

Comment #	Page #	Author	Comment Scope	Comment Text	Comment Response
1	1	Snortland	First "Whereas" Clause - ...the United States Coast Guard (USCG) is the lead federal agency, responsible for making a federal bridge permit decision	Isn't the USCG responsible also for issuing the permit? Issuing a permit is more than making a decision. It's acting on that decision.	
2	1	Merritt	4th "Whereas" Clause - APE	An APE should be prepared for visual impacts as well, not just the footprint of ground disturbance. The rationale that there are no historic properties outside the footprint is clearly erroneous. For example, the Bridge is part of the 80-mile corridor of the Northern Plains National Heritage Area, which runs along the Missouri River. The Bridge also crosses the Lewis & Clark National Historic Trail, which runs along the Missouri River. In addition, as noted in the Whereas Clauses below, there are a number of significant ancestral and traditional cultural sites within the viewshed of the historic bridge.	
3	1	Merritt	4th "Whereas" Clause - APE	In addition to visual impacts, it will be important to assess potential construction vibration impacts, which will extend beyond the footprint itself.	
4	1	Sakariassen	4th "Whereas" Clause - APE	Preservation North Dakota remains concerned that there have been multiple questions raised from different parties about how the potential effects are defined and what the extent of the APE is and what that is based on. We request further discussion to ensure all consulting parties are clear about this very important information before a draft of the PA is approved. We realize it's something that should be understood from very early on in this process, but perhaps that is not the case and that should be addressed again. Thank you.	

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5	1	Snortland	4th "Whereas" Clause - APE	<p>NHPA Section 106 § 800.16(d) states, "Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking."</p> <p>The October 12, 2017, SHPO letter of response to USCG's September 20, 2017, consultation letter made no mention of the APE. SHPO only recommended an EIS be prepared and found the Class III report to be acceptable. Is there another letter we do not have? If so, please share the SHPO consultation correspondence with consulting parties.</p> <p>In fact in the October 12 letter the Deputy SHPO did not concur with USCG's APE and given the USCG has not fully defined the limits of disposal, borrow, and staging, such concurrence would be premature. We also are concerned that the Class III report did not include these areas of disturbance in the Class III survey and the APE also was not defined in the Class III report. Although page 3 of the Class III report depicts a project area, the contractor did not record or discuss the earthwork/berm that was built up over the wood falsework/trestle that creates the grade leading to the bridge's portal on the Morton County side. It should have been documented as either an</p>	
6	1	Merritt	4th "Whereas" Clause - APE: "...that they would like to see any additional areas to be used for disposal, borrow or staging ..."	Make sure there's a provision to address this in the stipulations	

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7	1	Merritt	6th "Whereas" clause	This confirms the importance of developing an APE for visual impacts.	
8	2	Merritt	7th "Whereas" clause	More confirmation that a visual APE is necessary.	
9	2	Merritt	8th "Whereas" clause	More confirmation that a visual APE is necessary.	
10	2	Snortland	8th "Whereas" clause	After the APE is redefined to cover direct and indirect effects (including auditory and visual) of all related activities, a Class I inventory should be conducted to identify all historic properties and their site numbers within sight and hearing of construction and demolition activities, such as explosions, pile driving, and heavy equipment operations.	
11	2	Meidinger	8th "Whereas" clause	Only a portion of the hill has been surveyed for archeology but the whole landform is Crying Hill. Therefore, it would be inappropriate to cite a site number for only a portion of it.	
12	2	Merritt	14th "Whereas" clause - a desire and willingness to participate in future consultations if needed	This should not be contingent upon signing as a concurring party.	
13	3	Snortland	18th "Whereas" clause	FORB asks if NDSU really is a consulting party. Please provide copies of correspondence with consulting parties – invitations and responses.	
14	4	Merritt	Stipulation I - Federal Emergency Management Agency (FEMA) no net rise requirement .	It would be helpful to have a citation to this	
15	4	Sakariassen	Stipulation I.B - giving it the same level of consideration as BNSF's preferred alternative	PND requests further explanation at a future meeting. Not sure our board fully understands what this means.	

