

**UNITED STATES COAST GUARD (COAST GUARD) FINAL
ENVIRONMENTAL IMPACT STATEMENT FOR BNSF RAILWAY BRIDGE 196.6 PROJECT ACROSS
THE MISSOURI RIVER, MILE POINT 1315.0, MORTON AND BURLEIGH COUNTIES, BETWEEN
BISMARCK AND MANDAN, NORTH DAKOTA**

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PREPARED BY: U.S. Coast Guard Commander, 8 th District (D8-DWB). Cooperating Agencies: U.S. Army Corps of Engineers; Advisory Council on Historic Preservation; and North Dakota State Historic Preservation Office			
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ABSTRACT: The U.S. Coast Guard (USCG) through consultant, Jacobs Engineering Group, Inc., has prepared this environmental document as the lead federal agency, pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 <i>United States Code</i> [U.S.C.] Sections 4321 et seq.). This Final Environmental Impact Statement examines the potential environmental effects of the proposed replacement of the BNSF Railway Bridge 196.6 Project with USCG policy and procedures for implementing NEPA.			
DATE OF PUBLICATION: October 14, 2022			
The U.S. Coast Guard intends to issue a Record of Decision at least 30 (thirty) days after publication of the Final Environmental Impact Statement.			
I reviewed the final environmental impact statement (FEIS) and submitted my written comments to the Proponent.			
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I reviewed the FEIS and submitted my written comments to the Proponent.			
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In reaching my decision/recommendation on the Coast Guard's proposed action, I considered the information contained in this [<i>DEIS/FEIS/SEIS</i>] and considered and acknowledge the written comments submitted to me from the Environmental and Legal Reviewers.			
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¹ The USCG Preparer signs for NEPA documents prepared in-house. The USCG environmental project manager signs for NEPA documents prepared by an applicant, a contractor, or another outside party.

² Signature of the Environmental Reviewer/Senior Environmental Professional for the Bridge Administration Program may be that of the Preparer's.

FINAL
ENVIRONMENTAL IMPACT STATEMENT
BNSF Railway Bridge 196.6 Project
Morton and Burleigh Counties, North Dakota



U.S. Coast Guard
District Eight
St. Louis, Missouri

October 12, 2022

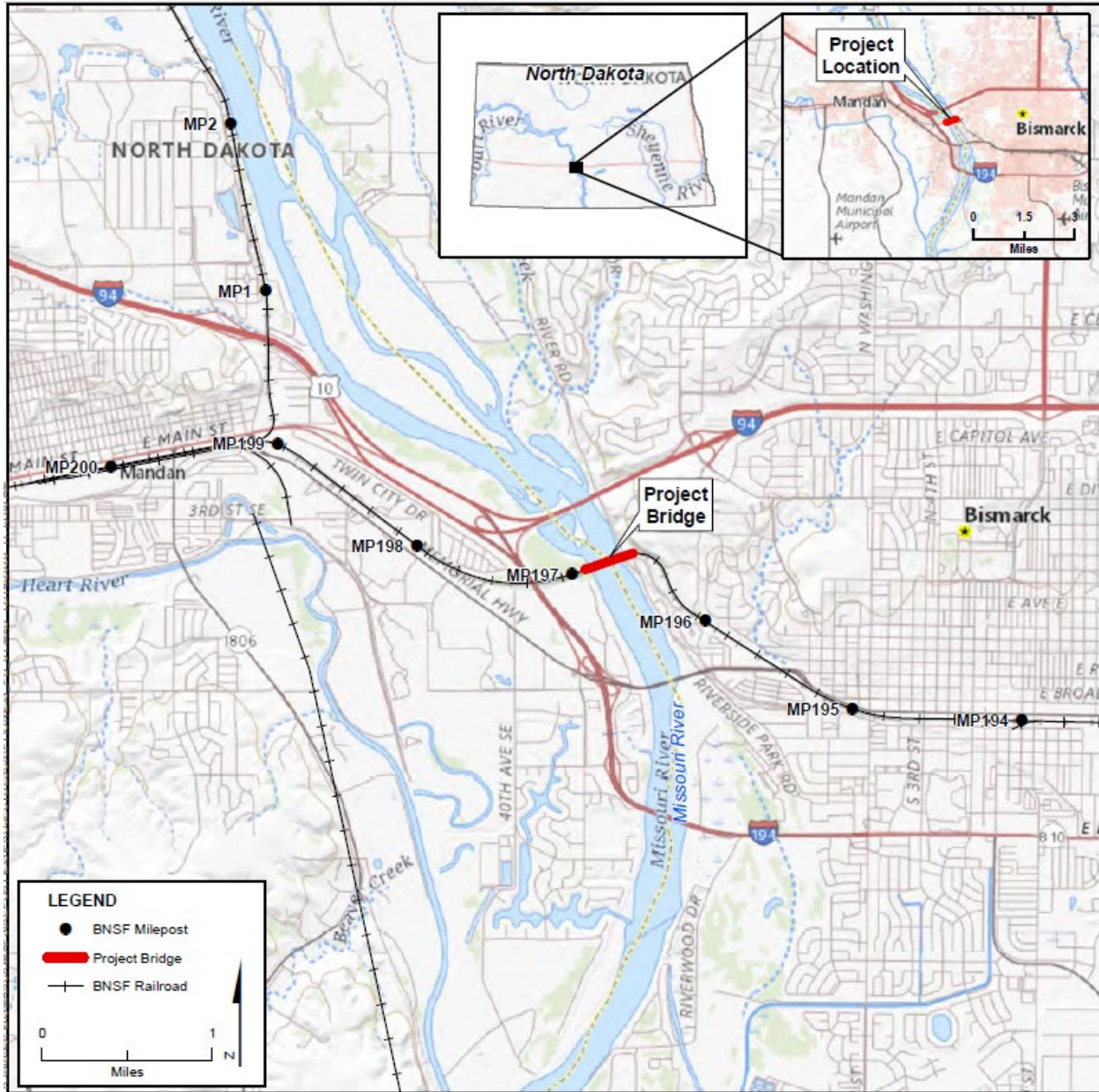
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EXECUTIVE SUMMARY

BNSF Railway Company (BNSF) is proposing to replace the existing historic bridge at milepost 196.6 (hereafter referred to as Bridge 196.6) across the Missouri River in Bismarck, North Dakota. The BNSF Jamestown Subdivision, part of the Twin Cities Division, is a 169.1-mile main line that runs from milepost 31.2 at the KO Subdivision junction (31 miles west of Fargo) to the Dickinson Subdivision at milepost 200.3 at Mandan. The railway bridge is a single-track structure that crosses the Missouri River between the cities of Bismarck and Mandan, North Dakota (Figure 1). Constructed between 1880 and 1883, Bridge 196.6 was the first bridge built across the Missouri River in the Bismarck-Mandan area.

With in-service components that are over 130 years old and a history of exposure to ice jams, Bridge 196.6 is approaching the end of its useful life and needs to be replaced to safely move future rail traffic along the BNSF northern corridor. The existing structure has shallow-foundation piers, which are susceptible to scour from hydraulic motion. BNSF has deemed the structure to be scour critical, which requires underwater inspections to be conducted every 5 years and after significant high-water events. Due to the age and condition of the bridge, restrictions in load clearance and axle spacing limit the size and type of railcar that can traverse Bridge 196.6. Additionally, the speed across the bridge is restricted to 25 miles per hour. To increase the speed across the bridge to the neighboring timetable speed of 35 miles per hour and remove the load restriction on the bridge, BNSF needs to replace Bridge 196.6. The existing main spans are configured with two pin-connected through trusses. Each truss contains fracture-critical members, which are subject to tensile loads. Failure of such a component would result in partial or total collapse.

Figure 1: Project Area



The purpose of the BNSF Railway Bridge 196.6 Project (Project) is to provide a safe and reliable crossing of the Missouri River on the BNSF Jamestown Subdivision. The Project intends to address the following and meet the goals for the Project as outlined in the Draft Environmental Impact Statement (DEIS):

- Meet existing and future demand for rail transport, as referenced in Section 1.2.2.
- Reduce maintenance outages and disruptions to railroad operations.
- Maintain a safe and reliable railway crossing at the Missouri River.

Chapter 3, Section 3.9.2 of the DEIS, states that the U.S. Coast Guard (USCG) has worked extensively with consulting parties, as outlined by Section 106 of the National Historic Preservation Act of 1966 (NHPA). Section 106 of the NHPA requires federal agencies to consider the effects that an action would have on historic properties. Bridge 196.6 was recorded as eligible for listing in the National Register of Historic Places in 2016. In anticipation of an adverse effect on historic properties and in accordance with Section 106 regulations at 36 Code of Federal Regulations (CFR) part 800.6, a Section 106 Programmatic Agreement (PA) was executed on January 16, 2021.

The PA addressed options for retaining or removing the existing bridge, as well as roles and responsibilities for each consulting party. A Memorandum of Agreement (MOA) has been developed and will serve as the implementation plan to the PA.

Stipulation V of the PA provided an opportunity for the consulting parties to introduce new alternatives that would facilitate retention of the existing bridge to be evaluated during the National Environmental Policy Act (NEPA) process. No new feasible proposals were introduced to be evaluated.

The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Efforts by the consulting parties during the Section 106 process to identify alternatives to retain the bridge that were technically and economically feasible were unsuccessful due to additional Project costs and projected floodplain rise. No new feasible alternatives were proposed under Stipulation V of the Section 106 PA; therefore, USCG determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge.

USCG has identified the Proposed Action Alternative (that is, build a new bridge with 200-foot spans and piers, 20 feet upstream of the existing bridge, and remove the existing structure) as the Preferred Alternative. The Proposed Action Alternative avoids the necessity of retaining walls on the eastern and western banks of the Missouri River. The Proposed Action Alternative encompasses the least amount of excavation and associated truck traffic impacts, soils impacts, vegetation impacts, and land use impacts. Hydrologic Engineering Center – River Analysis System modeling has demonstrated that the Proposed Action Alternative would have no net rise in the 100-year base flood elevation.

The No Action Alternative has been eliminated because it would not meet the purpose and need of the Project.

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1.0 INTRODUCTION

BNSF Railway Company (BNSF) is proposing to replace their existing historic railroad bridge, located at milepost 196.6 (hereafter referred to as Bridge 196.6), across the Missouri River in Bismarck, North Dakota. The railroad bridge is a single-track structure that crosses the Missouri River between the cities of Bismarck and Mandan, North Dakota. The BNSF Railway Bridge 196.6 Project (Project) area is within the existing BNSF right-of-way (ROW) from approximately milepost 196.6 to milepost 196.9, on Line Segment 0038 of the Jamestown Subdivision. The Project is in Morton (western bank) and Burleigh (eastern bank) counties. The western bank of the Project is located east of the city of Mandan, but is within the Mandan extraterritorial zoning area. The east bank of the Project is in the city of Bismarck.

The U.S. Coast Guard (USCG) has prepared this environmental document as the lead federal agency, pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 *United States Code* Sections 4321 et seq.) and in accordance with the White House Council on Environmental Quality's NEPA Implementing Regulations (40 Code of Federal Regulations [CFR] parts 1500-1508). The Draft Environmental Impact Statement (DEIS) for the Project was published on June 7, 2021.

1.1 Public Comment Period

The Notice of Availability (NOA) for the DEIS was published in the *Federal Register* on June 7, 2021. It set a 45-day public comment period ending on July 22, 2021. USCG solicited written and oral comments from the public, agencies, and organizations during the comment period. Due to the ongoing COVID-19 pandemic, USCG held a virtual public meeting to receive oral and written comments on the DEIS. In addition to oral comments received at the virtual public meeting, USCG accepted comments by mail, email, and submittal via the Regulations.gov website (<https://www.regulations.gov/>). The virtual public meeting was held on June 30, 2021, from 6 to 9 p.m. Central Daylight Time (CDT) via WebEx, and a call-in number was also provided. Details regarding both how to submit written comments to USCG, and how to attend the virtual public meeting were advertised on the local community bulletin board by Dakota Media Access.

1.2 Abbreviated Format Final Environmental Impact Statement

On July 16, 2020, the Council on Environmental Quality published a Final Rule to update its regulations for federal agencies to implement NEPA. In accordance with the Final Rule and Title 40 CFR Section 1502.9, "Final environmental impact statements shall address comments as required in part 1503 of this chapter. At appropriate points in the final statement, the agency shall discuss any responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised."

Per Section 1502.14, the agencies shall:

- a. Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.
- b. Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- c. Include the no action alternative.

- d. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- e. Include appropriate mitigation measures not already included in the proposed action or alternatives.
- f. Limit their consideration to a reasonable number of alternatives.

In addition, *Commandant Instruction 5090.1, U.S. Coast Guard Environmental Planning Policy* (USCG 2019) outlines the use of errata sheets and the DEIS in lieu of a Final Environmental Impact Statement (FEIS). Per 40 CFR 1503.4, the federal agency that prepares an Environmental Impact Statement may use an abbreviated FEIS. A traditional FEIS reproduces the information in the DEIS and incorporates the changes throughout the document. An abbreviated FEIS uses an errata sheet to list and explain the factual corrections made to the DEIS. The abbreviated FEIS format is allowed if there are only minor changes to the DEIS and the comments received do not warrant major alterations.

The Project qualifies for use of an abbreviated FEIS using the errata sheet approach because only minor revisions to the DEIS are required. The DEIS is still a valid document and should be used in conjunction with this abbreviated FEIS. This document is available to download and/or print on the *Federal Register*.

2.0 COMMENTS AND COORDINATION

2.1 Public Comment Period

The NOA for the “BNSF Railway Bridge Across the Missouri River Between Bismarck and Mandan, North Dakota” DEIS was published in the *Federal Register* on June 7, 2021. The comment period was extended from a planned ending on July 22, 2021, to July 26, 2021, to align with the U.S. Environmental Protection Agency (EPA) comment period for the Project. USCG solicited substantive and relevant comments from the public, agencies, and organizations during the comment period. The North Dakota Department of Transportation (NDDOT) requested a 30-day extension and concerned citizens and members of the Bismarck Board of Park Commissioners requested a 10-day extension, which were granted by USCG.

2.2 Public Comment Meeting

Due to the COVID-19 pandemic, a virtual public meeting was held on June 30, 2021, from 6 to 9 p.m. CDT. The public meeting provided the opportunity for participants to learn about, and comment on, the Project. USCG requested participants in the public meeting to submit their comments to the docket ahead of the meeting to assist with planning for the meeting and to allow adequate time for all participants to comment. A formal presentation began at 6:00 p.m. CDT, and a public comment forum followed the presentation. Participants were allotted 3 minutes to make oral comments. After all participants had an opportunity to comment, USCG allowed for further oral comments from interested participants. In addition to written and oral comments received in person at the public meeting, USCG also accepted comments by mail and email.

2.3 Comments Received

Six people spoke during the public forum portion of the public meeting. A court reporter was present during the meeting to prepare a transcript. A total of four comment submissions were received by email. Speakers included:

- Mark Zimmerman with Friends of the Rail Bridge (FORB)
- Nick Hacker
- Lyle Witham
- Signe Snortland
- Kimball Banks
- Wayne Schepp

Table A-1 of Appendix A includes responses to substantive comments. Table A-2 includes comments that were not determined to be substantive, including those submitted orally at the public meeting.

A total of 369 submissions were posted to the Regulations.gov Project portal in reference to the DEIS. There were also 97 submissions submitted to the docket prior to publication of the DEIS, in response to the Notice of Intent to prepare the DEIS, for a total of 466 docket submissions. The 369 DEIS submissions included the following:

- Test comments (2)

- Unique, non-form letter comments (48)
- Form letter submissions of Project support (319)

Comment letters containing substantive comments on the DEIS were received from the following organizations and individuals:

- The Chamber Grand Forks/East Grand Forks
- Shannon Full, Fargo Moorhead West Fargo Chamber of Commerce
- Arik Spencer, Greater North Dakota Chamber
- Downtown Bismarck Community Foundation Council
- FORB
- Elizabeth S. Merritt, National Trust for Historic Preservation
- Dave Mayer, Bismarck Parks and Recreation District
- Russ Hanson, Associated General Contractors of North Dakota
- Denizen Partners LLC
- J. Signe Snortland
- Kimball Banks
- Connie Sprynczynatyk
- Cathryn Anderson
- Jacob Webster
- Tory Jackson
- Emily Sakariassen
- Amy Sakariassen
- Lynsee Langsdon
- John Sakariassen
- Margie Enerson
- City of Bismarck
- Karen K. Ehrens
- Dawn Kopp
- Nick Hacker
- Lyle Witham
- Wayne Schepp
- Skip Duemeland

2.4 Agency Comments

Three agencies submitted comments on the DEIS:

1. EPA did not have substantive comments; they expressed that they had reviewed the DEIS and felt that it had addressed their scoping comments, and that they had no further issues which would need to be addressed in the FEIS.
2. NDDOT requested that any highway rights-of-way (ROW) disturbed by the Project be restored to NDDOT and Federal Highway Administration standards and requirements, and that the agency be involved in the development of the Memorandum of Agreement (MOA)/PA that details the mitigation measures for bridge removal, decommissioning, and potential reuse of structure elements.
3. Doug Goehring, the North Dakota Agriculture Commissioner with The North Dakota Department of Agriculture, expressed support for the Project in the interest of shipment of commodities benefiting the state of North Dakota.

2.5 Comment Response

Comment submissions were assessed to determine if comments were substantive or non-substantive in nature. Per version 6.9.2.1 of the *National Environmental Policy Act Handbook H-1790-1* (BLM 2008), a substantive comment does one or more of the following:

- Questions, with a reasonable basis, the accuracy of the information and/or analysis in the DEIS.
- Questions, with a reasonable basis, the adequacy of the information and/or analysis in the DEIS.
- Presents reasonable alternatives other than those presented in the DEIS that meet:
 - The purpose and need of the Proposed Action Alternative, and that address significant issues
- Questions, with a reasonable basis, the merits of an alternative or alternatives.
- Causes change in, or revisions to, the proposed action.
- Questions, with reasonable basis, the adequacy of the planning process itself.

Consistent with 40 CFR 1503.4(b), Table A-1 of Appendix A includes comments received that were determined to be substantive and Table 2A includes responses to non-substantive comments. Substantive comments were received regarding:

- Air quality
- Alternatives
- Coordination and compliance
- Cultural resources
- Cumulative impacts
- Environmental justice

- Floodplains
- Geology
- Land use
- Mitigation
- NEPA process
- Noise
- Purpose and need
- Recreation
- Safety
- Section 106 process
- Threatened and endangered species
- Traffic
- Vegetation
- Visual resources
- Water resources

USCG developed thematic responses to comments to address comments that were similar in nature. Table 2A in Appendix A includes the substantive comments received, responses to comments, and changes to the DEIS text, if applicable.

Table A-2 in Appendix A lists the non-substantive comments received. USCG is not required to respond to non-substantive comments. Although every comment was carefully considered and reviewed, non-substantive comments did not receive a detailed response. A non-substantive comment is categorized as one of the following:

- A general comment, opinion, or position statement
- A concern that is outside of the scope or is irrelevant to the Proposed Action Alternative and decision
- A concern that can be better addressed through another decision process
- A concern that requests action that has already been considered in an alternative

2.6 Section 106 Consultation

The final executed Programmatic Agreement (PA) pursuant to Section 106 of the National Historic Preservation Act (NHPA) was provided by USCG on January 20, 2021. USCG continued to engage with the consulting parties regarding an MOA for the Section 106 process.

On April 13, 2021, FORB, an invited signatory, proposed amendments to the Section 106 PA that had been executed in mid-January 2021. They noted their proposed amendments were motivated by delays in accomplishing specified tasks within stipulated timeframes and by financial costs for mitigation that they believed were inappropriately assigned to someone other than BNSF (the permit applicant). For instance, under Stipulation IV "NEW ALTERNATIVE WITH A NET RISE," they proposed striking text that assigned steps for identifying and resolving

a net rise to the flood plain caused by a new alternative, to the party that wished to pursue such an alternative. Under Stipulation V “RETAIN EXISTING BRIDGE,” they proposed changing the timeline to establish a public private partnership and proposed excluding or revising costs associated with flood rise mitigation and higher costs for design and construction of alternatives other than the proposed action. However, as noted under Stipulation XV, the PA requires the mutual written consent of the Signatories in accordance with 36 CFR 800.6(c)(7) to be amended. Without such consent from the other Signatories, the PA cannot be amended.

On April 22, 2021, the USCG responded to FORB via telephone (Brian Dunn/USCG to Mark Zimmerman/FORB) and asked for more information on a new alternative proposed by FORB via email on April 14, and went through in detail the stipulations of the PA that had not been met regarding said new alternative. This alternative appeared to be the same as the existing Alternative 3 with added flood plain mitigation of developing culverts under I-94. The USCG provided a timeline for FORB to provide the needed information in order for the USCG to consider the new alternative in the DEIS. Mr. Dunn noted that the USCG would schedule a meeting the week of May 10 to further discuss the status of the PA milestones and proposed amendments.

In response to FORB’s comments submitted to the USCG on April 9, the Preserve the Historic Piers alternative was added to Chapter 2 of the DEIS as an alternative considered but not carried forward for further analysis.

A Consulting Party meeting was held May 14, 2021, and FORB’s request for PA amendments were placed on the agenda and discussed. The USCG explained why the requested amendments were not viable and BNSF voiced their objections to the amendments. There was also discussion of milestones in the PA that had not been met. FORB stated their intent to seek dispute resolution over the failure to amend the PA. The Advisory Council on Historic Preservation (ACHP) advised them to make their request very clear on what was being disputed, what the specific complaint about the PA was – to be “very specific, focused and targeted.”

Consultation continued through multiple meetings with a primarily focus on the secondary MOA and mitigation for the adverse effect of bridge removal.

In a letter from FORB to the USCG on October 30, 2021, FORB requested dispute resolution under Stipulation XIV of the PA over failure to adopt their proposed PA amendments.

On November 19, 2021, the USCG responded to FORB’s request for dispute resolution and reiterated their determination stated at the May 14 meeting, that FORB’s proposed amendments would not result in a technically or economically feasible alternative that allows for retention of the existing bridge, and thus the amendments were not accepted. The USCG also noted that FORB’s proposed amendments to PA and the financial requirements for new alternatives had been addressed during the Section 106 Consultation Meetings. The USCG added that if FORB believed there was new or additional information to add concerning these issues, the USCG would set up additional consultations to further discuss that information.

The USCG held another Consulting Parties meeting on December 7, 2021, at which FORB stated they had asked for dispute resolution but received no response. The USCG responded they sent a letter in response to FORB’s dispute resolution request in which the USCG offered to meet with FORB to further discuss the issues but received no response. The USCG offered to set up another meeting to discuss the matter further.

On January 17, 2022, FORB sent a letter to the USCG stating that USCG's letter from November 19 failed to resolve FORB's issues and again asked for formal dispute resolution.

The USCG held a meeting with ACHP and FORB on January 28, 2022 to discuss FORB's concerns and request for dispute resolution. Following that meeting, the USCG informed FORB to identify the specific points in the PA of concern if they still had unresolved issues.

On February 8, 2022, FORB sent a letter to the USCG citing Stipulation II.C.3 of the PA, where BNSF claims ownership of the Bismarck Bridge, and disputed that property ownership. FORB asked for another dispute resolution meeting to discuss their new position that the Bismarck Bridge should be considered a publicly-owned structure subject to North Dakota State law (North Dakota Century Code 55-02-07) that protects significant properties on state land and does not allow their destruction without approval of the State Historical Board. FORB also provided their "final memorandum on state ownership," dated February 8, 2022, which contended that parts of the existing bridge below the ordinary high-water mark became the property of North Dakota when it became a state in 1899 under the Equal Footing and Public Trust Doctrines.

On February 18, 2022, FORB sent a letter to the USCG, which included supplemental information to their argument stating the existing bridge was actually owned by the State of North Dakota. Citing continuous private railroad use of the bridge for over one hundred years, BNSF disputed this argument.

On February 22, 2022, FORB requested the PA be terminated. On February 24, 2022, the USCG held a Consulting Parties meeting and notified all participants of FORB's request to terminate the PA.

The USCG held a meeting with Section 106 MOA signatories, including FORB, on March 9, 2022 to explain the PA termination process, provide a summary of the PA termination request, and develop a plan to move forward. On March 11, 2022, BNSF sent a letter to the USCG, which countered FORB's argument that the existing bridge is owned by the State of North Dakota. The letter provided evidence that BNSF has clear title to the bridge under the 1864 Act of Congress and that the title did not pass to North Dakota when it became a state in 1889.

As a result of the March 9, 2022 meeting, FORB withdrew its request to terminate on March 16, 2022. The USCG and consulting parties continued to pursue answers to FORB's questions regarding ownership of the bridge and operate under the terms of the PA. During that time, the USCG and other consulting parties also continued work on the development of a MOA as directed by PA Stipulation VI and VIII.

On March 25, 2022, the USCG contacted the North Dakota Office of Attorney General to request an opinion on FORB's assertion of State ownership of the existing bridge.

The USCG held a meeting with Consulting Parties on March 31, 2022 to continue the discussion from the February 24, 2022 meeting regarding the parties' positions on funds distribution for mitigation.

On April 18, 2022, North Dakota State Senator Tracey Potter, sent a letter to the North Dakota Office of Attorney General also requesting an opinion regarding State ownership of the existing bridge.

On April 27, 2022, the North Dakota Attorney General, Drew Wrigley, responded via letter to State Senator Tracey Porter. In the letter, Attorney General Wrigley stated his office would not provide an opinion and that ownership of the existing bridge is a matter to be resolved between the USCG, BNSF, and FORB.

On April 28, 2022, the Office of the Attorney General responded to the USCG's March 31, 2022 request for opinion on ownership of the bridge. The Office of the Attorney General chose to provide no opinion regarding potential State ownership of the bridge but rather forwarded a copy of the April 27, 2022 letter to State Senator Tracey Porter.

On May 3, 2022, the USCG sent a letter to BNSF and FORB regarding FORB's ownership dispute. In the letter, the USCG stated that based on the evidence provided by BSNF and FORB and because the State of North Dakota chose not to assert an ownership interest in the bridge, a novel argument first advanced by FORB late in the 106 process, the USCG had determined BNSF is the proper party under USCG regulations to submit an application for replacement of the existing bridge.

On May 4, 2022, FORB sent a response to the USCG's May 3, 2022 letter. FORB's letter outlined their disagreement with the USCG's determination that BNSF has sufficient property rights necessary to submit a permit application to replace the existing bridge.

On May 12, 2022, FORB sent a letter to the USCG, ACHP, State Historical Society of North Dakota, and BNSF to formally re-initiate termination of the Section 106 PA. In the intervening weeks, the USCG continued to talk with Consulting Parties and worked to resolve comments received during the March 31, 2022 Consulting Parties' meeting addressing distribution of funds in the MOA.

On June 28, 2022, the USCG sent a letter to FORB with copy to all Consulting Parties that the PA had been terminated effective June 19, 2022. The USCG stated further consultation would be unproductive in resolving FORB's issues. In that letter, the USCG also notified the Consulting Parties of its decision to develop and execute an MOA to resolve the adverse effects on historic properties from the undertaking.

On September 26, 2022, the ACHP sent a letter to the USCG providing the signed MOA.

The MOA was fully executed on September 27, 2022 (Appendix B).

3.0 ENVIRONMENTAL IMPACT STATEMENT ERRATA

Table 1 provides the errata (changes), which are corrections and amendments to the DEIS and its appendices. The errata are based on the responses to the comments on the DEIS contained in Appendix B, as well as additional information obtained since the publication of the DEIS. To use the errata sheet, readers should have the published DEIS available for reference. The document is available on the docket for the Project.

To review the revisions listed in the errata sheet, the reader should locate the referenced DEIS section, page, and location and read the revised language that is described in the errata in lieu of what is contained in the DEIS. To make the revisions more readily understandable to the reader, Table 1 includes the language that was used immediately before, and after, revisions to the DEIS were made.

Table 1: Draft Environmental Impact Statement Errata Table

Section	Page, Location	Explanation/Reason for Change	Draft EIS Text	Revised Text
2.0	Page 8, bulleted list of alternatives	Per a comment from FORB: “the Final EIS must explore the alternative of using, reinforcing, and refurbishing the existing piers as built into the bedrock of the Missouri River for upgrading the existing historical bridge as it stands.”	<ul style="list-style-type: none"> • Refurbish the existing bridge in place (eliminated alternative). • Build a new bridge with 200-foot spans and piers, 20 feet upstream of the existing bridge, and remove the existing structure (analysis of the Proposed Action Alternative). 	<ul style="list-style-type: none"> • Refurbish the existing bridge in place (eliminated alternative). • <i>[Preserve the historic piers and replace existing spans with 400-foot spans (eliminated alternative).]</i> • Build a new bridge with 200-foot spans and piers, 20 feet upstream of the existing bridge, and remove the existing structure (analysis of the Proposed Action Alternative).
2.2	Page 15, third paragraph	Per a comment from the City of Bismarck, “We did not confirm at the time there would be impacts to the West End Reservoir but acknowledged there could be impacts and asked for consideration and documentation on how BNSF would mitigate if it was determined there would be impacts. We respectfully request consideration in changing the language in the aforementioned statement to ‘could’ instead of ‘would’.”	The City of Bismarck has indicated that encroachment of the hillside upslope of the Project <i>[would]</i> affect the Bismarck West End Reservoirs, which would require mitigation.	The City of Bismarck has indicated that encroachment of the hillside upslope of the Project <i>[could]</i> affect the Bismarck West End Reservoirs, which would require mitigation.

Section	Page, Location	Explanation/Reason for Change	Draft EIS Text	Revised Text
3.6.3	Page 74, Avoidance, Minimization, and Mitigation section	<p>USCG received comments regarding the need for additional discussion of mitigation for trees affected by the Project from:</p> <ul style="list-style-type: none"> • FORB • Catheryn Anderson • Connie Spryncznatyk • Emily Sakariassen • John Sakariassen • Karen Ehrens • Dawn Kopp 	<p>BMPs to limit fugitive dust include the reduction of vehicle speeds and as-needed watering on unpaved roads. The Project would develop and implement a Revegetation and Restoration Plan to address site restoration, including seed mix, revegetation methods, timing of restoration activities, and monitoring. The Project would also implement BMPs during operations, such as maintenance of weed populations within the ROW, as required by federal rail and local regulations.</p>	<p>BMPs to limit fugitive dust include the reduction of vehicle speeds and as-needed watering on unpaved roads. The Project would develop and implement a Revegetation and Restoration Plan to address site restoration, including seed mix, revegetation methods, timing of restoration activities, and monitoring. <i>[Restoration activities will be implemented to prevent erosion of areas impacted by construction. Trees removed outside of BNSF ROW will be replaced.]</i> The Project would also implement BMPs during operations, such as maintenance of weed populations within the ROW, as required by federal rail and local regulations.</p>
3.11.2	Page 134, Offset Alternative 1 section, first paragraph	<p>Per a comment from the City of Bismarck, “We did not confirm at the time there would be impacts to the West End Reservoir but acknowledged there could be impacts and asked for consideration and documentation on how BNSF would mitigate if it was determined there would be impacts. We respectfully request consideration in changing the language in the aforementioned statement to ‘could’ instead of ‘would’.”</p>	<p>On the east side of the Project, the City of Bismarck indicated that replacing or removing fill from the hillside between the facility and the proposed Offset Alternative 1 <i>[would]</i> affect the Bismarck West End Reservoirs, which would be minimized through construction of a retaining wall. Section 2.2.3 further details retaining wall construction for Offset Alternative 1.</p>	<p>On the east side of the Project, the City of Bismarck indicated that replacing or removing fill from the hillside between the facility and the proposed Offset Alternative 1 <i>[could]</i> affect the Bismarck West End Reservoirs, which would be minimized through construction of a retaining wall. Section 2.2.3 further details retaining wall construction for Offset Alternative 1.</p>

Section	Page, Location	Explanation/Reason for Change	Draft EIS Text	Revised Text
3.12.2	Page 141, second paragraph	<p>Per a comment from the City of Bismarck, “In section 3.12.2 on page 141 the second paragraph states, ‘This alternative would somewhat support the goal of the City of Bismarck’s Infill and Redevelopment Plan to “promote efforts to beautify, preserve and enhance our aesthetically pleasing community” (City of Bismarck 2017), and would not “diminish” the viewshed of the natural landscape from Fort Abraham Lincoln State Park “by incompatible development” (Morton County 2018). From our perspective, this appears to be taking a recommendation we developed within the Infill and Redevelopment Plan out of context. The term ‘aesthetically pleasing’ can be subjective and it is not the intent or scope of the Infill and Redevelopment Plan to define what is or is not aesthetically pleasing related to the ‘Proposed Action Alternative’ or any of the other bridge design concepts discussed in the DEIS. We respectfully request this statement be removed from the DEIS.”</p>	<p><i>[This alternative would somewhat support the goal of the City of Bismarck’s Infill and Redevelopment Plan to “promote efforts to beautify, preserve and enhance our aesthetically pleasing community” (City of Bismarck 2017), and would not “diminish” the viewshed of the natural landscape from Fort Abraham Lincoln State Park “by incompatible development” (Morton County 2018).]</i></p>	Text has been deleted.

Section	Page, Location	Explanation/Reason for Change	Draft EIS Text	Revised Text
4.0	Page 186, Table 38: Impact Avoidance and Minimization Measures	Per a comment from Amy Sakariassen, "If the correct protocol had been taken, the existence of a paleontological site within the quarter section which includes the east bluff around the bridge approach and tracks would have been noted in the Draft EIS. Clearly, this fact has been neatly avoided, although the geologic specifics of the east side Missouri River banks are easy to find and these bluffs known to be fossil bearing. Any novice should have been alert to the potential for fossil resources to be encountered with the extensive construction and earthwork detailed for the proposed new BNSF rail approaches and bridge. Jacobs should be ashamed of this omission. And BNSF must accept responsibility for mitigation or avoidance of this recorded paleontological site. It is of great concern to me, considering the alarming extent of the reconfiguration of the bluff and approaches of a new structure, that fragile and potentially informative fossil resources have been excluded in this document."	Not applicable.	<p>Add row to "Proposed Action Alternative and Offset Alternatives 1 through 3" table entry:</p> <p>Measure: <i>[Conduct a preconstruction survey for paleontological resources; a paleontological monitor will be present during construction activities which may impact paleontological resources. If paleontological resources are discovered, implement the inadvertent discovery plan in Attachment D of the Programmatic Agreement.]</i></p> <p>Anticipated Benefit/Evaluating Effectiveness: <i>[Avoid and/or minimize effects on paleontological resources.]</i></p> <p>Implementing and Monitoring: <i>[Implemented throughout construction.]</i></p> <p>Responsibility: <i>[BNSF and construction contractor.]</i></p> <p>Estimated Completion Date: <i>[Project In-service date.]</i></p>

Notes:

Text that was changed between the DEIS and this abbreviated FEIS is denoted with *[brackets and red italics]*.

4.0 PREFERRED ALTERNATIVE

4.1 Reasonable Alternatives Considered

BNSF and USCG have identified and evaluated alternatives to replace Bridge 196.6 that crosses the Missouri River between the cities of Mandan and Bismarck, North Dakota. The first phase of the alternative analysis identified three conceptual alternatives, which included bypass routes. As the evaluation progressed to a second phase, BNSF and USCG considered a No Action Alternative and alternative bridge crossings in the vicinity of Bridge 196.6. The alternative crossings incorporated design options with varying pier placement and bridge-span designs.

USCG has considered the following alternative options:

- No action (analysis of the No Action Alternative).
- Develop a Bismarck North Route Bypass (eliminated alternative).
- Develop a Bismarck South Route Bypass (eliminated alternative).
- Relocate the existing bridge trusses to another location and repurpose (eliminated alternative).
- Refurbish the existing bridge in place (eliminated alternative).
- Preserve the historic piers and replace existing spans with 400-foot spans (eliminated alternative).
- Build a new bridge with 200-foot spans and piers, 20 feet upstream of the existing bridge, and remove the existing structure (analysis of the Proposed Action Alternative).
- Build a new bridge with 200-foot spans and piers, 92.5 feet upstream of existing bridge, and retain the existing structure (analysis of Offset Alternative 1).
- Build a new bridge with 200-foot spans and piers, 92.5 feet upstream of existing bridge, and remove the existing structure (eliminated alternative).
- Build a new bridge with 400-foot spans and piers, 92.5 feet upstream of existing bridge, and retain the existing structure (analysis of Offset Alternative 2).
- Build a new bridge with 400-foot spans and piers, 92.5 feet upstream of existing bridge, and remove the existing structure (eliminated alternative).
- Build a new bridge with 200-foot spans and piers, 42.5 feet upstream of existing bridge, and retain the existing structure (analysis of Offset Alternative 3).
- Build a new bridge with 200-foot spans and piers, 42.5 feet upstream of existing bridge, and remove the existing structure (eliminated alternative).

