CE Determination Form for Federal-Aid Projects (June 2, 2015)

CE Review Level: *(Check boxes that apply)*

☐ 1 ☐ 2 ☒ 3 ☐ Re-evaluation

The proposed project qualifies as the Categorical Exclusion Level indicated above in accordance with the 2015 Programmatic Agreement.

Appendix: C Paragraph: 26

Project Name:

Maxwell to Brady

Project Number:

NH-80-4(139)

Control Number:

61429

Location Map Attached:

☒

Location and Study Area:

The project is located on Interstate 80 (I-80) in Lincoln County, Nebraska, 4.71 miles west of the State Spur 56A (S56A) and extends east to 0.58 miles west of the State Link 56D (L56D) along the eastbound and westbound lanes.

The Environmental Study Area is confined to the length of this project (12.66 miles) plus 200 feet on either end along I-80 (MM 185.74 to MM 198.40) including the existing right-of-way (ROW), plus 50 feet beyond ROW for most of the project length, and extending to 150 feet beyond the ROW at the bridges and culverts for wetlands and most other resources. For regulated materials the study area extended 0.10 mile, and for Section 4(f) resources 0.25 mile beyond ROW.

Termini are based on limits identified by NDOR pavement management system, District 6 and previous construction projects on this segment of highway.

Begin Point(s):

MM 185.74

End Point(s):

MM 198.40

Highway Number, Street, etc.:

I-80

Project Description:

NOTE: This Level 3 CE supersedes the previous CE-Level 2 that was approved on 10/20/2015.

This 3R (Resurfacing, Restoration and Rehabilitation), project would resurface 12.66 miles of the westbound (WB) and eastbound (EB) lanes on I-80 located in Lincoln County, starting 4.71 miles west of the S56A Maxwell Spur, at mile marker (MM) 185.74, and extending east to MM 198.40, 0.58 miles west of the L56D Brady Link. Construction may begin and/or end approximately 200 feet ahead of or beyond the actual project limits to accommodate transitioning the pavement.

The existing roadway on this segment of I-80 consists of the following:

• MM 185.74 – MM 189.98: The existing roadway on this segment of I-80 consists of four 12 foot wide concrete lanes separated by a depressed grass median, 6 foot wide inside shoulders, of which 4 feet is paved with concrete, and 12 foot wide outside shoulders, of which 10 feet is paved with concrete.

• MM 189.98 – MM 198.40: The existing roadway on this segment of I-80 consists of four 12 foot wide composite lanes separated by a depressed grass median, 6 foot wide inside shoulders, of which 4 feet is paved with asphalt overtop of concrete, and 12 foot wide outside shoulders, of which 10 feet is paved with asphalt overtop of concrete.

The improvements on this project consist of milling and resurfacing the existing roadway and surfaced shoulders with asphalt. The outside shoulders would be widened from 12 feet, of which 10 feet is surfaced, to 14 feet, of which 12 feet is surfaced. There would be a grade raise at the new inside and outside edge of pavement along the entire segment. Ramps at S56A and the Rest Areas would be milled and resurfaced.

Scope details include:

• Grading beyond the hinge point would be required for the following work:
- Guardrail
- Shoulder widening and surfacing
- Earth shoulder construction
- Flattening foreslopes

• There are 52 culverts along this segment, of which 38 would require being extended with the project.

•Guardrail:
- Remove and replace guardrail with grading beyond the hinge point

• The deck on the bridge over the Interstate (Structure Number S080 19045) would be repaired.

• Concrete pavement repairs would be made prior to resurfacing.

• The existing asphalt would be milled prior to resurfacing.

• Asphalt patching operations would be performed prior to resurfacing.

• Surfacing would be placed under the guardrail.

• The existing earth shoulders would be brought up to match the new asphalt.

• Short segments of the existing surface shoulders south and north of the ramp terminals would be removed and replaced with asphalt.

• Project surveying and staking would be required.

• Areas disturbed during construction would be stabilized utilizing methods of erosion control as shown in the Storm Water Pollution Prevention Plan (SWPPP).

• Rumble strips would be constructed on the resurfaced shoulders.

• Permanent pavement markings would be applied to all new surfacing.

• No additional property rights would be required to build this project.

• This project would be constructed under traffic with lane closures controlled with approved temporary traffic control.

- Traffic signs would be removed and replaced.
- Turnarounds in the median would be resurfaced.
- Concrete pavement repairs would be made in the existing rest areas.

Purpose and Need *(include for Level 3, NWP 23, and Section 4(f) Programmatic Evaluation)*:

Purpose: The purpose of this project is to preserve the transportation asset, improve the reliability of the transportation system and perpetuate the mobility of the traveling public.

Need: The need for this project is based on information from the NDOR's Pavement Management System, Materials & Research Pavement Design section and District 6. These entities have determined that the pavement distresses present on this section of I-80 are significant enough to warrant rehabilitation. The existing concrete from mile marker (MM) 185.74 to MM 189.98 is 19 years old, and will be 23 years old at the time of construction, and therefore at or beyond the end of its anticipated service life. The existing asphalt from MM 189.98 to MM 198.40 is 6 years old, and will be 10 years old at the time of construction, and therefore at or beyond the end of its anticipated service life. The existing asphalt has large areas of patching and wide and depressed thermal cracks. This is evidenced by a Thermal Cracking Index of 100, or a "Poor" condition rating.

The need for bridge repairs on this project is based on information from the NDOR's Bridge Inventory System and Bridge Division and District 6.

S080 19045

The simple pre-stressed girder structure was originally built in 1965 with a concrete deck overlay in 2009. The most recent biannual visual inspections in December 2015 indicated that there are longitudinal and transverse cracks in the deck.

The FHWA and NDOR have identified upgrading roadside safety hardware to a crashworthy appurtenance as a part of 3R (Resurfacing, Restoration and Rehabilitation) projects as one of the emphasis areas to mitigate the severity of roadway departure crashes. Pursuant to this emphasis, guardrail will be upgraded as necessary.

Action is identified in the Current STIP Date:	Subsequent Phase:	Estimated Cost *($)*:
March 15, 2016	Construction	$14,774,000.00

If the action qualifies for (c)(23), identify the federal portion (*$*): N/A

The numbers in the parentheses (x) indicate the level of CE review that will be required.

BLACK text indicates an all level question, **BLUE** text indicates a Level 2 threshold question, and **GREEN** text indicates the question is required for Level 2 and 3 reviews but does not constitute a threshold.

