternatives on vehicle need projections</li> <li>⇨ Airport connections: creating a link between the Cassidy Airport and the rail line</li> </ul>	<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>⇨ Capital and operational cost estimates of each option</li> <li>⇨ Analysis of current budgets e.g:             <ul style="list-style-type: none"> <li>○ Current budgets of local governments for roads construction and maintenance</li> <li>○ Provincial transportation ministry - highway construction</li> <li>○ Federal government - VIA rail subsidy</li> <li>○ Rail America – facility upgrade budgets</li> <li>○ BC Ferries</li> <li>○ BC Transit</li> </ul> </li> <li>⇨ Re-allocation possibilities</li> <li>⇨ Provincial and federal infrastructure funding sources</li> <li>⇨ Other private sector funding sources</li> </ul>	<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>⇨ Establishment of a coordinating body to oversee planning, funding and implementing the transportation strategy – e.g.:             <ul style="list-style-type: none"> <li>○ Multi-stakeholder coordinating committee established by multi-party memorandum understanding</li> <li>○ Transportation Authority with independent funding, allocated by member parties and its own funding (e.g., taxation, user fees) resources</li> </ul> </li> </ul>	<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>• Research – e.g., official community plans and regional growth strategies in the project area; transportation-land use integration measures from elsewhere</li> <li>• Collaborative review - with planners from the local governments</li> <li>• Policy development – elements of region-wide transportation strategy that could be adopted under member OCPs and regional strategies.</li> <li>• Implementation – draft bylaw and plan changes in member local governments to adopt strategy policies</li> <li>• Corridor protection</li> </ul>	<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>⇨ Promoting the vision - what east coast Vancouver Island COULD look like (the good and the ugly) - effects on greenhouse gases, land use, personal health, livability             <ul style="list-style-type: none"> <li>○ open houses</li> <li>○ newspaper articles</li> <li>○ video - TV, presentations</li> </ul> </li> <li>⇨ Exploring the options:             <ul style="list-style-type: none"> <li>○ Open houses</li> <li>○ Questionnaires (which would you use? how much would pay? when would it be preferable to use ___ over your car? etc.)</li> <li>○ Newspaper</li> <li>○ TV talk/phone in shows</li> </ul> </li> <li>⇨ Assessing the results:             <ul style="list-style-type: none"> <li>○ Customer satisfaction; improvements needed</li> </ul> </li> </ul>	<p><b>Basic elements (preliminary):</b></p> <ul style="list-style-type: none"> <li>⇨ indicators/measures</li> <li>⇨ Results of measuring indicators</li> <li>⇨ Assess findings - impact on greenhouse gas emissions: current and projected (if didn't do anything)</li> <li>⇨ Assess effectiveness of indicators</li> <li>⇨ Refine/replace indicators</li> </ul>



# CITY OF NANAIMO

V A N C O U V E R I S L A N D • B R I T I S H C O L U M B I A

2001-Oct-30

Urban Transportation Showcase Program  
Environmental Affairs  
Transport Canada  
Ottawa, Ontario K1A 0N5

File: 8310-01

Dear Sir/Madam:

**Re: Urban Transportation Showcase Program**

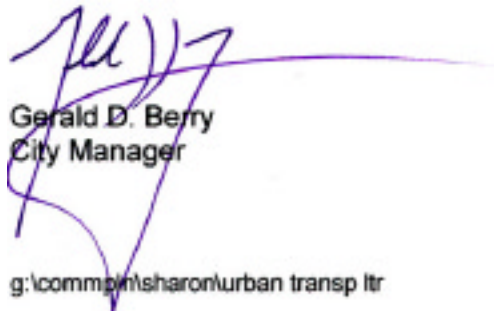
Transportation technology has the potential to bring more and more people to Vancouver Island. They are coming now to enjoy the beautiful natural environment and economic opportunities. This flow of people will continue to grow in the future.

The City of Nanaimo recognizes the importance of its geographic location. Nanaimo is a linkage point for all modes of transportation coming onto Vancouver Island. Nanaimo also plays a key role as a cross-roads for the movement of people and goods around the Island. It has become increasingly evident that if we are not careful about decisions related to transportation, this activity will destroy what has attracted people to Vancouver Island in the first place.

The City of Nanaimo supports the expression of interest which proposes protecting the future of eastern Vancouver Island by initiating a proactive approach to plan future mobility. This approach starts with a showcase which emphasizes a more intensive use of the existing E&N Rail corridor.

The Urban Transportation Showcase Program has provided us with an opportunity to look into the future and plan our preventative strategy rather than the inevitable task of expensive problem solving later.

