



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

CE Review Level:

1    2    3    Re-evaluation

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

Appendix:  A

Paragraph:  22

Project Name:

Gering - South Bayard

Project Number:

STP-92-1(126)

Control Number:

51543

Location and Study Area:

The project is located in Scotts Bluff and Morrill Counties, Nebraska, along two segments of Nebraska Highway 92 (N-92) extending from mile marker (MM) starting 0.26 miles west of the east corporate limits of Gering and extending east to 0.27 miles west of the west corporate limits of Melbeta. The project would then restart 0.15 miles east of the east corporate limits of Melbeta and extend east to 0.15 miles east of Chimney Rock Road. The project also includes work along a segment of Nebraska Link 79E (L79E) starting 0.06 miles south of the US-26/L79E junction and extending south 0.03 miles north of the N-92/L79E junction. Termini are based on limits identified by NDOR pavement management system, District 5 and previous construction projects on this segment of highway.

The Environmental Study Area for this project is defined as the length of this project plus an additional 200 feet on both ends of the project. For Section 4(f) resources, the study area extends to 0.25 mile beyond right-of-way (ROW). For regulated materials, the study area extends up to 1.0 mile beyond ROW. For wetlands and water resources, the study area consists of 50 feet beyond the limits of construction for the entire project alignment.

Begin Point(s):

N92: MM 26.58, MM 33.36, L79E: MM 0.06

End Point(s):

N92: MM 32.72, MM 43.87, L79E: MM 2.10

Highway Number, Street, etc.:

N-92, L79E

**Project Description:**

This project would resurface 16.65 miles of N-92 located in Scotts Bluff and Morrill Counties, starting 0.26 miles west of the east corporate limits of Gering, at MM 26.58, and extending east to MM 32.72, 0.27 miles west of the west corporate limits of Melbeta. Then, continuing 0.15 miles east of the east corporate limits of Melbeta, at MM 33.36, and extending east to MM 43.87, 0.15 miles east of Chimney Rock Road. This project would also resurface 2.04 miles of L79E located in Scotts Bluff County, starting 0.06 miles south of the US-26/L79E junction, at MM 0.06, and extending south to MM 2.10, 0.03 miles north of the N-92/L79E junction.

The existing roadway on this segment of N-92 consists of the following:

- MM 26.58- MM 26.97: This segment consists of two 12 foot wide asphalt lanes with 12 foot wide left turn lanes, painted median divided and 10 foot wide shoulders, of which 8 feet is surfaced with asphalt.
- MM 26.97 - MM 32.72: This segment consists of two 12 foot wide asphalt lanes and 10 foot wide shoulders, of which 8 feet is surfaced with asphalt. A historical marker turnout also exists at MM 32.16.
- MM 33.36 - MM 43.87: This segment consists of two 12 foot wide asphalt lanes and 10 foot wide shoulders, of which 8 feet is surfaced with asphalt. A right turn lane also exists at MM 38.93, and a historical marker turnout at MM 43.33.

The existing roadway on this segment of L79E consists of the following:

- MM 0.06 - MM 2.07: This segment consists of two 12 foot wide asphalt lanes and 8 foot wide shoulders, of which 2 feet is surfaced with asphalt.
- MM 2.07 - MM 2.10: This segment consists of two 12 foot wide asphalt lanes with raised median divided and 8 foot wide shoulders, of which 2 feet is surfaced with asphalt.

The improvements on this project consist of milling and resurfacing the roadway and surfaced shoulders with asphalt, and bridge resurfacing and repair. Scope details include:

- The deck on the bridge over N-92 (Structure Number S092 02714) and the decks on the bridges over L79E (Structure Numbers SL79E00127 and SL79E00145) would be repaired prior to resurfacing.
- The existing asphalt would be milled prior to resurfacing.
- Asphalt patching operations would be performed prior to resurfacing.
- The existing earth shoulders would be brought up to match the new asphalt.
- Rumble strips would be constructed on the resurfaced shoulders of N-92.
- Permanent pavement markings would be applied to all new surfacing.
- No additional property rights would be required to build this project.
- Access to adjacent properties would be maintained during construction but may be limited at times due to phasing requirements.
- This project would be constructed under traffic with lane closures controlled by appropriate traffic control devices and practices.

