

## FORB – Friends of the Rail Bridge

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Established 2018 | Burleigh & Morton County | (701)220-4513 |friendsoftherailbridge@gmail.com

April 16, 2021

Brian Dunn  
Chief, Office of Bridge Programs (CG-BRG)  
Coast Guard Headquarters  
US Coast Guard Stop 7318  
2703 Martin Luther King Jr Avenue SE  
Washington DC 20593-7318  
[REDACTED]

RE: Friends of the Rail Bridge Commits to Public Private Partnership Responsibility

Dear Mr. Dunn,

This letter is in response to your email of April 8, 2021, to Mark Zimmerman, President of Friends of the Rail Bridge (FORB). In your email you said that if no public private partnership is established as stipulated in 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* (PA), “we need a commitment from FORB by April 16 (the day after the Bismarck Parks and Recreation Commission Board meeting) that FORB is taking over all responsibilities of the public private partnership and their plan to establish a governance body that can take ownership/become lessee of the bridge.”

We very much appreciate your flexibility on this matter. FORB is committed to taking over all responsibilities of the public private partnership and will continue to seek public partners to become a governance body that can take ownership or become the lessee of the bridge. In order to accomplish this, FORB seeks your assistance in overseeing a collaborative process for compliance with Section 106 of the National Historic Preservation Act and giving due consideration to amendments to the PA proposed by FORB on April 13, 2021.

The reasons FORB has thus far been unable to find a public partner are twofold. First, the financial burden of bridge preservation stipulated in the PA is too high for local governments and not in accordance with Section 106 mitigation of adverse effects (36

CFR 800.6) and second, BNSF's aggressive opposition to preservation of the historic bridge is undermining all potential public partnerships.

Regarding the first point, on November 28, 2018, the Advisory Council on Historic Preservation (ACHP) published "Guidance to Consulting Parties in the Section 106 Review Process" on its website. While it begins with assistance to State Historic Preservation Offices and Tribal Historic Preservation Offices, it also clarifies a federal agency's role in working with consulting parties, like FORB. First of all, it says "if a consulting party is asked by a federal agency to do more than respond to a federal agency's findings and determinations, then it should be compensated for its efforts." Please note that in this consultation process FORB and other consulting parties have been directed to develop mitigation measures fully and agree to fund such measures. For instance, in your March 15 email to consulting parties, you tasked consulting parties with researching and presenting mitigation measures they had proposed previously and asked if they would be "amendable to the mitigation once they have any idea of how much mitigation they will be responsible for funding." We have not been compensated for this work.

The same guidance document states, "The federal agency is responsible for developing and considering actions to resolve adverse effects to historic properties where it has determined such effects may occur as part of a Section 106 review. In most cases, this results in measures agreed to by the agency to minimize or mitigate harm. The federal agency is therefore responsible for ensuring any such measures are funded and carried out, either directly by the agency or others, such as an applicant for a federal license, approval, or permit, as specified in a Section 106 agreement document or other binding final agency decision document."

In addition to being held responsible for developing and implementing multiple mitigation measures FORB proposed, in the PA FORB as an interested party or invited signatory has been directed to raise funds to pay for BNSF's engineering design and construction premiums estimated by BNSF to cost \$60-90 million, develop a CLOMR for a preservation alternative, and pay for mitigation as well as fund engineering design and acquire permits for construction to offset predicted flood rise for a preservation alternative. This is the opposite of the intent in ACHP published guidance and Section 106 Resolution of Adverse Effects (36 CFR 800.6). In fact, the permit applicant, BNSF, is tasked with little in the PA and has committed verbally only to give a piece of the destroyed historic property to one of the consulting parties and mount a plaque on their newly constructed rail bridge.

Regarding the second point, in the ACHP published guidance to permit applicants, like BNSF, the applicant is advised to approach "the consideration of alternatives to avoid or minimize adverse effects with flexibility, creativity, and respect for the interests of other participants in the process" (see Section 106 Applicant Toolkit Synopsis). The applicant is also tasked with working to "assist the agency in implementing mitigation measures as set forth in the MOA and PA."

Rather than being collaborative and respectful, BNSF actively opposes preservation of the bridge in meetings with FORB's prospective partners despite having signed the PA, which includes preservation of the bridge. When FORB requests to present a request for partnership during a local public entity board meeting, BNSF also requests to be included and, in their presentation, aggressively opposes bridge preservation, warns potential partners it will cost them \$60-90 million dollars to save the bridge, and asks them to turn down FORB's request to join the public private partnership. Case in point is Mike Herzog's presentation last night to the Bismarck Park Board

(<https://dakotamediaaccess.net/CablecastPublicSite/show/8015?channel=2>).

FORB is committed to continue seeking public partners but may be unsuccessful if the PA is not amended to remove undue financial burden from the public private partnership and if BNSF continues to undermine all our efforts. We ask for your support in revising the PA and request you advise BNSF to work collaboratively with us to develop measures to mitigate their proposed adverse effects to this endangered historic property, the Bismarck Bridge. Please see the attached PDF of the Bismarck Tribune story from the April 15, 2021 Bismarck Park Board meeting that states the reason to table a decision is due to unknown financial responsibilities.

If you have any questions, please feel free to contact me. We look forward to productive collaboration with the U.S. Coast Guard, the Advisory Council on Historic Preservation, and other consulting parties.

Sincerely,



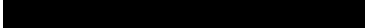
Mark Zimmerman  
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cc:


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