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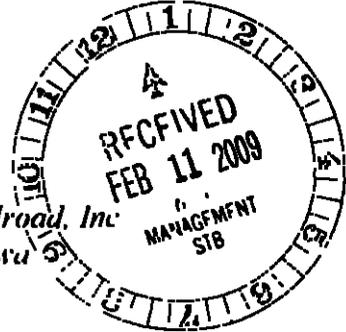
LAW OFFICES OF
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THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
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(202) 466-6532
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February 11, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423



RE Docket No. AB-364 (Sub-No. 15X), *Mid-Michigan Railroad, Inc.*
Discontinuance of Service Exemption - in Kent and Ottawa
Counties, MI

Dear Acting Secretary Quinlan

Enclosed are the original and 10 copies of a Petition for Exemption for the Mid-Michigan Railroad, Inc. ("MMRR") to discontinue service over a 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, Kent and Ottawa Counties, MI. Also enclosed are a check from MMRR for the filing fee of \$6,300, and a computer diskette containing the Petition in Word and pdf format. All of the color Exhibits are attached to the end of the Petition in Exhibit F.

Please time and date stamp the additional copy of this letter and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for Mid-Michigan Railroad, Inc.

Enclosures

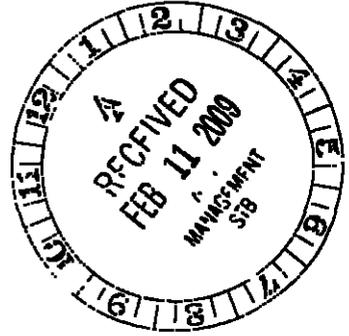
ENTERED
Office of Proceedings
FEB 11 2009

Part of
Public Record

FILED
FEB 11 2009
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
FEB 11 2009
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



Docket No AB-364 (Sub-No 15X)

MID-MICHIGAN RAILROAD, INC –
DISCONTINUANCE OF SERVICE EXEMPTION—KENT AND OTTAWA COUNTIES, MI

PETITION FOR EXEMPTION

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Attorneys for MID-MICHIGAN
RAILROAD, INC

Dated February 11, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No AB-364 (Sub-No 15X)

MID-MICHIGAN RAILROAD, INC –
DISCONTINUANCE OF SERVICE EXEMPTION–KENT AND OTTAWA COUNTIES, MI

PETITION FOR EXEMPTION

The Mid-Michigan Railroad, Inc (“MMRR”), successor-by-merger to the Grand Rapids Eastern Railroad, Inc (“GRE”)¹ petitions the Surface Transportation Board (the “Board”) to exempt under 49 U.S.C. §10502 MMRR’s discontinuance of service over a 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, Kent and Ottawa Counties, MI (the “Line”), from the requirements of 49 U.S.C. §10903.

GRE leased the Line from the Coopersville and Marne Railway Company Line (“C&M”)². The lease between MMRR and C&M was terminated on December 2, 2008. C&M acquired the Line from the Central Michigan Railway Company³ and retains the residual common carrier obligation to operate the Line.⁴

¹ *RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.—Corporate Family Transaction Exemption*, STB Finance Docket No 33693 (STB served January 20, 1999).

² *Grand Rapids Eastern Railroad, Inc.—Lease and Operation Exemption—Coopersville and Marne Railway Company Line*, STB Finance Docket No 33344 (STB served February 10, 1997).

³ *Coopersville & Marne Railway Company—Acquisition and Operation Exemption—Central Michigan Railway Company*, STB Finance Docket No 32942 (STB served May 21, 1996).

⁴ “Generally, a railroad lessor retains a common carrier obligation, residual or otherwise, over the rail line that it leases out.” *Twin State Railroad Company—Abandonment Exemption—In Caledonia and Essex Counties, VT*, STB Docket No AB-862X (STB served November 18, 2005) at 2.

Through discontinuance of service, MMRR seeks to end its common carrier obligation to operate over the Line because its right to operate over the Line under the lease with C&M has been terminated and C&M is authorized and required to operate the Line. Discontinuance of service will also prevent MMRR and C&M from potentially concurrently operating over the Line.

BACKGROUND

GRE entered a Lease dated as of January 8, 1997 with the C&M to lease and operate C&M's 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, Kent and Ottawa Counties, MI. GRE filed a Notice of Exemption under 49 C.F.R. §1150.41 to lease and operate the Line. The Board served a notice of exemption on February 10, 1997, and GRE commenced operations on February 1, 1997.

