



Hojack Swing Bridge, STB Docket No. AB 167 (Sub-No. 1162X)

Catherine Glidden to: john.bonafide

08/27/2012 01:22 PM

Cc: Kenneth Blodgett, Melanie Yasbin

Dear Mr. Bonafide,

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).

I understand that the Hojack Swing Bridge has been under review by your office and that you recently were party to a Letter of Resolution (LOR) regarding the bridge, signed by the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation and CSX Transportation Inc. (CSX). As you may already know, this historic resource is on a line of railroad (the Ontario Running Track) for which the Surface Transportation Board (STB) provided abandonment approval to Conrail, the former owner of the line, on July 18, 1996. That STB approval (the undertaking) included the Section 106 condition, as amended, that required the railroad 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." I have attached the May 8, 1997 STB Decision that included this condition below.

The bridge has been the subject of extensive mitigation by CSX including measures stipulated in the LOR (see attached). Although we were not a party to the LOR, we feel that the measures that have been undertaken by CSX, and that are outlined in the LOR, will mitigate any adverse effects that would result from removal of the bridge. We are therefore providing you with our "No Adverse Effect" determination for the undertaking pursuant to 36 CFR Part 800.

Both the Coast Guard and Army Corps of Engineers have informed CSX that the bridge poses a hazard. Moreover, CSX needs to begin removal of the bridge by the beginning of November so that it will not be in contempt of a Coast Guard order requiring its removal. We therefore request your concurrence regarding our "No Adverse Effect" determination for the abandonment in STB Docket No. AB 167 (Sub-No. 1162X). Once the we have completed the Section 106 process, CSX will be free to initiate its Coast Guard order.

I will be follow up with you by phone to ensure that you are in receipt of this email. Your prompt attention to this matter is appreciated.

All the best,

Catherine Glidden
Environmental Protection Specialist
Office of Environmental Analysis
Surface Transportation Board
Washington, DC 20423



LOR-Fully Executed.pdf



STB Decision.pdf



Site Map 2 (AB-167-1162X).pdf

**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. VANDORI

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

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

SITE MAP

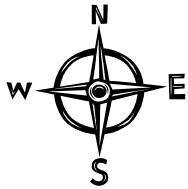
Docket No. AB-167
(Sub-No. 1162X)

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.