4.2 Identification of Preferred Alternative

USCG has selected the Proposed Action Alternative (that is, build a new bridge with 200-foot spans, and piers 20 feet upstream of the existing bridge, and remove the existing structure) as the Preferred Alternative by balancing the competing interests and impacts of the Project.

Section 2.2.2 of the DEIS discusses this alternative in detail. The Proposed Action Alternative meets the following purpose and need of the Project:

- Meet existing and future demand for rail transport, as referenced in Section 1.2.2 of the DEIS.
- Reduce maintenance outages and disruptions to railroad operations.
- Maintain a safe and reliable railway crossing at the Missouri River.

The Proposed Action Alternative also meets the goals and objectives identified in Section 1.2.3 of the DEIS:

- Goal 1: Provide a robust, dependable, and safe railway crossing.
 - Objective 1-1: Maintain the existing crossing location to service existing demand for rail transportation.
 - Objective 1-2: Meet BNSF operational needs to replace aging infrastructure and accommodate potential future need for a second track to meet projected demands for rail freight.
 - Objective 1-3: Reduce the frequency and duration of maintenance activities and associated outages.
 - Objective 1-4: Improve system reliability and bridge structure redundancy.
- Goal 2: Minimize adverse impacts to the human and natural environment.
 - Objective 2-1: Minimize impacts to natural resources during and after construction.
 - Objective 2-2: Minimize displacement to the Residential – Single Family zoning area south of the bridge.
 - Objective 2-3: Minimize and/or mitigate impacts to cultural and visual resources.
 - Objective 2-4: Minimize flooding and navigational impacts to the Missouri River corridor.
- Goal 3: Be feasible for BNSF to design and construct.
 - Objective 3-1: Deliver the Project at a reasonable cost to BNSF and its customers.
 - Objective 3-2: Complete the Project in a reasonable timeframe to minimize associated costs and impacts to the human and natural environment.
 - Objective 3-3: Complete the Project on the existing BNSF ROW or feasibly obtain additional easements from state and local entities.

The Proposed Action Alternative avoids the necessity of retaining walls on the eastern and western banks of the Missouri River. The Proposed Action Alternative encompasses the least amount of excavation and associated truck traffic impacts, soils impacts, vegetation impacts, and land use impacts. HEC-RAS modeling has demonstrated that the Proposed Action Alternative would have no net rise in the 100-year base flood elevation.

The No Action Alternative would not meet the purpose and need of the Project because it would not:

- Meet operational needs to replace aging infrastructure and accommodate potential future need for a second track for rail freight
- Reduce the frequency and duration of maintenance activities and associated outages
- Improve system reliability and bridge structure redundancy

4.3 Mitigation Measures and Best Management Practices

The Preferred Alternative was designed through an iterative process to avoid and minimize impacts. Protective measures will be implemented as part of the Project to help ensure the protection of natural and cultural resources. Impact mitigation is not part of the selected alternative because avoidance and minimization best management practices (BMPs) are part of the selected alternative. BNSF and its construction contractor(s) will implement protection measures and BMPs to minimize adverse impacts to natural resources. Table 2 lists these final environmental commitments.

Table 2: Final Environment Commitments

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
Install and maintain erosion prevention and sediment control BMPs.	Prevent discharges of stormwater to surface waters and control turbidity and sediment transport within the Missouri River.	Implemented throughout construction. Monitoring as required by a National Pollutant Discharge Elimination System construction stormwater permit.	Construction contractor	Following successful revegetation of areas disturbed by construction
Install a turbidity curtain deeper than 2 feet, as needed, during in-water excavation.	Minimize the suspension of sediments in the Missouri River.	Implemented during in-water construction.	Construction contractor	Completion of in-water construction and removal of temporary structures in the Missouri River
Balance cut and fill volumes, to the extent practicable.	Reduce the need to transport fill material to or from the Project.	Implemented throughout construction.	Construction contractor	Project in-service date
Test soils for contaminants prior to arriving or leaving the Project area.	Prevent potential soil contamination.	Implemented throughout construction.	Construction contractor	Project in-service date
Dispose of excess excavated soils at an approved facility or an upland location away from wetlands and waters of the United States, and outside of the floodplain.	Prevent potential soil contamination from entering wetlands, waters of the United States, or the floodplain.	Implemented throughout construction.	Construction contractor	Project in-service date
Locate petroleum containment spill kits at power equipment work sites and construction staging areas during construction.	Prevent, mitigate, and respond to spills.	Implemented throughout construction.	Construction contractor	Project in-service date
Develop and implement a Spill Prevention, Control, and Countermeasure Plan.	Prevent, mitigate, and respond to spills.	Implemented throughout construction.	BNSF and construction contractor	Project in-service date

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
Acquire compensatory wetland mitigation.	Offset unavoidable adverse impacts to wetlands.	Purchase of credits from a wetland mitigation bank, purchase of credits from an in-lieu program, or establishment and monitoring of permittee-responsible mitigation.	BNSF	Prior to construction
Construct no more than two in-water piers at a time.	Minimize impacts to flood conveyance.	Implemented during in-water construction.	Construction contractor	Completion of substructure construction
Mark disturbance areas with a high-visibility construction (silt) fence for reference by construction work crews and machinery operators.	Protect adjacent vegetation and prevention of sediment transport to adjacent vegetated areas.	Implemented throughout construction.	Construction contractor	Project in-service date
Limit clearing to areas necessary for safe equipment operations and temporarily seed or mulch areas during construction.	Minimize available areas for weed seed infestation or spread.	Implemented throughout construction.	Construction contractor	Project in-service date
Inspect and clean vehicles and equipment, prior to arriving onsite and immediately after departure.	Minimize the potential for introduction of new invasive seeds or vegetation pieces, or potential spread offsite.	Implemented throughout construction.	Construction contractor	Project in-service date
Reduce vehicle speeds and water unpaved roads, as needed.	Minimize fugitive dust.	Implemented throughout construction.	Construction contractor	Project in-service date
Develop and implement a Revegetation and Restoration Plan.	Address site restoration, including seed mix, revegetation methods, the timing of restoration activities, and monitoring activities.	Implemented throughout construction.	BNSF and construction contractor	Project in-service date

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
Tree restoration	Restoration of any trees removed off the BNSF ROW.	Implemented following construction.	Construction contractor	Project in-service date
Conduct preconstruction nest surveys (including eagle nest surveys).	Identify active migratory bird nests to prevent removal until nest(s) are inactive.	Completed prior to construction.	BNSF and construction contractor	Prior to tree clearing
Limit tree clearing to November 1 through April 1.	Prevent impacts to northern long-eared bat during hibernation season.	Implemented throughout construction.	Construction contractor	Completion of tree clearing
Post-construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.	Address restoration of Riverfront Trail.	Implemented following construction.	Construction contractor	Project in-service date
Initiate limited low-impact strikes to pile driving at the beginning of each work period or install bubble curtains to encourage fish dispersal, as needed.	Minimize impacts to fish by encouraging dispersal.	Implemented during in-water construction.	Construction contractor	Completion of substructure construction
Minimize fugitive light and direct it only on the work zone. Limit work to daylight hours.	Limit intensity and duration of light impacts.	Implemented throughout construction.	Construction contractor	Project in-service date
Review and adopt applicable recommendations from the Bridge Advisory Committee regarding bridge design.	Limit visual impacts.	Completed prior to construction.	BNSF and construction contractor	Project in-service date
Develop and implement a Construction Noise Logistics Plan.	Limit intensity and duration of noise impacts.	Implemented throughout construction.	BNSF and construction contractor	Project in-service date
Develop and implement an Emergency Planning and Preparedness Program.	Prevent, mitigate, and respond to all types of disasters and emergencies.	Implemented throughout operations.	BNSF	Ongoing

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
Identify a Vibration APE, based on a 500-foot radius from the construction footprint, and identify historic buildings and structures within it.	Avoid and minimize vibration impacts from construction on historic buildings and structures.	Implemented prior to construction.	BNSF	Prior to construction
Conduct an initial screening evaluation of historic buildings and structures within the Vibration APE by a vibration expert using methods recommended by the Federal Transit Administration <i>Transit Noise and Vibration Impact Assessment</i> , and consider local soil conditions. If the screening indicates that construction vibrations are likely to exceed a peak particle velocity unit of 0.2 inch per second at identified historic buildings or structures, or to exceed the velocity level determined for Bridge 196.6, then BNSF will explore the feasibility of options to reduce the vibrations below 0.2 inch per second at identified historic buildings or structures, or below the level determined for Bridge 196.6.	Avoid and minimize vibration impacts from construction on historic buildings and structures.	Implemented prior to construction.	BNSF	Prior to construction

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
<p>If measures to reduce vibrations to below 0.2 inch per second at historic buildings are not feasible, perform a condition assessment on those historic buildings and structures (except Bridge 196.6) within the Vibration APE to determine specific vibration thresholds for structural and architectural (cosmetic) damage.</p>	<p>Avoid and minimize vibration impacts from construction on historic buildings and structures.</p>	<p>Implemented prior to construction.</p>	<p>BNSF-contracted vibration expert, structural engineer, licensed architect, and architectural historian</p>	<p>Prior to construction</p>
<p>If any of the specific vibration thresholds exceed 0.2 inch per second, explore vibration mitigation measures to protect the building(s) and/or structure(s) and significant architectural features (except for Bridge 196.6), and determine whether these measures are feasible and reasonable. If determined to be feasible and reasonable, such measures will be implemented.</p>	<p>Avoid and minimize vibration impacts from construction on historic buildings and structures.</p>	<p>Implemented prior to construction.</p>	<p>BNSF, in consultation with the North Dakota State Historic Preservation Officer and affected property owners</p>	<p>Prior to construction</p>
<p>Install vibration amplitude monitoring at any vulnerable historic building(s) and/or structure(s), and establish warning and stop work thresholds, as well as procedures for threshold exceedances.</p>	<p>Avoid and minimize vibration impacts from construction on historic buildings and structures.</p>	<p>Implemented prior to construction.</p>	<p>BNSF-contracted vibration expert</p>	<p>Prior to construction</p>

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
<p>If a stop work threshold is exceeded, notify USCG as soon as possible, within normal working hours. Engage a structural engineer, a licensed architect, and an architectural historian to inspect the building(s) and/or structure(s) for damage within 72 hours of USCG notification. Construction can continue once the inspection is complete. After inspection, follow steps in PA Stipulation II.C.5.</p>	<p>Avoid and minimize vibration impacts from construction on historic buildings and structures.</p>	<p>Implemented throughout construction.</p>	<p>BNSF</p>	<p>Completion of construction</p>
<p>Complete Section 106 mitigation, stipulated in the second tier MOA, as required in Stipulation VIII of the PA.</p>	<p>Mitigate adverse effects on historic properties.</p>	<p>Implemented prior to, during, and after construction.</p>	<p>BNSF</p>	<p>Ten years from the date of the USCG bridge permit</p>
<p>If properties are discovered that may be historically significant, or if unanticipated effects on historic properties are found, implement the inadvertent discovery plan in Attachment D of the PA.</p>	<p>Avoid and/or minimize effects on historic properties.</p>	<p>Implemented throughout construction.</p>	<p>BNSF and construction contractor</p>	<p>Project in-service date</p>
<p>If human remains are discovered during construction, work in that portion of the Project will stop immediately and the human remains section of the inadvertent discovery plan in Attachment D of the PA will be implemented.</p>	<p>Avoid and/or minimize effects on human remains.</p>	<p>Implemented throughout construction.</p>	<p>BNSF and construction contractor</p>	<p>Project in-service date</p>

Measure	Anticipated Benefit/Evaluating Effectiveness	Implementing and Monitoring	Responsibility	Estimated Completion Date
A preconstruction survey for paleontological resources will be conducted and a paleontological monitor will be present during construction activities, which may impact paleontological resources. If paleontological resources are discovered, implement the inadvertent discovery plan in Attachment D of the PA.	Avoid and/or minimize effects on paleontological resources.	Implemented throughout construction.	BNSF and construction contractor	Project in-service date

^[a] Section 3.5.2 provides a discussion of outstanding information related to floodplain mitigation.

Note:

APE = Area of Potential Effects

5.0 REFERENCES

- Bureau of Land Management (BLM). 2008. [National Environmental Policy Act Handbook H-1790-1](https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf). Accessed December 2021.
https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf.
- U.S. Coast Guard (USCG). 2019. [Commandant Instruction 5090.1, U.S. Coast Guard Environmental Planning Policy](https://media.defense.gov/2019/May/13/2002130728/-1/-1/0/CI_5090_1.PDF). Accessed November 2021.
https://media.defense.gov/2019/May/13/2002130728/-1/-1/0/CI_5090_1.PDF.

Appendix A

Comments Received

Table A-1: Substantive Comments and U.S. Coast Guard Responses

Commenter	Comment	EIS Section	Response
Elizabeth S. Merritt, National Trust for Historic Preservation	The definition of the purpose and need for the proposed demolition and replacement of the historic bridge is improperly narrow.	1.2	The purpose of and need for the BNSF Railway Bridge 196.6 Project (Project) is discussed in Section 1.2 of the Environmental Impact Statement (EIS). Alternatives which considered retaining the existing bridge were screened against the purpose and need and assessed in the affected environmental and anticipated consequences section of the EIS.
Friends of the Rail Bridge	Definition of Problem and Statement of Purpose and Need. The definition of problem section of the DRAFT EIS states that the primary motive for replacing the Landmark 1883 Railway Bridge is because “[t]he vertical load clearance of 19.2 feet across Bridge 196.6 limits the number of freight cars that can be stacked on a railcar.” DRAFT EIS, p. 6. Since the passage of the 1990 Clean Air Act amendments, a primary use of the 1883 Railway Bridge has been to haul low-sulfur subbituminous coal from the upper reaches of the Powder River Basin in Montana and Wyoming to older coal-burning electric generation units in Minnesota and farther east. With the rapid development of the Bakken oil field in the late-2000s, oil tanker cars on this branch of the railway also become more common until pipelines were developed. Major changes to what is shipped on this stretch of railroad are being driven by greenhouse gas (GHG) policies that are shifting the purpose and need for shipping these commodities and what is likely to change over the next few years and decades. The DRAFT EIS segments this project by looking at this proposed project in isolation apart from the larger forces that are driving these changes and whether the proposed bridge will meet future needs of the local, regional, national, and international trade and transportation issues that are driving it. Such segmentation of the project and its larger effects is not allowed under NEPA. In fact, such segmentation completely defeats the purpose of NEPA and why it was enacted: “to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 40 CFR § 1500.1(a). Before this 138-year-old landmark is torn down, BNSF must show more justification than just stacking additional cargo containers on railcars that use this line, especially when BNSF has a near monopoly on all rail lines in the western United States, and there is no showing that stacking more containers on railcars that travel this line is necessary. There are alternatives that have not been discussed because the project has been segmented and the larger purpose and need issues have not been considered.	1.2	<p>Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions” (Title 40 of the <i>Code of Federal Regulations</i> [CFR], Section 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by the BNSF Railway Company (BNSF); therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a U.S. Coast Guard (USCG) bridge permit and environmental review.</p>

Commenter	Comment	EIS Section	Response
Tory Jackson	<p>Section 1.2.2 of the Draft EIS ensures all of the legal inadequacies that follow throughout the document by setting forth a “Problem Definition” that is unreasonably narrow and tailored to favor the outcome preferred by BNSF. Reading Section 1.2.2, one might naively conclude that BNSF’s proposed project is simply about the desire to increase the clearances for rail cars traversing the bridge. What the project is really about, however, is a fundamental transformation of how the Missouri River crossing and this particular segment of BNSF’s railway is used going forward. BNSF’s real goal is to alter the types of loads that are carried over the bridge and this segment of track. The railway bridge and the associated track segment have long been part of what BNSF itself refers to as it’s “coal network,” meaning the part of BNSF’s rail network primarily used to transport coal from the Powder River Basin to power plants and other end users in the eastern part of the country.</p> <p>Given the trends in the coal industry and the fairly rapid shift to renewable energy sources nationwide, BNSF surely knows what the rest of know – that the demand for transporting coal is likely to decrease dramatically in the near future and eventually cease altogether. Because of this, BNSF seeks to construct a new bridge and increase the capacity of its current “coal network” to make it compatible with the rest of its larger “intermodal network” which is heavily dependent on hauling shipping containers from west coast ports. Because the “problem” has been so narrowly defined, the Draft EIS completely fails to address numerous issues that the true scope of the BNSF project raises, including: (i) With a change in the type of freight hauled on this section of BNSF’s network, how many more trains will pass through Bismarck/Mandan each day? (ii) How much larger will the trains be than the current coal network trains? (iii) What will increased train speeds mean for the surrounding community? (iv) How will increased rail traffic affect air quality? (v) What are the noise and vibration impacts of larger loads and more trains traveling at higher speeds? (vi) What will more traffic and larger and faster trains mean for the historic downtown cores of Bismarck and Mandan? It appears that BNSF and the USCG are engaging in “segmenting” by narrowly focusing on one objective (height clearance for rail cars) and ignoring the larger issues at play (changing the fundamental nature of the operation and purposes of the bridge and associated rail line in the Bismarck/Mandan area). Segmenting is not allowed under federal law and renders the Draft EIS legally suspect. From a business or economic standpoint, BNSF’s larger goal makes perfect sense. The Draft EIS, however, completely ignores the larger context of the bridge replacement proposal and limits the scope of the project to a simple desire to increase rail car clearances on the bridge. If that were the real objective of this project, many of the alternatives that are summarily dismissed in the Draft EIS should have been given a more thorough review.</p>	1.2	<p>Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>(1 of 2)</p> <p>Definition of Problem and Statement of Purpose and Need. Agencies enjoy “considerable discretion” to define the purpose and need of a project. However, “an agency cannot define its objectives in unreasonably narrow terms.” “An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality. “Agencies ... are precluded from completely ignoring a private applicant’s objectives,” and “the agency should take into account the needs and goals of the parties involved in the application.” Requiring agencies to consider private objectives, however, is a far cry from mandating that those private interests define the scope of the proposed project. Indeed, “agencies must look hard at the factors relevant to the definition of purpose.... Perhaps more importantly [than the need to take private interests into account], an agency should always consider the views of Congress, expressed, to the extent the agency can determine them, in the agency’s statutory authorization to act, as well as other congressional directives.” The author of the DRAFT EIS in this case has drafted “the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality. The definition of problem section of the DRAFT EIS states that the primary motive for replacing the existing Landmark 1883 Railway Bridge is because “[t]he vertical load clearance of 19.2 feet across Bridge 196.6 limits the number of freight cars that can be stacked on a railcar.” DRAFT EIS, p. 6. By not acknowledging what is plain to any reasonable observer – that the primary use of the bridge for shipping coal on BNSF’s coal network is coming to an end in the next decade or so and that BNSF is converting the river crossing and this line to be able to haul shipping containers from ports on the Pacific rim – BNSF is framing the problem in a way that allows it to avoid answering all the hard issues: • How many more trains will be going through Mandan and Bismarck after the conversion of this bridge and line from part of BNSF’s coal network to part of its intermodal network that primarily stacks containers on flatbeds? • Will those trains be going faster and making more noise and vibrations? • Will those trains continue to be pulled by diesel engines, or will the system eventually become electric as it is becoming in Europe and other parts of the world to release less carbon dioxide and make the system faster and more efficient? • Is it probable that two rail lines will be needed to make that new system work? If so, is a reroute to the north or south the least environmentally impactful and most cost-effective option over the long term? By so narrowly defining its objectives, BNSF is segmenting the project to a narrow question about stacking shipping containers higher on its rail cars rather than the larger question of the conversion of the Missouri River crossing and upgrading this rail line to allow more trains to haul different freight and loads at higher speeds. NEPA does not allow the lead agency or the project proponent to define the objectives of its action in terms so unreasonably narrow that it avoids most of the obvious hard questions that would be (and that in this case are) avoided by such narrowing and segmenting. Segmenting essentially means that the overall project has been broken up into smaller parts so that consideration of the environmental impacts of the larger project are not adequately considered – in this case that means the DRAFT EIS addresses 1) stacking more containers higher on railcars which the 1905 superstructure of the bridge does not allow as the primary issue rather than considering the effects of 2) allowing more trains to haul different cargo at faster speeds through Mandan and Bismarck and committing a two track crossing at the current river crossing without considering the impacts of two track through Bismarck and Mandan or whether a two-track crossing would be better and more cost effective at another location.</p>	1.2	<p>Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>(2 of 2)</p> <p>As noted earlier, since the passage of the 1990 Clean Air Act amendments, a primary use of the 1883 Railway Bridge has been to haul low-sulfur subbituminous coal from the upper reaches of the Powder River Basin in Montana and Wyoming to older coal-burning electric generation units in Minnesota and farther east. With the rapid development of the Bakken oil field in the late-2000s, oil tanker cars on this branch of the railway also become more common until pipelines were developed. Major changes to the freight shipped on this stretch of railroad are being driven by greenhouse gas (GHG) policies that are shifting the purpose and need for shipping these commodities and what is likely to change over the next few years and decades. The DRAFT EIS segments this project by looking at this proposed project in isolation apart from the larger forces that are driving these changes and whether the proposed bridge will meet future needs of the local, regional, national, and international trade and transportation issues that are driving it. Such segmentation of the project and its larger effects is not allowed under NEPA. In fact, such segmentation completely defeats the purpose of NEPA and why it was enacted: “to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 40 CFR § 1500.1(a). Further, the narrow drafting of the problem to reflect only BNSF’s largely hidden and narrowly stated purpose and need – rather than the needs of the community, the region, and the nation – avoids other hard issues that other federal laws discussed earlier in these comments require the lead agency to raise and consider. “[A]n agency should always consider the views of Congress, expressed, to the extent the agency can determine them, in the agency’s statutory authorization to act, as well as other congressional directives. Congress has mandated that certain factors must be considered: • The agency must use “all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans” to “preserve important historic, cultural, and natural aspects of our national heritage.” NEPA § 102, 42 U.S.C. § 4332. The DRAFT EIS does not address this issue in any meaningful way. • For properties of national historical significance such as the existing historic railway bridge: “(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; “(2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program; “(3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations; “(4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means; and “(5) encourage the public and private preservation and utilization of all usable elements of the Nation’s historic built environment. • 54 U.S.C.A. § 300101 requires the agency to consider steps that result in “the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means” and that “encourage the public and private preservation and utilization of all usable elements of the Nation’s historic built environment.” The DRAFT EIS does not consider these mandatory factors in any meaningful way. They are as much a part of NEPA as they are of Section 106. Before the 138-year-old landmark can legally be torn down, the DRAFT EIS must show more justification than just stacking additional cargo containers on railcars that use this line, especially when BNSF has a near monopoly on all rail lines in the western United States, and there is no showing that stacking more containers on railcars that travel this line is necessary. It may be convenient for BNSF’s short-term interests to replace the nationally important historic landmark so that it can accommodate hauling freight other than coal and other commodities (it has been part of BNSF’s coal-hauling network for a long time), but the DRAFT EIS presents no convincing evidence that it is necessary that this conversion must be done right now, rather than wait a few years when the laws that will govern lower carbon shipping and transportation requirements are in place. Nor is there any showing that the superstructure of the bridge can’t be replaced again as it was in 1905 in a way that accommodates the stacking of cargo bins in flatbed railcars. In fact, the No Action alternative may likely be the best step until the larger policy changes are in place that will make the best alternative clearer. The Final EIS must redefine the problem and the purpose and need in a way that more accurately reflects the real needs and the real consequences of the proposed project, and that more fully considers ways to preserve the existing historic landmark bridge under the federal statutes cited above. In sum, the DRAFT EIS narrowly frames the purpose and need for the project so that alternatives that the above federal laws require that the DRAFT EIS discuss are avoided. This happens in part because the project has been segmented. This must be corrected in the Final EIS.</p>	1.2	<p>Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Section 2.1.4 details the "Rehabilitation of the Existing Bridge" alternative, which was not carried forward for further analysis in the EIS because it fails to meet the goals and objectives from the purpose and need. Further, retention of the existing bridge would not address existing vertical clearance, inspection hazards, scour potential, on-land pier shifting, and lack of structural redundancies. Under the National Environmental Policy Act (NEPA), agencies are required to include a “purpose and need” statement that “briefly specif[ed] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR. 1502.13 (1978). The new regulations retain the concept of purpose and need, but provide that “[w]hen an agency’s statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency’s authority.” 40 CFR. 1502.13 (2020). Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>For example, the DRAFT EIS states that currently the existing bridge handles 14-16 trains per day. DRAFT EIS, p. 5. The DRAFT EIS, however, fails to consider, much less take a “hard look,” at how the proposed action will change the number of trains that daily go over the bridge and through the cities of Mandan and Bismarck. The rail line that the existing bridge is part of is principally single track, with passing sidings to permit trains traveling in opposing directions to pass each other and faster trains to overtake slower trains. Since the passage of the 1990 Clean Air Act amendments, coal-fired power plants in the mid-west and eastern parts of the United States have substituted low-sulfur subbituminous coal from the Powder River Basin in Wyoming and Montana for higher-sulfur bituminous coal. Burlington Northern Santa Fe Railway (BNSF) responded to the tens of millions of tons of subbituminous coal Powder River Basin coal transported annually (and for all practical purposes exclusively) on its rail lines to coal-fired power plants in the east by dividing BNSF’s rail lines into two categories. The first category is BNSF’s “intermodal network” that constitutes the mainline transport of freight from Seattle, Portland, San Francisco to Chicago and other eastern delivery points on its system. The second category created by BNSF was the BNSF’s coal network and transload networks which, for most of the past three decades, have been used to haul Powder River Basin coal and other commodities produced in the western half of the United States to markets in the eastern half to the United States. The rail line and existing rail bridge between Mandan and Bismarck was not made part of the BNSF mainline between Seattle and Chicago as part of BNSF’s “intermodal network” that transports freight from the western seaports on the Pacific rim to destinations in the eastern United States. Instead, the rail line and existing rail bridge between Mandan and Bismarck have been designated by BNSF to be a part of BNSF’s coal network, and that remains its current primary use. The coal-fired power plants in the eastern part of the United States have been the primary market for Powder River Basin coal. The closing or scheduled closing of most of those coal-fired power plants means that the need for Powder River Basin coal and BNSF’s coal network is disappearing. The DRAFT EIS reflects this shift by stating that the main purpose of tearing down the historic 138-year-old existing bridge is because the opening in the superstructure of the bridge is not tall enough to accommodate the stacking of containers on flatbed railcars as is done on BNSF’s intermodal network, rather than continuing to use it as part of BNSF’s coal network for which the opening in the existing bridge has been large enough to accommodate the passing of multiple coal trans every day for the past 30 years. The DRAFT EIS indicates that the existing bridge is “restricted based on dimensional clearances and car-axle spacing.” DRAFT EIS, p. 6. The existing historic bridge is limited to a load clearance of 9.2 feet (vertical) and 21.5 feet (horizontal). BNSF wants to increase the vertical load clearance to 23 feet, 6 inches to meet its own self-imposed policy goal in “BNSF 2018,” so that BNSF can increase “the number of freight cars that can be stacked on a railcar.” DRAFT EIS, p. 6. The DRAFT EIS, for example, does not discuss how this change will affect the number of trains going over the bridge and through Bismarck/Mandan daily if the existing historic bridge is made useable for shipping freight as part BNSF’s intermodal network.</p>	1.2	<p>Cumulative impacts are defined as “the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge.</p>

Commenter	Comment	EIS Section	Response
Dawn Kopp	Issue 4: BNSF claims the need for a second track due to increased rail traffic due to coal and oil production. However on July 20, 2021, The Bismarck Tribune reported ND oil output is flat and frack crews have moved to Texas due to the seasonal swings in ND weather. https://bismarcktribune.com/news/state-and-regional/north-dakota-oil-output-flat-as-a-pancake-a-mid-frack-crew-shortage/article_6971f0fd-b3f9-5447-91ff-4f815434504a.html	1.2	Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit action and environmental review.
Friends of the Rail Bridge	(1 of 2) Failure to fully consider the most obvious and reasonable alternatives to save the landmark 1883 Railway Bridge. 40 CFR § 1502.14, which governs how alternatives must be considered in the EIS, provides: “This section is the heart of the environmental impact statement.” Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for having been eliminated. (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. (c) Include reasonable alternatives not within the jurisdiction of the lead agency. (d) Include the alternative of no action. (e) Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. (f) Include appropriate mitigation measures not already included in the proposed action or alternatives. As discussed at numerous points above, the DRAFT EIS fails to adequately consider the “no action alternative” or to consider alternatives that would rebuild, refurbish, and continue to use the existing landmark bridge built by the Northern Pacific between 1880 and 1882 as well as the superstructure that replaced the original superstructure in 1905. The superstructure was rebuilt in 1905 and has been maintained, repaired and refurbished since then. That alternative is not adequately considered in the DRAFT EIS. As noted above, the DRAFT EIS indicates that the existing bridge is “restricted based on dimensional clearances and car-axle spacing” and is limited to a load clearance of 19.2 feet (vertical). BNSF want to increase the vertical load clearance to 23 feet, 6 inches so that BNSF can increase “the number of freight cars that can be stacked on a railcar.” DRAFT EIS, p. 6. BNSF also appears to suggest that having to do required underwater inspections of the piers “every 5 years and after significant high-water events” is burdensome. Does this mean that BNSF will object to inspecting the 5-7 piers that will be in the river under various proposals in the DRAFT EIS or that this obligation will be any less burdensome than inspecting the current two piers that are currently are in the Missouri River channel?	2.0	The No Action Alternative was assessed in the Draft Environmental Impact Statement (DEIS). The alternative of rehabilitating the existing bridge was considered in Section 2.1.4 of the DEIS and eliminated from further consideration. The existing historic piers have shallow-foundation construction which makes them more susceptible to scour. New bridge piers would be constructed to be more scour-resistant.

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>(2 of 2)</p> <p>BNSF also mentions its desire to increase the speed that it crosses the bridge from 25 mph to 35 mph and to increase the weight limits on the rail cars. DRAFT EIS, p. 6. Will the new rail cars weigh more than the coal cars that have been crossing the existing historical bridge for decades? If so, the Final EIS should consider what that means for vibration and other related impacts on structures in downtown Bismarck and Mandan affected by the number and weight of trains going through the center of their historic commercial districts and how that may change options for those districts going forward. The current 25 mph speed restriction affects only 14-16 trains per day and does not appear to affect the total time in transit of those trains in any meaningful way. DRAFT EIS, p. 5. The DRAFT EIS makes vague claims about the existing bridge nearing “the end of its useful life,” but fails to present solid evidence supporting that claim and, as discussed in more detail earlier, fails to consider whether the existing bridge could be refurbished and restored and reinforced in ways that would satisfy BNSF’s self-imposed goals of increasing the vertical height and weight of loaded cars and the speed at which they cross the bridge. Further, as discussed in section 4.1, the DRAFT EIS considers unreasonable alternatives such as removing the current steel superstructure of the bridge and floating or reassembling two of its trusses down the river. This is as an unreasonable strawman proposal created by BNSF that distorts the cost and analysis and been used by BNSF to scare local governments from attempting to save the 1883 Railway Bridge at its current historical location. The DRAFT EIS fails to consider as a real alternative NDSU’s Department of Architecture and Landscape Architecture’s feasibility study which considers “whether it is feasible to repurpose the historic Northern Pacific Railroad Bridge into a pedestrian and bicycle path with BNSF’s proposed new bridge in place thirty feet to the north or, alternatively, 80 feet to the north.” Bismarck Missouri River Bridge Historic Bridge Repurposing Feasibility Study, Section 1.1 Project Overview & Scope (March 5, 2019, REVISED: June 30th, 2019). Most importantly, the unreasonably narrow and BNSF-centered purpose and need results in a narrow discussion that seriously considers only 4 alternatives, all of which are only slight variations of one alternative: which is to knock down the existing historic bridge and locate the replacement bridge variations of a few feet from the current location. If you ask a question that has only one answer that answer is predetermined. That is what the DRAFT EIS does. The north and south routes, the reinforcement if needed and replacement of the superstructure to accommodate loads up to 23.5 feet high, the repurposing of the historic Northern Pacific Railroad Bridge into a pedestrian and bicycle path with BNSF’s proposed new bridge to the north or south as discussed in NDSU’s Bismarck Missouri River Bridge Historic Bridge Repurposing Feasibility Study, and the “no action” alternatives, as discussed in more detail in various comments above, are all real alternatives raised in these proceedings that the Final EIS must discuss and weigh in more detail as set forth in 40 CFR § 1502.14. The range of alternatives has long been recognized by regulation and caselaw to be the heart of an EIS. The unreasonable and narrow set of alternatives considered in the DRAFT EIS has the foreseeable effect of causing the DRAFT EIS to fail to consider the most important long-term direct, indirect, and cumulative impacts of the proposed project for the reasons discussed throughout these comments.</p>	2.0, 3.13	Section 1.2.2 of the EIS describes the rationale for replacing the existing structure. Alternatives were screened against the purpose and need statement as detailed in Section 1.2 of the EIS. Alternatives not carried forward for further analysis, and the justification for elimination of these alternatives, is discussed in Section 2.1 of the EIS.
Friends of the Rail Bridge	<p>The DRAFT EIS makes vague claims about the existing historical bridge nearing “the end of its useful life,” but fails to present solid evidence supporting that claim and fails to consider whether the existing bridge could be refurbished and restored and reinforced in ways that would satisfy BNSF’s selfimposed goals of increasing the vertical height and weight of loaded cars and the speed at which future trains cross the bridge. BNSF appears to object to having to do required underwater inspections of the piers “every 5 years and after significant high-water events” and wants to increase the speed that it crosses the bridge from 25 mph to 35 mph and to increase the weight limits on the rail cars. DRAFT EIS, p. 6. As noted above, currently the 25-mph speed restriction affects only 14-16 trains per day and does not appear to affect the total time in transit of those trains in any meaningful way. DRAFT EIS, p. 5. Further, the DRAFT EIS considers unreasonable alternatives such as removing the current steel superstructure of the bridge and floating it down the river as an unreasonable strawman proposal that distorts the cost and analysis and has been used by BNSF to scare local governments and the state from attempting to save the 1883 Railway Bridge at its current historical location. This bait-and-switch alternative is not one any reasonable person, entity, or agency would do. (See further discussion in section 4.1 below.) The range of alternatives has long been recognized by regulation and case law to be the heart of an EIS. The unreasonable and narrow set of alternatives considered in the DRAFT EIS has the foreseeable effect of causing the DRAFT EIS to fail to consider the long-term direct, indirect, and cumulative impacts of the proposed project.</p>	2.0	<p>Section 1.2.2 of the EIS describes the rationale for replacing the existing structure.</p> <p>The No Action Alternative would not meet the purpose and need of the Project because it would not: 1) meet operational needs to replace aging infrastructure and accommodate potential future need for a second track for rail freight; 2) reduce the frequency and duration of maintenance activities and associated outages; or 3) Improve system reliability and bridge structure redundancy.</p> <p>USCG assessed the potential alternative of preserving the historic piers and replacing the bridge superstructure. As stated in Section 2.1.6 of the DEIS, the historic piers would need to be strengthened through concrete encasement to meet American Railway Engineering and Maintenance-of-Way Association (AREMA) and BNSF design standards. As a result of these alterations, the historic piers would no longer be visible and would resemble modern bridge piers constructed from concrete and structural steel. This alternative would not meet the Friends of the Rail Bridge (FORB) goal of preserving the aesthetics of the historic bridge.</p>

Commenter	Comment	EIS Section	Response
Margie Enerson	The full potential of collaborating with the USCG and BNSF on this proposed federal undertaking has never been realized since the permit application process has begun. The DEIS cites several alternatives FORB suggested at consulting party meetings and the DEIS considers but eliminates the alternatives. Prior to the final EIS, it should be BNSF's responsibility to show how they have demonstrated collaborative and non-adverse alternatives to preserving historic bridge.	2.0	Section 1.2.2 of the EIS describes the rationale for replacing the existing structure. USCG screened alternatives and determined which met the definition of reasonable such to be moved forward to full assessment of impacts.
Friends of the Rail Bridge	<p>(1 of 2)</p> <p>The scoping notice for the EIS also noted: "The alternatives were developed to meet the purpose and need of the project, which is to provide BNSF Railway with a new bridge that can accommodate two tracks at a future date should a second track become needed." The DRAFT EIS fails to discuss how putting two tracks through Bismarck/Mandan will affect the number and speed of trains going through Bismarck/Mandan and all the associated environmental impacts that will have on those communities. The current location of the bridge is almost certainly not the right location for a two-track railway, as opposed to the rail line that the existing bridge is part of, which is principally single track. As quoted above, NEPA requires that the following factors be considered: "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." The DRAFT EIS must consider how running two tracks through Bismarck/Mandan will affect those communities, rather than build the new bridge at an alternative crossing point north or south of the current location – as summarily proposed and dismissed in the DRAFT EIS without meaningful consideration. Running two tracks through the center of Bismarck and Mandan will have huge environmental impacts on the number and speed of trains going through Bismarck and Mandan and will require major revisions and rebuilding of the road and bridge infrastructure at the center of those communities which may more easily and cost-effectively be addressed by rerouting the two-track railway around those communities. The "local short-term use" of the single track through the center of those communities must be weighed against "enhancement of long-term productivity" by routing the new crossing at another location north or south of the current crossing point. Further, the "irreversible and irretrievable commitments of resources" 7 which would be involved in the proposed action of committing to the two-track-option to its current location must also be considered. If the lower environmental impact and lower over-all cost is re-routing the track to another crossing location, that must be given a "hard look" in the final EIS. At Section 106 Consulting Party Meeting # 4 for the Proposed Bridge Replacement, BNSF discussed the concept of a "BNSF Bismarck Bypass" through a "North Route" or a "South Route." According to the first slide of this presentation, the North Route option would involve approximately 9 miles of new track at \$6 million dollars per track mile and approximately 16 miles of track upgrades at \$2 million dollars per track mile, for a total of approximately \$86 million. The same slide says that the South Route would involve approximately 18 miles of new track at approximately \$6 million per mile, for a total of approximately \$108 million. There are also the costs of building the bridge at the new crossing, property acquisition, and other bridges, but those costs are also present by building a new bridge at the current crossing point. In fact, building new bridges and underpasses for the two-track option at every street crossing through the center of Bismarck and Manda – as well as widening and reinforcing the 1951 cut through the hill just east of the current bridge crossing – may possibly exceed the cost of a re-route. The higher estimated \$108 million of the South Route is less than the amount BNSF estimates its proposed new bridge will cost, and the \$86 million for the North Route is less than the high end of the inflated \$60-90 million BNSF has presented to local and state officials as the cost of preserving the existing historical bridge. At the very least, the final EIS requires a "hard look" at the continued "local short-term use" of the current single track through the center of those communities compared to the "enhancement of long-term productivity" of routing the new crossing at another location north or south of the current crossing point. There are also the "irreversible and irretrievable commitments of resources which would be involved in the proposed action" of destroying the existing historical bridge "if it is implemented."</p>	2.0	The North and South Route Alternatives were assessed and eliminated from further discussion as described in Section 2.1. Addition of a second track is not part of the scope for this Project. If BNSF plans to add a second track in the future, a bridge permit would be required from USCG and NEPA environmental review would take place at that time.