Sincerely,



Gerald D. Berry  
City Manager

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# CITY OF NANAIMO

V A N C O U V E R   I S L A N D   •   B R I T I S H   C O L U M B I A

2001-Oct-30

Urban Transportation Showcase Program  
Environmental Affairs  
Transport Canada  
Ottawa, Ontario K1A 0N5

File: 8310-01

Dear Sir/Madam:

**Re: Urban Transportation Showcase Program**

We appreciate the opportunity to submit this expression of interest to develop a Showcase Project under the Urban Transportation Showcase Program. Our expression of interest focuses on the development of an integrated, "inter-regional" transportation strategy aimed specifically at reducing greenhouse gas emissions while meeting future transportation needs along east Vancouver Island.

The "showcase" is the adaptive and enhanced use of an existing under-utilized rail corridor - the E&N Railway. This expression of interest has been developed in collaboration with other local governments along the corridor as well as provincial government agencies and private sector partners.

Our immediate goal is to gain the opportunity to develop a detailed proposal that maps out the project and its potential to reduce and avoid greenhouse gas emissions as the Island population continues to grow. Our long-term goal is to build a sustainable transportation network that preserves this region's environment, strengthens its economy, and reflects the Island's quality of life.

Sincerely,

Sharon Fletcher  
Manager, Community Planning  
Development Services Department

g:\commpln\sharon\urban transp ltr2



REGIONAL  
DISTRICT  
OF NANAIMO

October 31, 2001

Urban Transportation Showcase Program  
Environment Affairs  
Transport Canada  
Ottawa, Ontario  
K1A 0N5

Dear Sir/Madam:

**RE: URBAN TRANSPORTATION SHOWCASE PROGRAM**

I support the City of Nanaimo expression of interest to the Urban Transportation Program of Transport Canada for an Urban Transportation Showcase for the East Coast of Vancouver Island.

The Urban Transportation Showcase for the East Coast of Vancouver Island is consistent with the direction of the Growth Management Plan for the Regional District of Nanaimo. The Growth Management Plan is the regional growth strategy for the region, endorsed by the municipalities within the region (Nanaimo, Parksville and Qualicum Beach) and the adjacent regional districts (Cowichan Valley, Comox Strathcona, and Alberni-Clayquot).

It is anticipated that the Urban Transportation Showcase for the East Coast of Vancouver Island would also complement the provision of transit services by the Regional District in the region.

We look forward to working as a part of a coordinated effort of the East Coast Vancouver Island regional districts, member municipality governments, provincial government agencies, Crown corporations and private corporations to meet the common goals around transportation, land use and sustainability on Vancouver Island.

Sincerely,

Neil Connelly  
General Manager, Community Services

cc. M. Donnelly, Manager of Transportation Services  
C. Thomas, Senior Planner, Regional Planning

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**E&N Railway Company (1998) LTD.**  
(a RailAmerica company)

P.O. Box 581, 23 Esplanade, Nanaimo, B.C. V9R 5L3  
Phone (250) 754-9222 Fax (250) 754-5318

October 31, 2001

To: Urban Transportation Program of Transport Canada

Re: Expression of Interest for an Urban Transportation showcase for the East Coast of Vancouver Island submitted by the City of Nanaimo, B.C.

We are pleased to offer this letter of support for the expression of Interest being submitted by the City of Nanaimo to the Urban Transportation Showcase Program. We look forward to the opportunity to work with the City and regional governments along the E&N rail corridor to maximize the benefits of this corridor as a transportation alternative serving these communities.

We recognize that the physical and economic context of business is changing as Vancouver Island transforms from its historic industrial base into a significant urban corridor. RailAmerica is very interested in opportunities for broadening our business base and for greater utilization of our transportation corridor.

We recognize that much work has to be done in the planning and development of policy and physical infrastructure to achieve the vision outlined in this Expression of Interest. The strategy suggested by the City with its broad consultations with regional governments and existing transportation providers offers an opportunity for innovative solutions that no individual organization could achieve.

RailAmerica applauds the efforts of the City in developing this vision for the future of this transportation corridor and looks forward to playing a significant role in this project as these ideas continue to unfold.

Sincerely,

E & N RAILWAY COMPANY (1998) LTD.

Anne A. Venema  
Acting General Manager

## Doug Backhouse

---

**From:** Jonathan W. Lampman [jlampman@rtl-law.com]  
**Sent:** October 31, 2001 8:41 AM  
**To:** 'Sharon Fletcher' (E-mail)  
**Cc:** Douglas Backhouse (E-mail)  
**Subject:** Urban Transportation Showcase/ Nanaimo--Vancouver Island

Dear Sharon

Our firm is RTL Consulting Ltd. We are consultants to private industry in the area of environmental impacts, eco-efficiency and green investment. We have been involved in reviewing the City proposal under the Urban Transportation Showcase program. We think the proposal has great merit and we strongly support it as a way to focus public sector and private sector attention on the urgent planning issues which confront us on Vancouver Island.

As consultants primarily to the private sector we see many potential economic and environmental benefits which could flow from this disciplined look at the transportation issues, and we look forward to being able to give input into Phase Two.

Jon Lampman, Managing Partner  
RTL Consulting Ltd.