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

N/A

Action is identified in the  
 Current STIP Date:

Subsequent Phase:

Estimated Cost (\$):

5/25/2016

Construction

\$5,573,000

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

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

**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

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

Melbeta Community Park and McGrew Park are located within 0.25 mile of the project. Melbeta Community Park is located approximately 750 feet west of the project at the southeast corner of the 3rd Street/Main Street intersection in the Town of Melbeta. McGrew Park is located 1,200 feet north of the project at MM 39.00 and within the Town of McGrew just east of the 3rd St/Pine St intersection. There would be no impact to these properties and access would be maintained at all times.

**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

## **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

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 will 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 will initiate the reevaluation prior to project letting. If the work is identified during construction, the project sponsor will initiate the reevaluation prior to commencing utility work. (NDOR Environmental, NDOR District)

If either one of the above two conditions does 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, National Recreational River Segment, or a river listed on the nationwide rivers inventory, 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.

**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:

The project intersects the Gering Drain (MM 27.14 of N-92) and North Platte River (MM 1.45 of L79E) Zone A floodplains. The project improvements at these locations include bridge deck repair and bridge rail sealing on structures S092 02714 and L79E 00145, respectively. The improvements would not affect the hydraulic capacity or elevation of either structure; therefore, the project would not result in any change in the 100-year base flood elevation of either the Gering Drain or the North Platte River. A floodplain permit has been acquired through the county.

**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)

**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:

N/A

**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:

Based on a desktop review that was completed on 5/9/2016, and the current project scope as per the project description, impacts to wetlands and/or Waters of the US are not anticipated as a result of this NDOR roadway project. The project encompasses approximately 16 miles of resurfacing with three bridge repairs, and no culvert work; nor would any additional ROW be acquired. All wetlands within the project area are listed on Attachment 1 of the Environmental Commitment for the Contractor as avoidance area.

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

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)

No wetland impacts are anticipated for this project; however, if impacts are found during design, the required permits shall be obtained prior to letting. NDOR Environmental shall reevaluate the project for the change in impacts. All wetlands within the project area shall be marked on the project plans or listed on Attachment 1 of the Environmental Commitment for the Contractor as avoidance areas. (NDOR Design, NDOR Environmental)

**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:

The North Platte River (NP3-10000) is an impaired water 303(d) Category 5 water for Aquatic Life Use for levels of Mercury. Although the water feature is within the 0.5 mile study area, it is not anticipated to be impacted by the project.

8.5 Impaired Waters, Section 402, and MS4 Mitigation:

There are Category 5 impaired waters in the project study area; BMPs shall be reviewed and developed as necessary during the erosion control review process. If mitigation is required for impaired waters, it shall be captured in the projects erosion control plan sheets and special provisions. (NDOR Roadside Stabilization Unit)

**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)

NDOR PQS Determination Date:

11/16/2015

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:

A biological assessment was completed for the project on 11/16/2015. A "May Affect, Not Likely to Adversely Affect" determination was made for the following species: River Otter, Whooping Crane.

## 9.8 Species Mitigation:

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)

### River Otter:

RO-2 If work is confined to an area between the hinge-points of the roadway or bridge deck, work may proceed. If work is required off the bridge deck or roadway surface, 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)

OR

RO-3 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, 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 along the length of the project (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 1/2 mile of the project, but departs the area (further than 1/2 mile from the project) then work can resume. Document this departure according to protocol.

AND

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 prior to beginning construction activities.

\* 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)

10.4 Historic Property Determination

NDOR PQS Determination Date:

Has coordination occurred with SHPO?

Yes     No

Has coordination occurred with THPO?

Yes     No

Has coordination occurred with CLG?

Yes     No

**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)

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

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

Yes (3)     No (1)

NDOR PQS Determination Date:

5/20/2016

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

The HMR identified two facilities where past releases have occurred within the hazardous materials study area. Both sites have past releases associated with leaking underground storage tanks. Based on the scope of work near these sites consisting of milling and resurfacing the roadway (no soil disturbance beyond the pre-existing roadway fill material), there is a low potential of encountering contamination originating from these facilities during construction.

