

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

Docket No. AB 55 (Sub-No. 791X)

**CSX Transportation, Inc. – Abandonment Exemption –
in Mason County, Ky.**

In this proceeding, CSX Transportation, Inc. (CSXT) filed a notice under 49 U.S.C § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 to abandon its dock and loadout/conveyor belt at the Maysville Port, beginning at milepost CA 599.0 in Mason County, Kentucky. Because the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, had not been completed at the time of the Board's July 3, 2019 decision, the Board imposed a condition requiring CSXT to: (a) retain its interest in, and take no steps to alter, the historic integrity of all historic properties including sites, buildings, structures, and objects within the Area of Potential Effect that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the Section 106 process of the NHPA has been completed; (b) report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the Kentucky Heritage Council (the State Historic Preservation Office or SHPO) and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

New Comments on the Abandonment

Section 106 Condition

On July 25, 2019, CSXT submitted a late comment from the SHPO. In its comment letter, the SHPO stated that it would issue a conditional no adverse effect determination for archeological resources because CSXT would not know whether the earthen berm under the conveyer system would be disturbed until CSXT contracts the salvage work out. The SHPO also agreed that there would be no adverse effect to above-ground resources as a result of the proposed abandonment because there are no above-ground properties more than fifty years old in the area of the proposed abandonment.

Pursuant to the Section 106 regulations of the NHPA at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that CSXT's proposed abandonment would not affect historic properties listed in or eligible for inclusion in

the National Register.¹ Accordingly, the Board has satisfied its responsibilities under Section 106 of the NHPA in this proceeding, and OEA is recommending that the Board remove the Section 106 condition.

New Condition to Address Archaeological Resources

On July 23, 2019, OEA also received a late-filed comment from the Osage Nation Historic Preservation Office (Osage Nation). The Osage Nation stated that there may be previously unrecorded archeological sites and/or sites of cultural or religious significance in the project area. In addition, the Osage Nation requested consulting party status during the Section 106 process, that it receive all relevant documentation and correspondence concerning the project, and that all areas affected by the operation of the project be subjected to a cultural resources survey directed in the field by personnel meeting the Secretary of Interior's standards.

After further consultation with the Osage Nation and the SHPO regarding archaeological resources, OEA is recommending that the Board impose a new monitoring and unanticipated discoveries condition. The Osage Nation and the SHPO have agreed that the new monitoring and unanticipated discoveries condition satisfies all their concerns.²

Conclusions

For the reasons stated above, OEA recommends that the Board: (1) remove the Section 106 condition that was imposed in the July 3, 2019 decision and (2) impose a new condition to address the Osage Nation's and SHPO's concerns regarding archaeological resources. The new recommended condition is as follows:

Due to the potential for archeological resources, CSX Transportation, Inc. (CSXT) or its contractor shall monitor all project activities that could involve ground disturbance. This monitoring shall be undertaken by an individual that meets the Secretary of the Interior's Professional Qualifications Standards (36 C.F.R. Part 61). If any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT or its contractor shall immediately cease all work and notify the Board's Office of Environmental Analysis (OEA), the Kentucky Heritage Council (SHPO), and appropriate federally recognized tribes, including the Osage Nation, pursuant to 36 CFR 800.13(b). OEA will then consult with the SHPO, CSXT, the appropriate federally recognized tribes, including the Osage Nation, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

¹ The documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of the CSXT's Historic Report, all relevant correspondence, and the Environmental Assessment, which have been provided to the SHPO and made available to the public through posting on the Board's website at <https://prod.stb.gov/>.

² OEA's written correspondence with the Osage Nation and the SHPO can be found on the Board's website under "Environmental Comments" by docket number.

If this condition is imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.