If a Level 1 threshold is exceeded, answer the corresponding Level 2 questions (**BLUE**) within the subject section, as well as all **GREEN** questions. If any Level 2 threshold is exceeded, the project shall be processed as a Level 3 review requiring approval by FHWA.

All technical assessment approvals shall be made by NDOR Professional Qualified Staff (PQS) responsible for the resource category and are indicated by "NDOR PQS Determination Date."

Right of Way and Property Impacts

1.1 **Easements/ROW** – Will the action require the acquisition of new temporary or permanent right-of-way *(including easements)*?

☐ Yes (2) ☒ No (1) ☐ N/A

1.2 Will the action result in acquisition of greater than 2 acres per linear mile *(estimated)* or the removal of major property improvements?

☐ Yes (3) ☐ No (2) ☒ N/A

1.3 Describe type of property required for ROW and/or potential impacts to major property improvements:

N/A

1.4 Estimated Acres of Permanent ROW/Easements:

N/A

1.5 Estimated Acres of Temporary ROW/Easements

N/A

1.6 Will the action result in any residential or nonresidential displacements?

☐ Yes (3) ☐ No (2) ☒ N/A

1.7 If Yes, describe the displacements.

N/A

2.1 **Section 4(f)** – Will the action result in a Section 4(f) use or qualify for Section 4(f) Exception?

☐ Yes (2) ☒ No (1) ☐ N/A

2.2 Will the action result in an Individual Section 4(f) Evaluation?

☐ Yes (3) ☐ No (2) ☒ N/A

2.3 Describe resources, impacts, and the coordination conducted with officials/agencies *(including FHWA approval date(s))*:

Although located adjacent to the westbound side of the project, the West Brady State Wildlife Management Area is located inside of the study area and would not be impacted by construction. West Brady State Wildlife Management Area is located 0.3 miles south of the Brady/I-80 Interchange on the east side of the road.

The Nebraska Gateway Sculpture is located within the Brady Rest Area Eastbound at MM 194.35. This sculpture is not considered eligible under Section 4(f). A rest area's primary purpose is transportation and not recreation; therefore they are not eligible for Section 4(f) protection. The rest area would undergo concrete repairs. The rest area would only be closed as construction warrants, and the rest area would re-open when the contractor is not working in the area or as determined by the engineer. Signage would be placed to notify travelers of the rest area closure as needed. All commitments are located in Section 16: Access Disruptions.

The Platte State Wildlife Management Area is located 1.5 miles west of I-80 West at MM 185.74 (project start) in Maxwell, NE. The project would not impact this area due to its limits beginning 1.5 miles west of its boundary, and out of the project study area. Access to this are would be maintained.

The Fremont Slough State Wildlife Management Area is located 3.2 miles west of I-80 West at MM 185.74 (project start) in Maxwell, NE. The project would not impact this area due to its limits beginning 3.2 miles west of its boundary, and out of the project study area. Access to this are would be maintained.

The West Maxwell Wildlife Management Area is located 0.3 miles south of I-80 East at MM 190.00 in Maxwell, NE. The wildlife management area is located outside of the project study area; therefore it will not be impacted.

2.4 Section 4(f) Mitigation:

N/A

3.1 Section 6(f) – Are there any Section 6(f) Land and Water Conservation Fund Act properties (36 CFR 59) within the study area?

☐ Yes (1) ☐ No (1) ☒ N/A

3.2 Will the action result in a conversion of a Section 6(f) property?

☐ Yes (2) ☐ No (1) ☒ N/A

3.3 Describe resources, impacts, replacement lands *(if applicable)*, and the coordination conducted with officials/agencies *(including FHWA)*:

N/A

3.4 Section 6(f) Mitigation::

N/A

Other Non-Threshold Property Impacts

4.1 Will the action take place on or adjacent to Tribal lands or other Federal lands?

☐ Yes ☒ No

4.2 Will federal funds be used to relocate utilities, or will the project contractor be responsible for the relocation of the utilities?

☐ Yes ☒ No ☐ Unknown

The following questions should only be answered when the action is processed for CE Level 2 or CE Level 3 determinations. These questions are not required for a CE Level 1 analysis.

4.3 Trails – Will the action involve construction of new trails on ROW not previously designated for trails?

☐ Yes ☒ No

4.4 Farmland – Will the action result in impacts to prime or unique farmland?

☐ Yes ☒ No

4.5 If Yes, does the affected property accumulate 60 points or more in Part VI of the NRCS-CPA-106 Form?

☐ Yes ☐ No ☒ N/A

4.6 Describe resources, impacts, and the coordination conducted with officials/agencies *(including FHWA)*:

N/A

4.7 Describe Mitigation for Above Non-Threshold Resources:

Utility relocation or replacement is not anticipated for the project. If utility relocation or replacement is required in a later phase of the project, a reevaluation will be required if: (1) federal funds shall be used for the utility work; or (2) the project construction contractor will be responsible for the work. If this utility work is identified during final design, the project sponsor shall initiate the reevaluation prior to project letting. If the work is identified during construction, the project sponsor shall initiate the reevaluation prior to commencing utility work. (NDOR Environmental, NDOR District)

If any one of the above two conditions do not apply, later relocation or replacement of utilities shall be coordinated through NDOR and the Contractor per NDOR's Standard Specifications for Highway Construction, Subsection 105.06. Any environmental permits required for these utility relocations or replacements shall be the responsibility of the Utility. (NDOR District, Utility Provider(s))

Water and Ecological Resources

5.1 Wild and Scenic/National Recreational Rivers – Will the action cross or occur adjacent to a Wild and Scenic River or National Recreational River Segment, including its buffer area?

☐ Yes* ☒ No ☐ N/A

Note: If Yes, the proposed action can be processed as a Level 1 [all Appendix A categories] or a Level 2 Action [Appendix B categories other than *(26), (27),* and *(28)*] if the Agency with Jurisdiction has determined the action will not result in an impact.

5.2 For actions processed under Appendix B categories *(26), (27),* or *(28)*, a Level 3 review will be required.

☐ Level 3 Required

5.3 Is the action considered an impact to the National System of Wild and Scenic Rivers by the Agency of Jurisdiction?

☐ Yes (3) ☐ No ☒ N/A

5.4 Describe resources, impacts, and the coordination conducted with officials/agencies:

N/A

5.5 Wild and Scenic River Mitigation:

N/A

6.1 Floodplain/Floodway – Will the action occur within the boundaries of a mapped Zone A floodplain or a mapped floodway?

