

Statement of Work
Support for Cultural Resources Inventory and Consultation in the Surface
Transportation Board's Case--
Docket No. AB 167 (Sub-No. 1189X)
Consolidated Rail Corporation—Abandonment Exemption in Hudson County,
Jersey City, New Jersey

I. Background

The Surface Transportation Board (Board) has regulatory jurisdiction over railroad abandonments. Abandonment proceedings are subject to environmental and historic review processes under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). In Docket No. AB 167-1189X—in which Conrail seeks to abandon a 1.36-mile segment of rail line known as the Harsimus Branch in Hudson Co., New Jersey—the Board's Office of Environmental Analysis (OEA) is responsible for completion of environmental compliance requirements. Because of the unique facts of this proceeding, OEA's environmental compliance includes evaluation of the effects of the abandonment on the historic Harsimus Branch embankment, as well as potentially-affected neighboring historic properties. The work outlined in this Statement of Work (SOW) supports the OEA's environmental review process, focusing on completion of requirements under Section 106 of the NHPA, codified at 36 C.F.R. 800.

As noted above, the Harsimus Branch abandonment presents unique circumstances. In 2005, Conrail sold part of the Harsimus Branch property (the "embankments") to a private developer without seeking abandonment authority. Thereafter, certain parties petitioned the Board for a determination that the Harsimus Branch was part of a line of railroad subject to the Board's abandonment authority. The Board completed an Environmental Assessment (EA) on March 23, 2009, which it issued for public review and comment. OEA received more than 2000 public comments on the EA. Before OEA was able to complete the environmental and historic reviews, however, court proceedings regarding the case resulted in a Board-ordered abeyance on April 20, 2010. Based on various Special Court and appellate court rulings in 2014, the case is now active before the Board again. Controversy and litigation have characterized the protracted proceedings concerning the proposed abandonment and the private developer's plans for redevelopment of the right-of-way.

The Harsimus Branch abandonment involves a section of rail line that once connected a main line of the Pennsylvania Railroad to the Harsimus Cove on the Hudson River. Stone wall embankments are the primary surviving elements of a short section of elevated rail line that extended from the Bergen Cut to Harsimus Cove. The embankments are listed on the New Jersey Register of Historic Places (Pennsylvania Railroad Harsimus Branch Embankment [ID#131]), have been determined to be eligible for the National

Register of Historic Places, and have been designated as a Municipal Landmark by the City of Jersey City. They are embedded in an urban setting adjacent to or near other historic properties as well.

In accordance with 36 C.F.R. 800, an Area of Potential Effects (APE) report was prepared for the Harsimus Branch abandonment (Hayden 2008).¹ The APE includes an archaeological area and a broader architectural area intended to address the potential effects on historic properties of the developer's post-abandonment redevelopment of the property for residential housing. Direct effects are possible where the surviving embankment itself may be demolished or significantly altered. Indirect effects are anticipated where post-abandonment construction within the right-of-way may intrude upon the view shed of historic properties in or near the right-of-way. In determining the effects of abandonment, the Board will consider the likelihood of the developer's redevelopment plans or the City of Jersey City's plans to develop the embankments for park and trail use coming to fruition.

II. Objective

The environmental review process for the Harsimus project includes several components. Subject to a fixed cost and its approval of the work in stages, Conrail has agreed to pay a qualified contractor to perform the tasks in Section III below related primarily to the Section 106 process and one task derived from the 2009 EA prepared by OEA. In general, the tasks support three of the four steps in the Section 106 process (the first step having been conducted by OEA): *consultation* with interested parties; *identification* of historic properties; and *analysis of effects* to historic properties. The tasks are divided in four stages. Conrail will determine the preliminary budget for each stage in consultation with the contractor and OEA. Immediately prior to the commencement of work on each stage, in consultation with the contractor and OEA, Conrail will determine the final fixed-price amount to be paid for each stage and commit to pay that amount to the contractor as deliverables are accomplished in accordance with the Invoicing Schedule in Section V below. Prior to any stage, if the Board or the courts make rulings that may affect the scope of work, OEA, the contractor, and Conrail will consult regarding amending the remaining tasks.

III. Stages and Tasks

Stage 1

- A. Kick-Off Meeting.** Upon receipt of notice to proceed, the contractor will schedule a kick-off meeting with OEA at the Board's offices in Washington D.C. The tasks, work schedule and deliverables will be discussed during this meeting. Subsequent communication between OEA will be accomplished primarily through telephone and email correspondence, though additional meetings may be required.
- B. Analysis of Public Comments.** The contractor shall analyze public comments (n = 2000+) submitted in response to the Board's 2009 EA. Analysis will include a quantified categorization of comments by a list of topics encompassing the variation of ideas, concerns, questions and

¹ Hayden, Phil (2008). Area of Potential Effects Report and Proposed Methodology for Section 106 Consultation, Conrail Harsimus Branch Abandonment (STB Docket No. AB 167 [Sub-No. 1189]), City of Jersey City, Hudson County, New Jersey. Richard Grubb and Associates, Inc.

suggestions therein. The contractor shall review the comments, develop a list of topics to be addressed and submit this to OEA prior to conducting the analysis. A description of the topics and major concerns represented in each area will be provided. Methods and results will be included in a brief letter report to OEA. Copies of data and tables in spreadsheet format will also be provided to OEA.

