

EO-1971

CG

Executed MOA for Hojack Swing Bridge

Catherine Glidden

to:

Vicki Rutson, Melanie, cvaughn, John.Bonafide, cevandre

10/17/2012 11:55 AM

Cc:

Kenneth Blodgett, Terry Guy

Hide Details

From: Catherine Glidden/STB Sort List...

To: Vicki Rutson/STB@STB, Melanie@lgrailaw.com, cvaughn@achp.gov,
John.Bonafide@parks.ny.gov, cevandre@gw.dec.state.ny.us

Cc: Kenneth Blodgett/STB@STB, Terry Guy/STB@STB

1 Attachment



signed MOA.pdf

Hello All,

Please see attached executed MOA for the Hojack Swing Bridge. Please let me know if you have any trouble opening this file.

Thanks all.

-Cathy

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

**MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD,
CSX TRANSPORTATION, INC.,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, AND
THE NEW YORK STATE OFFICE OF PARKS, RECREATION
AND HISTORIC PRESERVATION**

**REGARDING DOCKET NO. AB 167 (SUB-NO. 1162X) CONSOLIDATED RAIL
CORPORATION - ABANDONMENT EXEMPTION - IN MONROE COUNTY, NY**

WHEREAS, on July 18, 1996, Consolidated Rail Corporation (“Conrail”), a CSX Transportation, Inc. (“CSXT”) predecessor, filed a notice of exemption with the Surface Transportation Board (“STB”) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for Conrail 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 (the “Line”); and

WHEREAS, in a decision served on July 22, 1996, the proceeding was reopened at the request of the STB’s Section of Environmental Analysis, now the Office of Environmental Analysis (“OEA”), and the exemption was made subject to the condition that Conrail “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” (“Section 106”); and

WHEREAS, in a decision served on May 8, 1997, the proceeding was reopened again to modify the historic preservation condition to require Conrail to “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” (map; Appendix A); and

WHEREAS, the STB’s approval of the abandonment is an undertaking as defined at 36 C.F.R § 800.3(a); and

WHEREAS, the swing bridge at milepost 94.0 of the Ontario Industrial Track (“Swing Bridge”) has been determined eligible for listing on the National Register of Historic Places; and

WHEREAS, CSXT is the current owner of the Swing Bridge and seeks to fully consummate the abandonment; and

WHEREAS, the United States Coast Guard (“USCG”) initiated an enforcement proceeding against CSXT under the applicable sections of the Federal Rivers and Harbors Act of 1899, as amended (33 U.S.C. §§ 401 and 502 (Section 18), 33 C.F.R. § 116) requiring CSXT to remove all elements of the Swing Bridge due to the unreasonable hazard the Swing Bridge

poses to vessels navigating the Genesee River and because once CSXT consummates the abandonment, the Swing Bridge will no longer have a transportation purpose; and

WHEREAS, the USCG authority requiring removal of the Swing Bridge has been determined by the Advisory Council on Historic Preservation (“Advisory Council”) not to be an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, as a law enforcement proceeding, the federal bridge statutes and permit that authorized the construction of the bridge over a navigable waterway of the United States also requires its removal when no longer serving a transportation use, and there are no feasible alternatives; and

WHEREAS, the NY SHPO, USCG, and the Advisory Council were unaware until September 2012 that the removal of the Swing Bridge was part of an STB abandonment proceeding subject to Section 106 of NHPA; and

WHEREAS, the removal of the Swing Bridge requires a permit from the New York Department of Environmental Conservation (NY DEC) under Article 15 (NYECL) and 6 NYCRR Part 608; and

WHEREAS, in issuing its permit to CSXT to remove the Swing Bridge NY DEC, prior to knowing of the Section 106 review now being undertaken by the STB, was required to comply with New York State Historic Preservation Act of 1980; and

WHEREAS, the NY SHPO, acting through the Field Services Bureau of the New York State Office of Parks, Recreation and Historic Preservation, determined that removal of the Swing Bridge by CSXT constitutes and adverse impact under the New York State Historic Preservation Act of 1980; and

WHEREAS, CSXT proceeded to conduct public outreach to various preservation groups and public and state agencies in compliance with the New York State Historic Preservation Act of 1980; and

WHEREAS, on September 14, 2011, CSXT sent letters to The Bridge Project, Landmark Society of Western New York, Inc. (“Landmark Society”), Rails-to-Trails Conservancy (“Rails-to-Trails”), NY SHPO, Charlotte Community Association, Charlotte-Genesee Historical Society, Mayor of Rochester, Irondequoit Town Supervisor, Deputy Monroe County Executive, offering the Swing Bridge to any party willing and able to take delivery of the Swing Bridge for removal and preservation at another site with a response deadline of October 15, 2011; and

WHEREAS, no offers to take delivery of the Swing Bridge were received by October 15, 2011; and

WHEREAS, on October 3, 2011, CSXT provided the Landmark Society with a proposed historical impact mitigation plan and invited the Landmark Society to submit comments; and