The lease was terminated pursuant to its terms on December 31, 2008.⁵ GRE and MMRR have provided service over the Line from February 1, 1997 until December 31, 2008 pursuant to the lease. MMRR understands that C&M is authorized and required to provide common carrier operations beginning January 1, 2009. MMRR also understands that C&M is required to continue to provide service to the shippers on the Line. MMRR contends that discontinuing service over the Line will permit MMRR to comply with its contractual commitments. Without discontinuance authority, MMRR would retain a common carrier obligation to provide service upon reasonable request from a shipper. Not only would MMRR's operation be contrary to the lease termination, but it would also require a joint operating protocol

⁵ See Exhibit D

with C&M. By MMRR discontinuing service over the Line, MMRR and C&M will avoid the time and expense necessary to agree to joint operating protocols over the Line.

The Line traverses Zip Codes 49404, 49435, and 49544. Grand Rapids and Marne are stations on the Line. Based on information in MMRR's possession, the Line does not contain federally granted right-of-way. Any documentation in MMRR's possession concerning title will be made available to those requesting it. However, ownership of the Line will not change as a result of the discontinuance of service by MMRR and service should be provided by C&M.

A map of the Line is attached as Exhibit A. The draft Federal Register Notice is in Exhibit B and copies of the newspaper publication and the required certification are in Exhibit C. Exhibit D contains the notification as to the termination of the lease. Exhibit E is the certificate of service. Exhibit F is a color copy of the map.

ARGUMENT SUPPORTING THE ABANDONMENT

MMRR seeks an exemption under 49 U.S.C. §10502 from the applicable requirements of 49 U.S.C. §10903 in order to discontinue service over the Line.

Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and

(2) either

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the

administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H. R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brac Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H. R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. §10903 Is Not Necessary to Carry Out the Rail Transportation Policy.

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal discontinuance of service application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §10101 (2) and (7). The discontinuance of service by MMRR will not result in a loss of rail service. C&M retains the common carrier obligation to serve the shippers on the line.

Granting this exemption fosters sound economic conditions and encourages efficient management by permitting the termination of MMRR's obligation to pay the operating and maintenance costs for the Line. MMRR will be able to terminate its common carrier obligation to provide service over the Line, while C&M continues to have the common carrier obligation to serve the shippers. 49 U.S.C. §10101 (3), (5) and (9). Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will continue to receive rail service from another short line railroad.

B. This Transaction Is Of Limited Scope.

The proposed transaction is of limited scope. MMRR seeks to discontinue service over a 6.94-mile line in two counties in Michigan.

C. This Transaction Will Not Result In An Abuse Of Market Power.

MMRR should be replaced by C&M as the railroad providing service over the Line. The shippers on the Line should receive service from C&M and should not be deprived of rail service as a result of MMRR's discontinuance. Essentially, C&M should replace MMRR as the carrier providing service over the Line. Accordingly, MMRR contends that the discontinuance of service over the Line will not result in an abuse of market power. One operating railroad should replace another.

The Board has found that there is no abuse of market power where one railroad replaces a railroad that is discontinuing service. See *Timber Rock Railroad, Inc. –Discontinuance of Service Exemption—in Burleson, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties, TX*, STB Docket No. AB-998X (STB served January 25, 2007), at 2-3.

ENVIRONMENTAL AND HISTORIC REPORTS

Pursuant to a telephone conversation on February 3, 2009, with Ms. Victoria Rutson, SLA clarified that MMRR is not required to file either an ER or an HR for this discontinuance of service where C&M is required to continue to provide common carrier service over the Line.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached hereto as Exhibit B.

LABOR PROTECTION

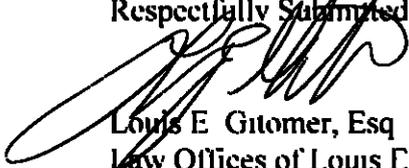
The interests of the railroad employees of MMRR who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co. --Abandonment--Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. §10903 to the discontinuance of service over the Line is not required to carry out the rail transportation policy set forth in 49 U.S.C. §10101, as previously shown. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this discontinuance of service is of limited scope. Accordingly, MMRR respectfully requests the Board to grant the proposed exemption of the discontinuance of service over the 6.94-mile Line.

Respectfully Submitted,

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329
Scott.Williams@railamerica.com


Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
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Towson, MD 21204
(202) 466-6532
Lou.Gitomer@verizon.net

Attorneys for MID-MICHIGAN
RAILROAD, INC.