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16	4	Snortland	Stipulation II - net rise to the floodplain	Please quantify. All models have a margin of error. If the net rise predicted is less than the margin of error in the model, is it considered no net rise?	
17	4	Snortland	Stipulation II - must document the potential mitigation measures associated with the net rise for that alternative(s)	Do you mean propose or identify? What is meant by "document?"	
18	4	Snortland	Stipulation II.A - process for any new alternative(s) resulting in a net rise	This is very informative, but does it belong in a PA? Isn't this more applicable to NEPA compliance than NHPA?	
19	4	Snortland	Stipulation III	Why is this stipulation "Retain Existing Bridge" is presented in a table and the parallel section of "Remove Existing Bridge" is not? Suggest using the same format to put these stipulations on equal footing and identify the responsible party for each action under "Remove the Existing Bridge" stipulation.	
21	5	Merritt	Stipulation III.B Table	This chart is a useful format. We recommend using it for Stipulation IV. as well.	
23	5	Merritt	Stipulation III.B - Bridge Design Review Committee	This is also important for Option IV (Remove Existing Bridge)	

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24	5	Kaitala	Stipulation III.B - Bridge Design Review Committee	BNSF will not consider a bridge that looks other than how a bridge should look in 2020. This is in line with NPS guidelines, which indicate that new structures should not attempt to look like old structures. "Each property will be recognized as a physical record of its time" and not create a false sense of history. <a href="https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf">https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf</a> Also, a railroad bridge must be designed by railroad engineers.	
25	5	City of Bismarck	Stipulation III.B - Bridge Design Review Committee	Not sure if it is appropriate or not for the Bismarck Historic Preservation Commission to take the lead in this effort. The initial recommendation suggested that BNSF take the lead on this effort in partnership with others such as SHPO, FORB, and the Bismarck Historic Preservation Commission. Could you please highlight this item to seek clarification from the larger group as to whom would be most appropriate to take the lead role.	
26	5	Kaitala	Stipulation III.B - FORB to Establish a public/private partnership	If FORB cannot find a willing public partner, we need an off ramp.	
27	5	Kaitala	Stipulation III.B - Public-Private Partnership	If the public private partnership will not agree or cannot meet these requirements, we need an off ramp.	
28	5	Snortland	Stipulation III.B - Public-Private Partnership • Provide reasonable assurance that the following will be obtained:	Add another bullet - Interpretive signage documenting history of the Bismarck Bridge	

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29	5	Snortland	Stipulation III.B - Public-Private Partnership	Insert "BNSF will donate funds to the Public Private Partnership equivalent to the cost of demolishing the bridge.	
30	5	Kaitala	Stipulation III.B - fund and select a Secretary of the Interior-qualified consultant to prepare NRHP nomination	BNSF objects to this. The new owner or lessee of the bridge should be responsible for this documentation.	
31	6	Merritt	Stipulation III.B - Nomination must be completed and accepted by the SHPO prior to demolition	But this alternative does not involve demolition.	
32	6	Sakariassen	Stipulation III.B - Nomination must be completed and accepted by the SHPO prior to demolition	This statement makes little sense. PND would like to point out that a National Register nomination is a pointless endeavor if the bridge is to be demolished. It would be more useful and appropriate to have it documented in the HABS/HAER program in the event that it is demolished; NRHP nomination in the event that it is left in place.	
33	6	Meidinger	Stipulation III.B - Nomination must be completed and accepted by the SHPO prior to demolition	This list is under Retain Existing Bridge so possibly say "prior to any demolition"	
34	6	Snortland	Stipulation III.B - Nomination must be completed and accepted by the SHPO prior to demolition	This stipulation retains the existing bridge; therefore, the bridge would not be demolished.	
35	6	Kaitala	Stipulation III.B - Nomination must be completed and accepted by the SHPO prior to demolition	This is confusing since this option is to keep the bridge.	

