

E1 - 20139



Re: Fw: West Michigan RR Co - Abandonment Exemption - Van Buren
County, STB Docket No. AB-1107X
RWimbish to: David.Navecky
Cc: KJacobs

03/01/2013 02:36 PM

History: This message has been replied to.

1 attachment



Michigan SHPO Letter - 02-13-13.pdf

Dave -

Sorry we didn't attach the SHPO's letter with our last email. We did not think we had to. Given the date on the letter, and the fact that it was addressed to you, we figured you already had the SHPO's sign-off and knew what we were talking about. We guessed wrong.

Anyway, don't take it from us. Here is what the SHPO said.

- Rob

Robert A. ("Rob") Wimbish
Attorney at Law
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave., NW
Washington, D.C. 20037

202.663.7824 (direct) / 202.663.7849 (fax)

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Re: Fw: West Michigan RR Co - Abandonment Exemption - Van Buren County, STB Docket No. AB-1107X
David.Navecky to: KJacobs 03/01/2013 01:57 PM
Cc: RWimbish

Kenneth -

I'm going to need the SHPO's office to provide its conclusions in writing.
Do you know if they've sent something out in the mail?

Thanks,

Dave
202-245-0294

From: KJacobs@bakerandmiller.com
To: David.Navecky@stb.dot.gov
Cc: RWimbish@bakerandmiller.com
Date: 02/28/2013 03:32 PM
Subject: Re: Fw: West Michigan RR Co - Abandonment Exemption - Van Buren
County, STB Docket No. AB-1107X

Good Afternoon Mr. Navecky,

Rob Wimbish has asked me to contact you in connection with the above referenced abandonment proceeding. As you know, the the February 1, 2013 Environmental Assessment (EA) issued in this proceeding recommends among other things that the West Michigan Railroad Co. (WMI) consult with the U.S. Fish and Wildlife Service, East Lansing Field Office (USFWS) prior to undertaking salvage activity in order first to ascertain whether any endangered or threatened species would be adversely affected by such salvage activity.

As you can see from the email thread I am forwarding to you, Ms. Tameka Dandridge of the USFWS has confirmed that the proposed abandonment would have no effect on the federally listed endangered or threatened species. Upon her review, she concluded that no additional consultation is required from the USFWS.

The communications below should establish that WMI has fully satisfied the requirements of Condition 2 contained in the EA.

On a related note, I understand that the Michigan State Historic Preservation Office has separately confirmed that the proposed abandonment will not have any adverse impact on historic resources. Accordingly, WMI understands that the requirement of Condition 3 in the subject EA also has been satisfied.

We will update you should there be any further developments concerning the remaining issue that the EA recommends we address prior to undertaking track salvage.

Should you have any questions regarding our consultation with the USFWS, or any of the other matters addressed in this email, I can be reached at 202-663-7830.

Sincerely,
Kenneth Jacobs

Kenneth Jacobs
Legal Assistant
Baker & Miller, PLLC
2401 Pennsylvania Ave, NW
Washington, DC 20037
Direct: 202.663.7830
Main: 202.663.7820
Fax: 202.663.7849

----- Forwarded by Kenneth Jacobs/bakermiller on 02/28/2013 11:53 AM -----

From: "Dandridge, Tameka" <tameka_dandridge@fws.gov>
To: <KJacobs@bakerandmiller.com>,
Date: 02/28/2013 11:21 AM
Subject: Re: West Michigan RR Co - Abandonment Exemption - Van Buren
County, STB Bocket No. AB-1107X

Upon concluding with a No Effect determination, we recommend that you document your findings. No effect determinations do not require concurrence from this office and concludes consultation.

On Thu, Feb 28, 2013 at 11:04 AM, <KJacobs@bakerandmiller.com> wrote:
Good Morning Ms. Dandridge,

I did recent your voicemail that the email sent by Rob Wimbish was a sufficient response and that no further action will be required from the U.S. Fish & Wildlife Service.

Can you please verify that this is correct? We would like to have a written confirmation from your office and a response to this email will be sufficient.

Thank you for your assistance on this matter.

Best,
Ken

Kenneth Jacobs
Legal Assistant
Baker & Miller, PLLC
2401 Pennsylvania Ave, NW
Washington, DC 20037
Direct: 202.663.7830
Main: 202.663.7820
Fax: 202.663.7849

From: Robert Wimbish/bakermiller
To: Kenneth Jacobs/bakermiller@bakermiller,

Date: 02/26/2013 11:22 AM
Subject: Fw: West Michigan RR Co - Abandonment Exemption - Van Buren
County, STB Docket No. AB-1107X

for our meeting . . .

