


ACHP Opinion Requested: Hojack Swing Bridge in Monroe County, NY
Catherine Glidden to: kkerr, Charlene Vaughn, ngabriel

09/07/2012 09:15 AM

Cc: Scot.M.Striffler, Kenneth Blodgett, Joshua Wayland, Phillis

Johnson-Ball

Bcc: Melanie Yasbin

Hello Charlene,

I am contacting you regarding the Hojack Swing Bridge, a National Register of Historic Places eligible resource located in Monroe County, NY (see attached map, No. 1). The bridge, which has been out of use since 1995, sits as an isolated structure in the Genesee River and has been declared a hazard by the Coast Guard (USCG) and the Army Corps of Engineers (ACOE). It is owned by CSX Transportation Inc. (CSXT) and the USCG has issued an order to CSXT requiring its removal under Section 9 of the River and Harbors Act of 1899.

Both the USCG and ACOE have determined that Section 106 of the National Historic Preservation Act does not apply to their regulatory actions over the bridge. And, on November 29, 2011, the ACHP provided the opinion to the USCG stating its bridge enforcement proceedings are not subject to the requirements of Section 106 (see attached, No. 2). However, you were likely unaware that the bridge is also part of a line of railroad (the Ontario Running Track) requiring Surface Transportation Board (STB) abandonment approval which is subject to Section 106. (On July 18, 1996, the STB provided abandonment approval for the undertaking with the condition that the railroad (then, Conrail): "retain its interest in and take no steps to alter the historic integrity of the swing bridge at milepost 94.0 of the Ontario Industrial Track until completion of the Section 106 process of the National Historic Preservation Act, 16. U.S.C. 470f." I have attached the May 8, 1997 STB Decision that included this condition below, No. 3)

The STB was unaware, until recently, that CSXT was in the process of removing the swing bridge and consummating the abandonment (this is likely due to the time elapsed since we provided our original decision and the SHPO does not keep files that are more than 9 years old). Meanwhile, CSXT had been working together with the SHPO to comply with NY state historic preservation laws prior to the bridge removal. As an outcome of their consultations, the NY SHPO, CSXT and the NY Department of Environmental Conservation executed a Letter of Resolution (LOR) in July 2012 stipulating the completion of measures to mitigate any impacts prior to demolition of the bridge (LOR attached, No. 4). Although we were not a party to the LOR, we feel that the measures that have been undertaken by CSXT, and that are outlined in the LOR, will mitigate any adverse effects (per. Section 106) from removal of the bridge. Mitigation measures outlined in the LOR include: offering the bridge up for sale, completion of Level II HAER documentation of the bridge (including digital images), preservation of bridge components for local exhibits, and a CSXT monetary contribution of \$30,000 to a "Bricks and Mortar Fund" which will be used to support a historic preservation project in the Rochester area.

CSXT currently has contractors at the bridge to begin the demolition process. Any delay

of the work they are conducting would be prohibitively expensive (please see 9/6/2002 letter from CSXT to me outlining their concerns, costs etc, No. 5). And the USCG has expressed deep concern regarding the safety hazards posed by the bridge (see attached, No. 6). We believe that the Section 106 process could be quickly resolved by making a determination of "No Adverse Effect" pursuant to 36 CFR Part 800.5(b). We have stated our intention to make this determination to the NY SHPO, however they are uncomfortable with agreeing to this without an ACHP opinion stating that this is an appropriate finding in this case. The NY SHPO is, however, eager to complete the historic preservation review for the swing bridge. Our contact at the NY SHPO office is John A. Bonafide. His phone number is 518-237-8643 (Ext. 3263), email john.bonafide@parks.ny.gov.

It is clear from the facts of this case **that there is no alternative to removal of the swing bridge**. Consequently, we believe that a "No Adverse Effect" finding is appropriate in this case given the safety issues, cost of keeping contractors at the site, mitigation measures already outlined in the LOR, and the duplicative effort that would result from a complete Section 106 review. We believe that the mitigation measures outlined in the LOR are exemplary and would certainly equal measures that would be likely included in a memorandum of agreement developed under Section 106.

We are open to any other suggestions that you may have regarding the prompt completion of the Section 106 process in this case. I will follow up with you by phone to ensure that you are in receipt of this email. Your prompt attention to this matter is appreciated. I can be reached at 202-245-0293, gliddenc@stb.dot.gov. Alternatively, you can call Kenneth Blodgett at 202-245-0305.

Thank you!