One non-National Priorities List (NPL) Superfund site was identified adjacent to the project. The Agromac International Inc. facility (former Lockwood Corporation) is located adjacent to the beginning of the project in Gering, NE at MM 26.58. When Lockwood shut down operations in 1999, approximately 200 drums of hazardous materials were left onsite. The EPA completed removal activities at this location and archived the site as no further action was required. No releases of hazardous materials to the soil or groundwater contamination were documented. Based on the minimal scope of work near the site and the EPA completing removal activities, there is a low potential of encountering contamination originating from this site during construction.

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 shall stop until NDOR/FHWA is notified and a plan to dispose of the Hazardous Materials has been developed. Then NDEQ shall be consulted and a remediation plan shall 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 shall be contacted for consultation and appropriate actions to 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 District, Contractor).

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

Yes (3)  No (1)  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

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)

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

Yes (3)     No (1)

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)

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

Yes (3)     No (1)

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

Yes (3)     No (1)

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

Yes (3)     No (1)

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

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 30 working days. (Contractor)

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

Yes (1)     No (1)

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

Yes (3)     No (1)

16.6 Will the action change the functionality of adjacent properties?

Yes (3)     No (1)

16.8 Substantial Access Disruption Mitigation:

Access to adjacent properties shall be maintained at all time during construction. Access may be disrupted temporarily at times due to construction activities, but will not be closed. (Contractor)

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

Yes (1)  No (1)

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)

NDOR Highway Civil Rights Specialist Determination Date:

6/21/2016

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

A low-income population was identified in the Village of McGrew. However, there would be no disproportionately high and adverse human health or environmental effects visited upon minority and low-income populations, as defined in FHWA Order 6640.23A.

There would be no anticipated adverse effects to the low-income population in the Village of McGrew based on the following information:

There would be no detour for this project.

There is no anticipated right-of-way acquisition for this project.

Access to adjacent properties would be maintained.

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

There would be no restrictions of access to essential services.

There would be no relocations or building removal.

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

This project has been disclosed in the District-wide 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 will not occur during the NEPA phase.

No LEP outreach is required for this project because, in the areas surveyed, none of the data indicates the presence of an LEP population that reaches the NDOR LEP outreach triggers of 5% or 1,000 persons.

18.2 Public Involvement Mitigation:

A minimum of one news release shall 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

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

**Contract Provisions Required**

20.1 Wellhead Protection Special Provisions

Yes  No

20.2 General Conditions for Nationwide Permit

Nationwide Permit:

N/A

Yes  No

20.3 Federal Aviation Administration (FAA) Form 7460-1

Yes  No

20.4 General Conservation Conditions from the Matrix PA

Yes  No

**T&E General Conditions:**

**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/permited 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)

**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.”*

21.3 Cumulative Impacts:

There is currently one other project that is active near the project, Scottsbluff – Minatare (CN 51507). CN 51507 is currently scheduled to go to letting on 8/30/2018, which would be after construction of the Gering to South Bayard project. Based on the scope of this project in combination with reasonably foreseeable past, present, and future actions no cumulative impacts are anticipated.

There are no anticipated cumulative impacts due to the proposed project in conjunction with the projects referenced above. There are no negative long-term socioeconomic impacts anticipated as access to residences or businesses would only be limited during construction. However, motorists would benefit from the improved roadway and shoulders, and overall greater reliability of the transportation system.

22.1 Additional Comments:

Coordination with the Western Nebraska Regional Airport (William B Heilig Field) was completed in July 2016.

23.1 Project Mitigation:

**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 will 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 will initiate the reevaluation prior to project letting. If the work is identified during construction, the project sponsor will initiate the reevaluation prior to commencing utility work. (NDOR Environmental, NDOR District)

If either one of the above two conditions does 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/Waters of the U.S. Mitigation:**

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)

No wetland impacts are anticipated for this project; however, if impacts are found during design, the required permits shall be obtained prior to letting. NDOR Environmental shall reevaluate the project for the change in impacts. All wetlands within the project area shall be marked on the project plans or listed on Attachment 1 of the Environmental Commitment for the Contractor as avoidance areas. (NDOR Design, NDOR Environmental)

**Impaired Waters, Section 402, and MS4 Mitigation:**

There are Category 5 impaired waters in the project study area; BMPs shall be reviewed and developed as necessary during the erosion control review process. If mitigation is required for impaired waters, it shall be captured in the projects erosion control plan sheets and special provisions. (NDOR Roadside Stabilization Unit)

**General Conservation Conditions from the Matrix PA:**

**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)

**Species Mitigation:**

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)

**River Otter:**

RO-2 If work is confined to an area between the hinge-points of the roadway or bridge deck, work may proceed. If work is required off the bridge deck or roadway surface, 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)

OR

RO-3 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, 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 along the length of the project (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

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 prior to beginning construction activities.

**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 shall stop until NDOR/FHWA is notified and a plan to dispose of the Hazardous Materials has been developed. Then NDEQ shall be consulted and a

remediation plan shall 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 shall be contacted for consultation and appropriate actions to 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 District, Contractor).

**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 30 working days. (Contractor)

**Substantial Access Disruption Mitigation:**

Access to adjacent properties shall be maintained at all time during construction. Access may be disrupted temporarily at times due to construction activities, but will not be closed. (Contractor)

**Public Involvement Mitigation:**

A minimum of one news release shall 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)

**Additional Mitigation:**

**BORROW, DEBRIS DISPOSAL AND STAGING:**

Any material needed will 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.

The Contractor shall have a staging area for the project where material and equipment for the project is stored (e.g. re-steel, forms, etc.). The Contractor shall be required to dispose of material removed as part of the project described above and miscellaneous obstructions encountered and removed along the project. The disposal shall be the responsibility of the Contractor. A waste site may be needed. The Contractor shall be responsible to obtain all permits and clearances and all conditions of those permits. (Contractor)

**WELLHEAD PROTECTION AREA**

A portion of the project has been identified as being located within or adjacent to the City of Gering and the City of Minatare Wellhead Protection Areas. NDOR's Standard Specifications 107.01, 107.09 and 107.16 address the Contractor's responsibility to keep fully informed of, observe and comply with all federal, state and local laws and ordinances that affect the conduct of the work. (Contractor)

**FEDERAL AVIATION ADMINISTRATION**

Because of the proximity to the Western Nebraska Regional Airport (William B Heilig Field) in Scottsbluff, NE, the height of any equipment used in the construction of the project (or any antennae installed on the equipment) shall not exceed the local airport's Height Restriction Zoning. Any Contractor involved in the project shall use the Notice Criteria Tool available at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>. (Contractor)

If required, the Contractor shall file a 7460-1 Form with the Federal Aviation Administration (FAA). The form shall be required if the Contractor uses any equipment over 200' tall, or the equipment breaks a 100:1 slope from a public-use airport. This includes any trucks or equipment used during the construction of the project. NDOR's Roadway Design Division shall verify clearance for permanent construction in the controlled zone from the Nebraska Department of Aeronautics (NDOA) and FAA. NDOR's Roadway Design Division shall identify those contracts that shall require the special provision concerning the Contractor's responsibility to gain FAA and NDOA clearance for temporary encroachments due to construction operations. NDOR's Plans, Specification & Estimates (PS&E) / Contracts shall include the special provision in the appropriate project contracts. (Contractor)

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

Paragraph:

Activity:

Prepared by:

Organization:

Phone:

Email:

Signature:



Date:

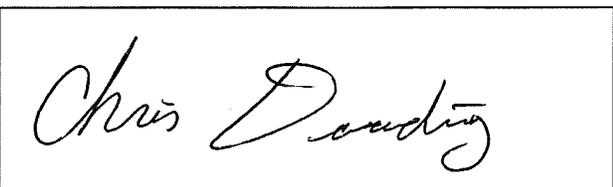
**Reviewed by Project Sponsor:**

Name:

Organization:

Title:

Signature:



Date:

**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:

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

Date:

FHWA Environmental Specialist (*Level 3 Requirement*):

Date:

**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: