

MEMORANDUM OF AGREEMENT
BETWEEN
THE DELAWARE AND RARITAN CANAL COMMISSION
AND
THE NEW JERSEY DEPARTMENT OF TRANSPORTATION
AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
HISTORIC PRESERVATION OFFICE

I. Purpose

This Memorandum of Agreement (“MOA”) establishes a cooperative framework for the coordinated, standardized and expedited review of the visual, historic and natural quality impacts of projects proposed by the New Jersey Department of Transportation (the “DOT”) to rehabilitate or replace bridges with wooden decks located within the Review Zone of the Delaware and Raritan Canal Commission (the “Commission”).

Throughout its operation, the Delaware and Raritan Canal utilized a series of movable span bridges that allowed vehicles and pedestrians to cross the canal without impeding the waterborne traffic. These “A” frame swings, king-post, bascule and other types over movable spans, were replaced in the decades following the canal’s closure, by fixed spans. These bridges, which were constructed primarily of wood and featured white-painted wooden guiderails are evocative of the movable span designs used in a period of the canal’s historic significance. Accordingly, the rehabilitation or replacement of these bridges should employ design elements and use materials that respect and highlight the canal’s historic significance.

The need for this MOA originates with the DOT project to replace the bridge that carries Somerset County Route No. 518 over the Delaware and Raritan Canal near the Borough of Rocky Hill. After a considerable period of negotiation, the Commission approved a replacement bridge; however, the design of the replacement bridge was considered incompatible with the canal’s status as an historic district by the Commission, while the process employed to arrive at the replacement bridge design was considered unduly protracted by the DOT. It was therefore, deemed desirable by both the DOT and the Commission to devise an improved approach to the review of future projects by the Commission.

To achieve this purpose, a joint DOT/Commission letter dated January 30, 2017 established an interagency task force comprised of the DOT, the Commission, the Department of Environmental Protection (“DEP”) Division of Parks and Forestry, DEP State Historic Preservation Office (“SHPO”), the New Jersey Water Supply Authority (“NJWSA”), local municipality and county representatives, and other stakeholders with an interest in the Delaware and Raritan Canal. The task force was charged with the: identification, categorization and the development of a shared understanding of the existing bridges with wooden decks within the Delaware and Raritan Canal State Park (“Park”); and the review of the regulatory, policy, design, safety and engineering issues

and concerns of both the DOT and the Commission relating to the periodic rehabilitation and potential replacement of those bridges.

Upon the completion of its deliberations, the task force made recommendations regarding the resolution of the issues noted above, which in turn are memorialized in this MOA. The MOA would improve both the process, design, safety and engineering aspects of future proposed park bridge rehabilitation or replacement projects, and thereby facilitate and expedite the review of the visual, historic and natural quality impacts of such projects pursuant to N.J.A.C. 7:45-10.

The MOA is not intended to, nor does it, supersede, alter, or otherwise authorize the DEP Division of Parks and Forestry, SHPO, or the NJWSA to deviate from any of the substantive requirements of: N.J.S.A. 13:1B-15.128 et seq., or the requirements of N.J.A.C. 7:4; N.J.S.A. 13:13A-1 et seq., N.J.S.A. 13:1B-1 et seq., 13:1B-15.000 et seq., and 13:1L-1 et seq., or the requirements of N.J.A.C. 7:2.; or N.J.S.A. 58:1B-1 et seq., or the requirements of N.J.A.C. 7:11, respectively.

The MOA is not intended to compel the DOT to design a bridge rehabilitation or replacement project within the Review Zone in any manner, including but not limited to, a manner which is inconsistent with applicable Federal, State (New Jersey Department of Transportation Design Manuals), and Professional (American Association of State Highway and Transportation Officials (AASHTO)) engineering and traffic safety standards, violates the provisions of the "Americans with Disabilities Act of 1990," 42 U.S.C. §12101 et seq., or in a manner so as to occasion the loss of federal funds or otherwise deviate from any of the substantive requirements of: Title 23 of the U.S. Code, or Title 49 of the U.S. Code, or violate any State or Federal Environmental Regulation.