- a. Public Analysis Report submittal schedule.
 - i. Within 60 days of the kick-off meeting, a draft report will be submitted to the OEA for review and comment. Two hard copies and one digital copy will be provided.
 - ii. OEA will return comments within 30 days.
 - iii. Within 30 days of receiving comments, the contractor will submit two printed copies and digital version of a Final Report.

Stage 2

C. Cultural Resources Inventory

- a. Cultural Resources Survey and Evaluation Requirements.
 - i. Update the inventory of known historic properties within the APE as listed in Hayden (2008). Confirm the presence of previously recorded historic properties, check for demolition of previously recorded properties and check HPO files for newly identified properties.
 - ii. Evaluate the Harsimus Branch Embankment, known to be National Register-eligible, as a potential contributing element to immediately adjacent historic districts, including the Hamilton Park Historic District and the Harsimus Cove Historic District. Fulfill *New Jersey Guidelines for Architectural Survey* for this effort, leveraging existing documentation for the previously defined districts and embankment.
 - iii. Conduct a streetscape, reconnaissance survey of unevaluated properties greater than 50 years of age within the Architecture APE. Hayden (2008) notes the presence of unsurveyed commercial, retail, industrial buildings as well as parks, monuments, residential buildings and railroad components. Hayden specifically lists the properties listed below as candidates for survey. Survey will be cost-efficient with limited documentation and reporting.
 - 1. New Jersey Junction Railroad/National Docks & New Jersey Connecting Railway Connecting Railway Company
 - 2. Jersey City Cemetery
 - 3. Mary Benson Memorial
 - 4. V.F.W. Monument at Mary Benson Park
 - 5. Holy Rosary Roman Catholic Church and Parish House & school buildings
 - 6. Fifth Ward Savings Bank
 - 7. St. Anthony's School
 - 8. Brick flats on Manila Avenue & Marin Boulevard

- iv. Archaeological reconnaissance (archival, cartographic, walkover) survey of potential for archaeological deposits within the immediate right-of-way. A brief summary of the results of this survey will be included in a report.

Effects Analysis. Evaluate the potential for direct and indirect effects to historic properties in the APE. Include in this analysis the potential for effects to result from 1) the City of Jersey City's plans to develop the embankments for park and trail use, 2) development of the embankments for residential or other use. Subject to availability, the contractor will utilize specific plans from the City and the current property owner in this analysis. Conduct a basic level of modeling to determine which architectural properties that are National Register eligible and that may be eligible based on a streetscape survey could be visually affected from the proposed development.

D. Inventory Report. Complete a brief report that summarizes the evaluation of the Embankment's relationship to the neighboring districts, the reconnaissance survey results for architecture and archaeology, and the review of the potential for effects from the abandonment. The report shall include:

- i. Brief summary of project background and objectives.
 - ii. Brief summary and illustration of the APE via maps (based on Hayden [2008]).
 - iii. Brief summary of methods employed in survey and evaluations.
 - iv. Summary of the evaluation of the Harsimus Branch Embankment as a contributing element to neighboring districts.
 - v. Summary of streetscape reconnaissance survey of previously unsurveyed properties.
 - vi. Completion of minimal reconnaissance requirements of the state of New Jersey for streetscape survey, i.e. basic forms for individual properties previously unsurveyed.
 - vii. Recommendations of National Register of Historic Places eligibility for previously unsurveyed properties.
 - viii. Detailed summary of direct and indirect effects to historic properties likely to result from the proposed abandonment.
 - ix. Bibliography
- b. Inventory Report submittal schedule.
- i. Within 120 days of notice to proceed, a draft report will be submitted to the OEA for review and comment. Three hard copies and one digital copy will be provided.
 - ii. OEA will return comments within 30 days.
 - iii. Within 30 days of receiving comments, the contractor will submit a Revised Draft Report that OEA will utilize for consultation with the SHPO, ACHP and other parties. Ten hard copies and one digital copy will be provided.
 - iv. OEA will return comments on the Revised Draft Report within 30 days.
 - v. Ten printed copies of the Final report and a digital version will be provided to OEA within 30 days of receipt of comments.