-Cathy

Catherine Glidden
Environmental Protection Specialist
Office of Environmental Analysis
Surface Transportation Board
Washington, DC 20423
(202) 245-0293



SITE MAP

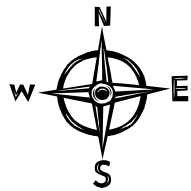
Docket No. AB-167
(Sub-No. 1162X)

Location:

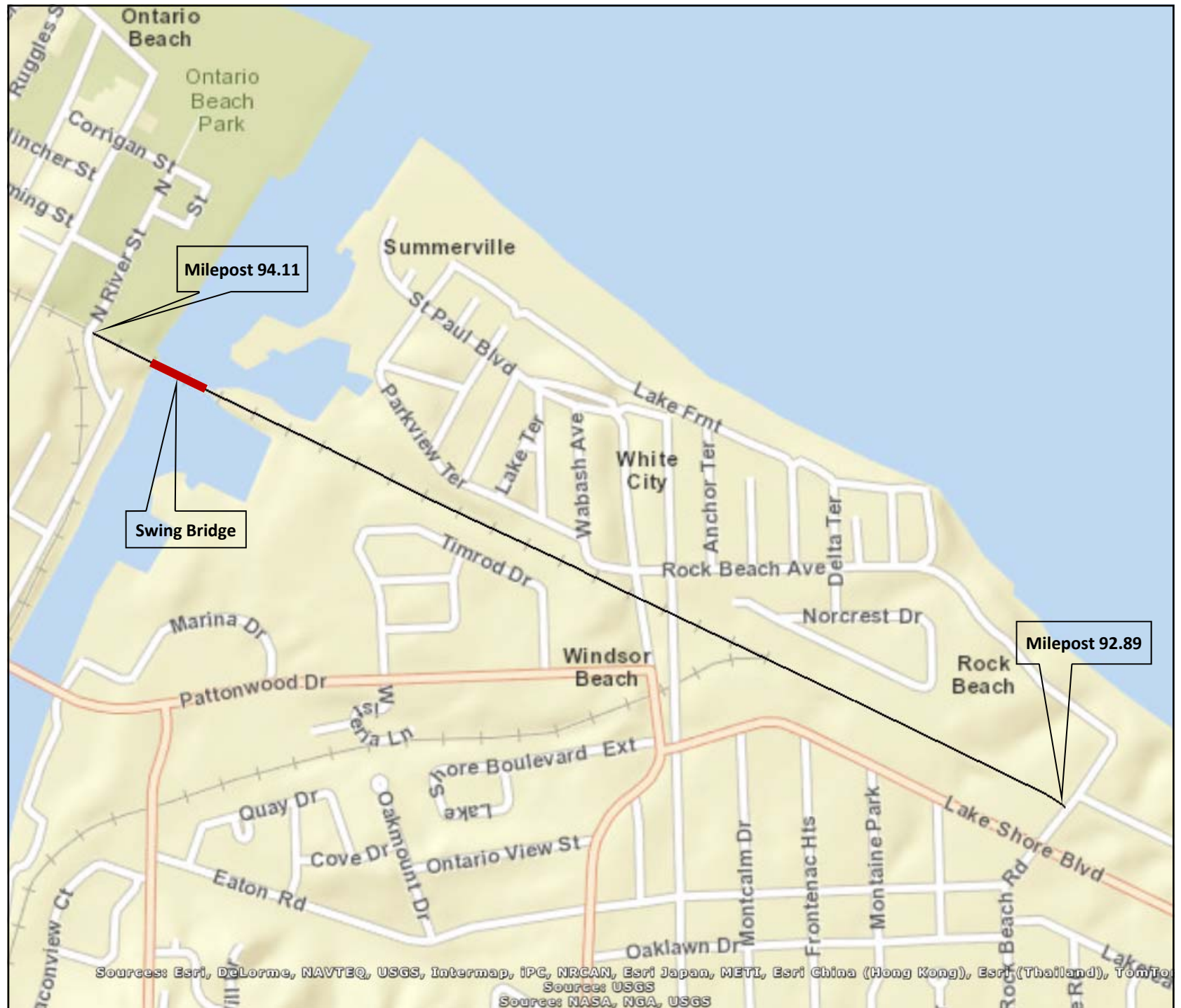
Monroe County
New York

Legend:

— Ontario
Industrial Track



Disclaimer: Maps produced by the Surface Transportation Board, Office of Environmental Analysis are based on information provided by the rail applicant and are for reference purposes only.





Preserving America's Heritage

November 29, 2011

Mr. Scot Striffler
Bridge Program Manager
United States Coast Guard
Ninth Coast Guard District
1240 E. Ninth Street
Room 2047
Cleveland, OH 44199-2060

***Ref: Removal of Hojack Swing Bridge from Mile 0.9 of the Genesee River and the Applicability of Section 106 of the National Historic Preservation Act
Rochester, Monroe County, New York***

Dear Mr. Striffler:

The Advisory Council on Historic Preservation (ACHP) is evaluating the applicability of Section 106 of the National Historic Preservation Act (NHPA) to the United States Coast Guard's (USCG) involvement in the removal of the Hojack Swing Bridge. Our evaluation is being conducted in accordance with Section 800.9(d) of our regulations, "Protection of Historic Properties" (36 CFR Part 800), so that we can better understand the USCG's jurisdiction in regard to bridge activities. The activity in this case is the removal of the Hojack Swing Bridge, a property eligible for listing in the National Register of Historic Places.