Recitals

WHEREAS, the Delaware and Raritan Canal Commission is within the DEP, established pursuant to the Delaware and Raritan Canal State Park Law ("Law") of 1974, N.J.S.A. 13:13A-1 et seq., and charged with implementing the requirements of the Law; and

WHEREAS, in accordance with the requirements of the Law at N.J.S.A. 13:13A-11, the Commission developed and adopted the Master Plan, a comprehensive statement of policies for planning and managing development and land use in the Review Zone, as defined at N.J.A.C. 7:45-1.3 ("Review Zone"); and

WHEREAS, the Master Plan and the Commission's regulations at N.J.A.C. 7:45 set forth the regulatory standards adopted by DEP and the Commission to protect, preserve and enhance the significant values of the land and resources of the Review Zone; and

WHEREAS, the Commission, pursuant to its regulations, regulates land use planning and exercises development review authority over all development within the Review Zone; and

WHEREAS, the Commission has the authority to regulate governmental projects, as defined at N.J.A.C. 7:45-1.3 conducted by or on behalf of the State of New Jersey, Department of Transportation in the Review Zone; and

WHEREAS, the Commission is authorized by N.J.S.A. 13:13A-12c. to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the commission or to carry out any power expressly given in the Law; and

WHEREAS, the DOT is a principal Department of the Executive Branch of State Government, and through the Commissioner of Transportation, is authorized, pursuant to N.J.S.A. 27:1A-5 and 27:7-21, to contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under Title 27; and

WHEREAS, the DOT manages bridge construction and repair projects in the public trust for the State of New Jersey in accordance with its functions and responsibilities under state and federal law; and

WHEREAS, a number of these bridges are located within the Review Zone;

WHEREAS, as part of its management of these bridges, the DOT seeks to engage in bridge rehabilitation or replacement activities which would constitute governmental projects as defined by N.J.A.C. 7:45-1.3 and, therefore, will submit an Application and obtain a certificate of approval of same from the Commission before undertaking such activities within the Review Zone.

WHEREAS, the SHPO is within the DEP and is charged, pursuant to N.J.S.A. 13:1B-15.128, with the preservation of the State's historic, architectural, archaeological, and cultural heritage in accordance with N.J.A.C. 7:4-1.1 to -8.9; and

WHEREAS, the SHPO, pursuant to N.J.S.A. 13:13-3.2, desires to participate in this MOA.

NOW, THEREFORE, the Commission, the DOT, and SHPO (collectively, the "Parties") agree as follows:

II. The DOT agrees:

1. To design and conduct all bridge rehabilitation or replacement in the Review Zone in accordance with the provisions of N.J.A.C. 7:45.
2. To submit an application to the Commission for any proposed bridge rehabilitation or replacements to be conducted within the Review Zone.
3. To include Commission representatives as part of the DOT design process for bridge rehabilitation or replacement projects within the Review Zone.
4. To schedule and attend pre-application meetings with members of the Commission's staff, as needed, to ensure there are no delays in the processing of the application submittals for proposed bridge rehabilitation or replacement projects in the Review Zone.

5. To consult with the State Historic Preservation Office at the earliest practicable opportunity during the design process, but in no instance less than 30 days prior to DOT undertaking, or causing to be undertaken, any maintenance, rehabilitation, bridges carrying State, county, or municipal roads and any guardrails or barriers along the approaches to these vehicle bridges over the Delaware and Raritan Canal.

6. To maintain wooden decks on the bridges designated as Low Use Bridges over the Delaware and Raritan Canal as depicted on Exhibit A. Low Use Bridges have been designated as those bridges with an Average Dailey Traffic of 500 vehicles or less.

The timber deck for the above referenced bridges will be designed in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Load and Resistance Factor Design (LRFD) Bridge Design Specifications (BDS) and the US Forestry Service Timber Bridge Manual, and other relevant AASHTO design standards as may be applicable on a project specific basis.

7. To maintain wooden walkways on the aforementioned bridges (listed in #6 above).

8. To design bridges with a concrete deck on the following bridges designated as High Use Bridges as depicted on Exhibit A ("High Use Bridges"). High Use Bridges have been designated as those bridges with an Average Dailey Traffic greater than 500. Asphalt overlay will not be used on the concrete decks.

9. To maintain wooden walkways on the High Use Bridges; provided that the walkways can be designed to drain water, and to the extent that other environmental constraints permit.

