

SERVICE DATE – JANUARY 11, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 807X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN MUSKEGON COUNTY, MICH.

Decided: January 11, 2024

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.81-mile rail line that runs between milepost CGCS 56.35 and milepost CGCS 60.16 on the South Horn Spur in Muskegon County, Mich. (the Line).¹ Notice of the exemption was served and published in the Federal Register on July 11, 2022 (87 Fed. Reg. 41,158). The exemption became effective on August 10, 2022.

By decision served August 9, 2022 (August 2022 Decision), several conditions recommended by the Board’s Office of Environmental Analysis (OEA) were imposed on abandonment of the Line, including a historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, 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 project right-of-way (the Area of Potential Effect) that are eligible for listing or 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 OEA regarding any consultations with the Michigan State Historic Preservation Office (State Historic Preservation Office, or SHPO), appropriate federally recognized tribes, 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.²

¹ In the same jointly filed verified notice, Michigan Shore Railroad division, Mid-Michigan Railroad, Inc., sought to discontinue service over the Line. See Mich. Shore R.R. Div., Mid-Mich. R.R.—Discontinuance of Serv. Exemption—in Muskegon Cnty., Mich., AB 364 (Sub-No. 17X) (STB served July 11, 2022).

² The August 2022 Decision also included a notice of interim trail use or abandonment to provide CSXT and the City of Muskegon, Mich. (Muskegon), an opportunity to negotiate an interim trail use/railbanking agreement for approximately two miles of the Line between milepost CGCS 56.35 and milepost CGCS 58.35 (the Segment) under the National Trails System Act, 16 U.S.C. § 1247(d). On March 31, 2023, CSXT and Muskegon notified the Board that they had entered a purchase sale agreement for the Segment.

OEA served a Supplemental Final Environmental Assessment (Supplemental Final EA) on November 9, 2023, in which OEA states that, on October 30, 2023, it received a comment from the SHPO stating that the proposed abandonment would have no adverse effect on historic properties. Therefore, pursuant to the Section 106 regulations of the NHPA at 36 C.F.R. § 800.4(d)(1) and following its consultation with the SHPO and the public, OEA has determined that CSXT's proposed abandonment would not adversely affect historic properties listed in or eligible for inclusion in the National Register. As such, OEA recommends removing the Section 106 historic preservation condition imposed in the August 2022 Decision.

OEA also recommends imposing an additional condition on any decision granting abandonment authority. Given the possibility for inadvertent discovery of human remains or archeological materials, the SHPO requested the development of an Unanticipated Discoveries Plan prior to CSXT's commencement of salvage-related activities. In response, OEA prepared an Unanticipated Discoveries Plan in consultation with the SHPO and recommends that an unanticipated archaeological discovery condition be imposed. The condition would require that, in the event any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's abandonment-related salvage activities, CSXT must immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO, pursuant to 36 C.F.R. § 800.13(b). OEA states that it will then consult with the SHPO, interested federally recognized tribes, CSXT, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Consistent with OEA's recommendation, this proceeding will be reopened, the previously imposed Section 106 historic preservation condition will be removed, and the unanticipated archaeological discovery condition will be imposed. All other previously imposed conditions remain unchanged.

This decision, and 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 August 2022 Decision is removed. All other conditions remain unchanged.
3. Abandonment of the Line is subject to the following additional condition:³

³ For any portion of the Line covered by an interim trail use agreement, compliance with this condition and the remaining previously imposed conditions is not required for the duration of the agreement.

In the event any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during abandonment-related salvage activities, CSXT must immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO. OEA will then consult with the SHPO, interested federally recognized tribes, CSXT, and other consulting parties in accordance with the Unanticipated Discoveries Plan developed in consultation with SHPO to determine whether appropriate mitigation measures are necessary.

4. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.