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SERVICE DATE - LATE RELEASE NOVEMBER 15, 1996

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

S.B. Docket No. AB-361 (Sub-No. 2X)

MICHIGAN SHORE RAILROAD, INC.--ABANDONMENT EXEMPTION--
IN MUSKEGON, MUSKEGON COUNTY, MI

Decided: November 13, 1996

By decision served and published in the Federal Register on October 8, 1996, Michigan Shore Railroad, Inc. (Michigan Shore) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 3.21-mile rail line extending from milepost 93.59, at Getty Street and Laketon Avenue in Muskegon, MI, to the end of the track at milepost 90.38, near Dangl Road and Laketon Avenue near Muskegon, all in Muskegon County, MI. The exemption became effective on November 7, 1996.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) of the proposed abandonment on July 12, 1996. In the EA, SEA stated that the right-of-way may be suitable for public use under 49 U.S.C. 10905. At the time of the decision, no one had sought a public use condition, and none was imposed. Nevertheless, a 20-day period after Federal Register publication was provided for interested persons to request a public use condition.

On October 17, 1996, the Michigan Department of Natural Resources (MDNR), through its Forest management Division, filed a request for a public use condition and interim trail use/rail banking. MDNR's submission meets the requirements for a public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying: (a) the condition sought (a public use condition); (b) the public importance of the condition (the right-of-way would provide a key link between existing recreational trails); (c) the period of time for which the condition would be effective (180 days); and (d) a justification for the imposition of the period of time requested (MDNR needs this time to conduct appraisals, title review, and negotiations). Accordingly, the public use condition will be imposed.

A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes. All interested parties are encouraged promptly to pursue negotiations, as the 180-day period is statutory and cannot be extended.

Regarding the request for trail use/rail banking, MDNR states that the line may be suitable for recreational trail use and will provide a key link between corridors already acquired for trail use by MDNR and by the City of Muskegon. MDNR states that it will assume full responsibility for management of the right-of-way, and that it will assume legal liability for the transfer and use of the right-of-way, and for the payment of any and all taxes that may be levied or assessed against the right-of-way. By facsimile dated October 31, 1996, Michigan Shore states that it does not object to the imposition of a trail use condition and that it will negotiate with MDNR.

MDNR has stated that it will assume financial responsibility for interim trail use/rail banking and it has acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. In light of this and Michigan Shore's willingness to enter into negotiations, a notice of interim trail use (NITU) will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, our further approval is unnecessary. If no agreement is reached within 180 days, Michigan Shore may fully abandon the line. See 49 CFR 1152.29(d)(1).

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The decision, served and published in the 'Federal Register' on October 8, 1996, exempting the abandonment of the above-described line, is modified to the extent necessary to implement interim trail use/rail banking.
3. The decision is subject to the condition that Michigan Shore keep intact the right-of-way underlying the track, including bridges, culverts, and similar structures (but not track or related materials) until May 6, 1997 (180 days after November 7, 1996, the effective date of the exemption), so that any state or local government agency or any other interested person may negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed within the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment.
4. Subject to the condition set forth above, Michigan Shore may discontinue service and salvage track and material consistent with interim trail use/rail banking after the effective of this decision and NITU.

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5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of the right-of-way, full responsibility for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and full responsibility for the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. If a user intends to terminate trail use, it must send the Board a copy of this decision and request that trail use be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by May 6, 1997, interim trail use may be implemented. If no agreement is reached by that date, Michigan Shore may fully abandon the line.

8. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.

9. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, office of Proceedings.

Vernon A. Williams
Secretary