Stage 3

E. Public Meeting. Within 45 days of notice to proceed, the contractor will support OEA by organizing and facilitating a public meeting to share information regarding the Section 106 process. Inventory findings and the results of a determination of effect analysis will be shared. Additionally, if an adverse effect determination is made, information on the process to resolve adverse effect in accordance with 36 CFR 800 will be provided. To support this meeting effort, the contractor shall:

- a. Publish a legal notice announcing the availability of the inventory report and a public meeting date.
- b. Prepare presentation materials (hand-outs, posters, etc).
- c. Secure facility for meeting (ensure appropriate meeting space, audio-visual equipment, and court recorder)
- d. Provide staff at meeting (2-3 individuals with subject matter expertise) to set up, answer questions, take notes, and pack materials at meeting conclusion

F. Public Meeting Report. Provide brief summary of meeting, including summary of comments received

- a. Public Analysis Report submittal schedule.
 - i. Within 30 days of the public meeting, a draft report will be submitted to the OEA for review and comment. Two hard copies and one digital copy will be provided.
 - ii. OEA will return comments within 30 days.
 - iii. Within 30 days of receiving comments, the contractor will submit ten printed copies and digital version of a Final Report.

Stage 4

G. Mitigation Plan. If an adverse effect determination is made by the OEA, upon receipt of notice to proceed, the contractor will assist the OEA with the preparation of a Mitigation Plan based on input from consulting parties and under the direction of the OEA. Preparation of the plan may require meetings with the SHPO and other consulting parties. The plan will reflect input from consulting parties and the public.

- c. Mitigation Plan submittal schedule.
 - i. Within 60 days of the Public Meeting, a draft plan will be submitted to the OEA for review and comment. Two hard copies and one digital copy will be provided.
 - ii. OEA will consult with the SHPO and other parties and return comments within 60-90 days.
 - iii. Within 30 days of receiving comments, the contractor will submit two printed copies and digital version of a Final Report.

IV. Performance Schedule

Work performed under this contract shall be conducted by task. As provided in Part III above, some tasks will be conducted concurrently with other tasks. Stages 1 and 2 will overlap, as will Stages 3 and (if necessary) Stage 4. The schedule below identifies targeted milestones for each task. Modifications to the schedule may be required and will be approved as necessary.

- A. Kick-Off Meeting – within 30 days of notice to proceed with Stage 1
- B. Public Comment Analysis—final report within 150 days of notice to proceed with Stage 1
- C. Draft Inventory Report – within 120 days of notice to proceed with Stage 2
- D. Final Inventory Report – within 240 days of notice to proceed with Stage 2
- E. Public Meeting – within 45 days of notice to proceed with Stage 3
- F. Summary Report of Public Meeting—final report within 135 days of notice to proceed with Stage 3
- G. Mitigation Plan—final plan within 180 days of notice to proceed with Stage 4

V. Invoicing Schedule

- A. Task A
 - 1. 100% of contracted amount due at completion
- B. Task B
 - 1. 60% of contracted amount due at draft report submittal
 - 2. 100% of contracted amount due at final report submittal
- C. Task C, D
 - 1. 60% of contracted amount due at draft report submittal
 - 2. 100% of contracted amount due at final report submittal
- D. Task E, F
 - 1. 60% of contracted amount due at draft report submittal
 - 2. 100% of contracted amount due at final report submittal
- E. Task G
 - 1. 60% of contracted amount due at draft report submittal
 - 2. 100% of contracted amount due at final report submittal

VI. Summary of Deliverables

- A. Analysis of public comments from 2009 EA (two hard copies; 1 digital copy in Microsoft Word format and 1 digital copy in Adobe Acrobat format)
- B. Inventory Report prepared in accordance with III.D
- C. Public Meeting Report ((two hard copies; 1 digital copy in Microsoft Word format and 1 digital copy in Adobe Acrobat format)
- D. Mitigation Plan
- E. GIS shapefiles of APE, site locations.
- F. Digital copies of photographs from cultural resources inventory

VII. Modification

The performance requirements in this Statement of Work may be supplemented, amended, or modified as Section 106 consultation and environmental review for this case proceeds. Any modification will be by mutual agreement of the parties in accordance with the terms of the MOU. Modifications will only be binding when in writing and signed by all parties.

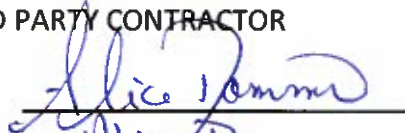
APPLICANT

By: 
ROBERT M. JENKINS, III

Title: Senior Counsel, Mayr Brown LLP

Date: 7/24/15

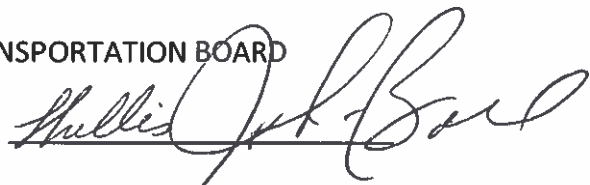
THIRD PARTY CONTRACTOR

By: 
Alice Domm

Title: CEO/President

Date: 7/28/15

SURFACE TRANSPORTATION BOARD

By: 

Title: Deputy-Director

Date: 7/27/15