

SERVICE DATE – APRIL 20, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN MASON COUNTY, KY.

Decided: April 20, 2020

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its dock and loadout/conveyor belt at the Maysville Port in Maysville, beginning at milepost CA 599.0 in Mason County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on June 7, 2019 (84 Fed. Reg. 26,715). The exemption became effective on July 7, 2019.

By decision served on July 3, 2019, the proceeding was reopened and the Board imposed a historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, recommended by the Board’s Office of Environmental Analysis (OEA). The Section 106 condition requires 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 until the Section 106 process of the NHPA has been completed, (b) report back to OEA regarding any consultations with the Kentucky Heritage Council (State Historic Preservation Office, or SHPO) and the public, and (c) not file its consummation notice or initiate any salvage activities related to the abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a Supplemental Final Environmental Assessment (Supplemental Final EA) served on March 3, 2020, OEA states that on July 25, 2019, CSXT submitted a comment from the SHPO. In its 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 out the salvage work. 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 50 years old in the area of the proposed abandonment. Additionally, to address archeological resources, OEA consulted with the SHPO regarding an unanticipated discoveries condition, as discussed further below. OEA states that the Board has therefore satisfied its responsibilities under Section 106 and recommends that the Board remove the Section 106 condition.

In the Supplemental Final EA, OEA also states that on July 23, 2019, the Osage Nation Historic Preservation Office (Osage Nation) commented that there may be previously unrecorded

archeological sites and/or sites of cultural or religious significance in the project area. OEA recommends that the Board impose a monitoring and unanticipated discoveries condition to address the Osage Nation's concerns regarding archaeological resources. OEA also consulted with the SHPO regarding this proposed condition. Specifically, due to the potential for archeological resources, OEA recommends a condition requiring that CSXT or its contractor monitor all project activities that could involve ground disturbance and that the monitoring be undertaken by an individual that meets the Secretary of the Interior's Professional Qualifications Standards (36 C.F.R. pt. 61). In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT or its contractor immediately cease all work and notify OEA, the SHPO, and appropriate federally recognized tribes, including the Osage Nation, pursuant to 36 C.F.R. § 800.13(b). OEA would 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.

Accordingly, based on OEA's recommendation, this proceeding will be reopened, the previously imposed Section 106 condition will be removed, and the newly recommended unanticipated discoveries condition will be imposed.

The proposed abandonment, if implemented as conditioned, 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. Upon reconsideration, the Section 106 historic preservation condition imposed in the July 3, 2019 decision is removed. Further, the exemption is subject to the following additional condition: due to the potential for archeological resources, 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. pt. 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 OEA, the SHPO, and appropriate federally recognized tribes, including the Osage Nation, pursuant to 36 C.F.R. § 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.
3. This decision is effective on its date of service.

By the Board, Allison C. Davis, Director, Office of Proceedings.