☒ Yes (1) ☐ No (1) ☐ N/A

If Yes, attach permits to the CE document. If a floodplain permit has not been obtained, add commitment that one will be obtained prior to the start of construction.

6.2 Will the action cause a greater than 1-foot rise in the Base Flood Elevation *(BFE)*, any rise in a floodplain that potentially impacts an adjacent structure, or any rise in a floodway?

☐ Yes (3) ☒ No (1) ☐ N/A

6.3 Will the actions reviewed under Appendix B, Paragraphs (26), (27), and (28) result in a floodplain encroachment other than functionally dependent uses or actions that facilitate open space use?

☒ Yes (3) ☐ No ☐ N/A

6.4 Describe resources, impacts, and the coordination conducted with officials/agencies:

There are three possible longitudinal encroachments along this project. The work in these locations is consistent with the rest of the project, involving milling and resurfacing the existing roadway and surfaced shoulders, and widening the outside shoulders from 12 feet (10 feet surfaced) to 14 feet (12 feet surfaced). The change in the roadway section at these longitudinal encroachment locations would be minimal and grading generally ties-in at or before the limits of the existing embankment, with the exception of one location where it would tie-in within five feet of the existing toe. The effect of these possible encroachments were considered in the analysis. The Platte River floodplain at these locations is between 7,700 feet and 9,400 feet wide. The thin layer of grading which ties in five feet or less from the existing toe of slope represents 0.06% or less of the entire floodplain width. The change to the floodplain is negligible and would have no impact on the base flood elevation or conveyance of floodwater.

As defined in 650.105, a significant encroachment involves a significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route, a significant risk meaning potential for loss of life or property, or a significant adverse impact on natural and beneficial flood-plain values.

This project does not result in a significant potential for interruption or termination of this transportation facility which is needed for emergency vehicles or a community's only evacuation route. It also does not result in a significant risk or potential for loss of life or property. This project does not result in a substantial adverse impact on natural and beneficial flood-plain values. This highway improvement Project would maintain local and regional access to existing areas and would occur completely within the existing interstate ROW; therefore, this project would not support any incompatible floodplain development.

There would be no significant encroachments as a result of this Project and it does not support incompatible floodplain development.

Nebraska floodplain regulations require any project that crosses a mapped, regulated Floodplain (100 year base floodplain) to obtain a floodplain permit. NDOR has acquired the proper floodplain permits, and has certified that the construction activities would be in compliance with the State of Nebraska floodplain regulations.

6.5 Floodplain/Floodway Mitigation

N/A

7.1 Wetlands/Waters of the U.S. – Are there wetlands, stream channels, or other waters within the study area?

☒ Yes (1) ☐ No (1)

7.2 Will the action result in wetland impacts in accordance with Section 404 of the Clean Water Act and/or Nebraska State Title 117?

☒ Yes (1) ☐ No (1) ☐ N/A

7.3 Will the action result in greater than 0.5 acres *(total permanent)* of wetland impacts?

☒ Yes (2) ☐ No (1) ☐ N/A

7.4 Estimated Permanent Wetlands Impacts:

3.2 acres

7.5 If the project is processed with a Nationwide Permit, is a Pre-construction Notification required?

☒ Yes (2) ☐ No (1) ☐ N/A

7.6 Will the action require an Individual Permit (IP) or Section 10 Permit from the U.S. Army Corps of Engineers or a Section 9 Permit from the U.S. Coast Guard?

☐ Yes (3) ☒ No (2) ☐ N/A

7.7 Describe resources, potential impacts, and any coordination conducted to date with officials/agencies:

Project activities would result in approximately 3.2 acres of permanent impacts to roadside ditch emergent wetlands (PEMA/C). Permanent impacts to these resources are due to culvert extensions and would exceed 0.10 acres. Impacts would be mitigated for at the NDOR Maxwell Wetland Mitigation Bank. The proposed Maxwell – Brady project would be permitted by the USACE as a NWP 23.

7.8 Wetlands/Waters of the U.S. Mitigation:

All wetlands within the project area that are not permitted for impacts shall be marked on the project plans and on the Green Sheet for the Contractor as avoidance areas. (NDOR Design, NDOR Environmental)

The project will require a pre-construction notification for impacts to waters of the U.S. the permit shall be obtained prior to the projects letting. The contractor shall adhere to all permit conditions, including regional and general conditions, during construction. (Contractor, NDOR Environmental)

The Contractor shall not stage, store, waste or stockpile materials and equipment in undisturbed locations, or in known/potential wetlands and/or known/potential streams that exhibit a clear “bed and Bank” channel. Potential wetland areas consist of any area that is known to pond water, swampy areas or areas supporting known wetland vegetation or areas where there is a distinct difference in vegetation (at lower elevations) from the surrounding upland areas.(Contractor)

Any material needed shall be provided by the Contractor. The Contractor shall try to obtain borrow from an upland site to prevent depletion issues. If the borrow site is within a depletion area of concern, the Contractor shall coordinate with the appropriate agencies and NDOR to offset or minimize impacts. The Contractor shall obtain all environmental clearances and permits required for the borrow site prior to obtaining borrow material for the project. (Contractor)

8.1 Impaired Waters, Section 402, and MS4 – Are there any impaired waters within or adjacent to *(0.5 mile)* the project study area?

☐ Yes ☒ No

8.2 Does the project occur within a MS4 community?

☐ Yes ☒ No

8.3 Does the project require a NPDES storm water permit (*ground disturbance of greater than 1 acre*)?

☒ Yes ☐ No

If Yes, add standard Erosion Control plans and Storm Water Pollution Prevention Plan (SWPPP) commitment to the mitigation commitments.

8.4 Describe resources, potential impacts, and any coordination conducted with officials/agencies:

N/A

8.5 Impaired Waters, Section 402, and MS4 Mitigation:

Erosion control plans and storm water pollution prevention plans (SWPPP) are required on all projects that have one acre or more of disturbed soil. NDOR inspects all erosion and sediment control best management practices (BMP's) including devices every 14 days minimum and after every precipitation event of 0.5 inch or greater as per the requirements in the General Construction Storm Water Permit. Any BMP adjustments and repairs are to occur within 7 days of the inspections to ensure that water quality is being protected to the maximum extent practicable. The SWPPP shall be maintained and discharge points shall be monitored by the NDOR District Staff until the site is 70% re-vegetated. At that time the Notice of Termination with NDEQ for the General Construction Storm Water Permit and completion of the SWPPP responsibilities shall be filed. (NDOR Environmental)

9.1 Threatened and Endangered Species – Will the action result in a "May Affect" determination per the Nebraska Biological Evaluation Process *Matrix** that requires further consultation with the resource agencies?