10. That any rehabilitation or replacement to any of the bridges subject to this MOA will include, wherever field conditions will allow, a steel four-bar railing without a concrete pylon as designed by the New Hampshire Department of Transportation as depicted on Exhibit B attached hereto. Should the crash testing certification of the New Hampshire Department of Transportation railing expire, the DOT agrees that the Commission shall approve the design of any alternate replacement railing. The new design is required to be MASH compliant or equivalent and have a minimum test level (TL) for the roadway. The Commission's express preference is that any replacement railing incorporate a slanted top rail similar to those currently on most bridges over the Delaware and Raritan Canal.

11. That all rehabilitation or replacement projects shall maintain a minimum underclearance above the mean high water line of 36 inches to the lowest improvement that crosses the waterway, unless otherwise approved by the Commission.

12. At bridges where the Delaware and Raritan Canal multiuse trail crosses State highways, county roads or municipal streets, and where there is sufficient pedestrian traffic to warrant their installation and such installation is consistent with applicable federal and State engineering and traffic safety standards, the installation of marked crosswalks and pedestrian-activated crossing devices shall be incorporated into proposed park bridge rehabilitation or replacement projects. Pedestrian-activated crossing device design shall be jointly agreed upon by the DOT, the Commission, the DEP Division of Parks and Forestry and the DEP SHPO, and shall be approved

by the State, county or municipality having jurisdiction over the highway, road or street, as the case may be. The installation of marked crosswalks and pedestrian-activated crossing shall be reviewed in accordance with relevant statutes. The cost of maintenance of such crosswalks and devices shall be borne by the DOT unless another governmental entity agrees to assume such responsibility. A maintenance agreement between the governing entity who has jurisdiction over the roadway where a pedestrian-activated crossing device is installed and the DOT will be a required component of a project application submitted to the Delaware and Raritan Canal Commission.

13. The Parties agree that Timber Façade lumber may be used for wingwalls and abutments. When wingwalls are replaced in kind, a Right of Entry will be utilized.

14. No sheeting should be used in the canal without a compelling reason. If there is a compelling reason to use sheeting, the Commission, the New Jersey Water Supply Authority, and the DEP SHPO shall approve the design prior to the permit submission. For cofferdams, a port-a-dam type of system which sits on the canal bottom and that would not risk puncturing the canal liner may be utilized. Piles may not be removed from the canal, instead they should be cut so as to not damage the canal liner.

15. Value engineering will not be permitted after a construction contract is awarded for bridges over the Delaware and Raritan Canal that are designed pursuant to this MOA. This includes, but is not limited to, value engineering of the bridge type, design, aesthetic features, safety features, and location and extent of staging areas. If the DOT determines that value engineering is required due to an unforeseen circumstance with the proposed design, the DOT will consult with the Commission and the SHPO regarding the proposed changes.

III. The Commission agrees:

1. To establish a single point of contact at the Commission for DOT applications.
2. To recognize emergencies to life, health and safety and, if warranted, follow the process for emergency authorizations established pursuant to N.J.A.C.
3. That if any DOT application for the in-kind rehabilitation or replacement of a bridge subject to this MOA comports with all applicable standards set forth for a General Permit No. 1, N.J.A.C. 7:45-6.1, as amended to the date the application is declared complete, the Executive Director of the Commission shall issue a General Permit No. 1.
4. That if any DOT application for a rehabilitation, replacement or renovation of a bridge covered by this MOA proposes to expand, widen or deepen the features of a bridge, or deviate from any plans of any prior project approvals, except for minor deviations due to changes in materials or construction techniques, then the proposed application shall be presented to the Commission for approval as an individual approval pursuant to N.J.A.C. 7:45-4.1.
5. That any application for a rehabilitation, replacement or renovation of a bridge covered by this MOA subject to an individual approval pursuant to Section II, paragraph 4 that is designed in

accordance with the provisions Section II of this MOA, shall be deemed by the Executive Director of the Commission to be in compliance with the visual, historic and natural quality impact review standards of the Commission's rules at N.J.A.C. 7:45-10.

6. That it shall not unreasonably withhold the necessary approvals of any project subject to this MOA.

IV.. GENERAL PROVISIONS.

1. Entire Agreement. The provisions contained herein or incorporated herein by reference constitute the entire MOA between the parties on the subject of bridge construction or renovation activities.

2. Amendments. This MOA may be amended by the written request of either Party and with the consent of the other Party. Any agreed amendment of this MOA shall be set forth in writing and signed by an authorized representative of each Party in order to become effective.

3. Captions. The captions appearing in this MOA are inserted and included solely for convenience and shall not be considered or given effect in construing this MOA, or its provisions, in connection with the duties, obligations, or liabilities of the Parties or in ascertaining intent, if a question of intent arises.

4. Subject to Funding. All payment obligations under this MOA are subject to appropriations and the availability of funds.

5. No Third-Party Beneficiaries. This MOA does not create in any individual or entity the status of third-party beneficiary, and this MOA shall not be construed to create such status. The rights, duties, and obligations contained in this MOA shall operate only between the Parties and shall insure solely to the benefit of the Parties. The provisions of this MOA are intended only to assist the Parties in determining and performing their obligations under this MOA.

6. Non-Assignability. This MOA may not be assigned, except upon written consent of the Parties. Any purported transfer or assignment of obligation to this MOA shall be void without written approval by all Parties.

7. Governing Law. This MOA and the rights and obligations of the Parties shall be interpreted, construed, and enforced in accordance with the laws of the State of New Jersey, including, but not limited to, the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

8. Duration. This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, DOT may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IV.2, above.

9. **Termination.** If any Party to this MOA determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other signatories to attempt to develop an amendment in accordance with this MOA. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any Party may terminate the MOA upon written notification to the other signatories.

10. **Dispute Resolution.** Should any Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, DOT shall consult with such party to resolve the objection. Any dispute that cannot be resolved by the signatories shall be presented to the Chiefs of Staff for the DOT and DEP for resolution.

11. **Severability.** Should any term or provision of this MOA, or any application thereof, be determined to be invalid to any extent, the remainder of this Agreement shall not be affected thereby, and the balance of the terms and provisions of this MOA shall remain valid. The Parties may renegotiate the terms affected by severance.

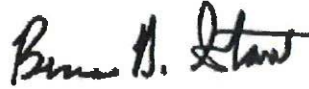
12. **Effective Date and Termination.** This MOA shall take effect upon approval and signature by the authorized representatives of all parties. This MOA shall remain in effect unless terminated by any party upon thirty (30) days' written notice.

13. **Counterparts.** This MOA is being executed as three (3) duplicate original counterparts, with one (1) original counterpart being retained by each Party, and all such counterparts shall together constitute but one and the same instrument.

14. **Use of Electronic Signatures.** By submitting this MOA with electronic signatures, the Parties acknowledge that they will accept and submit electronic signatures in connection with the submission of this MOA, including any amendment in connection therewith. The Parties acknowledge the right to opt-out of this arrangement and can request hard copies of the applicable documents to sign and review upon thirty (30) days written notice to the other Parties. The Parties agree that any Party may reserve the right to refuse to conduct other transactions by means of electronic signatures.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on and as of the day and year first written below.

Date: June 1, 2021



Bruce D. Stout, Vice Chairman Delaware
and Raritan Canal Commission

Approved as to Form for the Delaware and Raritan Canal Commission:
ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: **Jason Kane** Digitally signed by Jason Kane
Date: 2021.08.19 18:08:18 -04'00'
Jason Brandon Kane
Deputy Attorney General

Date: August 19, 2021

Attest/Witness/Affix Seal




Anika James
NJDOT Department Secretary



Snehal Patel, Assistant Commissioner
New Jersey Department of Transportation

Approved as to Form For the NJDOT:
ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Ryne A. Spengler
Deputy Attorney General

Date: August 20, 2021



Katherine Marcopul, Administrator
New Jersey Department of Environmental Protection
Historic Preservation Office

Approved as to Form For SHPO:
ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
John Kuehne
Deputy Attorney General

