


Fw: ACHP Opinion Requested : Hojack Swing Bridge in Monroe County , NY
Catherine Glidden to: Bonafide, John (PEB)

09/10/2012 10:13 AM

Cc: Scot.M.Striffler, "Pierpont, Ruth (PEB)", Kenneth Blodgett, Joshua Wayland, Phillis Johnson-Ball, Melanie Yasbin

Hi John,

Below is an opinion provided by Charlene Dwin Vaughn of the ACHP regarding options we have to resolve the Section 106 process for the swing bridge. She offered up two choices: applying the emergency provision under the Section 106 regulations, or creating an MOA which "accepts the LOR of July 2012 as the appropriate mitigation, and references in the Whereas clause the chronology of federal involvement in this project and the strategy used to engage the public." I believe we will need to go with this last option. I spoke with Scott Striffler of the Coast Guard this morning and he does not believe that the safety issues associated with the bridge rise to the level required under the emergency provision.

You had mentioned that you had a boilerplate MOA format that we could use in this case. Could you send me a copy of the document?

Also, please let me know if you have some idea of how quickly we could finalize the MOA. We understand that CSXT will need to begin demolition of the bridge near the end of next month. Thus, there is a bit of a time crunch here.

Thanks,
Cathy

Catherine Glidden
Environmental Protection Specialist
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Washington, DC 20423
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----- Forwarded by Catherine Glidden/STB on 09/10/2012 09:34 AM -----

From: "Charlene Vaughn" <cvaughn@achp.gov>
To: <Catherine.Glidden@stb.dot.gov>
Cc: <Joshua.Wayland@stb.dot.gov>, "Kenneth Blodgett" <kenneth.blodgett@stb.dot.gov>, "Katharine R. Kerr" <kkerr@achp.gov>, "Najah Duvall-Gabriel" <ngabriel@achp.gov>, <Phillis.Johnson-Ball@stb.dot.gov>, "Pierpont, Ruth (PEB)" <Ruth.Pierpont@parks.ny.gov>, "Scot Striffler" <scot.m.striffler@uscg.mil>
Date: 09/07/2012 11:52 AM
Subject: RE: ACHP Opinion Requested: Hojack Swing Bridge in Monroe County, NY

Cathy,

I don't really know if this would qualify as an emergency, but the Coast Guard would. Is this a time sensitive matter? Does the bridge need to come down under any Coast Guard provision that has to do with safety regulations that STB needs to adhere to under its review? How would the SHPO view the characterization of this situation as an emergency?

It appears that the actions taken thus far might create an emergency situation for the community requiring immediate attention. Since I have limited knowledge about the resource and its role in the community, it is difficult for me to advise you. However, I think that the SHPO and Coast Guard will be able to advise you whether this could be handled as an emergency given the timing and current

conditions.

I'll await your response about whether this will pass the emergency threshold.

Charlene Dwin Vaughn, AICP

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From: Catherine.Glidden@stb.dot.gov [mailto:Catherine.Glidden@stb.dot.gov]

Sent: Friday, September 07, 2012 11:30 AM

To: Charlene Vaughn

Cc: Joshua.Wayland@stb.dot.gov; Kenneth Blodgett; Katharine R. Kerr; Najah Duvall-Gabriel; Phillis.Johnson-Ball@stb.dot.gov; Pierpont, Ruth (PEB); Scot Striffler

Subject: RE: ACHP Opinion Requested: Hojack Swing Bridge in Monroe County, NY

Hi Charlene,

Thanks for your quick response to my query. Do you think the above action would qualify under the emergency provision that you cite? If so, what kind of documentation would you require from us or the Coast Guard? I think this option would resolve this matter the most efficiently, if it applies.

I am concerned that the MOA option would take much longer as we would need to comply with all the time provisions built into the process. However we will take this step if we have no other choice.

Thanks for your intention to work with us to resolve this issue in a timely fashion.

All the best,

Cathy

"Charlene Vaughn" <cvaughn@achp.gov> wrote on 09/07/2012 11:08:22 AM:

> From: "Charlene Vaughn" <cvaughn@achp.gov>
> To: <Catherine.Glidden@stb.dot.gov>, "Katharine R. Kerr"
> <kkerr@achp.gov>, "Najah Duvall-Gabriel" <ngabriel@achp.gov>
> Cc: "Scot Striffler" <scot.m.striffler@uscg.mil>, "Kenneth Blodgett"
> <kenneth.blodgett@stb.dot.gov>, <Joshua.Wayland@stb.dot.gov>,
> <Phillis.Johnson-Ball@stb.dot.gov>, "Pierpont, Ruth (PEB)"
> <Ruth.Pierpont@parks.ny.gov>
> Date: 09/07/2012 11:07 AM
> Subject: RE: ACHP Opinion Requested: Hojack Swing Bridge in Monroe County,
NY
>
> Hi Cathy,
>
> Thanks for the e-mail and the detailed background on this matter.
> Based upon my review of the information, this matter cannot be
> handled as a "No Adverse Effect." The proposed action clearly meets
> the definition of an adverse effect as outlined in 36 CFR Section

> 800.5(a)(1). As such, you have two options available to
> expeditiously conclude this matter. The first is for STB to prepare
> an MOA that accepts the LOR of July 2012 as the appropriate
> mitigation, and references in the Whereas clause the chronology of
> federal involvement in this project and the strategy used to engage
> the public. The second option is to handle it under 36 CFR Section
> 800.12 as an emergency which responds to other immediate threats to
> life or property and request a 7-day review in accordance with
> Section 800.12(b)(2).
>
> Please review these options and get back to me today regarding the
> direction that STB wants to pursue. The ACHP will work closely with
> you to avoid any delays, recognizing the SHPO, railroad and others
> have worked hard on this matter.
>
> Thanks,
>
> Charlene Dwin Vaughn, AICP
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> From: Catherine.Glidden@stb.dot.gov [<mailto:Catherine.Glidden@stb.dot.gov>]
> Sent: Friday, September 07, 2012 9:16 AM
> To: Katharine R. Kerr; Charlene Vaughn; Najah Duvall-Gabriel
> Cc: Scot Striffler; Kenneth Blodgett; Joshua.Wayland@stb.dot.gov;
> Phillis.Johnson-Ball@stb.dot.gov
> Subject: ACHP Opinion Requested: Hojack Swing Bridge in Monroe County, NY
>
> 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

>
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