- Rob

Robert A. ("Rob") Wimbish
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----- Forwarded by Robert Wimbish/bakermiller on 02/26/2013 11:22 AM -----

Re: West Michigan RR Co - Abandonment Exemption - Van Buren County, STB
Docket No. AB-1107X [Link](#)

Robert Wimbish

to:

Dandridge, Tameka

02/06/2013
01:40 PM

Cc:

David.Navecky, William Mullins

Dear Ms. Dandridge -

Thank you for your note and for your guidance concerning the proposed
railroad line abandonment's expected impact on endangered or threatened
species.

As you mention in your note, West Michigan RR ("WMI") sent to USFW and various other consulting agencies a copy of a consolidated Environmental & Historic Report ("E&HR"), which the US Surface Transportation Board ("STB") requires of all railroads seeking to abandon a line. Your feedback and guidance to the railroad and to the STB is very much appreciated.

As relevant here, WMI expressed its opinion in the subject E&HR that the proposed abandonment would not likely have any impact upon any endangered or threatened species. This determination, as explained in the E&HR, was predicated upon the fact that the proposed abandonment and related track salvage activity would take place on previously-developed railroad right-of-way, would involve limited activity related to the removal of rail and track material, and not affect any natural habitat (such as the removal of trees or other plants adjacent to the rail line right-of-way or any activity in streambeds or wetlands).

In my opinion, the subject project area would be the 50-foot-wide rail line right-of-way ("r-o-w") along the length of the roughly 10.67-mile line of railroad extending from milepost 19.88 (west of the Line's crossing of 56th Street, near Lawrence, MI) to milepost 30.55 (east of Kalamazoo Street in Paw Paw, MI), and roughly 25 feet on either side of the r-o-w. That said, the proposed action would be limited to the removal of rail and track material on land developed for railroad use. Track salvage can and will be accomplished entirely within the subject rail line r-o-w, and so the impact on any habitat would be, in our opinion negligible to non-existent, unless, of course, any threatened or endangered species can be expected to be living atop, within, or along the subject railroad trackage.

I have visited the USFWS website from the link you have supplied below in connection with Section 7 consultation, and have determined that the following threatened or endangered species may be found in Van Buren County, Michigan, where the rail line proposed for abandonment is located: Indiana bat, eastern massasauga (technically listed as a "candidate" for federal listing), Mitchell's satyr butterfly, and Pitcher's thistle.

In examining the area surrounding the rail line slated for abandonment and maps of the vicinity, and in considering the scope of the proposed project (which will be limited to removal of track and track material within an existing rail corridor), it is my opinion that the proposed abandonment would have NO EFFECT on any of the above-listed species. To begin with, it does not appear that the proposed abandonment would result in the loss or disturbance of Indiana bat habitat. Also, the subject rail line does not appear to extend near or through any habitat that would host the Mitchell's satyr butterfly or the Pitcher's thistle. Accordingly, I now conclude that the appropriate determination here is that the proposed abandonment and the activities stemming from it will have no effect on threatened or endangered species that may be found in Van Buren County.

This is essentially in keeping with the conclusion of the STB's Office of Environmental Assessment ("STB-OEA"), which recently stated that

"due to the temporary nature and very limited scope of the proposed salvage activities, OEA believes that potential impacts to any such species could be appropriately mitigated through consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA)." Should

USFWS conclude that the proposed rail line salvage activities may nevertheless threaten to adversely affect threatened or endangered species, please let me know at your earliest possible convenience, so that we may explore appropriate salvage mitigation measures. Since my client expects soon to commence salvage activity, your input and guidance on mitigating any adverse impact to endangered species would be essential to swift project completion. My contact information is supplied below, and I welcome your call.

As you may have noted, I am sharing a copy of your email and my reply with David Navecky of the STB-OEA, to whom this project has been assigned for purposes of STB environmental and historic impacts analysis. If you have any questions concerning the STB's environmental review process, I encourage you to contact Dave directly at David.Navecky@stb.dot.gov or 202-245-0294.

Sincerely,

Rob (Counsel for WMI)

Robert A. ("Rob") Wimbish
Attorney at Law
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave., NW
Washington, D.C. 20037
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West Michigan RR Co - Abandonment Exemption - Van Buren County, STB
Docket No. AB-1107X

Dandridge, Tameka

to
:

Robert A Wimbish

02/06/20
13 10:45
AM

Hello Mr. Wimbish:

In your letter to the US Fish and Wildlife Service, dated December 18, 2012 and received in our office on January 7, 2013, you stated that the West Michigan Railroad Company does not believe that the proposed action is likely to adversely affect federally listed species or designated critical habitat. Your letter did not provide any information on which federally listed species may be in the project area or a project area description.

Before we can concur, you will need to provide an explanation of why the proposed action is not likely to adversely affect federally listed species. Please include a description of the project area and if any federally listed species may use the habitat within the project area (i.e., would the site provide habitat to support an endangered or threatened species).

If your project area does not provide habitat or if the proposed action will not impact habitat or federally listed species, then the appropriate determination is "No Effect". Upon making this determination, section 7 consultation is complete and contact with our office is not required. However, if you maintain your "Not Likely to Adversely Affect" determination, then you will need to request our concurrence.

Additional information about the section 7 consultation process may be found here:
<http://www.fws.gov/midwest/endangered/section7/s7process/index.html>

I am also providing definitions of the terms No Effect and May Affect, But is Not Likely to Adversely Affect.

No effect - implies that the weight of available evidence indicates that either: (1) there will be no exposure to the environmental impacts resulting from the proposed action, or (2) neither the species nor the critical habitat will respond in any manner (i.e., behaviorally, physiologically, or chemically) upon exposure to the proposed action.

May affect, but is not likely to adversely affect - appropriate conclusion when the species or critical habitat may, based on the available information, be exposed and may respond upon exposure. This analysis occurs at the individual level. The appropriate conclusion for an action that may not affect the species as a whole but will impact individuals in some manner is "may affect." Effects may be insignificant, discountable or beneficial.

If you have any questions, please call or email me.

Sincerely,
Tameka Dandridge

--

Tameka N. Dandridge
U.S. Fish and Wildlife Service
East Lansing Field Office

2651 Coolidge Road
Suite 101
East Lansing, Michigan 48823
tameka_dandridge@fws.gov



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
STATE HISTORIC PRESERVATION OFFICE

SCOTT WOOSLEY
EXECUTIVE DIRECTOR

February 13, 2013

DAVE NAVECKY
OFFICE OF ENVIRONMENTAL ANALYSIS
SURFACE TRANSPORTATION BOARD
395 E STREET SW
WASHINGTON DC 20423-0001

RE: ER13-145 West Michigan Railroad Co. Rail Line Abandonment Exemption - STB Docket No. AB-1107X,
MP 19.8 to MP 30.55, T3S, R15W and T3S, R14W, Lawrence and Paw Paw Townships,
Van Buren County (STB)

Dear Mr. Navecky:

Under the authority of Section 106 of the National Historic Preservation Act of 1966, as amended, we have reviewed the above-cited undertaking at the location noted above. Based on the information provided for our review, it is the opinion of the State Historic Preservation Officer (SHPO) that the effects of the proposed undertaking do not meet the criteria of adverse effect [36 CFR § 800.5(a)(1)]. Therefore, the project will have no adverse effect [36 CFR § 800.5(b)] on historic properties within the area of potential effects for the above-cited undertaking.

The views of the public are essential to informed decision making in the Section 106 process. Federal Agency Officials or their delegated authorities must plan to involve the public in a manner that reflects the nature and complexity of the undertaking, its effects on historic properties and other provisions per 36 CFR § 800.2(d). We remind you that Federal Agency Officials or their delegated authorities are required to consult with the appropriate Indian tribe and/or Tribal Historic Preservation Officer (THPO) when the undertaking may occur on or affect any historic properties on tribal lands. In all cases, whether the project occurs on tribal lands or not, Federal Agency Officials or their delegated authorities are also organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties per 36 CFR § 800.2(c).

This letter evidences the STB's compliance with 36 CFR § 800.4 "Identification of historic properties" and 36 CFR § 800.5 "Assessment of adverse effects", and the fulfillment of the STB's responsibility to notify the SHPO, as a consulting party in the Section 106 process, under 36 CFR § 800.5(c) "Consulting party review".

The State Historic Preservation Office is not the office of record for this undertaking. You are therefore asked to maintain a copy of this letter with your environmental review record for this undertaking. If the scope of work changes in any way, or if artifacts or bones are discovered, please notify this office immediately.

If you have any questions, please contact Brian Grennell, Cultural Resource Management Specialist, at (517) 335-2721 or by email at grennellb@michigan.gov. Please reference our project number in all communication with this office regarding this undertaking. Thank you for this opportunity to review and comment, and for your cooperation.

Sincerely,


Martha MacFarlane Faes
Deputy State Historic Preservation Officer

MMF:SAT:BGG

copy: Robert Wimbish, Baker & Miller, PLLC