The USCG's involvement in bridge activities would constitute an "undertaking" subject to Section 106 when the removal of a bridge was (a) carried out by or on behalf of the USCG, (b) carried out with financial assistance from the USCG; or (c) required a permit, license or approval from the USCG. Based upon our research of the Hojack Swing Bridge activity, the USCG will not be carrying out the removal itself. While the Truman-Hobbs Act authorizes federal funding for some bridge removals, the USCG has stated that in this particular removal, federal funding will not be allocated. Thus, there is no direct or indirect federal financial involvement.

In addition, the USCG's actions do not require the issuance of a permit, license or approval in order for the bridge removal to proceed. The USCG is merely notifying the bridge's owner of its factual determination that the bridge is an unreasonable obstruction to navigation, and, therefore, under the Rivers and Harbors Act, must be removed. As a point of clarification, this activity is somewhat analogous to a homeowner telling a trespasser that he or she is on private property without permission, and must leave or be subject to arrest. Such actions by the homeowner could not be viewed as a permit, license or approval. Nevertheless, once the trespasser was informed he or she was unwelcomed he or she would be required to leave the private property immediately.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

In closing, it is the ACHP's conclusion that USCG's enforcement of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. §§ 401, 403, 406, 413, and 502, and 33 CFR Part 116 in regards to the Hojack Swing Bridge is not subject to the requirements of Section 106. Further, if this is the extent of federal involvement (e.g., no U.S. Army Corps of Engineers' Section 404 permit is required), the USCG may proceed with enforcement once it fulfills other mandatory, applicable reviews.

If you have any additional questions regarding the ACHP's findings, please contact Ms. Katharine R. Kerr at (202) 606-8534, or via email at kkerr@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section

SERVICE DATE - MAY 8, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1162X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN MONROE COUNTY, NY

Decided: May 2, 1997

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon approximately 8.50 miles of its line of railroad from approximately milepost 0.10 to approximately milepost 7.20 (Rochester Running Track) and from approximately milepost 92.90 to approximately milepost 94.10 (Ontario Industrial Track) in Monroe County, NY. Notice of the exemption was served and published in the *Federal Register* on June 20, 1996 (61 FR 31607-08).

By decision served July 22, 1996, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that Conrail: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) not salvage or dispose of the entire right-of-way until the U.S. Army Corps of Engineers completes its review under section 404 of the Clean Water Act, 33 U.S.C. 1344.

By letter dated October 22, 1996 Conrail requests that the Board remove the conditions imposed in the July 22, 1996 decision so that it may proceed with the abandonment of the line and removal of the track. It submitted letters from the New York State Parks, Recreational and Historic Preservation Agency (SHPO) and the U.S. Army Corps of Engineers (Corps). The SHPO has expressed concern about the future plans for the historic swing bridge at milepost 94.0, which once connected the two sides of the Genesee River. Also, the Corps advised that it regulates work in the Genesee River (a navigable waterway) under section 10 of the Rivers and Harbor Act of 1899, (33 U.S.C. 403) and that it should be contacted concerning the use of the swing bridge at milepost 94.0 to determine if authorization under section 10 of the Rivers and Harbor Act of 1899 is required. SEA states that, although the issue of documentation remains with respect to the historic swing bridge at milepost 94.0 of the Ontario Industrial Track, it appears that the previously imposed conditions can be modified to the extent necessary to permit Conrail to salvage the track. However, an evaluation of the potential impact of this project on historic resources has not been completed. Therefore, SEA recommends that the conditions imposed in the July 22, 1996 decision be modified as set forth in the ordering paragraph below.

As conditioned, this action 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 historic preservation and the salvage conditions previously imposed in the decision served July 22, 1996, are modified to require that Conrail : (1) retain its

interest in and take no steps to alter the historic integrity of the swing bridge at milepost 94.0 of the Ontario Industrial Track until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) consult with the Army Corps of Engineers concerning the change in use of the swing bridge at milepost 94.0.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

**LETTER OF RESOLUTION
AMONG THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION
AND
CSX TRANSPORTATION, INC.
REGARDING THE DEMOLITION OF THE HOJACK SWING BRIDGE
ROCHESTER, MONROE COUNTY**

WHEREAS, the CSX Transportation Inc. (CSX) swing bridge (the Bridge) located in the Genesee River at River Mile 0.9 (a.k.a. Hojack Swing Bridge) is wholly owned and formerly operated by CSX; and

WHEREAS, CSX, as authorized by statute and permit in 1905 and subsequent permit in 1966, constructed the Bridge in navigable waters of the United States; and

WHEREAS, the Bridge ceased operation circa 1995 and its associated railroad tracks have been removed; and

WHEREAS, CSX is now being required in an enforcement proceeding initiated by the United States Coast Guard (USCG) to remove the Bridge from the navigable waters of the United States since the Bridge has ceased to function for transportation purposes; and

WHEREAS, the Bridge was determined to meet the criteria which make it eligible for inclusion in the National Register of Historic Places by the New York State Historic Preservation Office (OPRHP) in 1996 and again in 2001; and

WHEREAS, the question of potential Section 106 (federal NHPA) applicability was raised with regard to the actions of the USCG through their enforcement of the statute and associated permit conditions that were established when the Bridge was built and updated; and

WHEREAS, the President's Advisory Council for Historic Preservation (ACHP) was asked to provide a formal opinion of the applicability of Section 106 with regard to the USCG's permit enforcement action seeking the removal of the Bridge; and

WHEREAS, by letter dated November 29, 2011, the ACHP determined that the enforcement of the statute and permit condition requiring the removal of the Bridge at the time of its cessation of use for transportation purposes was in fact not subject to Section 106; and

WHEREAS, no other federal permits or actions subject to Section 106 are associated with the removal of the Bridge; and

WHEREAS, the removal of the Bridge will disturb the bed of the Genesee River, and therefore, require a permit from the New York State Department of Environmental Conservation (DEC) under Article 15 (NYECL) and 6 NYCRR Part 608; and

WHEREAS, DEC has sought the consultation of the OPRHP as required under Section 14.09 (NYSPRHPL) and 9 NYCRR Part 428; and

WHEREAS, OPRHP has concurred with DEC that the demolition of the National Register eligible Hojack Swing Bridge is an Adverse Impact as defined in 9 NYCRR Part 428.7 (a)(1); and

WHEREAS, OPRHP and DEC have determined that the enforcement of the USCG permit condition (f) of the Department of Army permit dated November 30, 1966 and applicable sections of the Federal Rivers and Harbors Act of 1899, as amended, 33 U.S.C. §401 and 502 (Section 18), 33 CFR 116, allow for no reasonable or prudent alternative that might avoid the Adverse Impact to the historic bridge.

NOW, THEREFORE, in accordance with the Section 14.09 (NYSPRHPL), DEC, OPRHP, and CSX agree that the Project may proceed subject to the stipulations below.

STIPULATIONS

In accordance with its jurisdictional authority over the project pursuant to Article 15 of the Environmental Conservation Law noted above, and its related obligations to fulfill the applicable requirements of the State Historic Preservation Act, the DEC shall have responsibility for ensuring that the stipulations of this Letter of Resolution are implemented by the responsible parties identified below. The failure of any responsible party identified below to implement the stipulations is subject to enforcement by DEC under its jurisdictional authority, but such failure shall not be construed to require DEC to independently implement any specific element of these stipulations.

A. Offer of Sale

On September 14, 2011, a letter was sent to potentially interested parties offering the Bridge to any qualified purchaser (Offer Letter). The Offer Letter stated that any party interested in acquiring the Bridge must respond to the offer in writing by October 15, 2011. CSX's offer was not accepted during the solicitation period.

B. Abbreviated Level II HAER Documentation

The Historic American Engineering Record (HAER) Level II documentation will be completed for the structure. This work will consist of:

1. Large format photographs of the Bridge.
2. Standard digital photography of the control house.
3. Reproduction of existing drawings.
4. Written narrative data.

Two (2) complete sets of this material will be prepared. One set will be retained by a local repository to be determined in consultation with OPRHP and one set will be provided to the OPRHP for presentation to the New York State Archives.

C. Historical Interpretive Signage

CSX will design and produce historical outdoor signage in order to help inform and educate residents and visitors about the history of the Hojack Swing Bridge. The content of the signage and their locations will be developed in consultation with OPRHP and DEC. The historical signage will consist of a single flat panel, installed in two prominent public locations.

D. Bricks and Mortar Fund

CSX will make a monetary contribution in the amount of Thirty Thousand Dollars (\$30,000.00) to a "Bricks and Mortar Fund." CSX will set aside the monies for the Bricks and Mortar Fund in a non-interest bearing attorney trust account with Hiscock & Barclay LLP or other appropriate entity to be named by CSX upon the issuance of a final permit by the DEC. The monies in the Bricks and Mortar Fund will be used to support one or more project(s) associated with a historic resource on or eligible for listing on the National Register of Historic Places (NRHP), which is accessible to the public within the City of Rochester and preferably in the Project area (the lower Genesee River or immediately adjacent Lake Ontario shoreline).