☒ Yes (2) ☐ No (1) ☐ N/A

9.2 Will the action result in a "may affect, likely to adversely affect" determination for threatened or endangered species or designated critical habitat?

☐ Yes (3) ☒ No (2) ☐ N/A

9.3 Will the action require the use of unique conservation conditions that are not included within the *Matrix* PA, requiring resource agency concurrence?

☐ Yes (3) ☒ No (2) ☐ N/A

NDOR PQS Determination Date:	USFWS Concurrence Date:	NGPC Concurrence Date:
3/2/2015	1/30/2015	2/25/2015

9.4 Suitable habitat for eagle nesting is reviewed as part of the *Matrix* Biological Evaluation process and projects are evaluated for compliance with the Bald and Golden Eagle Protection Act (BGEPA). This project was reviewed for potential impacts to bald and golden eagles resulting in the following determination:

☐ NDOR has determined the project site does not have appropriate habitat for eagles. Due to the lack of suitable habitat and the information that there are no known bald or golden eagle nests within the project area, NDOR has determined that there will be no impact to these species.

☒ It has been determined that suitable habitat does exist within 0.5 mile of the Environmental Study Area. NDOR will utilize the Bald and Golden Eagle Survey Protocols to determine when a survey for nests and/or roosts should be conducted. If nest(s) are present within 0.5 mile of the project area, NDOR will notify the Nebraska Game and Parks Commission and the United States Fish and Wildlife Service, and construction will not commence prior to their approval.

9.5 This project will comply with the Migratory Bird Treaty Act *(MBTA)* in accordance with NDOR's Avian Protection Plan *(APP)* and Biological Evaluation *Matrix* Appendix A.

☒

9.6 If a Section 404 Individual Permit is required coordination under the Fish and Wildlife Coordination Act will occur during the permitting process.

☐ Coordination Required ☒ N/A

9.7 Describe resources, potential impacts, and any coordination conducted to date with officials/agencies:

The project, as proposed has been determined to "may affect, not likely to adversely affect" the following listed species with the implementation of conservation conditions: American Burying Beetle, Interior Least Tern, Piping Plover, River Otter, Whooping Crane. The project will have "no effect" to all other state or federally listed species or their designated critical habitat.

9.8 Species Mitigation:

American Burying Beetle:

ABB-2 Mowing/vegetation removal and carrion (roadkill carcasses) removal must be done according to American Burying Beetle Conservation Measures Protocol and must be implemented at the following locations: the length of the project (MM 185.74 to MM 198.40). This work will be conducted by either the District or the Contractor, as determined by the District during contracting.

R-1 For the American burying beetle, nighttime work with lights from June 1 – July 1 and August 7 – September 1 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

R-2 Request for early construction starts in the range of the American burying beetle must be coordinated by the Project Construction Engineer with NDOR Environmental for approval of early start (District Construction, Contractor).

Interior Least Tern and Piping Plover:

ILT,PP-1 For construction activities that begin prior to April 15 and continue beyond April 15, surveys will be conducted starting April 8 and continue through the end of construction or August 15 whichever comes first. NDOR Environmental, NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: MM 195.0 to MM 196.7. If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT,PP-2 When initiating construction activities between April 15 and August 15, surveys will start one week prior to construction activities and will continue through the end of construction or August 15th, whichever comes first. NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: MM 195.0 to MM 196.7. If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT,PP-4 Herbaceous species used for re-seeding within ¼ mile of the following location: MM 195.0 to MM 196.7 will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design)

R-4 For the interior least tern and piping plover, nighttime work with lights from April 15 – August 15 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Surveys may be required to determine if nesting birds are present within ½ mile of the nighttime activity. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

River Otter:

RO-1 A qualified biologist will survey according to protocol no more than 10 days prior to construction. If no active den sites are found, then the project can proceed. If active den sites are found, NDOR Environmental Section will notify the District and will consult with the USFWS, NGPC, and FHWA. If species are present the District will notify the Contractor to stop work within 1/2 mile of the active den until NDOR Environmental completes consultation. (NDOR Environmental, District Construction, Contractor)

Whooping Crane:

WC-1

Construction activities will not occur during Whooping Crane migration periods. (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16). (NDOR Environmental, Construction, Contractor)

OR

WC-2

If construction activities occur during Whooping Crane migration periods (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16), NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: the length of the project (MM 185.74 to MM 198.40) (prior to the start of daily construction activities). If species are present the District will notify the Contractor to stop work within 1/2 mile of the whooping crane and follow the protocol to determine when work can resume (also not initiate work if species is found in the morning survey). Options for resuming work may include but are not limited to (NDOR Environmental, Construction, Contractor):

•Construction activities are limited to the hours from 10:00 a.m. to 4:00 p.m. (CST) during the migration period, unless morning survey indicates Whooping Cranes are not present.

•If a whooping crane is observed during the survey within ½ mile of the project, but departs the area (further than ½ mile from the project) then work can resume. Document this departure according to protocol.

AND

WC-3 Herbaceous species used for re-seeding within ¼ mile of the following location: the length of the project (MM 185.74 to MM 198.40) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design, NDOR Environmental).

R-11 For the whooping crane, nighttime work with lights from March 10 - May 10 and September 16 - November 16 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

Bald and Golden Eagle Protection Act:

• Suitable Bald Eagle nesting and/or roosting habitat exists within 0.5 miles of the Environmental Study Area. If construction will begin between February 1 and April 15, a nest survey must be completed at least 1 but not more than 14 days prior to construction. If construction will begin between April 15 and October 1, a nest survey completed in March is sufficient, as nests will likely already be constructed if nesting will occur that year. However, a nest survey may be completed anytime during this timeframe, as long as it is completed prior to construction. If bald eagles are nesting in the area, consultation with NGPC and USFWS will be required. Eagle roosting surveys will be conducted if construction occurs between October 1 and January 31.

* The Nebraska Biological Evaluation Process Programmatic Agreement *Matrix* complies with the Federal Endangered Species Act *(ESA)* and Nebraska Nongame and Endangered Species Conservation Act *(NESCA)*.

Human and Social Resources

10.1 Historic Properties – Are there any properties listed or eligible for the National Register of Historic Properties in the study area?