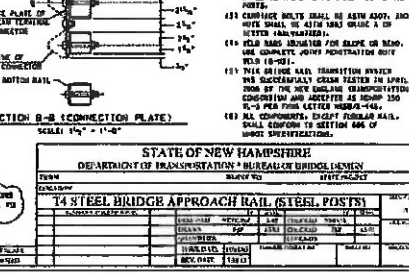
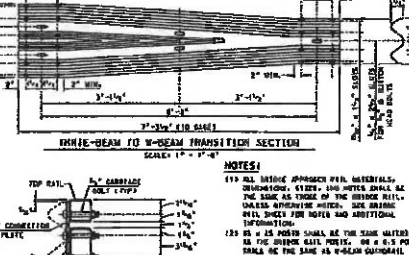
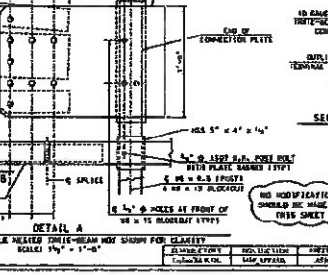
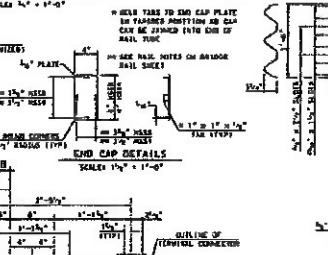
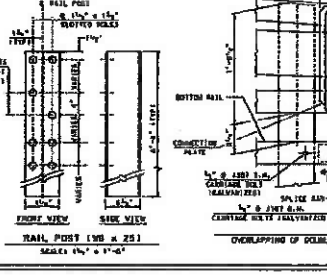
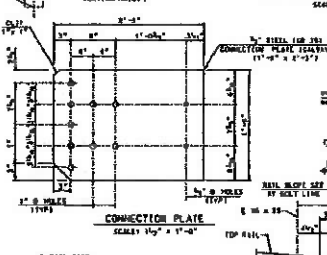
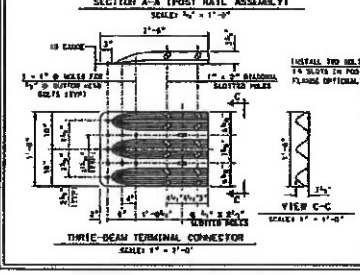
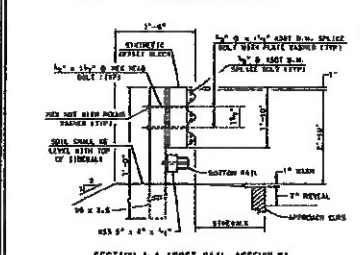
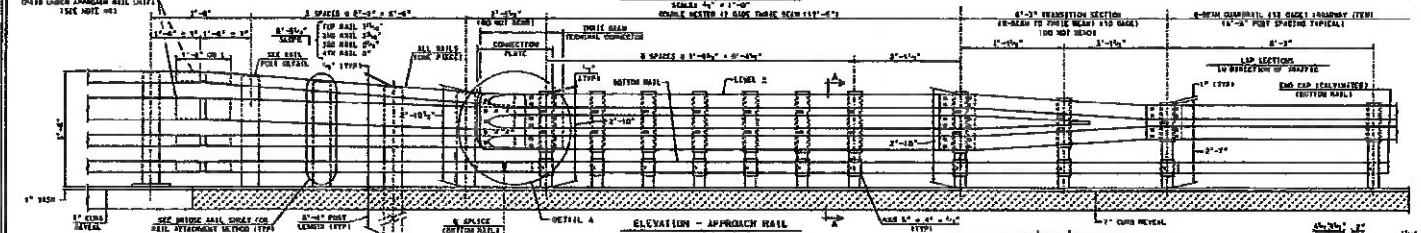
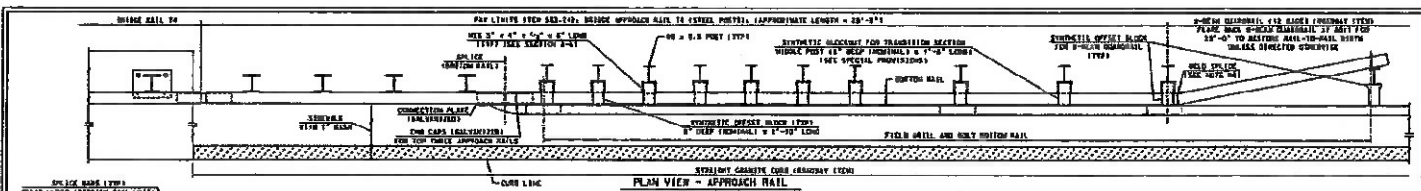
Exhibit A
 High and Low Use Bridges Over the
 Delaware and Raritan Canal

Low Use Bridges			
NJDOT Bridge Number	Bridge Name	Location	ADT (YEAR)
3001166	BERNARD DRIVE OVER D&R FEEDER CANAL	Ewing Township Mercer County	138 (2017)
3001170	RIVER DRIVE OVER D&R FEEDER CANAL	Hopewell Township Mercer County	54 (2016)
3001173	BRIDGE OVER D&R CANAL FEEDER AT LOCK No. 3	Lambertville City Hunterdon County	15 (2016)
3000158	OLD RT 27 OVER D&R CANAL	South Brunswick Township, Middlesex County	108 (2014)
3001176	BARBERS FARM BRIDGE/D&R CANAL FEEDER	Township of Delaware Hunterdon County	35 (2016)
3001180	RAVEN ROCK BRIDGE OVER D&R FEEDER	Township of Delaware Hunterdon County	659 (2015)
3001172	ASHTON'S FARM BRIDGE / D&R FEEDER CANAL	West Amwell Township Hunterdon County	100 (2015)

High Use Bridges

NJDOT Bridge Number	Bridge Name	Location	ADT (YEAR)
3001162	LOWER FERRY RD OVER D&R CANAL FEEDER	Ewing Township Mercer County	5878 (2016)
3001164	WILBURTHA RD OVER D&R CANAL FEEDR	Ewing Township Mercer County	925 (2016)
3000163	GRIGGSTOWN CAUSEWAY OVER D&R CANAL	Franklin Township Somerset County	4284 (2016)
3000164	BLACKWELLS MILLS ROAD (CR 658) OVER D&R CANAL	Franklin Township Somerset County	6990
3000166	MANVILLE CAUSEWAY (CO. 623)/D&R CANAL	Franklin Township Somerset County	4564 (2016)
3000167	ENTR.TO FORMER ZAREPHATH BIBL.INST/D&R CANAL	Franklin Township Somerset County	337 (2015)
3001167	WASHINGTON CROSSING RD (CR 546)/D&R FEEDER CANAL	Hopewell Township Mercer County	5406 (2016)
3001168	GRANT ST. OVER D&R CANAL FEEDER	Hopewell Township Mercer County	625 (2015)
3001169	CHURCH RD / D&R CANAL FEEDER	Hopewell Township Mercer County	688 (2015)
3001175	CORYELL ST. OVER D&R CANAL FEEDER	Lambertville, Hunterdon County	1370 (2016)
3000152	CARNEGIE RD OVER D&R CANAL	Lawrence Township, Mercer County	2275 (2015)
3000153	BAKERS BASIN ROAD OVER D&R CANAL	Lawrence Township, Mercer County	11600 (2014)
3000154	QUAKER ROAD (CR 533)/D & R CANAL	Princeton, Mercer County	9195 (2015)
3001159	HERMITAGE AVE / D&R CANAL FEEDER	Trenton City, Mercer County	6156 (2016)

Exhibit B
New Hampshire Department of Transportation
Steel Four-Bar Railing



- NOTES**
1. ALL BRIDGE APPROACH RAIL, UNLESS OTHERWISE SPECIFIED, SHALL BE THE SAME AS THOSE OF THE BRIDGE RAIL, UNLESS OTHERWISE SPECIFIED. SEE BRIDGE RAIL SHEET FOR NOTES AND ADDITIONAL INFORMATION.
 2. IS - 15 PILES SHALL BE THE SAME MATERIAL AS THE BRIDGE RAIL PILES. OR IS - 15 PILES SHALL BE THE SAME AS 4-BEAR CAPACITY PILES.
 3. CONNECTION BOLTS SHALL BE ASTM A307, AND NUTS SHALL BE ASTM A307 OR AS SPECIFIED (UNLESS OTHERWISE SPECIFIED).
 4. WELD SHALL BE 1/4" MINIMUM PENETRATION WELD (10-10).
 5. THIS IS ONE RAIL TRANSITION BRIDGE. THE SUCCESSFUL CROSS SECTION IN LEVEL FORM OF THE BRIDGE APPROACH RAIL CONSTRUCTION AND ACCEPTED AS SHOWN 100% PER PLAN LETTER NUMBER 144.
 6. ALL DIMENSIONS, UNLESS OTHERWISE SPECIFIED, SHALL CONFORM TO SECTION ONE OF BRIDGE SPECIFICATIONS.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION - BUREAU OF BRIDGE DESIGN

FORM NO.	REVISION	DATE
74	STEEL BRIDGE APPROACH RAIL (STEEL POSTS)	
DESIGNED BY	CHECKED BY	DATE
DRAWN BY	APPROVED BY	
PROJECT NO.	SCALE	
PROJECT NAME		
PROJECT LOCATION		
PROJECT NUMBER		