The OPRHP, in consultation with DEC, will select the project(s) that will receive the funds from the attorney trust account, designate the recipient of those funds, and determine the amount each project will receive. Hiscock & Barclay LLP or other appropriate entity to be named by CSX will disburse payments from the Bricks and Mortar Fund to the recipient up to the amount specified by DEC upon presentation of an invoice(s) by the recipient, whether paid or unpaid, from the person(s) who provided the services or materials to the project selected by OPRHP.

Bricks and Mortar Fund money will be held in the attorney trust account for a period not to exceed two (2) years following issuance of a final permit by DEC. A funding process schedule will be established for these resources as follows:

Within three (3) months of the DEC permit being issued, CSX will seek grant applicants for the Bricks and Mortar Fund money. Applicants must have either a project that involves the rehabilitation or repair of a building or structure, which is on or eligible for listing on the National Register of Historic Places and can demonstrate a direct impact (visually or historically) as a result of the removal of the Hojack Swing Bridge, or be the recipient institution(s) selected by DEC and OPRHP to display the salvageable components of the Bridge in which case the recipient institution(s) can apply for a grant of up to \$5,000 from the Bricks and Mortar Fund to assist the recipient institution(s) with curation and interpretation of these artifacts. If no applicants meeting these requirements apply, then applicants with resources on or eligible for listing on the Register, but not directly impacted by this action and located in the greater Rochester area may apply. In addition, applicants proposing projects involving an educational component promoting preservation and creative reuse, may apply. All Bricks and Mortar Fund projects must follow the Secretary of the Interior's Standards for Rehabilitation.

The notice of application for Bricks and Mortar Fund money shall be posted in a publication of record for the area or through direct mailing or e-mailing of information to entities that may fit the requirements. The posting will outline the requirements of the grant and allow for a 30 day application period.

After the posting has been closed and applications have been received, the applications will be reviewed and rated, and recipients selected, by OPRHP in consultation with DEC. The selected applicants will be notified by CSX and, upon receipt by Hiscock & Barclay LLP or other appropriate entity to be named by CSX of an invoice(s) to the recipient, whether paid or unpaid, from the person(s) who provided the services or materials to the project selected by OPRHP, or receipt of other appropriate documentation for work to be completed using the funds, said Bricks and Mortar Fund money will be made available to the project sponsor. Sponsors will be given an established time frame within which to use the Bricks and Mortar Fund money to complete the project identified and demonstrate completion of the approved work through photo documentation, which will be provided directly to the DEC and OPRHP. Applicants that fail to complete approved work in the agreed upon time frame may be required by DEC or OPRHP to pay back the previously disbursed Bricks and Mortar Fund money to Hiscock & Barclay LLP or other appropriate entity to be named by CSX for deposit back into the Bricks and Mortar Fund for reprogramming by OPRHP. Applicants may seek reasonable time frame extensions in consultation with DEC and OPRHP.

Disposition of any money left in the Bricks and Mortar Fund at the end of 18 months following issuance of a final permit by DEC, that have not been committed to specific projects, will be dispersed to appropriate projects, programs or institutions in accordance with the above noted requirements by CSX in consultation with DEC and OPRHP.

E. Digitization of Historical Photographs of the Bridge

After receipt by CSX of the list prepared by DEC and OPRHP of the names of persons and/or entities that own historical photographs of the Bridge and may be willing to make those photographs available for digitization, CSX, in consultation with DEC and OPRHP, will select those photographs worthy of digitization from among the photographs made available to CSX by such persons and entities and will digitize them in jpg. or tif. compression format for inclusion in the HAER Level II documentation or for collection purposes for public viewing.

F. Preservation of Bridge Components at Local and State Railroad and Transportation Museums

The Hojack Swing Bridge played a unique role in the transportation history of the City of Rochester. Thus, there exists the potential for various entities to want to display preserved components of the Bridge. CSX has identified several components as potentially salvageable pieces for preservation, although the actual preservation and exhibition of salvageable pieces is dependent upon interest, exhibition space and cost. Possible salvage pieces include:

1. The date plaques (1 complete, 1 partial).
2. A steam engine and fly wheel.
3. The lever assembly.
4. The bridge rotation indicator face and stand.

Mitigation Plan Phased Approach

The Mitigation Plan will follow a three (3) phase approach to ensure that demolition of the Bridge can occur in a timely manner as required by the USCG enforcement proceeding while meeting the stipulations outlined in this agreement.

Phase I

The non-invasive elements of the Mitigation Plan that will be completed prior to the issuance of the permit and commencement of any demolition activity and will be completed in consultation with OPRHP and DEC. The components include:

1. The submittal of digital images of the HAER photographs for review and comment.
2. The issuance of the Offer Letter of September 14, 2011.
3. The issuance of a Bridge components offer letter to Museums.
4. The preparation and submission of a proposed outline for the HAER Level II written narrative for review and comment.
5. The reproduction of existing drawings/blueprints and submission of a list of blueprints for large format photography for review and comment.
6. The issuance of a further offer letter (offering the Bridge to any qualified purchaser) as part of the public comment period, if requested by OPRHP or DEC and allowed by the USCG.
7. Demonstration of commitment of site owner(s) for placement of the historical interpretive signage.
8. The preparation of the historical interpretive sign boards (DRAFT) for review and comment by DEC, OPRHP and any other interested party.