☐ Yes (1) ☒ No (1)

10.2 Will the action result in Section 106 effects other than a "No Potential to Cause Effects" or a "No Historic Properties Affected" determination?

☐ Yes (2) ☒ No (1) ☐ N/A

10.3 Will the project result in an "adverse effect" to any historic property?

☐ Yes (3) ☐ No *(No adverse effect)* (2) ☒ N/A

10.4 Historic Property Determination

No Historic Properties Affected

NDOR PQS Determination Date:

6/11/2015

SHPO Concurrence Date:

4/2/2013

THPO Concurrence Date:

N/A

CLG Concurrence Date:

N/A

10.5 List Eligible Resources, Impacts, and Coordination:

NESHPO concurred with an effect determination of no historic properties affected on 4/2/2013. Since that concurrence, the project description was amended to include widening existing shoulders, removing and replacing traffic signs, resurfacing turnarounds, clarifying that culverts would be extended, and that concrete repairs would be completed in existing rest areas.

A supplemental Section 106 evaluation was completed on 6/11/2015 and the project effects determination of "no historic properties affected" remains appropriate. The reinitiation of Section 106 consultation was not necessary.

10.6 Historic Properties Mitigation:

N/A

11.1 Hazardous Materials – Will the project actions exceed the scope of the listed exemption identified in NDOR's Hazardous Materials Assessment Guidance?

☒ Yes (1) ☐ No (1)

11.2 Will the action result in more than a Low Potential for encountering hazardous materials during construction (excluding Lead Based Paint or Asbestos Containing Material)?

☐ Yes (2) ☒ No (1) ☐ N/A

11.2A There is potential for the project to encounter Lead Based Paint (LBP). LBP standard specifications shall apply to the proposed project.

☐ Yes ☒ N/A

11.2B Asbestos Containing Materials (ACM) has been identified on bridge structures. ACM specifications will be included in the contract by special provisions.

☐ Yes ☒ N/A

11.3 Will the action result in a High Potential for encountering hazardous materials during construction?

☐ Yes (3) ☐ No (2) ☒ N/A

11.4 Will any soil disturbance occur below or beyond preexisting roadway fill within an active Superfund Site?

☐ Yes (3) ☐ No (2) ☒ N/A

NDOR PQS Determination Date:

6/5/2014

11.5 Describe potential conflicts and the coordination with officials/agencies:

A hazardous materials review (HMR) was completed and approved by NDOR on April 28, 2015. A HMR was required for this project because the scope of work exceeds the project exemptions. The HMR identified two facilities where releases have occurred within the hazardous materials study area. The I-80 Westbound Rest Area (M.M. 194) and Ranchland C-Store (8894 S Spur 56A) both had small releases (75-150 gallon) of diesel fuel from trucks. In addition, UST tanks were removed from the Ranchland C-Store property in 1996. All programs were granted a no further remedial action (NFA) status. Based on the minimal extent of the releases, the distance from construction activities to the releases and the NFA status for each site, there is a low potential of encountering contamination during the construction of the project. The scope of bridge work on structure S080 19045 does not require an asbestos survey or lead mitigation. No lead or asbestos commitments are required.

11.6 Hazardous Materials Mitigation:

If contaminated soils and/or water or hazardous materials are encountered, then all work within the immediate area of the discovered hazardous material will stop until NDOR/Federal Highway Administration (FHWA) is notified and a plan to dispose of the Hazardous Materials has been developed. Then NDEQ will be consulted and a remediation plan will be developed for this project. The potential exists to have contaminants present resulting from minor spillage during fueling and service associated with construction equipment. Should contamination be found on the project during construction, the NDEQ will be contacted for consultation and appropriate actions be taken. The contractor is required by NDOR's Standard Specification section 107 (legal relations and responsibilities to the public) to handle and dispose of contaminated material in accordance with applicable laws (NDOR Environmental, District Construction).

12.1 Traffic Noise – Does the project qualify as a Type I Project under NDOR's Noise Policy?

☐ Yes (3) ☒ No (1) ☐ N/A

12.2 Based on the noise analysis, does the project qualify for abatement?

☐ Yes ☐ No ☒ N/A

12.3 Summarize the results of the noise analysis:

N/A

12.4 Noise Mitigation:

N/A

13.1 Air Quality – Will the action increase capacity in exceedance of 100,000 vehicles per day in the 20th year following construction; will it result in a high potential for Mobile Source Air Toxics *(MSAT Level III)* effects; or is it considered *Regionally Significant* within a designated non-attainment area?

☐ Yes (3) ☒ No ☐ N/A

13.2 Air Quality Comments:

N/A

13.3 Air Quality Mitigation:

N/A

14.1 Roadway – Will the action result in the addition of through-lane capacity?

☐ Yes (3) ☒ No (1) ☐ N/A

15.1 Traffic Disruption – Will the action result in minor traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 30 working days?

☒ Yes (2) ☐ No (1) ☐ N/A

15.2 Will the action result in major traffic disruption requiring detours, temporary roads, or ramp closures that are greater than 135 working days?

☐ Yes (3) ☐ No (2) ☒ N/A

15.3 Will temporary roads, detours, or ramp closures substantially change the environmental consequences of the action?

☐ Yes (3) ☒ No (1) ☐ N/A

15.4 Will the action result in adverse travel *(out-of-direction)* greater than 5 miles in urban areas or 25 miles in rural areas?

☐ Yes (3) ☒ No (1) ☐ N/A

15.5 Will the action result in temporary or permanent interference with local special events or festivals?

☐ Yes (3) ☒ No (1) ☐ N/A

15.6 Will the action result in temporary or permanent adverse effects to through-traffic dependent business?

☐ Yes (3) ☒ No (1) ☐ N/A

15.7 Will the action result in permanent traffic pattern changes or disruptions?

☐ Yes (3) ☒ No (1) ☐ N/A

If a detour is required for the project, attach a map to the CE document.