Dated February 11, 2009

EXHIBIT A-MAP

DISCONTINUANCE BETWEEN GRAND RAPIDS (WALKER) AND MARNE, MI

- 1 Mile post 159.5
- 2 Mile Post 166.44

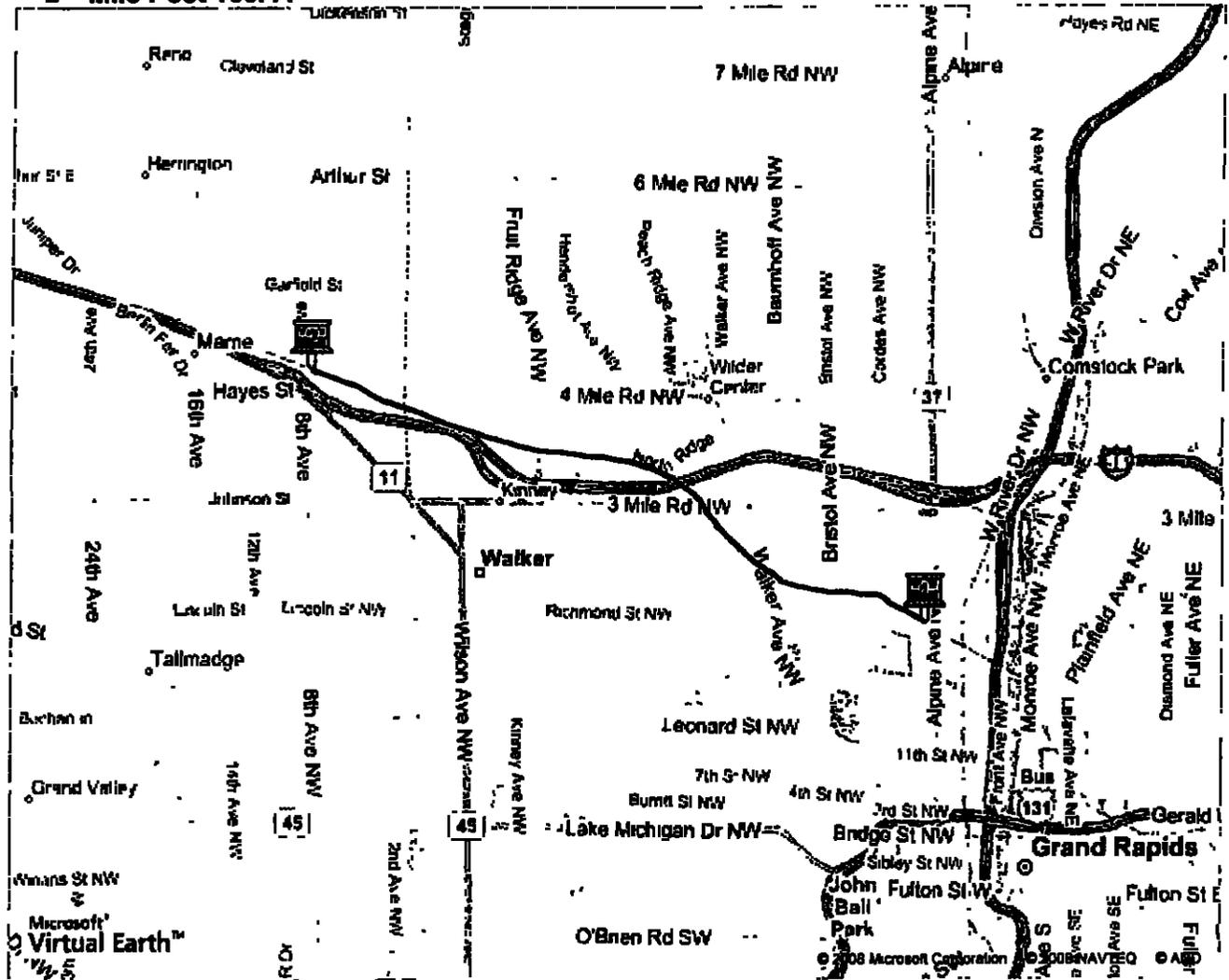


EXHIBIT B—FEDERAL REGISTER NOTICE

MID-MICHIGAN RAILROAD, INC –
DISCONTINUANCE OF SERVICE EXEMPTION—KENT AND OTTAWA COUNTIES, MI

Notice of Petition for Exemption to Discontinue Service

On February 11, 2009 the Mid-Michigan Railroad, Inc (“MMRR”) filed with the Surface Transportation Board, Washington, D C 20423, a petition for exemption for the discontinuance of service over a 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, all of which traverses through United States Postal Service ZIP Codes 49404, 49435, and 49544 in Kent and Ottawa Counties, MI (the “Line”). The stations on the Line are Grand Rapids and Marne.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R Co –Abandonment–Goshen*, 360 I C C 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U S C 10502(b). A final decision will be issued by June 1, 2009.