Phase II

Elements of the Mitigation Plan to be undertaken after DEC issues its Article 15 permit but prior to beginning the physical demolition of the Bridge's superstructure (other than lead and asbestos abatement activities and the accompanying removal of the top 10 feet of the Bridge's underlying fender systems to allow for the placement of a debris catching system under the steel truss to catch any debris from the performance of the lead and asbestos abatement activities). These elements include:

1. The identification and digitization of historical photographs (owned by others) which the owners are willing to make available to CSX upon request and within a reasonable timeframe. (DEC and OPRHP will provide CSX with a list of such persons and/or entities within 15 days of this Letter of Resolution being signed).
2. The transfer of Thirty Thousand Dollars (\$30,000.00) into an attorney trust account for a Bricks and Mortar Fund.
3. The submittal of a draft of the HAER Level II written narrative which incorporates DEC and OPRHP comments on the proposed outline for the written narrative, which comments by DEC and OPRHP shall be provided to CSX no later than 15 days after issuance of the permit.

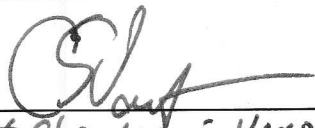
Phase III

Elements of the Mitigation Plan will be undertaken within 18 months of the completion of the removal of the Bridge superstructure. These elements include:

1. The delivery of the selected salvageable components of the Bridge to the Museum(s) (selected by DEC and OPRHP) committed to displaying them. The selected Museum(s) may apply for a grant of up to \$5,000 from the Bricks and Mortar Fund to assist the recipient institution(s) with curation and interpretation of these artifacts.
2. Final production of interpretive signage and installation. Photos will be submitted to DEC and OPRHP to demonstrate completion of this component of the plan.
3. Distribution of Bricks and Mortar funds shall be completed during this phase as directed by OPRHP.

Understanding the complexities associated with the various aspects of the agreed upon mitigation, CSX will have two (2) years from the date of issuance of the DEC Article 15 permit to complete the plan. A period of six (6) months is assigned for the completion of Phase II projects in the mitigation plan and an additional eighteen (18) months for actions associated with Phase III projects in the mitigation plan. One year extensions can be approved if all signatories agree on the extension.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

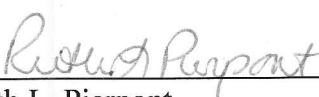
By: 

Name: Charles E. Vandro

Title: Agency Historic Preservation Officer

Date: 7/10/12

THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

By: 

Name: Ruth L. Pierpont

Title: Deputy Commissioner for Historic Preservation/Deputy SHPO

Date: 7/10/12

CSX TRANSPORTATION, INC.

By: 

Name: William Parry

Title: Manager Environmental Remediation

Date: 7/14/2012

C. Historical Interpretive Signage

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The notice of application for Bricks and Mortar Fund money shall be posted in a publication of record for the area or through direct mailing or e-mailing of information to entities that may fit the requirements. The posting will outline the requirements of the grant and allow for a 30 day application period.

After the posting has been closed and applications have been received, the applications will be reviewed and rated, and recipients selected, by OPRHP in consultation with DEC. The selected applicants will be notified by CSX and, upon receipt by Hiscock & Barclay LLP or other appropriate entity to be named by CSX of an invoice(s) to the recipient, whether paid or unpaid, from the person(s) who provided the services or materials to the project selected by OPRHP, or receipt of other appropriate documentation for work to be completed using the funds, said Bricks and Mortar Fund money will be made available to the project sponsor. Sponsors will be given an established time frame within which to use the Bricks and Mortar Fund money to complete the project identified and demonstrate completion of the approved work through photo documentation, which will be provided directly to the DEC and OPRHP. Applicants that fail to complete approved work in the agreed upon time frame may be required by DEC or OPRHP to pay back the previously disbursed Bricks and Mortar Fund money to Hiscock & Barclay LLP or other appropriate entity to be named by CSX for deposit back into the Bricks and Mortar Fund for reprogramming by OPRHP. Applicants may seek reasonable time frame extensions in consultation with DEC and OPRHP.

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Phase I

The non-invasive elements of the Mitigation Plan that will be completed prior to the issuance of the permit and commencement of any demolition activity and will be completed in consultation with OPRHP and DEC. The components include:

1. The submittal of digital images of the HAER photographs for review and comment.
2. The issuance of the Offer Letter of September 14, 2011.
3. The issuance of a Bridge components offer letter to Museums.
4. The preparation and submission of a proposed outline for the HAER Level II written narrative for review and comment.
5. The reproduction of existing drawings/blueprints and submission of a list of blueprints for large format photography for review and comment.
6. The issuance of a further offer letter (offering the Bridge to any qualified purchaser) as part of the public comment period, if requested by OPRHP or DEC and allowed by the USCG.
7. Demonstration of commitment of site owner(s) for placement of the historical interpretive signage.
8. The preparation of the historical interpretive sign boards (DRAFT) for review and comment by DEC, OPRHP and any other interested party.

Phase II

Elements of the Mitigation Plan to be undertaken after DEC issues its Article 15 permit but prior to beginning the physical demolition of the Bridge's superstructure (other than lead and asbestos abatement activities and the accompanying removal of the top 10 feet of the Bridge's underlying fender systems to allow for the placement of a debris catching system under the steel truss to catch any debris from the performance of the lead and asbestos abatement activities). These elements include:

1. The identification and digitization of historical photographs (owned by others) which the owners are willing to make available to CSX upon request and within a reasonable timeframe. (DEC and OPRHP will provide CSX with a list of such persons and/or entities within 15 days of this Letter of Resolution being signed).
2. The transfer of Thirty Thousand Dollars (\$30,000.00) into an attorney trust account for a Bricks and Mortar Fund.
3. The submittal of a draft of the HAER Level II written narrative which incorporates DEC and OPRHP comments on the proposed outline for the written narrative, which comments by DEC and OPRHP shall be provided to CSX no later than 15 days after issuance of the permit.

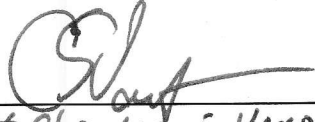
Phase III

Elements of the Mitigation Plan will be undertaken within 18 months of the completion of the removal of the Bridge superstructure. These elements include:

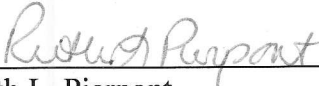
1. The delivery of the selected salvageable components of the Bridge to the Museum(s) (selected by DEC and OPRHP) committed to displaying them. The selected Museum(s) may apply for a grant of up to \$5,000 from the Bricks and Mortar Fund to assist the recipient institution(s) with curation and interpretation of these artifacts.
2. Final production of interpretive signage and installation. Photos will be submitted to DEC and OPRHP to demonstrate completion of this component of the plan.
3. Distribution of Bricks and Mortar funds shall be completed during this phase as directed by OPRHP.

Understanding the complexities associated with the various aspects of the agreed upon mitigation, CSX will have two (2) years from the date of issuance of the DEC Article 15 permit to complete the plan. A period of six (6) months is assigned for the completion of Phase II projects in the mitigation plan and an additional eighteen (18) months for actions associated with Phase III projects in the mitigation plan. One year extensions can be approved if all signatories agree on the extension.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:  Date: 7/10/12
Name: Charles E. Vandrovi
Title: Agency Historic Preservation Officer

THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

By:  Date: 7/10/12
Name: Ruth L. Pierpont
Title: Deputy Commissioner for Historic Preservation/Deputy SHPO

CSX TRANSPORTATION, INC.

By:  Date: 7/14/2012
Name: William Parry
Title: Manager Environmental Remediation

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September 6, 2012

Ms. Catherine Glidden
Environmental Protection Specialist
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: AB-167 (Sub-No .1162X), *Consolidated Rail Corporation--Abandonment
Exemption--in Monroe County, NY*

Dear Catherine:

CSX Transportation, Inc. ("CSXT") appreciates the Surface Transportation Board's (the "Board") efforts to remove the condition in the May 8, 1997 decision that required "that Conrail : (1) retain its interest in and take no steps to alter the historic integrity of the swing bridge at milepost 94.0 of the Ontario Industrial Track until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f." The swing bridge is known as the Hojack Bridge and crosses over the Genesee River in Rochester, NY.

CSXT has been ordered to remove the Hojack Bridge by the U.S. Coast Guard. After the Board's decision, the U.S. Coast Guard and the U.S. Army Corps of Engineers declined to conduct a Section 106 review since the Bridge was being removed under an enforcement action. This decision not to conduct the review under the Section 106 process was supported by the Advisory Council. A copy of that Advisory Council letter is attached. As explained below, CSXT has a limited window in which to demolish the Hojack Bridge and requires that entire window to complete the work.

The New York SHPO conducted a thorough historic review under Section 14.09 of the state law that resulted in a detailed mitigation plan. Under New York state law, the detailed mitigation plan is deemed to satisfactorily mitigate any adverse impact resulting from the way in which the Bridge is removed. See 6 NYCRR 428.10(b).

Since initiation of the U.S. Coast Guard enforcement proceeding in 2011, CSXT has spent approximately \$1 million in engineering, environmental consulting and legal fees to obtain the necessary permits and authorizations, including the completion of a State Environmental Quality Review Act process. To obtain these permits and authorizations over the past year and a half, CSXT worked with the New York SHPO, the City of Rochester, the Town of Irondequoit, the U.S. Army Corps of Engineers, the New York State Department of Environmental Conservation, and the Landmark Society of Western New York among others.

CSXT has a limited window in which to conduct the demolition of the bridge. Due to fish spawning and propagation requirements and the extensive recreational boating usage of the River during the summer months, the permit from the New York State Department of Environmental Conservation restricts CSXT's contractor to a 6 month work window, beginning October 15, 2012 and ending April 15, 2013.

Further, due to its deteriorating and unsafe condition, CSXT has also incurred additional costs to implement temporary measures to stabilize the Bridge to minimize potential hazards to the public, boaters (because of its location in the middle of the river), and the environment until the demolition work can be initiated in October.

Based on the final permits and authorizations received, CSXT has already signed contracts with BIDCO for removal of the Bridge structure and FRS Properties LLC (an adjacent property owner) for a staging area and access to the Bridge for use during demolition. BIDCO, in turn, has leased an additional staging area on the western side of the River from the City of Rochester, and filed for and acquired the necessary contractor permits and amendments that it will need to conduct salvage operations in the Genesee River. The contractor's site mobilization has also begun. BIDCO is currently in the process of mobilizing to the site the large equipment and deep water materials to support the dismantling of the Bridge superstructure and foundations, and to remove and dispose of approximately 5,000 cubic yards of associated sediment and rip rap. As of this past weekend, a large crane has already been delivered to the staging area. The cost of demolition will be in addition to the costs already incurred by CSXT.

Further complicating the project is the limited window available for work. Due to fish spawning and propagation requirements and the extensive recreational boating usage of the River during the summer months, the permit from the New York State Department of Environmental Conservation restricts BIDCO to a 6 month work window, beginning October 15, 2012 and ending April 15, 2013. Based on the contractor responses to CSXT's request for proposals, the full six month window is necessary to remove the Bridge. If the project start is delayed and the removal not completed by April 15, 2013, the project will have to stop and start again in October 2013.

If that is the case, CSXT will incur significant delays, demobilization, remobilization and contract amendment costs, and BIDCO will have to reapply for a number of permits to complete the work and renegotiate leases of adjacent properties necessary to support the project. In addition, the deteriorating center pier, the north and south starkwaters and fendering system will likely remain in place through 2012-2013 boating season posing a continuing hazard to commercial and recreational boating traffic. Moreover, without the bridge superstructure above them, at night or in the evenings, the creosote soaked (brown-black) timbers of the starkwaters and fendering system at water level in the middle of the river will pose an enhanced navigation hazard.

As you can see, there is every reason to move forward with the demolition, and a substantively sound historic resource review and mitigation record upon which to proceed, Please do not hesitate to contact me if CSXT can be of any further assistance to the Surface Transportation Board.

Sincerely

A handwritten signature in blue ink, appearing to read 'Melanie Yasbin', with a stylized flourish at the end.

Melanie Yasbin
Attorney for: CSX Transportation, Inc.



CSXT (Hojack) Bridge Removal

Striffler, Scot to: Gliddenc

Sent by: **Scot.M.Striffler@uscg.mil**

Cc: "Soule, Lee", "Stanifer, William"

09/05/2012 10:28 AM

History: This message has been replied to and forwarded.

Ms. Glidden,

Thank you for the phone call yesterday regarding the removal of the CSXT (Hojack) Bridge over Genesee River in Rochester, NY. As we discussed, the Coast Guard has a continuously running notice to mariners warning vessel operators of potential hazards originating from the former railroad swing bridge. This notice will continue to run until the bridge is removed. The structure itself is also considered a hazard since the required bridge fendering/protection system is no longer present. Essentially, the bridge has been required to employ and maintain a bridge fendering/protection system that is basically a fence around the entire structure. These types of protection systems protect the bridge itself from allisions by large commercials, as well as keep recreational vessels from drifting, or being pushed into, the structure itself.

A copy of the notice to mariners the Coast Guard has been running continuously since 2010 is below:

LAKE ONTARIO - NY - Genesee River, Chart 14815 - Bridge Discrepancy
The Coast Guard has received reports of floating debris originating from the CSX Transportation Railroad Bridge at Mile 0.9 over the Genesee River.
Mariners should exercise caution in the area. [35/10]

Please feel free to contact me with questions or to discuss further. I would also appreciate being included in future updates on this issue. Thank you.

Sincerely,

Scot

Scot Striffler
Bridge Program Manager
Ninth Coast Guard District
(216) 902-6087
Fax: (216) 902-6088
Scot.M.Striffler@uscg.mil