# Biological Assessment PQS Memorandum

DATE 6/1/2016

TO Ryan Walkowiak, NEPA Project Manager

Cc Pat Sward, EPU Project Manager

FROM Melissa Marinovich, T&E Species Biologist

SUBJECT Ashton West; STP-92-4(116); CN 42721
Threatened & Endangered Species Concurrence

The biological assessment final approval on: **5/31/2016**

Date of Project Description used for this review: 4/13/2016

**Threatened and Endangered Species Effect Determination**:

☒ The Project(s) will have "No Effect" to all state or federally listed species or their designated critical habitat (Level 1).

☐ A "May Affect, Not Likely to Adversely Affect" determination is made for the following species/critical habitat with the conservation conditions listed below:

☐ This BA required FHWA Review and Approval.

FHWA Concurrence Date:

☐ This BA required further consultation with the resource agencies (Level 2).

USFWS Concurrence Date:

NGPC Concurrence Date:

☐ Unique conservation conditions were developed and are included below (Level 3).

☐ A "May Affect, Likely to Adversely Affect" determination is made for the following species/critical habitat with the conservation conditions listed below: (Level 3).

Additional Coordination with Other Tribal or Federal Agencies:

Description of Coordination:

**Bald and Golden Eagle Protection Act:**

This project was reviewed for potential impacts to bald and golden eagles. NDOR believes the project site does not have appropriate habitat for eagles. Due to the lack of suitable habitat and 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.

**Migratory Bird Treaty Act:**

NDOR has developed an Avian Protection Plan (APP) to reduce conflicts between construction of NDOR projects and the laws governing migratory birds. This procedure is designed to protect and conserve avian populations and reduce avian conflicts through changes in project scheduling (i.e. tree clearing outside of primary nesting period), increased migratory bird surveys, and changes in project construction timelines. NDOR will utilize its APP to reduce conflicts with migratory birds on this project.

**Fish and Wildlife Coordination Act:**

A wetland delineation was completed in May 2013. Based on current project design, there will be approximately 0.640 acres of wetland impacts (these numbers may change slightly as coordination with design is ongoing). This project will require a NPDES permit and Nationwide 3 and 14 Section 404 permits from the US Army Corps of Engineers. An onsite mitigation site is being planned and designed. A proposed site location map is attached.

Any impacts to vegetated areas would be re-vegetated per Best Management Practices (BMPs) included in the erosion control plan. A Temporary Erosion Control Plan shall be developed prior to the commencement of construction in order to avoid impacts to fish and other aquatic organisms. This plan would show the BMPs necessary at the beginning of the projects and would be updated as BMPs are added or modified throughout the construction process. When land disturbances are greater than or equal to one acre, the Temporary Erosion Control Plan will be a component of the NDOR's Stormwater Pollution Prevention Plan (SWPPP).

Comprehensive and effective erosion and sediment control measures shall be implemented throughout the construction process to minimize the likelihood of sediment discharges. NODR promotes the use of sediment and erosion control techniques in combination with each other, rather than as stand-alone BMPs to improve the effectiveness of these BMPs. Please refer to NDOR's "Construction Stormwater Best Management Practices" Pocket Field Guide for additional information concerning NDOR's recognized BMPs. (http://www.transportation.nebraska.gov/environment/guides/Const-Strmwtr-Pocket%20Guide.pdf)

BMPs are considered during all stages of the Project's planning and design. They are implemented and maintained for the duration of the construction project and until the vegetation on the project sites has been re-established. Per the plans, the site will be vegetated with a perennial seed mixture containing native species. Most of the vegetated areas to be disturbed consist mainly of non-native cool season grasses, therefore, the use of the native grass species in the seed mixture should have a beneficial effect to terrestrial resources. An inspection and maintenance schedule is being developed and implemented on all projects that require a SWPPP to help ensure effectiveness of the BMPs. The SWPPP also requires the contractor must provide a spill prevention plan. The spill prevention plan is reviewed during each inspection, as required by the Construction Stormwater Permit.

NDOR is committed to protecting Nebraska's water resources. Through design, construction, and establishment phases on each project, erosion and sediment control BMPs are being considered, installed, and maintained to help ensure that sediment discharges are minimized to the maximum extent practicable.

Any impacts to fish and wildlife resources from this project would be minimal and considered discountable as this is a preservation type project working on the existing roadway corridor and would not be increasing traffic

capacity or building new alignment in unaltered habitat. there are no migratory routes or unique habitats bissected by this project.
In addition, NDOR would build a wetland mitigation site within NDOR ROW which would provide beneficial habitat values for fish and wildlife resources in the area, as it would be creating a larger ratio of habitat than that being impacted by the Project.

**Conservation Conditions:** *Responsible Party for conservation condition shown in parentheses.*

Listed below are the required Conservation Conditions that apply to this project. These measures are not subject to change without the prior written approval of the Federal Highway Administration. **Copy and paste the conditions listed below verbatim in the NEPA document, the Green Sheet, and in the contract documents:**

**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)