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>(2 of 2)</p> <p>The Federal Railroad Administration (FRA), which is part of the U.S. Department of Transportation, is responsible under federal law for “establishing Federal safety requirements for railroad bridges.”⁹ When the FRA began its 2010 rulemaking to establish new safety standards for bridges in 1991, the rulemaking was prompted by the FRA’s “perception that the bridge population was ageing, traffic density and loads were increasing on many routes, and the consequences of bridge failure could be catastrophic.” Instead, the FRA found in its 2010 rulemaking for bridge safety that “[d]uring the last five decades, not one fatality has been caused by the structural failure of a railroad bridge. Train accidents caused by the structural failure of railroad bridges have been extremely rare.” The preamble to the 2010 rulemaking for bridge safety explains why this is so: Although the average construction date of railroad bridges predates most highway bridges by several decades, the older railroad bridges were designed to carry heavy steam locomotives. Design factors were generally conservative, and the bridges’ functional designs permit repairs and reinforcements when necessary to maintain their viability. ... Many railroad bridges display superficial signs of deterioration but still retain the capacity to safely carry their loads. Corrosion on a bridge is not a safety issue unless a critical area sees significant loss of material. Routine inspections are prescribed to detect this condition, but determination of its effect requires a detailed inspection and analysis of the bridge. In general, timber bridges continue to function safely, and masonry structures built as early as the 1830s remain functional and safe for their traffic.</p>	2.1	<p>USCG assessed the potential alternative of preserving the historic piers and replacing the bridge superstructure. As stated in Section 2.1.6 of the DEIS, the historic piers would need to be strengthened through concrete encasement to meet AREMA and BNSF design standards. As a result of these alterations, the historic piers would no longer be visible and would resemble modern bridge piers constructed from concrete and structural steel. This alternative would not meet the FORB goal of preserving the aesthetics of the historic bridge.</p>
Friends of the Rail Bridge	<p>(1 of 2)</p> <p>Who contracted for and prepared the DRAFT EIS. NEPA § 102, 42 U.S.C. § 4332, directs that “all agencies of the Federal Government shall ... include in every recommendation or report on ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on” the mandated factors that must be considered under NEPA § 102 in any EIS. Although § 102 does not mandate how the EIS be prepared “by the responsible official,” there are lines that cannot be crossed. For example, while the responsible official can and often does hire and pay a contractor to prepare a draft EIS for the lead agency or agencies responsible for preparing that EIS for their review, NEPA § 102 does not allow the project proponent to hire and pay for, and to be the controlling entity, in charge of the DRAFT EIS. That appears to be what has happened in the drafting of the DRAFT EIS in this case. The Final EIS and the Record of Decision must make full disclosure on this issue, and specifically address, through written documentation, who hired, controlled and paid for the contractor. In sum, it appears that the lead agency did not write the DRAFT EIS itself or properly act as the “responsible federal official” in hiring, directing, and paying for the contractor who prepared the DRAFT EIS. Rather the Draft EIS was written and prepared by BNSF’s contractor. The result is a DRAFT EIS that is biased in favor of BNSF’s self-interested outcomes, that fails to evaluate reasonable alternatives to the proposed action, and that ignores or fails to adequately address key environmental effects and impacts of the proposed action. This is not a distinction without a difference. For example, FORB hired NDSU’s Department of Architecture and Landscape Architecture to do a feasibility study “to consider whether it is feasible to repurpose the historic Northern Pacific Railroad Bridge into a pedestrian and bicycle path with BNSF’s proposed new bridge in place thirty feet to the north or, alternatively, 80 feet to the north.” Bismarck Missouri River Bridge Historic Bridge Repurposing Feasibility Study, Section 1.1 Project Overview & Scope (March 5, 2019, REVISED: June 30th, 2019)(attached). NDSU’s study concluded that it was feasible to repurpose the historic existing bridge with the new bridge either 30 or eighty feet to the north and estimated the cost of this repurposing at \$6,891,720. Bismarck Missouri River Bridge Historic Bridge Repurposing Feasibility Study, Appendix E. After NDSU’s study was released to the public, BNSF commissioned TKDA to do “concept level investigations” of “repurposing of the in-place railroad bridge truss spans as public use structures for pedestrian, bicycle, and vehicular traffic.” DRAFT EIS, Appendix A. (July 4, 2019). In Exhibit A, BNSF revealed its intended plan to use the existing historic bridge during construction of the new bridge, then tear it down when construction was completed: “Upon completion of the new structure, the preferred plan includes complete removal of the in-place bridge; therefore, the potential for repurposing portions of the structure as public use facilities exists.” Id. TKDA’s concept level investigation examined saving only the 1905 superstructure of the existing historic bridge and moving two of the three trusses down river to east of Sertoma Park in Bismarck at two locations in the sandy wetland areas east of the Missouri River and west of Sertoma Park to cross one stream and a sometimes-isolated sandbar there.</p>	2.1	<p>Per 40 CFR. 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF. USCG assessed the potential alternative of preserving the historic piers and replacing the bridge superstructure. As stated in Section 2.1.6 of the EIS, the historic piers would need to be strengthened through concrete encasement to meet AREMA and BNSF design standards. As a result of these alterations, the historic piers would no longer be visible and would resemble modern bridge piers constructed from concrete and structural steel. This alternative would not meet the FORB goal of preserving the aesthetics of the historic bridge.</p>

Commenter	Comment	EIS Section	Response
<p>Friends of the Rail Bridge</p>	<p>(2 of 2) TDKA estimated the cost of moving “Truss # 1” to the first location to be “\$19,300,00 rounded” (30% contingency) and moving Truss # 2 to the second location to be “\$15,900,000 rounded” (30% contingency), plus an additional “\$1,300,000” in construction costs, for a total cost of moving Truss #'s 1 & 2 to the sandbar/ flood zone east of Sertoma Park of approximately \$36.5 million dollars. Saving two of the three trusses from the 1905 rebuild of the superstructure of the existing historical bridge is like saving 2/3 of the frame surrounding the Mona Lisa while throwing away Leonardo’s famous masterpiece because the curator of the Louvre wants to use the space on the wall for a new modern painting, and he/she doesn’t want the new painting and the historical masterpiece side-by-side. By giving BNSF and its hired contractor the pen and control of determining the content and writing the DRAFT EIS, the Coast Guard has allowed BNSF to include TKDA’s strawman “concept level investigation” of moving just two of the three 1905 superstructure trusses downriver to a location in a wetland location and flood zone at a cost of \$36.5 million dollars in the DRAFT EIS as Exhibit A. In contrast, the DRAFT EIS gives no place in its appendix, and contains no meaningful discussion, of NDSU’s feasibility study that shows that the historic Northern Pacific Railroad Bridge can be kept in place (including the original piers constructed in 1881 and 1882 as described in section 2.0 above) and repurposed into a pedestrian and bicycle path either with BNSF’s proposed new bridge in place 30 feet to the north or, alternatively, 80 feet to the north at a cost of approximately \$6,891,720 less than 1/5th of the cost of moving two of the 1905 trusses to a location downriver, and without the existing historic bridge becoming a public nuisance in the way that two abandoned trusses in the middle of a wetland area that the Missouri river periodically floods and alters are likely to be. This is just one example in this DRAFT EIS of the consequences of turning responsibility for crafting the alternatives and drafting the EIS to the Project Proponent, rather than the lead and cooperating federal agencies that NEPA requires. Further, when undocumented hearsay statements claiming extremely high costs for repurposing the historic bridge for public use, FORB was unable to counter those false and unsupported claims because the lead agency did not have those calculations as part of public records that must be turned over under the Freedom of Information Act. In sum, turning control of the content and alternatives considered in the DRAFT EIS to a contractor who appears largely subject to BNSF’s control does not meet the requirements of NEPA § 102, which requires that writing and content of the EIS be under the control of the “the responsible official” (usually by law the agency’s head) in the lead agency who is responsible for defining purpose and need, the alternatives, and writing the draft EIS for public comment.</p>	<p>2.1</p>	<p>Section 1.2.2 of the EIS describes the rationale for replacing the existing structure. USCG screened alternatives and determined which met the definition of reasonable such to be moved forward to full assessment of impacts. USCG assessed the potential alternative of preserving the historic piers and replacing the bridge superstructure. As stated in Section 2.1.6 of the DEIS, the historic piers would need to be strengthened through concrete encasement to meet AREMA and BNSF design standards. As a result of these alterations, the historic piers would no longer be visible and would resemble modern bridge piers constructed from concrete and structural steel. This alternative would not meet the FORB goal of preserving the aesthetics of the historic bridge.</p>
<p>Tory Jackson</p>	<p>Section 2.0 of the Draft EIS sets forth BNSF’s preferred approach and alternatives. Federal regulations and caselaw make clear that the alternatives section is the heart of an EIS. In this case, the alternatives presented are inadequate and nearly guarantee the outcome that BNSF prefers. If BNSF’s main objective was simply to increase the clearances of the bridge superstructure to accommodate taller loads, it is curious that refurbishing the existing bridge is summarily dismissed. The superstructure of the historic bridge was replaced in 1905 and could be replaced against to increase the clearance height. The Draft EIS includes conclusory statements that the bridge “is approaching the end of its useful life” and “susceptible to collapse.” Those assertions are not supported by any meaningful evidence or analysis and only serve to dismiss alternatives such as refurbishing or repurposing the existing bridge. What’s more, those statements are contradicted elsewhere in the Draft EIS where the historic bridge is described as “structurally sound.” The truth is that the historic bridge was built to accommodate much heavier steam locomotives and was engineered extremely conservatively so as to be over-built for incredible strength and durability. If the USCG and BNSF really want to claim that the historic bridge is nearing the end of its useful life, bald assertions will not do. They need to present actual evidence. Because the Draft EIS does not contain such evidence, one is left to conclude that such statements were included simply to help dismiss any alternative that would refurbish or repurpose the existing bridge. Similarly, BNSF’s complaint about the burden of conducting underwater inspections of the piers “every five years and after significant high-water events” should be given no weight at all, even though the Draft EIS simply takes it at face value. Does BNSF somehow think it would be prudent to operate any bridge – old or new – without routine, periodic inspections? Does it not plan to inspect a new bridge at regular intervals? The Draft EIS also fails to give adequate consideration to the alternative established by the NDSU study, which clearly shows the feasibility of repurposing the historic bridge as a pedestrian and bicycle path with a new bridge either 30 or 80 feet to the north. Given the historic nature of the bridge and the potential benefits of repurposing, this alternative deserves more serious consideration.</p>	<p>2.1</p>	<p>USCG assessed the potential alternative of preserving the historic piers and replacing the bridge superstructure. As stated in Section 2.1.6 of the DEIS, the historic piers would need to be strengthened through concrete encasement to meet AREMA and BNSF design standards. As a result of these alterations, the historic piers would no longer be visible and would resemble modern bridge piers constructed from concrete and structural steel. This alternative would not meet the FORB goal of preserving the aesthetics of the historic bridge. The alternatives of keeping the existing bridge are assessed in Section 3 of the DEIS.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	Based on 138 years of evidence showing the existing historical bridge's structural integrity, the Final EIS must explore the alternative of using, reinforcing, and refurbishing the existing piers as built into the bedrock of the Missouri River for upgrading the existing historical bridge as it stands. Tearing it down cannot be based on a vague statement unsupported by engineering and scientific evidence that it has reached the end of its useful life.	2.1	Section 2.1.6 details the "Preserve the Historic Piers" alternative, which was not carried forward for further analysis in the EIS because it fails to meet the goals and objectives from the purpose and need. While this alternative was inadvertently omitted from the alternatives considered list on page 8 of the EIS, it was discussed in section 2.1.6 of the EIS. See Table 1 DEIS Errata for modifications to the text.
Friends of the Rail Bridge	Similarly, the Final EIS must explore, as an alternative, replacing the existing superstructure that has been there since 1905 (as pictured being replaced above) with a new superstructure (just as the 1905 superstructure replaced the original superstructure pictured in the 1884 photo at the top of this page). A vertical load clearance of 23 feet, 6 inches to address BNSF's self-imposed policy goal in "BNSF 2018" that would allow BNSF to increase "the number of freight cars that can be stacked on a railcar," DRAFT EIS, p. 6, may be accomplished by changing the superstructure of the existing historical bridge, just as the 1905 superstructure was changed to accommodate changes to size of the locomotives and loads occurring on the rail system in 1905. Thus, replacing the 1905 superstructure with a superstructure that accommodates BNSF's current needs – rather than tearing the existing historical bridge down – is an alternative the Final EIS must explore. The above photos show that changing needs can be addressed by changing the superstructure. Alternatives to tearing down the bridge must be more fully explored in the Final EIS. Vague and unsupported statements and claims as made in the DRAFT EIS are not sufficient.	2.1	Section 2.1.6 details the "Preserve the Historic Piers" alternative, which was not carried forward for further analysis in the EIS because it fails to meet the goals and objectives from the purpose and need. While this alternative was inadvertently omitted from the alternatives considered list on page 8 of the EIS, it was discussed in section 2.1.6 of the EIS. See Table 1 DEIS Errata for modifications to the text.
Friends of the Rail Bridge	Failure to fully consider the most obvious and reasonable alternatives to save the landmark 1883 Railway Bridge. EIS fail to adequately consider the "no action alternative" or to consider alternatives that would rebuild, refurbish, and continue to use the existing landmark bridge built by the Northern Pacific between 1880 and 1883. The bridge has been rebuilt, repaired and refurbished in the past. That alternative is not adequately considered in the DRAFT EIS. The DRAFT EIS indicates that the existing bridge is "restricted based on dimensional clearances and car-axle spacing." DRAFT EIS, p. 6. The current bridge is limited to a load clearance of 19.2 feet (vertical) and 21.5 feet (horizontal). BNSF want to increase the vertical load clearance to 23 feet, 6 inches to meet its own self-imposed policy goal in "BNSF 2018", so that BNSF can increase "the number of freight cars that can be stacked on a railcar." DRAFT EIS, p. 6. BNSF also appears to object to having to do required underwater inspections of the piers "every 5 years and after significant high-water events" and wants to increase the speed that it crosses the bridge from 25 mph to 35 mph and to increase the weight limits on the rail cars. DRAFT EIS, p. 6. The 25 mph speed restriction affects only 14-16 trains per day, and does not appear to affect the total time in transit of those trains in any meaningful way. DRAFT EIS, p. 5. The DRAFT EIS makes vague claims about the existing bridge nearing "the end of its useful life," but fails to present solid evidence supporting that claim and fails to consider whether the existing bridge could be refurbished and restored and reinforced in ways that would satisfy BNSF's self-imposed goals of increasing the vertical height and weight of loaded cars and the speed at which they cross the bridge. Further, the DRAFT EIS considers unreasonable alternatives such as removing the current steel superstructure of the bridge and floating it down the river as an unreasonable and ridiculous strawman proposal that distorts the cost and analysis and has been used by BNSF to scare local governments from attempting to save the 1883 Railway Bridge at its current historical location. This bait-and-switch alternative is not one any reasonable person, entity, or agency would ever consider doing. The range of alternatives has long been recognized by regulation and case law to be the heart of an EIS. The unreasonable and narrow set of alternatives considered in the DRAFT EIS has the foreseeable effect of causing the DRAFT EIS to fail to consider almost all of the long-term direct, indirect, and cumulative impacts of the proposed project.	2.1	The No Action Alternative was assessed in the DEIS. The alternative of rehabilitating the existing bridge was considered in Section 2.1.4 of the DEIS and eliminated from further consideration. The existing historic piers have shallow-foundation construction which makes them more susceptible to scour. New bridge piers would be constructed to be more scour-resistant.

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>Current North Dakota State Geologist Edward Murphy's 1995 study of the history of the construction and upgrades to "The Northern Pacific Railway Bridge at Bismarck" shows all the factors mentioned above demonstrating that it is a prime candidate for continued use as a viable bridge: 1) the bridge was designed to carry heavy steam locomotives; 2) its design factors were generally conservative; and 3) the bridge's functional design may permit repairs and reinforcements when necessary to maintain its viability. 13 Although FORB and others suggested this option, BNSF dismissed it without supporting evidence and failed to adequately consider it either in the Section 106 process or DRAFT EIS. Edward Murphy's 1995 study summarizes several of the reasons why the existing historical bridge is a likely candidate for repairs and reinforcements to maintain its viability. First, the current location was picked over two others in 1880 in part because the two piers currently in the river were built into and upon the underlying bedrock.14 The civil engineer who designed the bridge, George Shattuck Morison, "sank more than forty borings around the bridge and excavated two deep pits to accurately define the geology beneath the site so he could determine the appropriate design for his piers." 15 Murphy explains the final design: Morison designed the bridge with four piers spaced approximately 400 feet apart. The eastern and westernmost bridge piers were located on dry land. During the spring thaw, Morison noted the tremendous size and power of ice jams that formed in the Missouri River near Bismarck. Some of these ice jams were reportedly twenty feet thick. Morison decided against designing a cheaper, low draw bridge due to the potential damage to the bridge spans from ice jams. To further address these concerns, Morison designed two of the bridge piers with metal-coated edges on the upstream side so that they could, in effect, serve as plows, breaking through ice jams and discouraging their development. Construction on the piers began September 1, 1881, and was completed June 3, 1882. 16 As shown in above and discussed in Murphy's historical study, the two piers were built into the bedrock of the in the Missouri River at the current crossing and have now withstood 138 years of ice jams and monumental floods. This includes floods such as the Missouri River 2011 flooding when the Garrison Dam spillway north of Bismarck overflowed for the first time since the Garrison dam was completed in the late 1940s to help prevent such flooding (forcing the evacuation of nearly 900 homes in Burleigh and Morton counties) or the monumental spring flooding that occurred in 1884 pictured on the next page below17 which shows the kind of spring flooding that occurred nearly on an annual basis before the main stem and other dams on the Missouri River and its tributaries were completed. The existing historical bridge was designed to withstand such ice jams and flooding, and it has now done so for 138 years.</p>	2.1	<p>Section 2.1.4 details the "Rehabilitation of the Existing Bridge" alternative, which was not carried forward for further analysis in the EIS because it fails to meet the goals and objectives from the purpose and need. Further, retention of the existing bridge would not address existing vertical clearance, inspection hazards, scour potential, on-land pier shifting, and lack of structural redundancies.</p>
Mark Zimmerman	<p>Failure to fully consider the most obvious and reasonable alternatives to save the landmark 1883 rail bridge. The draft EIS failed to adequately consider the No-action Alternative.</p>	2.2	<p>Section 1.2.2 of the EIS describes the rationale for replacing the existing structure. USCG screened alternatives and determined which met the definition of reasonable such to be moved forward to full assessment of impacts.</p> <p>The No Action Alternative would not meet the purpose and need of the Project because it would not: 1) meet operational needs to replace aging infrastructure and accommodate potential future need for a second track for rail freight; 2) reduce the frequency and duration of maintenance activities and associated outages; or 3) Improve system reliability and bridge structure redundancy.</p>
Elizabeth S. Merritt, National Trust for Historic Preservation	<p>The consideration of alternatives is inadequate, including the alternative of preserving the historic bridge as a pedestrian crossing after the new bridge is constructed.</p>	2.2	<p>Section 1.2.2 of the EIS describes the rationale for replacing the existing structure. USCG screened alternatives and determined which met the definition of reasonable such to be moved forward to full assessment of impacts.</p>
Anonymous	<p>In looking at a study that would be a rational, defensible and justifiable way to value the bridge, at least for mitigation, there are at least two routes that could be pursued. They are below:</p> <ul style="list-style-type: none"> •Three appraisals from three disparate, unbiased (not on the payroll of BNSF) commercial appraisers should be pursued (much in the way one would pursue three quotes for a project); •The 1884 Northern Pacific Railroad report contains the cost for labor and material expenses for construction of the original NPRR Bridge. The original 1883 piers remain intact. Adjustments would likely be needed for the 1905 superstructure replacement. Once the cost of the original bridge labor and materials is found, the original costs should be adjusted for inflation at a value commensurate for the year 2021. This can be done using an inflation calculator. <p>The following report, which is contained in the archives of the State Historical Society of North Dakota (Bismarck) and the Minnesota Historical Society (St. Paul), is the one that contains this necessary information. See George S. Morison, Bismarck Bridge: A Report to A. Anderson Engineer in Chief Northern Pacific Railroad, 1884. Detailed illustrations accompany Morison's narrative of bridge construction and costs of labor and materials.</p>	2.2, Table 1	<p>The EIS details the cost of the Proposed Action and alternatives.</p>

Commenter	Comment	EIS Section	Response
City of Bismarck	There appears to be little if any mention, throughout the subject DEIS, regarding the “Proposed Action Alternative” (building a new bridge 20 feet upstream of the existing bridge and removing the existing bridge) or the “No Action Alternative” and the associated impacts on the City of Bismarck West End Reservoir particularly the slope between the West End Reservoir and the BNSF tracks. We respectfully request that documentation be included within the Environmental Impact Statement (EIS) on impacts, mitigation measures (including costs), and responsible parties to pursue mitigation to protect the City of Bismarck West End Reservoir and associated slope located between the West End Reservoir and the BNSF tracks. Appendix D references existing sink holes, erosional features and general instability of the slope that should be addressed regardless of the alternative selected by BNSF.	2.2	Slope stability issues are not expected to be exacerbated by replacement of the bridge as described in the proposed action. Mitigation for impacts from offset alternatives are addressed in development of the retaining walls. Ongoing maintenance issues associated with slope stability are not within the scope of this undertaking.
City of Bismarck	In section 2.2 on page 15 of the document the following statement is provided, “The City of Bismarck has indicated that encroachment of the hillside upslope of the Project would affect the Bismarck West End Reservoir, which would require mitigation.” On July 23, 2021 a conversation was held between the Bismarck City Engineer and Abby Korte with Jacobs Engineering. We did not confirm at the time there would be impacts to the West End Reservoir but acknowledged there could be impacts and asked for consideration and documentation on how BNSF would mitigate if it was determined there would be impacts. We respectfully request consideration in changing the language in the aforementioned statement to could instead of would.	2.2	This language will be removed from the text. See Table 1: DEIS Errata Table.
City of Bismarck	In section 2.3.2 page 27, we would respectfully request consideration of language being added which states that easements granted by the City of Bismarck may be required if the “Proposed Action Alternative” is pursued and if alternative remediation of the existing slope between the BNSF track and the West End Reservoir is necessary.	2.3	The proposed action alternative would be constructed entirely within the existing BNSF right-of-way (ROW) and accordingly will not require acquisition of additional easements. Remediation of the existing slope instability between the BNSF track and the West End Reservoir is outside of the scope of this NEPA review.
John Sakariassen	It is my understanding that the EIS proposes the clearing and removal of twenty to thirty acres of trees along the riverfront without replanting or mitigation of any kind. This is unconscionable. I further understand that BNSF also proposes the damage or destruction of portions of public roadway and recreation trails without plans to repair the damage or reimburse public entities and ultimately taxpayers for the cost of reconstruction. Equally unconscionable.	2.3	Restoration activities will be implemented to prevent erosion of areas impacted by construction. Trees removed outside of BNSF ROW will be replaced. Please refer to Table 2 – Final Environmental Commitments.
Karen K Ehrens	I do not see in this impact statement for how the BNSF will replace trees that are removed for this project.	2.3	Restoration activities will be implemented to prevent erosion of areas impacted by construction. Trees removed outside of BNSF ROW will be replaced.
Friends of the Rail Bridge	<p>The principal environmental impacts associated with rail operations are well recognized:</p> <ul style="list-style-type: none"> • Greenhouse Gas Emissions • Air Pollutant Emissions • Noise and Vibration • Water and Land Pollution and Contamination • Land-take • Visual intrusion <p>“The most significant of the environmental impacts listed above are greenhouse gas emissions, air pollutant emissions, and noise. For these three impact categories, detailed methodologies have been developed to measure, model, or calculate the impacts of railway operations, and work has also been carried out to estimate the costs to society associated with these impacts. Research into the other railway environmental impacts is much less well developed.” The DRAFT EIS fails to consider how altering the bridge to allow it to accommodate and become part of BNSF’s intermodal system will impact the number of trains going through Bismarck/Mandan and how that changed traffic will impact all of the factors listed above.</p>	3.0	While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction a new bridge.
Karen K Ehrens	I do not see in the analysis how this project will contribute to reducing pollution and energy use, or how this contributes to a smaller environmental footprint for the railroad, the state, or the nation. I write at a time when global climate change is contributing to larger, more frequent and more intense storms, changes in weather patterns, and increased wild fires. The temperature in Bismarck, ND is expected to reach 105 degrees F, and smoke, haze and particulates from forest fires across Western U.S. and Canada are floating in the air here. How can we continue on this course, as if nothing is happening?	3.1	Section 3.1.2 discusses reduced train and traffic idling with the replacement of the Bridge. This section also discusses construction duration, which may temporarily affect air emissions.

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	Other environmental issues are ignored, such as impacts to paleontological resources, locations of disposal of excavated materials, airborne particulate matter effects on neighborhoods south of the bridge beside the construction zone, and the significance of the Northern Plains National Heritage Area in the project area.	3.1, 3.9, 3.11	If identified during construction, impacts to paleontological resources would be mitigated through implementation of an Unanticipated Discoveries Plan. Air quality impacts are discussed in section 3.1.2 of the EIS. As noted in Section 3.9, the current bridge is not the bridge that was built originally, except for the piers.
Dawn Kopp	Approximately 250 programmed or low-income housing units are within 1 to 1.5 city blocks of the current rail line in Historic Downtown Bismarck. Increased speed, height and weight of trains as proposed along with the plan to construct a second line will directly impact these units creating environmental impact issues for the underserved and minority populations housed within. Again NO MITIGATION strategies are made within the EIS. The Patterson Apartments located at 422 E. Main Avenue, Bismarck is federal Section 8 Housing. The majority of residents do not own vehicles, which causes them to run errands, go to appointments, etc. on foot. Faster, heavier, taller trains will increase safety and environmental concerns for the Patterson Apts. residents. The Patterson Building, a 95 unit housing structure with main level commercial space, just went through a \$7.5MM rehab/restoration project including the replacement of every window in the building except for the historic stained glass windows on street level. The new windows help mitigate current street noise and other industrial noises such as those created by rail traffic. Should trains be allowed to increase speed, weight, and height, noise levels are apt to increase as well, once again putting the Section 8 housing residents at an environmental disadvantage once again.	3.1	This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would increase impact to environmental justice (EJ) communities.
City of Bismarck	In section 3.2.2 on page 43, we respectfully request language be added regarding remediation of the slope between the West End Reservoir and the BNSF tracks to Table 5 of the Long-term Impact of the "Proposed Action Alternative" if mitigation is necessary.	3.2	Existing slope stability issues are not expected to be exacerbated by replacement of the bridge as described in the proposed action. Remediation of the existing slope instability between the BNSF track and the West End Reservoir are outside of the scope of this NEPA review.
Wayne Schepp	I guess my concern is, then, is the erosion that will be caused by the additional piers, by keeping the two bridges up.	3.3	Impacts to water resources and water quality are discussed in Section 3.3.2 of the EIS, including proposed mitigation measures.
Friends of the Rail Bridge	Regarding scientific integrity, FORB contracted with an engineering firm Ackerman-Estvold to evaluate the floodplain modeling used in the CLOMR (see attached Technical Memoranda). Their evaluation found that BNSF's modeling analysis manipulated coefficients to falsely achieve no net rise for the Proposed Action Alternative. Ackerman-Estvold's technical memoranda were given to and presented to the USCG. The USCG did not respond, and the coefficients were not corrected thereby calling into question the scientific integrity of information on floodplain effects presented in this Draft EIS.	3.5	The modeling and coefficients used in the BNSF floodplain modeling analysis were reviewed and approved by the Federal Emergency Management Agency.
Nick Hacker	Due to the permanent physical improvements that will be needed for a second bridge under that option, the wildlife area immediately south of the interstate bridge on the west side of the river supports deer, turkey, small game, bald eagles, and many waterfowl will likely never return to what it is today. And there will be disruption under a temporary solution, but at the end of the day, with that level of improvements, we will never see that again. In fact, (inaudible) that the USDA was recently out here, as in last week, engaging with the neighborhood south on the west side of the river to eradicate noxious weeds, to ensure that there's appropriate nesting and wildlife support areas for that game.	3.7	Impacts to wildlife, including wildlife at the Missouri River Natural Area, are discussed in Section 3.7.2 of the EIS.
Nick Hacker	And further, there's this potential for increased water levels. I don't know exactly to what extent, but the piping plover is a sacred bird to us along the river, and we're very concerned that changes in water flows could impact those nesting areas; and additionally, changes in water flows around additional pillars being permanently placed around the river could also impact the main channel of the river. And that's had a long-term impact in this community, not only to property owners, but to the ecology of all of the lands that follow along the river as that has moved. And if you have an opportunity to go up north of the bridge, you'll see what happens when you change river channels based on flow, because you'll notice areas that are now desolate, that used to harbor much game -- and recreation, to some extent -- but frankly, the nature that surrounds any river.	3.8	The proposed action would not result in a change to the existing 100-year base flood elevation (BFE). Offset Alternative 1 would result in a long-term, 0.03-foot increase in the BFE. Offset Alternative 2 would not result in an increase in the BFE, but short-term falsework may affect floodplain conditions during construction. Offset Alternative 3 would result in a long-term, 0.02-foot increase in the BFE. Impacts to the federally-listed (threatened) piping plover are discussed in Section 3.8.3. Mitigation measures to protect the species are also included in Section 3.8.3.
Friends of the Rail Bridge	Other impact analyzes are misleading or misrepresent results, as noted in attached, specific comments. For instance, the Civil War battle within the area of visual effects is referred to as the "Apple Creek Fight" rather than the "Battle of Apple Creek."	3.9	Although the Apple Creek Fight may be alternatively referred to as the Battle of Apple Creek, EIS research predominantly found it referred to as the "Apple Creek Fight". Most notably, this is how Dakota Goodhouse, a member of the Standing Rock Sioux Nation and Native American Studies professor at United Tribes Technical College, refers to the site. Goodhouse has done considerable writing about the topic. The Apple Creek Fight or Battle of Apple Creek both refer to an 1863 skirmish that occurred on a hill near Apple Creek that marked the end of a 2-week running battle (the Apple Creek Conflict) from Big Mound, near present day Tappen, North Dakota, southwest to Apple Creek.

Commenter	Comment	EIS Section	Response
Amy Sakariassen	If the correct protocol had been taken, the existence of a paleontological site within the quarter section which includes the east bluff around the bridge approach and tracks would have been noted in the Draft EIS. Clearly, this fact has been neatly avoided, although the geologic specifics of the east side Missouri River banks are easy to find and these bluffs known to be fossil bearing. Any novice should have been alert to the potential for fossil resources to be encountered with the extensive construction and earthwork detailed for the proposed new BNSF rail approaches and bridge. Jacobs should be ashamed of this omission. And BNSF must accept responsibility for mitigation or avoidance of this recorded paleontological site. It is of great concern to me, considering the alarming extent of the reconfiguration of the bluff and approaches of a new structure, that fragile and potentially informative fossil resources have been excluded in this document.	3.9	Two paleontological sites were identified within the same sections but outside of the Project area. Because there may be a probability of encountering paleontological resources, a preconstruction survey would be completed and a paleontological monitor present during construction. See Table 1 DEIS Errata for modifications to the text and the addition of paleontological resource mitigation in Table 2: Final Environmental Commitments.
Tory Jackson	Despite a few vague references in the Draft EIS to the “iconic” historic bridge, one can read the entire document and come away thinking this project is only about the destruction of a run-of-the-mill piece of aging infrastructure. The Draft EIS does not contain any meaningful analysis of how historically important this bridge is to Bismarck, Mandan and the northern Great Plains, including its historical impact on the Lakota, Mandan, Hidatsa, Arikara and other tribal nations. The Draft EIS fails as a matter of law by not considering the historic value of the existing bridge. There are numerous feasible alternatives that would preserve this historic landmark, including refurbishment or repurposing. The Draft EIS does not give serious consideration to those alternatives because it completely fails to recognize the historic nature of the existing bridge. Because it is so narrowly focused and ahistorical, the Draft EIS also fails to include any discussion of federal requirements for mitigation when dealing with a historic structure. As someone who cares deeply about the history of the Northern Plains and serves on both the Bismarck Historic Preservation Commission and the Board of Directors of the Bismarck Historical Society (although I do not provide these comments as anything but my own), I cannot stress enough how historically significant the existing railway bridge is to our community and our region. None of us would be here without it, and none of us who care even slightly about history can imagine our community without it.	3.9	The historical significance was addressed in the DEIS. The Advisory Council on Historic Preservation (ACHP) and the North Dakota State Historic Preservation Officer (SHPO) were engaged and participated in the Section 106 process.
Friends of the Rail Bridge	The review under the National Historic Preservation Act (NHPA) as incorporated into the EIS is also deeply flawed and fails to adequately consider the historical importance of the still-in-use Landmark 1883 Rail Bridge at the historically important Missouri River Crossing of the Transcontinental Railroad between the Pacific Ocean port on the Columbia River and the westernmost port connected to the Atlantic Ocean at the Port of Duluth at the westernmost point of Lake Superior. As discussed above, vague references in the DRAFT EIS to the “iconic nature” is not a substitute of real analysis of the historical importance of the existing bridge or whether there are reasonable options by which it can be saved. Unfortunately, the Section 106 NHPA process for the 1883 Railway Bridge has been poisoned by scare tactics, misrepresentations, and aggressive lobbying by the proponents of the project. Meanwhile, similar railway bridges of much less historical significance are being saved for community use such as light rail and rails to trails, or as part of comprehensive community riverfront planning in numerous cases in various parts of the country. Preservation of the historic and continuing importance of the 1883 Railway Bridge to the Bismarck/Mandan community has not been meaningfully considered because of these tactics, and this is another additional reason that the EIS is legally insufficient under NEPA. The approach in the DRAFT EIS is to simply not mention the issue or the various provisions of the law that require that the DRAFT EIS consider how to save historical properties of national, regional, and local significance. That does not pass legal muster. 54 U.S.C.A. § 300101, requires “the preservation of non-federally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means” and requires that agencies encourage “the public and private preservation and utilization of all usable elements of the Nation’s historic built environment.” As noted earlier in these comments, the National Historic Preservation Act as reenacted in 2014 requires the Final EIS to consider alternatives that minimize harm to the existing historic Railway Bridge resulting from construction and use of any new railway bridge to the north or south, and/or a rebuild and refurbishment of the existing historic bridge. This can be done either by continuing to use the existing historical bridge for the time being as is (the “no action” alternative), as refurbished, or by an alternative such as rails-with-trails or rails-to-trails as is common across the United States for similar bridges as discussed in NDSU’s study as discussed above.	3.9	The historical significance was addressed in the DEIS. ACHP and SHPO were engaged and participated in the Section 106 process.

Commenter	Comment	EIS Section	Response
Karen K Ehrens	<p>Re: USCG-2019-0882</p> <p>Thank you for the opportunity to comment on the Draft Environmental Impact Statement. I appreciate the opportunity.</p> <p>As long as any resident of North Dakota has been alive, the railroad bridge over the Missouri River has been a part of our environment. Indeed, that bridge changed the course of history. The rail bridge has been the backdrop of life events of not only North Dakotans, but of people from all over the U.S.A. and even other parts of the world. This is an icon to people who live here, and the proposed preferred alternative looks utilitarian and flat. If the plans to build a new bridge and tear down the old bridge continue as planned, it will change the visual, social and historical environment of this place. I urge the federal agencies to account for how those changes will impact the people of these cities, this state, and the nation. I also urge another review of the alternative that leaves the current bridge in place; it can serve as a pedestrian and bicycle crossing, a place for gathering, and continue on in the backdrop of our lives.</p> <p>When a corporation proposed to change our environment, good care should be taken to preserve the environment. I find this environmental impact statement lacking in consideration for how the bridge changes our environment; it is lacking in mentioning how the newer standards for lighting will impact the people living near the bridge and the people who look to the stars for inspiration and for being able to view the stars, planets, and other celestial bodies as their position changes relatively to earth with the seasons.</p>	3.9	<p>Section 3.9.1 addresses the significance of the Northern Plains National Heritage Corridor which includes the Missouri River Corridor and the Lewis and Clark National Historic Trail.</p> <p>As noted in Section 3.9.2, the Proposed Action Alternative would not have a significant impact or an adverse effect on the potential cultural landscape. Although the removal and replacement of the existing historic bridge at milepost 196.6 (hereafter referred to as Bridge 196.6) with a new bridge would alter the setting, this change would not diminish the communities' ability to understand the history of the cultural landscape and its importance to the Northern Plains National Heritage Corridor, Missouri River corridor, and the Lewis and Clark National Historic Trail.</p>
Elizabeth S. Merritt, National Trust for Historic Preservation	The consideration of adverse impacts on the Northern Plains National Heritage Corridor is inadequate.	3.9	<p>Section 3.9.1 addresses the significance of the Northern Plains National Heritage Corridor which includes the Missouri River Corridor and the Lewis and Clark National Historic Trail.</p> <p>As noted in Section 3.9.2, the Proposed Action Alternative would not have a significant impact or an adverse effect on the potential cultural landscape. Although the removal and replacement of Bridge 196.6 with a new bridge would alter the setting, this change would not diminish the communities' ability to understand the history of the cultural landscape and its importance to the Northern Plains National Heritage Corridor, Missouri River corridor, and the Lewis and Clark National Historic Trail.</p>
North Dakota Department of Transportation	Continue to allow and provide for the movement of pedestrians to pass under the new railroad bridge on both the Mandan and Bismarck sides of the river. (Section 3. 11. 1)	3.11	Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.
Mark Zimmerman	Direct impacts of the project on the Bismarck/Mandan community. And there are the issues of recreational use. Those concerns, well beyond the time of construction. We have some grave concerns that were not addressed.	3.11	Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.
Mark Zimmerman	<p>The draft EIS, on page 131-133, contains statements concerning impacts to recreational resources and uses along the proposed construction area: The earthwork to align the track with the new bridge would result in permanent changes to the trails throughout the Project area" (page 133). I do not see any references as to how these stated changes to the trails will be addressed and the draft EIS does not address the mitigation plans for such damages and changes to the affected trails. Removal of the interior span would affect recreation use of the Missouri River for approximately one season" (page 133). Am I to understand that the stated removal of the interior span references impact to the recreational use of the Missouri River at the public boat ramp in the immediate area of construction? What is the mitigation plan for the recreational impact this action would have? What is the economic impact of this closure? Are mitigation plans being addressed that would impact this area by additional silting or deposit of material that may require dredging at a later date for safe and efficient operation of the boat ramp facility?</p>	3.11	Recreational use of the Missouri River would be restricted during in-water construction; however, closure of the Missouri River waterway is not anticipated. Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.

Commenter	Comment	EIS Section	Response
Mark Zimmerman	I believe the draft EIS should include information that can easily be obtained from the Bismarck Parks and Recreation Department on the number of daily trail users on the trails that will be impacted by construction, the estimated number of boat launches performed daily to the Missouri River from the public boat ramp at this location as well as other impacts to scheduled events along the trails such as charity road races, cycling events, and numerous other activities. These are significant impacts to major recreational facilities and services for the citizens and visitors to the City of Bismarck. As a member of the Bismarck Board of Park Commissioners I am concerned these impacts are not adequately addressed in the draft EIS.	3.11	Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.
Lynsee Langsdon	<p>I am a long-time resident of Bismarck/Mandan and my absolute favorite thing to do in the summers is to hang out on the river. My favorite spot is right next to the train bridge. I go at every opportunity. Sometimes I sit on the bank and read enjoying the scenery and the sound of the water. Other times I will be there doing yoga and listening to music. I often chat with strangers that walk their dogs past me. I get to watch young kids fish off the rocks and goof around with their buddies. I dive with my friends into the channel from the edge of the sandbar to cool off. Just this week for the first time I was able to dive into the channel with flippers on and swim out to touch one of the rail bridge's piers! It was an amazing experience paddling hard to reach it in time, reaching out and touching the stone as the river rushed us past, getting to see the marks of creation left on the rock. I cannot wait to do it again.</p> <p>My comment for the EIS is that this draft does not address how the project will impact the ability of the public to access the riverbanks for recreation. The riverbanks around the bridge provide some of the only free public spots to play and relax in the water during the overwhelming heat of the summer. I know work must be done in the area to save the bridge for our future use, but the EIS must address the social and economic impact closing the beaches will have on the people of Bismarck/Mandan. We need access to the river. We need this place. It is important to us, do the right thing.</p>	3.11	Closure of the Missouri River waterway is not anticipated at this time. There are no public beaches in the Project area which would be closed.
Friends of the Rail Bridge	The closure of the Missouri River to river traffic for an entire season by the Proposed Action Alternative and permanent changes to recreation trails are briefly mentioned on page 133, but not in the Executive Summary and environmental consequences summary in Table 37.	3.11	Recreational use of the Missouri River would be restricted during in-water construction; however, closure of the Missouri River waterway is not anticipated. Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.
Anonymous	Adverse effects to businesses and commercial and private water recreation during construction of the bridge can be addressed by taking the mean average of tax return data for each business 1 mile north and 1 mile south of the project area over the last 5 years. From this mean average, if gross income drops below this average during construction of the bridge, the project applicant (BNSF) should compensate the businesses along the Missouri River for the remainder of the lost revenue.	3.11	Closure of the Missouri River waterway is not anticipated and as such, significant impacts to businesses are not anticipated.
Dave Mayer, Bismarck Parks	The document does a good job identifying the recreational aspects on the east side of the river and we appreciate that. We do have concern about the vagueness of the potential disruption of the trail use. How long he trail will be closed for demolition; how long it will be closed during construction.	3.11	Temporary closures of Riverfront Trail may occur during construction while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Post construction, Riverfront Trail will be restored to a condition that is "equal or better" to preconstruction.

Commenter	Comment	EIS Section	Response
Denizen Partners LLC	<p>To illustrate the impact on the local economy, we contemplate three alternative scenarios:</p> <p>Scenario 1 - rail line remains as is.</p> <p>Scenario 2 - Rail line developed as currently planned by BNSF, thereby increasing capacity or freight rail traffic through the area of town with the highest capacity for real estate development. We understand this to mean additional freight line, moving at higher speeds, with heavier loads, ultimately resulting in substantial increase in noise and vibration.</p> <p>Scenario 3 - a Win-Win alternative involving the relocation of rail the corridor to avoid urbanized areas. This scenario would maintain or even increase the traffic volume of the freight rail lines for the purposes and objectives of BNSF. In addition, this scenario would significantly increase the development capacity of the blocks within a quarter mile of the existing rail line through town, stretching from the Bismarck riverfront to the 2600 block along the main street corridor. With modest public investment in commuter bike infrastructure in the vacated corridor, the return on investment of such an infrastructure investment - realized through an increased tax base - is substantial.</p> <p>Methods - We estimate an impact in development potential between scenarios two and three at one billion dollars based on the following assumptions:</p> <p>Scenario 2: increased freight traffic, and the associated noise and vibration, limits redevelopment of the Main Ave corridor. Zero redevelopment of directly adjacent property. · Zero re-development pressure in adjacent blocks. Existing development patterns and property values will remain as is. · Zero public investment in new infrastructure along the corridor.</p> <p>Scenario 3: increased development capacity due to transit-oriented development opportunities offered by re-purposing of the existing rail corridor as a commuter bike trail.</p> <p>20M capacity for each block currently bisected by the existing rail line, and potentially bisected by the commuter bike trail. This entails a mid-rise, mixed-use development pattern, capitalizing on the opportunities created by transit oriented development patterns. (NOTE: two developments currently under construction in downtown Bismarck, each accounting for more than 10M in value in less than a ½ block of developed land area, provide the basis of this estimate.) 20M capacity within 3 blocks on either side. This entails low-rise development patterns characterized by "Missing Middle building types" Developed at approx. 30-50 Du/Acre. Such patterns may develop within walking distance of a walkable/bike-able commercial corridor. Assumes 25 blocks of redevelopment potential along the three-mile corridor.</p> <p>Comparison: Based on the above assumptions, a total difference of \$10 Million in annual property tax revenues available to local taxing entities exists between scenarios 2 and 3 as follows:</p> <p>1 Billion difference in tax base of the main Ave corridor. (\$40M / Block x 25 Blocks.) 1% property tax rate. (\$1Billion x 1% = 10M annual tax revenue)</p> <p>Conclusion - There appears to be a strong rationale to approach local taxing entities as partners in realizing the Win-Win potential of scenario 3. This opportunity to mitigate against the adverse economic impact of BNSF's stated development intentions on the local economy should not be dismissed without due consideration. A rigorous examination of the Scenario 3 alternative proposed here should be further investigated as part of the EIS process.</p>	3.11	As stated in Section 3.13.2 of the DEIS, the Proposed Action does not add origin or destination facilities and would not increase or decrease rail volumes and, as such, noise levels, over the existing conditions. Section 2.1.1 and 2.1.2 describe the Bismarck North Route Bypass and Bismarck South Route Bypass as alternatives considered and eliminated from further consideration.
City of Bismarck	<p>Similar to previous comment number 3, within section 3.11.2 on page 134 in the first paragraph under Offset Alternative 1, there is a statement that indicates, "On the east side of the Project, the City of Bismarck indicated that replacing or removing fill from the hillside between the facility and the proposed Offset Alternative 1 would affect the Bismarck West End Reservoirs, which would be minimized through construction of a retaining wall." As previously stated, on July 23, 2021 a conversation was held between the Bismarck City Engineer and Abby Korte with Jacobs Engineering. We did not confirm at the time there would be impacts to the West End Reservoir but acknowledged there could be impacts and asked for consideration and documentation on how BNSF would mitigate if it was determined there would be impacts. We respectfully request consideration in changing the language in the aforementioned statement to could instead of would.</p>	3.11	This language will be removed from the text. See Table 1: DEIS Errata Table.
Dawn Kopp	<p>How will a possible second track be laid through the center of Mandan & Bismarck within the current BNSF right of way without impacting current structures, public infrastructure, local economies, and so forth. As mentioned in "Issue 2". Section 3.9.2 of the EIS references many structures nearer to the historic rail bridge, however, this section does not call out structures adjacent to the rail line that goes through the historic hub of Downtown Bismarck or Downtown Mandan.</p>	3.11	The APE for the Project was approved by SHPO. A bridge permit action from USCG would be required for addition of a second track and NEPA environmental review of the impacts due to addition of a second track would be completed.

Commenter	Comment	EIS Section	Response
Dave Mayer, Bismarck Parks	Also, it does state in some of the alternatives that “The Proposed Action Alternative would not result in permanent changes to the land use or zoning.” It would also result in no permanent changes to the unofficial Mandan Missouri River Bike Trail and the Riverfront Trail. But then goes on to say: “The earthwork required to align the track with the new bridge would result in permanent changes to the trails throughout the Project area.” Which are contradictions, we would like some clarity on this and during design some input on impacts to the East bank trail system.	3.11	The Project would not permanently change the status of the unofficial Mandan Missouri River bike trail. No permanent impacts are anticipated for the Riverfront Trail.
Dawn Kopp	EIS only takes into account impacts made by the replacement of our historic bridge EIS does not take all impacts into account, rather it segments the impact by permit - permit to demolish our historic bridge. No impacts addressed on adjoining communities, business hubs, historic hubs, adjacent neighborhoods, waterways, adjacent nature areas, native species, etc. 19+ acres of mature trees are slated to be removed and NOT REPLACED due to the building of new bridge; again NO MITIGATION Great data gaps on impacts to business/livelihood/lifestyle are missing from this EIS This project MUST analyze the full range of direct, indirect, cumulative effects, and safety issues caused by an increase in speed, weight and trains supposedly utilizing a “new” bridge, for example the max speed for trains would increase from 25 mph to 35 mph.	3.11, 3.18, 4.0	Alternatives, including the No Action Alternative and Offset Alternatives which consider impacts resulting from retaining the existing bridge and construction a new bridge adjacent to the existing bridge, were carried forward for full assessment in the EIS. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes.
Friends of the Rail Bridge	Direct impacts of the project on the Bismarck/Mandan community. The Missouri River main-stem dams primarily constructed in the 1930’s through the 1960’s ended commercial navigation on the upper reaches of the Missouri River, making recreational navigation the primary navigational use of the river near the bridge. Most persons reading the DRAFT EIS will not see that the proposed new bridge will require bright commercial navigational lights, will add additional piers in the river that will affect the flow and recreational use of the river for fishing and boating and that will add additional danger of ice jams. Although initial modeling showed these impacts, by altering coefficients in its calculations, the project proponents miraculously made these obvious impacts disappear. The visual and economic impacts of tearing down the iconic and beautiful 1883 Railway Bridge are not discussed in any meaningful way.	3.12	The Proposed Action will not add additional piers as compared to the existing condition. USCG approves the navigational clearances as a component of the permitting process and there is no anticipated impact on recreational traffic. A visual impact assessment was conducted and is included in Appendix O.
Elizabeth S. Merritt, National Trust for Historic Preservation	The consideration of adverse visual impacts is inadequate.	3.12	Visual impacts are discussed in Section 3.12 of the EIS and in further detail in the Visual Impact Assessment in Appendix O.
City of Bismarck	In section 3.12.2 on page 141 the second paragraph states, “This alternative would somewhat support the goal of the City of Bismarck’s Infill and Redevelopment Plan to “promote efforts to beautify, preserve and enhance our aesthetically pleasing community” (City of Bismarck 2017), and would not “diminish” the viewshed of the natural landscape from Fort Abraham Lincoln State Park “by incompatible development” (Morton County 2018).” From our perspective, this appears to be taking a recommendation we developed within the Infill and Redevelopment Plan out of context. The term “aesthetically pleasing” can be subjective and it is not the intent or scope of the Infill and Redevelopment Plan to define what is or is not aesthetically pleasing related to the “Proposed Action Alternative” or any of the other bridge design concepts discussed in the DEIS. We respectfully request this statement be removed from the DEIS.	3.12	This language will be removed from the text. See Table 1: DEIS Errata Table.
Friends of the Rail Bridge	The Missouri River main-stem dams primarily constructed in the 1930’s through the 1960’s ended commercial navigation on the upper reaches of the Missouri River, making recreational navigation the primary navigational use of the river near the bridge. Most persons reading the DRAFT EIS will not see that the proposed new bridge will require bright commercial navigational lights, will add additional piers in the river that will affect the flow and recreational use of the river for fishing and boating and that will add additional danger of ice jams. Although initial modeling showed these impacts, by altering coefficients in its calculations, somehow these impacts disappeared when the project proponents adjusted the calculations in ways that were not transparent or justified. The visual and economic impacts of tearing down the iconic and beautiful 1883 Railway Bridge also are not discussed in a way that considers the full impacts of how the changes will affect aesthetic enjoyment of recreational users on the river or the recreational users of the trails and parks on both sides of the river. Further, as discussed earlier, how the proposed new bridge will affect the number of trains that go through the community and other related impacts are not discussed in any way that satisfies the requirements of 40 CFR § 1502.14.	3.12	A Visual Impact Assessment was completed for the DEIS and was included in Appendix O. Lighting requirements on the new bridge will not be significantly different than what is on the existing bridge. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction a new bridge.

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	How the proposed new bridge will affect the number of trains that go through the community is not discussed in any way that puts the public on notice of those impacts. How fast the trains will be going and what noise and safety impacts that will have are not meaningfully discussed either.	3.13, 3.16	Rail volumes through the corridor are market driven. Construction of the new bridge will not affect rail volumes.
Karen K Ehrens	I do not see projections of how larger and heavier trains through the cities of Bismarck and Mandan will impact the people living nearby who will experience likely greater levels of sound (horns and engines).	3.13	Section 3.13.3 describes the noise and vibration impacts of the Project, and states that the Proposed Action would have impacts similar to the No Action Alternative, with similar rail volumes and associated noise impacts.
Dawn Kopp	Concerns regarding potential second track. Currently the BNSF rail line runs through the heart of Historic Downtown Bismarck. At some points along the rail line, the BNSF right of way butts up against the footprint of historic structures and buildings. One such building is the historic Northern Pacific Railroad Depot, which is listed on the National Register of Historic Places. I worked on the second floor of this building for several years. At that time roughly 22 trains/day came through town, currently that total is approximately 14 trains/day. Each time a train passed through, vibrations were felt and the sound of the trains rolling along the track was heard. It was manageable, but I have considerable concerns with heavier, taller, and faster trains as proposed in the EIS, that will utilize the rail and the increased noise and vibrations they will create. Such vibrations will be felt by future tenants and patrons of businesses within the historic depot and the historic depot itself. There are no mitigation measures provided in the EIS, rather only Impact Avoidance and Minimization Measures (Table 38).	3.13	Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit action and environmental review. Number of trains would be factors in that assessment.
Dawn Kopp	Section 3.15 Traffic; Section 3.15.1 Affected Environment. Both of these sections take into regard only the permit and structure for a new bridge. It does not take into consideration the rail line or rail crossings that would be affected as a result of the referenced permit. The lack of analysis on impacts east and west of the proposed new bridge prove the significant impact of segmenting permits in such a manner. The following are concerns which would arise from this manner of segmentation: A second track would greatly impact the economic hubs and historic hubs of Mandan and ND's state capital Bismarck; a portion of these hubs are registered historic areas on the National Register of Historic Places. No where in EIS has an analysis been done on a second track expansion through Bismarck or Mandan or any communities east or west of the possible "new bridge". If a second track would be created as the EIS states is a possibility, there is no analysis in the EIS to determine the adverse effects to properties adjacent to the rail line in Downtown Mandan or Downtown Bismarck, for example the historic Northern Pacific Depot.	3.15	Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit action and environmental review.
Friends of the Rail Bridge	Failure to consider the project's impacts on GHG emissions, climate change, and climate resiliency. By segmenting the proposed project from its larger effects, the DRAFT EIS avoids the issue of direct, indirect, and cumulative impacts the proposed project may have on GHG emissions and Climate change and resiliency. The transportation sector now is the leading emitter of GHGs of all sectors of the United States' economy, and the shipping of goods in the global economy is a huge contributor to global anthropogenic GHG emissions. The 1883 Railway Bridge has been in near-continuous use for 138 years, and the Missouri River Crossing at Bismarck/Mandan is a key crossing within the nation's railway system, including the western system controlled by BNSF. The transportation system, including the hauling of goods by truck and railway, will undergo major changes through electrification and other potential ways of powering the transportation sector (hydrogen, biofuels, use of carbon capture and storage technologies that result in net negative emissions, etc.). By segmenting this project from how it fits into the whole system, the EIS fails to consider its primary environmental impacts, and may result in constructing a bridge that fails to fit in with the transportation infrastructure that is likely to develop over the next few years and decades to address impacts of that sector on climate change and resiliency, and how our local, regional, national, and global economies and transportation sectors develop in response to those primary drivers.	3.18	Cumulative impacts are defined as "the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions" (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time. While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.

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Friends of the Rail Bridge	<p>Failure to consider the project's impacts on GHG emissions, climate change, and climate resiliency. By segmenting the proposed project from its larger effects, the DRAFT EIS avoids the issue of direct, indirect, and cumulative impacts the proposed project may have on GHG emissions and Climate change and resiliency. The transportation sector now is the leading emitter of GHGs of all sectors of the United States' economy, and the shipping of goods in the global economy is a huge contributor to global anthropogenic GHG emissions. Although shipping freight by rail emits less carbon dioxide per ton of goods shipped than by shipping goods by truck, and rail shipping emits a smaller percentage of overall emissions because of the present predominance of the use of trucks within the transportation sector, the rail system still emits millions of tons of carbon dioxide each year. In addition, how the rail system is changed over the next few years and decades to respond to zero-emission targets will greatly affect how the transportation sector will meet those challenges. Building a new bridge at the current location and not considering whether a northern or southern crossing will better address and result in lower-emitting rail system that is almost certain to develop soon is a flaw that must be addressed in the final EIS, as well as to meet the new requirements imposed by the changes of policy recently made by the Biden Administration. The 1883 Railway Bridge has been in near-continuous use for 138 years, and the Missouri River Crossing at Bismarck/Mandan is a key crossing within the nation's railway system, including the western system over which BNSF has a near monopoly. (See maps of BNSF's rail system in section 2.0 above.) As the transportation system, including the hauling of goods by truck and railway, will undergo major changes through electrification and other potential ways of powering the transportation sector (hydrogen, biofuels, use of carbon capture and storage technologies that result in net negative emissions, etc.). By segmenting this project from how it fits into the whole system, the EIS fails to consider its primary environmental impacts, and may result in constructing a bridge that fails to fit in with the transportation infrastructure that is likely to develop over the next few years and decades to address impacts of that sector on climate change and resiliency, and how our local, regional, national, and global economies and transportation sectors develop in response to those primary drivers. The Final EIS must consider the alternatives in light of the carbon-reduction policies discussed in section 3.0 above that, because of those policies and requirements, the EIS must consider.</p>	3.18	<p>Cumulative impacts are defined as "the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions" (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.</p>
Mark Zimmerman	<p>Failure to consider the project's impacts on greenhouse gas emissions, climate change, and climate resiliency. Our concerns are with the segmenting of this project that these very valid concerns under the NEPA regulations are not being addressed, and need to be addressed in the final EIS.</p>	3.18	<p>Cumulative impacts are defined as "the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (RFFA) regardless of what agency (federal or nonfederal) or person undertakes such other actions" (40 CFR 1508.7). Cumulative impacts can result from individually minor actions that can collectively become a measurable impact when taking place over time.</p> <p>While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction of a new bridge. Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review.</p>

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Elizabeth S. Merritt, National Trust for Historic Preservation	The consideration of cumulative and indirect impacts is inadequate.	3.18	Indirect impacts are discussed in Section 3.17 of the EIS, and cumulative impacts are addressed in section 3.18 of the EIS.
Emily Sakariassen	<p>Fourth, and most importantly, despite my involvement in developing a Programmatic Agreement and pending Memorandum of Agreement under Section 106 of the NHPA, I remain concerned that no mitigation is offered in the DEIS for any one of the numerous impacts they've identified the project as having. The project proponent intends to interrupt trails, transportation, recreation, commerce, traffic, the peace and quiet of certain neighborhoods, and take away an irreplaceable piece of the past with astounding potential to bridge communities through preservation and reuse. But will they fix the trails they close? Replant the trees they cut? Compensate for closed corridors and interrupted revenue streams for the years-long construction period? Will they limit their construction hours and noise levels to accommodate the people of Captain's Landing Township? Will they guarantee new lighting won't keep residents awake at night? Will they make up for our shared loss of a nationally significant historic resource? Based on the information provided, the answer must be no. Absolutely nothing is offered up in return for the mess they plan on making. The following is just a sample of statements within the DEIS that have an adverse effect, but for which I cannot find any mitigation offered in subsequent sections.</p> <p>Page 4, paragraph 1, line 1: "The Project area is within the existing BNSF right-of-way (ROW) from approximately milepost 196.6 to milepost 196.9, on Line Segment 0038 of the Jamestown Subdivision." –The DEIS does not adequately disclose that staging and construction areas defined as the "Revised APE" (as depicted in Figure 10, page 104) are also part of the project area and therefore this statement is false. In order to discuss impacts, adverse effects, and mitigation, there has to be a clear understanding of exactly what the APE is.</p> <p>Page xii, paragraph 2, bullet 2, objective 2-3: "Minimize and/or mitigate impacts to cultural and visual resources." –What is a "visual resource" and how is it different from a cultural resource? From this language, it appears the contractor has conflated the concept of "visual impacts" to cultural resources under section 106 of the NHPA with the classification of types of cultural resources. This issue comes up again when "Visual Resources" is used as a subhead on Page xviii. How can mitigation for adverse effects to cultural resources be decided when the language regarding the potential affects in the DEIS is misused and misleading?</p> <p>Page xii, paragraph 2, bullet 3, objective 3-1: "Deliver the Project at a reasonable cost to BNSF and its customers." –How and by whom is "reasonable" cost calculated? Will Project cost be deferred to customers/consumers? The DEIS does not explain how Project cost may be borne by customers/ consumers.</p> <p>Page xvi, Fish and Wildlife subhead, bullet 2: "The Proposed Action Alternative and Offset Alternatives 1 through 3 would result in...displacement of individuals during construction..."</p> <p>What individuals will be displaced and for how long? No assurances are made for the duration and other conditions of their displacement.</p> <p>Page xvii, Land Use and Recreation subhead, bullet 2 & bullet 4: "The Proposed Action Alternative and Offset Alternatives 1 through 3 would result in minor temporary impacts due to temporary trail closures, impacts to recreational use of the Missouri River..." and "The falsework required for Offset Alternative 2 would result in impacts to recreational use of the Missouri River." –There are at least five local restaurants/bars located on the Missouri River at Bismarck and Mandan that serve boaters and Missouri River recreators (The Paddle Trap, Huckleberry House, Broken Oar, The Pier, and The Drink at Lakewood). How will temporary closures affect their business? No mitigation is offered to offset this impact to this commercial niche which contributes considerably to the recreation and tourism economy at Bismarck-Mandan.</p>	4.0	<p>The unofficial Mandan Missouri River bike trail will be closed for the duration of the Project. Temporary closures of Riverfront Trail may be anticipated while work is completed in the immediate vicinity of the trail. Anticipated activities include construction of River Pier 5, Approach Pier 4, installation of new beams, removal of the in-place bridge, and installation of a temporary access road. Durations of the temporary closures are anticipated to vary from hours to weeks depending on task. Closure of the Missouri River waterway is not anticipated at this time. With the anticipated schedule, most work will take place during daylight hours.</p> <p>The Project APE for each alternative is described in Section 3. Visual resources are detailed in Section 3.12 and Appendix O. As described in section 3.7, mobile terrestrial and aquatic animals (individuals) would potentially be displaced during construction.</p>
Connie Sprynczynatyk	It was my pleasure to serve on the Bridge Advisory Committee, a group tasked with gaining a thorough understanding of the proposed bridge alternatives, and to provide recommendations to BNSF regarding the concerns we believe to be shared by the general public (see attached report). While this EIS mentions impacts to visual, recreational and habitat concerns, it is my opinion that the permitting process must spell out mitigation measures. I believe the general public--even those who support efficient transportation systems and economic growth--has serious concerns about these impacts and essential mitigation measures. The trails, the trees, the wildlife, the recreational navigation along the Missouri River are all fundamental components in this region. Unless this portion of the process delineates mitigation regarding the existing bridge, the impact on public recreation, and other social impacts, this EIS is woefully inadequate.	4.0	Mitigation measures were identified and discussed in Section 4.0. Recommendations from the Bridge Advisory Committee (BAC) were incorporated into the Section 106 Memorandum of Agreement (MOA) as opportunities for minimization. Additional mitigation may be identified during the permitting process.

Commenter	Comment	EIS Section	Response
Cathryn Anderson	The permitting process must spell out mitigation measures. I believe the general public--even those who support efficient transportation systems and economic growth--has serious concerns about these impacts and essential mitigation measures. The trails, the trees, the wildlife, the recreational navigation along the Missouri River are all fundamental components in this region. Unless this portion of the process delineates mitigation regarding the existing bridge, the impact on public recreation, and other social impacts, the Environmental Impact Statement is woefully inadequate.	4.0	Mitigation measures were identified and discussed in Section 4.0. Table 2 of the Final Environmental Impact Statement (FEIS) Errata document lists the Final Environmental Commitments for the Project, which includes measures detailed in the DEIS and those identified after DEIS publication.
Amy Sakariassen	<p>I include here comments formulated by the BAC, and presented during the Section 106 process to the United States Coast Guard. "Following research on bridge aesthetics, the Bridge Advisory Committee, formed by the Friends of the Rail Bridge, adopted a quotation from an industry expert highlighted in a Minnesota Department of Transportation document entitled 'Aesthetics for Bridge Design.'" C.E. Ingilis said, "Dominating the landscape, a bridge may make or mar its surroundings for centuries to come. Consequently, a striving for beauty of form and harmony with surroundings is a social obligation which structural engineers must recognize and educate themselves to perform." The BAC kept this principle at the forefront throughout the design discussions. The impact of the bridge design on the people of this region and state cannot be minimized or dismissed. The river at this location has become the public's backyard, as one of the few accessible public places along the stretch of the Missouri between the towns of Bismarck and Mandan. The visual impact of a new structure, particularly one of such overwhelming proportions, will reverberate throughout the state. The suggestions of this BAC are intended to convey an earnest desire to influence the aesthetics of a new bridge. No reasonable suggestion to mitigate the impact of the current design should be ignored. Our ideas to guide design sensitive mitigation included:</p> <ul style="list-style-type: none"> · Uncomplicated horizontal design · Pigmented concrete approaches and pillars · Addition of symbols impressed in the concrete (e.g., indigenous people's symbol for water) · Addition of texturing on the piers and/or the concrete approaches · Lighting <p>The complete report generated by the Bridge Advisory Committee under the stipulations of the Programmatic Agreement is a seven-page document with accompanying images and references. For greater detail about the conclusions of this design advisory committee please refer to the document filed on April 14th, 2021 with the United States Coast Guard. It must be noted here that the representatives of BNSF were consistently negative to any substantial aesthetic mitigations to the design of the new bridge, regardless of which option is determined to go forward. They were dismissive of the ideas offered by the BAC members, who had worked in good faith to find reasonable yet substantive compromise. To review just one of the points discussed during BAC meetings is the matter of lighting on a new bridge, which will alter forever the stillness of the evening and nighttime views of people who live in proximity to the bridge and those who merely use the recreational trails along the bluffs and banks of the Missouri River. Navigational lighting not before required on the old bridge will be installed on the new, affecting the tranquility of the darkness permanently. This is not a small impact for the community, yet it is tossed away as inconsequential. Such a cavalier attitude is consistent with the absence of any sensitivity to the visual impacts of this project on the people who live in this area or who visit it. It is also an attitude reflected in the failure of the consultant and BNSF to address/offer any culpability for disruption of recreation and commerce, for the destruction of trees that shade and beautify the area, and for the brazen lack of serious and honorable mitigations commensurate with the destruction and diminishment of the area's shared historic resources. This document demonstrates a break of faith with the intent of a genuine Environmental Impact Statement. The work of the BAC was concluded when their report was sent to the Coast Guard. The Draft EIS implies that this BAC has some ongoing role. This is not true. The BAC completed the task for FORB under the terms of the PA, which does not suggest any extension of those asked to serve on the BAC. The consultant, BNSF, and the Coast Guard each has the signed agreements of those who participated as BAC members which indicates that temporary nature and focus of the BAC.</p>	4.0	Mitigation measures were identified and discussed in Section 4.0. Recommendations from BAC were incorporated into the Section 106 MOA as opportunities for minimization. Additional mitigation may be identified during the permitting process.

Commenter	Comment	EIS Section	Response
Connie Sprynczynatyk	<p>Members of FORB's Bridge Advisory Committee have undertaken the responsibility assigned under the Programmatic Agreement to review the proposed designs as presented by BNSF for a bridge to be placed upstream from the historic rail bridge across the Missouri River outside of Bismarck, North Dakota. Two options were addressed: one with a preservation outcome retaining the 1883 bridge, and one with a new bridge built to span the river. Study of the renderings, study of pertinent material obtained from online resources, and consultation—both with professionals in the transportation field and representatives from BNSF—have occupied the group.</p> <p>It is the opinion of the BAC that the enormous size of the piers as shown in the schematics from BNSF, and the replacement bridge aesthetics, will be difficult for the community to support. In short, the proposed design will create a significant and negative impact the viewshed along this stretch of the Missouri River.</p> <p>No reasonable suggestion to mitigate the impact of the current design should be ignored. The visual impact of a new structure, particularly one of such overwhelming proportions, will be significant. The suggestions of the BAC are intended to convey an earnest desire to influence the aesthetics of a new bridge, no matter which alternative is ultimately adopted.</p> <p>It is our opinion that the appearance of the new rail bridge is of great importance to the communities, and the impact of the bridge design on the people of this region and state cannot be minimized or dismissed.</p>	4.0	The Visual Impact Assessment, included in the DEIS as Appendix O, included visual renderings of the proposed bridge structure. Recommendations from BAC were incorporated into the Section 106 MOA as opportunities for minimization.
City of Bismarck	In section 4 on page 186 within Table 38, there is no discussion regarding impacts to the West End Reservoir associated with the "Proposed Action Alternative" or "No Action Alternative". We respectfully request that language be added on slope remediation between the BNSF tracks and the West End Reservoir.	4.0	Remediation of the existing slope instability between the BNSF track and the West End Reservoir are outside of the scope of this NEPA review.
Amy Sakariassen	The lead Draft EIS failed to obtain meaningful participation from agencies that have jurisdiction by law or special expertise with respect to the environmental impacts caused by or related to the proposed project. Consequently, this document fails to adequately address environmental impacts that EPA is responsible for reviewing and enforcing, including how the project will affect a known paleontological site on the bluff on the east side of the river.	5.0	The U.S. Environmental Protection Agency (EPA) reviewed the EIS and had no requests for additional analysis. Paleontological records are not considered cultural resources, and an Unanticipated Discoveries Plan covers any unanticipated impacts.
Amy Sakariassen	My comments here, for the most part, will deal with the failure of the Draft EIS creator, Jacobs Engineering, and their employer, BNSF, to obtain meaningful and requisite participation of at least one critical federal and state agency. Although the geology of the specific project area was addressed superficially by reference to Ed Murphy's article in North Dakota History, which focused on the history of the rail bridge and the significant geologic complications that led to slippage and slumping of the river bank, it appears no effort was made to contact the United States Geologic Survey Office in Bismarck. Ed Murphy, author of the paper, is currently the State Geologist. Nor was effort made to contact Dr. Clint Boyd, North Dakota's State Paleontologist. Had this requisite contact been made through channels normally followed in the creation of a responsible EIS, certain facts would be in that document. Both of these men are easily reached and yet they were not approached by BNSF's consultant for their professional input on the project in question.	5.0	The historical significance was addressed in the DEIS. ACHP and SHPO were engaged and participated in the Section 106 process. The bridge is eligible for listing on the National Register of Historic Places (NRHP), additional information would not impact eligibility. As stated in section 3.9, archaeological survey work was conducted by local firm, who performed a literature search and conducted a pedestrian survey. Paleontological records are not considered cultural resources, and an Unanticipated Discoveries Plan covers any unanticipated impacts.
Karen K Ehrens	And I did not read about consultations with historical organizations about how the project may impact potential archeological sites in the area.	5.0	The historical significance was addressed in the DEIS. ACHP and SHPO were engaged and participated in the Section 106 process. The bridge is eligible for listing on the NRHP, and additional information would not impact eligibility.
Jacob Webster	This bridge has been a historical landmark for decades. Teddy Roosevelt's crossed this bridge on the way to Medora. He said without his time in Medora he would have never been president. This bridge needs to stay a second bridge can be put in for the railroad. Without the bridge, Bismarck and Mandan isn't the same. A walking path should be placed in there for citizens and visitors. The tribal officials also must be consulted before any action is taken place. I believe tearing it down is tearing down history. Other means can be looked at, I'd gladly pay taxes to help keep it up and open.	5.1	Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.

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Friends of the Rail Bridge	<p>The existing historic bridge at the Bismarck/Mandan railway crossing of the Missouri River is the most impactful still-existing and in-use historical landmark affecting the native peoples and nations of the upper Great Plains – in the 19th Century up to the present day. The choosing of the current Bismarck/Mandan point for the Missouri River crossing for the transcontinental railroad resulted in Bismarck becoming the territorial capitol of Dakota territory and a key center for riverboat and stage-line transport of goods and people for all of Dakota territory, as well as the principal supply point for the U.S. Army in this region. Fort Lincoln would never have been located at the mouth of the Heart River to protect the railroad surveyors and to launch the 1874 Black Hills expedition that was a primary cause of the gold rush to the Black Hills if the Missouri River railway crossing had not been located at this point. That and the building of the western transcontinental railway system resulted in the change in treaties and the diminishment of reservations in the late 19th Century that continues to affect the Mandan, Arikara, Hidatsa, Lakota, and other tribal nations of the upper Great Plains. This history and its related actions continue to have large and impactful consequences to the affected tribal nations to the present time. Those tribal nations must be meaningfully consulted to more fully determine those impacts. How the current rail system is developed going forward will greatly affect the reservations who have tracks running through or bordering their lands, and that depend on the rail system as part of the larger transportation system to connect them to the larger world. The choices made for BNSF's project in the DRAFT EIS will greatly influence options, and have great economic and cultural effects, on those tribal notions in the years and decades to come. The failure of the drafters of the EIS to fully consult with these affected native peoples and nations and consider environmental justice and other environmental impacts relating to these tribal nations is a fatal flaw that must be addressed in the final EIS.</p>	5.1	<p>Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.</p>
Kimball Banks	<p>On page 113, the statement is made: "... as it provides a tangible link to the past for Native American communities whose forebears may have been impacted by the Indian policies of the U.S. during the first part of the 20th century." This is a false and misleading statement and unreferenced. Native American communities were definitely impacted by Indian policies during the first part of the 20th century. The Winters Doctrine, an outcome of the 1907 Supreme Court decision in Winters v. United States established Indian water rights. Native Americans did not get the right to vote until 1924 and the passage of the Snyder Act. The Indian Reorganization Act of 1934 sought to curtail further allotment of tribal communal lands that was authorized by the Dawes Act of 1887 he return of surplus lands within reservations to tribes rather than to homesteaders. The act encouraged tribes to pass written constitutions and charters that would give tribes power to manage their internal affairs. These are only a few examples of how Native Americans were impacted by Indian policies of the government, both positive and negative. Tribes have always been subject to decisions of Congress and the courts.</p>	5.1	<p>Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.</p>
Mark Zimmerman	<p>Failure to concern environmental justice issues, as the impact on the Mandan, Arikara, Hadatsa, Lakota, and other tribal nations. As Dr. Kimble mentioned earlier, some very great concerns with the inaction to contact tribes in a meaningful way.</p>	5.1	<p>Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.</p>
Kimball Banks	<p>Yes, I want to read out of your external affairs manual concerning tribal consultations. "Field commands must establish healthy interpersonal relationships and open communication with tribes. Social engagements are as equally important as official engagements. Example of engagements include informal meetings, formal meetings, briefings, command visits, inquiries, notifications, response actions, and regular contact with tribal leaders. Further, "Field commands must engage and listen to the interests and concerns of tribes, and invest time in building a rapport and understanding with tribal leaders in order to maintain (inaudible) relationships with tribal leaders. Field commands must determine the frequency and method of communication based on the uniqueness of each tribe, their concerns, and the impact of Coast Guard missions on those tribes." I am concerned, because the only evidence of consultation consist of letters, emails, and supposedly meetings, and there's no documentation in the draft about the tribal comments on those meetings, and results in those meetings, or anything like that. It's also unclear whether Jacobs Engineering organized and held those meetings, or if it was Coast Guard directly. And in my experience -- and I know of other agencies, tribes want government- to-government relationships. That means they don't want to meet with the contractors. They want to meet with the head of the agencies on such issues. And that's all I have to say, so thank you.</p>	5.1	<p>Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.</p>

Commenter	Comment	EIS Section	Response
Elizabeth S. Merritt, National Trust for Historic Preservation	Tribal consultation has been inadequate, and the Draft EIS fails to properly assess the impact of the proposed project on the interests of tribal nations.	5.1	Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.
Friends of the Rail Bridge	Failure to consider environmental justice issues as it impacts the Mandan, Arikara, Hidatsa, Lakota, and other tribal nations of the upper Great Plains. The Bismarck/Mandan railway crossing of the Missouri River is most likely the most impactful project on the native peoples and nations of the upper Great Plains in United States history. But for the choosing of this crossing for the transcontinental railroad, Bismarck would never have become the territorial capitol of Dakota territory and a key center for riverboat and stage-line transport of goods and people for all of Dakota territory. Fort Lincoln would never have been located at the mouth of the Heart River to protect the railroad surveyors and to launch the Black Hill expedition that resulted in the gold rush to the Black Hills and the building of the western transcontinental railway system that resulted in the change in treaties and the diminishment of reservations that continues to affect the Mandan, Arikara, Hidatsa, Lakota, and other tribal nations of the upper Great Plains to this day. The failure of the drafters of the EIS to fully consult with these affected native peoples and nations and consider environmental justice issues is a fatal flaw that must be addressed in the final EIS.	5.1	Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.
Kimball Banks	(1 of 2) In this Draft EIS, Tribal consultations are documented in Section 5.1.2. Native American Tribes. Consultation was through calls, emails, and, secondarily, letters. The Coast Guard initiated consultation in 2017 with 12 tribes in South Dakota, Minnesota, and Montana. None of the five North Dakota tribes were consulted in this initial round; the five tribes were then consulted a year later in 2018. No reason was provided for the delay, especially considering that the Mandan, Hidatsa, and Arikara and the Standing Rock Sioux Nations undoubtedly have the most historic and precontact claims to the area of potential effects. The Coast Guard then notified tribes of 11 additional consulting party meetings to be held between January 10, 2018, and August 21, 2019. No summaries of these meetings are provided. Subsequently, in 2021 the area of potential effects was revised to include terraces on both sides of the Missouri. Terraces were the preferred locations for earthlodge villages of the Mandan, Hidatsa, and Arikara tribes. The Draft EIS also includes a map depicting the visual area of potential effects, identifying historic properties within view of the bridge including Chief Looking's Village (a State Historic Site), Scattered Village, and Crying Village, a Traditional Cultural Property (Draft EIS, Figure 11). According to the Draft EIS (Table 39: Agencies and Persons Contacted), initial consultation consisted of a telephone call and an email; if no one answered the call, a voicemail was left. Only two tribes apparently responded. The Northern Cheyenne Nation provided a written response agreeing to participate as a consulting party. The Mandan, Hidatsa, and Arikara Nation also provided a written response stating they wanted to be involved in the National Historic Preservation Act Section 106 process. As a federal agency, the Coast Guard is responsible for undertaking government-to-government consultations directly with tribes in formulating Federal policies, programs, or actions that affect Tribal Nations. Such consultations reflect the sovereignty of Tribal Nations. The requirement for such consultations is specified in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments" dated November 6, 2000) and reaffirmed in a Presidential Memorandum ("Tribal Consultation Tribal Consultation and Strengthening Nation-to-Nation Relationships dated January 26, 2021), the revised Council on Environmental Quality regulations Implementing NEPA(40 CFR Parts 1500 et seq), the Department of Homeland Security's draft (2021) Instruction ("Implementing Consultation And Coordination With Tribal Governments" (https://www.dhs.gov/sites/default/files/publications/2021_tribal_consultation_instruction_draft_508.pdf), and the Chapter 4 Governmental Affairs, H. Tribal Engagements of the U.S. Coast Guard's External Affairs Manual (2014) (https://www.forcecom.uscg.mil/Portals/3/Documents/FORCECOM%20Main/Performance%20Technology%20Center%20(FCTptc)/COAST%20GUARD%20EXTERNAL%20AFFAIRS%20MANUAL.pdf?ver=2019-12-10-085620-353). The Advisory Council on Historic Preservation also has issued guidance on consultation (see Section 106 Consultation Between Federal Agencies and Indian Tribes Regarding Federal Permits, Licenses, and Assistance Questions and Answer (2008); Recommendations For Improving Tribal-Federal Consultation (2015); Improving Tribal Consultation and Tribal Coordination in Federal Infrastructure Decisions (2017); and Consultation Procedures Pursuant To E.O. 13175: Consultation And Coordination With Indian Tribal Governments (2021)).	5.1	Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.

Commenter	Comment	EIS Section	Response
Kimball Banks	<p>(2 of 2)</p> <p>Coast Guard consultation in the Draft EIS falls short of its own guidance. According to the Coast Guard External Affairs Manual, “[f]ield commands must establish healthy interpersonal relationships and open communication with tribes. Social engagements are as equally important as official engagements. Examples of engagement include: informal meetings, formal meetings, briefings, command visits, inquiries, notifications of response actions...and regular contact with tribal leaders.” Further, “[f]ield commands must engage and listen to the interests and concerns of tribes and invest time in building a rapport and understanding with tribal leaders in order to maintain preneed relationships with tribal leaders” and “[f]ield commands must determine the frequency and method of communication based on the uniqueness of each tribe, their concerns and the impact of Coast Guard missions on those tribal interests.” The Draft EIS lacks evidence that the Coast Guard recognized the uniqueness of each tribe, followed up on the telephone calls and emails, and did not delegate this inherently federal function to Jacobs Engineering, the contractor BNSF hired to prepare the Draft EIS. Establishing personal relationships are critical to successful tribal consultations, as the External Affairs Manual points out. The Advisory Council on Historic Preservation guidelines also stress the need to establish such relationships, best achieved through face-to-face meetings. An EIS requires full disclosure. Beyond mentioning the responses from the Northern Cheyenne and the MHA Nation, the Coast Guard fails to disclose the results of the calls, emails, and the purported meetings or if tribes were notified of changes to the area of potential effects and the visual area of potential effects. Consequently, tribal consultation and documentation of consultation cannot be evaluated in full but tribal consultation appears to fall far short of that required by federal regulations, Coast Guard External Affairs Manual, and Executive Order 13175.</p>	5.1	<p>Area Tribes, as detailed in Section 5.1.2 of the DEIS, were contacted regarding consultation on the Project. USCG initiated government-to-government consultation with area Tribes in October 2017 and November 2018. Tribes were invited to participate in an in-person SHPO meeting in January 2018. USCG attempted to contact the Tribes by phone and email. Most recently, USCG contacted the Cheyenne Nation via email on September 9, 2021. Tribes have been and continue to be issued invitations for consulting parties meetings by letter and by email. No Tribal Governments commented on the DEIS. While the Tribes have been invited to participate in the EIS process, they cannot be compelled to do so.</p>
Friends of the Rail Bridge	<p>Failure to consult key federal agencies about this project. The lead agency has failed to obtain meaningful participation from key federal agencies that have jurisdiction by law or special expertise with respect to the environmental impacts caused by or related to the proposed project. The DRAFT EIS also fails to adequately address environmental impacts that EPA is responsible for reviewing and enforcing, including how the project will affect greenhouse gas emissions for the reasons discussed earlier. Other key federal agencies are also left out. For example, the Federal Railroad Administration (FRA) of the United States Department of Transportation is responsible for regulating railroad bridge safety. If BNSF's primary goal is safety the FRA should have been part of this process. Neither of these agencies was meaningfully consulted for this DRAFT EIS.</p>	5.2	<p>EPA provided comment on the EIS and had no requests for additional analysis. The Federal Railroad Administration (FRA) lacks jurisdiction over the Project as there would be no overall increase in rail operations, no FRA funding involvement, and there are no required approvals from FRA.</p>
Friends of the Rail Bridge	<p>Failure to consult key federal agencies about this project. The lead agency has failed to obtain meaningful participation from key federal agencies that have jurisdiction by law or special expertise with respect to the environmental impacts caused by or related to the proposed project. The DRAFT EIS also fails to adequately address environmental impacts that EPA is responsible for reviewing and enforcing, including how the project will affect greenhouse gas emissions for the reasons discussed earlier. Other key federal agencies are also left out. For example, the Federal Railroad Administration (FRA) of the United States Department of Transportation is responsible for regulating railroad bridge safety. If BNSF's primary goal is safety the FRA should have been part of this process. Neither of these agencies was meaningfully consulted for this DRAFT EIS.</p>	5.2	<p>EPA provided comment on the EIS and had no requests for additional analysis. FRA lacks jurisdiction over the Project as there would be no overall increase in rail operations, no FRA funding involvement, and there are no required approvals from FRA.</p>
Mark Zimmerman	<p>Failure to consult key federal agencies about this project. An example, the Federal Railroad Administration had very little input on this draft EIS from what we can see in that document.</p>	5.2	<p>FRA lacks jurisdiction over the Project as there would be no overall increase in rail operations, no FRA funding involvement, and there are no required approvals from FRA.</p>

Commenter	Comment	EIS Section	Response
Emily Sakariassen	<p>Second, I am concerned about breadth and quality of agency consultation. Page 196-197, Table 40 summarizes the names of agencies contacted during preparation of the DEIS and I note that several state and federal agencies that I would expect to see listed were not consulted for the proposed undertaking. These include the Federal Railway Administration and Federal Highway Administration. Considering the nature of the proposed construction and the intersection of the revised APE with existing transportation infrastructure (including I-94 and West Bismarck Expressway) I am concerned that potentially valuable insight/oversight from these agencies is not part of the DEIS. For example, if, (1) as stated on Page 193, paragraph 5, lines 1-2, "BNSF would need to obtain a General Approval/Coordination for construction at roadway crossings from NDDOT, Burleigh County, Morton County, and affected townships", and (2) as the purpose and need states desire for capacity for a second track in the future that would logically require other infrastructure improvements to the east and west of the bridge, shouldn't the FHWA review this DEIS? Will they be consulted at a later date? Is NDDOT acting in their delegated authority? Does Section 4(f) of the U.S. Department of Transportation Act apply to this undertaking? Why or why not? Inclusion of these agencies in the discussion could result in a stronger, more considerate final EIS that adequately addresses the bigger picture. At minimum, the final EIS should explain why these agencies and other relevant agencies (North Dakota Geological Survey is also absent) were not included.</p>	5.3	<p>Installation of a second track is not planned at this time or included in the scope of this EIS. Addition of a second track in the future would require a USCG bridge permit and environmental review, at which time the Federal Highway Administration would be consulted regarding potential impacts to federal highways.</p>
Mark Zimmerman	<p>I respectfully request an extension, of ten days, in the comment period to request the staff of Bismarck Parks and Recreation District to provide the information that I feel is necessary and vitally important in the determination of the impacts associated with the construction at these sites.</p>	N/A	<p>The extension requested by Mark Zimmerman and the Bismarck Parks and Recreation District was granted by USCG.</p>
U.S. EPA	<p>Pursuant to Section 309 of the Clean Air Act and the National Environmental Policy Act, the U.S. Environmental Protection Agency Region 8 has reviewed the U.S. Coast Guard (USCG) Draft Environmental Impact Statement (EIS), received June 7, 2021, for the BNSF Railway Bridge Across the Missouri River Between Bismarck and Mandan, North Dakota (CEQ# 20210069). BNSF Railway Company owns and operates the existing bridge that crosses the Missouri River between the cities of Mandan and Bismarck, North Dakota. With bridge components over 130 years old, the USCG has determined the in-place structure is approaching the end of its useful service life. The project purposes are:</p> <ul style="list-style-type: none"> • Meet existing and future demand for rail transport; • Reduce maintenance outages and disruptions to railroad operations; and, • Maintain a safe and reliable railway crossing at the Missouri River. <p>We found the Draft EIS to be well organized and it addressed the comments EPA provided during the scoping process. We appreciate the public engagement provided by the USCG and the opportunity to participate in the review of this Draft EIS. Our review did not identify additional environmental concerns in EPA's jurisdiction that would need to be further addressed by the Final EIS. If you have any questions or comments, please feel free to contact me at (303) 312-6704, or VelRey Lozano of my staff at (303) 312-6128 or lozano.velrey@epa.gov.</p>	N/A	<p>Comment noted.</p>
Margie Enerson	<p>The entire process of working with USCG and BNSF has been strife with conflict and lack of collaboration. Prior to the Draft EIS, the USCG and BNSF's paid consultants, Jacobs Engineering, lacked in professional communication skills and follow up with meeting minutes in a timely manner. • There were no meeting notes from Meeting #13 – January 7, 2021 (one week before the Programmatic Agreement signing deadline) • June 10, 2021, Meeting #17 minutes were not sent out until July 20, 2021. A failure to keep up with meeting minutes creates confusion due to unfinished business from prior meetings and takes for granted the important and timely manner that meetings should be documented. FORB raised numerous concerns with the Programmatic Agreement, transmitting comments and suggested changes in a timely manner on various drafts. Most of our concerns were dismissed and FORB signed the Programmatic Agreement under duress because by not signing it, we would have been removed as a signatory and left out of developing mitigation measures in a memorandum of agreement.</p> <p>The following is paragraph is from Advisory Council on Historic Preservation Section 106 Applicant Toolkit Synopsis Step 4: Resolve Adverse Effects: Applicant's Role (BNSF) • Be flexible and seek creative solutions that meet project needs while avoiding or minimizing impacts to historic properties by actively participating in the consultation process. • Conduct any required studies to inform the development of project alternatives to avoid or minimize adverse effects.</p>	N/A	<p>Comment noted.</p>

Commenter	Comment	EIS Section	Response
Margie Enerson	Bismarck City Mayor Steve Bakken took an active role in the consulting party meetings with interest in mitigation of the demolished bridge. It is interesting to note that a FOIA request on his engagement with BNSF found the following: One of the things that is evident from Mayor Bakken's emails is that he was actively suggesting mitigation solutions to BNSF, and they were actively working with him on them, including cost estimates and stating whether they would pay to cover those costs. Outside the Section 106 Process, the Mayor had an entire back-and-forth with BNSF, including having the Community Development Department draw up a map of potential bridge relocation sites for BNSF to review. None of these undisclosed discussions were shared with other consulting parties.	N/A	BNSF did communicate with Bismarck City Mayor, Steve Bakken, through the BNSF government relations communication channels with regard to the City of Bismarck and Mayor Bakken's interest in potential salvage and relocation of the historic bridge. BNSF encouraged Mayor Bakken to participate in the consultation process and attend the consulting parties meetings to express his and the city's interest in the historic bridge. USCG is not aware of, and has not been provided, any maps of alternate potential bridge relocation sites proposed by the City of Bismarck Community Development.
North Dakota Department of Transportation	The North Dakota Department of Transportation (NDDOT) has reviewed the Draft Environmental Impact Statement (DEIS). Based on the large volume of materials contained in the DEIS and appendices the NDDOT is still working to fully evaluate the contents of the document as it relates to mobility and movement of goods in North Dakota as well as potential impacts to department interests. The NDDOT is requesting a 30-day time extension to evaluate the contents of the document more fully.	N/A	The extension requested by the North Dakota Department of Transportation was granted by USCG.
Elizabeth S. Merritt, National Trust for Historic Preservation	The proposed mitigation, as discussed in the context of Section 106 consultation, is grossly inadequate compared to the magnitude of the irreparable adverse impacts.	N/A	Mitigation has been addressed through the Section 106 consultation process and an MOA has been signed.
Elizabeth S. Merritt, National Trust for Historic Preservation	We agree with FORB that, "[u]nfortunately, the Section 106 NHPA process for the 1883 Railway Bridge has been poisoned by scare tactics, misrepresentations, and aggressive lobbying by the proponents of the project," as they have actively sabotaged the good faith efforts by FORB and other consulting parties to develop an effective public-private partnership to preserve the historic bridge.	N/A	USCG carried out the Section 106 process in good faith, which resulted in a Programmatic Agreement (PA) and an MOA among the consulting parties.
Friends of the Rail Bridge	(1 of 3) 1. NEPA Background Information relating to the EIS Prepared under the Direction and Control of BNSF which proposes to Destroy and Replace the still-in-use Landmark 1883 Railway Bridge at the historically important Missouri River Crossing between Bismarck and Mandan, North Dakota The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. On July 16, 2020, the Council on Environmental Quality (CEQ) made the first major revisions to NEPA's implementing regulations since 1978. "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," 85 Fed. Reg. 43,304 (July 16, 2020) (2020 CEQ NEPA Reg. Revisions or 2020 Rule). NEPA has been among the most important and consequential federal environmental laws ever enacted by Congress, and the 2020 Rule in important ways undermines how NEPA is interpreted and applied. CEQ's regulations have, since 1978, set forth the steps each federal agency must follow 1) to take a "hard look" at the direct, indirect, and cumulative impacts of any major federal action or decision, 2) to involve federal agencies with relevant expertise through notification and consultation to make sure environmental impacts of a proposed project or action are not overlooked, and 3) to mandate the requirements that apply to this process. The Trump Administration's 2020 CEQ NEPA Reg. Revisions altered key aspects of the of CEQ's longstanding 1978 regulations, including scope and whether and how agencies consider indirect and cumulative impacts of a proposed federal action. These changes weaken and undermine the purpose of NEPA as stated in statute and CEQ'S implementing regulations under NEPA: "NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 40 CFR § 1500.1(a). The 2020 CEQ NEPA Reg. Revisions were immediately challenged in federal district court on July 29, 2020, by numerous entities, who raised numerous issues about the 2020 rule's legality and consistency with the requirements and purpose of NEPA. The issues raised in the Complaint challenging the legality of the 2020 Rule include several issues relevant to the EIS prepared under the direction and control of BNSF for the proposed destruction and replacement of the landmark rail bridge between Bismarck and Mandan, North Dakota: • Whether the 2020 Rule improperly or unlawfully circumscribes the range of alternatives, long recognized by regulation and caselaw to be the heart of an Environmental Impact Statement, or has the foreseeable effect of leading agencies to consider an improperly narrow range of alternatives; • Whether the 2020 Rule improperly or unlawfully circumscribes the environmental effects, including climate change effects, to be evaluated by federal agencies, or has the foreseeable effect of leading agencies to improperly circumscribe the environmental effects considered in the EIS;	N/A	Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of alternatives. Under NEPA, agencies are required to include a "purpose and need" statement that "briefly specif[ed] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR 1502.13 (1978). The new regulations retain the concept of purpose and need, but provide that "[w]hen an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority." 40 CFR 1502.13 (2020).

Commenter	Comment	EIS Section	Response
<p>Friends of the Rail Bridge</p>	<p>(2 of 3)</p> <ul style="list-style-type: none"> • Whether the 2020 Rule adversely affects environmental justice or impairs environmental justice communities in the NEPA process; • Whether the 2020 Rule adversely affects environmental quality generally as protected by NEPA, and adversely affects climate change and climate resilience in particular; • Whether the 2020 Rule unduly restricts public and community participation or has that foreseeable effect. <p>On January 20, 2021, President Biden was inaugurated and immediately issued Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7,037 (Jan. 25, 2021) (“EO 13990”). EO 13990 stated that it is the policy of the new administration to:</p> <p>listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.</p> <p>Id. at 7,037. EO 13990 directs federal agencies to “immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” Id. That same day the White House separately published a Fact Sheet listing agency actions subject to EO 13990. That Fact Sheet identified the 2020 Rule as one of the agency actions to be reviewed.</p> <p>Subsequently, President Biden issued Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.” 86 Fed. Reg. 7,619 (Feb. 1, 2021) (“EO 14008”). EO 14008 declares the Administration’s policy to “move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.” Id. at 7,619. It also states that it is the Administration’s policy to “secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.” Id. at 7,629.3 U.S. District Judge James Jones of the Western District of Virginia rejected the Department of Justice’s motion seeking a stay of the legal challenge to the 2020 Rule, stating that “adding lengthy additional delay to my decision would not be appropriate.” Following Judge Jones’ denial of the request for a stay, the Department of Justice filed a motion requesting that the court remand the 2020 Rule to CEQ, arguing that remand is appropriate because CEQ has identified substantial and legitimate concerns with the 2020 Rule and is currently considering whether to initiate a process to amend or repeal the Rule.</p>	<p>N/A</p>	<p>Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of alternatives. Under NEPA, agencies are required to include a “purpose and need” statement that “briefly specifi[ed] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR 1502.13 (1978). The new regulations retain the concept of purpose and need, but provide that “[w]hen an agency’s statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency’s authority.” 40 CFR 1502.13 (2020). Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>(3 of 3)</p> <p>4 Environmental groups opposed the motion, arguing instead that the court should find the rule unlawful and vacate it. Oral argument on the pending motions for summary judgment occurred in mid-April, and the court has yet to issue a decision on either the motion for remand or the motions for summary judgment in the legal challenge to the legality of the 2020 Rule. In the meantime, the Biden administration also issued a notice repealing a 2019 CEQ draft guidance document on ways in which federal agencies should consider greenhouse gas (GHG) emissions under NEPA. The draft guidance had given federal agencies significant discretion to determine the degree to which they need to consider GHG emission impacts of major federal actions. The Biden administration's notice reverses course and directs federal agencies to fully evaluate climate and GHG impacts of federal actions, noting that "[m]any projects and programs proposed, funded, or approved by Federal agencies have the potential to emit or sequester greenhouse gases...and may be affected by climate change. Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews." 86 Fed. Reg. 10,252 (Feb. 19,2021).</p> <p>The DRAFT ENVIRONMENTAL IMPACT STATEMENT for the "BNSF Railway Bridge 196.6 Project across the Missouri River, Morton and Burleigh Counties, North Dakota," whose title, like the rest of the DRAFT EIS, either hides or fails to consider indirect and cumulative impacts, climate change and climate resilience issues, environmental justice issues, or even a reasonable set of alternatives that include repairing and rebuilding the existing still-in-use landmark 1882 bridge at the historic Missouri River Crossing of the transcontinental railway between the Pacific Ocean port on the Columbia River and the westernmost port connected to the Atlantic Ocean at the port of Duluth at the western end of Lake Superior. Although parties to the scoping process agreed that the 1978 NEPA regulations would apply because the EIS process began before the 2020 Rule became effective, the EIS fails to adequately consider the issues summarized above that longstanding 1978 NEPA regulations require the lead agency to consider. The DRAFT EIS also narrows the scope of the EIS in ways that makes the analysis inadequate, and the outcome predetermined. The 2020 Rule applies to any NEPA process begun after September 14, 2020, but also opens the door of application of the 2020 Rule to any NEPA process begun before September 14, 2020. 40 C.F.R. § 1506.13. The retroactive application of the 2020 Rule is not appropriate or legal in this case because a full-blown analysis of reasonable alternatives and direct, indirect, and cumulative environmental impacts is necessary, and agreement was reached at the outset that the 1978 regulations would apply. The 2020 Rule does not provide for adequate consideration of key environmental impacts. The DRAFT EIS fails to adequately consider key issues that the longstanding 1978 regulations require the EIS to consider, including, for example, how the proposed project may affect climate change and environmental justice through its direct, indirect, and cumulative impacts.</p>	N/A	<p>Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of alternatives. Under NEPA, agencies are required to include a "purpose and need" statement that "briefly specifi[ed] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR 1502.13 (1978). The new regulations retain the concept of purpose and need, but provide that "[w]hen an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority." 40 CFR 1502.13 (2020). Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions such to contribute to climate change.</p>

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<p>Friends of the Rail Bridge</p>	<p>(1 of 4) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. On July 16, 2020, the Council on Environmental Quality (CEQ) made the first major revisions to NEPA's implementing regulations since 1978. "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," 85 Fed. Reg. 43,304 (July 16, 2020) (2020 CEQ NEPA Reg. Revisions or 2020 Rule). NEPA has been among the most important and consequential federal environmental laws ever enacted by Congress, and the 2020 Rule in important ways undermines how NEPA is interpreted and applied. CEQ's regulations have, since 1978, set forth the steps each federal agency must follow 1) to take a "hard look" at the direct, indirect, and cumulative impacts of any major federal action or decision, 2) to involve federal agencies with relevant expertise through notification and consultation to make sure environmental impacts of a proposed project or action are not overlooked, and 3) to mandate the requirements that apply to this process. The Trump Administration's 2020 CEQ NEPA Reg. Revisions altered key aspects of the of CEQ's longstanding 1978 regulations, including scope and whether and how agencies consider indirect and cumulative impacts of a proposed federal action. These changes weaken and undermine the purpose of NEPA as stated in statute and CEQ'S 1978 implementing regulations under NEPA: "The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy." 40 CFR § 1500.1(a). The 2020 CEQ NEPA Reg. Revisions were immediately challenged in federal district court on July 29, 2020, by numerous entities, who raised numerous issues about the 2020 rule's legality and consistency with the requirements and purpose of NEPA. The issues raised in the Complaint challenging the legality of the 2020 Rule include several issues relevant to the EIS prepared under the direction and control of BNSF for the proposed destruction and replacement of the landmark rail bridge between Bismarck and Mandan, North Dakota: • Whether the 2020 Rule improperly or unlawfully circumscribes the range of alternatives, long recognized by regulation and caselaw to be the heart of an Environmental Impact Statement, or has the foreseeable effect of leading agencies to consider an improperly narrow range of alternatives; • Whether the 2020 Rule improperly or unlawfully circumscribes the environmental effects, including climate change effects, to be evaluated by federal agencies, or has the foreseeable effect of leading agencies to improperly circumscribe the environmental effects considered in the EIS; • Whether the 2020 Rule adversely affects environmental justice or impairs environmental justice communities in the NEPA process; • Whether the 2020 Rule adversely affects environmental quality generally as protected by NEPA, and adversely affects climate change and climate resilience in particular; • Whether the 2020 Rule unduly restricts public and community participation or has that foreseeable effect.²² On January 20, 2021, President Biden was inaugurated and immediately issued Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7,037 (Jan. 25, 2021) ("EO 13990"). EO 13990 stated that it is the policy of the new administration to: listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.</p>	<p>N/A</p>	<p>Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of EJ, climate change, and greenhouse gases (GHGs). Under NEPA, agencies are required to include a "purpose and need" statement that "briefly specifi[ed] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR 1502.13 (1978). The new regulations retain the concept of purpose and need, but provide that "[w]hen an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority." 40 CFR 1502.13 (2020). Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions such to contribute to climate change. Because the Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; the Project would not drive increases or decreases in rail volumes that would increase impact to EJ communities.</p>

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<p>Friends of the Rail Bridge</p>	<p>(2 of 4) Id. at 7,037. EO 13990 directs federal agencies to “immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” Id. That same day the White House separately published a Fact Sheet listing agency actions subject to EO 13990. That Fact Sheet identified the 2020 Rule as one of the agency actions to be reviewed. Subsequently, President Biden issued Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.” 86 Fed. Reg. 7,619 (Feb. 1, 2021) (“EO 14008”). EO 14008 declares the Administration’s policy to “move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.” Id. at 7,619. It also states that it is the Administration’s policy to “secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.” Id. at 7,629.24 U.S. District Judge James Jones of the Western District of Virginia rejected the Department of Justice’s motion seeking a stay of the legal challenge to the 2020 Rule, stating that “adding lengthy additional delay to my decision would not be appropriate.” Following Judge Jones’ denial of the request for a stay, the Department of Justice filed a motion requesting that the court remand the 2020 Rule to CEQ, arguing that remand is appropriate because CEQ has identified substantial and legitimate concerns with the 2020 Rule and is currently considering whether to initiate a process to amend or repeal the Rule.²⁵ Environmental groups opposed the motion, arguing instead that the court should find the rule unlawful and vacate it. Oral argument on the pending motions for summary judgment occurred in mid- April, and the court has yet to issue a decision on either the motion for remand or the motions for summary judgment in the legal challenge to the legality of the 2020 Rule.</p> <p>In the meantime, the Biden administration also issued a notice repealing a 2019 CEQ draft guidance document on ways in which federal agencies should consider greenhouse gas (GHG) emissions under NEPA. The draft guidance had given federal agencies significant discretion to determine the degree to which they need to consider GHG emission impacts of major federal actions. The Biden administration’s notice reverses course and directs federal agencies to fully evaluate climate and GHG impacts of federal actions, noting that “[m]any projects and programs proposed, funded, or approved by Federal agencies have the potential to emit or sequester greenhouse gases...and may be affected by climate change. Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews.” 86 Fed. Reg. 10,252 (Feb. 19,2021). The DRAFT ENVIRONMENTAL IMPACT STATEMENT for the “BNSF Railway Bridge 196.6 Project across the Missouri River, Morton and Burleigh Counties, North Dakota,” whose title, like the rest of the DRAFT EIS, either hides or fails to consider indirect and cumulative impacts, climate change and climate resilience issues, environmental justice issues, or even a reasonable set of alternatives that include repairing and rebuilding the existing still-in-use landmark 1883 bridge at the historic Missouri River Crossing of the transcontinental railway between the Pacific Ocean port on the Columbia River.</p>	<p>N/A</p>	<p>Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of EJ, climate change, and GHGs.</p>

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Friends of the Rail Bridge	<p>(3 of 4)</p> <p>westernmost port connected to the Atlantic Ocean at the port of Duluth at the western end of Lake Superior. Although parties to the scoping process agreed that the 1978 NEPA regulations would apply because the EIS process began before the 2020 Rule became effective, the EIS fails to adequately consider the issues that longstanding 1978 NEPA regulations require the lead agency to consider. The DRAFT EIS also narrows the scope of the EIS in ways that makes the analysis inadequate, and the outcome predetermined. The 2020 Rule applies to any NEPA process begun after September 14, 2020, but also opens the door of application of the 2020 Rule to any NEPA process begun before September 14, 2020. 40 C.F.R. § 1506.13. The retroactive application of the 2020 Rule is not appropriate or legal in this case because a full-blown analysis of reasonable alternatives and direct, indirect, and cumulative environmental impacts is necessary, and agreement was reached at the outset that the 1978 regulations would apply. The 2020 Rule does not provide for adequate consideration of key environmental impacts. The DRAFT EIS fails to adequately consider these key indirect and cumulative issues that the longstanding 1978 regulations require the EIS to consider, including, for example, how the proposed project may affect climate change and environmental justice through its direct, indirect, and cumulative impacts. The longstanding definitions of direct, indirect, and cumulative impacts and effects under 40 CFR § 1508 are: § 1508.7 Cumulative impact. Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. § 1508.8 Effects. Effects include: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. The alterations in the meaning of direct, indirect, and cumulative impacts and effects are at the core of the 2020 changes to CEQ's implementing regulations. See 2020 CEQ NEPA Reg. Revisions, 85 Fed. Reg. at 43343-44 ("Definition of 'Cumulative Impact' and Clarifying the Meaning of 'Effects'"). The underlying legal flaw in the DRAFT EIS is that the DRAFT EIS has applied and conducted its analysis in a way that does not examine the direct, indirect, and cumulative as defined at 40 CFR §§ 1508.7 & 1508.8.</p>	N/A	Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of EJ, climate change, and GHGs.
Friends of the Rail Bridge	<p>(4 of 4)</p> <p>quoted above, but rather in the narrower way defined in the 2020 CEQ NEPA Reg. Revisions, which drops consideration of cumulative impacts, and narrowly limits the way "effects" are considered. The 2020 Rule does not implement the meaning of "environmental impact," "any adverse environmental effects which cannot be avoided," "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," and "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented" as broadly set forth in NEPA § 102(C), 42 U.S.C. § 4332(C). Such narrowing of the broad scope of NEPA § 102(C) must be made by Congress, not by the executive branch. An agency cannot change the requirements of NEPA § 102(C) and its long-established meaning by changing definitions in its implementing rules – any more than Congress can change the meaning of the Constitution by redefining its terms in federal statute. Further, in this case, it was agreed that the 1978 NEPA regulations are applicable and will be applied. The scope of review in the DRAFT EIS fails to adequately consider the direct, indirect, and cumulative impacts of the proposed action as defined at 40 CFR §§ 1508.7 & 1508.8. This must be corrected in the Final EIS or it is legally deficient. A Clean Air Act conformity determination under CAA § 309, 42 U.S.C. § 7609, also must be part of the final EIS.²⁶ The proposed project is not only a project for construction, but also a project that involves the destruction of a bridge of national historical significance, and a project that will greatly impact transportation and the shipment of goods in the region for decades to come. There is no exclusion from this requirement in CAA § 309 for railroads. Railroad projects that trigger federal permit requirements must be reviewed to determine their impact on air quality, including their cumulative impacts on greenhouse gas emissions and other air pollutant emissions. The DRAFT EIS does not adequately address how the project will impact air quality. The issue of considering indirect and cumulative impacts of the project on air quality applies to the CAA § 309 analysis as well as the NEPA analysis. In sum, the indirect and cumulative impacts of the proposed federal action on air quality under the various alternatives also must be included in the Final EIS.</p>	N/A	Changes made to NEPA under the 2020 Final Rule did not substantively affect the USCG assessment of air quality, EJ, climate change, and GHGs.

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Friends of the Rail Bridge	NEPA also places the responsibility squarely on Federal agencies to implement NEPA's policies and makes it mandatory that all Federal agencies "shall" include certain considerations: The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall -- NEPA § 102, 42 U.S.C. § 4332. (Emphasis supplied.) In this case, the Coast Guard has not used "all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans" to "preserve important historic, cultural, and natural aspects of our national heritage." Instead, the DRAFT EIS narrows the scope of the EIS, especially regarding preservation of the existing historic bridge, in ways that makes the analysis inadequate, and the outcome predetermined. A brief phrase referring to its "iconic" nature is not a substitute for "using all practical means" for preserving this 138-year-old and still structurally sound nationally important historical and architectural structure so that BNSF can increase the height on its rail cars to 23.5 inches (especially when, as discussed above, there are alternatives that can do both of those things). Any retroactive application of the 2020 Rule is not appropriate or legal in this case because a full-blown analysis of reasonable alternatives and direct, indirect, and cumulative environmental impacts is necessary to fully consider the environmental impacts, and agreement was reached at the outset that the 1978 regulations would apply. The 2020 Rule, for the reasons discussed above, does not provide for adequate consideration of key environmental impacts. The DRAFT EIS fails to adequately consider key issues that the longstanding 1978 regulations require the EIS to consider, including, for example, how the proposed project may affect climate change and environmental justice through its direct, indirect, and cumulative impacts.	N/A	Stipulation V of the Section 106 PA provided an opportunity for new alternatives that would facilitate retention of the existing bridge to be proposed and evaluated during the NEPA process. No new feasible proposals were introduced to be evaluated. The DEIS evaluated three alternatives that provided for retention of the existing bridge using the Section 106 process to determine feasibility of those alternatives that included retention of the existing bridge. The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Unfortunately, early in the Section 106 process it was determined that the party that wanted to retain the bridge was not able to finance the bridge or prove no net floodplain rise was feasible for that alternative. Because no new feasible alternatives were proposed, under Stipulation V of the Section 106 PA, the Coast Guard determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge.
Friends of the Rail Bridge	Who contracted for and prepared the DRAFT EIS. The lead agency did not write the DRAFT EIS itself or properly act as the "responsible federal official" in hiring, directing, and paying for the contractor who prepared the DRAFT EIS. Rather the Draft EIS was written and prepared by BNSF's contractor. The result is a DRAFT EIS that is biased in favor of BNSF's self-interested outcomes, that fails to evaluate reasonable alternatives to the proposed action, and that ignores or fails to adequately address key environmental effects and impacts of the proposed action.	N/A	Per 40 CFR 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF.
Tory Jackson	The first major issue with the Draft EIS is how it was prepared. Pursuant to NEPA, a federal agency can either prepare an EIS itself or hire a qualified contractor. In this case, however, the Draft EIS was prepared by BNSF's own contractor, Jacobs Engineering Group, Inc. (Jacobs), raising serious questions about who was actually in charge of the process and whether the work product is biased in favor of BNSF. The USCG must disclose all information regarding how Jacobs was selected, who communicated with and directed Jacobs, and who paid for Jacobs' services. Even if Jacobs was technically hired and paid by the USCG, Jacob's existing relationship with BNSF at a minimum creates the appearance that the Draft EIS is biased toward BNSF's self-interested goals. Jacobs has communicated with the USCG "on behalf of BNSF" on other issues related to the project. One can't help but wonder whether Jacobs also prepared the Draft EIS "on behalf of BNSF" instead of the USCG. Given some of the major flaws in the Draft EIS and its tendency to favor BNSF's preferred outcome, it appears that Jacobs' had BNSF's interests in mind when preparing the Draft EIS.	N/A	Per 40 CFR 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF.
Emily Sakariassen	First, it is my understanding that it is the responsibility of the lead federal agency in any federal undertaking such as the proposed BNSF Railway Bridge 196.6 Project, to prepare an EIS. I am concerned about transparency and who performed this work, under what influence. On Page 1, paragraph 1, line 1, it appears as though the project proponent had their consultant (Jacobs Engineering Group, Inc.) prepare the document. I struggle to understand how any reader can expect the remainder of the DEIS to contain an objective examination of potential environmental effects of the Project in accordance with NEPA and, I find the analyses of alternatives to be biased in favor of a pre-determined outcome.	N/A	Per 40 CFR 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF.

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Margie Enerson	<p>The DRAFT EIS does not consider the flawed Consulting Party communication, along with the misleading and unverified construction and design costs that are at the heart of the decision for the USCG to not retain the historic Bismarck-Mandan bridge. These are as much a part of NEPA as they are of Section 106.</p> <p>The Section 106 Process has been overtly influenced by BNSF, the applicant, and its consultant, Jacobs Engineering. The USCG failed to take its full responsibility as a federal agency to objectively conduct the Section 106 Process.</p> <ol style="list-style-type: none"> 1. The USCG's reliance on BNSF to supply their own engineering study, versus a study conducted and hired by a third party means the data was skewed in favor of BNSF. 2. The DEIS was also written by BNSF's consultant, Jacobs Engineering, which numerous flaws have been outlined in FORB's comments on the DEIS. 3. The USCG lack of follow through on requests for BNSF to verify and provide a presentation on the exorbitant \$60-90 million for construction and design costs, led to a decision by the USCG to not be in favor of a retention alternative. 4. BNSF has used lobbying, scare tactics, and mitigation promises with our local and state officials to deter a realistic partnership within our community. Adverse and uncollaborative communication go against the civic duty and responsibilities that are expected for BNSF to be granted a permit to build a new bridge and destroy the historic Bismarck-Mandan Rail Bridge. <p>54 U.S.C.A. § 300101, requires "the preservation of non-federally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means" and requires that agencies encourage "the public and private preservation and utilization of all usable elements of the Nation's historic built environment."</p>	N/A	Per 40 CFR 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF.
Mark Zimmerman	One, who contracted for and prepared the draft EIS? Jacobs Engineering, which is also contracted with BNSF. That seems highly inappropriate.	N/A	Per 40 CFR 1506.5, An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency. USCG was engaged and provided guidance and decisions regarding preparation of the DEIS by Jacobs, with information provided by BNSF.
Friends of the Rail Bridge	<p>The review under the National Historic Preservation Act (NHPA) as incorporated into the EIS is also deeply flawed and fails to adequately consider the historical importance of the still-in-use Landmark 1883 Rail Bridge at the historically important Missouri River Crossing of the Transcontinental Railroad between the Pacific Ocean port on the Columbia River and the westernmost port connected to the Atlantic Ocean at the Port of Duluth at the westernmost point of Lake Superior. The NHPA process for the 1883 Railway Bridge has been poisoned by scare tactics, misrepresentations, and aggressive lobbying by the proponents of the project. Meanwhile, similar railway bridges of much less historical significance are being saved for community use such as light rail and rails to trails, or as part of comprehensive community riverfront planning in numerous cases in various parts of the country. Preservation of the historic and continuing importance of the 1883 Railway Bridge to the Bismarck/Mandan community has not been meaningfully considered because of these tactics, and this is another additional reason that the EIS is legally insufficient under NEPA.</p>	N/A	USCG carried out the Section 106 process in good faith, resulting in a PA and an MOA to document mitigation for the Project.

Commenter	Comment	EIS Section	Response
J. Signe Snortland	<p>First of all, according to the U.S. Department of Justice, the National Environmental Policy Act (NEPA) “requires every federal agency to examine the environmental impacts of proposed major federal actions and to consider reasonable alternatives and cumulative impacts, sharing its analysis with the public for comment, before deciding on action” (https://www.justice.gov/enrd/nepa-and-other-overarching-statutes). Despite that requirement, during the June 10, 2021, USCG meeting with consulting parties, Brian Dunn, USCG Administrator of Office of Bridge Programs, announced that “the Coast Guard has sought concurrence from ACHP and the NDSHPO to move forward to Stipulation VI in the Section 106 PA” (email from Rob E McCaskey to National Historic Preservation Act consulting parties June 15, 2021). This decision was first proposed on May 14, 2021, during a consulting parties meeting.</p> <p>The PA referred to is the Programmatic Agreement Among the United States Coast Guard, The North Dakota State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Proposed Bridge Project at Mile 1315.0 on the Missouri River Near Bismarck And Mandan, Burleigh County, North Dakota prepared under the National Historic Preservation Act. Stipulation VI of the PA is “Remove the Existing Bridge.”</p> <p>Thus, on June 6, 2021, only four days before moving forward with consultation on their decision to remove the existing bridge, the USCG released a Draft EIS prepared by BNSF’s contractor that claims to evaluate five alternatives, including three that would retain the existing bridge. Keep in mind this NEPA document is not the Record of Decision; it is the draft seeking public and agency input prior to making a decision. Yet, the USCG had already decided to remove the existing bridge under the National Historic Preservation Act.</p> <p>What do NEPA regulations say about the timing of decision-making?</p> <p>§ 1502.2(g) Implementation states “Environmental impact statements shall serve as a means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.”</p> <p>§ 1502.5 Timing. “The statement shall be prepared early enough so that it can serve as an important practical contribution to the decision-making process and will not be used to rationalize or justify decisions already made.”</p> <p>I am very concerned that the USCG decided to demolish the historic Bismarck Rail Bridge prior to considering public comment on the Draft EIS, responding to those comments in a Final EIS, and preparing a Record of Decision, as required under NEPA.</p>	N/A	<p>Stipulation V of the Section 106 PA provided an opportunity for new alternatives that would facilitate retention of the existing bridge to be proposed and evaluated during the NEPA process. No new feasible proposals were introduced to be evaluated. The DEIS evaluated three alternatives that provided for retention of the existing bridge using the Section 106 process to determine feasibility of those alternatives that included retention of the existing bridge. The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Efforts by the consulting parties during the Section 106 process to identify alternatives to retain the bridge that were technically and economically feasible were unsuccessful due to additional Project costs and projected flood plain rise. Because no new feasible alternatives were proposed, under Stipulation V of the Section 106 PA, the Coast Guard determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge. No determination on a preferred alternative was made in the DEIS. Through this FEIS, we have identified the preferred alternative. The determination of whether the preferred alternative is approved will be made at time of permit decision by USCG.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	<p>Further, such a step is required by law when the project involves the potential destruction of a nationally important historic structure. Under the National Historic Preservation Act as reenacted in 2014, the following policies must be considered and implemented for properties of national historical significance such as the existing historic Railway Bridge: “(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; “(2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program; “(3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations; “(4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means; “(5) encourage the public and private preservation and utilization of all usable elements of the Nation’s historic built environment; and “(6) assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.”¹⁹ For transportation projects subject to the jurisdiction or oversight of the Secretary of Transportation through the FRA, federal policy is well established that damage to properties of historical significance such as the existing historic must be avoided unless “(1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such ... historic site resulting from such use.”²⁰ This policy applies to historic bridges over which the FRA has oversight and review authority under authority of the Department of Transportation and NEPA, either as a lead or cooperating agency.²¹ In this case, damage and destruction of the existing historic Railway Bridge should be avoided because there are feasible and prudent alternatives, and the alternatives that should be considered and implemented. The jurisdiction of the Coast Guard over permitting the crossing of a navigable water does not preclude or change the jurisdiction of the FRA over bridge safety and the other factors that must be considered under 54 U.S.C.A. § 300101, including “the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means” and “encourage[ing] the public and private preservation and utilization of all usable elements of the Nation’s historic built environment.” Pursuant to these provisions of the National Historic Preservation Act as reenacted in 2014, the final EIS must consider an alternative that minimizes harm to the existing historic Railway Bridge resulting from construction and use of any new railway bridge to the north or south, and/or a rebuild and refurbishment of the existing historic bridge. This can be done either by continuing to use the existing historical bridge as is, as refurbished, or for an alternative such as rails-with-trails or rails-to-trails as is common across the United States for similar bridges. And rails-to-trails resources are now being converted back for light rail use in many cities. Such options are foreclosed by not preserving such resources. And that burden is especially high when the property is one that is clearly covered by the National Historic Preservation Act such as the bridge in question here. Thus, 54 U.S.C.A. § 300101 imposes a burden on the Coast Guard as the lead agency, and BNSF as the project proponent needing a federal permit to proceed, to show otherwise when the project includes a bridge of national historical importance such as the existing historic bridge, and to mitigate any impacts to this historic landmark to the extent reasonable and practicable.</p>	N/A	<p>Stipulation V of the Section 106 PA provided an opportunity for new alternatives that would facilitate retention of the existing bridge to be proposed and evaluated during the NEPA process. No new feasible proposals were introduced to be evaluated. The DEIS evaluated three alternatives that provided for retention of the existing bridge using the Section 106 process to determine feasibility of those alternatives that included retention of the existing bridge. The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Efforts by the consulting parties during the Section 106 process to identify alternatives to retain the bridge that were technically and economically feasible were unsuccessful due to additional Project costs and projected flood plain rise. Because no new feasible alternatives were proposed, under Stipulation V of the Section 106 PA, the Coast Guard determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge. No determination on a preferred alternative was made in the DEIS. Through this FEIS, we have identified the preferred alternative. The determination of whether the preferred alternative is approved will be made at time of permit decision by USCG.</p>
Friends of the Rail Bridge	<p>No mitigation measures are included in the Draft EIS to offset any adverse effects as required by 40 CFR 1508.20 including for “long-term, substantial, adverse impacts to sensitive viewers due to removal of Bridge 196.6,” displacement of residences south of the bridge, loss of 13.9 acres of trees, visual impacts to historic properties in the Northern Plains Heritage Area, light pollution from navigation lights on the new bridge, visual impacts from design of the new bridge, impacts to traffic and neighborhoods from construction activities, and others. There is no mitigation for adverse effects to historic properties in Draft EIS Section 4.0 because identification of mitigation measures been deferred to development of a memorandum of agreement under the National Historic Preservation Act; however, discussion of mitigation measures in the MOA ceased in May before release of the DRAFT EIS and no meetings have been scheduled since. If meetings resume after the public comment period closes, the public and agencies rights to comment on mitigation will be foreclosed. The only mitigation measures BNSF has agreed to implement by the last consultation meeting was to install a plaque on the new bridge and donate a piece of the demolished historic bridge to Morton County, which is inadequate. The only measures listed in Table 38 in the Mitigation section are best practices, impact avoidance, and minimization measures. How will stipulations in the programmatic agreement, such as the Inadvertent Discoveries Plan be implemented with no mitigation measures included as environmental commitments in the Draft EIS, Final EIS, Record of Decision, or USCG’s permit to be issued to BNSF? If the USCG does not develop mitigation measures and include them in the Final EIS, Record of Decision, and permit, BNSF will have no incentive to minimize impacts to any resources. Unfortunately, the USCG said in the final consulting parties meeting that it is not their practice to attach the Record of Decision and mitigation measures to the navigation permit. This is not in keeping with NEPA.</p>	N/A	<p>Stipulation V of the Section 106 PA provided an opportunity for new alternatives that would facilitate retention of the existing bridge to be proposed and evaluated during the NEPA process. No new feasible proposals were introduced to be evaluated. The DEIS evaluated three alternatives that provided for retention of the existing bridge using the Section 106 process to determine feasibility of those alternatives that included retention of the existing bridge. The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Efforts by the consulting parties during the Section 106 process to identify alternatives to retain the bridge that were technically and economically feasible were unsuccessful due to additional Project costs and projected flood plain rise. Because no new feasible alternatives were proposed, under Stipulation V of the Section 106 PA, the Coast Guard determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge. No determination on a preferred alternative was made in the DEIS. Through this FEIS, we have identified the preferred alternative. The determination of whether the preferred alternative is approved will be made at time of permit decision by USCG. Mitigation measures are discussed above in Table 2: Final Environmental Commitments, in the final PA, and in the final MOA.</p>

Commenter	Comment	EIS Section	Response
Margie Enerson	<p>Once again, the confusion in the community of the \$60-90 million was the main reason we couldn't find a public partner. This undue financial responsibility on FORB has been UNPRECEDENTED.</p> <p>The National Historic Preservation Act's Section 106 regulatory process is supposed to be collaborative not adversarial. The regulations require the federal agency (USCG) to "seek ways to avoid, minimize, or mitigate any adverse effects to historic properties." Our bridge has been determined eligible for inclusion in the National Register of Historic Places, making it a historic property worthy of protection from adverse effects. Paying for and carrying out the mitigation is ALWAYS the responsibility of the permit applicant overseen by the federal agency. That's the way the law works. Mitigation is not the responsibility of the consulting parties, such as FORB or local government entities. The permit applicant in this Section 106 Process is BNSF. Currently the Programmatic Agreement is saying the Public Private Partnership will pay design costs and construction premiums of \$60-90 million TO BNSF to save our bridge with a two-bridge option. This is unprecedented and was addressed to the USCG with a request for amendments to the Programmatic Agreement. Our request for an amendment to the Programmatic Agreement was discussed in the May 14 Consulting Party meeting. It was turned down by Brian Dunn, USCG, as costs of bridge preservation were an unreasonable and undue burden for BNSF, therefore it was announced at that meeting that the bridge would move into demolition phase, even though the Draft EIS pretends to consider three preservation alternatives.</p>	N/A	<p>Stipulation V of the Section 106 PA provided an opportunity for new alternatives that would facilitate retention of the existing bridge to be proposed and evaluated during the NEPA process. No new feasible proposals were introduced to be evaluated. The DEIS evaluated three alternatives that provided for retention of the existing bridge using the Section 106 process to determine feasibility of those alternatives that included retention of the existing bridge. The PA schedule allowed for consideration of retention of the existing bridge throughout the NEPA process. Efforts by the consulting parties during the Section 106 process to identify alternatives to retain the bridge that were technically and economically feasible were unsuccessful due to additional Project costs and projected flood plain rise. Because no new feasible alternatives were proposed, under Stipulation V of the Section 106 PA, the Coast Guard determined that the Section 106 consultations should concentrate on mitigation for removal of the existing bridge. No determination on a preferred alternative was made in the DEIS. Through this FEIS, we have identified the preferred alternative. The determination of whether the preferred alternative is approved will be made at time of permit decision by USCG. Mitigation measures are discussed above in Table 2: Final Environmental Commitments, in the final PA, and in the final MOA.</p>
J. Signe Snortland	<p>Secondly, the USCG has set unreasonable deadlines and assigned expensive mitigation responsibilities to parties other than the applicant BNSF, as evidenced in the PA. For instance, in Stipulation V.B table, Retain Existing Bridge, FORB (a small non-profit preservation group) is required to "Submit to the USCG a conceptual plan to identify how funds will be raised and funding sources for all costs associated with the project to retain the bridge and convert it to a non-rail use by the close of the draft environmental impact statement public comment period." In the next section it explains that all costs include "Added design costs and construction premiums above those for BNSF's proposed action," which BNSF estimates to be 60-90 million dollars, in addition to the cost of converting the bridge from rails to trails at 6.9 million dollars, preparing a CLOMR for \$500,000 and mitigation of negligible flooding impacts at 10 million dollars. The total cost assigned to FORB is about 107.4 million dollars to save the historic bridge and the fundraising plan is due on July 26, 2021. This is unreasonable and unprecedented.</p>	N/A	<p>Deadlines and assignment of mitigation is based on the request from consulting parties to find an alternative that would retain the bridge. Section 106 issues have been addressed through the consultation process.</p>
J. Signe Snortland	<p>Thirdly, requiring consulting parties to submit written comments before this hearing and sign up to present oral comments at this hearing is highly unusual and may limit public involvement.</p>	N/A	<p>While registration was requested to provide USCG with an estimate of the interest in oral comment presentation, USCG allowed oral comment from any interested parties participating in the online public meeting. USCG did not require written comments to be submitted prior to the public meeting; written comments were accepted throughout the comment period.</p>
Friends of the Rail Bridge	<p>The National Environmental Policy Act (NEPA) requires federal agencies to take a "hard look" at any major federal action that will have significant impacts on the human environment. The lead agency and cooperating agencies must consider alternatives and impacts, and "to the fullest extent possible ... shall" prepare "a detailed statement" that considers: "(i) the environmental impact of the proposed action, "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, "(iii) alternatives to the proposed action, "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."2 The DRAFT EIS has numerous flaws that make it insufficient to meet minimum requirements under NEPA. Although parties to the scoping process agreed that the 1978 NEPA regulations would apply because the EIS process began before the 2020 Rule became effective, the EIS fails to adequately consider the issues that the longstanding 1978 NEPA regulations require the lead agency to consider. The DRAFT EIS also narrows the scope of the EIS in ways that makes the analysis inadequate, and the outcome predetermined.</p>	N/A	<p>Section 1506.13 of the NEPA Final Rule states that the regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations to this subchapter to ongoing activities and environmental documents begun before September 14, 2020.</p>

Commenter	Comment	EIS Section	Response
Friends of the Rail Bridge	As discussed in the previous sections, the DRAFT EIS has numerous flaws that make it insufficient to meet minimum requirements under NEPA. Although parties to the scoping process agreed that the 1978 NEPA regulations would apply because the EIS process began before the 2020 Rule became effective, the EIS fails to adequately consider issues that longstanding 1978 NEPA regulations require the lead and cooperating agencies to consider. NEPA specifically recognizes the importance of protecting historical and cultural resources as part of NEPA: In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice... NEPA § 101(b)(4), 42 U.S.C. § 4331(b)(4).	N/A	Section 1506.13 of the NEPA Final Rule states that the regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations to this subchapter to ongoing activities and environmental documents begun before September 14, 2020. USCG has decided to apply the regulations to this Project.
Friends of the Rail Bridge	NEPA Regulations (revised rule) state that “The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process” (§ 1500.1 Purpose and policy). It goes on to state that “Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” (§ 1502.23 Methodology and scientific accuracy). In this case there were no public scoping meetings held for the Draft EIS despite FORB’s comment on the Notice of Intent requesting public scoping. As a result, several relevant issues were overlooked including paleontology, disposal of excavated materials, airborne particulate matter effects on neighborhoods south of the bridge beside the construction zone, and the significance of the Northern Plains National Heritage Area in the project area.	N/A	USCG held a scoping meeting for NEPA and NHPA on December 14, 2017 at the commencement of the bridge permitting process. In addition, as required by CEQ regulations, USCG specifically solicited for scoping comments in the Notice of Intent, which was published on the Federal Register on January 8, 2020. The 47-day public comment period ended on February 24, 2020.
Downtown Bismarck Community Foundation Council	Our Downtown Bismarck Community Foundation development council is aware of proposed changes to the Downtown Bismarck rail corridor, especially as it relates to additional freight lines, increased freight traffic, increased capacity and the ability of adding passenger service. There do not seem to be mitigation efforts spelled out in the Draft EIS which detail the effects increased freight rail traffic may have on Downtown Bismarck. Over the last 15 years our development members, private businesses, and city leaders have worked hard to redevelop the downtown with over with million dollars in private investment and millions more in public investment including the addition of Quiet Zone rail infrastructure at three at-grade crossings. We are just getting started on the development of housing (appx \$40 million under construction) and more commercial space in and near the areas adjacent to the rail crossing with an addition of a Downtown private-college campus and a potential public gathering space. As a stakeholder, we’ve not been contacted regarding your plans with the rail line that abuts much of our private property owners land and businesses and would love the opportunity to hear what your plans are. It’s my understanding that with the discussion of keeping or demolishing the historic rail bridge that your plans may be to add additional and heavier traffic to the rail in the Downtown. This could have an impact on the burgeoning development in our Downtown and my board and council would like to sit down or have a conversation about your potential future plans and how they align with the city’s and private Downtown business and property owner’s vision for Downtown Bismarck. Thank you for your time and consideration, please reach out to schedule a meeting.	N/A	While primarily driven by market conditions and the number and type of passenger and freight origins and destinations along a rail line, train traffic cannot increase unfettered. Demand and resulting train traffic volume is limited by the capacity of the rail line. Rail line capacity is a complicated dynamic calculation involving many physical factors, such as track geometry and condition, and operational factors, such as operating speeds, equipment mixes, and inspection and maintenance requirements, specific to the line itself. This Project does not add any rail capacity, origin or destination facilities, nor does the new bridge change the commodities moved by BNSF; therefore, the Project would not drive increases or decreases in rail volumes that would result in an increase of greenhouse emissions. The amount of freight moved by train is driven by two main factors: (1) market conditions, such as interest rates, and the supply and demand for products and employment and (2) the number and type of freight origins and destinations along the rail line. As a federally designated common carrier, BNSF has a legal obligation to provide transportation services for all regulated goods upon reasonable request. This rail corridor moves all types of traffic, including consumer goods, grain, lumber, and energy products such as crude oil, wind turbines, and coal. The factors driving train traffic and freight in the study area will exist with or without construction a new bridge.
Margie Enerson	My comments will reflect the flawed NHPA Section 106 process and DEIS by USCG, BNSF and BNSF’s paid consultant, Jacobs Engineering. Throughout the consultation process, BNSF representatives have stymied any serious consideration of a preservation alternative. They have displayed an almost arrogant sense of entitlement, as if the process were nothing more than a regulatory nuisance. They have lobbied against our efforts and applied political pressure to dissuade governing bodies at all levels from endorsing or participating in any outcome that would save the historic bridge.	N/A	The Section 106 process was followed in accordance with 36 CFR 800. North Dakota SHPO and ACHP were involved. A PA was developed to provide an opportunity for consulting parties to propose alternatives that would provide for retention of the existing bridge. No new alternatives that were technically and economically feasible were identified by the consulting parties; therefore, an MOA was developed to mitigate the loss of the existing bridge.

Commenter	Comment	EIS Section	Response
Margie Enerson	While lobbying may be considered a lawful practice, lobbying against a collaborative process is not in line with NHPA or NEPA regulations. BNSF has taken an active role in dissuading local and state officials from supporting bridge preservation by presenting misleading information. Examples of this BNSF's lobbying efforts are:	N/A	NHPA and NEPA regulations do not preclude any party for attending or participating in public or community meetings or discussing the Project with other stakeholders.
Margie Enerson	<p>BNSF followed the city, county, and district park board monthly meeting agendas to request to speak at any meetings that FORB was already scheduled to present. A good example of these tactics was BNSF tried to get on the Bismarck Parks and Recreation March 18, 2021, agenda even after the deadline for presenters was closed, which was communicated to us by the Bismarck Parks and Recreation Director. With BNSF following our every move with intimidation and fear tactics at public meetings, it discouraged any meaningful discussion for public entities to commit to joining a public-private-partnership required by the programmatic agreement to adopt the historic bridge. The undue time restraint in the Programmatic Agreement to find a public partner in 45 days was also unprecedented. Although discussion on the bridge preservation and alternative designs have been in consultation meetings since 2018, no public entity was going to agree to a partnership without a written agreement from BNSF to donate the bridge. A 45-day limit made it difficult for FORB to get on monthly meeting agendas, plus it didn't allow for constructive conversations with the decision-making commissions at the city, county and park boards who were uncomfortable with unknown financial responsibilities.</p> <p>Examples of BNSF's counterproductive and uncollaborative behavior can be found on these meeting links: Burleigh Commission Replay 4/5/21 (dakotamediaaccess.net) 01:21:37 Bismarck Park Board Replay 4/15/21 (dakotamediaaccess.net) 00:24:20</p>	N/A	<p>NHPA and NEPA regulations do not preclude any party for attending or participating in public or community meetings or discussing the Project with other stakeholders. Actions taken by the Bismarck Parks and Recreation District, and other local authorities are outside of the purview of USCG.</p> <p>The terms of the PA were negotiated with all consulting parties through the Section 106 process. Final decisions regarding the PA were made by USCG as the lead federal agency. All signatories and invited signatories signed the PA.</p>
Margie Enerson	<p>The main message from BNSF at these meetings was to discourage a public partnership with FORB by stating partners would be responsible for paying \$60 - \$90 million dollars to adopt the historic bridge in addition to \$6.9 to rehabilitate the bridge in order to preserve it. This frequently used estimate of additional design and construction costs was so overwhelming that no public entity even asked for specifics on how this estimate was determined but cited the unknown financial responsibilities as reason for not becoming a public partner.</p> <p>Bismarck Tribune – April 16, 2021 https://bismarcktribune.com/news/history-events/bismarck-park-board-tables-rail-bridge-discussion-for-up-to-6-months/article_f02c8f5c-9d55-563d-b4ee-17900b5e6113.html?utm_medium=social&utm_source=email&utm_campaign=user-share The public and FORB deserved to know how BNSF came up with this calculation. Our request for information on true calculations of the \$60-90 million estimate for construction and design costs for the two bridges to co-exist was never answered. Below is the brief line item estimate that we were provided by BNSF. When statements claiming extremely high costs for preserving the historic bridge for public use were cited by BNSF, FORB was unable to counter those exaggerated and unsupported claims because they were never granted an on-the record presentation. A formal letter was sent to Rob McCaskey on April 13, 2021 – the following is an excerpt from the letter with our request. The letter should be in USCG records of communication. FORB requests several agenda items be discussed during the next consultation meeting. These are as follows: • BNSF's explanation of how "added design cost and construction premiums" were calculated and release of supporting documents, like engineering reports, to facilitate consulting party evaluation and discussion of these estimates. • Discussion of BNSF's anticipated terms in a bridge lease agreement including an estimated cost to lease the bridge needed for FORB's conceptual fundraising plan. In the public meetings listed in the links above, you will also hear Mike Herzog, BNSF Director of Bridge Construction, state that BNSF will only look at a possible lease agreement, not a sale of the historic bridge. FORB was never in discussion with or provided any information on a possible lease agreement. Instead, the consulting party meetings were dominated with discussions on mitigation on the demolished bridge, versus focusing on efforts to allow FORB or government entities to look at the full costs or repurposing and fundraising for the bridge.</p>	N/A	<p>The terms of the PA were negotiated with all consulting parties through the Section 106 process. Final decisions regarding the PA were made by USCG as the lead federal agency. All signatories and invited signatories signed the PA. Comparison of cost for the alternatives has been provided in the DEIS and several presentations made by BNSF to the consulting parties.</p>

Commenter	Comment	EIS Section	Response
Margie Enerson	<p>Signe Snortland, FORB: First amendment - FORB submitted an alternative that has no net rise because it retains the existing piers. So no reason to do a CLOMR. Second amendment – BNSF would be responsible for mitigation for new alternative with net rise. Third amendment – FORB having great difficulty getting a public partner because BNSF is going to all of the meetings and saying that bridge rehabilitation is going to cost \$60-90M. FORB is requesting an extension on establishment of the PPP to get these amendments made and eliminate the \$60-90M, and be able to get a PPP. Next, eliminated “all” costs so PPP is only responsible for costs to convert the bridge to non-rail use – \$6.9M. Eliminate costs over and above those for BNSF’s proposed action. Would be nigh unto impossible to make a fundraising plan for that amount. BNSF should pay the cost for their own bridge. Next, costs and mitigation in table should be BNSF’s responsibility, not FORB’s. Brian Dunn, USCG: I would like to talk about how we got to where we are and why things are in the PA like they are. If there is not a cost share, the project is not technically feasible. If we double the cost of the bridge, it is not economically feasible. Chris Wilson: The DEIS will be published, and the FEIS cannot be published until the Section 106 consultation is complete. We have been trying to mitigate adverse impacts this whole time. The PA bought FORB time to evaluate local capacity to retain the bridge. This is a bigger issue to me. There is no local capacity. Intention of the PA was to pursue that local interest. I agree with Signe that the dollar figure in the PA has scared away public partners. Is there local capacity? Signe Snortland: Capacity within the local community is dependent upon the \$60-90M figure. Emily Sakariassen, Preservation ND: I agree that the \$60-90M figure handcuffs discussions with potential public partners. The funding discussion should be limited to the \$6.9M that NDSU identified for conversion to a pedestrian trail. Betsy Merritt, NTHP: We have been worried for a long time about poison pills within the PA. The \$60-90M is a poison pill that needs to be detoxed from the PA. Shifting responsibilities from the applicant to preservation advocates is unprecedented. The \$60-90M is a poison pill. Mike Herzog, BNSF: If we are saying that the additional bridge cost of \$60-90M is a poison pill, then the poison pill is the truth. BNSF negotiated the PA in good faith and met all timelines. BNSF is opposed to all proposed amendments. Signe Snortland, FORB: We are meeting with the FORB board next week and recommending dispute resolution or termination of the PA. Chris Wilson, ACHP: I would like to discuss those terms because they have real meaning. The PA has a clause for dispute resolution and the ACHP, where I work, not Signe, has a role in that. Entering into dispute resolution should only be done when conflict is well thought out. Termination can only be enacted by the USCG or ACHP. FORB cannot terminate. Let’s cover the three routes: • The Amendment process – is there any way to discuss the amendments further? Are there any tweaks that can be made? I agree that the transfer of costs is bizarre and unheard of. Can we tweak it? • Dispute resolution – if something can’t be resolved, then the ACHP makes a formal comment to the USCG and the USCG makes the call. • Termination is not in the cards. It is a lose-lose proposition. Any mitigation in the PA/MOA is lost with termination. Brian Dunn: Even if amendments are adopted, there is no feasible alternative for the DEIS. The cost issue becomes important under NEPA. Only technically and economically feasible alternatives can be in the EIS. Technical feasibility depends on economics. There is no authority for a federal agency to tell a private entity that they need to double the cost of their project. Avoiding impacts does not appear to be technically or economically feasible. Signe Snortland: We are happy to discuss the amendments, but they have not been well received by BNSF. To clarify, FORB can terminate as the PA does not differentiate between a signatory and an invited signatory. Once again, the arbitrary costs of \$60-90 million and the transfer of these responsibilities to FORB or a public partner other than BNSF in the Programmatic Agreement have resulted in the USCG stating the costs are too high for a private entity to pay and too high and unknown for a public partner to join in the preservation of the historic bridge. Lack of a thorough study and a presentation of the construction and design costs has never been conducted.</p>	N/A	<p>These comments were addressed by USCG through the Section 106 process during the development of the PA. Pier encasement needed to reinforce the existing historic piers would increase the size of the piers below the 100-year flood elevation and would require a new model to support a CLOMR application. As previously discussed, it is up to the party proposing the alternative to provide sufficient information to show that that alternative is technically and economically feasible. In this case, it was determined that either a no net rise alternative or a mitigated no-rise floodplain solution would be the responsibility of the proposing party. Without this requirement, it is expected that any alternative to retain the bridge will not be technically or economically feasible.</p> <p>There are no authorities (statute, regulation) that require or even allow the Federal Government to require a private entity to develop Project alternatives that are outside of the scope of the Project purpose and need. Likewise, there is no authority for the Federal Government to require a private entity to pay for additional costs that may result from such an alternative.</p> <p>As discussed during the Section 106 consultations, should a party propose a new alternative to retain the existing bridge, if such an alternative was determined to be technically feasible, the additional costs would need to be borne by the entity proposing that alternative. Without this requirement, it is expected that any new alternative to retain the existing bridge will not be economically feasible.</p>