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36	6	Kaitala	Stipulation III.B - BNSF- Secure additional right-of-way as needed; Protect water intake/water plant, underground reservoir, and piping; Ensure adequate slope stability; Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc.	BNSF objects to this as well. The costs of these items should be borne by those who wish to keep the bridge, particularly mitigation and compensation to parties that specifically are asking to keep the bridge.	
37	6	Merritt	Stipulation III.B - (added) Develop a vibration monitoring plan for construction. Make the draft plan available for comment by the consulting parties, and the plan must be approved by the USCG.	added text	
38	6	Merritt	Stipulation III.B - Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc	We need to add a process for reviewing and approving the plan.	

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38	6	Snortland	Stipulation III.B - BNSF- Secure additional right-of-way as needed; Protect water intake/water plant, underground reservoir, and piping; Ensure adequate slope stability; Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc.	While these are valid concerns, these are NEPA issues and not NHPA-related. NHPA states, “§800.1 Purposes. (a) Purposes of the section 106 process. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings... The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.” These issues should be addressed in the Draft EIS and not the PA.	
39	6	Snortland	Stipulation IV.A - BNSF- Secure additional right-of-way as needed; Protect water intake/water plant, underground reservoir, and piping; Ensure adequate slope stability; Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc.	See previous comment about this being a NEPA issue and not pertinent to NHPA.	

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40	6	Merritt	Stipulation IV.A - Establish a Bridge Design Review Committee to consider how design of the new bridge could be visually compatible with the Bismarck Bridge and its landscape, setting, and viewshed. Committee may include representatives from the North Dakota SHPO, FORB, North Dakota State Water Commission, USCG, BNSF, and tribes.	This is copied from Stipulation III. above. This is not just a mitigation measure, but will also help to <u>reduce</u> adverse visual effects to surrounding historic properties.	
41	7	Snortland	In addition, the design of the new bridge shall include a pedestrian/bicycle crossing.	added text	
42	7	Merritt	Develop a vibration monitoring plan for construction. Make the draft plan available for comment by the consulting parties, and the plan must be approved by the USCG.	added text	
41	7	Merritt	Stipulation IV.A - Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc.	We need to add a process for reviewing and approving the plan.	

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42	7	Kaitala	Stipulation IV.A - Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, etc.	this is far too vague and does not belong in a 106 agreement. BNSF cannot agree it will compensate anyone for impacts during construction	
43	7	Kaitala	Stipulation IV.B - Possible Mitigation Suggestions for Discussion	BNSF will only consider funding those items that are DIRECTLY RELATED to mitigating the removal of one railroad bridge in North Dakota. Further, BNSF will not sign up for open-ended funding of any item.	
44	7	Snortland	Stipulation IV.B (responsible parties to be determined through consultation)	FORB – Any party assigned a role in a mitigation measure should be included as a concurring party in this PA.	
45	7	Sakariassen	Stipulation IV.B.2 - Possible Mitigation Suggestions for Discussion	PND requests further discussion about how stipulation measures (in both events of bridge removal and retention) will be further developed, since we are interested in being involved in this process as it moves forward. Can that be a discussion item for a future meeting? Could examples be made available so that we can conceptualize how our organization as a consulting party can expect to remain involved?	
46	7	Merritt	Stipulation IV.B. - Provide funding for the development of a multi-use trail(s )	What would be the relationship of this new trail to the existing Lewis & Clark National Historic Trail?	
47	7	Merritt	Stipulation IV.B.6 - Provide funding to survey the Bismarck Bridge and other historic resources around the Bismarck and Mandan communities for possible nomination to the NRHP	There would be no point in nominating the Bridge itself to the National Register since it would be destroyed under this scenario.	

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48	9	Merritt	Stipulation IV.B.19 - Ensure that funds are made available to the Bismarck Historical Society and to the Mandan Historical Society	Add Northern Plains Heritage Foundation / Northern Plains National Heritage Area to one of these lists.	
49	9	Snortland	Stipulation IV.B.19	Insert another mitigation measure: Integrate a bicycle and pedestrian pathway into the design of the new bridge. Pathway will integrate with the existing trail networks of Bismarck and Mandan and will include historic interpretive signage that highlights the significance of the Bismarck Bridge.	Inserted into draft by Kimball Banks
50	10	Meidinger	Stipulation IV.C.1 - HISTORIC AMERICAN ENGINEERING RECORD DOCUMENTATION (Level of documentation to be determined through consultation)	HAER standards do not allow digital cameras, <a href="https://www.nps.gov/hdp/standards/PhotoGuidelines.pdf">https://www.nps.gov/hdp/standards/PhotoGuidelines.pdf</a> The prints, however, can be digitally created	Level of documentation TBD
51	10	Meidinger	Stipulation IV.C.1.c - HISTORIC AMERICAN ENGINEERING RECORD DOCUMENTATION (Level of documentation to be determined through consultation) Photographs	HAER standards do not allow digital cameras, <a href="https://www.nps.gov/hdp/standards/PhotoGuidelines.pdf">https://www.nps.gov/hdp/standards/PhotoGuidelines.pdf</a> The prints, however, can be digitally created	

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52	11	Sakariassen	Stipulation V. IMMINENT FAILURE	<p>PND is very concerned about the language in this item. We insist that more specific language be used to define “other physical breakdown.” Also, we want it clearly outlined how the “imminent failure” determination would be made and if that determination would be subject to review by another authority. We also think it would be important that all consulting parties be notified, if not consulted, out of respect for the time, energy, and in some cases money that has been put into this cooperative effort to-date.</p>	
53	11	Snortland	Stipulation V. IMMINENT FAILURE	<p>– We strongly object to vague terms like “other physical breakdown” that are so broad as to encompass normal maintenance issues. Section 106 addresses emergency situations, which should be followed instead of this stipulation. The regulations state: in “§ 800.12 Emergency situations. 12(a) Agency procedures. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which <u>respond to other immediate threats to life or property</u>. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.” [emphasis added]</p>	

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54	11	Merritt	Stipulation V. IMMINENT FAILURE	We strongly object to allowing a unilateral determination by BNSF as to whether the historic bridge is subject to imminent failure or “other physical breakdown.” A process needs to be established that involves the signatories & invited signatories.	
55	12	Merritt	Stipulation VII. PROFESSIONAL QUALIFICATIONS	Are you sure there was an amendment to the 1983 Standards? I don’t think this is correct. I think the only choices are the 1983 standards, cited here, and the proposed 1997 Standards, which are much more comprehensive, but weren’t formally adopted as final. 62 Fed. Reg. 33,708 (June 20, 1997). Nonetheless, we often cite the 1997 Standards as a PA requirement because they’re published, and specific, and so much better than the 1983 Standards.	
56	13	Merritt	Stipulation XI. DISPUTE RESOLUTION	We strongly recommend that the dispute resolution procedure be available to all consulting parties. Otherwise, you’re pushing some parties to take their objections to court rather than trying to work it out with the Coast Guard first.	
57	13	Merritt	Stipulation XIII.A TERMINATION	This should either be all consulting parties or just the signatories & invited signatories.	
58	13	Merritt	Stipulation XIII.A TERMINATION	This term is ambiguous. Do you mean to include all consulting parties? Or just signatories & invited signatories?	
59	13	Merritt	Stipulation XIII.A TERMINATION	Ditto	
60	14	Meidinger	Stipulation XIV. POINTS OF CONTACT	Recommend using the same format as the other phone numbers	Format corrected for consistency
61	14	Merritt	Execution	Don’t we need to specify that the Army Corps gets credit for 106 compliance as well?	

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62	16	Meidinger	SHPO Signatory Page	Our new SHPO is William D. Peterson, PhD	SHPO has been updated
63	16	Snortland	SHPO Signatory Page	Claudia retired July 1.	SHPO has been updated