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C’FR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each

OFA must be accompanied by the filing fee, which is currently set at \$1.500 *See* 49 CFR 1002.2(f)(25)

All filings in response to this notice must refer to STB Docket No. AB-364 (Sub-No. 15X) and must be sent to (1) Surface Transportation Board, 395 E. Street, S.W., Washington, DC 20423-0001, and (2) Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245-0230 or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV"

Decided _____, 2009.

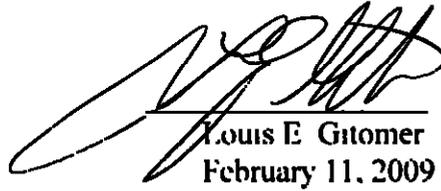
By the Board, David M. Konschnik, Director, Office of Proceedings

Anne K. Quinlan
Acting Secretary

EXHIBIT C-NEWSPAPER CERTIFICATION

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance of service in Docket No 364 (Sub-No 15X) was advertised on February 3, 2009 in the Grand Rapids Press , a newspaper of general circulation in Kent and Ottawa Counties, MI, as required by 49 C F R § 1105.12



Louis E. Gitomer
February 11, 2009

Mid-Michigan Railroad, Inc ("MMRR") gives notice that on or about February 6, 2009 it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting the discontinuance of service over a 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, all of which traverses through United States Postal Service ZIP Codes 49404, 49435, and 49544 in Kent and Ottawa Counties, MI. The proceeding has been docketed as No. AB-364 (Sub-No. 15X).

Appropriate offers of financial assistance to continue rail service through subsidy can be filed with the Board. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E Street, S.W., Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-245-0231. Copies of any comments or requests for conditions should be served on the applicant's representative Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, phone (202) 466-6532, fax (410) 332-0885, and email Lou_Gitomer@verizon.net.

EXHIBIT D—NOTICE OF TERMINATION



MID-MICHIGAN RAILROAD, INC

432 E. Grove Street • Greenville, MI • 48818 • Phone 616 754 0001 • Fax 616 754 4444

September 3, 2008

Via e-mail & registered mail

Mr. Jeffery Du Pilka
President
Coopersville and Marne Railway Company
P.O. Box 55
Coopersville, MI 49504

RE: Grand Rapids Eastern Railroad, Inc (GRE) and Coopersville and Marne Railway Company (C&M) 1997 Lease of Land and Trackage Agreement (Agreement)

Dear Mr. Du Pilka,

Per Section 14 of the Agreement, GRE is providing 90 days written notice of termination of the Agreement.

The GRE will be filing with the Surface Transportation Board (STB) to discontinue its common carrier authority between Mile Post 159.5 at Grand Rapids to Mile Post 166.44 at Marne, a distance of 6.94 miles in early December 2008.

Sincerely,

Sandra K Franger
VP/ Contracts & Interline Agreements

Cc: J. Ricard (via email only)
Lundberg, Lanni, Ovitt, Bixby, Dine (via email only)



A RailAmerica Company

EXHIBIT E—CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to 49 C F R §1152 60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No AB-364 (Sub-No 15X), *Mid-Michigan Railroad, Inc –Discontinuance of Service Exemption–in Kent and Ottawa Counties, MI*, was mailed via first class mail, postage prepaid, on February 11, 2009, to the following parties

State Public Service Commission

Michigan Department of Transportation
P O Box 30050
Lansing, MI 48909

Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48909

Military Surface Deployment and Distribution Command Transportation Engineering Agency

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

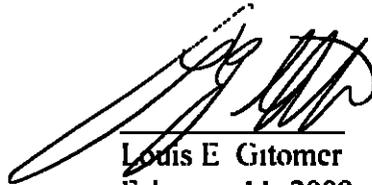
National Park Service

U S Department of Interior
National Park Service
Land Resources Division
1201 Eye Street, N W
Washington, DC 20005

Charlie Stockman
National Park Service, RTCA Program
1201 Eye Street, NW
9th Floor (Org Code 2240)
Washington, DC 20005

U.S. Department of Agriculture

U S Department of Agriculture
Chief of the Forest Service
4th Floor, NW
Sidney R Yates Building
201 14th Street, S W
Washington, DC 20250



Louis E Gitomer
February 11, 2009

EXHIBIT F—COLOR MAP

DISCONTINUANCE BETWEEN GRAND RAPIDS (WALKER) AND MARNE, MI

- 1 Mile post 159.5
- 2 Mile Post 166.44