Commenter	Comment	EIS Section	Response
Margie Enerson	<p>The following points demonstrate the lack of public engagement for the public meeting:</p> <ol style="list-style-type: none"> 1. Only one public notice was filed in the Bismarck Tribune on June 11, 2021, for the DEIS 2. North Dakota has not had any mandates on masks or capacity restrictions since January 18, 2021. The lack of public outreach and the EIS virtual hearing format in a very unrestricted North Dakota environment discouraged public input. 3. The virtual hearing was conducted in a way to discourage participation by requiring pre-registration online through a confusing process and did not follow the guidelines laid out by the Citizen's Guide. <ul style="list-style-type: none"> • Required re-submission of written statements through Regulations.gov through a confusing process • Limit of three minutes per presentation with three people registered to present unannounced prior to the hearing so all statements exceeded the time limit and speakers were cut off before finishing • Limited public engagement on virtual hearing • Unnecessary to have a virtual Draft EIS hearing in Bismarck where there are no Covid-19 restrictions 	N/A	<p>Notification of the virtual public meeting was provided with the Notice of Availability (NOA) of the DEIS. While North Dakota did not have mask mandates or capacity restrictions, federal employees were restricted from traveling to host an in-person EIS public meeting. All speakers present at the virtual meeting had an opportunity to speak and were given an additional opportunity to continue their comments after all parties spoke. USCG requested, but did not require, participants to submit to the docket their request to speak in the virtual public meeting. While registration was requested to provide USCG with an estimate of the interest in oral comment presentation, USCG allowed oral comment from any interested parties participating in the online public meeting. USCG did not require written comments to be submitted prior to the public meeting; written comments were accepted throughout the comment period.</p>
Mark Zimmerman	<p>This is Mark Zimmerman, President of Friends of the Rail Bridge. We thank the U.S. Coast Guard for allowing us to make these public statements regarding the draft EIS. I would echo the comment that I emailed you and Amy Angel asking for instructions and time. I was not advised, and we also would like to file a concern that now we have only three minutes to make a public statement. That's quite disheartening and disconcerting that no advance information given on that time.</p>	N/A	<p>Notification of the virtual public meeting was provided with the NOA of the DEIS. While North Dakota did not have mask mandates or capacity restrictions, federal employees were restricted from traveling to host an in-person EIS public meeting. As provided for in the public notice, USCG placed a limit on the time allotted to each speaker's presentation to ensure there would be sufficient opportunity to all who wanted to provide oral comments. All speakers present at the virtual meeting had an opportunity to speak and were given an additional opportunity to continue their comments after all parties spoke. USCG requested but did not require submission of written statements to speak at the virtual public meeting.</p>
Mark Zimmerman	<p>I wish to echo our displeasure in just hearing now our time limits and other items to participate in this public hearing. Not appreciated.</p>	N/A	<p>Notification of the virtual public meeting was provided with the NOA of the DEIS. While North Dakota did not have mask mandates or capacity restrictions, federal employees were restricted from traveling to host an in-person EIS public meeting. All speakers present at the virtual meeting had an opportunity to speak and were given an additional opportunity to continue their comments after all parties spoke. USCG requested but did not require submission of written statements to speak at the virtual public meeting.</p>
Mark Zimmerman	<p>another concern of mine, just 10 how this whole process goes. I really do. I don't want to sound inappropriate here, but you said three minutes, so I do the three minutes, and now I understand we would have additional time. I appreciate that, but I wish that would have been stated at the beginning. I would have certainly kept my notes with me, as I've moved to another location. But thank you.</p>	N/A	<p>Notification of the virtual public meeting was provided with the NOA of the DEIS. While North Dakota did not have mask mandates or capacity restrictions, federal employees were restricted from traveling to host an in-person EIS public meeting. All speakers present at the virtual meeting had an opportunity to speak and were given an additional opportunity to continue their comments after all parties spoke. USCG requested but did not require submission of written statements to speak at the virtual public meeting.</p>
Lyle Witham	<p>And as to the process, it's highly unusual to have a requirement of pre-filed oral comments, which was done at your request. And as to the process, it's highly unusual to have a requirement of pre-filed oral comments, which was done at your request.</p>	N/A	<p>USCG requested but did not require submission of written statements to speak at the virtual public meeting.</p>
Signe Snortland	<p>Third, requiring consulting parties to submit written comments before this hearing and sign up to present oral comments at this hearing is highly unusual and may limit public involvement, and also not letting us know we only have three minutes to speak beforehand would have been helpful. I urge you to give due consideration about my comment and concerns about the pre-decisional action, unreasonable and unprecedented financial mitigation responsibilities assigned to a private non-profit group rather than the applicant, BNSF, and your public involvement process. Thank you.</p>	N/A	<p>Notification of the virtual public meeting was provided with the NOA of the DEIS. While North Dakota did not have mask mandates or capacity restrictions, federal employees were restricted from traveling to host an in-person EIS public meeting. All speakers present at the virtual meeting had an opportunity to speak and were given an additional opportunity to continue their comments after all parties spoke. USCG requested but did not require submission of written statements to speak at the virtual public meeting.</p>
North Dakota Department of Transportation	<p>If the selected alternative results in the removal of Bridge 196.6, the NDDOT requests to be involved with the second tier Memorandum of Agreement/Programmatic Agreement (MOA/PA) that details the mitigation measures with the intent (Section 2.3.5):</p> <ul style="list-style-type: none"> o To have first right of refusal to take ownership of the three 400-foot trusses and granite masonry pieces from the piers based on preliminary consultation with the United States Coast Guard (USCG). o To provide input into how the trusses will be removed (such as member-by-member), tagged, inventoried, hauled, and stored so that they can be assembled back to their original state using the original plans, erection plans, and blocking diagrams. o To provide input into the process for the distribution of the trusses and granite masonry pier pieces for future projects and displays. 	N/A	<p>Details regarding mitigation for removal of the existing bridge will fall under the Section 106 process per the MOA.</p>

Table A-2: Nonsubstantive Comments

Commenter	Comment
Form letters	<p>I am contacting you because I support transportation infrastructure to keep our economy strong and competitive. As the Coast Guard evaluates BNSF's proposal to build a new railroad bridge over the Missouri River at Bismarck and Mandan, ND through the draft environmental impact statement, it should emphasize the need for a new bridge to be built without delay and added expense.</p> <p>The bridge is 130 years old and has speed and weight limits today. That already impacts potential shippers and could impact more in the future if the new bridge isn't built soon.</p> <p>Keeping the existing bridge in place creates ice jams, increases costs significantly, and adds delays to construction.</p> <p>The draft EIS doesn't detail any alternative that is safer or more efficient than the proposed project. I support BNSF's plan and urge the Coast Guard to issue its permit without delay.</p>
The Chamber Grand Forks/ East Grand Forks	<p>14 trains a day carrying loads of agriculture, coal, energy and industrial products travel the bridge. Based on the condition of the current bridge, there are speed and weight restrictions for those trains carrying commodities from across North Dakota and the country. A new bridge must be built soon to ensure continuity of service and safety, as well as improved efficiency.</p> <p>BNSF builds for the present and the future. Railroad infrastructure is imperative for a healthy growing economy. The region continues to ship record volumes of agricultural products and develop more value-added agricultural opportunities, as well as transport needed energy and other industrial products. The new bridge would serve North Dakota and nationwide customers for another century. To meet future rail capacity needs, BNSF plans to build a bridge that could support a second main track when needed.</p>
Fargo Moorhead West Fargo Chamber of Commerce	<p>Our Chamber promotes economic growth and prosperity through leadership in advocacy, education, and engagement. Safe infrastructure and reliable transportation solutions are imperative for our region and state to achieve these goals of economic growth and prosperity. Promptly modernizing and enhancing infrastructure is essential to the continued growth of North Dakota's economy. Many local businesses and community members benefit from the reliability and accessibility of the BNSF Railway network. Whether its small grains being shipped to America's Coasts or Bakken Oil being transported to refineries, this railway is a lifeline for many businesses.</p>

Commenter	Comment
Friends of the Rail Bridge	<p>We believe businesses — no matter their size, need to be allowed to build capacity with certainty on timeline and budget. 14 trains per day carry loads across the railroad bridge supporting the agricultural, energy, and manufacturing industries, shows the importance this infrastructure plays for North Dakotas economy. The success of these industries demand a rail network that transports these commodities safe reliably.</p> <p>As a result of the pandemic, supply chain disruption significantly impacted American businesses and the supply of goods that people rely upon. It is critical now that we invest in infrastructure that provides safe and dependable transportation to strengthen our nation's supply chain. Private companies should be allowed to invest in upgrading their own infrastructure to meet consumer demands with reasonable and timely regulatory processes.</p>
Connie Sprynczynatyk	LETTER CONTAINS HISTORY, PROCESS, AND CONCLUSIONS FROM THE BRIDGE ADVISORY COMMITTEE.
Emily Sakariassen	Overall, I find this Draft Environmental Impact Statement (DEIS) has missed the mark. Continuously throughout consultation, the project proponent (BNSF) has shown disrespect and disregard for the regulatory processes meant to safeguard the public from loss and destruction of critical aspects of our environment and, particularly with this case, legacies of our shared history, heritage, and culture on the Great Plains. In so doing, they have compiled a DEIS that, to the lead agency's detriment, does not represent a good-faith effort in complying with the National Environmental Policy Act (NEPA) and NHPA.
Friends of the Rail Bridge (nonprofit)	Friends of the Rail Bridge provided a comment crosswalk table of their comments (see comments in Table 1A).
Friends of the Rail Bridge (nonprofit)	Friends of the Rail Bridge provided the Historic Bridge Repurposing Feasibility Study as an attachment to their comment letter submission.
Friends of the Rail Bridge (nonprofit)	Friends of the Rail Bridge provided the Ackerman and Estvold – 2-Dimensional Modeling of Existing and Proposed Conditions as an attachment to their comment letter submission.
Friends of the Rail Bridge (nonprofit)	Friends of the Rail Bridge provided Slides - Review of Hydraulic Modeling. September 18, 2020 as an attachment to their comment letter submission.
Friends of the Rail Bridge (nonprofit)	Friends of the Rail Bridge provided the Ackerman and Estvold - FORB Preferred Alternative as an attachment to their comment letter submission.
Margie Enerson	Margie Enerson provided the Meeting minutes from Consulting Parties Meeting #16 as an attachment to her comment letter submission.
North Dakota Department of Transportation	The NDDOT requires that any highway right of way (ROW) disturbed by the project, such as with an access route, be restored to NDDOT and Federal Highway Administration (FHWA) standards and requirements. (Section 2.3.6)

Commenter	Comment
North Dakota Department of Transportation	The NDDOT does not have any information to submit at this time on the request from the USCG of the Friends of the Rail Bridge (FORB) regarding mitigation for the floodplain rise. (Section 3.5.2)
Mark Zimmerman	Definition of problem and statement of purpose, those items listed in the draft EIS, we have some concerns with those; again, detailed in our written comments.
Russ Hanson, Associated General Contractors of North Dakota	The Associated General Contractors of North Dakota represents the construction industry and its legislative and regulatory interests at the North Dakota Legislature. We are fortunate to operate in a state that supports business, and our members play an integral role in the state's economy. 14 trains per day carry loads of agriculture, coal, energy, and industrial product across this bridge. Based upon its current condition, there are speed/weight restrictions for those trains carrying commodities across North Dakota. A new bridge must be built soon to ensure continuity of service and safety, as well as efficiency. A bridge project like the BNSF Railway bridge is an enormous undertaking that requires years to plan and years to build. Companies need to have regulatory certainty so they can adequately plan construction projects like this and minimize impact to their operations. While we support infrastructure projects generally, our members also rely on rail transportation for their own varying inputs involved in the construction projects -particularly the shipment of concrete products. We cannot risk ongoing delay to this project and the potential for the current bridge to reach a time where it may not be able to carry heavy loads our industry relies upon.
Skip Duemeland	How do feel About a walking bridge? Your thoughts will Be kept Private. You may get the results Of the survey if we able to send to you. We Live on the river on the Mandan side near where the exit Of walking bridge may locate in Captains Landing. I am indifferent as to outcome. Skip

Appendix B

Section 106 Memorandum of Agreement

MEMORANDUM OF AGREEMENT

AMONG THE UNITED STATES COAST GUARD, THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Whereas, the United States Coast Guard (USCG) is the lead Federal agency, responsible for making a Federal bridge permit decision for the BNSF Railway Company (BNSF) Bridge Project to construct a railroad bridge to replace or accompany the existing historic BNSF Railway Bridge across the Missouri River between Bismarck and Mandan, North Dakota (Undertaking), in accordance with the General Bridge Act of 1946, as amended; and

Whereas, the Undertaking is defined as construction of a railroad bridge to replace or accompany the existing BNSF Bridge 0038-196.6, a historic through-truss bridge over the Missouri River, Jamestown Subdivision, Milepost 1315.0 (hereafter known as Bismarck Bridge), in Burleigh County, North Dakota, constructed 1880-1883 (substructure) and 1905-1906 (superstructure); and

Whereas, BNSF has determined that the Bismarck Bridge has reached the end of its useful life for rail traffic and needs to be replaced in order to safely move future rail traffic along BNSF's northern corridor; and

Whereas, the USCG has consulted with the North Dakota State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (54 United States Code Section 306108) and its implementing regulations at *Code of Federal Regulations* (CFR) Title 36 Part 800, as amended; and

Whereas, the USCG defined the Area of Potential Effects (APE) as the footprint of the proposed Undertaking within which all proposed construction and ground disturbing activity is confined, including existing and proposed right of way for replacement of the Bismarck Bridge, and provided an expanded, revised APE to include a new possible access route and the footprints of all alternatives considered in the Draft Environmental Impact Statement (Attachment A – APE map), and the SHPO provided formal written concurrence with the revised APE on May 11, 2021, and requested that the SHPO be invited to consult on the review of any additional areas to be used for disposal, borrow or staging as those areas are identified; and

Whereas, the previously unsurveyed areas in the revised APE were surveyed, the USCG identified no additional historic properties in the revised APE, and the SHPO concurred that no additional work is needed to identify historic properties in the APE as currently defined on July 15, 2021; and

Whereas, many residents of Bismarck, Mandan, and surrounding areas regard the Bismarck Bridge to be an iconic landmark for their community identity and a compelling visual feature in the cultural landscape of the Missouri Valley; and

Whereas, the USCG consulted with the SHPO to identify a visual APE and, after receiving comment from Consulting Parties, the USCG issued a final visual APE (Attachment A – APE map) on March 1, 2021; and

Whereas, the USCG identified historic properties in the visual APE and determined that the Undertaking would have no adverse visual effects on historic properties, and SHPO concurred with those decisions on July 15, 2021; and

Whereas, cultural resources within the APE are Site Lead 32MOx626, which is a drainage or irrigation ditch, and the Bismarck Bridge (site 32BL801/32MO1459); and

Whereas, the USCG, in consultation with the SHPO, has determined Site Lead 32MOx626 not eligible for

listing in the NRHP and determined the Bismarck Bridge eligible for listing in the NRHP under Criterion A for its association with broad patterns of railroad, commercial, and military history in the United States, and under Criterion C for design and construction, and for its association with engineers George Shattuck Morison and Ralph Modjeski; and

Whereas, the USCG determined that the Bismarck Bridge west approach span contributes to the Bismarck Bridge and did not evaluate the east approach span because it dates from 1991, and the SHPO concurred on July 12, 2021; and

Whereas, the USCG, in consultation with the SHPO, determined that the Undertaking would have an adverse effect on the Bismarck Bridge; and

Whereas, in accordance with 36 CFR 800.6(a)(1), the USCG notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

Whereas, the USCG, SHPO, and Advisory Council on Historic Preservation (ACHP) executed a Programmatic Agreement (PA) for the Undertaking on January 15, 2021, with Invited Signatories BNSF and Friends of the Rail Bridge (FORB); and

Whereas, Stipulations VI. and VIII. of the PA required the USCG to lead the consultation to develop this Memorandum of Agreement (MOA) to stipulate detailed mitigation measures needed to resolve any adverse effects from the removal of the historic Bismarck Bridge and the addition of a new bridge; and

Whereas, FORB requested termination of the PA on February 22, 2022, withdrew that termination request on March 16, 2022, and then reinstated their PA termination request on May 12, 2022, and the USCG terminated the PA on June 28, 2022; and

Whereas, the parties to this MOA agree that certain previously agreed upon stipulations from the PA have been moved to and incorporated into this MOA; and

Whereas, the National Trust for Historic Preservation listed the Bismarck Bridge on *America's 11 Most Endangered Historic Places for 2019* because it was the first bridge to cross the upper Missouri River, George Shattuck Morison designed and oversaw its construction between 1880 and 1883, and the project employed advanced construction methods including pneumatic caissons such as those used to build its contemporary, the Brooklyn Bridge; and

Whereas, Mandan, Hidatsa, and Arikara (MHA) Nation ancestral sites overlook this industrial infrastructure that altered the history of their lands and people, and the bridge is upriver from On-A-Slant Village where Mandan Chief Sheheke was born and later accompanied Lewis and Clark back to Washington, D.C. where Sheheke and President Jefferson met; and

Whereas, known ancestral areas upriver of the APE include Chief Looking's Village (site 32BL3), Crying Hill (site CHFMO38) (see Attachment B), and areas of the Missouri River bottomlands used to plant corn, beans, and squash; and

Whereas, the Bismarck Bridge is an important resource in the cultural landscape of the Northern Plains National Heritage Area and is closely tied with many important historic places and events in the Heritage Area; and

Whereas, Stipulation V.C. of the PA stated that if any part of Stipulation V. could not be fulfilled, then the process may move to Stipulation VI., at the discretion of the USCG, and the USCG determined that the requirements in the PA for an interested party to propose a new feasible and reasonable alternative to retain the existing bridge and construct a new adjacent bridge with no net floodplain rise were not met, and thus

moved to Stipulation VI. of the PA, and the SHPO concurred with this on June 15, 2021, and the ACHP concurred on January 13, 2022; and

Whereas, in response to a request from Consulting Parties to consider salvaging some components of the Bismarck Bridge if it were to be demolished, the State of North Dakota (represented by North Dakota Department of Transportation [NDDOT]), at the direction of the USCG, convened a Salvage Working Group that identified five options for salvaging pieces of the bridge, including the granite pier blocks, for possible historic preservation projects; and

Whereas, Consulting Parties are defined to include Signatories, Invited Signatories, and Concurring Parties; and

Whereas, "Signatories" as defined in 36 CFR 800.6(c)(1) have the sole authority to execute, amend, or terminate this agreement, and "Invited Signatories" as defined in 36 CFR 800.6(c)(2) have the same rights with regard to seeking amendment or termination of this agreement as the Signatories; and

Whereas, any reference within this MOA to a "Signatory" includes Signatories and Invited Signatories; and

Whereas, Concurring Parties participate in the consultation process and are invited to concur in this MOA but they cannot prevent the MOA from being executed, amended, or terminated; and

Whereas, BNSF is the project proponent, has specific responsibilities under this MOA, and has been invited to participate in this consultation and to sign this MOA as an Invited Signatory; and

Whereas, the Northern Plains Heritage Foundation has specific responsibilities under this MOA and has been invited to participate in this consultation and to sign this MOA as an Invited Signatory; and

Whereas, because the Undertaking requires authorization by the United States Army Corps of Engineers (USACE) under the Clean Water Act Section 404, the Omaha District of USACE (North Dakota Regulatory Office) has been invited to participate in this consultation and to sign this MOA as a Concurring Party; and

Whereas, the USCG has consulted with Bismarck Parks and Recreation District, Bismarck Historical Society, Bismarck-Mandan Metropolitan Planning Organization, Burleigh County, Captain's Landing Township, City of Bismarck, City of Mandan, Fort Abraham Lincoln Foundation, Friends of the Rail Bridge, Historic Bridge Foundation, Mandan Historical Society, Morton County, Morton County Historical Society, National Trust for Historic Preservation, North Dakota Parks and Recreation Natural Resources Division, North Dakota State Railroad Museum, and Preservation North Dakota regarding the effects of the Undertaking on historic properties and has invited them to participate in this consultation and to sign this MOA as Concurring Parties; and

Whereas, in accordance with 36 CFR 800.2(c)(2)(ii), the USCG invited the following Federally recognized Indian tribes to participate in consultation on this Undertaking as Concurring Parties in November 2017 and has continued to communicate with them throughout the Section 106 process: Cheyenne River Sioux Tribe, Chippewa Cree, Crow Creek Sioux Tribe, Crow Nation, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, MHA Nation, Northern Cheyenne Nation, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Nation, Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux, Turtle Mountain Band of Chippewa, and Yankton Sioux Tribe; and

Whereas, the USCG invited the Wahpekute Band of Dakotah, a non-Federally recognized Indian tribe, to participate in consultation on this Undertaking as a Concurring Party in January 2018 and has continued to communicate with them throughout the Section 106 process; and

Whereas, the MHA Nation and the Northern Cheyenne Nation accepted the invitation to participate in consultation and the USCG invited them to sign this MOA as a Concurring Party;

Whereas, the USCG initiated Section 106 consultation with the SHPO on May 10, 2017, and has made a good faith effort to consult with interested parties to discuss the Undertaking, its effects, and potential

mitigation measures, including 21 Consulting Parties' meetings between January 2018 and March 2022, as documented in the consultation log in Attachment C; and

Whereas, the USCG held a public meeting and open house on December 14, 2017, in compliance with Section 106 of the NHPA, to provide the public with information about the Undertaking and its effects on historic properties, seek public comment and input, and provide general information about the project;

Now, therefore, the USCG, SHPO, and ACHP agree that the USCG will ensure that the following stipulations are implemented to mitigate the effects of the Undertaking on historic properties, and that these stipulations will govern the Undertaking and all of its parts.

STIPULATIONS

The USCG will ensure that the following measures are implemented:

I. AREA OF POTENTIAL EFFECTS

The APE may require amendments or revisions as the project design develops and construction methodologies are detailed. If BNSF or their contractor(s) identify additional areas to be used for disposal, borrow or staging, the APE will be amended to include such areas. If the APE requires amendment or revision, the following procedure will apply.

- A. BNSF will notify the USCG and SHPO in writing of requested changes to the APE within seven (7) days of learning an amendment or revision is needed. BNSF will provide a map showing the existing APE and the proposed amendment(s) or revision(s), accompanied by a written explanation of the reason for the change(s).
- B. The USCG will consult with the SHPO on the requested changes to the APE and will revise or amend the APE as they determine appropriate.
- C. The USCG will notify Consulting Parties of changes to the APE along with the map showing the existing APE and the proposed amendment(s) or revision(s), as well as the written explanation of the reason for the change(s), within fifteen (15) days of the USCG and SHPO being informed by BNSF of the need for an amendment(s) or revision(s).
- D. Consulting Parties will have thirty (30) days to review and comment on the amended or revised APE.
- E. The USCG will take all comments into consideration when finalizing the amended or revised APE. The USCG will provide the finalized APE to the Consulting Parties within thirty (30) days of receiving comments. Any disagreements on changes to the APE will be resolved as stated in Stipulation XI.
- F. Once APE changes are finalized, the USCG will file them electronically with the ACHP through e-106.
- G. The USCG will ensure that all areas added to the APE that have not been previously surveyed will be surveyed for cultural resources. If any cultural resources are identified, the USCG will determine if they are eligible for the NRHP and submit those determinations to the SHPO for concurrence.
- H. If historic properties are identified within the APE revisions, the USCG will consult with the SHPO and other Consulting Parties to determine the effects of the Undertaking on those properties. If those effects are found to be adverse, the USCG will consult with BNSF and the SHPO to explore ways to avoid or minimize the effects.

I. If previously unknown adverse effects to historic properties within the APE revisions cannot be avoided, the USCG will consult with the parties to this agreement to reach consensus on appropriate mitigation for those adverse effects. This MOA will then be amended in accordance with Stipulation XII. to incorporate such mitigation.

II. **VIBRATION MONITORING**

A. The USCG will identify a vibration APE for construction and demolition activities that may have adverse effects on historic properties as a result of vibration impacts. The vibration APE will be based on a 500-foot radius from the construction footprint. 500 feet is considered a reasonable and conservative threshold for screening of construction activities that do not involve blasting, according to the National Cooperative Highway Research Program Project 25-25 (Task 72). No blasting or explosives will be used by BNSF or their contractors. The USCG will distribute the vibration APE to the other Consulting Parties.

B. BNSF will strive to avoid and minimize vibration impacts from construction on historic buildings and structures.

C. BNSF will hire a qualified consultant (pursuant to Stipulation VI.) to identify historic buildings and structures (eligible for or listed in the NRHP) within the vibration APE.

1. If any historic buildings or structures are identified within the vibration APE, BNSF will have sixty (60) days from identification of said buildings and/or structures to conduct an initial screening evaluation by a vibration expert using methods recommended by the Federal Transit Administration's *Transit Noise and Vibration Impact Assessment* (May 2006), taking into consideration local soil conditions. The Federal Transit Administration provides a peak particle velocity unit of 0.2 inch per second as the level for potential construction vibration damage to non-engineered timber and masonry buildings with plaster walls and/or ceilings. Peak particle velocity for vibration at the Bismarck Bridge will be specific to the bridge and take into consideration the existing vibrations it currently experiences from train traffic. If the screening indicates construction vibrations are likely to exceed a peak particle velocity unit of 0.2 inch per second at identified historic buildings or structures, or to exceed the velocity level determined for the Bismarck Bridge, then BNSF will explore the feasibility of options to reduce the vibrations below 0.2 inch per second at identified historic buildings or structures, or below the level determined for the Bismarck Bridge.

2. If measures to reduce the vibrations to below 0.2 inch per second at historic buildings are not feasible, BNSF will perform a condition assessment on those historic buildings and structures within the vibration APE prior to construction. The condition assessment will be performed by the vibration expert, a structural engineer, a licensed architect, and an architectural historian, all retained by BNSF, and will include photo and/or video documentation. It will specifically evaluate susceptibility to vibration damage for each building and structure. The assessment will determine specific vibration thresholds for structural and architectural (cosmetic) damage. The condition assessments must be completed before construction can begin. No condition assessment of the Bismarck Bridge will be performed as existing BNSF inspections will suffice.

3. If any of the specific vibration thresholds determined in Stipulation II.C.2. exceed 0.2 inch per second, BNSF, in consultation with the SHPO and affected property owners, will explore vibration mitigation measures to protect the building(s) and/or structure(s) and significant architectural features, and whether these measures are feasible and reasonable. If, after said consultation, BNSF determines these measures to be feasible and reasonable, BNSF will implement them, in consultation and with the approval of the property owner(s). Mitigation measures will not apply to the Bismarck Bridge as it will continue to operate as an active rail bridge under BNSF ownership throughout construction.

4. In addition to potential vibration mitigation measures, the vibration expert will install vibration amplitude monitoring at the vulnerable historic building(s) and/or structure(s). The vibration monitoring will be done by the vibration expert, who will establish warning and stop work thresholds, as well as procedures for threshold exceedances. Once the vibration expert has established these thresholds and procedures, BNSF will provide this information to the USCG, who will in turn notify the Consulting Parties, and construction may then proceed.

5. If a stop work threshold is exceeded, BNSF will notify the USCG as soon as possible, within normal working hours. BNSF will engage a structural engineer, a licensed architect, and an architectural historian to inspect the building(s) and/or structure(s) for damage within seventy-two (72) hours of USCG notification. Construction can continue once the inspection is complete.

a) If the inspection determines there is no damage, the vibration expert will consult with the structural engineer, licensed architect, and architectural historian to determine if the threshold should be raised and adjust accordingly.

b) If the inspection determines there is minor structural or architectural damage, BNSF will provide for any necessary repairs, consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. BNSF will offer the SHPO an opportunity to comment on the consistency of such repairs with the *Standards* and will modify the repairs in response to any SHPO comments. The vibration expert will consult with the structural engineer, licensed architect, and architectural historian to determine if a lower stop work threshold is needed and adjust accordingly.

c) If the inspection determines there is severe damage, BNSF will provide for any necessary repairs, consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. BNSF will offer the SHPO an opportunity to comment on the consistency of such repairs with the *Standards* and will modify the repairs in response to any SHPO comments. BNSF will direct the contractor to immediately stop working on that construction activity until appropriate safeguards can be put in place. The vibration expert will consult with the structural engineer, licensed architect, and architectural historian to determine if a lower stop work threshold is needed and adjust accordingly.

d) If vibration levels approach or exceed the stop work levels repeatedly, BNSF will direct the contractor to immediately stop working on that construction activity and will consult with the USCG and SHPO on alternative construction methods or other avoidance/mitigation solutions.

III. MITIGATION FUNDING

BNSF will be responsible for the cost of the mitigation detailed in Stipulation IV.A. Bridge Documentation and the \$500,000 grant program in Stipulation IV.B.

IV. MITIGATION FOR REMOVAL OF EXISTING BRIDGE

A. **Bridge Documentation** – BNSF will be responsible, at their cost, for having the documentation listed in Stipulation IV.A developed to record the historic Bismarck Bridge through Historic American Engineering Record (HAER) Level I documentation.

1. **Historic American Engineering Record (HAER) Documentation Level I** - BNSF will develop comprehensive documentation that records the Bismarck Bridge in accordance with HAER documentation Level I guidelines. This will include measured drawings, professional black and white large format photographs, and a written history and description, all in an archive-stable format. It will be prepared as an Addendum to HAER ND-2 and will copy and cite information from HAER NE-2. Two identical sets of the documentation will be prepared – one for the National Park Service (NPS) and one for SHPO.

a) Measured Drawings

The documentation will include reproduction of all existing drawings of the current bridge, including drawings of its original design, minus duplicates. A site plan/aerial photograph of the bridge and the quadrangle map of the project area will also be included. The bridge will be scanned via laser or other comparable means to produce a complete set of current, as-is drawings. The final version of these drawings will be submitted on archival CD/DVD and printed on 34-inch x 44-inch archivally stable materials. In addition, one reduced 8½-inch x 11-inch copy on archival bond paper will be produced.

b) Photographs

The documentation will include at least 10 and no more than 20 black and white large format photographs to include all four elevations of the bridge, bridge details, and at least four context photographs, and include views from each side of the river. The documentation will include an index to the photographs as well as a photograph key showing the location and view direction of each image. Each photograph will produce a large format negative (4-inch x 5-inch, 5-inch x 7-inch, or 8-inch x 10-inch) and a contact print, archivally processed on fiber-based paper and also submitted electronically on archival CD/DVD. Once photo documentation is accepted by the NPS, construction on the substructure of the new bridge may proceed, in accordance with USCG permits.

c) Written History and Description

The written narrative will contain a description of the bridge and a detailed history. The narrative will also include a history of the Jamestown Subdivision between Mandan and Bismarck, including construction of the railroad and its major features, historical ownership information, the impact of the railroad on the growth and development of the towns and counties along the Jamestown Subdivision, significant historical users of the railroad, significant alterations to the bridge or subdivision, and significant historic events or patterns of history related to the subdivision. The narrative will include history and information about the substructure from HAER NE-2 (citing it appropriately), as well as information about the superstructure, its changes over time, and a description of its current condition. Final narrative will be produced on acid-free, 100-year, 8 ½-inch by 11-inch archival paper and electronically on archival CD/DVD.

d) Review and Comment

(1) Within ninety (90) calendar days of receipt of the USCG bridge permit, or as soon thereafter as weather permits, BNSF will prepare the draft HAER photo documentation in accordance with Stipulation IV.A.1.b) and distribute it via electronic mail or other electronic media to the North Dakota SHPO and NPS for review. The North Dakota SHPO will review and provide comments to BNSF and NPS within fifteen (15) calendar days of receipt of the photo documentation. NPS will then have an additional fifteen (15) days (for a total of thirty [30] days) to review and provide comments to BNSF. Because NPS has the responsibility of accepting final HAER mitigation documents for archiving at the Library of Congress, which includes ensuring that the documents meet the exacting content, editing and formatting requirements of the HAER program, the additional fifteen (15) days allows NPS to provide direction for editing the draft documents, including incorporation of any review comments that the SHPO might generate.

If no comments are provided to BNSF by the end of the thirty (30) day-comment period, the draft photo documentation will be considered final. If comments are provided to BNSF, BNSF will revise the draft photo documentation in response to the comments, as needed, and submit the final

photo documentation in accordance with Stipulation IV.A.1.b) within fifteen (15) calendar days of receipt of comments.

(2) BNSF will prepare the draft measured drawings and written narrative in accordance with Stipulation IV.A.1.a) and c) and distribute them via electronic mail or other electronic media to the North Dakota SHPO and NPS for review within one hundred eighty (180) calendar days of receipt of the USCG bridge permit. The North Dakota SHPO will review and provide comments to BNSF within thirty (30) calendar days of receipt of the draft HAER narrative and/or measured drawings. NPS will then have an additional fifteen (15) days (for a total of forty-five [45] days) to review and provide comments to BNSF. Because NPS has the responsibility of accepting final HAER mitigation documents for archiving at the Library of Congress, which includes ensuring that the documents meet the exacting content, editing and formatting requirements of the HAER program, the additional fifteen (15) days allows NPS to provide direction for editing the draft documents, including incorporation of any review comments that the SHPO might generate.

If no comments are provided to BNSF by the end of the forty-five (45)-day comment period, the draft HAER narrative and measured drawings will be considered sufficient and will be finalized in accordance with Stipulation IV.A.1.a) and c). If comments are provided to BNSF, BNSF will revise the draft HAER narrative and measured drawings in response to the comments, as needed, and submit them as final in accordance with Stipulation IV.A.1.a) and c) within thirty (30) calendar days of receipt of comments.

2. **Distribution** - Upon completion of the HAER documentation stipulated in III.A.1., BNSF will submit one copy of the documentation to the North Dakota SHPO and one copy to the NPS. In addition, BNSF will offer one copy of the HAER documentation to the Historic Bridge Foundation, Bismarck Historical Society, FORB, Mandan Historical Society, North Dakota State Railroad Museum, Burleigh County Library System, and North Dakota State University library electronically on archival CDs or other electronic media.

BNSF will provide to the USCG and North Dakota SHPO evidence of transfer to the recipients listed in Stipulation IV.A.2. who wish to receive a copy of the HAER documentation in the form of a copy of the transmittal letter(s).

B. **Grant Program** – BNSF will provide one-time funding in the amount of \$500,000 to be distributed as grants for historic preservation projects directly related to the historic Bismarck Bridge and tied to the Mandan and Bismarck community.

1. Grants will be limited to projects directly associated with the loss of the historic Bismarck Bridge, with the addition of the new bridge, with history associated with the existing bridge or its location, or with the impacts the bridge had on tribal culture or on the Bismarck/Mandan area. Projects can also include salvaging and utilizing bridge pieces listed in Stipulation IV.B.8.

2. BNSF, the USCG, NDDOT, and potential recipients of the bridge pieces, as members of the Salvage Working Group, submitted salvage concepts to BNSF to obtain cost estimates as part of the construction contract for the project. Once BNSF receives the bids from the contractor for these add-alternate items, they will share these bids with the grants administrator(s) at least sixty (60) days after issuance of the USCG bridge permit. The grants administrator(s) will then publicize these amounts to consulting parties and members of the Salvage Working Group for consideration in grant package submittals, and will open the

grants application period. See Sections III.B.5.-7. for more information on timing and decisions related to salvage pieces.

3. The grants program will be jointly administered by the State Historical Society of North Dakota and the Northern Plains Heritage Foundation, who will determine which of them will be the custodian for the funds. If the two parties cannot reach an agreement on grants administration or funds custodian within thirty (30) days of the execution of this MOA, then those parties must immediately notify the USCG of their failure to agree. The State Historical Society of North Dakota would then be solely responsible for grants administration and as funds custodian. The State Historical Society of North Dakota may also choose to seek another party to serve as funds custodian. If using a third party, the State Historical Society of North Dakota must have a signed agreement with the identified alternate funds custodian and must provide said agreement to the USCG no more than thirty (30) days after issuance of the USCG bridge permit.

4. Within forty-five (45) days of issuance of the USCG permit, the grants administrator(s) will open an account at a federally insured financial institution, or direct the funds custodian to do so, and will notify the USCG and BNSF once the account is open to receive funds.

5. The grants administrator(s) will develop a process for reviewing projects for grant funding and publicize grants to interested parties within sixty (60) days of issuance of the USCG bridge permit.

6. To be considered in the \$500,000 grant program, applicants must submit proposals, including those for salvaged parts, to the grants administrator(s) within sixty (60) days from the date BNSF provides add-alternate bid item pricing to the grants administrator(s). This is necessary to be able to include any projects for potential grant funding that need to be complete prior to construction and demolition.

7. The grants administrator(s) has one hundred twenty (120) days from the date BNSF provides add-alternate bid item pricing for the parts listed in Stipulation IV.B.8. to notify BNSF which add-alternate bid items they will accept. Within sixty (60) days of receiving this notice from the grants administrator(s), BNSF will transfer the net funds (\$500,000 minus the cost of the accepted add-alternate bid items) to the account identified in Stipulation IV.B.4. Subsequent to transfer of funds, BNSF will notify the USCG in writing with proof of transfer. If BNSF does not receive a response from the grants administrator(s) within the one hundred twenty (120) days, that will serve as a rejection of all add-alternate bid items and no salvage of bridge items will occur. In that case, BNSF will transfer the total \$500,000 to the account identified in Stipulation IV.B.4.

8. The Salvage Working Group identified the following parts for salvage listed by entity:

- a) City of Mandan: 100 granite blocks.
- b) City of Bismarck: 50 granite blocks and three entrance (end) trusses to the second post.
- c) Mandan Railroad Museum: Two entrance (end) trusses to the second post; base bridge grid trusses; 20 granite blocks; tracks and ties for 100 feet of track; 60 feet of guardrail; and 60 feet of walkway.
- d) Cities of Mandan and Bismarck: All remaining blocks/chunks/pieces.

9. For any of the salvage items provided, the entity accepting those salvage items will be required to sign an agreement with BNSF that identifies the entity as the new owner of these salvaged materials and fully indemnifies BNSF from any liabilities or responsibilities related to these materials.

V. IMMINENT FAILURE

The parties acknowledge that, if the existing Bismarck Bridge is determined by BNSF to be subject to derailment, imminent failure, or other serious physical hazard, BNSF will immediately notify the USCG, USACE, and SHPO, and immediately commence the USCG (Commandant Instruction M16590.5C, Chapter 4.F.) and USACE (33 CFR 325.2(e)(4)) emergency permit process prior to bridge removal and replacement. BNSF will notify the other Consulting Parties within twenty-four (24) hours of notifying the agencies. If the imminent failure prevents the documentation detailed in Stipulation IV.A. from being completed, then the USCG will consult with the parties to this agreement to reach consensus on other appropriate mitigation. This MOA will then be amended in accordance with Stipulation XII. to incorporate such mitigation.

Administrative Provisions

VI. PROFESSIONAL QUALIFICATIONS

All work carried out pursuant to this MOA will be developed and/or implemented by, or under the direct supervision of, a person or persons meeting or exceeding the minimum professional qualifications, appropriate to the affected resource(s), listed in the *Secretary of the Interior's Professional Qualification Standards* as defined and officially adopted in 1983 (48 FR 44716, September 29) and the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* as expanded and revised in 1997 (62 FR 33708, June 20). The USCG and BNSF will ensure that consultants retained for services pursuant to this Agreement meet these standards. This Stipulation does not apply to grant administrators or grantees that may receive funds under Stipulation IV.B.

VII. EFFECTIVE DATE

The terms of this agreement will become effective upon signature of all Signatories. The USCG will file a copy with the ACHP.

If an emergency is declared in the area of the Undertaking by the President of the United States or Governor of North Dakota, any deadlines written into this MOA may be extended by the USCG for a period of up to sixty (60) calendar days.

VIII. DURATION

Unless the MOA is terminated pursuant to Stipulation XIII., another agreement executed for the Undertaking supersedes it, or the Undertaking has been canceled, this MOA will remain in full force and effect for ten (10) years from the date of issuance of the USCG bridge permit. Prior to such time, the USCG may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation XII.

If the USCG determines that all terms of this MOA have been fulfilled in a satisfactory manner, the USCG will notify the Consulting Parties in writing of the agency's determination. This MOA will expire on the day the USCG so notifies the Consulting Parties.

IX. POST-REVIEW DISCOVERIES

A. If properties are discovered that may be historically significant, or if unanticipated effects on historic properties are found, the USCG shall implement the inadvertent discovery plan included as Attachment D.

B. If human remains are discovered during construction, work in that portion of the project shall stop immediately and the USCG shall implement the human remains section of the inadvertent discovery plan included as Attachment D.

X. MONITORING AND REPORTING

Commencing one hundred eighty (180) calendar days after this MOA is executed, BNSF and the grants administrator(s) identified in Stipulation IV.B.3. will each provide an annual report detailing all proposed scheduling changes and disputes or objections received in their efforts to carry out the terms of this MOA. These reports will be emailed to the USCG point of contact (POC), who will then distribute the report to the POCs for all parties as listed in Stipulation XIV. The USCG will hold periodic Consulting Party meetings after the MOA is executed when deemed necessary by the USCG.

XI. DISPUTE RESOLUTION

Should any Signatory or Concurring Party to this MOA object at any time to the manner in which the terms of this MOA are implemented, the USCG will consult with such party to resolve the objection. If the USCG determines that such objection(s) cannot be resolved, the USCG will:

A. Forward all documentation relevant to the dispute, including the USCG's proposed resolution, to the ACHP. The ACHP will provide the USCG with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USCG will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Concurring Parties and provide them with a copy of this written response. The USCG will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the USCG may make a final decision regarding the dispute and proceed accordingly. Prior to reaching a final decision, the USCG will prepare a written response that takes into account any timely advice or comments regarding the dispute from the Signatories and Concurring Parties and provide them and the ACHP with a copy of such written response.

C. The USCG's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

XII. AMENDMENTS AND ADDITIONAL PARTIES

A. This agreement may be modified upon the mutual written consent of the Signatories.

B. If additional approvals for the Undertaking are needed from another federal agency that is not a party to this MOA and the Undertaking remains unchanged, such agency may comply with Section 106 by agreeing in writing to the terms of this MOA, notifying and consulting with the SHPO and ACHP, and signing this MOA as a Signatory. Any necessary modifications would be considered in accordance with Stipulation XII.A.

XIII. TERMINATION

A. If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XII. If within thirty (30) calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories, explaining the reasons for termination.

Once the MOA is terminated, prior to work continuing on the Undertaking at the discretion of the USCG after consultation with the Signatories, the USCG must either:

A. Execute an MOA pursuant to 36 CFR § 800.6 or

B. Request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7.

The USCG shall notify the Signatories as to the course of action it will pursue.

XIV. POINTS OF CONTACT

The USCG POC will be the Commander Eighth Coast Guard District (dwb) (314) 269-2378. The SHPO POC will be Lorna Meidinger, Architectural Historian (701) 328-2089. The ACHP POC will be

Christopher Wilson, Program Analyst (202) 517-0229. The BNSF POC will be Mike Herzog, Director of Bridge Construction (913) 551-4229.

Execution of this MOA by the USCG, SHPO, and ACHP, and implementation of its terms, is evidence that the USCG has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

Attachment A
Revised APE and Visual APE Maps

May 6, 2021

Mr. Brian Dunn
U.S. Coast Guard Bridge Program (CG-BRG)
(202) 372-1510
brian.dunn@uscg.mil

**Subject: BNSF Bismarck Bridge Replacement Project
Revision of the project Area of Potential Effects**

Dear Mr. Dunn,

Per Stipulation I.A. of the Programmatic Agreement among the U.S. Coast Guard, the North Dakota State Historic Preservation Officer, and the Advisory Council on Historic Preservation regarding the Proposed Bridge Project at Mile 1315.0 on the Missouri River near Bismarck and Mandan, Burleigh County, North Dakota, Jacobs, on behalf of BNSF, is notifying your office and the North Dakota State Historic Preservation Officer (SHPO) (copied below) of needed revisions to the Area of Potential Effects (APE). Please see the attached map that shows the existing APE as well as the proposed revisions.

The APE is being revised through two expansions. The first expansion is to include a temporary construction access route on the western side of the Missouri River. This access route is still being negotiated with the North Dakota Department of Transportation (NDDOT) and is subject to change but is being evaluated in the Draft Environmental Impact Statement (DEIS). The second expansion is to accommodate the footprints of all alternatives being considered in the DEIS. These areas were not defined when the original APE was identified, but as any one of these alternatives has the potential to affect historic properties, the APE is being expanded to include them.

While the western access route is still being negotiated and the Preferred Alternative has not been selected, the APE is being revised to include these areas in advance of publication of the DEIS. Jacobs, on behalf of BNSF, requests that your office consult with the North Dakota SHPO on these APE revisions, and that you also convey this information to the Consulting Parties within 15 days of receipt, in accordance with the Programmatic Agreement. If you have any questions or would like additional information, please do not hesitate to contact me at Lori.Price@jacobs.com or 727-560-4503.

Thank you,

Jacobs Engineering Group, Inc.



Lori Price

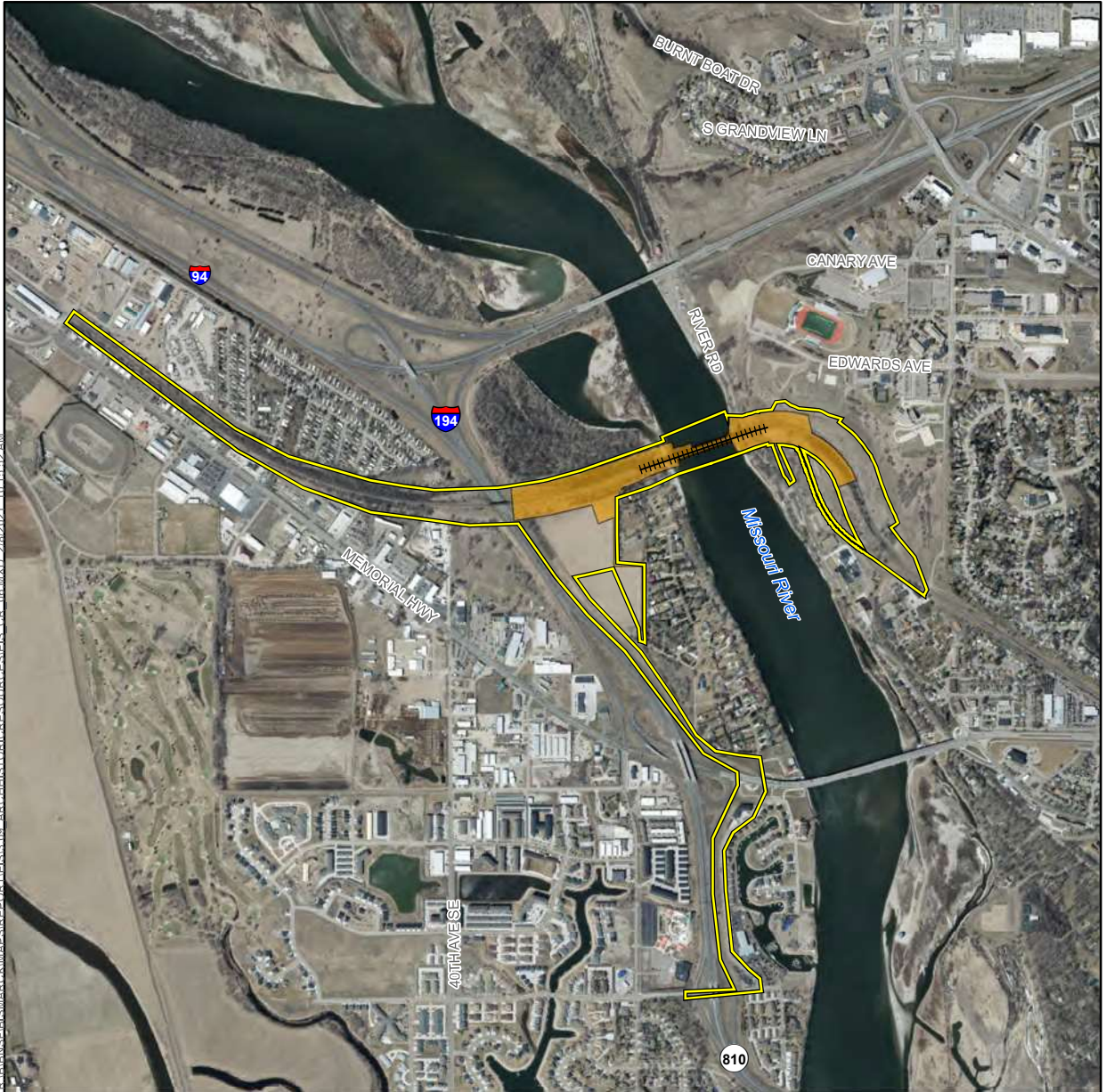
Enclosures:



May 6, 2021
Union Pacific Railroad Westlake Bridge Fender Replacement Project
Revision of the project Area of Potential Effects

Attachment 1 – Revised APE Map

cc: Dr. Bill Peterson, SHPO
Mike Herzog, BNSF

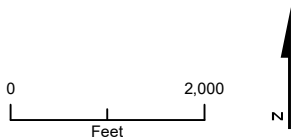


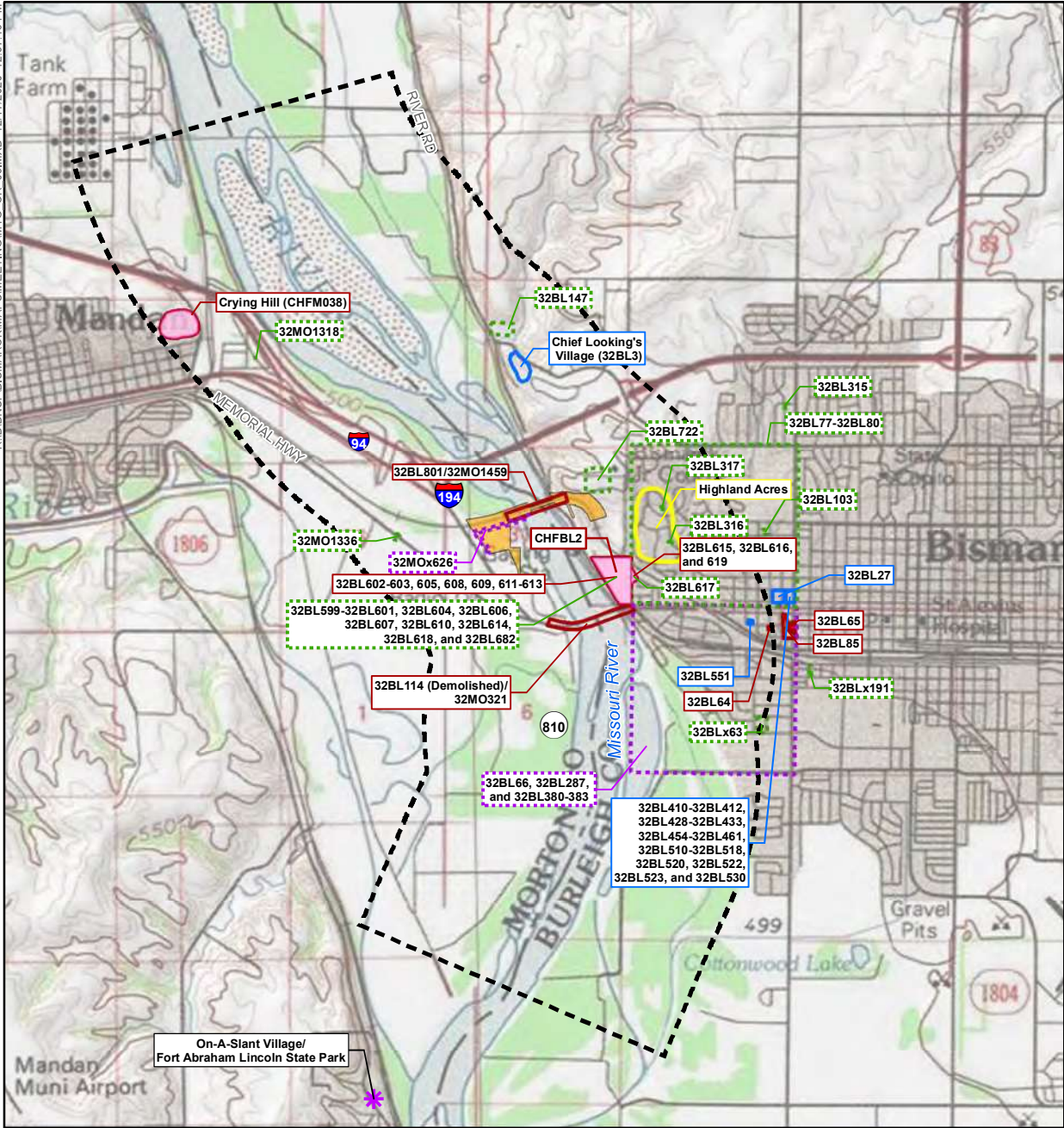
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Source: (ESRI Imagery, April 2020)

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- +++++ Existing Bridge
- Area of Potential Effects (Original)
- Area of Potential Effects (Expanded)

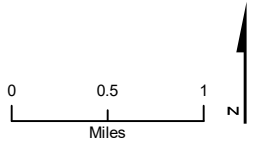




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- | | |
|--|--|
|  Added By Consulting Parties | Site Status |
|  Class III Inventory Project Area |  Traditional Cultural Property |
|  Visual Area of Potential Effects (APE) |  Eligible |
| |  Listed |
| |  Not Eligible |
| |  Unevaluated |
| |  Currently Being Surveyed for Historic District Nomination (as of 12-17-22) |



Attachment B
Identified Cultural Resources and Map of Non-Confidential Sites

Table 1: Results of the Site, Site Lead, and Isolated Find Files Search					
Sec-Twp/Rng	SITS#	Type	Recorder Date	NRHP Status	MS #
5-138/80	32BL63	Architectural - Residence	Schweigert/ Persinger 1988	E	108, 4554, 8462, 10128, 11555, 17256
	32BL64	Architectural - Residence	Schweigert/ Persinger 1988	E	
	32BL65	Architectural - Residence	Schweigert/ Persinger 1988	E	
	32BL66	Architectural - Residence	Schweigert/ Persinger 1988	NE	
	32BL85	Architectural/Historic - Park, Masonry, Metal	Schweigert/ Persinger 1988	E	
	32BL114	Architectural - Liberty Memorial Bridge	Meidinger 2011; Renewable Technologies, Inc./Hess, Roise, & Co. 1991	E	
	32BL287	Architectural - Calvary Free Lutheran Church	Ford-Dunker 1999	UN	
	32BL381	Architectural - Residence	Meidinger 2013; Wegscheid 1991	UN	
	32BL382	Architectural - Residence	Wegscheid 1991	UN	
	32BL383	Architectural - Residence	Wegscheid 1991	UN	
	32BL534	Archaeological - CMS, Faunal Remains, Chipped Stone	Pratt 2003	NE	
	32BL551	Architectural - Lundquist House	Ryan 2006	L	
	32BLx3	Isolated Find - Projectile Point	Borchert 2006	NE	
	32BLx7	Isolated Find - Fire Cracked Rock, Chipped Stone	Zachmann 2006	NE	
	32BLx63	Site Lead - Residence	BAM 1996	UN	
32BLx191	Site Lead - Residence	BAM 1996	UN		
6-138/80	32BL114	Architectural - Liberty Memorial Bridge	Meidinger 2011; Renewable Technologies, Inc./Hess, Roise, & Co. 1991	E	87, 3992, 8462, 8772, 8838, 8901, 10128, 15166
	32MO321	Architectural - Liberty Memorial Bridge	Renewable Technologies, Inc./Hess, Roise, & Co. 1991	E	
	32MO1318	Architectural -Bethel Assembly of God	Christopher 2002	UN	
1-138/81	32MO28	Archaeological - CMS, Earthlodge Village, Mound	Simonson 1997; Purcell 1979; Metcalf 1950	NE	80, 94, 2094, 2999, 3992, 6088, 6138, 6708, 6919, 8044, 8838, 8901
29-139/80	32BL315	Architectural - Church of Christ	Ford-Dunker 1999	UN	4554, 5506, 5968, 8172, 16299
30-139/80	32BL3	Archaeological - Chief Looking's Village	Bleier, SHSND 2010; Volk 2010; Metcalf 1950	E	80, 94, 109, 5410, 5506, 6886, 7133,

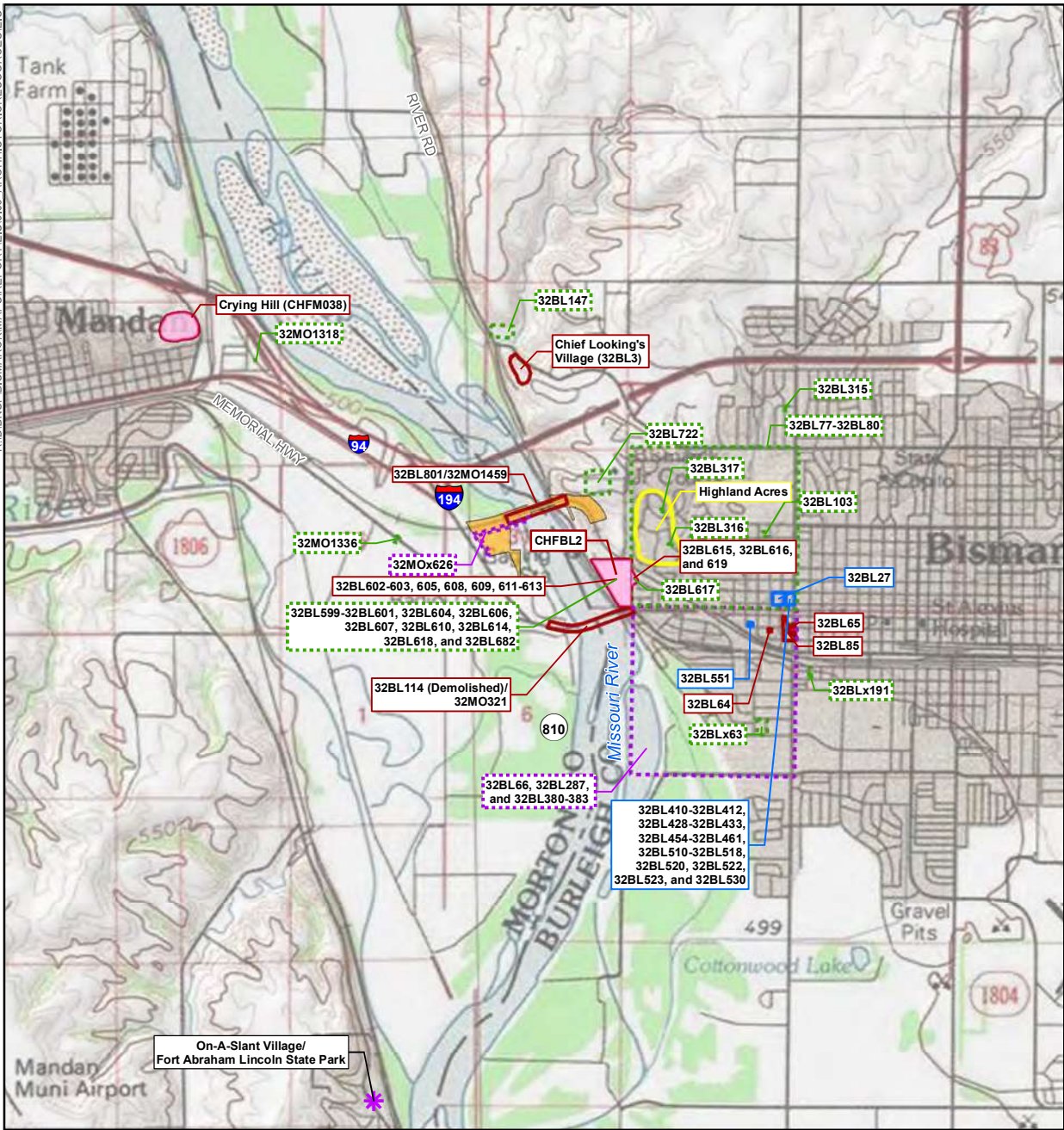
*Update: The Bismarck Indian School/Fraire Barracks is considered a Traditional Cultural Property by the MHA Nation and the Standing Rock Sioux Tribe (recorded as CHFBL2). The individual buildings are recorded as 32BL599 (not extant) with the following contributing buildings 32BL602-603, 605, 608, 609, 611-613, 615-616, 619.

Table 1: Results of the Site, Site Lead, and Isolated Find Files Search					
Sec-Twp/Rng	SITS#	Type	Recorder Date	NRHP Status	MS #
	32BL147	Architectural - Homestead	Good 1998	NE	8812, 11030, 12124, 15171, 15377, 16299
	32BLx202	Isolated Find - Faunal Remains, Chipped Stone	Good 1998	NE	
	32BKx351	Site Lead - Bismarck State College	Meidinger 2015	UN	
31-139/80	32BL599-32BL614	*Architectural - (16 Sites) - Fraire Barracks/ND National Guard	McCormick/Renewable Technologies, Inc. 2006		80, 109, 2011, 5920, 6354, 8772, 10861, 15171, 16299
	32BL616	*Architectural - Fraire Barracks/ND National Guard	McCormick/Renewable Technologies, Inc. 2006	UN	
	32BL618	Architectural - Fraire Barracks/ND National Guard	McCormick/Renewable Technologies, Inc. 2006	UN	
	32BL682	Architectural - Fraire Barracks/ND National Guard/Motor Vehicle Storage	Rossillon 2009	NE	
	32BL722	Architectural - Barrack Building	Meidinger 2011	UN	
	32BL801	Architectural - Northern Pacific RR Bridge	Barth 2016; Meidinger 2011; Benson 1980	E	
	32BLx66	Site Lead - Steamboat Warehouse	Benson 1980	UN	
	32BLx351	Site Lead - Bismarck State College	Meidinger 2015	UN	
	32MO321	Architectural - Liberty Memorial Bridge	Renewable Technologies, Inc./Hess, Roise, & Co. 1991	E	
	32MO1459	Architectural - Northern Pacific RR Bridge	Barth 2016; Meidinger 2011; Benson 1980	E	
32MOx626	Site Lead - Water Diversion Ditch	Yates 2017	NE		
32-139/80	32BL27	Architectural - Cathedral of the Holy Spirit	Ford-Dunker 1999	L	108, 4554, 10861, 15495
	32BL75-32BL80	Architectural - (7 Sites) - Residential			
	32BL103	Architectural - Ralph S. Thompson House	Fukuda 1978	UN	
	32BL316	Architectural - Church of the Cross	Ford-Dunker 1999	UN	
	32BL317	Architectural - United Church of Christ	Ford-Dunker 1999	UN	
	32BL410 - 32BL412	Architectural - (3 Sites) - Residential			
	32BL428 - 32BL433	Architectural - (6 Sites) - Residential			

**Update: The Bismarck Indian School/Frairie Barracks is considered a Traditional Cultural Property by the MHA Nation and the Standing Rock Sioux Tribe (recorded as CHFBL2). The individual buildings are recorded as 32BL599 (not extant) with the following contributing buildings 32BL602-603, 605, 608, 609, 611-613, 615-616, 619.*

Table 1: Results of the Site, Site Lead, and Isolated Find Files Search					
Sec-Twp/Rng	SITS#	Type	Recorder Date	NRHP Status	MS #
32-139/80	32BL454 - 32BL461	Architectural - (8 Sites) - Residential			108, 4554, 10861, 15495
	32BL510 - 32BL518	Architectural - (9 Sites) - Residential			
	32BL520	Architectural - Cathedral Convent	Mertz 2000	L	
	32BL522- 32BL523	Architectural - (2 Sites) - Residential			
	32BL530	Architectural - Residence	Mertz 2000	L	
	32BL615	*Architectural - Frairie Barracks/ND National Guard	McCormick/ Renewable Technologies, Inc. 2006	UN	
	32BL617	Architectural - Frairie Barracks/ND National Guard	McCormick/ Renewable Technologies, Inc. 2006	NE	
	32BL619	*Architectural - Frairie Barracks/ND National Guard	McCormick/ Renewable Technologies, Inc. 2006	UN	
	32BLx159	Site Lead - Bone, Glass, Metal	Ritterbush 1982	UN	
32BLx170	Site Lead - Mound/Isolated Find	LCT 1990	UN		
25-139/81	32MO1060	Archaeological - CMS, Charcoal, Faunal Remains, Fire Cracked Rock, Chipped Stone	Stine/Kulevsky 2002	UN	87, 6779, 6886, 7753, 8351, 8812, 8897
36-139/81	32MO1336	Architectural - International Cornerstone Church & Academy	Mertz 2002	UN	2054, 2999, 3992, 8351
	32MOx158	Isolated Find - Chipped Stone, TRSS Biface Fragment	Gnabasik 1988	NE	

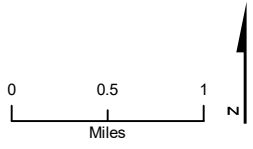
SITS=Smithsonian Institute Trinomial System, CMS=Cultural Material Scatter, NRHP=National Register of Historic Places, E=Eligible, UN=Unevaluated, NE=Not Eligible, L>Listed, MS=Manuscript



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|--|----------------------------------|--|--|
| | Added By Consulting Parties | | Site Status
Traditional Cultural Property |
| | Class III Inventory Project Area | | Eligible |
| | | | Listed |
| | | | Not Eligible |
| | | | Unevaluated |
| | | | Currently Being Surveyed for Historic District Nomination (as of 12-17-22) |



**Attachment C
Consultation Log**

Meeting Type	Date	Relevant Compliance
USCG Bridge Application Public Meeting (In compliance with Section 106 and NEPA)	December 14, 2017	NEPA/Section 106
SHPO Consultation Meeting (Conference Call)	January 10, 2018	Section 106
Consulting Parties Meeting #1	January 31, 2018	Section 106
Consulting Parties Meeting #2	May 14, 2018	Section 106
Consulting Parties Meeting #3	June 20, 2018	Section 106
Consulting Parties Meeting #4	July 11, 2018	Section 106
Consulting Parties Meeting #5	August 1, 2018	Section 106
Consulting Parties Meeting #6	August 22, 2018	Section 106
Consulting Parties Meeting #7	September 11, 2018	Section 106
Consulting Parties Meeting #8	October 10, 2018	Section 106
Consulting Parties Meeting #9	October 30, 2018	Section 106
Consulting Parties Meeting #10	November 14, 2018	Section 106
Consulting Parties Meeting with FEMA	July 12, 2019	Section 106
Consulting Parties Meeting #11	August 21, 2019 (originally scheduled December 4, 2018)	Section 106
Webinar for Consulting Parties	November 13, 2019	Section 106
Notice of Intent and Request for Public Comments (Notice # D8 DWB-891)	January 8, 2020	NEPA
USCG meeting with Consulting Parties	April 22, 2020	Section 106
Consulting Parties Meeting #12	September 18, 2020	Section 106
Consulting Parties Meeting #13	January 7, 2021	Section 106
Consulting Parties Meeting #14	March 3, 2021	Section 106
Consulting Parties Meeting #15	March 24, 2021	Section 106
Consulting Parties Meeting #16	May 14, 2021	Section 106
Consulting Parties Meeting #17	June 10, 2021	Section 106
Consulting Parties Meeting #18	September 22, 2021	Section 106
Consulting Parties Meeting #19	September 27, 2021	Section 106
Consulting Parties Meeting #20	March 9, 2022	Section 106
Consulting Parties Meeting #21	March 21, 2022	Section 106

Attachment D
Inadvertent Discoveries Plan

Attachment D. Inadvertent Discoveries Plan

- A. If previously unidentified cultural resources or unanticipated effects to historic properties are discovered during Project activities, the Project Manager shall immediately halt all project activities within a one-hundred-foot-radius of the discovery and notify BNSF. BNSF shall notify the United States Coast Guard (USCG), the North Dakota State Historic Preservation Officer (ND SHPO), and the City of Bismarck Historic Preservation Commission within 24 hours of the discovery and shall immediately implement interim measures to protect the previously unidentified cultural resource from looting and vandalism.
- B. Immediately upon receipt of notification, the USCG or their designee, in consultation with the ND SHPO, shall inspect the construction site to determine the extent of the discovery or the effect, ensure that construction activities have halted, clearly mark the area of discovery, and implement additional measures, as appropriate, to protect the previously unidentified cultural resource from looting and vandalism.
 - a. Unanticipated Effects
 - i. The USCG or their designee shall assess the unanticipated effect and the USCG shall determine if the effect is adverse. The USCG shall provide their assessment and effects finding to the ND SHPO for concurrence. The ND SHPO shall respond within 15 days of receipt of the finding. If the finding is No Adverse Effect, work may proceed with no further delay.
 - ii. If the USCG finds the unanticipated effect is adverse, they shall consult with the ND SHPO to design a plan for avoiding, minimizing or mitigating the adverse effect, prior to project activities resuming in the area of the unanticipated effect.
 - b. Previously Unidentified Cultural Resources
 - i. The USCG shall ensure that a qualified professional archaeologist examines the previously unidentified cultural resource to determine if it is an archaeological site, isolated find, or not a cultural resource.
 - ii. If it is determined not to be an archaeological site, or is determined to be an isolated find, work may proceed with no further delay.
 - iii. If it is determined to be an archaeological deposit, it will be assumed eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion D until a formal Determination of Eligibility is made.
 - iv. The USCG shall ensure the proper documentation and assessment of any newly discovered cultural resource, in consultation with ND SHPO. All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist using standard techniques. In consultation with the ND SHPO, the USCG shall determine the appropriate level of documentation and treatment of the resource.
 - v. Project construction outside the discovery location may continue while documentation and assessment of the cultural resource proceeds.

Attachment D. Inadvertent Discoveries Plan

- vi. The USCG will make a Determination of Eligibility based on the documentation. If the USCG determines the resource is not eligible for the NRHP, they shall provide the documentation to the ND SHPO for concurrence. The ND SHPO will have 15 days to respond.
 - vii. If the USCG determines the resource to be a historic property, then, in consultation with the ND SHPO, they will design a plan for avoiding, minimizing or mitigating any adverse effects to the historic property prior to project activities resuming in the area of the discovery.
- C. Construction may continue at the discovery location only after the process outlined in this plan is followed and the USCG determines that compliance with state and federal laws is complete.
- D. Treatment of Human Remains
- a. If an inadvertent discovery contains human remains on private property, work in that portion of the project shall stop immediately. BNSF shall be cover the remains and/or protect them in place in such a way that minimizes further exposure of and damage to the remains. BNSF shall immediately notify the USCG, law enforcement, and the ND SHPO.
 - b. Once notified, the USCG shall immediately consult with the ND SHPO and the Intertribal Reinternment Committee in compliance with *North Dakota Century Code 23-06-27* and the North Dakota Administrative Code 40-02-03.
 - c. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the USCG and ND SHPO.
 - d. At all times the human remains must be treated with the utmost dignity and respect, and in a manner consistent with the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007).
 - e. If the remains are found to be Native American, in accordance with applicable law, a treatment plan shall be developed by the USCG and ND SHPO in consultation with appropriate federally recognized Indian tribes. The USCG shall ensure that any treatment and reburial plan is fully implemented.
 - f. If the remains are not Native American, the USCG shall consult with the appropriate local authority to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.
- E. BNSF shall ensure that the requirements and protocols established in this Plan are incorporated into all appropriate construction contracts.

SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

AMONG THE UNITED STATES COAST GUARD,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER
NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Signatory:

United States Coast Guard



Richard V. Timme, Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District

Date

AUG 24 2022

SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

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NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Signatory:

North Dakota State Historic Preservation Officer



William Peterson, State Historic Preservation Officer

Date 8-9-2022

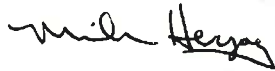
INVITED SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

AMONG THE UNITED STATES COAST GUARD,
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REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER
NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Invited Signatory:

BNSF Railway Company



Digitally signed
by Mike Herzog

Date:

2022.08.10

09:12:17 -05'00'

Date

Mike Herzog, P.E., Director of Bridge Construction, BNSF Railway
Company

INVITED SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

**AMONG THE UNITED STATES COAST GUARD,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
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REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER
NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA**

Invited Signatory:

Northern Plains Heritage Foundation

A handwritten signature in blue ink that reads "Aaron L. Barth". The signature is written over a horizontal line.

Aaron Barth, Executive Director

Date 08/10/2022

SIGNATORY PAGE

MEMORANDUM OF AGREEMENT

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NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA**

Signatory:

Advisory Council on Historic Preservation



Reid Nelson, Executive Director, Acting

Date 9/27/2022

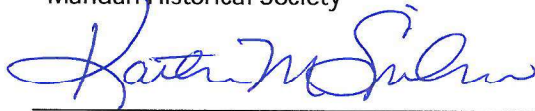
CONCURRING PARTY PAGE

MEMORANDUM OF AGREEMENT

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REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER NEAR
BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Concurring Party:

Mandan Historical Society



Kathye Spilman, Secretary

Date

8/9/2022*

CONCURRING PARTY PAGE

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REGARDING THE PROPOSED BRIDGE PROJECT AT MILE 1315.0 ON THE MISSOURI RIVER NEAR
BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA**

Concurring Party:

North Dakota State Railroad Museum



William G. Engelter, President

Date

8-4-22