WHEREAS, on February 15, 2012, CSXT sent letters to The Bridge Project, Landmark Society, Rails-to-Trails, Rochester & Genesee Valley Railroad Museum, Lehigh Valley Railroad Historical Society, King Bridge Company Museum, Charlotte-Genesee Historical Society, New York Museum of Transportation, Arcade and Attica Railroad Corporation, Medina Railroad Museum and Charlotte Community Association, Mayor of the City of Rochester, Town of Irondequoit, Monroe County Executive, USCG, US Army Corps of Engineers, NY DEC and others, offering salvageable parts of the Swing Bridge for display by willing recipient(s) to be chosen by the NY SHPO; and

WHEREAS, several museums have requested various salvageable parts of the Swing Bridge; and

WHEREAS, on April 11, 2012, CSXT sent letters addressed to The Bridge Project, Landmark Society, Rails-to-Trails, NY SHPO, Ted George, Charlotte Community Association, Charlotte-Genesee Historical Society, Mayor of the City of Rochester, Irondequoit Town Supervisor, Deputy Monroe County Executive, presenting a second offer to donate the Swing Bridge to any party willing and able to take delivery of the Swing Bridge for removal and preservation at another site; and

WHEREAS, no offers to take delivery of the Swing Bridge were received; and

WHEREAS, on June 27, 2012, NY DEC, NY SHPO and CSXT developed a Letter of Resolution (“LOR”) to mitigate the adverse impact of removing the Swing Bridge pursuant to the New York State Historic Preservation Act of 1980; and

WHEREAS, the LOR was executed by NY DEC, NY SHPO and CSXT on July 14, 2012 and includes stipulations for mitigating the adverse impact to the Swing Bridge (Appendix B); and

WHEREAS, on July 30, 2012, NY DEC issued a permit to CSXT allowing CSXT to work below the mean high water line of the Genesee River to accomplish demolition of the Swing Bridge, and that permit requires that work be undertaken between October 15th and April 15 during the term of the permit; and

WHEREAS, on July 25, 2012, CSXT contacted OEA regarding its intent to remove the Swing Bridge; and

WHEREAS, on August 27, 2012, OEA contacted the NY SHPO stating that the removal of the Swing Bridge was part of an STB abandonment proceeding subject to Section 106 of NHPA; and

WHEREAS, the STB in consultation with the Advisory Council and NY SHPO has determined that removal of the Swing Bridge will have an adverse effect pursuant to Section 106; and

WHEREAS, in an email sent on September 14 , 2012, OEA notified the Advisory Council of the adverse effect in accordance with 36 C.F.R § 800.6(a)(1); and

WHEREAS, in an email sent on September 24, 2012, the Advisory Council declined to participate in the preparation of this MOA; and

WHEREAS, CSXT has solicited public input regarding this MOA by publishing a legal notice in the Democrat & Chronicle newspaper on September 24, 2012, and sending a notice letter to several parties that participated in the review and consultation process as well as the development of mitigation measures embodied in the LOR as set forth in its “stipulations”; and

WHEREAS, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

NOW, THEREFORE, the STB, CSXT, and NY SHPO agree that the STB undertaking including the removal of the Swing Bridge shall be implemented in accordance with the following stipulations in order to satisfy STB’s Section 106 responsibilities.

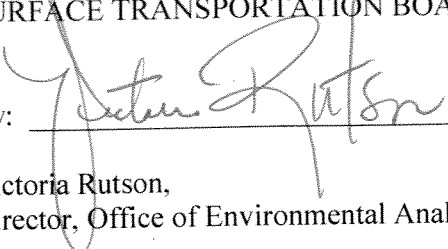
STIPULATIONS

1. CSXT shall complete the stipulations provided in the LOR executed on July 14, 2012 among the NYSDEC, NY SHPO, and CSXT. A copy of this LOR is attached as Appendix B and incorporated as part of this document.

Execution of this MOA by the STB and implementation of its terms evidences that the STB has taken into account the impact of this undertaking on historic properties and afforded the NY SHPO and the Advisory Council an opportunity to comment.

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

By:  Date: Oct 16, 2012

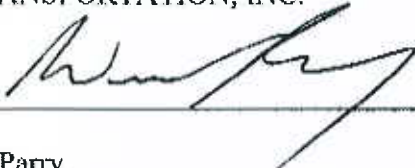
Victoria Rutson,
Director, Office of Environmental Analysis

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

By: Ruth L Pierpont Date: 10/15/12

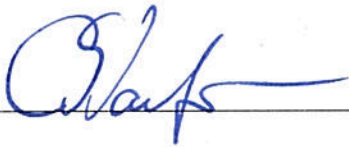
Ruth L Pierpont,
Deputy Commissioner for Historic Preservation/Deputy NYSHPO

CSX TRANSPORTATION, INC.