15.8 Traffic Disruption Comments:

N/A

15.9 Traffic Disruption Mitigation:

This project shall be constructed under traffic with lane closures controlled by approved temporary traffic control. The project shall not result in traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 45 working days. (Contractor)

16.1 Access Disruptions – Will the action require any access closures to businesses or residences?

☐ Yes (1) ☒ No (1) ☐ N/A

16.2 Will the action result in complete closure to residential properties for greater than 5 working days?

☐ Yes (2) ☒ No (1) ☐ N/A

16.3 Will the action result in complete closure to residential properties for greater than 10 working days?

☐ Yes (3) ☐ No (2) ☒ N/A

16.4 Will the action result in closure of business access during operational hours?

☐ Yes (3) ☒ No (1) ☐ N/A

16.5 Will the action result in access restrictions to emergency service facilities or providers?

☐ Yes (3) ☒ No (1) ☐ N/A

16.6 Will the action change the functionality of adjacent properties?

☐ Yes (3) ☐ No (2) ☒ N/A

16.7 Access Disruption Comments:

The Brady Rest Area Eastbound (MM 194.35) is adjacent to the project and the ramps would be repaired as a part of this project. The rest area would be closed up to 45 days for the concrete repairs required in the deceleration ramps, parking areas, and acceleration ramps. For west bound travelers the next designated rest area is located 33 miles (MM 161.85) west of the Brady Rest Area. In addition, nearby gas station/truck stops would be avaliable. Travelers would be able to stop prior to the Brady Rest Area just off I-80 at Exit 199 (MM 199) just 5.21 miles south east or Exit 190 (MM190.66) 3.72 miles west.

Ample signage would be placed along I-80 to notify travelers of the rest area work beforehand as needed.

There are no properties with direct access to the interstate located along this project with the exception of the rest area, further access mitigation measures are not required.

16.8 Substantial Access Disruption Mitigation:

The rest area will be closed for up to 45 days while construction occurs. Signage will be placed to notify travelers of the rest area closure as needed (Contractor, District Engineer)

17.1 Environmental Justice – Are protected populations within the study area?

☐ Yes (1) ☒ No (1) ☐ N/A

17.2 Will the project have an adverse impact to minority or low income populations per NDOR's Environmental Justice Policy?

☐ Yes (2) ☒ No (1) ☐ N/A

17.3 Will the action result in a potential for disproportionately high and adverse impacts to minority or low income populations?

☐ Yes (3) ☐ No (2) ☒ N/A

NDOR Highway Civil Rights Specialist Determination Date:

2/3/2014

17.4 Describe resources, impacts, and the coordination conducted with officials/agencies:

For Environmental Justice purposes, it's not accurate or helpful to consider the surrounding population for these project areas. These projects are not on residential streets, likely to be used primarily by the immediately surrounding community. This length of roadway is used overwhelmingly by the trucking industry and the travelling American public. There are no small, neighborhood streets that have immediate access to this roadway; there are occasional on-ramps, as with any Interstate highway. It's misleading to discuss the surrounding population, as if this roadway is a residential thoroughfare rather than an arterial roadway that provides an autonomous, insulated channel through the areas it traverses.

Regardless of the roadway's relationship to the surrounding population, there will be no disproportionately high and adverse human health or environmental effects visited upon minority and low-income populations, as defined in USDOT Order 5610.2(a), for the following reasons:

There will be no detours or permanent road closures. Traffic will continue to flow throughout the project. No Right-of-Way is being acquired.

Access to adjacent businesses and residences will remain unimpeded.

There will be no isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community

There will be no restrictions of access to essential services. There will be no relocations or building removal.

17.5 Protected Population Mitigation:

N/A

18.1 Public Involvement – Provide a summary of any completed and planned Public Involvement Activities**:**

On May 18, 2016 NDOR Public Involvement and Roadway Design reached out to the trucking industry, as well as Lincoln County Tourism via phone call on 5/18/16, to notify both entities of temporary closures of the Brady Rest Areas adjacent to the proposed Maxwell-Brady project. Follow-up letters were sent to both entities with general project information and contact information.

The figures in the Civil Rights Analysis do not indicate the presence of an LEP population that reaches the NDOR LEP outreach triggers of 5% or 1,000 persons. No LEP outreach is recommended for this project.

This project has been disclosed in the District Program Hearings as well as through the public involvement efforts in conjunction with the development of the STIP. Due to the nature of the work, additional public outreach is not needed, beyond what is stated above.

18.2 Public Involvement Mitigation:

A minimum of one news release would go to all local and area media, and be posted on the NDOR website, prior to the start of construction work. (NDOR District, NDOR Communication)

19.1 Unresolved Controversy – Based on public involvement carried out per NDOR's procedures, is there any known public or agency controversy on human, natural, or economic grounds associated with the action?

☐ Yes ☒ No ☐ N/A

If Yes, coordinate with FHWA to determine the proper level of environmental review.

19.2 Unresolved Controversy Comments:

N/A

Contract Provisions Required

20.1 Wellhead Protection Special Provisions

☐ Yes ☒ No

20.2 General Conditions for Nationwide Permit

☒ Yes ☐ No Nationwide Permit: 23

20.3 Federal Aviation Administration *(FAA)* Form 7460-1

☐ Yes ☒ No

20.4 General Conservation Conditions from the Matrix PA

☒ Yes ☐ No

The proposed action will be carried out in compliance with Executive Order 13112 *(Invasive Species)*. The project contractor shall comply with Special Provision A-43-2010 amending NDOR Specification 107.01 to include the following: The Contractor shall prevent the transfer of invasive plant and animal species. The Contractor shall wash equipment at the Contractor's storage facility prior to entering the construction site. The Contractor shall inspect all construction equipment and remove all attached vegetation and animals prior to leaving the construction site.

21.1 No Indirect or Cumulative Impacts

☒

This box can be checked if after careful consideration of the Indirect and Cumulative Impact analysis guidance in the CE instructions and the facts of the project, the following statement is determined to be true:

"Indirect effects from this project are not anticipated. This project will not induce growth, change land uses, substantially change travel patterns within a community, or substantially impact water quality, drainage patterns or other resources of concern. Since no substantial human, environmental or economic impacts have been identified for this project; no cumulative impacts are expected."