By:  Date: 10/16/2012

William Parry,
Manager of Environmental Remediation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:  Date: 10/16/12

Charles Vandrei,
Agency Historic Preservation Officer

SITE MAP

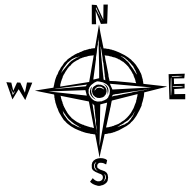
Docket No. AB 167
(Sub-No. 1162X)

Location:

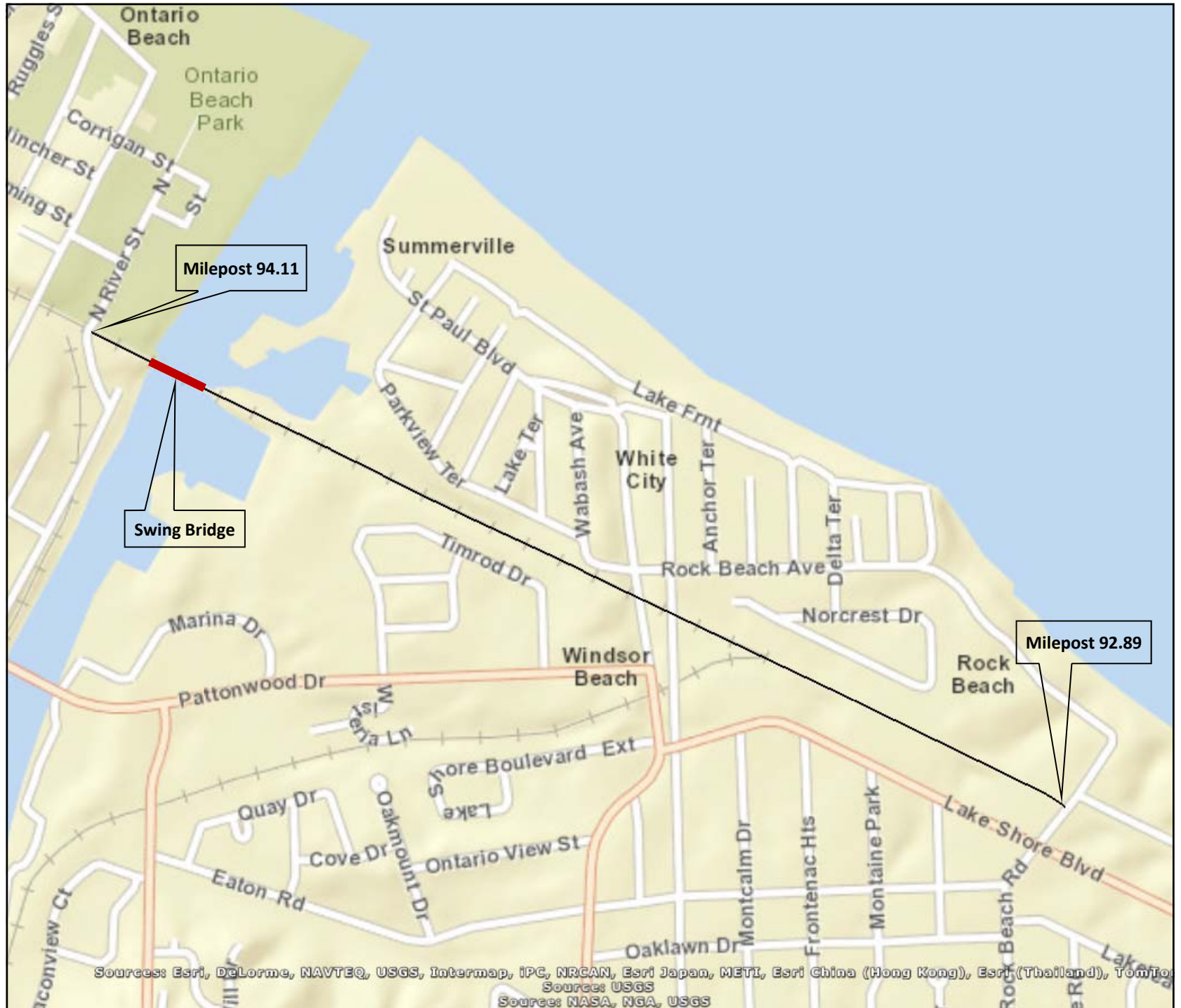
Monroe County
New York

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.



APPENDIX B

**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.

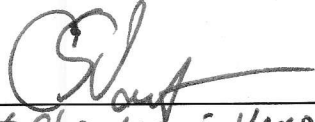
Phase III

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

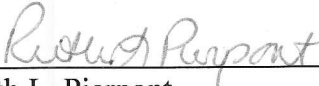
1. The delivery of the selected salvageable components of the Bridge to the Museum(s) (selected by DEC and OPRHP) committed to displaying them. The selected Museum(s) may apply for a grant of up to \$5,000 from the Bricks and Mortar Fund to assist the recipient institution(s) with curation and interpretation 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:  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