21.2 Indirect Impacts and Mitigation:

N/A

21.3 Cumulative Impacts:

N/A

22.1 **Additional Comments**:

N/A

23.1 **Project Mitigation**:

Utilities:

Utility relocation or replacement is not anticipated for the project. If utility relocation or replacement is required in a later phase of the project, a reevaluation will be required if: (1) federal funds shall be used for the utility work; or (2) the project construction contractor will be responsible for the work. If this utility work is identified during final design, the project sponsor shall initiate the reevaluation prior to project letting. If the work is identified during construction, the project sponsor shall initiate the reevaluation prior to commencing utility work. (NDOR Environmental, NDOR District)

If any one of the above two conditions do not apply, later relocation or replacement of utilities shall be coordinated through NDOR and the Contractor per NDOR's Standard Specifications for Highway Construction, Subsection 105.06. Any environmental permits required for these utility relocations or replacements shall be the responsibility of the Utility. (NDOR District, Utility Provider(s))

Wetlands/WOUS:

All wetlands within the project area that are not permitted for impacts shall be marked on the project plans and on the Green Sheet for the Contractor as avoidance areas. (NDOR Design, NDOR Environmental)

The project will require a pre-construction notification for impacts to waters of the U.S. the permit shall be obtained prior to the projects letting. The contractor shall adhere to all permit conditions, including regional and general conditions, during construction. (Contractor, NDOR Environmental)

The Contractor shall not stage, store, waste or stockpile materials and equipment in undisturbed locations, or in known/potential wetlands and/or known/potential streams that exhibit a clear “bed and Bank” channel. Potential wetland areas consist of any area that is known to pond water, swampy areas or areas supporting known wetland vegetation or areas where there is a distinct difference in vegetation (at lower elevations) from the surrounding upland areas.(Contractor)

Any material needed shall be provided by the Contractor. The Contractor shall try to obtain borrow from an upland site to prevent depletion issues. If the borrow site is within a depletion area of concern, the Contractor shall coordinate with the appropriate agencies and NDOR to offset or minimize impacts. The Contractor shall obtain all environmental clearances and permits required for the borrow site prior to obtaining borrow material for the project. (Contractor)

Impaired Waters/MS4/NPDES:

Erosion control plans and storm water pollution prevention plans (SWPPP) are required on all projects that have one acre or more of disturbed soil. NDOR inspects all erosion and sediment control best management practices (BMP’s) including devices every 14 days minimum and after every precipitation event of 0.5 inch or greater as per the requirements in the General Construction Storm Water Permit. Any BMP adjustments and repairs are to occur within 7 days of the inspections to ensure that water quality is being protected to the maximum extent practicable. The SWPPP shall be maintained and discharge points shall be monitored by the NDOR District Staff until the site is 70% re-vegetated. At that time the Notice of Termination with NDEQ for the General Construction Storm Water Permit and completion of the SWPPP responsibilities shall be filed. (NDOR Environmental)

Threatened and Endangered Species:

A-1 Changes in Project Scope. If there is a change in the project scope, the project limits, or environmental commitments, the NDOR Environmental Section must be contacted to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior

written approval from the Federal Highway Administration. (District Construction, Contractor)

A-2 Conservation Conditions. Conservation conditions are to be fully implemented within the project boundaries as shown on the plans. (District Construction, Contractor)

A-3 Early Construction Starts. Request for early construction starts must be coordinated by the Project Construction Engineer with NDOR Environmental for approval of early start to ensure avoidance of listed species sensitive lifecycle timeframes. Work in these timeframes will require approval from the Federal Highway Administration and could require consultation with the USFWS and NGPC. (District Construction, Contractor)

A-4 E&T Species. If federal or state listed species are observed during construction, contact NDOR Environmental. Contact NDOR Environmental for a reference of federal and state listed species. (NDOR Environmental, District Construction, Contractor)

A-5 Refueling. Refueling will be conducted outside of those sensitive areas identified on the plans, in the contract, and/or marked in the field. (Contractor)

A-6 Restricted Activities. The following project activities shall, to the extent possible, be restricted to between the beginning and ending points (stationing, reference posts, mile markers, and/or section-township-range references) of the project, within the right-of-way designated on the project plans: borrow sites, burn sites, construction debris waste disposal areas, concrete and asphalt plants, haul roads, stockpiling areas, staging areas, and material storage sites.

For activities outside the project limits, the contractor should refer to the Nebraska Game and Park Commission website to determine which species ranges occur within the off-site area. The contractor should plan accordingly for any species surveys that may be required to approve the use of a borrow site, or other off-site activities. The contractor should review Chapter 11 of the Matrix (on NDOR's website), where species survey protocol can be found, to estimate the level of effort and timing requirements for surveys.

Any project related activities that occur outside of the project limits must be environmentally cleared/permitted with the Nebraska Game and Parks Commission as well as any other appropriate agencies by the contractor and those clearances/permits submitted to the District Construction Project Manager prior to the start of the above listed project activities. The contractor shall submit information such as an aerial photo showing the proposed activity site, a soil survey map with the location of the site, a plan-sheet or drawing showing the location and dimensions of the activity site, a minimum of 4 different ground photos showing the existing conditions at the proposed activity site, depth to ground water and depth of pit, and the "Platte River depletion status" of the site. The District Construction Project Manager will notify NDOR Environmental which will coordinate with FHWA for acceptance if needed. The contractor must receive notice of acceptance from NDOR, prior to starting the above listed project activities. These project activities cannot adversely affect state and/or federally listed species or designated critical habitat. (NDOR Environmental, District Construction, Contractor).

A-7 Waste/Debris. Construction waste/debris will be disposed of in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. (Contractor)

A-8 Post Construction Erosion Control. Erosion control activities that may take place by NDOR Maintenance or Contractors after construction is complete, but prior to project close-out, shall adhere to any standard conservation conditions for species designated for the project area during construction. (NDOR Maintenance, District Construction, Contractor)

S-2 Platte River Depletions. All efforts will be made to design the project and select borrow sites to prevent depletions to the Platte River. If there is any potential to create a depletion, NDOR (during design) and the contractor (for borrow sites) shall follow the current Platte River depletion protocols for coordination, minimization, and mitigation. In general the following are considered de minimis depletions, but may still require agency coordination; a project which: a) creates an annual depletion less than 0.1 acre feet, b) creates a detention basin that detains water for less than 72 hours, c) any diverted water will be returned to its natural basin within 30 days, or d) creates a one-time depletion of less than 10 acre feet.

S-3 Revegetation. All permanent seeding and plantings (excluding managed landscaped areas) shall use species and composition native to the project vicinity as shown in the Plan for the Roadside Environment. However, within the first 16 feet of the road shoulder, and within high erosion prone locations, tall fescue or perennial ryegrass may be used at minimal rates to provide quick groundcover to prevent erosion, unless state or federally listed threatened or endangered plants were identified in the project area during surveys. If listed plants were identified during survey, any seed mix requirements identified during resource agency consultations shall be used for the project. (NDOR Environmental)

S-4 Sensitive Areas. Environmentally Sensitive Areas will be marked on the plans, in the field, or in the contract by NDOR Environmental for avoidance. (NDOR Environmental, District Construction)

S-5 Species Surveys. If species surveys are required for this project, results will be sent by NDOR to the USFWS, NGPC, and if applicable COE. FHWA will be copied on submittals. (NDOR Environmental, District Construction)

American Burying Beetle:

ABB-2 Mowing/vegetation removal and carrion (roadkill carcasses) removal must be done according to American Burying Beetle Conservation Measures Protocol and must be implemented at the following locations: the length of the project (MM 185.74 to MM 198.40). This work will be conducted by either the District or the Contractor, as determined by the District during contracting.

R-1 For the American burying beetle, nighttime work with lights from June 1 – July 1 and August 7 – September 1 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

R-2 Request for early construction starts in the range of the American burying beetle must be coordinated by the Project Construction Engineer with NDOR Environmental for approval of early start (District Construction, Contractor).

Interior Least Tern and Piping Plover:

ILT,PP-1 For construction activities that begin prior to April 15 and continue beyond April 15, surveys will be conducted starting April 8 and continue through the end of construction or August 15 whichever comes first. NDOR Environmental, NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: MM 195.0 to MM 196.7. If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the

protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT,PP-2 When initiating construction activities between April 15 and August 15, surveys will start one week prior to construction activities and will continue through the end of construction or August 15th, whichever comes first. NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: MM 195.0 to MM 196.7. If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT,PP-4 Herbaceous species used for re-seeding within ¼ mile of the following location: MM 195.0 to MM 196.7 will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design)

R-4 For the interior least tern and piping plover, nighttime work with lights from April 15 – August 15 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Surveys may be required to determine if nesting birds are present within ½ mile of the nighttime activity. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

River Otter:

RO-1 A qualified biologist will survey according to protocol no more than 10 days prior to construction. If no active den sites are found, then the project can proceed. If active den sites are found, NDOR Environmental Section will notify the District and will consult with the USFWS, NGPC, and FHWA. If species are present the District will notify the Contractor to stop work within 1/2 mile of the active den until NDOR Environmental completes consultation. (NDOR Environmental, District Construction, Contractor)

Whooping Crane:

WC-1 Construction activities will not occur during Whooping Crane migration periods. (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16). (NDOR Environmental, Construction, Contractor)

OR

WC-2 If construction activities occur during Whooping Crane migration periods (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16), NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: the length of the project (MM 185.74 to MM 198.40) (prior to the start of daily construction activities). If species are present the District will notify the Contractor to stop work within 1/2 mile of the whooping crane and follow the protocol to determine when work can resume (also not initiate work if species is found in the morning survey). Options for resuming work may include but are not limited to (NDOR Environmental, Construction, Contractor):

• Construction activities are limited to the hours from 10:00 a.m. to 4:00 p.m. (CST) during the migration period, unless morning survey indicates Whooping Cranes are not present.

• If a whooping crane is observed during the survey within ½ mile of the project, but departs the area

(further than ½ mile from the project) then work can resume. Document this departure according to protocol.

AND

WC-3 Herbaceous species used for re-seeding within ¼ mile of the following location: the length of the project (MM 185.74 to MM 198.40) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design, NDOR Environmental).

R-11 For the whooping crane, nighttime work with lights from March 10 - May 10 and September 16 - November 16 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor).

Bald and Golden Eagle Protection Act:

• Suitable Bald Eagle nesting and/or roosting habitat exists within 0.5 miles of the Environmental Study Area. If construction will begin between February 1 and April 15, a nest survey must be completed at least 1 but not more than 14 days prior to construction. If construction will begin between April 15 and October 1, a nest survey completed in March is sufficient, as nests will likely already be constructed if nesting will occur that year. However, a nest survey may be completed anytime during this timeframe, as long as it is completed prior to construction. If bald eagles are nesting in the area, consultation with NGPC and USFWS will be required. Eagle roosting surveys will be conducted if construction occurs between October 1 and January 31.

Unexpected Waste:

If contaminated soils and/or water or hazardous materials are encountered, then all work within the immediate area of the discovered hazardous material will stop until NDOR/Federal Highway Administration (FHWA) is notified and a plan to dispose of the Hazardous Materials has been developed. Then NDEQ will be consulted and a remediation plan will be developed for this project. The potential exists to have contaminants present resulting from minor spillage during fueling and service associated with construction equipment. Should contamination be found on the project during construction, the NDEQ will be contacted for consultation and appropriate actions be taken. The contractor is required by NDOR's Standard Specification section 107 (legal relations and responsibilities to the public) to handle and dispose of contaminated material in accordance with applicable laws (NDOR Environmental, District Construction).

Traffic Disruption:

This project shall be constructed under traffic with ane closures controlled by approved temporary traffic control. The project shall not result in traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 45 working days. (Contractor)

Access Disruption:

The rest area will be closed for up to 45 days while construction occurs. Signage will be placed to notify travelers of the rest area closure as needed (Contractor, District Engineer)

Public Involvement:

A minimum of one news release would go to all local and area media, and be posted on the NDOR

website, prior to the start of construction work. (NDOR District, NDOR Communication)

The proposed project qualifies as a Categorical Exclusion under the following activity found in 23 CFR 771.117:

Paragraph: (d)

Activity: 13

Prepared by:

Carmen (Pellish) Modrcin

Organization:

NDOR Environmental

Phone:

402-479-4413

Email:

carmen.pellish@nebraska.gov

Signature:

Date:

5/31/16

NDOR has determined the information in this form is accurate and the project is in compliance with the *OPERATIONAL DRAFT* 2015 Categorical Exclusion Programmatic Agreement between FHWA and NDOR, and satisfies the criteria of 23 CFR 771.117(a) no significant impact and (b) no unusual circumstances. The mitigation identified above shall be implemented for the project.

NDOR Environmental NEPA Specialist Signature:

Date:

5/31/16

NDOR Environmental Documents Manager Signature *(Level 2 ~~and 3~~ Requirement)*:

Date:

5/31/16

FHWA Environmental Specialist *(Level 3 Requirement)*: Date:

Scott H. Stapp

Digitally signed by Scott H. Stapp
DN: cn=Scott H. Stapp, o=FHWA-NE, ou=Nebraska Division, email=scott.stapp@dot.gov, c=US
Date: 2016.06.01 08:36:50 -05'00'

If the scope of work changes, existing conditions change, or applicable regulations change, NDOR shall reevaluate this determination in accordance with the *NDOR reevaluation procedures*.

Reevaluation Approval *(if necessary)*: Date: