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CE Programmatic  
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**PROGRAMMATIC  
CATEGORICAL EXCLUSION AGREEMENT  
BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION  
AND  
THE NEBRASKA DEPARTMENT OF ROADS**

**REGARDING THE PROCESSING OF HIGHWAY PROJECTS CATEGORICALLY  
EXCLUDED FROM THE REQUIREMENTS TO PREPARE EITHER AN  
ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT**

APRIL 2015

(SUPERSEDES AGREEMENT DECEMBER 1, 2008 - PROGRAMMATIC AGREEMENT  
FOR NEPA CATEGORICALLY EXCLUDED TRANSPORTATION PROJECTS)



U.S. HIGHWAY 20 BRIDGE OVER THE WHITE RIVER, DAWES COUNTY  
PHOTOGRAPH BY JUSTIN WILLIAMS

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

**Whereas**, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

**Whereas**, the Federal Highway Administration's (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

**Whereas**, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA's primary responsibilities (49 CFR 1.81(a)(5));

**Whereas**, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

**Whereas**, the Nebraska Department of Roads (NDOR) is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for the NDOR projects (23 CFR 771.109);

**Whereas**, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

**Whereas**, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014;

**Now, therefore**, the FHWA and NDOR enter into this Programmatic Agreement ("Agreement") for the processing of categorical exclusions.

#### **A. PARTIES**

The Parties to this Agreement are the Federal Highway Administration ("FHWA") and the Nebraska Department of Roads (hereinafter "NDOR").

#### **B. PURPOSE**

The purpose of this Agreement is to authorize NDOR to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117 as listed in Appendix A and B of this Agreement.

### C. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

1. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
2. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
3. 40 CFR parts 1500 - 1508
4. DOT Order 5610.1C
5. 23 CFR 771.117

### D. INTRODUCTION

The FHWA Nebraska Division follows the philosophy that the goal of the NEPA process is better decisions and not bigger documents. The primary purpose of this Agreement is to increase flexibility, streamline the environmental process, and reduce paperwork while maintaining appropriate consideration of projects' impacts on the human and natural environment. This Agreement provides for the expeditious processing of CE actions by NDOR, under the guidance and with the approval of FHWA. NDOR shall develop project documentation that demonstrates that project actions meet the CE criteria established under this Agreement and shall demonstrate that project actions meet the definition of a CE defined in 23 CFR 771.117(a) (see Council on Environmental Quality [CEQ] definition below) and have no unusual circumstances defined in 23 CFR 771.117(b) that would require the preparation of either an EA or EIS. The FHWA shall rely upon this documentation as a basis for any CE determinations it must make as part of consideration of notices to proceed to final design, right-of-way purchases, or construction.

NDOR will satisfy all conditions contained herein for all projects processed under this Agreement. This Agreement supersedes the December 17, 2008 CE processing agreement held between FHWA and NDOR, titled *Programmatic Agreement for the Review and Approval of NEPA Categorically Excluded Transportation Projects between the Federal Highway Administration Nebraska Division and the Nebraska Department of Roads*. This agreement applies to all projects that involve FHWA funding or approvals. This Agreement does not apply to 100% state funded projects that do not require FHWA approval.

In accordance with FHWA regulations [23 CFR 771.117(a)], CEs are actions which meet the definition contained in the CEQ regulations at 40 CFR 1508.4, and based on past experience with similar actions, do not involve significant environmental impacts and therefore are categorically excluded from the need to prepare an EA or EIS. They are actions which:

- Do not induce significant impacts to planned growth or land use for the area;
- Do not require the relocation of significant numbers of people;
- Do not have a significant impact on any natural, cultural, recreational, historic, or other resource;
- Do not involve significant air, noise or water quality impacts;
- Do not have significant impacts on travel patterns; or
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts

The term "Significant" as used in NEPA is defined at 40 CFR 1508.27 and requires consideration of both context and intensity.

This agreement has been developed to be in conformance with the policy and procedures for the environmental processing of CE actions as defined in Section 23 CFR 771.117 (and as amended).

## **E. RESPONSIBILITIES**

NDOR is responsible, as part of their processing proposed projects under this agreement, for:

1. Conducting appropriate environmental studies to determine if the CE classification is proper per 23 CFR 771.117(a) and (b), including considering unusual circumstances. Such unusual circumstances include, but are not limited to:
  - a. Significant environmental impacts;
  - b. Substantial controversy on environmental grounds;
  - c. Significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or,
  - d. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
2. Classifying all CE project actions as Level 1, or Level 2 CE Actions in accordance with 23 CFR 771.117 and this Agreement. The appropriate determination of a CE is based upon the type of action and project impacts; and,
3. Conducting environmental analyses and preparing documentation that serves as a basis for making a CE determination; and,
4. Coordinating with FHWA in the event cumulative effects may be of concern for an action; and,
5. Processing all CE project actions according to the terms of this agreement; and,
6. Preparing documentation in accordance with terms of this agreement utilizing NDOR's CE Determination Form, in agreement with FHWA Division office; *[NDOR is committed to developing electronic or "Smart Form" documentation tools for future incorporation into an online document production and storage system. These forms/systems will be incorporated, modified, and/or replaced as necessary with concurrence from with FHWA throughout the term(s) of this Agreement.]*; and,
7. Making CE determinations (CE approvals) on FHWA's behalf for Level 1 and Level 2 CE Actions; and,
8. Conducting quality control and quality assurance reviews to ensure that the provisions of this agreement are being appropriately followed; and,
9. Ensuring qualified staff perform all environmental reviews and documentation; and,
10. Assuring compliance with all applicable federal environmental and related requirements.

The FHWA Nebraska Division Office is responsible for:

1. Providing timely responses to request for reviews and approvals of items submitted by NDOR including but not limited to:
  - a. Questions on class of action
  - b. Reviews for Section 4(f), Section 106, Section 7 impacts
  - c. Review and approval of Level 3 CE Actions
2. Participating in any project level agency coordination, consultation, public involvement activity, or government to government consultation, as appropriate; and,
3. As part of its program oversight responsibility, conducting monitoring of NDOR's performance according to the terms of this agreement; and,
4. Determining whether a project should be classified as a Level 3 CE, EA or EIS

#### **F. CE ACTION LEVELS**

Activity types and environmental impact thresholds that define Level 1 and Level 2 CE actions for purposes of this agreement are defined in Appendices A and B. If a project does not meet the criteria for a Level 1 or Level 2 CE Action and a variance is not provided by FHWA, the project would be processed as either a Level 3 CE, an EA, or EIS as determined by FHWA. NDOR shall ensure that each project processed under this Agreement will be documented in accordance with the thresholds specified in the appendices of this Agreement.

CE determinations for Level 1 CE actions shall only be approved by a full-time equivalent NDOR Environmental Documents NEPA Analyst, the NDOR Environmental Document Unit Supervisor, or the NDOR Environmental Section Manager. CE determinations for Level 2 CE actions shall be only approved by the NDOR Environmental Documents Unit Supervisor or the Environmental Section Manager.

For projects that will likely exceed the Level 2 CE actions thresholds, NDOR will provide FHWA pertinent project scope and potential resource impact information using NDOR's *Probable Class of Action* form (or a successor form in agreement with FHWA) for FHWA to make the class of action determination. This will occur early in the environmental review process or during planning.

Level 3 CE actions can include projects with impacts greater than those listed as Level 1 or Level 2 CE actions. Level 3 CE actions must meet the intent of 23 CFR 771.117 in that they must satisfy the criteria for CE classification and cannot involve significant environmental impacts. Level 3 CE documentation shall be approved for content and accuracy by the NDOR Environmental Documents Unit Supervisor or the Environmental Section Manager prior to submittal to FHWA. FHWA retains approval authority for Level 3 CE actions.

This Agreement shall not preclude NDOR from requesting, or FHWA granting a CE review level *variance* when the project action results in a minor exceedance of the thresholds listed in Appendix A or B, on a case-by-case basis. NDOR shall provide FHWA pertinent project information and justification relevant to the *variance* request. In addition, the project action must qualify as a listed CE activity in 23 CFR 771.117 (c) or (d). Nothing in this Agreement diminishes FHWA's right to individually review any CE action, or prevent NDOR from requesting FHWA review of a Level 1 or Level 2 classified project.

## **G. DOCUMENTATION OF NDOR CE APPROVALS AND CERTIFICATIONS**

NDOR shall ensure that it fulfills the following responsibilities for documenting CE approvals made by NDOR on behalf of FHWA, and State CE certifications for CE actions to be approved by FHWA:

1. For actions listed in Appendix A and B, NDOR will identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a NDOR signature evidencing approval.
2. In addition, for actions listed in 23 CFR 711.117 (d), NDOR shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.

NDOR shall maintain a project record for CE approvals it makes on FHWA's behalf and each CE submitted to FHWA for approval. This record should include at a minimum:

1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
4. The name and title of the document approver and the date of NDOR's approval or FHWA's final approval; and
5. Documented re-evaluations (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).

Inherently governmental functions, such as CE approvals, must be performed by a government employee.

Any electronic or paper project records maintained by the NDOR shall be provided to FHWA at their request. NDOR will retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve NDOR of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

## **H. REEVALUATIONS**

It may become necessary for NDOR to re-evaluate the CE classification for projects having CE determinations. Re-evaluations shall be conducted by NDOR in accordance with 23 CFR 771.129. If there is a change in project scope or impacts, a written re-evaluation will be required prior to further approvals being granted. The re-evaluation of a CE shall be conducted by NDOR for the following circumstances:

1. If the project scope has changed since the last CE determination

2. If the project impacts have changed since the last CE determination
3. If regulatory changes occur that would influence the project or necessitate a reevaluation of impacts.

A reevaluation would be necessary if there are substantial changes in the proposed action that are relevant to social, economic or environmental concerns or if there are new circumstances or information relevant to social, economic, or environmental concerns with bearing on the proposed actions or its impacts.

NDOR shall document re-evaluations using a memorandum to the file or the reevaluation block on the CE form, commensurate with the action. The signature authority for re-evaluations will be the same as for the original CE document unless the re-evaluation indicates a change in the level of document is needed. It is the responsibility of NDOR to ensure that the conditions of the project have not changed and the NEPA determination remains valid for the action.

#### **I. STATE DOT PERFORMANCE MEASURES**

On a quarterly basis, NDOR will provide FHWA a list of Level 1 and Level 2 CE actions processed under this Agreement. The previous quarter's data will be provided to FHWA no later than the 10th of the first month after each consecutive quarter. At a minimum the list will contain the project number, control number, project name, date of NDOR approval, CE action level, and the corresponding (c) list or (d) list category used to approve the project.

For national reporting purposes, FHWA will periodically request NDOR to report the duration to complete CE processing. NDOR and FHWA Nebraska Division will mutually agree on the methodology used to measure CE processing duration.

NDOR must maintain adequate organizational and staff capability and expertise, or as appropriate, procure through consultant services some or all of the technical expertise needed, to effectively carry out the provisions of this Agreement. This includes:

1. Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement; and
2. Devoting adequate financial and staff resources to carry out the certification and processing of projects under this Agreement

NDOR shall have written protocols to ensure that environmental commitments are fulfilled.

NDOR will continue to offer training as part of its environmental consultant prequalification process to ensure high quality standards in documentation preparation. A minimum of 3 training events during the five year Programmatic Agreement period will be held.

NDOR will monitor its processes relating to project approvals, environmental analysis and project file documentation and check for errors and omissions. NDOR shall take corrective action as needed and will document quality control activities and any corrective actions taken and will provide FHWA a summary of the findings upon request.

NDOR will utilize interim written QA/QC procedures effective on the signature date of this agreement. Final quality control process and written procedure will be provided to FHWA Nebraska Division no later than *June 2016*.

NDOR shall ensure that project records are available to the public consistent with requirements applicable to Federal agencies under 5 U.S.C. §552 [the Freedom of Information Act (FOIA), as amended in 2002], NEPA, and consistent with applicable FHWA regulation, policy, and guidance.

## **J. MONITORING**

Full compliance with the Agreement will be determined by FHWA through completion of process reviews on an annual basis for the first two years of this agreement, then every other year thereafter.

NDOR and FHWA will jointly conduct process reviews of all Level 1 and Level 2 CE actions, and prepare a report detailing the findings, recommendations and best practices. The results of such reviews will be used to determine what agreement modifications, if any, may be needed and a reasonable schedule to address process review action items shall be included in the report. FHWA shall review Level 3 CE actions at least once during the life of this 5 year agreement and as needed.

Nothing in this Agreement shall prevent FHWA from undertaking other monitoring or oversight actions, including process reviews, with respect to NDOR performance under this Agreement. FHWA may identify findings or observations, as a result of its oversight monitoring, that NDOR has not performed according to the provisions of this agreement. In such cases NDOR shall prepare and implement a corrective action plan to address such findings and observations. At its sole discretion, FHWA may require NDOR to perform other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.

## **K. TERM, RENEWAL, TERMINATION, & MODIFICATIONS**

This Agreement shall have a term of five (5) years, beginning on the date of the last signature. This Agreement is renewable for additional terms of five (5) years each, if NDOR requests renewal and FHWA determines that NDOR has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement, compliance with the terms of the agreement, and its overall impact on the environmental review process.

NDOR shall post an executed copy of this Agreement on its web site, available to the public.

At least six (6) months prior to the end of each term, NDOR and FHWA shall meet to discuss the results under the Agreement and consider amendments to this Agreement. If the parties do not renew the Agreement, then it shall expire at the end of the term then in effect.

Either party may terminate this Agreement at any time by giving at least a 30 day written notice to the other party.

Any party to this Agreement may request that it or the Appendices be amended to reflect changes, whereupon the parties shall consult to consider such an amendment. If the parties agree to amend this Agreement or the Appendices, then FHWA and NDOR may execute an amendment with new signatures and dates after all necessary reviews are completed. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement. Minor non-substantive changes to the Appendices may be made through

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

appropriate clarification guidance to better refine implementation of the agreement based on experience. This will not require re-execution of the Agreement, but would require the written consent of both parties.

Expiration or termination of this Agreement shall mean that NDOR is not able to make CE approvals on FHWA's behalf.

**Signatures**

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

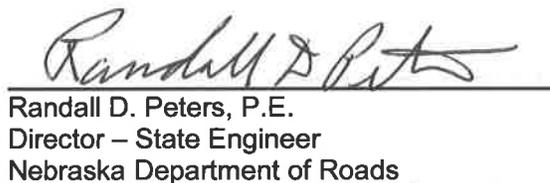


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Joseph A. Werning  
Division Administrator  
Federal Highway Administration

4-15-2015  
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Date



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Randall D. Peters, P.E.  
Director – State Engineer  
Nebraska Department of Roads

4/14/15  
\_\_\_\_\_

Date

## Appendix A: Level 1 CE Actions

Due to the limited scope of work for certain projects and based on NDOR and FHWA's past experience with similar actions, these actions meet the intent of CEQ regulation (Section 1508.4) and 23 CFR 771.117(a) and 771.117(c): some actions "...meet the criteria for CEs in the CEQ regulation and normally do not require any further NEPA reviews by the Administration."

These projects must have independent utility and logical termini and must not exceed any of the Level 1 project impact thresholds listed in the next section. Based on past experience, projects listed below will not result in any significant impacts to the human and/or natural environment. If environmental resources will be impacted, the level of documentation will need to be elevated.

The NDOR shall be ultimately responsible for ensuring that projects meet the criteria of a Level 1 CE action and do not require any further NEPA approvals. The following project actions correlate to the actions described in 23 CFR 771.117(c)(1) through (25) and have been determined to meet the criteria of a Level 1 CE action as defined by NDOR and FHWA:

- (1) Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system. Examples include:
  - Study type projects (i.e. feasibility studies, etc.).
  - Visual bridge inspection, including collection of physical samples (e.g. paint chips, timber pile cores, etc.), that is not part of a larger undertaking.
- (2) Approval of utility installations along or across a transportation facility. Examples include:
  - Tower lighting and street lighting projects.
  - Repair/replacement of intersection, underpass, overpass or other roadway lighting.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities. Examples include:
  - Walkways, sidewalks, re-construction of shared-use paths and facilities, construction of a bike path on an existing railroad bed, designations of certain highways as bike routes, painting of existing paved shoulders as bike lanes, ADA ramps.
  - Construction of new shared-use paths and facilities will require at least a Level 2 review.
- (4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction. Examples include:
  - Maintenance and/or replacement of existing noise wall panels and/or posts
- (7) Landscaping. Examples include:
  - Beautification or facility improvement projects (i.e. landscaping, curb and gutter replacement, installation of park benches, decorative lighting, etc.)
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur. Examples include:
  - The installation, replacement or maintenance of signs and signals, pavement markings/raised pavement markers/sensors, traffic calming activities, and/or new or replacement fencing.
  - General pavement marking or "line painting" projects, other than re-striping a roadway to increase capacity.
- (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
  - (i) Emergency repairs under 23 U.S.C. 125; and
  - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
    - (A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
    - (B) Is commenced within a 2-year period beginning on the date of the declaration.
- (10) Acquisition of scenic easements. Examples include:
  - Land acquisition by a public agency/public park entity for passive recreational use.
- (11) Determination of payback under 23 CFR part 156 for property previously acquired with Federal-aid participation.

- (12) Improvements to existing rest areas and truck weigh stations. Examples include:
- Improvements to existing rest areas and weigh stations for minor maintenance (i.e. mill and resurfacing of existing ramp and parking areas, lighting or other enhancements to rest area facilities). Projects involving major construction may require a higher level of documentation.
  - Rest Area/Weigh Station electrification and construction/installation supporting alternative energy vehicles at existing facilities
- (13) Ridesharing activities. Examples include:
- Transportation corridor fringe parking facilities, park-and-ride lots and ridesharing activities
- (14) Bus and rail car rehabilitation.
- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE. Examples include: Purchase or conversion of vehicles to alternative fuel uses (CNG, E-85, etc.)
- (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- (19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- (20) [Deleted due to inapplicability in the NDOR Transportation Program].
- (21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses. Other examples include:
- Replacement of existing or installation of new traffic signals, flashing beacons, railroad warning devices and the installation of ITS system components
  - Upgrade of existing tower lighting to new technologies that ensure a lesser impact than the current system.
  - Fiber optic trenching within the existing roadway ROW

- Implementation of other new safety or operations technologies.
- (22) Projects, as defined in 23 U.S.C. 101 that would take place entirely within the existing operational right-of-way. Operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way. Example actions may include:

- General highway maintenance and improvements such as pavement repair, armor coat, chip/fog seal, crack/joint seal, grinding/resurfacing, microsurfacing, mill and inlay/overlay, shoulder surfacing, trench widening, shoulder reconstruction.
- Culvert installation and maintenance activities including headwall, wingwall and other similar repair replacement or modification; installation or replacement of Flared End Sections (FES); in-kind replacement; new curb and flume installation (new locations), repair/replacement, etc.
- Bridge maintenance and repair activities including bridge deck overlays; deck repairs (including Class III repairs); rail repair/replacement; abutment and wingwall repair, replacement or modification; approach slab replacement; painting; anti-icing system installation.
- Guardrail replacement, repair and modification and associated surfacing where roadway ditches and back slopes will not be relocated, mail box turnouts, etc.
- Sediment and erosion control work including slope/slide repair and reconstruction.
- Construction of new or improvements to existing NDOR facilities when the actions occur within the existing operational right-of-way.

(23) Federally-funded projects:

- (i) That receive less than \$5,000,000 of Federal funds; or
- (ii) With a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

(Note: Total project costs include all phases of work on a project, from preliminary engineering, to final design, right-of-way, construction, etc. The \$5,000,000 cumulative threshold includes all federal funds applied to the project, regardless of phase.)

Example actions may include:

- General highway maintenance and improvements such as pavement repair, armor coat, chip/fog seal, crack/joint seal, grinding/resurfacing, microsurfacing, mill and inlay/overlay, shoulder surfacing, trench widening, shoulder reconstruction.
- Culvert installation and maintenance activities including headwall, wingwall and other similar repair replacement or modification; installation or replacement of Flared End

- Sections (FES); in-kind replacement; new curb and flume installation (new locations), repair/replacement, etc.
  - Bridge maintenance and repair activities including bridge deck overlays; deck repairs (including Class III repairs); rail repair/replacement; abutment and wingwall repair, replacement or modification; approach slab replacement; painting; anti-icing system installation.
  - Guardrail replacement, repair and modification and associated surfacing where roadway ditches and back slopes will not be relocated, mail box turnouts, etc.
  - Sediment and erosion control work including slope/slide repair and reconstruction.
- (24) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
- (25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation. Examples include:
- Conservation/mitigation easements and fee simple.
- (26, 27, 28) These "(c)" listed activities cannot be processed as a Level 1 Action per 23 CFR 711.117(c)(26-28) and the provisions identified in MAP-21 (see Appendix B).
- (29) [Deleted due to inapplicability in the NDOR Transportation Program].
- (30) [Deleted due to inapplicability in the NDOR Transportation Program].

#### **Level 1 CE Action - Impact Thresholds**

Projects that exceed the following thresholds will not be considered eligible for processing as a Level 1 CE Action:

- Any acquisition of new temporary or permanent right-of-way for construction. All Level 1 CE actions must occur within existing right-of-way
- National Wild and Scenic River or National Recreational River corridor impacts. Upon written concurrence from the agency of jurisdiction, a finding of "no impact" would not preclude processing the action as a Level 1 CE.
- An action that causes 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.
- Section 404 Nationwide Permit requiring Pre-Construction Notification or an Individual Permit or a Section 9 Coast Guard Permit.
- Impacts to wetlands greater than 0.50 acre, including isolated wetlands/waters of the state.
- Impacts to state or federally threatened or endangered species resulting in a "May Affect" determination per the Nebraska Biological Evaluation Process *Matrix* and requiring further review and resource agency concurrence.
- Impacts to historic properties or historic districts. All Level 1 CE Actions must result in a *No Potential to Affect* or a *No Historic Properties Affected* determination.

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

- Hazardous material conflicts: If the project qualifies as an exemption per the Hazardous Material Manual and/or it has been determined by NDOR HazMat specialists there is low potential for conflict with hazardous materials it qualifies for Level 1.
- Section 4(f) use (temporary or permanent), determination of 4(f) exception, or a 6(f) conversion.
- Minor traffic disruption, including the use of a temporary road, detour or ramp closure unless the use of such facilities satisfy the following conditions:
  - Duration of the detour is less than 30 working days in length;
  - Designated detours would result in adverse (out-of-direction) travel less than 5 miles in urban areas or 25 miles in rural areas;
  - Provisions are made for access by local traffic and so posted;
  - Through-traffic dependent businesses will not be adversely affected;
  - The detour or ramp closure will not interfere with any local special event or festival;
  - The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action;
  - There is no unresolved controversy associated with the temporary road, detour, or ramp closure
- The action will not result in the complete closure of access to residential properties greater than 5 working days, closure of business access during operational hours or access restrictions to emergency service facilities or providers.
- A Type I project as defined by NDOR's approved Traffic Noise Policy and 23 CFR 772, will not qualify as a Level 1
- Any adverse impact to minority or low income populations
- Unresolved public or agency controversy on environmental grounds. If NDOR identifies or receives notification of human, natural or economic impacts as a result of the project after all other issues have been addressed (e.g. permits, authorizations, agreements, etc. have been received), the action cannot be processed as a Level 1 CE action. NDOR shall coordinate with FHWA to determine the proper level of environmental review if unresolved controversy exists.

## Appendix B: Level 2 CE Actions

Due to the limited scope of work for certain projects and based on NDOR and FHWA's past experience with similar actions, these actions meet the intent of CEQ regulations (Section 1508.4), and 23 CFR 771.117(a), (b), and (c). Furthermore, these actions satisfy the criteria for CE Classification and do not involve significant environmental impacts. These projects must have independent utility and logical termini and must not exceed any of the Level 2 CE action impact thresholds listed below. Level 2 CE actions require documentation to ensure no unusual circumstances are present (ex., significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action) that would warrant a higher level of NEPA documentation.

Certain projects that exceed Level 1 CE action impact thresholds can be processed as a Level 2 CE project **only** if they meet the criteria of a Level 2 CE action **and** if they do not exceed Level 2 CE action impact thresholds. Those projects that do not meet the criteria for Level 2 shall be processed at the next appropriate higher level, whether it be a Level 3 CE, EA, or EIS.

The following project actions correlate to the actions described in 23 CFR 771.117(c) and have been determined to meet the criteria of a Level 2 CE action as defined by NDOR and FHWA. Level 1 Actions listed in Appendix A but not listed below are incorporated by reference to the list of Level 2 CE actions:

- (22) Projects, as defined in 23 U.S.C. 101 that would take place entirely within the existing operational right-of-way. For this agreement, Operational right-of-way includes the property rights necessary to build, operate and maintain the transportation facility (i.e. roadways, trails, bikeways, share use paths, etc.) and its appurtenances. Appurtenances include, for example, culverts, bridges, fencing, sidewalks, roadway approaches, shoulders, signing, ditches and backslopes. Operational right-of-way would not include non-economical remnants or existing ROW not necessary for the operation or maintenance of the transportation facility, or property acquired for environmental mitigation.

Based on previous experience with similar actions, examples may include:

- Reconstruction actions meeting the terms (operational right-of-way) and associated Level 2 CE resource impact thresholds.
  - Minor Realignment actions (less than one (1) mile in length) occurring within the Operational ROW.
  - Construction of new or improvements to existing NDOR facilities when the actions occur within the existing operational right-of-way.
- (23) Projects that receive less than \$5,000,000 of Federal funds or with a total estimated cost of not more than \$30,000,000 and with Federal funds that comprise less than 15 percent of the total estimated project cost (project costs would include preliminary engineering, right-of-way, etc. if Federal funds are used for those associated project actions).
  - (26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the project meets the constraints listed in 23 CFR 771.117 (e).

Based on previous experience with similar actions, examples may include:

- Construction of bicycle lanes and pedestrian walkways, sidewalks, shared-use paths, or facilities and trailhead parking.
  - Beautification or facility improvement projects (i.e. landscaping, curb and gutter installation and replacement, ADA ramps/curb ramps, installation of park benches, decorative lighting, etc.).
  - Other project types based on past experience with similar actions with concurrence from FHWA.
- (27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints listed in CFR 23 771.117 (e).

Based on previous experience with similar actions, examples may include:

- Other project types based on past experience with similar actions with concurrence from FHWA.
  - If the project includes a roundabout, coordinate with FHWA to determine appropriate class of action.
- (28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings if the project meets the constraints listed in 23 CFR 771.117(e).

Based on previous experience with similar actions, examples may include:

- Construction of associated pedestrian crossings, grade-separated pedestrian crossings, and connecting pathways.
- Other project types based on past experience with similar actions with concurrence from FHWA.

#### **Level 2 CE Action Impact Thresholds**

The environmental resources listed below require documentation to illustrate that no significant impacts will occur. The Level 2 classification cannot be applied to projects when any of the thresholds below are exceeded:

- No addition of through-lane capacity. Auxiliary lanes and turn lanes less than a mile in length are not considered capacity-adding actions. Center turn lanes, regardless of length, are not considered capacity-adding actions.
- No acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements. For this agreement, minor amounts of ROW are defined as less than 2 acres per linear mile, and no removal of major property improvements. Examples of Major improvements include residential and business structures, garages, or the removal of other features which would change the functional utility of the property. Removal of minor improvements, such as fencing, landscaping, sprinkler systems, and mailboxes would be allowed.
- No need for a bridge permit from the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act.

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

- No need for an Individual Section 404 permit under the Clean Water Act, or a Section 10 permit under the Rivers and Harbors Act, from the U.S. Army Corps of Engineers.
- No finding of adverse effect to any historic property considered under Section 106 of the National Historic Preservation Act.
- No Section 4(f) use resulting in greater than the following: de minimis impacts, an excepted use, or use of a programmatic evaluation.
- No finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act, and no use of unique conservation conditions requiring resource agency concurrence that are not included within the “Matrix” PA.
- No construction of temporary access, or the temporary or permanent closure of existing road, bridge, or ramps, that would result in major traffic disruptions,
  - A temporary traffic and access disruption would not be considered major if it meets the following conditions:
    - Duration of the detour or temporary access is less than a total of 135 working days (a typical construction season);
    - Designated detours would result in adverse (out-of-direction) travel less than 5 miles in urban areas or 25 miles in rural areas;
    - Provisions are made for access by local traffic and so posted;
    - Through-traffic dependent businesses will not be adversely affected;
    - The detour or ramp closure will not interfere with any local special event or festival;
    - The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action;
    - The action will not result in the complete closure of access to residential properties greater than 10 working days, closure of business access during operational hours or access restrictions to emergency service facilities or providers.
    - There is no unresolved controversy associated with the temporary road, detour, or ramp closure
  - A permanent traffic and access disruption cannot
    - permanently close a roadway, roadway intersection, or interstate ramp
    - create new intersections
    - convert a local street into a higher classification of roadway
    - permanently change the functional utility of the property
- No Changes in access control that result in change to the functional utility of adjacent properties.
- No floodplain encroachment other than functionally dependent uses (e.g. bridges, wetlands) or actions that facilitate open space use (e.g. recreational trails, bicycle and pedestrian paths). For CE Level 1 actions listed in Appendix A that are elevated to a Level 2 CE review, an encroachment is allowed, but the action cannot cause greater than 1-foot rise in the BFE, any rise in a floodplain that impacts an adjacent structure, or any rise in a floodway.
- No construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers. For CE Level 1 actions listed in Appendix A that are elevated to a Level 2 CE review, the activity can

Programmatic Categorical Exclusion Agreement  
Between FHWA and NDOR  
April 2015

occur in, across or adjacent to one of these resources, but the action cannot impact the resource. The presence of an impact is determined based upon coordination with the agency with jurisdiction.

- No unresolved public or agency controversy on environmental grounds. If NDOR identifies or receives notification of negative human, natural or economic impacts as a result of the project after all other issues have been addressed (e.g. permits, authorizations, agreements, etc. have been received), the action cannot be processed as a Level 2 CE action. NDOR shall coordinate with FHWA to determine the proper level of environmental review if unresolved controversy exists
- Actions that meet the Type I project as defined by NDOR's approved Traffic Noise Policy and 23 CFR 772.
- Actions that increase capacity in exceedance of 100,000 vehicles per day in the 20th year following the project construction (see DEQ MOU), projects that may result in high potential for Mobile Source Air Toxics effects (MSAT Level 3), or a project considered Regionally Significant within a designated non-attainment area.
- Projects occurring within the boundaries of an active Superfund site with soil disturbance below or beyond preexisting roadway fill, or projects with a high potential for encountering contaminants.
- The action cannot be processed as a Level 2 CE action if the project results in a potential for disproportionately high and adverse impacts as determined by the NDOR HCRS.
  - If mitigation is required to avoid disproportionately high and adverse impacts, or if protected populations or social service providers express project-related social or economic impact concerns, coordination will occur with FHWA to determine if the project will require a Level 3 CE or higher level NEPA review. This coordination should occur as early as possible, and must include enough information to reasonably anticipate the level of impact and make the NEPA class determination.

**Appendix C: Level 3 CE Actions**

Any proposed action that does not meet the criteria of Level 1 or Level 2, either due to an impact threshold or action type, will be processed as a Level 3 CE or higher level NEPA document. FHWA retains approval authority for Level 3 actions and approval of the associated Form. For projects that will likely exceed the Level 2 thresholds, NDOR will provide FHWA pertinent project scope and potential resource impact information using NDOR's *Probable Class of Action* form (or a successor form in agreement with FHWA) to make the proper class of action determination. This will occur early in the environmental review process or during planning. For Level 3 actions, NDOR shall provide appropriate documentation certifying the proposed action meets the criteria of 23 CFR 771.117(c) or 23 CFR 771.117(d) and Appendix C of this agreement using the Level 3 CE form.

A-2

CE Guidance  
(Insert tab  
here)



**Instructions and Guidance  
for Completing the  
Nebraska Categorical Exclusion  
Determination Form  
for Federal-Aid Projects**

**June 2, 2015**



June 2, 2015

## **INSTRUCTIONS**

Many projects do not result in significant social, economic, and environmental impacts and are processed as Categorical Exclusions (*CE*) as described in 23 CFR 771.117. In Nebraska, the level of Categorical Exclusion documentation required for a federal-aid project is determined by criteria contained in the 2015 Programmatic Categorical Exclusion Agreement (2015 CE PA) between the Federal Highway Administration (*FHWA*) and Nebraska Department of Roads (*NDOR*). The CE determination is based on the project action criteria (type of project being proposed) and its potential effects on the social, economic and natural environment. Projects with the potential for “significant” impacts require preparation of an Environmental Assessment (*EA*) or an Environmental Impact Statement (*EIS*). The NEPA practitioner should review and understand the supporting 2015 CE PA and Title 23 Regulations found at the following links prior to commencing a project CE determination:

2015 CE PA: [INSERT HYPER LINK WHEN AVAILABLE](#)

23 CFR 771: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr771\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr771_main_02.tpl)

The CE Determination Form and these instructions are designed to guide the practitioner through the identification of the proper CE analysis level, to document and assess project effects, and to identify and document necessary mitigation.

The 2015 CE PA describes three levels of CE actions in Nebraska, with the level of analysis and documentation increasing with the complexity of the project and the context and intensity of potential project impacts. Consistent with the 2015 CE PA, this document provides guidance in completing the NDOR CE Determination Form for Federal Aid Projects to ensure that potential environmental impacts are being considered and compliance with applicable laws, regulations, and executive orders are being properly documented.

When analyzing a Federal-aid project in Nebraska, two factors are critical in determining the appropriate CE Classification. These two factors are the scope of the project (scope) and the context and intensity of project impacts (effects). The scope and effects of the project are compared to the ‘*Action Criteria*’ and ‘*Impact Thresholds*’ found in the 2015 CE PA appendices to determine the appropriate CE analysis level.

First, the practitioner must compare the project scope to the *Action Criteria* listed in the Appendices of the 2015 CE PA to determine CE eligibility. Next, the practitioner needs to compare the effects of the project to the *Impact thresholds* identified for the eligible CE level to determine the proper CE classification. If the project meets the *Action Criteria* for a particular Level, but not the *Impact Threshold*, the project must be analyzed with a higher level of documentation. In order for a project to qualify for a particular level of analysis, the project must meet **the proper CE Action Criteria** AND all of the *Impact Thresholds* specified for the corresponding level of analysis.

NDOR may request a CE Level variance on a case by case basis as allowed in the 2015 CE PA. Variances may be granted when the context and intensity of the project impacts are minimal (as determined by FHWA). Early coordination with FHWA must occur to determine if a variance will be approved.

Appropriate documentation for each resource area must be developed to support the CE determination and to ensure the determination complies with the 2015 CE PA, supporting Resource Agency agreements, and associated laws and regulations. The practitioner shall ensure the

June 2, 2015

appropriate documentation is attached directly to the CE Determination Form, or retained in the project file.

## **GENERAL OVERVIEW**

### **Public and Agency Coordination**

Coordination with the public and pertinent agencies (federal, state, local) is essential in the NEPA decision making process, regardless of the CE level of action described in the 2015 CE PA. Coordination activities need to be commensurate with the project scope and in compliance with the applicable regulations and existing agreements. Early coordination helps in determining the appropriate level of NEPA documentation and identifying environmental resources that may be affected by the project. The project sponsor must use specific outreach requirements referenced in the following public involvement and technical guidance/procedure documents to aid in conducting proper public and agency outreach commensurate for the proposed CE action:

- 2015 Categorical Exclusion Programmatic Agreement;
- 2015 NDOR Public Involvement Plan;
- 2015 NDOR Limited English Proficiency (LEP) Policy;
- 2012 Biological Evaluation *Matrix* Process Programmatic Agreement;
- 2015 Section 106 Programmatic Agreement;
- 2015 NDOR Hazardous Materials Manual (DRAFT);
- 2015 NDOR Wetland and Water Resources Review Manual (DRAFT).
- 2015 NDOR Environmental Justice Policy and the project-specific Environmental Justice (EJ) memo
- 2015 NDOR Section 4(f) Guidance

### **Requirements for NEPA Documentation Preparation**

The project sponsor must ensure that NEPA documentation is prepared by qualified staff or qualified consultants. The preparer [*whether it be a consultant, local government employee or NDOR Environmental Section (ES) employee*] and approver must have a minimum of a bachelor's degree within the field of environmental science, planning, engineering, or a closely related field and have completed the NEPA and Transportation Decision Making Process course (on-line course is acceptable). Considering the goals of quality environmental documents and project delivery efficiencies, the level of documentation preparation should correspond with the experience of the practitioner; i.e., an experienced practitioner should be responsible for the preparation of Level 2 or 3 CEs. For Level 3 CE's, the practitioner should have completed the instructor led NHI NEPA and Transportation Decision Making Process course (NHI-142005), have been trained on the use of this form, and must have at least 6 months of NEPA experience specific to the Nebraska federal-aid transportation program.

### **Maps**

**For all CE determinations**, attach the standard NDOR location map. Ensure the location map includes a state map inset showing the county location of the project within the state. The NDOR location map should include the following:

1. Project name, project number and control number;
2. Project location and termini points (project beginning and ending reference points);

June 2, 2015

3. County name, north arrow, and scale.

Include a project map indicating the project Environmental Study Area considered in the CE Determination. This map can be created using an aerial map as the base or standard NDOR location maps or plans can be used if appropriate. The Environmental Study Area will be established based on the area estimated to be potentially impacted by the project and will be identified on the projects location map.

**For Level 2 and Level 3 CE determinations**, a map showing the location of resources of concern must be attached. As applicable, these map(s) should include the following:

1. Impacted noise receptor locations and any proposed noise abatement feature locations
2. The location of any known Hazardous Materials sites within the environmental study area
3. Any 4(f) resources within the study area
4. The *general* location of wetlands and jurisdictional streams, channels or rivers (i.e., the scale and detail shown in wetland review or delineation packages is not necessary).
5. The location of historic standing structures or historic districts that are directly adjacent to the project or are impacted.
6. Detour map when applicable.

The practitioner should consider use of multiple resource maps for complex projects involving numerous potential resource impacts and/or for lengthy projects as appropriate. The resource maps should be developed at a reasonable scale to efficiently display subject resources within the project study area.

If the scope of work or a particular resource impact is difficult to describe, the practitioner should attach appropriate project plans, drawings, or other displays to aid in the in the CE analysis and documentation.

### **Attachments**

**For all CE determinations**, the following NDOR resource specialist review memos must be attached to the CE Determination:

1. Section 4(f) Initial Assessment form;
2. Section 404/Wetlands memo
3. Biological Evaluation (*Matrix*) memo;
4. Section 106 Historic properties memo;
5. Hazardous Materials Memo;
6. Environmental Justice Review memo.

These memos will provide a summary of identified resource impacts, the resource specialist's determination related to corresponding resource agreements and/or regulations, and any applicable mitigation required for the project.)

As applicable, the following attachments would be required to support the CE determination: Section 4(f) Exception form, Section 4(f) *de minimis* form, Section 4(f) programmatic evaluations, any project letters received from Agencies, and the preliminary (or final, if available) floodplain impact assessment [if the project occurs within the 100 year floodplain for projects qualifying for a CE under 2015 CE PA Appendix B, paragraph (26), (27) or (28)].

June 2, 2015

A public involvement summary memo describing the method of public outreach, comments received, and the project proponent responses to public comments must be attached to the CE determination. The full public involvement report should not be included with the documentation, but must be made available to FHWA upon request.

If a CE level variance is approved by FHWA, attach the supporting correspondence to CE form.

**For Level 3 CE determinations**, the following will be submitted to FHWA either prior to or concurrent with the CE submittal. These documents are not required to be attached to the CE:

- If there is a high potential for project conflicts with Hazardous Materials, the Hazardous Materials Report (HMR) will be provided.
- If a noise study was completed for the project, the Noise Report will be provided
- If there is potential disproportionate high and adverse impacts to protected populations, the EJ assessment will be provided

## **CE DETERMINATION FORM INSTRUCTIONS**

**CE Review Level:** Check the proper CE Level based on the Scope of work and the resulting impact threshold analysis. If the current determination constitutes a project re-evaluation, select the proper CE level based upon the current project scope and impact threshold analysis, and check the Re-evaluation box to indicate the current determination status. Additionally, select the qualifying 2015 Programmatic Agreement *Appendix Action* (project scope) category corresponding with the CE determination [e.g. Appendix: A, Paragraph: (8) – or – Appendix B, Paragraph (26)].

The intent of this section is to determine the level of CE analysis required, considering both the project scope and effects, to meet the criteria specified in the 2015 CE PA. Additionally, this section provides the NEPA reviewer an indication of CE review level and qualifying action criteria (scope and impact thresholds). The practitioner must compare the project scope to the *Action Criteria* listed in the 2015 CE PA appendices to determine which CE level(s) the project would qualify for based on the scope. Then, the practitioner must consider the appropriate impact thresholds to make the final CE determination identified in this section. In practice, this section may be the last step in completing the CE Determination Form.

**Project Name:** Provide the official project name.

**Project No:** This is the Federal-aid number assigned to the project.

**Control No:** This is the NDOR assigned number for the project. Generally, the first numeral of the control number corresponds to the NDOR District in which the project occurs.

**Location and Study Area:** Give a brief description of location, including city (or nearest city/town), county, highway/roadway name, highway number, beginning and ending mileposts,\* and, if necessary, give the distance to nearest landmark (e.g., *15 miles north of local airport*). Include a brief description of the environmental study area; the environmental study area will be established based on the area potentially impacted by the project.

- \* **NOTE:** Start and End locations can be Mileposts, Project Stations, or brief description. Ensure the project start and end points are logical, taking into consideration the scope of the

June 2, 2015

activity, purpose of the project, and the needs of the facility.

**Project Description:** Provide a brief description of the project setting (e.g., urban, rural) and existing conditions including roadway appurtenances (e.g. sidewalks, shoulders, guardrail etc.). Describe project activities including such information as type of improvement/construction, major project features, etc. The practitioner should ensure the project description adequately describes all project features and construction activities commensurate with the CE action level and/or potential to impact identified study area resources.

For further information please refer to project description guidance, Appendix A.

Prior to finalizing CE Form for approvals, ensure the project description accurately reflects the scope and location of the federal-aid activity at the time of the approval, and that all associated technical documents and assessments were completed using the same project scope and the environmental study area of the technical document encompassed the termini points. If this project is a local government project, note the name of the sponsoring local government.

For more information on writing a Project Description, see the NDOR Project Description guidelines at: <http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/environmental/guide-doc-nepa-ce-proj-descrip.pdf>

**Purpose and Need:** Clearly identify and describe the underlying problem or deficiency (e.g., congestion, safety, system linkage). In addition, explain why the project is necessary (e.g., provide system continuity, capacity improvement, correct safety or roadway deficiencies). A clear, well-justified purpose and need statement/section explains why the expenditure of funds is necessary and worthwhile. The statement length and complexity will vary with the scope of the proposed project. (e.g. If it is a 3R project, ensure there is a statement regarding a need to upgrade facility to current design criteria; if there is storm sewer work, describe why it's needed.)

**STIP Identification:** Provide date of the most recently approved State Transportation Improvement Program (STIP) or amended STIP that includes the project. For projects located within MAPA, LCLC, SIMPCO, and Grand Island MPO boundaries, the project would be listed in the TIP or amended TIP and incorporated by reference in the STIP or amended STIP. The practitioner should provide the date of the most recently approved STIP. Contact NDOR program management for the status of the projects inclusion into the STIP. Federal funding requires that the project be included in the STIP prior to CE approval; therefore, only the date of the STIP is applicable. The TIP information may be useful to find the appropriate STIP, but the date of the TIP should not be entered in the block.

For Local Public Agency projects, occasionally local governments may elect to use *property assessments* to fund a portion of the project. The practitioner must review the Local Projects programming document to identify if the sponsoring local government agency intends to use property assessments as part of their funding strategy for the project. If property assessments are planned, identify the use in the project description.

The NDOR STIP can be found at: <http://www.transportation.nebraska.gov/STIP/>

**Subsequent Phase:** Select the subsequent funded project phase as provided by Program Management shown in the fiscally constrained TIP/STIP. Generally, for state let projects, this would be "construction" only. For Local Public Agency projects, this may be Right-of-Way Acquisition or Construction when using federal-aid for those activities. Federal rules require that the project be

June 2, 2015

funded through the next project phase prior to CE approval.

**Estimated Cost:** Include the total estimated cost shown the current STIP. For projects that use federal-aid for preliminary/final engineering, Right-of-Way acquisition and/or construction, include the total federal-aid expenditures requested for the project.

For the impact-related questions that follow, all project-related impacts (direct, indirect, and cumulative) shall be considered. The indirect and cumulative impacts should be summarized in Comment box 21.2 or 21.3 as appropriate.

**Right of Way and Property Impacts:**

**1.) Easements/ROW** – For Level 1 CE actions, no temporary or permanent Right-of-Way (ROW) acquisition, easements or relocations can occur. The following are examples of activities that would not meet the Level 1 criteria threshold for easements/ROW: any new permanent right-of-way, construction easements (temporary or permanent), utility relocations outside the existing ROW using federal funds (which would trigger a NEPA review of that activity), and new trail construction outside existing trail alignments.

- Question 1.1: If NO is answered, the action is eligible for a CE Level 1. The N/A box would be checked for CE actions that inherently would not involve the potential of ROW impacts such as “Activities that do not involve or lead directly to construction...” If YES is answered, the practitioner must answer the following Level 2 ROW questions 1.2 thru 1.7.

For Level 2 CE actions, no acquisition of more than a minor amount of right-of-way or acquisition that would result in any residential or non-residential displacements can occur. In Nebraska, minor amounts of ROW are defined as less than 2 acres per linear mile (average acres per mile), and no removal of *major* property improvements. To determine average acres per mile, include the total estimated acreage all ROW required for construction (including temporary and permanent easements). For projects under a mile in length, the estimated total acreage of easements/ROW must be less than 2 acres. Examples of *major* property improvements include residential and business structures, functional garages or outbuildings, or other features which would change the functional utility of the property. Removal of minor improvements, such as fencing, landscaping, sprinkler systems, and mailboxes would be allowed. A displacement would occur if any owner occupant or tenant is required to move from a dwelling (including mobile homes) or moves from a business or farm/ranch as a result of the project.

- Question 1.2: If NO is answered, the action remains eligible for CE Level 2. If YES is answered, the project review would be elevated to a Level 3 CE.
- Include the following project information for either CE Level 2 or CE Level 3 as appropriate:
  - 1.3 - Description of the property required and potential impacts to major property improvements. Describe the structure(s) affected and general disposition (Home, Business, Farm/Ranch, apartment/rental property, occupied or vacant, functional or dilapidated, etc.) of the structure. This should include any modifications or relocations of major improvements that result in the continued functionality of the property. Include potential change in functional utility of the property due to access changes/restrictions or loss of parking and potential land use changes that may occur as a result of the project.
  - 1.4 - Provide the total acres of permanent ROW/Easements required for project

June 2, 2015

- construction.
- 1.5 - Provide the total acres of temporary ROW/Easements required for project construction.
- Question 1.6: If NO is answered, the action remains eligible for CE Level 2. If YES is answered, the project review would be elevated to a Level 3 CE. Include the following project information:
  - Description of the displacements. Describe the estimated number of relocations, including a description of whether the displacements are residential or non-residential. If the project involves a residential displacement describe the adequacy of replacement housing in the area. If the project involves a non-residential displacement describe the type or activity of the business or farm and availability of replacement sites in the area.

**2.) Section 4(f):** Section 4(f) properties are planned or existing publicly owned parks, recreation areas, or wildlife and waterfowl refuges, or any significant historic sites (*including historic bridges eligible for National Register of Historic Places listing*) officially designated as such by a Federal, State, or local agency.

A “use” of a Section 4(f) resource occurs: 1) When land is permanently incorporated into a transportation facility; 2) When there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose as determined by the criteria in 23 CFR 774.13(d); or 3) When there is a constructive use of a Section 4(f) property as determined by the criteria in 23 CFR 774.15. A constructive use of a Section 4(f) resource occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. For example, a constructive use can occur when the projected noise level increase, attributable to the project, substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by Section 4(f). The finding of constructive use is extremely rare and must be made by FHWA.

When completing the form, the practitioner must review the Section 4(f) Initial Assessment form to respond to the questions. The Assessment form will indicate whether a Section 4(f) property exists and whether there is a use of the property.

For Level 1 Actions, the project cannot involve a Section 4(f) use (temporary or permanent) or a determination of a Section 4(f) exception. If the project results in a use of a Section 4(f) property or if a determination is made that the use is eligible for an exception to the requirement for Section 4(f) approval, the project shall be processed as a Level 2 CE. Address the following CE Form questions:

- Question 2.1: If NO is answered for 2.1, the project may be processed as a CE Level 1. Attach the Section 4(f) Initial Assessment Form. If a YES is answered, the practitioner must answer question 2.2.

For Level 2 actions, the project cannot result in a Section 4(f) use greater than the following: *de minimis* impacts, programmatic evaluations and Section 4(f) exceptions. Address the following CE Form questions:

- Question 2.2: If NO is answered, the action is eligible as a CE Level 2. Attach the appropriate 4(f) documentation such as the *de minimis* form, programmatic evaluation, or Section 4(f) exception.

June 2, 2015

- If YES is checked for question 2.2 and requires a Section 4(f) Individual Evaluation, a Level 3 CE or higher NEPA classification is required. If the action results in an Individual Evaluation, coordination must occur with FHWA to determine the appropriate level of NEPA action.
- 2.3 – Describe if a Section 4(f) resource exists but will be avoided by the project (i.e., no use); name any Section 4(f) resources that were assessed during the Section 4(f) analysis; note the nature of the impact or use (if any); note whether the use or impact would interfere with the features, attributes, or functions of the property that make it eligible for Section 4(f) protection; describe the coordination with the agencies with jurisdiction; and describe Section 4(f) determination and approval date for each property. Note also the date of FHWA approval.
- 2.4 – Describe any mitigation measures associated with the 4(f) resource impact. This may include project design avoidance or minimization efforts, resource modification, relocation or replacement, etc.

The Section 4(f) project analysis are conducted and documented according to the NDOR Section 4(f) Guidance. The Section 4(f) determinations are reviewed and approved by FHWA, regardless of the class of NEPA action. The Section 4(f) analysis and approval process occurs prior to the submittal and finalization of the CE form.

For more information on Section 4(f), see the NDOR Section 4(f) Guidance and the FHWA Section 4(f) Policy Paper (links below).

Agency with jurisdiction documentation and FHWA approval shall be attached to the CE form.

Nebraska Section 4(f): [INSERT HYPER LINK WHEN AVAILABLE](#)

FHWA Section 4(f): [INSERT HYPER LINK WHEN AVAILABLE](#)

**3.) Section 6(f) - Land and Water Conservation Fund Act:** For Level 1 Actions, the project cannot result in a Section 6(f) conversion. If Land and Water Conservation Fund Act (L&WCF) funds were used to acquire property or to improve property that will be impacted by the project, the project does not qualify for a Level 1 analysis. If there are no Section 4(f) resources within the study area, then a search for Section 6(f) facilities is not necessary. The Nebraska Game and Parks Commission can assist in determining if L&WCF funds were used for a given property. Address the following CE Form questions:

- Questions 3.1: If a NO is answered, a N/A answer for 3.2 is sufficient and the action is eligible for a CE Level 1. If a YES is answered, the practitioner must answer question 3.2 to determine if there will be a conversion of a Section 6(f) property.
- Question 3.2: If NO is answered, the action is eligible for a CE Level 1. If YES is checked, complete the Level 2 questions 3.3 and 3.4.

For Level 2 Actions, if a conversion of Section 6(f) properties to other uses will occur as a result of the project and replacement lands are required, coordination with FHWA is required to determine if a Level 2 analysis is still appropriate or if a Level 3 analysis or higher is required. Address the following CE Form questions:

- Question 3.3: Name any Section 6(f) resources that were assessed during the analysis; note the nature of the impact (if any); note whether the impact would require replacement land; and describe the coordination with the agencies with jurisdiction.
- Question 3.4: Describe any mitigation measures associated with the 6(f) resource impact. This may include project design avoidance or minimization efforts, resource modification,

June 2, 2015

relocation or replacement, etc.

Land & Water Conservation Funds land information in Nebraska can be found at (*coordination with the contact listed on the site will likely be needed*):

<http://outdoornebraska.ne.gov/parks/programs/lwcf/lwcf.asp>

**4.1) Federal and Tribal Lands:** The practitioner must check land ownership to determine whether the project occurs on or directly adjacent to tribal or federal lands. The practitioner can either check a land ownership map or coordinate with NDOR ROW to determine ownership. If this box is checked yes, note in the comment block 4.6 the name of the entity that owns/manages the land in question. In addition, coordination would need to occur with that entity during the environmental review process to inform them of the anticipated work and to determine if they have any comments or concerns. In addition, per the Section 106 PA and the Matrix PA, these entities are provided the opportunity to review and comment on the Section 106 review and the Biological Assessment generated for the project.

**4.2 Utilities:** If any federal funds are used to relocate utilities, or if the project contractor will be responsible for utility relocation, the relocation is considered a federal action subject to NEPA. Answer YES if federal funds will be used for utility relocation, or if the project contractor will be responsible for utility relocations. If YES is answered, the practitioner should ensure the new utility location is included in the project study area and reviewed appropriately. Include a brief discussion outlining the affected utilities in comment box 4.6 and include any pertinent mitigation in the mitigation block 4.7. If utility relocation is unknown add a commitment in the mitigation block to review the status of utilities when available and ensure the utility relocation is within the project study area. After NEPA, if a determination is made that the project contractor will relocate utilities, or that federal funds will be used for utility relocation, the practitioner shall coordinate with applicable NDOR resources specialists and initiate re-evaluation of the CE determination as appropriate.

***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:** If the project will construct a new trail on ROW not previously designated for trail use, coordination with the adjacent landowners is required. The practitioner should coordinate with the NDOR Public Involvement Specialist in this instance to determine the proper outreach methods to employ, and to determine who will be responsible for the outreach.

**4.4 Farmlands:** If the proposed project has the potential to convert prime or unique farmland to non-farm use, the practitioner must complete the NRCS-CPA-106 form and check YES to Question 4.4. If the total score of Section VI is below 60, answer NO for question 4.5 and ensure the form is placed in the project file. Per 7 CFR 658.4(c)(2), "Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated." If Section VI score is less than 60, it's not possible to reach the 160 threshold.

If YES is answered for question 4.5, coordination with the Natural Resources Conservation Service (NRCS) is required. The practitioner should proactively initiate coordination with FHWA to determine the appropriate level of NEPA analysis.

Within the comment block 4.6, the practitioner shall provide a summary of farmland impacts, and any coordination with the NRCS. Include a general discussion of project activities that may impact farming or ranching procedures (such as closing or consolidating drives or access points, will impact a center pivot or irrigation practices, etc.).

June 2, 2015

For more information, see NRCS's website: <http://www.nrcs.usda.gov/programs/fppa/>

**Water and Ecological Resources:**

**5.) Wild and Scenic/ National Recreational Rivers:** The practitioner must compare the location of the proposed project to the Wild and Scenic (WS)/Nationwide Rivers Inventory (NRI) and the National Recreational Rivers (NRR) lists found at 16 USC 1271-1287. The NDOR Initial Environmental Review (IER) will document the occurrence of WS, NRR and NRI rivers in proximity to the project study area. Designation of a River into one of these categories protects the river and a 0.5-mile corridor from development. For projects within .25 miles of listed Wild and Scenic Rivers or within a corridor 1.5 miles up or downstream of its tributaries, coordination with the Agency with jurisdiction is required.

- Question 5.1: If NO is answered, the project is eligible as CE Level 1. If YES is answered, the practitioner must consider the following and address question 5.2.

For Level 1 CE's and Level 2 CE's, excluding Level 2 projects to be reviewed and approved under Appendix B, paragraphs (26), (27), or (28), there can be NO IMPACT to these designated rivers. If a designated river segment, including the buffer areas described above, occurs with the project study area, coordination should be initiated with the agency with jurisdiction (generally the National Parks Service in the federal agency with jurisdiction but the US Fish and Wildlife Service may be the jurisdictional agency for certain designated rivers in Nebraska). If the agency with jurisdiction determines the project will not result in an impact to the designated river segment, the project would remain eligible under CE Level 1 or CE Level 2 as appropriate.

For projects to be reviewed and approved under Appendix B, paragraphs (26), (27), or (28), or if the agency with jurisdiction has determined project construction activities would result in an impact, a Level 3 CE or higher level NEPA assessment is required.

- Question 5.2: If NO is answered, attach the appropriate correspondence from the agency with jurisdiction indicating their determination of no impact resulting from the propose project construction. The project is eligible for CE Level 1 or CE Level 2 as appropriate. If YES is answered, a Level 3 CE project review is required.
- Include the following project information for either CE Level 2 or CE Level 3 as appropriate:
  - 5.3 - Describe the river resource area, potential construction impacts, and coordination conducted with officials/agencies with jurisdiction. To determine whether there is an impact to one of these resources, the practitioner should review the management plan for the River segment in question (if available) to determine the sensitive uses and values attributed to the river and assess whether the project activities would impact those uses or values. This assessment should be documented in writing (letter or email) and provided to the agency with jurisdiction for their review and concurrence. The letter or email to the agency with jurisdiction should clearly request their concurrence on potential impacts in writing.
  - 5.4 – Discuss any design avoidance or minimization efforts made, or other mitigation efforts agreed upon with the agency with jurisdiction.

June 2, 2015

For more information, please see:

Nationwide Rivers Inventory for Nebraska: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ne.html>

Nebraska Wild and Scenic Rivers: <http://www.rivers.gov/nebraska.php>

**6.) Floodplain/floodway:** To comply with Executive Order 11988 (Floodplain Management), federal agencies are required to consider alternatives to avoid *adverse effects* and incompatible development in floodplains.

The practitioner should review the FEMA floodplain maps to determine if the project is within the boundaries of a floodplain or floodway. See the FEMA link, below, for more information and for floodplain maps. Additionally, the NDOR Initial Environmental Review (IER) will document the occurrence of Zone A floodplains (100-year floodplain) and designated floodways that occur within the project study area. If the project is within the boundaries of a Zone A floodplain or floodway, early coordination should occur with the NDOR Roadway Design Hydraulics Unit and/or the Bridge Hydraulics Unit for a preliminary determination of impacts. In some instances, such as when a county does not participate in the FEMA program, an area may not be mapped for floodplains. In this instance, the state law defining floodplain areas will be used in lieu of the FEMA floodplain maps.

CE Level 1 projects evaluated under Appendix A of the 2015 CE PA are not subject to the floodplain restraint criteria required for actions processed under 771.117(c) (26), (27) and (28); therefore, minor floodplain impacts, or encroachments, are allowed for CE Level 1 projects. If a CE Level 1 project crosses a mapped Zone A floodplain/or floodway, the action cannot cause greater than a 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.

- Question 6.1: If NO is answered, the project is eligible as a CE Level 1. The practitioner shall ensure that proper documentation is included in the project file. (e.g. This may consist of the FIRM map panel number(s) and date(s) for the project area.) If YES is answered, the project remains eligible as CE Level 1 or CE Level 2. The practitioner should assess the following CE Determination Form questions.
- Question 6.2: If NO is answered, the project is eligible as a CE Level 1 or CE Level 2 as appropriate. If YES is answered, the project would be elevated to a CE Level 3 review (or higher level NEPA determination). The practitioner should proactively initiate coordination with NDOR Roadway Design and/or Bridge Hydraulics, and FHWA to determine the proper NEPA classification.

For projects reviewed under Appendix B of the 2015 CE PA, actions qualifying for a CE Level 2 under paragraphs (22) and (23), and any Appendix A actions that have been elevated to a CE Level 2 review, can generally be addressed as described above for CE Level 1.

For projects reviewed under Appendix B, paragraphs (26), (27) and (28), MAP-21 guidelines require FHWA CE approval if there are any floodplain encroachments other than a functionally dependent use such as bridges (any water conveyance structures) or actions that facilitate the use of open space use (e.g. recreational trails, bicycle and pedestrian paths). Per 23 CFR 650.105(e), "Encroachment shall mean an action within the limits of the base floodplain." Projects involving parallel or perpendicular embankment encroachments (not directly associated with a bridge or culvert) or new projects on new alignment assessed under Appendix B (26), (27), or (28) will require a CE Level 3 review or higher NEPA determination.

June 2, 2015

Note: In some instances, such as when a county does not participate in the FEMA program, an area may not be mapped for floodplains. In this instance, the state law defining floodplain areas will be used in lieu of the FEMA floodplain maps. An encroachment within these areas will be treated as a 100 year floodplain encroachment for the purposes of this form and floodplain compliance [see 23 CFR 650.111(a) for more information]. The NDOR floodplain memo will identify when a project is in such an area.

- Question 6.3: If NO is answered, project remains eligible for CE Level 2. A functionally dependent use (bridge or culvert and grading and guard rails and etc. associated or required to support or protect the bridge or culvert) would receive a NO answer. The practitioner shall ensure that proper documentation is included in the project file. If YES is answered, the project will be elevated to a CE Level 3 review requiring review and approval by FHWA. The practitioner shall proactively initiate coordination with NDOR Roadway and/or Bridge Hydraulics Units as appropriate, and FHWA.
- Question 6.4: Describe resources, impacts and the coordination conducted with officials/agencies. If question 6.3 is checked “yes”, review the NDOR floodplain memorandum and also review the requirements listed in 23 CFR 650.111(b-e). Summarize the findings as required in the referenced regulations for the project in this text block. The practitioner must review the NDOR floodplain memorandum, the hydraulic reports, and/or coordinate with the project designer and NDOR Hydraulics unit to obtain this information.
- Question 6.5: include any applicable floodplain mitigation. If a floodplain permit is required but not obtained by the time the CE is ready for approval, include a commitment to obtain the permit prior to construction.

Although final floodplain certification and permitting will generally occur during the final design phase of project development, the practitioner should seek adequate preliminary information concerning potential floodplain impacts through the NDOR Environmental Coordination Meetings (likely, the ECM 20, 30 or 40) to address CE Determination Form questions.

- Attach Floodplain permits if available. If the floodplain permit is not available, include the following commitment language: *Floodplain permits will be required for the project action. Floodplain permits will be acquired from the appropriate local Floodplain Administrator(s), in accordance with Nebraska Floodplain regulations, prior to the construction obligation phase.*

The practitioner shall ensure documentation of both the preliminary and final determination is included in the project file as appropriate. This may include the Hydraulics/Floodplain summary email or memo note, certification of compliance documents/reports, floodplain permit application or signed floodplain permits. As stated above, some or all of these activities may occur after the NEPA documentation has been approved. Appropriate documentation shall be verified prior to construction obligation.

FEMA floodplain maps can be found at: <https://msc.fema.gov/portal>

**7.) Wetlands/Waters of the US:** Waters of the U.S., including wetlands, waterways, lakes, natural ponds, and impoundments, are regulated by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, which requires a permit to authorize the discharge of dredged or fill material into waters of the U.S. (33 USC 1344). Federal regulations require that impacts to wetlands be avoided and minimized to the extent practicable. Wetland/Waters of the U.S. identification should occur early in the project delivery process to allow for avoidance and

June 2, 2015

minimization measures to be accounted for during the design process and properly documented in the appropriate level NEPA determination.

If no work will occur within a water of the U.S. or if the project qualifies for a non-notifying Nationwide Permit, the project meets the Level 1 *Impact Threshold* for this criterion. In addition, a project can have a cumulative impact of up to 0.5 acres of wetland impacts and remain eligible for a CE Level 1. Projects requiring a pre-construction notification (PCN) or result in cumulative impacts greater than 0.5 acres would require a CE Level 2 review.

Upon completion of the appropriate wetland/waters determination or delineation, and receipt of preliminary impacts from Roadway Design (DR form 290), the practitioner can address the following questions. Additional resource and impact information will be developed by the Environmental Permits Unit (EPU) Biologist assigned to the project and made available to aid/guide the NEPA practitioner.

- Question 7.1: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, address the following question.
- Question 7.2: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, address the following question
- Question 7.3: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, the project remains eligible for a CE Level 2 review. Address the following permitting questions.
  - 7.4 - Include the **estimated total permanent** acres of wetland/waters impacts resulting from the project. It is important to note that the CE Level one threshold is based on total cumulative permanent impacts, which is not consistent with Section 404 regulations that account for impacts on a “*single and complete crossing*” basis. Additionally, isolated waters or any other non-jurisdictional waters that would be considered “waters of the state,” would be included in the total cumulative impacts reported for threshold assessment.
- Question 7.5: If NO is answered, the project is eligible as a CE Level 1. If YES is answered, the project remains eligible for a CE Level 2 review. The N/A box would be checked if an Individual Permit is required, which would elevate the project review to CE Level 3.

Any project that results in an application for: (1) an Individual Section 404 Permit, (2) a Section 10 Permit from the Corps of Engineers, OR (3) a Section 9 Permit from the U.S. Coast Guard, shall be processed as a Level 3 CE or higher level NEPA assessment.

- Question 7.6: If NO is answered, the project remains eligible for a CE Level 2 review. If YES is answered, the project review is elevated to a CE 3 Level review, requiring coordination, review and approval by FHWA. The practitioner should proactively initiate coordination with FHWA when the need for an Individual Section 404 permit or a Section 9 or Section 10 permit is required. The only Section 9/10 water in Nebraska is the Missouri River. For any work occurring in, across, or within the vicinity of the Missouri River, the practitioner should ensure these potential permit issues are addressed and documented appropriately. Contact the Environmental Permits Unit for aid in determining Section 9/10 permit needs/requirements.

Adequate support documentation must be included in the project file to demonstrate either no permit is required or that a permit is required or will be obtained prior to construction

- 7.7 – Include a general discussion to describe the level of delineation/determination

June 2, 2015

- conducted and describe the water resources identified in the project study area (this can be done a general landscape level/perspective). Briefly describe construction impacts resulting from project construction identify the applicable nationwide permit(s) that will likely apply to the project, or identify other permit strategies as warranted. Include any coordination conducted with appropriate resource/regulatory agencies with jurisdiction over the identified resources. This information should be provided to the practitioner (via a Memo) by the EPU biologist assigned to the project.
- 7.8 - Discuss any design avoidance or minimization efforts made, or other mitigation efforts agreed upon with resource/regulatory agencies with jurisdiction. Give a brief description of any mitigation proposed to offset unavoidable wetland impacts. Provide a landscape level description of onsite wetland or stream channel mitigation proposed. If credits from an approved NDOR Wetland Mitigation Bank will be used, identify the Wetland Bank and include general service area qualification. This information should be provided to the practitioner (via a Memo) by the EPU biologist assigned to the project.

If a non-notifying Nationwide Permit will be used, include the following commitment in the mitigation block of the form: *The project qualifies under Nationwide Permit #\_\_\_\_\_. The contractor shall adhere to the permit conditions, including regional and general conditions, during construction.*

If a PCN or Individual Permit is required for project construction, those permitting activities generally occur after the NEPA process in Nebraska. If a PCN or Individual Permit is required and has not been obtained prior to CE approval, include the following commitment in the mitigation block of the form: *The project will require a\_\_\_\_\_ (pre-construction notification or Individual Permit) for impacts to waters of the U.S. The permit shall be obtained prior to project letting. The contractor shall adhere to all permit conditions, including regional and general conditions, during construction.*

If wetlands exist within the environmental study area, but will be avoided by construction, include an avoidance commitment in the mitigation block. Identify whether the identified wetlands will be shown on project plans (2W sheets and/or Erosion Control plan sheets) or identified in a Project Station list format in the Project Greensheet and Contract Special Provisions.

For more information, see the *NDOR Wetland Review Requirements for Federal-Aid Transportation Projects* (link below).

NDOR Wetland Review Requirements for Federal-Aid Transportation Projects can be found at: <http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/environmental/wetlands/lpa-project-wetland-review-requirements.pdf>

**8.) Impaired Waters, Section 402, and MS4:** Section 303(d) of the Clean Water Act requires states, territories, and authorized tribes to identify waters for which existing required pollution controls are not sufficiently stringent to maintain applicable water quality standards and to establish total maximum daily loads (TMDLs) for the pollutants impairing those waters (33 USC 1251 et seq.). Title 117 of NDEQ guidelines (Nebraska Surface Water Quality Standards) classifies uses of the surface waters within the state and identifies criteria to be used to protect these waters and meet the requirements of Section 303(d) (NDEQ, April 1, 2012). These waters are referred to as Impaired Waters.

- Question 8.1: Although this is not a CE level threshold, if an impaired water is identified within or adjacent (within 0.5 mile of the project boundaries) to the project, the box must be checked yes. In the additional comments block 8.4, note the name of the impaired waterbody and

June 2, 2015

include a brief discussion concerning potential water quality impacts resulting from the project. Include any project specific mitigation needed to comply with established water quality/TMDL standard(s) identified for the impaired water resource in the mitigation block 8.5.

- Example mitigation measures include specific revegetation strategies; not using phosphorus in fertilizers of the water is impaired for dissolved oxygen, not using manure when the water is impaired for E. coli (fecal coliform bacteria), etc. The practitioner should coordinate with the NDOR Roadside Stabilization Unit (RSU) for assistance in identifying impaired waters, assessing potential water quality impacts and required mitigation measures or strategies.
- Question 8.2: The Pretreatment Program is a subprogram of the NPDES program and requires the consideration of water quality Best Management Practices within the local municipalities and counties. To accomplish this, NDEQ has permitted municipalities with a population of 10,000 or greater and highly urbanized counties as Municipal Separate Storm Sewer Systems (MS4s). The MS4 permit requires the municipalities and counties to develop water quality programs in the areas of 1.) Public Education and Outreach; 2.) Public Involvement; 3.) Construction Site Runoff Control; 4.) Post Construction Runoff Control; 5.) Illicit Discharge Detection and Elimination; and 6.) Good Housekeeping.

Since NDOR owns and maintains Rights of Way and properties within the MS4s, NDOR is permitted as a non-traditional Phase 2 MS4. As such, NDOR has developed a transportation specific MS4 permit in coordination with NDEQ. NDOR has determined specific water quality goals that the project must meet, and determines if there are specific erosion control measures (often referred to a BMP's) that should be employed for the project meet the 6 requirements listed above.

- Question 8.2: Although this is not a CE level threshold, if the proposed project occurs within an identified MS4 community/area, the box must be checked YES. In comment box 8.4, add the following statement:  
*Stormwater Treatment consideration is a condition of NDOR's Municipal Separate Storm Sewer System MS4) permit. Stormwater treatment requirements will be applied to this project if it meets the criteria outlined in Chapter Three (Stormwater Treatment within Municipal Separate Storm Sewer System MS4 Communities) of the NDOR Drainage Design and Erosion Control Manual. This determination and any necessary coordination with the MS4 community will be made during the design process.*
- Question 8.3: Section 402 of the Clean Water Act establishes environmental programs, including the National Pollutant Discharge Elimination System (NPDES) program, to protect the nation's waters. An NPDES Construction Storm Water General Permit – Notice of Intent (CSW-NOI) and a Storm Water Pollution Prevention Plan (SWPPP) is needed if construction disturbs over one acre of land.
  - Although this is not a CE level threshold, if the proposed project will disturb more than one (1) acre of soil, the box must be checked. If YES, add a commitment in the mitigation block 8.5, indicating the SWPPP will be developed prior to construction as appropriate.
  - For the CE documentation, the acreage impact assessment will be based on preliminary design information. If required, project specific Stormwater and Erosion Control Plans (SWPPP) and/or NPDES permits will be developed/acquired after the CE determination approval, during final design.

June 2, 2015

For more information, see:

Title 117 (303(d)): <http://deg.ne.gov/NDEQProg.nsf/%24%24OpenDominoDocument.xsp?documentId=E238CC319E38A69386257CB500746DCD&action=openDocument>

NPDES: <http://deg.ne.gov/NDEQProg.nsf/OnWeb/NPDES>

MS4: <http://deg.ne.gov/NDEQProg.nsf/OnWeb/PP>

**9.) Threatened & Endangered Species:** In January 2012, FHWA, NDOR, the U.S. Fish and Wildlife Service (USFWS), and the Nebraska Game and Parks Commission (NGPC) entered into a Programmatic Agreement for Endangered Species Act (ESA) and Nebraska Endangered Species Conservation Act (NESCA) compliance. This PA is referred to as the *Matrix*. The *Matrix* process and associated tools will be used for ESA and NESCA compliance for all projects assessed using the CE determination form.

For CE Level 1 actions, impacts to federally threatened or endangered species resulting in a “May Affect” determination per the *Matrix* cannot occur. A “May Affect” determination requires consultation with FHWA and the appropriate resource agencies.

- Question 9.1: If NO is answered, the project is eligible for a CE Level 1 or Level 2 as appropriate. Attach the T&E summary memo, Species Evaluation Form, or Overview of Effects Form as appropriate. If YES is answered, the project remains eligible for CE Level 2 and the practitioner must address the following CE Level 2 questions.

For CE Level 2 actions, impacts to federally threatened or endangered species resulting in a “May affect, likely to adversely affect” determination under ESA cannot occur. Additionally, if the project requires the implementation of unique conservation conditions not included in the *Matrix*, the project would be elevated to a CE Level 3 or higher level NEPA assessment.

- Question 9.2: If NO is answered, the project remains eligible for a CE Level 2. Attach the Biological Evaluation summary memo. If YES is answered, the project is elevated to a CE Level 3 review and requires coordination with FHWA and the appropriate resource agencies. The practitioner should proactively initiate coordination with FHWA through the NDOR Technical Documents Unit.
- Question 9.3: If NO is answered, the project remains eligible for a CE Level 2. Attach the T&E summary memo, Species Evaluation Form, or Overview of Effects Form as appropriate. If YES is answered, the project is elevated to a CE Level 3 review and requires coordination with FHWA and the appropriate resource agencies. The practitioner should proactively initiate coordination with FHWA through the NDOR Technical Documents Unit.
  - Include the NDOR PQS (the responsible TDU Biologist) Determination Date, and the USFWS and/or NGPC Concurrence dates as appropriate. Depending on the *Matrix* Evaluation level, the form may require dates in one, two or all three “Date” fields. For projects resulting in a “No effect” or a “May Affect, Not Likely to Adversely Affect” finding with standard conservation conditions implemented, generally only the NDOR PQS Determination date would be noted. If the USFWS and/or NGPC were not consulted, enter N/A as a concurrence date. If consultation with resources agencies is required, NGPC concurrence would be required for Stated Listed T&E species evaluations. If resource agency consultation involving Federal Listed T&E species are required, both NGPC and USFWS concurrence would be required and included in the

June 2, 2015

CE documentation as an attachment.

- 9.4: As part of the Biological Assessment (the *Matrix* evaluation), potential impacts to Bald and Golden Eagles are also considered. The practitioner should review the T&E species memo provided by the TDU biologist and verify the project will comply with the BGEPA by checking the associated box on the CE form. Provide a summary of potential impacts related to project construction activities in block 9.7. Ensure any specific mitigation measures required are included in the mitigation block 9.8.
- 9.5: Migratory Bird Treaty Act (MBTA): NDOR has developed an Avian Protection Plan (APP) for compliance with the MBTA. All projects, including Local Public Agency projects using federal-aid administered by NDOR must apply and follow the NDOR APP during project construction. Verify the project will comply with the APP by checking the associated box on the CE form. If the project will not comply with the NDOR APP (due to construction phasing considerations for example), coordination with FHWA and the USFWS will be required. If coordination is required to address MBTA concerns, provide a summary of the coordination in the Additional Comments block (9.7) and ensure any specific mitigation measures required are included in the Mitigation Commitments block (9.8). When the APP is followed (the standard case), compliance with the APP is established by Section 107.01 in the NDOR *Standard Specifications for Highway Construction*.
- 9.6: Fish and Wildlife Conservation Act: Only if a Section 404 Individual Permit is required for project construction, coordination with the U.S. Fish and Wildlife Service is required during the permitting process. If FWCA coordination occurs during the NEPA process, provide a summary of potential wildlife resource impacts related to project construction activities in the Additional Comments block (19.6). Include any specific mitigation measures required in the Mitigation Commitments block (19.7).
- 9.7: List the Threatened or Endangered species evaluated that resulted in a *May affect, not likely to adversely affect* determination or higher (i.e. do not list any species that resulted in a no affect determination) and include the appropriate affect determination. This may include impacts to associated species habitat and/or designated critical habitat. This information should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project.

Summarize any agency coordination conducted as part of the *Matrix* Evaluation. This information should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project.

- 9.8: Include the following Conservation Conditions as applicable [The applicable conservation conditions should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project]:
  - *General Conservation Conditions for Specific Impacts/Activities* (general construction activity and procedural based conditions);
  - *Standard Conservation Conditions for Range* (specific to species type);
  - *Standard Conservation Conditions for Species* (specific species conditions related to specific construction activities);
  - Unique mitigation agreed upon by resource agencies

June 2, 2015

NOTE: In Block 23.1, include all the commitments listed in 9.8 and also the *Matrix General Conservation Conditions for All Projects*,

For more information on the Matrix PA, please see:

<http://www.transportation.nebraska.gov/environment/guides/bio-eval-matrix-fed-aid-NE.pdf>

### **Human and Social Resources**

**10.) Historic Properties:** On [REDACTED], FHWA, NDOR, the State Historic Preservation Office (SHPO), and the Advisory Council for Historic Preservation entered into a Programmatic Agreement for Section 106 compliance. This PA is referred to as the Section 106 PA. The Section 106 PA procedures and associated tools will be used for Section 106 compliance for all projects.

The practitioner must review the NDOR cultural resource Professional Qualified Staff (PQS) project review memo. The memo will disclose the Section 106 determination.

For Level 1 Actions, the project cannot result in Section 106 effects other than a “No Potential to Cause Effects” or a “No Historic Properties Affected” determination. If the project results in an effect other than what is identified above, the project shall be processed as a Level 2 CE or higher. Address the following CE form questions:

- Question 10.1: If a NO is answered, check NO for 10.2 and the action is eligible for a CE Level 1. Attach NDOR’s PQS Project Review Memo and place the memo date in question 10.3. If YES is answered, the practitioner must answer question 10.2 to determine if the action will result in a Section 106 effect other than a “No Potential to Cause Effects” or a “No Historic Properties Affected” determination.
- Question 10.2: If NO is answered, the action is eligible for a CE Level 1. Attach NDOR’s PQS Project Review Memo and place the memo date in question 10.4. If YES is checked, complete Level 2 Threshold questions 10.3 and place the PQS memo date in question 10.4.

In the event the Section 106 review for the project was completed prior to the execution of the Section 106 PA, there will be no PQS memo. In this instance, enter the date the PQS sent the Section 106 package to FHWA for processing in the 10.4 date field. Also, for some projects there may be multiple consultation or PQS review dates. When this occurs, enter the most recent date in the date field.

For Level 2 Actions, the project cannot result in an “Adverse Effect” to any historic property under Section 106 of the National Historic Preservation Act. If the project results in an “Adverse Effect”, the project shall be processed as a Level 3 CE or higher. Address the following CE form questions:

- Question 10.3: If NO is answered, the action is eligible as a CE Level 2. Complete question 10.5.
  - If YES is checked for question 10.3 and will result in an “Adverse Effect” a Level 3 CE or higher NEPA classification is required. If the action results in an “Adverse Effect”, coordination must occur with FHWA to determine the appropriate level of NEPA action. Complete question 10.5.
- For all projects include the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), and Certified Local Government’s (CLG) concurrence dates, if applicable. The practitioner should review the Section 106 materials to determine if consultation with these entities occurred. If consultation did not occur with an entity, enter

June 2, 2015

“NA” in the field. If consultation did occur and concurrence was requested, enter the concurrence date and attach concurrence letters. In some instances, concurrence from a tribe, CLG or consulting party is not required, but consultation letters are sent to provide the entity the opportunity to comment or to provide information. In this instance, write “see below” in the applicable date field. Then in block 10.5, briefly describe which entity(s) was coordinated with, the date the consultation letter was sent, and if a response was received.

- Question 10.5: Any NRHP eligible or NRHP listed properties or districts found within in the area of potential effect (APE) must be described in the resources box, along with the Criterion (or Criteria) under which the property is eligible for the National Register. In addition, a brief disclosure of potential impacts must also be included, as applicable. The practitioner should review the Section 106 material and the NDOR PQS memo to find this information. If per the Section 106 PA consultation is required for the project, briefly summarize the consultation that occurred and include the consulting party concurrence dates. Consultation and concurrence letters must be attached to the CE.

As noted above, in some instances, consultation with an entity will occur but their concurrence is not required. When this occurs, also briefly describe which entity(s) was coordinated with, the date the consultation letter was sent, and if a response was received.

- Question 10.6: If the NDOR PQS memo or any Section 106 consultation letters indicate mitigation is required, include the mitigation in the mitigation block of the determination form.

**NOTE:** If any above ground resources (bridges, houses, businesses, silos, grain elevators, etc.) will be impacted by the project, the practitioner must review the Section 106 material to ensure the NRHP eligibility of these resources has been determined and impacts assessed during the Section 106 process. If it isn't clear whether the property was considered, coordinate with the NDOR PQS for verification. Also, if ROW will be acquired for the project, the practitioner is responsible for ensuring the PQS is informed of the ROW acquisition and that the areas acquired are included in the Section 106 assessment.

Section 106 PA can be found at: [Insert Hyperlink when available.](#)

**11.) Hazardous Materials:** The practitioner must review both the NDOR Hazardous Materials memo and the projects Hazardous Materials Report (HMR) prior to completing this section of the CE form.

For Level 1 Actions, the project cannot result in Hazardous Materials impacts other than low potential for conflict with Hazardous Materials based on a records review and visual survey (if needed). If the project results in a moderate or high potential for encountering hazardous materials, the project shall be processed as a Level 2 CE or higher. In some older Hazardous Material memo's or HMR reports, the terminology “low, moderate, high” may not have been used. In this instance, coordinate with NDOR's Hazardous Materials PQS to ensure the proper classification is recorded in the CE form. Address the following CE form questions:

- Question 11.1: If the proposed project would not exceed the scope in the Hazardous Materials manual exemption list, check NO and a N/A answer is appropriate for 11.2 and the action is eligible for a CE Level 1. Attach the NDOR Hazardous Materials memo and include the NDOR PQS date in the form. If YES is answered, the practitioner must answer question 11.2 to determine if there is more than a Low Potential for encountering hazardous materials during construction.

June 2, 2015

- Question 11.2: If NO is answered, the action is eligible for a CE Level 1. Attach NDOR's Hazardous Materials memo and include the NDOR PQS date in the form. If YES is checked, complete Level 2 Threshold questions 11.3 through 11.6 discussed below.
  - Question 11.2A: If any painted components of structures are being disturbed (i.e. removal or cleaning of painted components) check YES for box 11.2A and per the PQS memo, include the standard mitigation measures for handling and disposing of potential lead-based paint in block 11.6.
  - Question 11.2B: If there is potential to encounter asbestos during construction, testing for asbestos is required. Asbestos within existing ROW may be encountered during demolition of bridges (e.g. utilities attached to bridge rails, widening, re-decking, and replacement). Testing will typically occur during NEPA if the above mentioned activities will occur during project construction. The NEPA practitioner must check the Hazardous Materials PQS memo to determine the presence of asbestos. If asbestos is present, check the box and include the standardized mitigation and NESHAP requirements in block 11.6.

NOTE: For the demolition of structures outside the existing ROW, the NDOR ROW Division conducts hazardous materials testing prior to demolition, and, if appropriate, requires proper abatement during demolition.

For Level 2 Actions, the project cannot result in a High Potential for encountering hazardous materials during construction or disturb soil below or beyond preexisting roadway fill within an active Superfund Site. If the project results in High Potential or will result in soil disturbance below or beyond preexisting roadway fill within an active Superfund Site, the project shall be processed as a Level 3 CE or higher. Address the following CE form questions:

- Question 11.3: If NO is answered, the action is eligible as a CE Level 2 (if 11.4 is answered NO). Enter the date of determination by the NDOR HazMat Specialist and attach the memo.
  - If YES is checked for question 11.3 and will result in a High Potential for encountering hazardous materials during construction a Level 3 CE or higher NEPA classification is required. If the action results in a High Potential, coordination must occur with FHWA to determine the appropriate level of NEPA action. Enter the date of determination by the NDOR HazMat Specialist and attach the memo
- Question 11.4: If NO is answered, the action is eligible as a CE Level 2 (if 11.3 is answered NO). Enter the date of determination by the NDOR HazMat Specialist and attach the memo.
- Question 11.5: Any potential contamination sites that may be encountered during construction must be briefly described in the comments box, along with likelihood of impact (low, moderate, or high). If consultation was required with the EPA or DEQ for the project, briefly summarize the consultation that occurred. Consultation and concurrence letters must be attached to the CE. If the project will require the demolition of existing structures outside the existing roadway ROW, the practitioner should note "structures will be inspected for hazardous materials such as LBP, mercury and asbestos prior to demolition. This is standard practice and is managed by NDOR ROW Division."
- Question 11.6: Within the mitigation block, the practitioner must include any mitigation required, as noted in the NDOR HazMat review memo and/or the HMR.

**Note:** If any standing structures (bridges, houses, businesses, silos, grain elevators, etc.) will be impacted by the project, the practitioner must review the HMR and NDOR HazMat memo to ensure they were considered during the assessment. Also, if ROW will be acquired for the project, the practitioner is responsible for ensuring the areas to be acquired are included in the HazMat assessment.

June 2, 2015

If the HMR/Hazardous Materials memo indicates a moderate or high potential of encountering hazardous materials, additional testing may be required prior to approving the CE determination based on the NDOR Hazardous Materials Specialist's recommendations. In limited circumstances, testing may be deferred to a later phases of project delivery (post CE approval). Any deferred testing requires coordination between the NDOR Hazardous Material Specialist and FHWA. If testing is deferred, a commitment to complete necessary follow-up investigations to the extent possible during the ROW process must be included in the mitigation section. This review must be documented and retained in the project file. Re-evaluation of the CE determination may be required depending on the results of additional testing/investigations carried out after NEPA approval.

NDOR Hazardous Materials Assessment guidelines: [Include hyperlink when ready](#)

**12.) Traffic Noise:** The proposed project will be processed as a Level 3 CE or higher NEPA determination if the project is classified as a Type 1 project. A Type I project is defined per 23 CFR 772 and the NDOR Noise Policy as follows:

- (1) The construction of a highway on new location; or,
- (2) The physical alteration of an existing highway where there is either:
  - i. Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
  - ii. Substantial Vertical Alteration. A project that removes shielding; therefore, exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
- (3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,
- (4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
- (5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,
- (6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,
- (7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

The NDOR Noise Specialist will indicate in the DR-53 if a noise analysis is required for the proposed action to aid the practitioner in addressing the following CE form questions:

- Question 12.1: If a NO is answered, the action is eligible for a CE Level 1. If YES is answered, action will be processed as a Level 3 CE.
- Question 12.2: If NO, discuss in 12.3 why it was not feasible and/or reasonable to abate for noise. If YES, summarize the results of the of noise analysis in 12.3.
- Question 12.3: Briefly summarize whether there are impacted noise receptors, the range of noise levels for those receptors, and discuss whether it is feasible and reasonable to abate for

June 2, 2015

noise. In addition, summarize any noise public meetings held in this block. Within the public involvement block of the Form, refer the reader to this section for more information on the public outreach conducted specifically for noise.

- Question 12.4: Include any commitments to construct noise walls, if applicable. Also, include any required noise abatement during construction, as identified in the noise study.

**NOTE:** The project would qualify for noise abatement if, based on the noise study, it is feasible and reasonable to abate the noise impact. Refer to the project-specific noise memo to determine whether noise mitigation is feasible and reasonable for the project. Refer to the NDOR Noise Policy for more information on the reasonable and feasible criteria for abatement in Nebraska.

If the project is eligible as a Type 1 Project, attach a graphic to the CE form, showing the location of impacted receptors and the location for any proposed noise walls. The practitioner should coordinate with the NDOR Noise Specialist and review the Noise Study for the project to find the information needed to complete the comment box.

Noise Policy: <http://www.transportation.nebraska.gov/projdev/docs/noise-pol.pdf>

If there is a scope change that involves a shift of the travel lanes, adding travel lanes, the inclusion of a turn lane, or the extension of a turn lane since the time the NDOR noise PQS reviewed the project, coordination with the noise PQS is required.

**13.) Air Quality:** Projects that increase capacity in exceedance of 100,000 vehicles per day (vpd) in the 20<sup>th</sup> year following the project construction (see DEQ MOU), projects that may result in high potential for Mobile Source Air Toxics (MSAT) effects (MSAT Level 3), or a project considered *Regionally Significant* within a designated non-attainment area must be processed as a CE level 3, EA, or EIS.

MSAT Level 3 category includes projects that have the potential for meaningful differences in MSAT emissions among project alternatives. To fall into this category of analysis a project would:

- Create or substantially alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location, involving a significant number of diesel vehicles for new projects or accommodating with a significant increase in the number of diesel vehicles for expansion projects; or
- Create new capacity or add substantial capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the Annual Average Daily Traffic (AADT) is projected to be in the range of 140,000 to 150,000 or greater by the design year; and also
- Proposed to be located in proximity to populated areas.

For Level 1 and Level 2 Actions, the project cannot increase capacity in exceedance of 100,000 vehicles per day (vpd) in the 20<sup>th</sup> year following the project construction (see DEQ MOU), result in high potential for Mobile Source Air Toxics (MSAT) effects (MSAT Level 3), or cannot be considered Regionally Significant within a designated non-attainment area. If the project will exceed the above mention thresholds, the project shall be processed as a Level 3 CE or higher. The NDOR Air Analyst will review the action to confirm the project type, with a note to the file documenting the result. Address the following CE form questions:

June 2, 2015

- Question 13.1: If a NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action will be processed as a Level 3 CE or higher
- Question 13.2: Summarize the results of the Air Quality Study
- Question 13.3: Include any mitigation as noted in the Air Quality analysis
- For projects requiring MSAT Level 2 analysis, attach the quantitative analysis memo (provided by the NDOR Air Quality Specialist).

**NOTE:** The NEPA practitioner must coordinate with the NDOR Air Specialist if a project may exceed one of these thresholds for guidance.

**14.) Roadway:** For Level 1 and Level 2 Actions, the project cannot add through-lane capacity. If the project will add through-lane capacity, coordination with FHWA is required before the environmental review begins and the project must be analyzed as a Level 3 CE or higher NEPA determination. Right turn lanes and auxiliary lanes less than a mile in length, or center turn lanes (regardless of length) are not considered capacity-adding activities.

- Question 14.1: If a NO is answered, the action is eligible for a CE Level 1 or CE Level 2 as appropriate. If YES is answered, the action will be processed as a Level 3 CE or higher

**15.) Traffic disruption:** The practitioner must consider both temporary and permanent traffic disruptions when analyzing the project and completing this section of the form. Traffic management phasing will have an environmental impact, either beneficial or adverse, as a result of the changes in driver expectancy. In addition, the public's perception of traffic management phasing may be influenced by factors such as disruption encountered during construction.

If a detour is used, potential impacts must be assessed during the environmental analyses. The assessment should focus on potential social or economic impacts related to the detour.

For Level 1 Actions, the project cannot result in traffic disruptions requiring detours, temporary roads, or ramp closure that are greater than 30 working days. If the project results in traffic disruptions greater than 30 working days, the project shall be processed as a Level 2 CE or higher. Address the following CE form questions:

- Question 15.1: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the practitioner must answer question 15.2 to determine if the project will result in major traffic disruptions.
- Question 15.2: If NO is answered, the action is eligible for a CE Level 2. If YES is answered, the action requires as a CE Level 3.

Note: If a detour is used, the following commitment shall be included as mitigation for a Level 1 or Level 2 CE: *"If a detour is used, the duration of the detour must be less than \_\_\_\_\_ ('30 working days' for Level 1 - or - '135 working days' for Level 2). In addition, the detour must create less than 5 miles of adverse (out-of-direction) travel within an urban environment and less than 25 miles in a rural setting with access provisions for local traffic."*

For Level 1 Actions, the project also cannot result in temporary roads, detours, or ramp closures that substantially change the environmental consequences of the action. For example, a designated detour that may impact eligible or contributing brick streets due to increased traffic, or improvements to a designated detour route.

June 2, 2015

- Question 15.3: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.

For Level 1 and Level 2 CE Actions, the project cannot result in adverse travel (out-of-direction) great than 5 miles in urban areas (population of 5,000 or greater) or 25 miles in rural areas.

- Question 15.4: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.

For Level 1 and Level 2 CE Actions, the project cannot interfere with local special events or festivals either on a temporary or permanent basis.

- Question 15.5: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - Interference would include any construction activities occurring on the same segment of street utilized for the festivities, closure of a road used for festivities, closure of access for any duration to an adjacent property used for the festivities during the event, or complete closure of a main route to the town during the festivities. The practitioner should be aware that during summer months many small towns in Nebraska hold festivals and carnivals, which frequently utilize the street system in the town. For projects within towns and cities, the practitioner should check town websites and with town representatives to determine if and when summer festivals or events are planned.

For Level 1 and Level 2 CE Actions, the project cannot result in an adverse effect to through-traffic dependent business either on a temporary or permanent basis.

- Question 15.6: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - The determination of adverse effect to businesses cannot be made without coordination with the affected public. Please see the approved Public Involvement Plan for more information on outreach and/or coordinate with the NDOR Public Affairs office.

For Level 1 and Level 2 CE Actions, the project cannot result in substantial permanent traffic pattern changes or disruptions, such as permanently close a roadway or roadway intersection, increase through lane capacity, create new intersections, or convert a local street into a higher classification roadway.

- Question 15.7: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - An increase to through lane capacity can be described as: physically adding through traffic lanes, grade separation for either roads or railroads, or adding auxiliary lanes that are at least 1 mile long or are made continuous through a series of successive interchanges.
- Question 15.8: Within the comment box, describe the expected duration and route of any detours and discuss any social or economic impacts that may result from the detour. The outreach component of this assessment can either be captured here or in the public involvement section of the CE form.
- Question 15.9: Any mitigation measures intended to avoid, minimize or offset detours or other traffic impacts must be noted in the mitigation box. In addition, commitments to restrict detours and traffic impacts to the *Impact Thresholds* from the 2015 CE PA also need to be included in the mitigation block for all projects

June 2, 2015

For Level 3 Actions, the practitioner should be aware of potential continuity or cohesion impacts, either permanently or temporarily as a result of the project. This could include, but not be limited to, the separation of a housing complex from its school, park, or community meeting hall. Coordination should occur with stakeholders during the environmental review process (see the NDOR public Involvement Plan and coordinate with the NDOR Public Affairs Coordinator for project-specific outreach guidance) to determine potential continuity or cohesion impacts. The practitioner shall document any potential continuity or cohesion impacts, and any coordination with local officials in the Additional Comments block 22.1. If mitigation is proposed to reduce or eliminate continuity/cohesion impacts, include those measures in the Mitigation Commitments block 23.1.

**NOTE:** If a detour or access restriction will occur for the project, the above criteria are met, there is no unresolved controversy, and there are no anticipated social or economic impacts from the detour, include the following statement in the text box of this section: *“Coordination with the affected public and emergency services has occurred, following the requirements of the approved public involvement plan. No adverse effects to businesses or emergency services were identified during the outreach.*

**16.) Access Disruptions:** The practitioner must analyze the project both in terms of temporary access restrictions during construction and permanent access restrictions. Access is defined as a means of vehicle ingress or egress between a highway and abutting property or an intersecting local public road or street. Access is also defined as entrances or driveways from properties to a public road system.

For Level 1 Actions, the project cannot result the complete closure of access to residential properties greater than five (5) working days, complete closure of business access during operational hours or access restrictions to emergency service facilities or providers. Address the following CE Form questions:

- Question 16.1: If a NO is answered, a N/A for 16.2 and 16.4 is sufficient and the action is eligible for a CE Level 1 (if 16.5 is NO). If a YES is answered, the practitioner must answer question 16.2 and 16.4 to determine the impact of access restrictions.
- Question 16.2: If a NO is answered, the action is eligible for a CE Level 1 (if 16.4 and 16.5 is NO). If YES is checked, the practitioner must answer question 16.3 to determine if the project will require a CE Level 3.
- Question 16.4: If a NO is answered, the action is eligible for a CE Level 1 (if 16.2 and 16.5 is NO). If YES is checked, the project will require a CE Level 3.
- Question 16.5: If a NO is answered, the action is eligible for a CE Level 1 (if 16.2 and 16.4 is NO). If YES is checked, the project will require a CE Level 3.

For Level 2 Actions, the project cannot result in the complete closure of access to residential properties greater than 10 working days, complete closure of business access during operational hours (when the facility is open to the public, normal working hours when employees are present, or any time when shipping or receiving materials/products) or will permanently change the functional utility of the property.

- Question 16.3: If a NO is answered, the action is eligible for a CE Level 2. If a YES is checked, the project will require a CE Level 3. Coordination with FHWA shall occur to determine proper NEPA assessment.
- Question 16.6: If a NO is answered, the action is eligible for a CE Level 2. If a YES is checked,

June 2, 2015

the project will require a CE Level 3. Coordination with FHWA shall occur to determine proper NEPA assessment.

- Example: If the adjacent property requires heavy truck access and the access change is such that heavy trucks could no longer make the revised turn radii into the property, this would change the functionality of the adjacent property. Also, if the action results in a permanent access closure to a residential property or a permanent access changes to a business unless the permanent change will not adversely affect the business.
- Question 16.7: Disclose whether access closures are anticipated, note the expected duration of access closures, and assess whether any social or economic impacts may result from the closure.
- Question 16.8: Mitigation measures intended to address access impacts must be noted in the mitigation box. In addition, commitments to limit access restrictions to the Impact Thresholds noted in the 2015 CE PA also need to be included in the mitigation block.
  - If access closures will occur, the following commitment shall be included in the mitigation section: *Direct access to a residential property or driveway cannot be closed for more than \_\_\_\_ (5 working days for a Level 1 CE, or 10 working days for a Level 2 CE) and complete access closure to businesses during operational hours (when the facility is open to the public, normal working hours when employees are present, or any time when shipping or receiving materials/products) or emergency services cannot occur. During the access closure, reasonable and safe indirect access accommodation must be provided by the contractor to the property owner/tenant.*
  - If access restrictions, but not full closure, will occur due to moving equipment, milling or paving machines passing in front of access points, etc, include the following commitment: *Access to adjacent properties shall be maintained at all time during construction but may be disrupted temporarily at times due to construction activities, but will not be closed. (Contractor)*
  - Based on the needs of the project and the existing field conditions, mitigation specific to the project may be needed.

**NOTE:** During construction, events beyond the contractor's control (such as excessive rain or equipment malfunction) may interfere with their ability to comply with detour and access duration conditions. If this occurs, the project proponent will coordinate with NDOR environmental, and a reevaluation commensurate with the change will occur. In addition, outreach will occur to the affected public to explain the situation and to disclose the extended impact. If accommodations are requested by the public to alleviate impacts, they will be considered by the project proponent. This coordination shall be summarized in the reevaluation. Coordination with FHWA will occur during this process if the change exceeds any of the Level 2 thresholds noted in the NEPA PA, or if the project is included in the PoDI list (list NDOR maintains). A Level 3 assessment will not be required, but the reevaluation will need FHWA approval if a Level 2 threshold is exceeded.

**17.) Protected Populations:** *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires that an agency identify and address the disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority and low-income populations. Also, *Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency*, requires agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons

June 2, 2015

can have meaningful access to them. NDOR has established both an FHWA-approved Limited English Proficiency Plan and Environmental Justice analysis process.

For Level 1 Actions, the project cannot result in an adverse effect to a minority or low-income population. If the project results in an adverse effect, the project shall be processed as a Level 2 CE. Address the following CE Form Questions:

- Question 17.1: If a NO is answered, a N/A answer for 17.2 is sufficient and the action is eligible for a CE Level 1. Attach the NDOR Civil Rights Specialist (HCRS) Memo and include the memo date on the form. If a YES is answered, the practitioner must answer question 17.2 to determine if there will be an adverse effect.
- Question 17.2: If NO is answered, the action is eligible for a CE Level 1. Attach the NDOR HCRS Memo and include the memo date on the form. If YES is checked, complete Level 2 threshold questions 17.3 through 17.5 discussed below.

For Level 2 Actions, the project cannot result in the potential for disproportionately high and adverse effect to a minority or low-income population. If the project results in the potential for disproportionately high and adverse effect, the project shall be processed as a Level 3 CE or higher. Address the following CE Form Questions:

- Question 17.3: If NO is answered, the action is eligible at a CE Level 2. Attach the NDOR HCRS Memo. Include the date of the NDOR HCRC approval date
  - If YES is checked for question 17.3, the action shall be processed as a CE Level 3 or higher; coordination with FHWA is required. Include the date of the NDOR HCRS approval date.
- Question 17.4: Briefly describe the protected population in the project area, summarize demographic data within the project area, what steps were taken to avoid, minimize, or mitigate either the adverse effects on low income and minority populations or the potential disproportionately high and adverse effects. Also include any specific public outreach methods utilized (LEP outreach/translations and/or coordination with community leaders, etc.)
- Question 17.5: Describe any mitigation measures that were identified in the approved NDOR HCRS memo. This would include items such as document translation, specific public engagement measures, reduced bus fares, construction phasing, etc.
  - For projects where mitigation is required in order to avoid potential disproportionately high and adverse effects, or when protected populations or social service providers express project-related social or economic impact concerns, coordination with FHWA will occur in order to determine the appropriate NEPA classification. In these circumstances, FHWA will make the final determination if the outreach and mitigation have successfully alleviated potential disproportionately high and adverse effects.

**NOTE:** *Adverse Effects* is defined as the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of human-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or

June 2, 2015

low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of NDOR programs, policies, or activities.

*Disproportionately High and Adverse Effects on Minority and Low-Income Populations* is an adverse effect that: (1) is predominately borne by a minority population and/or a low-income population; OR (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population.

*Low-Income Population* – Any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

*Minority Population* – Any readily identifiable group of minority persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

The NDOR Civil Rights Specialist (HCRS) review memo will be attached to the CE Determination Forms.

For more information on how NDOR considers EJ and LEP, see the links below and/or coordinate with NDOR's Civil Rights coordinator.

NDOR Environmental Justice process: <http://www.transportation.nebraska.gov/humanres/title-6/docs/title-vi-implementation-plan.pdf>

NDOR LEP Plan: <http://www.transportation.nebraska.gov/humanres/title-6/docs/hr-titlevi-lepplan.pdf>

**18.) Public Involvement:** In accordance with 23 CFR 771.111, early coordination with appropriate agencies and the public aids in determining the environmental review a project requires, the level of analysis, and related environmental requirements. The consideration of diverse viewpoints ensures the needs and preferences of a community are considered on these public projects, and enable transportation officials to make informed decisions based on multiple viewpoints. NDOR has developed Public Involvement Procedures, which have been approved by FHWA, and can be found at the link noted at the bottom of this subsection.

The practitioner must review the FHWA approved NDOR Public Involvement Procedures to determine what level of public outreach, if any, needs to occur for the project during NEPA. The practitioner also needs to review the Environmental Justice/Limited English Proficiency (LEP) memo generated by the NDOR Civil Rights office to determine if alternate language accommodations are needed during public outreach. If public outreach during NEPA is needed (ex, a detour), coordination needs to occur with the NDOR Public Affairs Coordinator to determine the appropriate method of outreach, and to determine who is responsible for the outreach.

The practitioner must also review the project records to determine if public or agency comments specific to the project were received by NDOR during the STIP/TIP public outreach phase, during the District Program Highway Commission Hearings (or the local government equivalent for local government federal-aid projects), or for local projects using federal-aid, if project specific comments were received during their planning process.

June 2, 2015

- Question 18.1: If no public outreach was conducted during NEPA, note such in the comment block. If project-specific comments were received during the planning phase of the project, note those in this section. If public outreach during NEPA was conducted, a summary describing the outreach efforts performed or planned for the project must be included here (targeted mailing, public information meeting, public hearing). In addition, if LEP outreach measures were required, as outlined in the NDOR HCRS Memo, discuss the LEP requirements and the LEP outreach performed. Disclose the date the meeting was held, the time, the location, if the facility was ADA accessible, how the meeting was advertised, and how many people attended.

If comments were received during public outreach, the public comments and a response to comments must be summarized and provided in this text box, preferably by inserting a comment resolution table into the comment box. In this table, it is appropriate to summarize comments, ensuring the substantive element of the comment is captured, and it is appropriate to group like comments together. For example, if 4 people expressed concern regarding impacts to their fences, it is acceptable to group those into one entry in the table, noting 4 commenters provided the comment. Provide a brief response to each of the substantive comments summarized in the table, and as appropriate, reference in the response where more information can be found (ex, see question 10 in the CE form for more information, see the attached Section 106 concurrence letter for more information, etc).

During outreach if agency feedback is received, summarize the comment(s) and response(s) in the applicable subject-matter section within the CE form.

- Question 18.2: If commitments were made to the public during outreach, include those commitments in this block. If commitments were made to agencies during outreach, include those commitments in the applicable subject-matter section within the CE form. If there are commitments to hold specific outreach prior to or during construction, note the commitment in this block. In addition if LEP requirements apply to the project and post-NEPA outreach will occur, include a commitment requiring the inclusion of LEP commitments during the future outreach.

NOTE: For Local Public Agency projects, occasionally local governments may elect to use *property assessments* to fund a portion of the project. The practitioner must review the Local Projects programming document to identify if the sponsoring local government agency intends to use property assessments as part of their funding strategy for the project. If property assessments are planned, ensure the proper public information documentation is attached to the CE determination form. The Practitioner should proactively initiate coordination with NDOR's Public Involvement Specialist and FHWA to ensure the proper level of public outreach is conducted to support the NEPA determination.

NDOR Public Involvement Plan: [Insert Hyperlink when available.](#)

NDOR LEP procedures: <http://www.transportation.nebraska.gov/humanres/title-6/docs/hr-titlevi-lepplan.pdf>

**19.) Unresolved Controversy:** If, based on public or agency outreach, the project sponsor receives notification of human, natural or economic impact concerns as a result of the project that aren't resolved through other means (e.g. permits, authorizations, agreements, mitigation), the project shall be processed as a CE Level 3 or higher. Examples include public concerns regarding adjacent property flooding, concerns about economic impacts during construction, concerns about aesthetic impacts, etc.

June 2, 2015

If the project proponent is made aware of an issue raised by the public, business owners, emergency services, etc. that is documented as being resolved through continued coordination; the impact would not be considered an “unresolved controversy”. If a commitment is made as a means to resolve the issue, include the commitment and a description of the outreach in the most appropriate section of the CE.

For Level 1 and 2 Actions, the project cannot involve unresolved controversy. If the project involves unresolved public or agency controversy on human, natural, or economic grounds, the project shall be processed as a Level 3 CE or higher. Address the following CE Form question:

- Question 19.1: If a NO is answered, the action is eligible as a CE Level 1 or CE Level 2 review as appropriate. If a YES is answered, a Level 3 CE or higher NEPA classification is required. Coordination with FHWA shall occur to determine the proper NEPA classification.
- Question 19.2: Summarize controversy and/or refer reader to section of form where the discussion can be found.

**20.) Contract Provisions Required:** There are several environmental permits that may be required prior to construction obligation. Identify those permits that appear to be appropriate for the proposed project action. If the unknown box is checked, explain in additional comments.

**20.1 Wellhead Protection Areas:** The practitioner will answer YES if a Wellhead Protection Area occurs within the project study area. NDOR special provisions will be included in the contract to identify these sensitive areas. The provision shall direct the project contractor to coordinate with the city or county to ensure compliance with local well head protection ordinances.

For more information on Wellhead protection areas:

<http://www.deq.state.ne.us/Press.nsf/ac84d33f3c051e1e862576f00057fa81/504f9a4d2fb8fa0886257a09004f9832>

**20.2 Nationwide Permits General Conditions:** The practitioner shall review the Wetlands and Water Resources memo, provided by the EPU Biologist, and answer YES if it has been determined that the project will require a Section 404 Nationwide Permit and corresponding general conditions will apply. If YES, the practitioner shall select the corresponding Nationwide Permit number in the drop down box provided.

**20.3 FAA form/Potential Airport Conflicts:** Some projects occurring near an airport may require FAA coordination. The practitioner should refer to the PIH report to determine if coordination is required.

If FAA coordination is required, it is *recommended* that preliminary coordination start during NEPA to identify if any major issues that could affect design, construction, or impact the airport exist. If this coordination does occur, summarize in Block 22.1. Typically submittal of the FAA Form 7460-1 occurs during final design. If impacts to an airport or project changes are needed as a result of FAA coordination during final design, the NEPA determination may require reevaluation.

For more information on FAA Form 7460-1:

[http://www.faa.gov/documentLibrary/media/Form/FAA\\_Form\\_7460-1\\_2017.pdf](http://www.faa.gov/documentLibrary/media/Form/FAA_Form_7460-1_2017.pdf) or  
<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

June 2, 2015

**20.4 General Conservation Conditions from the Matrix:** The Matrix general conservation conditions apply to all projects; therefore, this question will always be checked YES. If checked NO, provide reasoning in the additional comments block 22.1 and include any alternate mitigation proposed in block 23.1 if appropriate. Example actions that may not require the Matrix general conservations would include “actions that do not involve or lead directly to construction activities.”

**21.1: No Indirect or Cumulative impacts:** This box can be checked if after careful consideration of the guidance contained below 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.”*

In making this determination, the preparer should be aware of the different types of impacts and the requisite methodology for assessing each type of impact:

- *Direct impacts* are those that are caused by the proposed action and occur at the same time and place.
- *Indirect or secondary impacts* are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems” (40 CFR 1508.8). CE level transportation activities which may generate indirect impacts include:
  - Projects that have the potential to induce growth or change land uses (such as new interchanges, projects that increase the capacity of the facility, and projects creating new access points to undeveloped areas),
  - Projects that may influence water quality or drainage patterns, and
  - Projects that may permanently change travel patterns within a community.

Speculative impacts would not be considered an indirect effect. Current or planned growth that is occurring regardless of whether the project is constructed is also not considered an indirect effect.

- *Cumulative impacts* are: “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impacts analysis should focus only on resources (human or natural environment) that are substantially impacted (directly or indirectly) by the project. Examples of substantial impacts may include: impacts to occupied protected species habitat, adverse effects to a historic district, disproportionately high and adverse effects to protected populations, adverse business impacts caused by the project construction, and detours that may cause social or economic impacts.. Other current actions, *reasonably identifiable* past actions, and *reasonably foreseeable* future actions that may also impact the resource of concern must be considered. Separate mitigation of cumulative impacts is not

June 2, 2015

required since mitigation of direct and indirect impacts will address the incremental contribution of the project's impacts to the overall health of the resource of concern.

For more information on assessing Indirect and Cumulative Impacts:

- FHWA *Questions and Answers Regarding Indirect and Cumulative Impact Considerations in the NEPA Process*: <http://www.environment.fhwa.dot.gov/guidebook/qaimpact.asp>
- AASHTO *Practitioners Handbook Assessing Indirect Effects and Cumulative Impacts under NEPA*: [http://environment.transportation.org/pdf/programs/practitioners\\_handbook\\_12.pdf](http://environment.transportation.org/pdf/programs/practitioners_handbook_12.pdf)

Sources of information that may be used to determine past, present or reasonably foreseeable actions in Nebraska may include, but are not limited to:

- Long Range Transportation Plans, Statewide Transportation Improvement Program, Transportation Improvement Programs (in MPO areas)
- Platted developments
- local or regional comprehensive land use plans
- Federal Land Management Plans (if within or adjacent to federal lands)
- Species Recovery Plans
- Nebraska Historical Society publications  
(<http://nlc1.nlc.state.ne.us/docs/pilot/pubs/historical.html>)

*Reminder: if there are no substantial impacts due to the project under review, which is often the case for CE's, there is no need to identify past, present or reasonably foreseeable actions. Substantial impacts are not minor, routine, non-controversial impacts that are easily mitigated to an inconsequential, neutral or negligible impact level.*

### **21.2: Indirect Impacts and Mitigation:**

If after careful consideration of the guidance and the facts of the project, the preparer determines that Indirect Impacts will result from the project, additional analysis and discussion of impacts and proposed mitigation should be provided in text box 21.2.

Information to include in text box 21.2 regarding indirect effects:

- If indirect impacts are expected, describe whether they would be temporary or permanent; whether the impacts result from induced growth, changed land uses, or substantially altered travel patterns within a community; include an assessment of the severity of those impacts (i.e., negligible, moderate, significant); and whether mitigation is required (if the mitigation is already included in the resource-specific section, note such here).
- If the context and intensity of any indirect impact rises to a level of potential significance, immediate coordination with FHWA is needed to determine appropriate class of action.
- If indirect impacts are not expected, then the text box should be labeled with N/A.

**21.3: Cumulative Impacts:** If after careful consideration of the guidance and the facts of the project, the preparer determines that Cumulative Impacts will result from the project, additional analysis and discussion should be provided in text box 21.3.

June 2, 2015

Information to include in text box 21.3 regarding cumulative effects:

- If there are substantial impacts from the project to resources of concern, include the following information regarding the cumulative impact review: Describe the substantial resource(s) of concern and the sources of information reviewed to identify other past, present, and reasonably foreseeable future actions. Note the actions (if any) identified through the data review that also impacted (or may impact in the future) the resource(s) of concern. Assess the cumulative impacts of all actions on the resource of concern and then conclude with an assessment on the intensity of the cumulative impact on the resource(s) of concern.
- If the context and intensity of any cumulative impact rises to a level of potential significance, immediate coordination with FHWA is needed to determine appropriate class of action.
- If cumulative impacts are not expected, then the text box should be labeled with N/A.

**22.1 Additional Comments:** If there is information or impacts that need to be assessed or disclosed that do not logically fit into another section of the form, include them here.

For CE Level 3 projects, the practitioner should be aware of the potential for visual impact that may result from project construction. Negative visual impacts specific to Section 106 are to be discussed in the Historic properties section of the form. Others, such as the visual screening of a traffic-dependent business due to the grade separation of an intersection or visual impacts to resources or properties sensitive to visual intrusions should be discussed in the Additional Comments block 22.1.

- **NOTE:** Most lands managed by a federal agency have visual quality objectives. If a project occurs on or adjacent to federal lands, the practitioner should review their management plan to identify any visual quality objectives that may apply and assess impacts. Also, if a project occurs on a scenic byway, review the corridor management plan for the scenic byway to determine whether the project could impact the identified visual qualities of the byway.

**23.1 Mitigation Commitments:** List all mitigation commitments, including any commitments identified in associated technical documents. The mitigation commitments must be clear and concise and include applicable timing, location and responsible party information. To ensure that the mitigation commitments can be fulfilled, the practitioner will coordinate internally with NDOR engineering and construction staff before finalizing this form. As applicable, commitments not to exceed impact thresholds shall be identified in this block.

Mitigation commitments shall be included in the project *Greensheet* and associated contract documents.

**Preparer signature:** By signing the CE Determination form, the preparer has determined:

- 1) The project scope is clearly and accurately described;

June 2, 2015

- 2) The project impacts are adequately and accurately assessed;
- 3) Adequate documentation exists in the project file to support the CE determination;
- 4) The project is in compliance with applicable laws, regulations and executive orders;
- 5) Applicable avoidance and mitigation measures are included in the mitigation commitment block; and
- 6) Ensures the project complies with the 2015 CE PA.

**Approval signature:** By signing the CE Determination form, the approver has determined:

- 1) the project is clearly and accurately described in the CE form;
- 2) the project is in compliance with all applicable laws, regulations and executive orders;
- 3) all applicable avoidance and mitigation measures are included in the mitigation commitment block;
- 4) supporting material has been retained in the project file; and,
- 5) adequate QA/QC of the CE determination form and environmental analysis has occurred

For Level 1 and 2 CE's, the approver is also certifying the project has been analyzed in compliance with the 2015 CE PA, the project fits the applicable *Action Criteria* and *Impact thresholds* as outlined in the 2015 CE PA, that no significant impacts or unusual circumstances exist.

For Level 3 CE's, the approver is making a determination the project has been analyzed in compliance with the 2015 CE PA, the project fits the applicable *Action Criteria* and *Impact thresholds* as outlined in the 2015 CE PA, that no significant impacts or unusual circumstances exist.

Level 1 CE's must be approved by a government employee NDOR Document Analyst or the NDOR Documents Unit Supervisor. Level 2 CE's are approved by the NDOR Documents Unit Supervisor or the NDOR Environmental Section Manager.

All Level 3 CE determinations are made by the NDOR Environmental Documents Unit Supervisor or the NDOR Environmental Section Manager. FHWA retains approval authority for Level 3 CE's, and will indicate approval by signing the "FHWA Environmental Specialist" line in the CE Determination form.

**Reevaluation approval:** If during the development of a proposed project, a change in the project scope, project limits\*, existing conditions, or pertinent regulations occurs, the practitioner shall re-evaluate potential impacts related to the CE PA *Impact Thresholds* and *Action Criteria* to ensure the CE Determination level is appropriate. This should occur at the time the change is identified, but at a minimum, the project must be assessed for changes when the project moves to the next subsequent phase of development (final design, ROW acquisition, or construction obligation).

**\*NOTE:** If a change in the project scope or the project limits occurs, the environmental study area will be reevaluated. This may result in the need for either additional studies or a reevaluation of associated technical documents.

If a change in the project scope, project limits, existing conditions, or pertinent regulations occurs after the CE form has been approved, the approved CE determination shall be re-evaluated to ensure the CE Determination is appropriate. The re-evaluation should describe the project scope change(s) including an assessment of resulting impacts. The practitioner shall verify if the original CE determination remains valid or if an elevated review is required. Coordination should occur with FHWA as appropriate to determine if a CE Level 3 review is warranted. Include any additional

June 2, 2015

mitigation commitments resulting from the re-evaluation.

**NOTE:** During construction, events beyond the contractor's control (such as excessive rain or equipment malfunction) may interfere with their ability to comply with detour and access duration conditions. If this occurs, the project proponent will coordinate with NDOR environmental, and a reevaluation commensurate with the change will occur. In addition, outreach will occur to the affected public to explain the situation and to disclose the extended impact. If accommodations are requested by the public to alleviate impacts, they will be considered by the project proponent. This coordination shall be summarized in the reevaluation. Coordination with FHWA will occur during this process if the change exceeds any of the Level 2 thresholds noted in the NEPA PA, or if the project is included in the PoDI list (list NDOR maintains). A Level 3 assessment will not be required, but the reevaluation will need FHWA approval if a Level 2 threshold is exceeded.

In the current format, an electronic signature is required within the re-evaluation block. The signature shall be commensurate with the resulting level of CE Determination.

For more information, please see the NDOR reevaluation guidance, 23 CFR 771, and/or the 2015 CE PA.

For addition information, see NDOR's re-evaluation procedures: [Insert Hyperlink when available.](#)

A-3

CE Form  
(Insert  
tab  
here)





# 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: A

Paragraph:

Project Name:

Project Number:

Control Number:

Location Map Attached:

Location and Study Area:

Begin Point(s):

End Point(s):

Highway Number, Street, etc.:

Project Description:

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

Action is identified in the Current STIP Date:

Subsequent Phase:

Construction

Estimated Cost (\$):

If the action qualifies for (c)(23), identify the federal portion (\$):

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:

**1.4** Estimated Acres of Permanent ROW/Easements:

**1.5** Estimated Acres of Temporary ROW/Easements

**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.

**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)*):

2.4 Section 4(f) Mitigation:

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*):

3.4 Section 6(f) Mitigation::

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## 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*):

4.7 Describe Mitigation for Above Non-Threshold Resources:

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## **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:

5.5 Wild and Scenic River Mitigation:

**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 (*BF E*), 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:

6.5 Floodplain/Floodway Mitigation

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:

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:

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

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:

8.5 Impaired Waters, Section 402, and MS4 Mitigation:

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:

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:

9.8 Species Mitigation:

\* 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

NDOR PQS Determination Date:

SHPO Concurrence Date:

THPO Concurrence Date:

CLG Concurrence Date:

10.5 List Eligible Resources, Impacts, and Coordination:

10.6 Historic Properties Mitigation:

**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:

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

11.6 Hazardous Materials Mitigation:

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:

12.4 Noise Mitigation:

13.1 **Air Quality** – Will the action increase capacity in exceedance of 100,000 vehicles per day in the 20<sup>th</sup> 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:

13.3 Air Quality Mitigation:

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:

15.9 Traffic Disruption Mitigation:

**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:

16.8 Substantial Access Disruption Mitigation:

**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:

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

17.5 Protected Population Mitigation:

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

18.2 Public Involvement Mitigation:

**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:

---

---

### Contract Provisions Required

20.1 Wellhead Protection Special Provisions

- Yes     No

20.2 General Conditions for Nationwide Permit

Yes  No

Nationwide Permit: N/A

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:

21.3 Cumulative Impacts:

---

---

22.1 Additional Comments:

---

---

23.1 Project Mitigation:

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:

**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:



A-4

Section 106 Forms  
(Insert tab here)





# NDOR PQS Project Review Memo

## Section 106 - Tier I Project

### No Potential to Cause Effects to Historic Properties

Control Number \_\_\_\_\_ Project Number \_\_\_\_\_ Review Date \_\_\_\_\_

Project Name \_\_\_\_\_ Project Location \_\_\_\_\_

Date of Project Description Reviewed \_\_\_\_\_  Project Description Attached  Tier I Project

THPO/Tribal Consultation?  No  Yes

THPO/Tribes(s): \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

THPO/Tribal response date: \_\_\_\_\_

THPO/Tribal comment: \_\_\_\_\_

CLG Consultation?  No  Yes

CLG: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

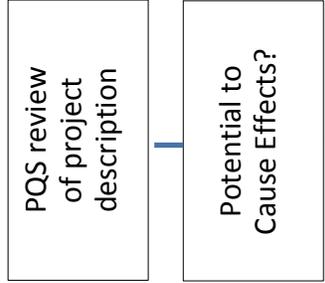
CLG response date: \_\_\_\_\_

CLG comment: \_\_\_\_\_

**Please Note: For the criteria below to be valid, any an all ground disturbance would be limited to the depth of the existing fill material. Ground disturbance would not exceed the depth of the existing fill material.**

Check all that apply:

- 1. Guardrail and bridge rail repair and replacement. Conditions: In kind repair/replacement.
- 2. Traffic Signals, intersection lighting, pedestrian signals, underpass lighting, or railroad lighting within existing right-of-way. Conditions: In kind repair/replacement.
- 3. Maintenance and replacement of highway signs on existing poles, new sign installation within existing fill material.
- 4. Crack sealing, pothole repair, overlaying, milling, resurfacing, installation of rumble strips, and pavement marking.  
Conditions: This activity does not include actions on brick streets or brick highways. The maintenance or rehabilitation is limited to the existing surfaced areas with only minimal surface expansion, is the same as the existing vertical and horizontal alignments of the roadway, no ditching or drainage work is included. All staging areas can be limited to existing paved or previously disturbed surfaces only (eg. surfaces with little to no vegetation due to previous disturbance). Any and all ground disturbance is limited to existing fill material and will not exceed the depth of the existing fill material.
- 5. Repair/Maintenance of right-of-way fencing, limited to repair/replacing fence wire and fence posts only on existing fence post locations.  
Condition: If any grading is required for access or installation of fencing, this authority does not apply.
- 6. Improving existing bicycle and pedestrian lanes and paths on their existing alignments. Conditions: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the fill material.
- 7. Acquisition of scenic easements.
- 8. Approvals for disposal of excess right-of-way or for joint or limited use of the right-of-way for right-of-way previously purchased with federal funds, provided no properties over 50 years old are located on within the property.
- 9. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.
- 10. Improvements to existing maintenance facilities, rest areas (excludine I-80 rest areas), and truck weigh stations less than 50 years old.  
Condition: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the existing fill material.
- 11. Repair/Replacement of at-grade railroad crossing gates, lights, signs, and the rail crossing driving surface. Condition: work is limited to in kind replacement/repair with any and all ground disturbance limited to existing fill material locations only, not to exceed the depth of the existing fill material.
- 12. Grants for training, education and research programs which do not involve construction.
- 13. Purchase of equipment or materials which do not involve construction.
- 14. Visual Bridge Inspections.



No

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e

Section  
106  
Complete

THPO and/or  
Federal agency  
consultation?

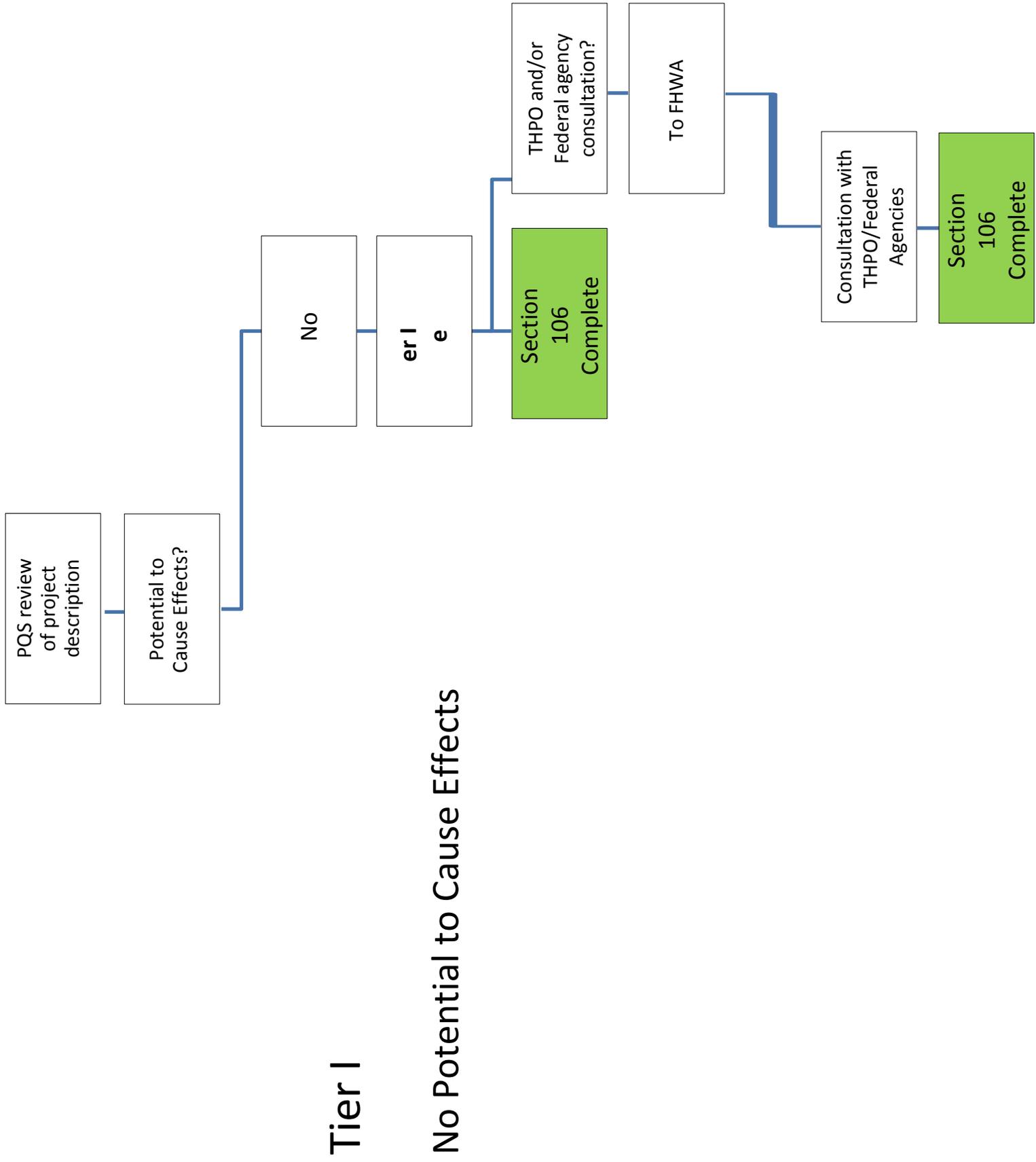
To FHWA

Consultation with  
THPO/Federal  
Agencies

Section  
106  
Complete

# Tier I

## No Potential to Cause Effects





## NDOR PQS Project Review Memo Section 106 - Tier II Project

Control Number \_\_\_\_\_ Project Number \_\_\_\_\_ Review Date \_\_\_\_\_

Project Name \_\_\_\_\_ Project Location \_\_\_\_\_

Date of Project Description Reviewed \_\_\_\_\_

Project Results in no historic properties affected  No  Yes  Tier II Project

THPO/Tribal Consultation?  No  Yes

CLG Consultation?  No  Yes

THPO/Tribes(s): \_\_\_\_\_

CLG: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

THPO/Tribal response date: \_\_\_\_\_

CLG response date: \_\_\_\_\_

THPO/Tribal comment:

CLG comment:

Other Consulting Parties Identified:

APE considered is consistent with 36 CFR 800.16(d):  Yes

Is Temporary Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Permanent Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Right of Way Required from ANY Historic Property Listed Above?  No  Yes

If Yes, describe:

---

Construction Commitments:  No  Yes

---

If Yes, detail here:

---

Project would result in no historic properties affected:  No  Yes

Tier II Project Evaluation Complete

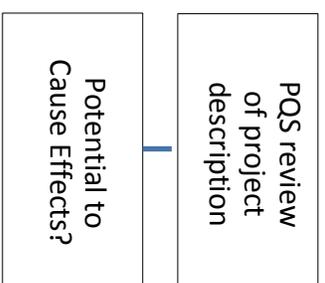
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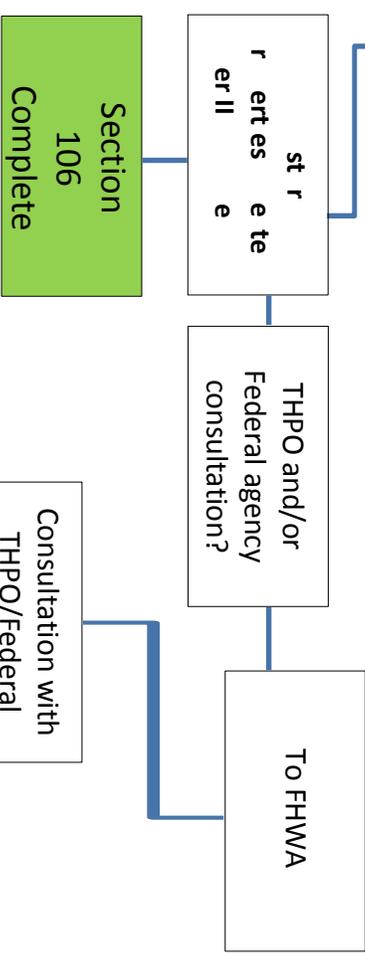
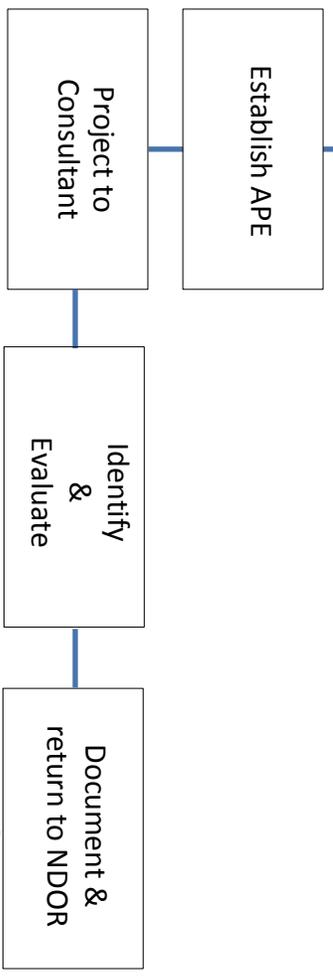
NDOR PQS Review

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Date



Yes



## Tier II

## No Historic Properties Affected





NDOR PQS Project Review Memo
Section 106 - Tier III Project

Control Number Project Number Review Date
Project Name Project Location
Date of Project Description Reviewed

Project Effect Recommendation Tier III Project

THPO/Tribal Consultation? No Yes

CLG Consultation? No Yes

THPO/Tribes(s):

CLG:

Date Correspondence Sent:

Date Correspondence Sent:

THPO/Tribal response date:

CLG response date:

THPO/Tribal comment:

CLG comment:

Other Consulting Parties Identified:

Empty box for Other Consulting Parties Identified

APE considered is consistent with 36 CFR 800.16(d): Yes

Archeological Resources

Above Ground Resources

Are NRHP listed or eligible properties present within the APE?

Are NRHP listed or eligible properties present within the APE?

No Yes

No Yes

Please list:

Please list:

Is Temporary Easement Required from ANY Historic Property Listed Above? No Yes

Is Permanent Easement Required from ANY Historic Property Listed Above? No Yes

Is Right of Way Required from ANY Historic Property Listed Above? No Yes

If Yes, describe:

Horizontal line at the bottom of the page

---

Construction Commitments:  No  Yes

---

If Yes, detail here:

---

---

Project would result in: \_\_\_\_\_

Provide narrative supporting "no adverse effect" finding or detail efforts to avoid an "adverse effect" finding:

If an "adverse effect" detail mitigation:

---

**Section 4(f)**

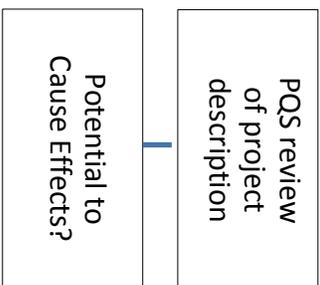
Does a Significant archeological site located within the APE of this project warrant preservation in place?  No  Yes

If yes, archeological site number: \_\_\_\_\_

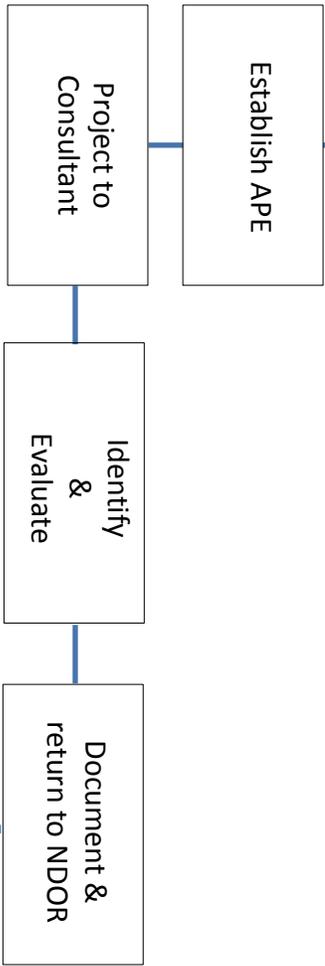
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\_\_\_\_\_  
NDOR PQS Review

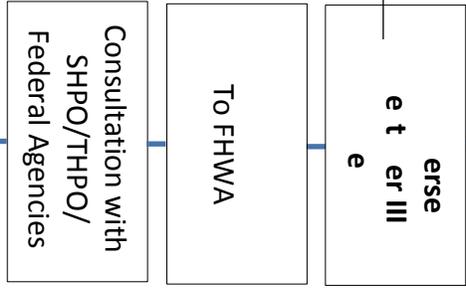
\_\_\_\_\_  
Date



Yes



**Adverse Effect  
Tier III PQS  
Memo**



Complete Memorandum of Agreement (MOA)

Data Recovery and/or Mitigation

Section 106 Complete

Tier III

No Adverse Effect

Adverse Effect

Section 106 Complete

A-4

Section 106 Forms  
(Insert tab here)





# NDOR PQS Project Review Memo

## Section 106 - Tier I Project

### No Potential to Cause Effects to Historic Properties

Control Number \_\_\_\_\_ Project Number \_\_\_\_\_ Review Date \_\_\_\_\_

Project Name \_\_\_\_\_ Project Location \_\_\_\_\_

Date of Project Description Reviewed \_\_\_\_\_  Project Description Attached  Tier I Project

THPO/Tribal Consultation?  No  Yes

THPO/Tribes(s): \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

THPO/Tribal response date: \_\_\_\_\_

THPO/Tribal comment: \_\_\_\_\_

CLG Consultation?  No  Yes

CLG: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

CLG response date: \_\_\_\_\_

CLG comment: \_\_\_\_\_

**Please Note: For the criteria below to be valid, any an all ground disturbance would be limited to the depth of the existing fill material. Ground disturbance would not exceed the depth of the existing fill material.**

Check all that apply:

- 1. Guardrail and bridge rail repair and replacement. Conditions: In kind repair/replacement.
- 2. Traffic Signals, intersection lighting, pedestrian signals, underpass lighting, or railroad lighting within existing right-of-way. Conditions: In kind repair/replacement.
- 3. Maintenance and replacement of highway signs on existing poles, new sign installation within existing fill material.
- 4. Crack sealing, pothole repair, overlaying, milling, resurfacing, installation of rumble strips, and pavement marking.  
Conditions: This activity does not include actions on brick streets or brick highways. The maintenance or rehabilitation is limited to the existing surfaced areas with only minimal surface expansion, is the same as the existing vertical and horizontal alignments of the roadway, no ditching or drainage work is included. All staging areas can be limited to existing paved or previously disturbed surfaces only (eg. surfaces with little to no vegetation due to previous disturbance). Any and all ground disturbance is limited to existing fill material and will not exceed the depth of the existing fill material.
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Condition: If any grading is required for access or installation of fencing, this authority does not apply.
- 6. Improving existing bicycle and pedestrian lanes and paths on their existing alignments. Conditions: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the fill material.
- 7. Acquisition of scenic easements.
- 8. Approvals for disposal of excess right-of-way or for joint or limited use of the right-of-way for right-of-way previously purchased with federal funds, provided no properties over 50 years old are located on within the property.
- 9. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.
- 10. Improvements to existing maintenance facilities, rest areas (excludine I-80 rest areas), and truck weigh stations less than 50 years old.  
Condition: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the existing fill material.
- 11. Repair/Replacement of at-grade railroad crossing gates, lights, signs, and the rail crossing driving surface. Condition: work is limited to in kind replacement/repair with any and all ground disturbance limited to existing fill material locations only, not to exceed the depth of the existing fill material.
- 12. Grants for training, education and research programs which do not involve construction.
- 13. Purchase of equipment or materials which do not involve construction.
- 14. Visual Bridge Inspections.

PQS review  
of project  
description

Potential to  
Cause Effects?

# Tier I

## No Potential to Cause Effects

No

Tier I  
e

Section  
106  
Complete

THPO and/or  
Federal agency  
consultation?

To FHWA

Consultation with  
THPO/Federal  
Agencies

Section  
106  
Complete



# NDOR PQS Project Review Memo

## Section 106 - Tier II Project

Control Number \_\_\_\_\_ Project Number \_\_\_\_\_ Review Date \_\_\_\_\_  
Project Name \_\_\_\_\_ Project Location \_\_\_\_\_  
Date of Project Description Reviewed \_\_\_\_\_

Project Results in no historic properties affected  No  Yes  Tier II Project

THPO/Tribal Consultation?  No  Yes

CLG Consultation?  No  Yes

THPO/Tribes(s): \_\_\_\_\_

CLG: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

THPO/Tribal response date: \_\_\_\_\_

CLG response date: \_\_\_\_\_

THPO/Tribal comment:

CLG comment:

Other Consulting Parties Identified:

APE considered is consistent with 36 CFR 800.16(d):  Yes

### Archeological Resources

### Above Ground Resources

Are NRHP listed or eligible properties present within the APE?

Are NRHP listed or eligible properties present within the APE?

No  Yes

No  Yes

Please list:

Please list:

Is Temporary Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Permanent Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Right of Way Required from ANY Historic Property Listed Above?  No  Yes

If Yes, describe:

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---

Construction Commitments:  No  Yes

---

If Yes, detail here:

---

Project would result in no historic properties affected:  No  Yes

Tier II Project Evaluation Complete

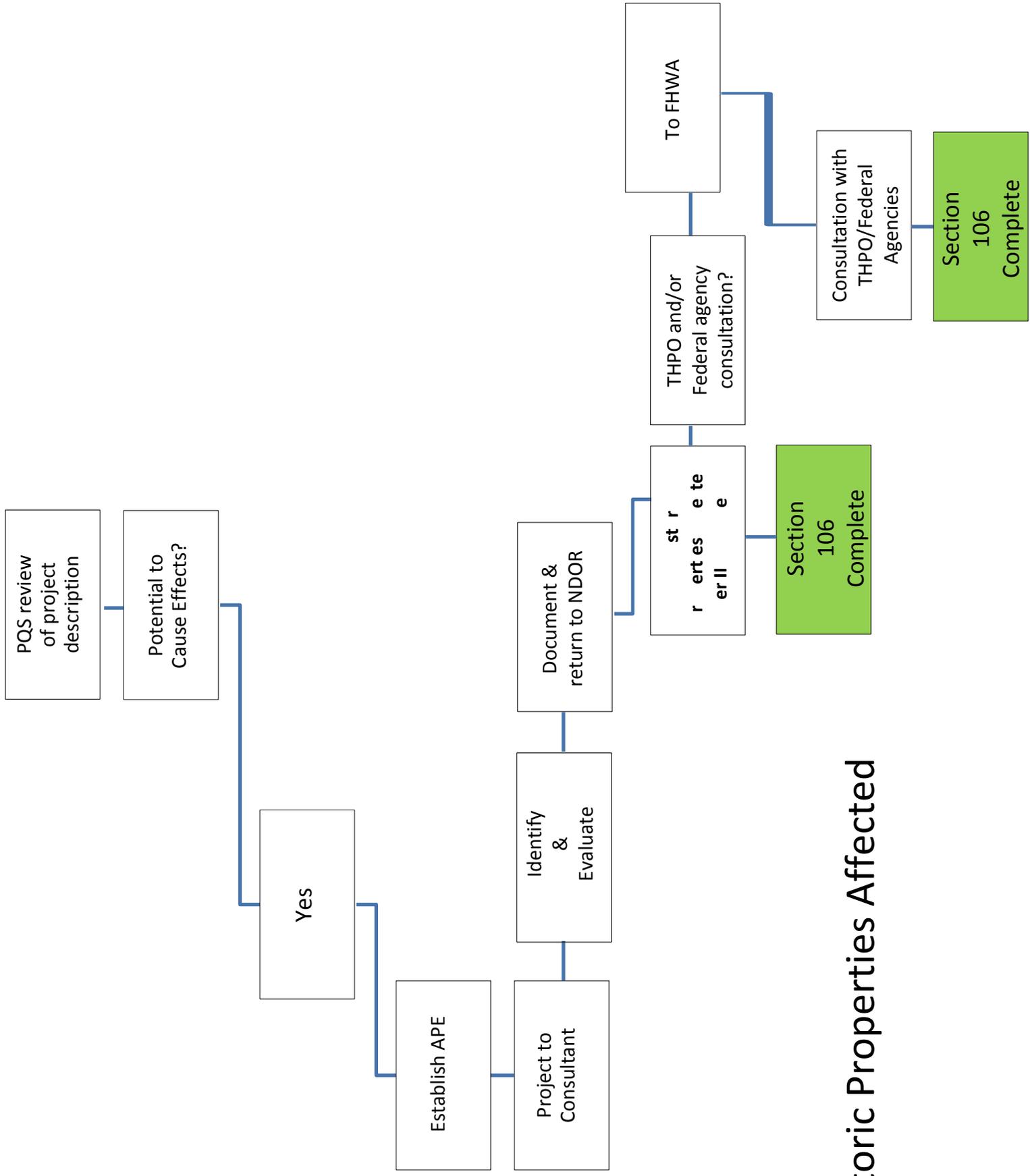
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NDOR PQS Review

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Date



## Tier II

## No Historic Properties Affected



## NDOR PQS Project Review Memo Section 106 - Tier III Project

Control Number \_\_\_\_\_ Project Number \_\_\_\_\_ Review Date \_\_\_\_\_

Project Name \_\_\_\_\_ Project Location \_\_\_\_\_

Date of Project Description Reviewed \_\_\_\_\_

Project Effect Recommendation \_\_\_\_\_  Tier III Project

THPO/Tribal Consultation?  No  Yes

CLG Consultation?  No  Yes

THPO/Tribes(s): \_\_\_\_\_

CLG: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

Date Correspondence Sent: \_\_\_\_\_

THPO/Tribal response date: \_\_\_\_\_

CLG response date: \_\_\_\_\_

THPO/Tribal comment: \_\_\_\_\_

CLG comment: \_\_\_\_\_

Other Consulting Parties Identified:

APE considered is consistent with 36 CFR 800.16(d):  Yes

Is Temporary Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Permanent Easement Required from ANY Historic Property Listed Above?  No  Yes

Is Right of Way Required from ANY Historic Property Listed Above?  No  Yes

If Yes, describe:

---

Construction Commitments:  No  Yes

---

If Yes, detail here:

---

---

Project would result in: \_\_\_\_\_

Provide narrative supporting "no adverse effect" finding or detail efforts to avoid an "adverse effect" finding:

If an "adverse effect" detail mitigation:

---

**Section 4(f)**

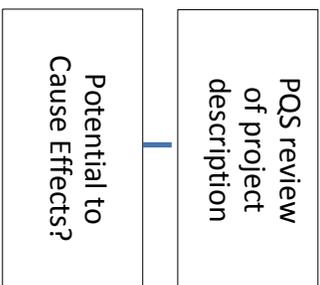
Does a Significant archeological site located within the APE of this project warrant preservation in place?  No  Yes

If yes, archeological site number: \_\_\_\_\_

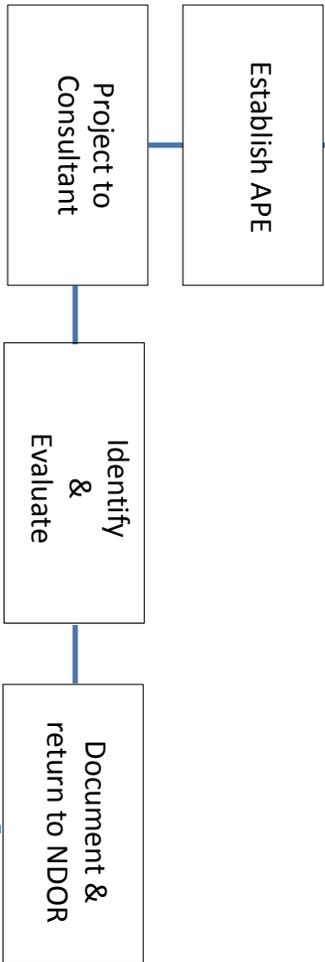
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NDOR PQS Review

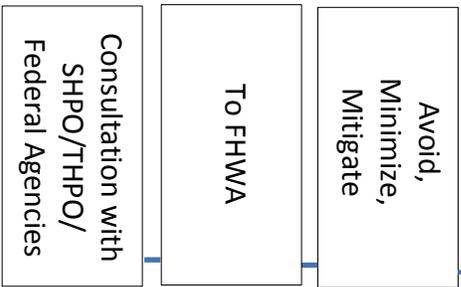
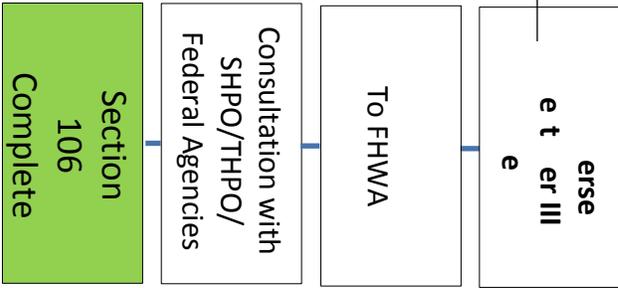
\_\_\_\_\_  
Date



Yes



**Adverse Effect  
Tier III PQS  
Memo**



Complete Memorandum of Agreement (MOA)

Data Recovery and/or Mitigation

Section 106 Complete

**Tier III**

**No Adverse Effect**

**Adverse Effect**

Section 106 Complete

A-5

Section 4(f)  
(Insert tab  
here)





## Section 4(f) Initial Assessment Form

May 29, 2015

Project Name

Project Number

Control Number

Date Completed

Project Location (*Town, County*)

Name of Preparer

The following form was developed as an initial assessment of potential Section 4(f) properties within a project area. The number of each question block corresponds directly to the NDOR Section 4(f) Guidance section with the same number. **One Initial Assessment Form per PROJECT must be included as an attachment to the CE Form or incorporated into the appropriate chapter in the EA/EIS.**

NOTE: At the time the Section 4(f) Initial Assessment Form is filled out, the Section 106 process must be sufficiently complete that historic properties have been identified. A Section 106 Finding of Effect (*No Adverse Effect, Adverse Effect*) must be completed prior to determining whether the project results in a 'use' of an historic property. All Section 106 determinations and findings must be made and documented by NDOR Professionally Qualified Staff (PQS).

### 1. Identification of Section 4(f) Properties

A. *For historic properties*, based on the NDOR Section 106 Tier Review Form, are there properties that are listed or eligible for listing on the National Register of Historic Places?

Yes     No     N/A (Section 106 Tier I)

If Yes, provide the name, Finding of Effect, and any other pertinent information from the Section 106 review for each identified property.

B. Are there existing or planned parks, recreation areas, or wildlife/waterfowl refuges present within a ¼ mile of the project area?

Yes     No

- C. In consultation with the online resources identified in the Section 4(f) Guidance, list the **resources** used to determine if parks, recreation areas, or wildlife/waterfowl refuges are present.

- D. Identify all potential Section 4(f) parks, recreation areas, and wildlife/waterfowl refuges (*include property name(s), location(s) along project, etc.*).

If No parks, recreation areas, or wildlife/waterfowl refuges are present, AND no historic properties need consideration from 1.A., indicate in the box below that no potential Section 4(f) properties are present. DOCUMENTATION IS COMPLETE.

---

**2. Applicability Criteria for Section 4(f) Parks, Recreation Areas, and Wildlife/Waterfowl Refuges (not Historic Properties)**

- A. List all properties from 1.D. that are (1) NOT publicly owned, or (2) NOT privately owned and leased to a public entity, for a Section 4(f) protected purpose, and how this was determined.

- B. List all properties from 1.D. that are NOT open to the public, and how this was determined. (This does NOT apply to wildlife/waterfowl refuges.)

- C. List all properties from 1.D. that are considered multiple-use properties, and what those uses are.

- D. List all properties from 1.D. that were NOT called-out in 2.A. or 2.B.; **these properties will be carried forward in the Section 4(f) process. Also be sure to carry forward any multiple-use properties from 2.C. or historic properties from 1.A. that have temporary or permanent right-of-way acquisition or vibratory effects.** If no properties are carried forward, note below and DOCUMENTATION IS COMPLETE.

---

**3. Determination of Section 4(f) Use**

A. Is there a potential *use* of the Section 4(f) applicable properties from 2.D. above? Will the properties be impacted by the project, including access restrictions? (See Guidance Section 3 for definition of *use*.)

Yes     No    Is there a potential *permanent* use?

Yes     No    Is there a potential *temporary* use (including exceptions)?

Yes     No    Is there a potential *constructive* use?

Any Yes: complete the appropriate Section 4(f) analysis for each impacted property

No: state impact avoidance measures below, then DOCUMENTATION IS COMPLETE

B. List impact avoidance measures (for “No” answer only). If justification is needed to support a “No” answer in 3.A., describe below.

---

NDOR Reviewer Approval Signature:

Date:

FHWA Environmental Signature:

Date:

FHWA signature is only required in the following circumstances:

- If the property is leased
- If the property is considered multiple-use
- If the Official(s) with Jurisdiction claims that the property is NOT significant



## Section 4(f) *De Minimis* Form

May 20, 2015

Project Name

Project Number

Control No.

Project Location (Town, County, Street)

Project Description

Name of Section 4(f) Property (A separate form must be completed for each property with a *de minimis* impact)

Official(s) with Jurisdiction

Total Property Size (in acres)

Permanent Impact (in acres)

Temporary Impact (in acres)

Property Description

Answer only the questions in the applicable block (A or B). All questions in Block C must be answered.

### A. Section 4(f) *De Minimis* Park, Recreation Area, and Refuge Eligibility

If the *de minimis* impact does NOT involve a park, recreation area or refuge, check the N/A below and proceed to Block B.

N/A

Will the project adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection?

Yes  No

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance,

Minimization, and Mitigation Measures box below.

Yes  No

Have *de minimis* public involvement requirements (notice, review, comments, etc.) been completed? If Yes, describe in the Comments box below.

Yes  No

Date(s):

Did the Official(s) with Jurisdiction concur with the determination of no adverse effect?

Yes  No

Date(s):

**B. Section 4(f) *De Minimis* Historic and Archeological Resource Eligibility**

If the *de minimis* impact does NOT involve an historic or archeological resource, check the N/A below and proceed to Block C.

N/A

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance, Minimization, and Mitigation Measures box below.

Yes  No

Was the effect determination either “no historic properties affected” or “no adverse effect”? \*

Yes  No

PQS Date

SHPO Date

THPO Date

\* The PQS field will always be filled out. If there is a date in the SHPO or THPO field, this would indicate the entity is the Official with Jurisdiction and they were informed of FHWA’s intent to apply *de minimis* via project-specific correspondence. The date in the field would be the date the entity concurred on the Section 106 effect determination. A notation of “N/A” in the field indicates the entity was not the Official with Jurisdiction. “Programmatic” in the SHPO field indicates that a determination of “no historic properties affected” or “no adverse effect” was made for the project per the Section 106 Programmatic Agreement and the *de minimis* notification was provided via letter agreement with the SHPO.

**C. Additional Information**

Description of Use (Temporary and/or Permanent)

Avoidance, Minimization, and Mitigation Measures

Comments

**De Minimis Documentation**

Are detailed maps included, showing current and proposed right-of-way, property boundaries, access, and existing and planned property features?

Yes  No

Is documentation of public involvement attached?

Yes  No  N/A (for historic resources)

Is concurrence from the Official(s) with Jurisdiction (and Consulting Parties, for historic properties) attached?

Yes  No

Additional Attachments (If Applicable)

---

**Approval Signatures**

The project involves a *de minimis* use of the Section 4(f) property. Harm to the park, recreation land, wildlife or waterfowl refuge, or historic property has been avoided or mitigated to minimize impacts to the qualifying characteristics and/or functions of the resource. Based on the scope of the undertaking, the fact that the undertaking does not adversely affect the function/qualities of the Section 4(f) property on a permanent or temporary basis, and with agreement from the Official(s) with Jurisdiction, the proposed action constitutes a *de minimis* use.

**Preparer**

**Date:**

**NDOR Environmental Manager**

**Date:**

**FHWA Environmental**

**Date:**



## Section 4(f) Exceptions Form

May 20, 2015

### Section 4(f) Exceptions (23 CFR 774.13): Public Parks, Recreation Lands, Wildlife & Waterfowl Refuges, and Historic Properties

Project Name

Project Number

Control Number

Project Location (*Road, Town, County*)

Project Description

Section 4(f) Property Name

Official(s) with Jurisdiction

Property Description

Type of Exception (Note: Choose the primary exception that applies from the drop-down choices below.)

23 CFR 774.13(a)

The following form was developed as a tool to assist in streamlining the Section 4(f) Exception process and to ensure that all necessary information is documented. **A separate Exceptions Form is required for each Section 4(f) property for which an exception applies.**

## Establishing Section 4(f) Exception Relevancy

The following questions are taken directly from 23 CFR 774.13 to determine if the project is exempt from the requirement of Section 4(f) approval.

**Check only the exceptions that apply for this property. (NOTE: More than one exception may apply.)**

- a. 23 CFR 774.13(a): Restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when: 1. [FHWA] concludes...that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and 2. the Officials with Jurisdiction (OWJ) over the Section 4(f) resource have not objected to the [FHWA] conclusion.

- b. 23 CFR 774.13(b): *All archeological sites qualify for the exception to Section 4(f) detailed at 23 CFR 774.13(b) unless the NDOR Professionally Qualified Staff (NDOR PQS) determines that the archeological site has important value for preservation in place and the SHPO/THPO has not objected. This information can be found on page 2 of the NDOR Section 106 Tier Review Form or through coordination with the NDOR PQS. [Agreed upon by FHWA and NDOR]*

***[If this exception is applicable to a property, check this box and obtain appropriate NDOR signatures (FHWA approval is not required), and DOCUMENTATION IS COMPLETE.]***

- c. 23 CFR 774.13(c): Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. [See 23 CFR 774.13(c) for more parameters.]

- d. 23 CFR 774.13(d): Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f).

The following conditions must be satisfied: 1. duration must be temporary and there should be no change in ownership of the land; 2. scope of the work must be minor; 3. there are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis; 4. the land being used must be fully restored to pre-existing conditions or better; and 5. there must be documented agreement of the OWJ(s) over the Section 4(f) resource regarding the above conditions.

- e. 23 CFR 774.13(e): Federal lands transportation facilities as defined in section 1103(a)(3) MAP-21 (23 U.S.C. 101(a)(8)).

- f. 23 CFR 774.13(f): Certain trails, paths, bikeways, and sidewalks, in the following circumstances: 1. trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2); 2. National

Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17; 3. trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and 4. trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation.

- g. 23 CFR 774.13(g): Transportation enhancement projects and mitigation activities, where: 1. the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and 2. the OWJ(s) over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.

If using **Exception d.** for a temporary occupancy, describe below how the five required conditions will be satisfied (also include property size and size of temporary impacts).

If using **Exception f. or g.**, explain the application of the exception below.

Was mitigation necessary to minimize use? If so, explain the impacts and mitigation.

---

### Exception Documentation

Are detailed maps included, showing current and proposed right-of-way, temporary/construction easements, property boundaries, access points for pedestrians and vehicles (if applicable), and existing and planned property features?

Yes     No

Is concurrence from the Official(s) with Jurisdiction attached? **(if required)**

Yes     No, not required

---

### Approval Signatures

I reviewed this checklist and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774.13 for a Section 4(f) Exception finding.

Preparer

Date

NDOR Environmental Manager

Date

**FHWA Environmental – Section 4(f) Exception Final Approval**

Based upon the above considerations, this Section 4(f) Exception satisfies the requirements of 23 CFR 774.13.

FHWA Environmental

Date:

Nationwide Section 4(f) Programmatic Evaluations Comparison Chart

	Independent Bikeway or Walkway Projects	Use of Historic Bridges	Minor Involvement with Parks, Recreation Lands, and Wildlife and Waterfowl Refuges	Minor Involvement with Historic Sites	Transportation Projects that have a Net Benefit to a Section 4(f) Property
<b>Date Enacted</b>	5/23/77	7/5/83	12/23/86	12/23/86	4/20/05
<b>Project Type</b>	Independent bikeway or walkway project, not incidental activities of a highway project.	Rehabilitation or replacement of historic bridges.	Improvement of operational characteristics, safety, and or physical condition of an existing highway on essentially the same alignment.	Improvement of operational characteristics, safety, and or physical condition of an existing highway on essentially the same alignment.	Any type of project on existing or new alignment regardless of NEPA document type.
<b>Resource Applicability</b>	Parks or recreation areas.	Historic bridges that are not a National Historic Landmark.	Parks, recreation lands, and wildlife and waterfowl refuges that are adjacent to the existing facility.	Historic sites that are adjacent to the existing facility.	All Section 4(f) resources.
<b>Impact threshold</b>	No significant impacts (No displacements, minimal water quality impacts, etc.)	If bridge can be rehabilitated without affecting the historic integrity, Section 4(f) does not apply. If the bridge is to be demolished and/or replaced, Section 4(f) applies.	The amount of property that may be acquired / used is limited as specified in the PA. May not be used for projects processed with an EIS.	<ul style="list-style-type: none"> <li>Project may not remove or alter historic buildings, structures or objects, or archaeological resources important for preservation in place.</li> <li>Project must result in a no effect or no adverse effect determination via the Section 106 process.</li> <li>May not be used for projects processed with an EIS.</li> </ul>	<ul style="list-style-type: none"> <li>No impact limits, but project results in an overall enhancement to the resource.</li> <li>For historic resources the project doesn't necessarily require a no effect or no adverse effect determination, but property remains eligible for NRHP.</li> </ul>
<b>Alternatives Analysis</b>	1. There is no feasible and prudent alternative to the use of Section 4(f) lands.	1. Do nothing. 2. Build a new structure at a different location without affecting the historic integrity of the historic bridge. 3. Rehabilitate the historic bridge without affecting the historic integrity of the historic bridge.	1. Do nothing. 2. Improve the highway without using the adjacent Section 4(f) resource. 3. Build an improved facility on new location without using the adjacent Section 4(f) resource.	1. Do nothing. 2. Improve the highway without using the adjacent historic site. 3. Build an improved facility on new location without using the historic site.	1. Do nothing. 2. Improve the transportation facility in a manner that addresses the project's P&N without using the Section 4(f) property. 3. Build the transportation facility at a location that does not require use of the Section 4(f) property.
<b>Coordination and Concurrence Requirements</b>	Official with jurisdiction concurs in writing that project is acceptable and consistent with designated use of property.	If replacement is proposed, the bridge must be made available for an alternative use. SHPO concurs in writing with assessment of impacts and proposed mitigation.	Official with jurisdiction concurs in writing with assessment of impacts and proposed mitigation.	SHPO concurs in writing with assessment of impacts and proposed mitigation.	Official with jurisdiction or SHPO concurs in writing with assessment of impacts and proposed mitigation  For projects with one or more public meetings or hearings, information on the proposed use of the Section 4(f) resources shall be communicated to the public.



A-6

Public Involvement  
(Insert tab here)



# Nebraska Public Involvement Procedure



## Table of Contents

<b>Intro</b> .....	<b>4</b>
<b>Fed Aid Requirements</b> .....	<b>4</b>
<b>NDOR PI Tools</b> .....	<b>4</b>
NDOR Website .....	5
Gov Delivery Email .....	6
Targeted Email .....	6
Targeted Mailing .....	7
Project Info Packet .....	7
Public Notification .....	7
Notification of Project Public Info Meeting or Hearing .....	8
Official Legal Notice .....	8
Targeted Canvassing in District .....	9
Media News Release .....	9
Twitter Posts .....	9
MindMixer .....	9
Temporary Highway Signs .....	10
Video Aids .....	10
Kiosk/Convention Booths .....	10
Workshops .....	11
Public Information Meetings .....	11
Public Information Hearings .....	11
District Program Highway Commission Meeting .....	12
Annual Reporting of 1 and 6 Year Plans for Highway Roads and Street Improvements .....	12
MPO Public Participation .....	12
<b>Determining Outreach Distribution for Projects</b> .....	<b>12</b>
<b>Limited English Proficiency and Environmental Justice</b> .....	<b>13</b>
<b>Standard Public Involvement Practices for Transportation Activities</b> .....	<b>14</b>
Nebraska Surface Transportation (Construction) Program Book .....	14
Long Range Transportation Plan .....	14
Statewide Transportation Improvement Program .....	14
Categorical Exclusion Level 1 CE Action .....	15

Categorical Exclusion Level 2 CE Action ..... 16

Categorical Exclusion Level 3 CE Action ..... 17

Environmental Assessment..... 18

Environmental Impact Statement..... 19

**Appendix A: Existing Reference/Guidance ..... 21**

**Appendix B: Example of Fact Sheet..... 22**

**Appendix C: Example of Post Card ..... 24**

**Appendix D: Example of Official Legal Notice ..... 25**

**Appendix E: Comment Form Example ..... 26**

**Appendix F: ADA Facility Checklist..... 27**

## **Nebraska Public Involvement Procedures**

### **1. INTRODUCTION**

Nebraska Department of Roads (NDOR) is a public agency whose mission is to provide the best possible statewide transportation system for the movement of people and goods. The department consists of sixteen divisions and eight districts managing the transportation system throughout Nebraska under the advisement of the State Highway Commission. Public and stakeholder involvement is a key ingredient in planning for and developing an efficient transportation system for Nebraskans.

NDOR views effective public involvement as critical to ensuring that the state transportation system continues to serve a wide range of needs. Consequently, this public involvement procedure provides guidelines, techniques, and processes that help NDOR solicit information from stakeholders and the public. This will enhance our performance and accountability through continuous improvement in communication, coordination, cooperation and collaboration. A strong partnership with the general public, tribal governments, metropolitan planning organizations, universities, local governments and other state and federal government agencies is the goal.

The consideration of diverse viewpoints ensures the needs and preferences of a community are considered, and enable transportation officials to make informed decisions based on multiple viewpoints. This document is intended to outline public involvement considerations and procedures to be used on federal aid transportation projects in Nebraska.

### **2. FEDERAL AID REQUIREMENTS**

The Nebraska Department of Roads encourages the public to get engaged early in the planning process and stay involved throughout the many stages of the transportation project development. Federal laws and regulations require public involvement during the transportation planning and decision making process. In accordance with 23 CFR 450.210, Federal Highway Administration (FHWA) requires the statewide planning process be developed ([www.fhwa.dot.gov/planning/public\\_involvement/orders/](http://www.fhwa.dot.gov/planning/public_involvement/orders/)) using a documented Statewide Transportation Improvement Plan (STIP) public involvement process for public review and comment at key decision points. FHWA and other federal agencies implemented the National Environmental Policy Act (NEPA) of 1969 and FHWA environmental procedures in 23 CFR 771 and the Council on Environmental Quality implemented regulations outlining requirements for public input during the project development process. These regulations include publishing notices and providing the opportunity for public hearings to solicit input about transportation projects.

In addition to the regulations set forth in Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), NDOR follows additional laws and policies that support public involvement. These laws and policies include Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA) of 1990 and the National Environmental Policy Act (NEPA).

### **3. NDOR PUBLIC INVOLVEMENT TOOLS**

Public involvement is an integral part of the transportation process which helps to ensure that decisions are made in consideration of and to benefit public needs and preferences. Successful

public involvement includes identifying appropriate means, methods, and techniques to deliver project information in a timely fashion and to establish means of communication with stakeholders, the public, and all interested parties. Provided below are descriptions of existing public involvement tools utilized by the Nebraska Department of Roads. LPA's may request the use of existing NDOR Public Involvement tools, such as the website, if not able to use their own for these purposes.

- **Nebraska Department of Roads (NDOR) Website**

The NDOR Website makes information easily accessible to the public via electronic form in order to increase transparency and ease of submitting feedback.

NDOR Webpages that facilitate transparent public involvement include, but are not limited to:

- Highway Project Webpage:
  - Project Fact Sheets (See Appendix B for an Example)
  - Location Maps
  - Videos:
    - Project Specific or
    - Instructional: Navigating a Roundabout or Diverging Diamond Interchange
  - A form to submit questions or comments about any highway project
- Civil Rights Title VI Compliance Webpages:
  - State and LPA Guidance
  - Complaint Procedures and Forms
  - Informational Videos and links to Federal websites
  - Downloadable Templates and Posters
  - NDOR Transition Plan
- STIP Webpage:
  - STIP Development Guidance
  - STIP Public Involvement Plan
  - Links to MPO webpages
    - TIP's and Public Participation Plans
- Public Involvement Webpage:
  - Informational Videos: From concept to construction
  - NDOR Contacts and Resources
  - Opportunities for Involvement
- Highway Commission Webpage:
  - Upcoming Meeting Agenda
  - Commissioner Contact Information
- Build Nebraska Act Webpage:
  - 10 Year Plan
  - Project Fact Sheets and Videos
  - Link to Legislation
- LRTP Update Webpage:
  - Description and Development Process Documents
  - Stakeholder Surveys and Results
  - Presentations
  - New Releases
  - Current Plan
- Nebraska Surface Transportation (construction) Program Webpage:
  - Annual 6 Year Program Book

- **GovDelivery e-mail notifications**

A GovDelivery subscription on the NDOR Website provides any individual with the ability to request notification when information on a webpage changes through automated e-mails. The public is notified of the GovDelivery tool through NDOR News Releases, event notification postcards, Twitter and the NDOR website.

- GovDelivery email notifications enables NDOR to involve more people and actively engage them.  
GovDelivery email notifications allow: users to select the content they want to receive; NDOR to track the webpages that are of most interest to the public; and NDOR to understand what is important our audience

- **Targeted Email**

E-mails are used to notify specific interested citizens who have indicated that they prefer to be contacted or updated on a project's status via direct email from NDOR.

- **Targeted Mailing**

A variety of targeted mailings may be used for public involvement. Approved agency logos must be included on all project materials provided to the public. All maps, plan sets, and project alternatives should include preliminary plan stamps. Provided below are descriptions of the most common tools used in Nebraska:

- A **Project Information Packet** is sent when a public information meeting is not planned. The Project Information Packet typically includes a cover letter, project handout/fact sheets (see Appendix B for example), a comment form, and/or any other displays/exhibits/handouts to summarize the project and agency contacts (including the Public Involvement Coordinator). A minimum 30-day comment period is required. The dates and methods to provide feedback must be included in the packet. This form of notification may be used if the project includes any of the following considerations:
  - **ROW**
  - **Detour**
  - **Access Restriction**
  - **Base Flood Elevation (Impacts to adjacent structure)**
  - **4(f) de minimis Impacts**
- A **Public Notification** typically includes a project description, purpose and need, brief scope of work, Right-of-way or easements, traffic or access disruption description, construction schedule, map (detour and location), accommodation of traffic, any other potential impacts, accommodation of information and/or materials for protected population, and agency contacts (including the Public Involvement Coordinator). This notification is distributed to contiguous property owners, business owners, and local officials. No comment period is required but, comments are accepted. This form of notification may be used if the project includes any of the following considerations:
  - **ROW**
  - **Detour**
  - **Access Restriction**

- **Nighttime Work in Residential Area**
- **Notification of Project Public Information Meeting or Hearing** is a form of notification used for informing the audience potentially affected by the project of the date, time, and location of the public information meeting or hearing. There are two options for reaching the affected audience, outlined below. These notifications can be distributed by canvassing or mail.
  - **Legal Notice of Meeting or Hearing** include the information provided in the legal notice that appeared in the Nebraska Press Association (NPA) newspaper with a project location and/or detour map.
  - **A Notification Post Card includes** project Information details about where to find project information and opportunities for involvement and methods for providing feedback. The post cards are typically sent to contiguous property owners, interested parties, business owners and local officials. (See Appendix C for example).
- **Official Legal Notice**

This notice is published in the legal section of a Nebraska Press Association (NPA) newspaper having general circulation within proximity to the project area. A notice includes project description, purpose and need, brief summary of project scope of work, acquisition of property rights, whether or not wetland impacts are anticipated and estimated construction schedule, instructions for obtaining information from the NDOR website, project point of contact information, accommodation of information and/or materials for protected population, any additional public involvement opportunities and comment period. If applicable, the notices will include, detour information, potential Section 4(f) impacts or adverse effect to Section 106 resources.

- **For Public Information Meeting/Hearings (See Appendix D for Example):**
  - Refer to the official legal notice requirements above and includes meeting/hearing details
  - For a Categorical Exclusion (CE), Draft Environmental Assessment (DEA), Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS), and Record Of Decision (ROD) the legal notice shall be published once:
    - Public information meeting and public hearing notices shall be published at a minimum of 15 days prior to the meeting/hearing, not including the day of the meeting/hearing. If the notification is not published for a full 15 days prior to the meeting/hearing, the event shall be rescheduled.
    - *Note: The public hearing notice for DEIS shall coincide with the timelines established in the Federal Register by FHWA.*
    - *Note: NDOR recommended best practice: NDOR commonly publishes legal notices twice before public meetings and hearings. The first publication is 31 days in advance of the event for public hearings, or 21 days in advance of the event for public information meetings. The second publication, for both public hearings and public information meetings, occurs 7 days prior to the event. NDOR often publishes the legal notices twice in an effort to notify a higher volume of persons about the upcoming event. Though NDOR strongly advises local agencies to follow this best practice, it is not required.*

- **For Target Mailings of Project Information Packet in lieu of a public information meeting (See Appendix D for Example):**
  - Refer to the official legal notice requirements above.
  - Shall be published twice:
    - The first publication starts the comment period (30 days).
    - The second publication is 15 days prior to the end of the comment period.
- **For FEIS/ROD Public Availability:**
  - Refer to the official legal notice requirements above with the exception of the comment period. The FEIS and ROD are provided for a public review period, but do not have a formal comment period. The document availability shall be clearly stated.
    - Note: This legal notice shall coincide with the timelines established in the Federal Register by FHWA.

- **Targeted Canvassing in a District**

These tools are utilized based on District, Highway Civil Rights Specialist or Public Involvement Coordinator recommendation.

- A brief **project description and upcoming event notification** is distributed to businesses and or officials prior to public meeting or hearing
- **Project fliers**
- **Door hangers** which include a Project Information Packet

- **Media News Release**

- **Statewide** applicable messages are shared with public media outlets across Nebraska
- **During NEPA** information and/or meeting details are distributed to local, regional and associated press media services within the project vicinity.
- **Preconstruction** project information is distributed to local, regional and associated press media services within the project vicinity prior to the start of construction.

- **Twitter Posts**

NDOR uses Twitter to send program and project specific information and upcoming event notifications, throughout the day. NDOR staff (Including PI) suggests posts for twitter, but the NDOR Communication Division actually creates the posts.

- **Mindmixer**

Mindmixer is a comprehensive community engagement website accessible through the NDOR website. Citizens are given access to project information and can engage, communicate and collaborate with NDOR staff and other citizens.

- Mindmixer can adapt to 79 different languages making it accessible to a wide variety of people
- Highway projects are posted with a question to jump start the public's thought process. Details about the project and photos, maps, and videos pertaining to the project are provided.

- This Public Involvement tool may be utilized for projects that include but, not limited to high public interest i.e.: Roundabouts, Environmental Assessment documents, Environmental Impact Statement (EIS)
- The Nebraska State Highway Commission will be available to the public via NDOR's Mindmixer page. The public now has the opportunity to create a log in at <http://netransportation.mindmixer.com/> and submit comments and/or questions regarding projects in their area to their Highway Commissioner. These comments will be discussed during the State Highway Commission Meetings.

- **Temporary Highway Signs**

There are two forms of temporary highway signs utilized as another form of outreach to interested and/or affected persons that can be placed on and/or near the route of the proposed project to notify users of an upcoming Public Meeting or Public Hearing for up to two weeks.

- **Temporary Highway Signs** are placed on or near the project site to advertise the meeting. These signs are placed approximately fifteen days prior to the advertised meeting/hearings and serve as a means of contacting interested and/or affected persons that utilize the route in question. These temporary signs are removed following the public meeting.
- **Portable Dynamic Message Signs** are utilized as a means of advertising upcoming public meetings/hearings prior to the event. When using this digital signage, public meeting information has the ability to become mobile.

- **Video Aids**

Video aids are a tool used to inform the public of proposed projects and educate them on the impacts and features associated with the project. These can be utilized for Public Information Meetings, Public Hearings, or as an educational tool for the community (Roundabouts, Concept to Construction, Historic Preservation, etc.). They can range from 3D models and animations to videos that provide the opportunity to present a visual representation and flyover perspectives of the proposed project.

- **Interviews with Stakeholders**

This tool could be used to involve a very specific group of citizens or agencies to review the project information and gather feedback. This tool is only to be used at the discretion of the NDOR Public Involvement Coordinator.

- **Kiosk or Convention Booths**

These tools could be used to disseminate details for upcoming public involvement opportunities and issue public surveys.

- **Workshops**

Workshops are an interactive method to discover the needs, interests, and concerns of stakeholders. A workshop allows interested or impacted members of the public direct involvement with experts such as traffic engineers, environmental specialists, and transportation designers.

- **Public Information meetings**

Public Information Meetings serve as an efficient method to inform the local populous of various stages of a proposed highway improvement project's by furnishing information to the general public and obtaining public input, providing a versatile and familiar public involvement opportunity. For controversial projects, public meetings are an essential intermediary step prior to conducting public hearings. A public information meeting may include an informal presentation so long as the presentation is included in the official legal notice. The meetings are most often held in an "Open House" format allowing the public to gather pertinent information about the project and come and go as they wish, no formal presentation is given. Project Development or Design plans and information is displayed, and personnel from NDOR are present to answer questions and receive comments (See Appendix E). A minimum 30 day public comment period is required. The comment period and method to provide feedback must be included in the meetings legal notice. The meeting should be held at a convenient time for the public to attend and location within close proximity to the proposed project as determined by the NDOR Public Involvement specialist.

- **Public Hearings**

Public Hearings ensure public involvement for a proposed project/corridor/plan and provide opportunities for public input on project alternatives via a variety of methods, which may include but are not limited to handouts and comment sheets. Hearings must be conducted for any construction projects involving a new alignment, projects requiring an Environmental Assessment, Environmental Impact Statement or projects involving local or regional significance or at the discretion of the State Highway Commission or FHWA. Federal regulation 23 CFR 771(h)(2)(iii) requires that the NDOR provide the opportunity for a hearing for any federally funded project which meets the following criteria:

- Requires the acquisition of significant amounts of right of way;
- Substantially changes the layout and purpose of connecting roadways or of the facility being improved;
- Has a substantial adverse impact on abutting property;
- Has a significant social, economic or environmental effect;
- Or is determined by the FHWA to require a public hearing in the public interest.

A public hearing may be held in presentation style or open-house format and includes an oral or video presentation. The hearing must be held at a convenient time for the public and at a location within close proximity to the proposed project as determined by the NDOR Public Involvement Specialist. Public Hearings must cover the required information in 23 CFR 771.111(h)(v), present an engineering statement of the proposed transportation action; allow the public a forum to address the agency and their assembled peers verbally with a microphone or recorder, and to allow for citizen and/or agency to publicly comment both verbally and in written form during and after the public hearing, within the open comment period. The public must be informed of the termination date of this comment period.

- The standard comment period for an Environmental Assessment is a minimum of 30 days, in which the draft EA shall be made available at the public hearing and for a minimum of 15 days in advance of the public hearing. Comments submitted within 30 days of the availability of the draft EA are deemed acceptable; FHWA reserves the rights to determine, for good cause, if a different number of days for a comment period is warranted. [23 CFR 771.119 (e)]
- The standard comment period for a draft Environmental Impact Statement (DEIS) is a minimum of 45 days with a maximum of 60 days, in which the DEIS shall be made available at the public hearing and for a minimum of 15 days in advance of the public hearing. Comments submitted within the maximum of 60 days are deemed acceptable; FHWA reserves the rights to determine, for good cause, if a different number of days for a comment period are warranted. [23 CFR 771.123 (h) and (I)]

A transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered is submitted to FHWA. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during the announced comment period. NDOR utilizes an internal checklist to document and ensure requirements are met.

- **District Program Highway Commission Hearing**

The public hearing is conducted 4 times a year during the State Highway Commission Meetings. Each District hosts a hearing every 2 years. During this hearing, NDOR provides an overview of NDOR's District Highway Construction key state projects planned for the next 6 years. Upon completion of the District presentation the public is encouraged to provide comments. Project specific comments are forwarded to the appropriate NDOR contacts. Event notification postcards are distributed to a District specific contact list and a statewide media release is issued. It is common for representatives of the MPO's, city and county government, local businesses, school board representatives, law enforcement and emergency management officials and local citizens to attend.

- **Annual Reporting of one and six year plans for Highway Roads & Street Improvements**

The Board of Public Roads Classifications and Standards provides the State, county, or municipality written notification that the annual review has been accomplished and makes recommendations to achieve the orderly development of an integrated system of highways, roads, and streets. All public involvement requirements are defined within the Instruction Manual for Annual Reporting of One and Six Year Plans for Highway, Road and Street Improvements.

- **MPO Public Participation**

Each MPO has its own Public Involvement procedures that define the steps utilized to involve the public. Federally funded State projects which fall within the MPO boundaries are included in the MPO Transportation Improvement Plan (TIP).

#### **4. DETERMINING OUTREACH DISTRIBUTION FOR PROJECTS**

NDOR creates two mailing databases for each project that includes mailing information. One database includes contiguous property owners, businesses directly affected by the project and those parties who have expressed an interest in the proposed project. The second database includes city and county officials, schools, hospitals, libraries, railroads, state agencies and other interested groups/organizations (e.g. chamber of commerce, neighborhood associations). When determining the outreach area NDOR considers project specific conditions such as areas potentially affected, Annual Daily Traffic (ADT), detour, project type and construction schedule, Right-of-Way (ROW), access restrictions, Environmental Justice (EJ)/Limited English Proficiency (LEP), contiguous historic resources and 4(f) properties. When public comment is requested, a comment form with prepaid return postage is provided.

#### **5. LIMITED ENGLISH PROFICIENCY AND ENVIRONMENTAL JUSTICE**

Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, requires agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Additionally, *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires that an agency identify and address the disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority and low-income populations. Public involvement that is tailored to maximize the opportunities for participation by minority, low-income, and LEP persons is a critical part of complying with these regulations.

Accordingly, NDOR has established both an FHWA-approved Limited English Proficiency Plan and a rigorous Environmental Justice review process. As protected populations in a project area are identified, NDOR's public involvement tools, above, are modified in order to effectively reach out to the specific minority, low-income, or LEP communities present.

Broadly speaking, if an LEP population is present, and public outreach is being undertaken, information released to the public will be translated into relevant language(s), and written project materials will be translated and sent to community resources, in accordance with the [NDOR LEP Plan](#). If an Environmental Justice population is present, and the potential for disproportionately high and adverse effects exists, public outreach tailored to effectively inform and involve the EJ community will occur. Common outreach includes targeted mailings, event notifications, and/or meetings with community leaders. A public meeting might be hosted in an environment that is welcoming to the protected population in question. Determining mitigation activities through consultation with community resources might be necessary. Outreach to Environmental Justice communities is very dependent on the circumstances of the individual projects, but outreach will always be performed in accordance with federal regulations and guidance on Environmental Justice.

The NDOR Highway Civil Rights Specialist will recommend specific outreach approaches in the civil rights review which occurs early in the NEPA process. More information on Environmental Justice can be found in the [NDOR Title VI Implementation Plan](#).

All NDOR public involvement activities will be executed in compliance with the Americans with Disabilities Act (ADA). To aid in ADA compliance, NDOR uses an ADA Facility Checklist to

review potential public meeting/hearing venues. (See Appendix F for this checklist) For further information on NDOR ADA compliance efforts, see the [NDOR Title VI Implementation Plan](#).

## **6. STANDARD PUBLIC INVOLVEMENT PRACTICES FOR TRANSPORTATION ACTIVITIES**

Provided below is a description of the standard public involvement practices employed for typical federal actions related to transportation. NDOR has the flexibility to utilize additional public involvement tools if projects circumstances prompt their use.

### **A. The Nebraska Surface Transportation (Construction) Program Book:**

Published annually, consist of the Six Year Highway Program, and contains funding sources and construction program financing.

#### **Standard Public Involvement:**

- NDOR Website
- GovDelivery subscriber notification
- Media News Release Statewide
- District Program Highway Commission Hearing

### **B. Long Range Transportation Plan (LRTP)**

Long Range Transportation Planning is a process that builds upon the past and studies to help prepare for the challenges of the future. Although NDOR is just one of many agencies responsible for the state's transportation system, the goals, objectives and strategies outlined in a plan can serve as examples of potential next steps for other implementing agencies.

#### **Standard Public Involvement**

- NDOR Website
- GovDelivery Subscriber Notification
- MPO Public Participation
- Media News Release Statewide
- Stakeholder Workshops

### **C. Statewide Transportation Improvement Program (STIP)**

The Statewide Transportation Improvement Program (STIP) is the Nebraska Department of Roads' (NDOR's) four-year highway improvement program development under Title 23 United States Code (USC), Section 135 Statewide Planning, (f) Statewide Transportation Improvement Program. It includes by reference the Transportation Improvement Programs (TIP's) from the Omaha, Lincoln, Grand Island and South Sioux City Metropolitan Planning Organizations (MPO's).

The STIP Public Involvement Plan is available on the website at

<http://www.transportation.nebraska.gov/STIP/>

## **Standard Public Involvement**

- Nebraska Department of Roads Website
- GovDelivery Subscriber Notification
- MPO Public Participation
- Media News Release Statewide
- Targeted Mailing to non-metropolitan appointed or elected officials
- NDOR Twitter Posts

### **D. Categorical Exclusion (CE) Level 1 CE Action**

Categorical Exclusions (CE) are actions which meet the definition contained in the Council on Environmental Quality regulations at 40 CFR 1508.4 and 23 CFR 771.117(a), (b), and (c), and based on past experience with similar actions, do not involve significant environmental impacts and are therefore categorically excluded from the need to prepare an EA or EIS. In Nebraska, levels of CEs are determined by activity types and environmental impact thresholds and consist of Level 1, 2, or 3 CE Actions. Level 1 and 2 CE Actions may be completed by NDOR with limited involvement from FHWA. If a project does not meet the criteria for a Level 1 or Level 2 CE Action, the project would be processed as a Level 3 CE Action, an EA, or EIS as determined by FHWA.

Level 1 CE actions must meet the intent of CEQ regulation (Section 1508.4) and 23 CFR 771.117 (a) and 771.117 (c) and must not exceed any of the Level 1 project impact thresholds listed within the CE PA. If environmental resources will be impacted, the level of documentation will need to be elevated.

\*Level 1 actions do not require approval by FHWA.

## **Program Level Public Involvement**

- Nebraska Department of Roads Website
  - STIP Public Involvement
  - The Nebraska Surface Transportation (Construction) Program Book
- GovDelivery notification to subscribers
- District Program Highway Commission Hearing
- MPO Public Participation (if located within an MPO)
- Media News Release (Preconstruction)

## **Project Level Considerations:**

- **The NDOR Public Involvement Coordinator will determine the public involvement tools to use during NEPA for projects with:**
  - Detour
  - Access restriction or closure
  - Projects within or directly adjacent to federal land, a State Park, or tribal land
  - Nighttime work in a residential area.

**At a minimum, the public will be engaged through a targeted mailer when:**

- A detour (refer to CE PA Agreement) is used.

- The detour must create less than 5 miles of adverse (out-of-direction) travel within an urban environment and less than 25 miles in a rural setting with access provisions for local traffic.
- If access restriction or closure (refer to CE PA Agreement) is used:
  - Direct access to a residential property or driveway is closed for no more than 5 working days, and complete access closure to businesses or emergency services cannot occur.
- When construction would involve nighttime work in a residential area.

## **E. Categorical Exclusion Level 2 CE Action**

Level 2 CE Actions are those actions that because of the limited scope of work and based on NDOR and FHWA's past experience with similar actions, meet the intent of CEQ regulations (Section 1508.4), and 23 CFR 771.117(a), (b), and (c). Furthermore, these actions satisfy the criteria for CE Classification and do not involve significant environmental impacts. These projects must have independent utility and logical termini and must not exceed any of the Level 2 CE Action impact thresholds in the CE PA. Level 2 CE Actions require documentation to ensure no unusual circumstances are present (ex., significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action) that would warrant a higher level of NEPA documentation.

\*Level 2 CE actions are typically do not require detailed review by FHWA.

### **Program Level Public Involvement:**

- Nebraska Department of Roads Website
  - STIP Public Involvement
  - The Nebraska Surface Transportation (Construction) Program Book
- GovDelivery notification to subscribers
- District Program Highway Commission Hearing
- MPO Public Participation (if located within an MPO)
- Media News Release (Preconstruction)

### **Project Level Considerations:**

- **The Public Involvement Coordinator will determine the public involvement tools to use during NEPA for projects with:**
  - Detour
  - Access restriction or closure
  - Section 4(f) use in accordance with Section 4(f) Guidance Document
  - Section 106 property, in accordance with Section 106 Guidance Document
  - Projects within or directly adjacent to federal land, a State Park, or tribal land.
  - Adjacent property owner trail maintenance
  - If LPA will require property owner assessment to assist in paying for a federal aid project

**At a minimum, the public will be engaged through a targeted mailer when:**

- A detour (refer to CE PA Agreement) is used.
  - The detour must create less than 5 miles of adverse (out-of-direction) travel within an urban environment and less than 25 miles in a rural setting with access provisions for local traffic.
- If access restriction or closure (refer to CE PA Agreement) is used:
  - Direct access to a residential property or driveway is closed for no more than 10 working days, and complete access closure to businesses or emergency services cannot occur.
- If the project results in a section 4(f) de minimis impact.
- When a new trail would be constructed adjacent to private property or if property owners are expected to maintain new trails based on local ordinance (shovel snow, mow area adjacent to trail).
- If property assessments would be used for the project financing.
- When construction would involve nighttime work in a residential area

**F. Categorical Exclusion Level 3 CE Action**

Any proposed action that does not meet the criteria of Level 1 or Level 2 CE Action, either due to action type or not meeting an impact threshold, will be processed as a Level 3 CE Action or higher level NEPA document. FHWA retains approval authority for Level 3 Actions and approval of the associated documentation. For projects that will likely exceed the Level 2 CE Action thresholds, NDOR will provide FHWA pertinent project scope and potential resource impact information using NDOR's *Probable Class of Action* form (or a successor form in agreement with FHWA) to make the proper class of action determination. This will occur early in the environmental review process or during planning. For Level 3 CE Actions, NDOR shall provide appropriate documentation certifying the proposed action meets the criteria of 23 CFR 771.117(c) and 23 CFR 771.117(d) the thresholds established in the CE PA.

**Program Level Public Involvement:**

- Nebraska Department of Roads Website
  - STIP Public Involvement
  - The Nebraska Surface Transportation (Construction) Program Book
- GovDelivery notification to subscribers
- District Program Highway Commission Hearing
- MPO Public Participation (if located within an MPO)
- Media News Release preconstruction

**Project Level Considerations:**

- **The Public Involvement Coordinator will determine the public involvement tools to use during NEPA for projects with:**
  - ROW
  - Detour
  - Access restriction or closure
  - Section 4(f) use in accordance with Section 4(f) Guidance Document

- Section 106 property impacts, in accordance with Section 106 Guidance Document
- Projects within or directly adjacent to federal land, a State Park, or tribal land
- Rise greater than 1-foot in the Base Flood Elevation (BFE).
- Type 1 Project criteria (in accordance with 23 CFR 772 and NDOR's Noise and Abatement Policy).
- When a new trail would be constructed adjacent to private property or if property owners are expected to maintain new trails based on local ordinance (shovel snow, mow area adjacent to trail).
- If LPA will require property owner assessment to assist in paying for a federal aid project.

**At a minimum, the public will be engaged through a targeted mailer if:**

- A detour
- ROW would be acquired:
  - If the project would require more than 2 acres per linear mile of ROW/easements.
  - Removal of minor improvements
- If access restriction or closure of more than 10 days is anticipated.
- Any rise in a floodplain that impacts an adjacent structure, or in a floodway.
- If the project results in a section 4(f) de minimis impact.
- If there is a determination of "adverse effect" on a historic property.
- When a new trail would be constructed adjacent to private property or if property owners are expected to maintain new trails based on local ordinance (shovel snow, mow area adjacent to trail).
- If property assessments would be used for the project financing.
- When construction would involve nighttime work in a residential area.

**G. Environmental Assessment (EA)**

When the significance of impacts of a transportation project proposal is uncertain, an EA is prepared to assist in making this determination. An EA shall be prepared by the applicant in consultation with the FHWA for each action that is not a CE and does not clearly require the preparation of an EIS, or where FHWA believes an EA would assist in determining the need for an EIS.

\*EA projects require NEPA studies and approval in accordance with 23 CFR 771.119, or, 23 CFR 771.121 (b) respectively and other applicable laws and regulations. After public comment is received on a draft EA (DEA), the comments are addressed and a final EA (FEA) is produced. There are three potential outcomes after the FEA is produced: 1) a Finding of No Significant Impact (FONSI); 2) determination of the need to prepare an EIS; and, 3) a finding that additional information is required to reach one of the other two outcomes.

## **Program Level Public Involvement**

- Nebraska Department of Roads Website
- STIP Public Involvement
- The Nebraska Surface Transportation (Construction) Program Book
- GovDelivery notification to subscribers
- District Program Highway Commission Hearing
- MPO Public Participation (if located within an MPO)
- Pre-Construction Media News Release

### **At a minimum, the public will be engaged through:**

- An early public scoping process during the NEPA phase that may include targeted mailers and/or Public Information Meeting(s)
- Notification of Project Public Hearing to notify constituents in the project vicinity that the Draft EA is approved by FHWA for release prior to public availability.
- Official Legal Notice of Public Hearing
- Public Hearing (after the Draft EA is approved by NDOR and released for public comment by FHWA)
  - NOTE: For State projects, Nebraska State law requires that the NDOR obtain the “written advice of the State Highway Commission and the consent of the Governor.” Following the Public Hearing, the results are presented to the State Highway Commission where NDOR shall request that the Highway Commission give formal advice, in writing, on the following project considerations, as applicable:
    - Projects that involve the **relinquishment** or **abandonment** of a fragment of a route, section of a route, or a route on the state highway system. (NEB. REV. STAT. §§ 39-1110 and 39-1313.)
    - Projects where NDOR proposes to **redesignate, relocate, redetermine or recreate** the state highway system. (NEB. REV. STAT. § 39-1309.)
      - Projects built on a new location whether it is a **new state highway** or the **relocation of an existing state highway**.
      - Projects needing a “corridor location approval” prior to NDOR obtaining **corridor protection** on land along a new or existing highway route. (See NEB. REV. STAT. §§ 39-1309(2) and 1311(2).)
    - Projects that include the establishment of controlled access on any segment of the project. (NEB. REV. STAT. § 39-1327.)
    - Projects that require agreements with adjoining states for the planning, development, construction, acquisition, operation, maintenance, and protection of bridges between Nebraska and adjoining states. (NEB. REV. STAT. § 39-891 and 895.)
    - Projects with a formal public hearing held in the District with Highway Commission involvement.
    - Projects that will increase the number of through lanes on an existing highway

*\*Aside from the minimum public involvement required for an EA, the NDOR Public Involvement Coordinator will determine if additional Public Involvement activities are required prior to or subsequent to the DEA being made available for public comment, based on project level considerations. The NDOR Public Involvement Coordinator shall be consulted immediately following the determination that an EA will be prepared to draft a public involvement plan.*

## **H. Environmental Impact Statement (EIS)**

NEPA requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. An EIS is a full disclosure and decision-making document that details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders.

The EIS process is documented through a draft EIS (DEIS). After comments are received on the DEIS, a final EIS (FEIS) is prepared. The FEIS addresses substantial public comments, and, if one has not been determined in the DEIS, presents a Preferred Alternative. After a public review period on the FEIS, a Record of Decision (ROD) is produced that announces the decision on the Selected Alternative and commits to project mitigation. FHWA may decide to combine the FEIS and ROD into one step.

\*EIS projects require NEPA studies and approval in accordance with 23 CFR 771.123, 771.125, 771.127, 771.129, and 771.130 respectively and other applicable laws and regulations.

### **Program Level Public Involvement**

- Nebraska Department of Roads Website
  - STIP Public Involvement
  - The Nebraska Surface Transportation (Construction) Program Book
- GovDelivery notification to subscribers
- District Program Highway Commission Hearing
- MPO Public Participation (if located within an MPO)
- Pre-Construction Media News Release

### **At a minimum, the public will be engaged through:**

- Notice of Intent (40 CFR 1508.22) to prepare an EIS would be prepared by project sponsor, in cooperation with FHWA and published Federal Register by FHWA.
- Following the Notice of Intent, the lead agencies, in cooperation with the project sponsor, will begin a scoping process that will engage the public through mailers and/or Public Information Meeting(s). The purpose of this process is to gain the input of the public and resources agencies on the purpose and need and range of alternatives. This process will also be used to determine which agencies would be a participating or cooperating agencies.
- Once the DEIS is approved for circulation by FHWA, the public is notified that the document is available for review/comment through legal notice of DEIS and notice of availability published in the Federal Register by FHWA.
- Targeted Mailings (during the NEPA process) to notify constituents in the project vicinity that the Draft EIS is available for comment.
  - Event Notification Postcard or Notification of Project Information Meeting/Hearing
- Legal Notice during NEPA

- Public Hearing during NEPA phase, after the draft EIS is released for Public comment refers to the Public Involvement toolbox for details.
- NOTE: For State projects, Nebraska State law requires that the NDOR obtain the “written advice of the State Highway Commission and the consent of the Governor.” Following the Public Hearing, the results are presented to the State Highway Commission where NDOR shall request that the Highway Commission give formal advice, in writing, on the following project considerations, as applicable:
  - Projects that involve the **relinquishment** or **abandonment** of a fragment of a route, section of a route, or a route on the state highway system. (NEB. REV. STAT. §§ 39-1110 and 39-1313.)
  - Projects where NDOR proposes to **redesignate, relocate, redetermine or recreate** the state highway system. (NEB. REV. STAT. § 39-1309.)
    - Projects built on a new location whether it is a **new state highway** or the **relocation of an existing state highway**.
    - Projects needing a “corridor location approval” prior to NDOR obtaining **corridor protection** on land along a new or existing highway route. (See NEB. REV. STAT. §§ 39-1309(2) and 1311(2).)
  - Projects that include the establishment of controlled access on any segment of the project. (NEB. REV. STAT. § 39-1327.)
  - Projects that require agreements with adjoining states for the planning, development, construction, acquisition, operation, maintenance, and protection of bridges between Nebraska and adjoining states. (NEB. REV. STAT. § 39-891 and 895.)
  - Projects with a formal public hearing held in the District with Highway Commission involvement.
  - Projects that will increase the number of through lanes on an existing highway
- Legal Notice used for FEIS/ROD Notice of Availability published in the Federal Register by FHWA

*\*Aside from the minimum public involvement required for an EIS, the NDOR Public Involvement Coordinator will determine if additional Public Involvement activities are required prior to or subsequent to the DEIS being made available for public comment, based on project level considerations. The NDOR Public Involvement Coordinator shall be consulted immediately following the determination that an EIS will be prepared to draft a public involvement plan.*

**Appendix A: Existing References/Guidance:**

- **NDOR Title VI (EJ Policy) Implementation Plan**
- **NDOR LEP Plan**
- **Programmatic Agreement for Processing NEPA Actions**
- **NDOR Noise and Abatement Policy**
- **NDOR Section 4(f) guidelines**
- **NDOR Section 106 Guidelines**
- **LPA Guidelines Manual and Checklists**
- **STIP Public Involvement Procedures**



**PUBLIC HEARING**

**Wednesday, October 1, 2014**

**Newberry's, 402 Box Butte Ave., Alliance, NE**

**Open House: 5:00-6:30 pm MDT / Public Forum: 6:30-7:00 pm MDT**

**NH-385-3(118); C.N. 51432  
JUNCTION L-62A/US-385 TO ALLIANCE**

**This public hearing is being held to provide information and receive input on the Draft Environmental Assessment (DEA) regarding the construction of a portion of U.S. Highway 385 (US-385) from the junction of Nebraska Link 62A (L-62A) to the city of Alliance. This portion of US-385 is identified as part of the "Heartland Expressway."**

**LOCATION:** The proposed project would begin on Nebraska Link 62A (L-62A), 2.19 miles west of the junction with U.S. Highway 385 (US-385) in Morrill County, and continue north on US-385 into the City of Alliance in Box Butte County, ending just north of the intersection with Nebraska Highway 2 (N-2), also known as West 3rd Street, for a distance of 24.75 miles on US-385. These portions of L-62A and US-385 are part of the "Heartland Expressway."

**PURPOSE AND NEED SUMMARY (full purpose and need description can be found in the DEA):**

The purpose of this project is to:

- provide an improved north-south highway on a National Highway System (NHS) High Priority Corridor that increases the efficiency and safety of travel.
- fulfill legislative intent of previous transportation bills which provided federally "earmarked" funds for the Heartland Expressway.
- fulfill legislative intent of the Build Nebraska Act, which identified this project as a high priority project for state funds.
- address roadway and operational deficiencies.

An additional project goal is to:

- improve the highway infrastructure in order to facilitate economic development.

The need for the project is based on the mix of traffic, including a high percentage of heavy-truck traffic, in combination with some areas where the roadway geometry does not meet standards.

**SCOPE OF WORK:** The proposed construction project would improve the existing US-385 two-lane highway from the Junction of US-385 and L62A, north to Alliance. The improvements would consist of constructing a four-lane divided highway with a depressed grass median throughout the rural portion of the project and five-lane section in Alliance that would provide two lanes in each direction and a center left-turn lane. The project would include reconstruction of the US-385/L62A intersection on a new alignment northwest of the existing highway junction. The proposed project would incorporate improvements to intersections, drainage structures, and lighting.

**TRAFFIC COUNT:**

	<i>US-385 – South of N-2</i>		<i>US-385 – North of L-62A</i>		<i>L-62A – West of US-385</i>	
<i>Year</i>	2014	2036	2014	2036	2014	2036
<i>Vehicles per Day</i>	3885	4950	3550	4655	2520	3410
<i>% Trucks</i>	18%	18%	19%	19%	19%	19%

**ESTIMATED CONSTRUCTION SCHEDULE:** Construction of the new southbound lanes is anticipated to be completed under two separate projects. The first, Alliance South, is anticipated to begin in 2016. The second, L-62A North, is anticipated to begin in 2017. The US-385/L62A Junction construction project and reconstruction of the existing northbound lanes is not yet programmed.

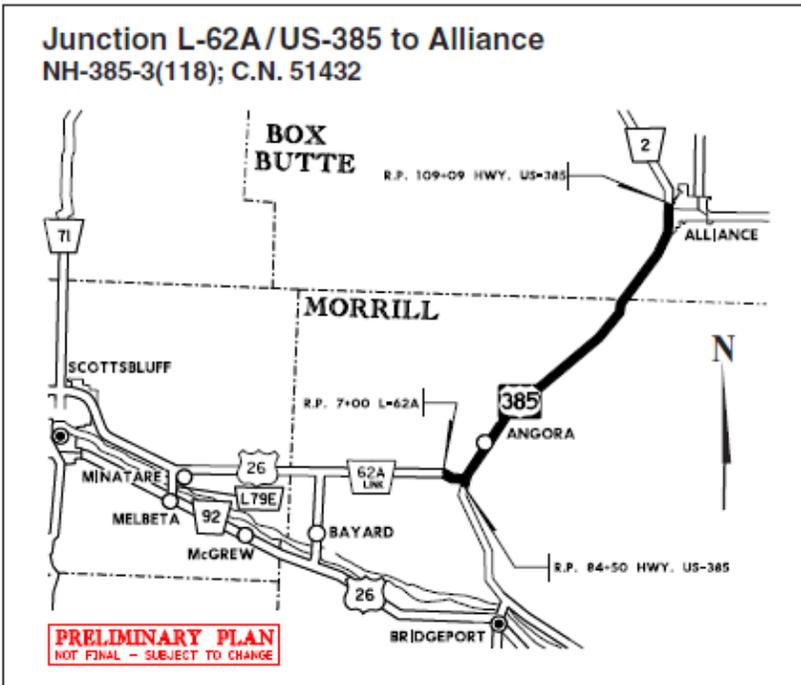
**Appendix B: Example of Fact Sheet**

**ACCOMMODATION OF TRAFFIC:** Proposed construction would be built "under traffic," or without a detour. Appropriate traffic control may be necessary to maintain traffic during construction.

**RIGHT-OF-WAY:** Acquisition of property rights for new right-of-way (ROW) and temporary and permanent easement rights would be required. It is estimated approximately 300 acres of new ROW would be required to complete the project, with access control rights purchased along the entire corridor. It is anticipated three residential relocations would be required; no commercial relocations are expected.

**POTENTIAL IMPACTS:** A draft Environmental Assessment (EA) has been prepared to determine the potential environmental impacts associated with the proposed project. Environmental resources evaluated include wetlands, threatened and endangered species, cultural resources, environmental justice, noise impacts, aesthetics and required acquisition of property rights for new ROW. The draft EA document may be viewed on the NDOR website at <http://www.transportation.nebraska.gov/projects/>. Copies are available at the FHWA and NDOR headquarters in Lincoln, the NDOR District 5 Office in Gering, in Alliance at the City Offices and Public Library, the Angora Post Office, and the City Office of Bridgeport. The information is available for a 30-day comment period: September 15—October 16, 2014.

**ESTIMATED COST:** The first construction project, Alliance South, DPS-385-4(139), CN 51522, would construct US-385 from West 3<sup>rd</sup> Street south to approximately Mile Marker (MM) 100+00 and is estimated at \$25 million. The second construction project, L-62A North, S-385-3(1021), CN 51443, would construct US-385 from approximately MM 100+00 south to the junction of US-385 and L-62A, and is estimated at \$30 million. The third project, which would construct a sweeping curve connecting L-62A to US-385, is currently not programmed. Preliminary engineering, ROW and utilities costs for the corridor are tracked under a separate project, NH-385-3(118), CN 51432, and are estimated at \$10 million. The total cost (in today's dollars) of the project contemplated is estimated at \$90 million, which includes an estimated \$25 million to construct the sweeping curve and reconstruct the northbound lanes. Funding sources would include federal, state (the Build Nebraska Act), and local funding (City of Alliance). The City of Alliance would participate with a 20% cost share for the portions of the project within or adjacent to the city limits.



**Send comments to:**  
NDOR Public Involvement  
Sarah Kugler  
P.O. Box 94759; 1500 Hwy. 2  
Lincoln, NE 68509-9983  
402-479-4871  
[sarah.kugler@nebraska.gov](mailto:sarah.kugler@nebraska.gov)

**For more information:**  
NDOR District 5 Engineer  
Craig Lind  
P.O. Box 220; 140375 Rundell Rd.  
Gering, NE 69341  
308-436-6587  
[craig.lind@nebraska.gov](mailto:craig.lind@nebraska.gov)

[www.roads.nebraska.gov](http://www.roads.nebraska.gov)



Visit [www.roads.nebraska.gov](http://www.roads.nebraska.gov) and click on the **Subscribe** button to sign up for email notifications about highway project updates and other topics of interest.

NOTICE OF HIGHWAY PUBLIC HEARING

**Wed., October 1, 2014; 5:00-7:00 PM MST**  
**Newberry's, 402 Box Butte Ave., Alliance, NE**  
**Jct. L-62A/US-385 to Alliance**



U.S. Department  
of Transportation  
**Federal Highway  
Administration**



The Nebraska Department of Roads (NDOR) will hold a public hearing to provide information and receive input on the Draft Environmental Assessment (DEA) regarding the construction of a portion of U.S. Highway 385 (US-385) from the junction of Nebraska Link 62A (L-62A) to the city of Alliance. This portion of US-385 is identified as part of the "Heartland Expressway."

The DEA will be available for review at the public hearing. Copies can also be reviewed at the City Office of Alliance, Alliance Public Library, Angora Post Office, City Office of Bridgeport, NDOR District Five Headquarters in Gering, FHWA-Nebraska Division and NDOR Headquarters in Lincoln, or at <http://www.transportation.nebraska.gov/projects/> by clicking on the "Heartland Expressway" link. The information is available for a 30-day comment period: September 15 – October 16, 2014.

 **Subscribe** Visit [www.roads.nebraska.gov](http://www.roads.nebraska.gov) and click on the **Subscribe** button to sign up for email notifications about highway project updates and other topics of interest.

Questions or comments, please contact:  
Sarah Kugler

NDOR Public Involvement Coordinator  
P.O. Box 94759, Lincoln, NE 68509-4759  
[sarah.kugler@nebraska.gov](mailto:sarah.kugler@nebraska.gov) 402-479-4871

**Appendix C: Example of a Post Card**

**NEBRASKA DEPARTMENT OF ROADS  
NOTICE OF HIGHWAY PUBLIC MEETING**

**Thursday, February 5, 2015; 4:00 – 6:00 PM**

*Information Open House Public Meeting*

**Ak-Sar-Ben Aquarium, Schramm Park State Recreation Area  
21502 Hwy 31, Gretna, Nebraska**

**RD-31-2(1014) Schramm Park South; C.N. 22302A**

The Nebraska Department of Roads (NDOR) will hold a public information openhouse regarding proposed improvements of Nebraska Highway 31 (N-31) in Sarpy County. The meeting will be held at the Schramm Park State Recreation Area, Ak-Sar-Ben Aquarium, 21502 Highway 31, in Gretna, on Thursday, February 5, 4:00–6:00 P.M.

Identified as *Schramm Park South*, the proposed project would resurface approximately 1.17 miles of N-31 located in Sarpy County, beginning 4.18 miles west of the junction of Nebraska Highway 50 (N-50) and N-31, and extending northwest to approximately 0.18 miles southeast of the entrance to Schramm Park State Recreation Area.

The purpose of this proposed project is to preserve the N-31 transportation asset, improve the reliability of the transportation system and perpetuate the mobility of the traveling public. The need for this proposed project is based on the condition of the roadway.

The planned construction would include removing the existing pavement and subgrade, and then constructing a new stabilized subgrade, foundation course, and concrete pavement. Additional work would include the pavement of parking turnouts, shoulder work, and grading of existing drives and intersections.

Access to adjacent properties would be maintained during construction but may be limited at times due to phasing requirements. No additional property rights are anticipated for this project.

Wetland impacts are anticipated and would be mitigated at a local wetlands bank.

Construction could begin as early as fall of 2016 and be complete fall of the same year. The proposed project would require detouring N-31 traffic; a designated detour would be provided, utilizing Interstate 80 (I-80), Nebraska Highway 370 (N-370)

and N-50. Details will be available at the public meeting.

This public open house meeting is being held to provide information regarding the project, currently in the design phase, and to receive the public's input. All interested persons are invited to attend and present relevant comments and questions. Design information will be displayed and personnel from NDOR will be present to answer questions and receive comments. The information "open house" format allows the public to come at any time during the advertised hours, gather pertinent information about the project, speak one-on-one with project personnel, and leave as they wish.

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NDOR will make every reasonable accommodation to provide an accessible meeting facility for all persons. Appropriate provisions for the hearing and visually challenged or persons with Limited English Proficiency (LEP) will be made if the Department is notified by January 23, 2015. Notification should be submitted to: Sarah Kugler, Public Involvement Coordinator, Nebraska Department of Roads, P.O. Box 94759, Lincoln, NE 68509-4759; [sarah.kugler@nebraska.gov](mailto:sarah.kugler@nebraska.gov); voice telephone 402-479-4871, Fax 402-479-3989.

Information regarding the proposed project will be made available on the NDOR website, the day after the meeting, at [www.transportation.nebraska.gov/projects/](http://www.transportation.nebraska.gov/projects/) by clicking on the "Schramm Park South" link. For those without internet access, information may be obtained through the contact above or at NDOR Headquarters, 1500 Hwy 2, Lincoln, NE. For further information, contact Tim Weander, NDOR District Two Engineer, 402-595-2534, [tim.weander@nebraska.gov](mailto:tim.weander@nebraska.gov).

**Appendix D: Example of Official Legal Notice**



**PUBLIC COMMENT SHEET**  
NDOR District One Public Information Meeting

**STP-L80E(113) BLUE RIVER BRIDGE, BEAVER CROSSING; C.N.  
13182**

**November 18<sup>th</sup>, 2014; 4:00 - 6:00 PM**

Beaver Crossing City Hall, 800 Dimery Ave., Beaver Crossing, NE

Please submit your written comments by December 3<sup>rd</sup>, 2014.

Return to:

Sarah Kugler, NDOR Public Involvement  
P.O. Box 94759  
Lincoln, NE 68509-4759

[sarah.kugler@nebraska.gov](mailto:sarah.kugler@nebraska.gov)  
402 479-4871 Office  
402 479-3989 Fax

EXAMPLE

The Nebraska Department of Roads (NDOR) and the Federal Highway Administration (FHWA) appreciate your input. Your comments, questions, and suggestions will be reviewed by appropriate personnel. Thank you for your participation.

(Please Print)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Written comments submitted to NDOR are considered public information and may be shared with appropriate local, state, or federal agencies, as well as the general public, as part of the project development process.

**Appendix E: Comment Form Example**

## NDOR Public Involvement ADA Accessibility Checklist

Event:

Project:

Date:

Time:

Venue:

Element	Accommodation Area	Yes	No	N/A
<u>Transportation</u>	Is the facility/meeting location accessible by public transportation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If yes, is public transportation available at the time of the meeting/training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Evacuation</u>	Do you know the emergency evacuation plans for the meeting/training location?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Parking</u>	Does the building have accessible ( <i>handicap</i> ) parking spaces?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If yes, are they at least 8' wide and have 5' aisles next to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Sidewalk</u>	Are there unobstructed curb ramps leading to the sidewalk ( <i>walkway</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Walkway</u>	Is there a walkway from the parking lot to the building, at least 36" wide?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Does the walkway have a stable and firm surface?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If the accessible route is different from the primary route to and through the building, can you post signs with the wheelchair symbol that slow the route?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is the walkway level and free of steps?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If no, is there a ramp at least 36" wide?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If there is a ramp, does it have a gentle slop ( <i>1" rise to 12" length</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Entrance/Doors</u>	Is the door at least 36" wide ( <i>wide enough for a wheelchair</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Can the hardware be operated with one hand ( <i>level, push plate, etc.</i> ) with minimum of twisting or grasping?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Are the handles low enough to reach ( <i>maximum 48" high</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Can the door be pushed open easily?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is the threshold no more than ½" high and beveled?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	When a vestibule, is there a minimum of 48" between the sets of doors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Appendix F: ADA Facility Checklist

<b>Element</b>	<b>Accommodation Area</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
<u>Floors</u>	Are the floors hard and not slippery?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is there a floor mat to dry feet and crutch tips to prevent slipping?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Corridors</u>	Is there a 36" corridor, from the entrance to where the meeting/training is held?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is the path free of objects projecting 4" maximum into the corridor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Elevators</u>	Is there an elevator in the facility where the meeting/training is located?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If yes, is it a working one that is large enough for a wheelchair?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Are the controls within reach ( <i>maximum 48"</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Do the controls have Braille?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is there an audible signal ringing at each floor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Meeting/Training Rooms</u>	Is there enough clearance around the table for a wheelchair to move?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Can the wheelchair pull under the edge of the table to sit close?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Restrooms</u>	Is there a wide, accessible path to the restroom?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is there a toilet stall wide enough that a wheelchair can enter and close the door behind? Interior space to turn around?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is the water closet ( <i>toilet</i> ) 17-19 inches high to the rim?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Can the wheelchair roll under the sink ( <i>29" to the bottom</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Can the faucets be reached and turned on easily?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Are the dispensers ( <i>soap, towel, etc.</i> ) reachable ( <i>maximum 48" high</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Is there a mirror at an accessible height ( <i>bottom of the mirror 44" above the floor</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Fire Alarms</u>	Are there flash fire alarm signals in the building, in the meeting/training room?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Signage</u>	Is there Braille text in the signage at the facility?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_  
Signature

Sarah Kugler  
NDOR Public Involvement

\_\_\_\_\_  
Date

Page 2

## **Appendix F: ADA Facility Checklist (cont'd)**

A-7

HazMat  
(Insert  
tab  
here)



## Hazardous Materials Review

[Project Name]

[Location, County, State]

Project No.: XXX-XXX(XXX)

Control No.: XXXXX

**Prepared For:**

NDOR or Local Public Agency

Department

Address

City, State, Zip Code

**Prepared By:**

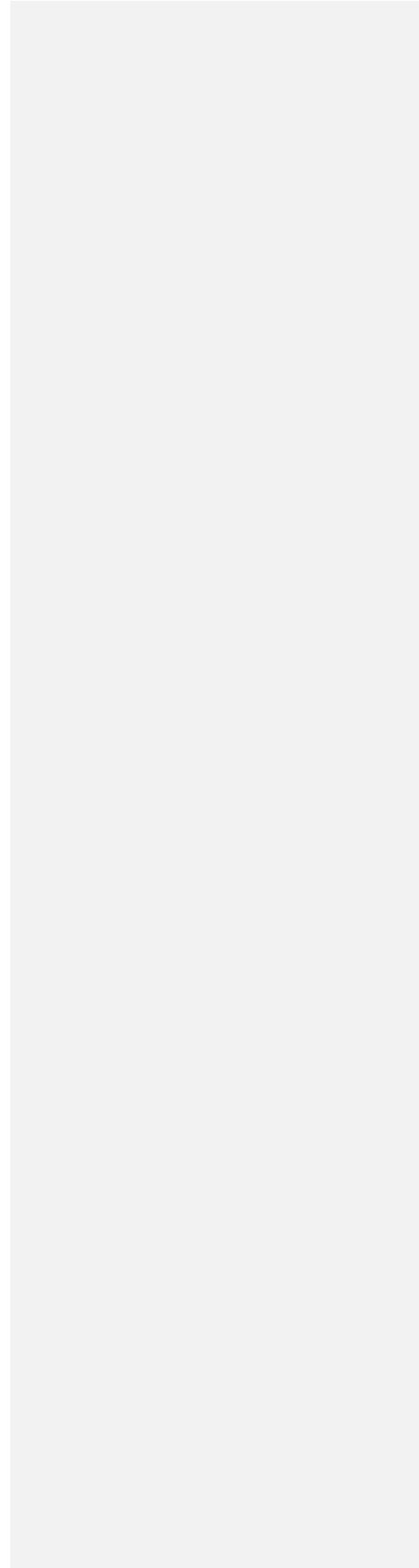
Insert Preparers Name (Do not include company names)

[Date (Day, Month, Year) the HMR is Submitted to NDOR]

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DRAFT



## TABLE OF CONTENTS

	<u>Page</u>
<b>1 INTRODUCTION</b> -----	<b>1</b>
1.1 Project Description -----	1
1.2 Methodology-----	2
1.3 Impact Criteria-----	3
<b>2 ENVIRONMENTAL SETTING</b> -----	<b>4</b>
<b>3 RESULTS</b> -----	<b>4</b>
3.1 Regulatory Database Search -----	4
3.2 Visual Reconnaissance-----	5
3.3 Historical Use Information [Remove this Section if Not Required for HMR] -----	6
3.4 Summary of Regulatory File Review-----	7
3.4.1 [Insert Identified Site Name #1 – Create new subsection for as many sites necessary to cover all regulatory record file reviews completed]-----	7
3.4.2 [Insert Identified Site Name #2 – Create new subsection for as many sites necessary to cover all regulatory record file reviews completed]-----	8
<b>4 FINDINGS AND MITIGATION MEASURES</b> -----	<b>10</b>
4.1 Findings-----	10
4.2 Mitigation Measures-----	10
<b>5 REFERENCES</b> -----	<b>12</b>

### List of Tables

Table 1. Project Features -----	2
Table 2. Identified Sites within the HMR Search Radii-----	5
Table 3. Summary of Historical Records Reviewed -----	6
Table 4. Regulatory Records Review for Identified Sites -----	9

### Appendices

- Appendix A – Project Figures
- Appendix B – Full Project Description
- Appendix C – Pertinent Regulatory Record Files [Remove if none]

[NOTE TO THE REPORT PREPARER: This document was established to serve as a template to assist you with developing a project-specific Hazardous Material Review (HMR) Report for your project. Sections in red/bold and using brackets are instructions to the report preparer or are to be filled in for each specific project. However, the entire document should be reviewed thoroughly to ensure it accurately reflects the details of the project. All instructions and red/bold text in brackets should be removed prior to finalizing the document. THE TEMPLATE BEGINS BELOW]

---

## **1 Introduction**

---

[Insert Preparers Name(s)], acting on behalf of [State or LPA], conducted a hazardous materials review (HMR) for the [insert project name] project ([insert control number]). The project is located in the [city/county, state] (Figure 1 in Appendix A).

**Note: Include a vicinity map that highlights the project area and surrounding area. A more detailed project area map should also be included. Label any rivers, streams, ditches, lakes that are present. This map should include the proposed logical termini and the existing facility. Both maps should include aerial photography as a base, a north arrow, scale, the project name, and county. Any bridges within the project area limits shall be marked on the map.]**

This HMR was performed as part of the National Environmental Policy Act (NEPA) documentation for the [insert project name] (Figure 2 in Appendix A). The information provided within this assessment is intended to assist [State or LPA] in identifying potential hazardous materials concerns and in considering the possible need to address hazardous materials concerns in project decisions regarding materials management and worker health and safety. A project description is included in the **Section 1.1**. [Insert the main scope items conducted for the HMR here:] The HMR included the review of the Nebraska Department of Environmental Quality (NDEQ) Interactive Mapping System (IMS) on [insert date], a review of an Environmental Data Resources (EDR) Radius Map Report on [insert date] and a visual reconnaissance was conducted on [insert date], by [Indicate the environmental professional that conducted the site reconnaissance]. A regulatory file review of NDEQ records was completed on [insert date] by [Indicate the environmental professional that conducted the regulatory file review]. Subsurface investigation of [insert medium (soil and/or groundwater)] was conducted on [insert date].

### **1.1 Project Description**

[Insert a brief project description and attach the full project description to the memo. Include maximum depth of excavation and if additional property rights would be required for the project.]

The full project description is attached in **Appendix B**. **Table 1** summarizes the project features.

**Table 1. Project Features**

Project Feature	Present (yes/no)	Discussion
Structure Acquisition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Structure Modification	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Structure Demolition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Full Property Acquisition for Right-of-Way	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Permanent or Temporary Easements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Utility Relocation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Excavation or Drilling	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Disturbance Depth (feet)	[i.e., is it possibly to groundwater?]	
Dewatering	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Encountering Groundwater Anticipated	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Depth to Groundwater (feet) (Section 2)	[e.g., approximately 10 to 20 ft below ground surface (bgs)]	
Groundwater Flow Direction (Section 2)	[e.g., northwest toward East Toll Gate Creek]	

**1.2 Methodology**

The methodology used to identify the presence of sites within the project footprint which have the potential to impact the project included the following steps:

- ▶ [Include steps that were used in your hazardous materials assessment. Add or delete steps, as necessary]
- ▶ Reviewed readily available local, state, and federal environmental agency databases to identify and assess sites with potential to impact the project up to a maximum distance of one mile from the project footprint.
- ▶ [If a visual reconnaissance was conducted add the following] Performed a visual reconnaissance of the project area from public right-of-way to identify site activities and potential contamination sources within and adjacent to the project area.
- ▶ [If additional analysis was conducted using historical sources add the following] Reviewed readily available standard historical sources, including aerial photographs within the project area.
- ▶ [If a regulatory file review was conducted add the following] Reviewed previous studies, Nebraska Department of Environmental Quality (NDEQ) records, Nebraska State Fire Marshal (SFM) records, or other available regulatory records from local, state, and federal agency records for properties within the project area.

### 1.3 Impact Criteria

The magnitude of the project impact from an identified site depends on several factors, including the distance between a potential source of a hazardous material as defined in NDOR's Hazardous Material Review Guidance document and the project; status of the identified sites (e.g., active or inactive); known or suspected releases into soil, surface water or groundwater; the hydrogeologic relationship of the source of contamination to the project; and the depth and/or duration of construction. This HMR considers these factors as part of the evaluation of whether an identified site has the potential to impact the project. Identified sites were categorized as having either a low or a high potential to impact the project area. The following describes the categories:

**[For Site Specific Projects use the following criteria:]**

**Low Potential:** It is determined through investigation that it is unlikely that contamination would be encountered during construction.

**Medium Potential:** During the investigation, it determined that it is unknown whether contamination is located in the project footprint. A subsurface investigation or further coordination with regulatory agencies determines if it is unlikely that contamination would be located in the project footprint. On a case-by-case basis, a commitment to the contractor and NDOR project manager to look for signs of contamination in specific areas can be included in the HMR rather than proceeding with a subsurface investigation.

**High Potential:** Through file review or subsurface investigation, it has been determined that it is likely that contamination would be encountered during construction.

These criteria are used throughout this report in evaluating impact potential from hazardous materials to the project.

**[For projects with in-depth Alternatives Analysis use the following criteria:]**

**Low Risk:** It is unlikely that contamination is located within the proposed project alternatives' limits of construction (LOCs). There is low risk to the overall project, the natural environment and human health and safety.

**Medium Risk:** Potential contamination exists within the project LOCs. The extent, nature and concentration of contamination are such that potential materials and management would pose minimal delays, low cost and could be handled by the contractor prior to or during construction. Any human health and safety plan would be minimal in scope and easy to implement. Correspondence with regulatory agencies may be required.

**High Risk:** Contamination is likely to exist within LOC's. The extent, nature and concentration of contamination are such that materials and management would be high in cost and could create substantial delays in project delivery. Human health and safety plans would require in depth planning, would be high in costs and required a QA/QC process. Correspondence with agencies may be required. NDOR's preference is the avoidance of contaminated sites that pose a high risk to the project.

These criteria are used throughout this report in evaluating impact potential from hazardous materials to the project.

## 2 Environmental Setting

---

[Insert results of visual site reconnaissance. Include a description of the land use (e.g., agricultural, commercial, light industrial, residential) in the project area and surrounding the project area. Geology, hydrology/receiving waters, depth to groundwater, etc.]

### Example:

The United States Geological Survey (USGS) topographic maps and Nebraska Department of Natural Resources (NDNR) elevation data, indicate that groundwater flow for the majority of the environmental study area would generally be to the south southeast toward Hell Creek and eventually to Big Papillion Creek. In addition, groundwater flow direction may be affected by water table elevations and may flow from areas with high water table elevations to areas with lower water table elevations, which may not be consistent with the direction of surface water flow. Regional geology is undifferentiated Pennsylvanian-aged Kansas City limestone overlaying unconsolidated glacial till. Estimated depth to groundwater is approximately 90-100 feet below ground surface based on reported static water levels of registered industrial/commercial-use wells (NDNR registered wells database) near the project.

## 3 Results

---

The following sections summarize the review of regulatory databases, the visual reconnaissance, and additional analysis [List additional analysis conducted, such as regulatory file review at NDEQ, project area history/historic review, etc.]. As discussed in Section 1.3, the evaluation of magnitude of the project impacts from a hazardous material is based on several factors. The HMR resource reviews were used to identify and evaluate sites with potential concerns related to hazardous materials that are located adjacent to, or within the vicinity of the proposed project improvements.

### 3.1 Regulatory Database Search

The results of the [EDR regulatory database,] NDEQ IMS review are listed in Table 2 and includes facilities that are listed in regulatory databases related to hazardous substance and/or petroleum product use, storage, or transfers. These types of sites may include but are not limited to, underground storage tanks (UST), leaking underground storage tank (LUST), Petroleum Release Remediation (PRR), Release Assessment (RA), Resource Conservation and Recovery Act (RCRA) sites with reported violations, and Tier 2 Chemical Reporting/Superfund Amendments and Reauthorization Act (SARA) Title III sites. These types of sites were reviewed and included in Table 2 and on the attached maps if they are located adjacent to and/or within 1/10 mile of the environmental study area (defined as the Hazardous Material Study Area).

Table 2 and the attached maps also include sites with indications of a known existing or past release of any hazardous substances or petroleum products into the ground (soil), groundwater, or surface water and the possibility for large-scale migration from the contaminant source, such as National Priority List or Superfund (SF), RCRA Corrective Action (CORRACTS), and Brownfields (BR) sites if they are located adjacent to and/or within 1 mile of the project footprint. [State whether or not SF, CORRACTS, or BR sites were identified within 1 mile of the project footprint].

Each identified site is included below in Table 2. As previously stated, these sites are located adjacent to the project footprint or within 1/10 mile (hazardous material study area), to 1 mile (sites with potential for larger scale contamination) from the hazardous material study area (as defined by NDOR).

**Table 2. Identified Sites within the HMR Search Radii**

Facility	Address	Regulatory Database and Facility Status	Distance Relative to Project
Uncle Neal's Country Store, Genex filling station	123 E Pacific Street (US-30)	UST <sup>2</sup> , Historical UST, Active LUST <sup>1</sup> , No Further Action	[adjacent or distance in feet] and topographically [down-, up-, or cross-]gradient
Nebraskaland Tire	511 Plum Creek Parkway (US-283)	UST, Active LUST, No Further Action	[adjacent or distance in feet] and topographically [down-, up-, or cross-]gradient
Lexington Laundry & Dry Cleaners / Plum Creek Dry Cleaners	118 W 5 <sup>th</sup> Street 117 E 6 <sup>th</sup> Street	Drycleaners <sup>4</sup> , RCRA non-generator <sup>3</sup> , Active	[adjacent or distance in feet] and topographically [down-, up-, or cross-]gradient
"5 <sup>th</sup> & Lincoln Street" (former drycleaner & newspaper printing)	114 W 4 <sup>th</sup> Street	CORRACTS <sup>5</sup> , Active	[adjacent or distance in feet] and topographically [down-, up-, or cross-]gradient
[Add Rows and Insert all Listed Sites]	[Add address]	[Add regulatory programs and status]	[Add distance and gradient]
<p>Notes: [update based on database search results]</p> <p>1 LUST = Leaking Underground Storage Tank Site</p> <p>2 UST = Underground Storage Tank</p> <p>3 RCRA NonGen/NLR = Federal Resource Conservation and Recovery Act Generator Non-Gen Facility includes sites which generate, transport, store, treat and/or dispose of hazardous waste as defined by RCRA. Non-Generators do not presently generate hazardous waste.</p> <p>4 Historical Cleaners = Include, but are not limited to dry cleaners, cleaners, laundry, Laundromat, cleaning/laundry, wash and dry, etc. Dry cleaner facilities have a history of use, handling, and storage of solvents (e.g., perchloroethylene) and unknown disposal practices.</p> <p>5 CORRACTS = Federal Resource Conservation and Recovery Act Corrective Action facility.</p>			

[Insert number of sites] site[s] [was/were] identified as having a high potential to impact the project footprint. Those that required additional analysis are discussed in further detail in Section 3.4 Summary of Regulatory File Review. The remaining regulated facilities identified in the [EDR report and/or on the] NDEQ IMS search were evaluated but are not carried forward for additional analysis due to their distance from the project, topographic gradient relative to the project and/or regulatory status.

### 3.2 Visual Reconnaissance

A site reconnaissance was conducted on August 11, 2014, by Allison Sambol, an environmental scientist with FHU. The purpose of the site reconnaissance was to assess the project area for potential hazardous materials concerns associated with current land use and observable site activities. The visual reconnaissance assessed the project area for obvious evidence of potential contamination sources, such as current hazardous materials storage or use; unusually stained soils, concrete slabs, or pavements; sumps, dumps, drums, tanks, and electrical transformers; stressed vegetation; and discarded containers.

[Insert site observations if applicable – see example below.]

#### Additional Site Reconnaissance Observations:

[Pole- and pad-mounted electrical transformers were observed throughout the project area. Prior to 1979, polychlorinated biphenyl (PCB) materials were used to manufacture electrical transformers. They have since been banned due to their environmental toxicity. The United States Environmental Protection Agency (EPA) defines PCB equipment as containing greater than 500 parts per million (ppm) PCBs; "PCB contaminated equipment" as containing 50 to 500 ppm PCBs; and "non-PCB equipment" as containing less than 50 ppm PCBs. Any electrical

equipment with no label or unknown concentration is assumed to be "PCB contaminated equipment" per EPA regulation and should be managed accordingly.]

### 3.3 Historical Use Information *[Remove this Section if Not Required for HMR]*

The objective of the historical review is to "develop a history of the previous uses of the property and surrounding area, in order to help identify the likelihood of past uses having led to recognized environmental conditions" (ASTM, 2013).

To evaluate the past uses of the project corridor and identify any sites with potential to impact the project, *[insert preparer's name]* reviewed historic aerial photographs for direct observation of site conditions through a period of time. These observations may include the locations of tanks, drums, pits, ponds, lagoons, stained/stressed vegetation, or other site development features that can indicate potential contaminant sources.

Table 3 summarizes the historical records reviewed.

**Table 3. Summary of Historical Records Reviewed**

Historical Record	Years Reviewed
<i>[Name]</i> USGS 7.5-Minute Topographical Maps	1986 (Provisional Edition) and 2009 (USGS Beta version)
<i>[Name]</i> USGS 7.5-Minute Topographical Maps	1947 (Photorevised in 1986) and 2009 (USGS Beta version)
<i>[Name]</i> USGS 30x60 and 1x2 Topographical Maps	1954 (Photorevised 1978) and 1985
<i>[Name]</i> USGS 30x60 and 1x2 Topographical Maps	1980 and 1985-87 (published 1989)
Aerial Photographs <sup>1</sup>	1993, 1999, 2000, 2003, 2006, 2009, 2010
Aerial Photographs <sup>2</sup>	1979, 1980
<b>NOTES:</b>	
(1) Aerial photographs were obtained from the Nebraska Department of Natural Resources IM Application (FSA aerial photography), the NRCS NAIP 2012 1m-County Aerial Imagery, and Google Earth	
(2) Aerial photographs were reviewed from the <b>Box Butte (1979) and the Morrill County (1980) NRCS Soil Surveys.</b>	

*[Insert brief summary of historical review.]*

**[Examples] Summary:**

The rail lines that currently parallel the project area and pass through the environmental study area have been active since their construction between the 1880s & 1890s as part of the Burlington and Missouri River Railroad (now BNSF) to provide access to the markets in Denver and Omaha. Construction material stockpiles, such as sand and gravel were apparent on property adjoining the southbound lanes of US-385 and the westbound lanes of L62A. In general, the area surrounding the project corridor maintains an agricultural/rural appearance until the more urban areas of Alliance replace the agricultural land with residences, industrial land uses, agri-business and commercial zones around major intersections.

Also depicted on the aerial photographs was a filling station at the project intersection, a scrap yard at US-385 and Rock Road, and the south end of the Alliance Yard railcar queuing area (the maintenance yard and roundhouse are located approximately 1 mile from the project footprint). Associated activities related to these three facilities, particularly the scrap yard and railroad; include the use and/or storage of petroleum products, solvents, heavy metals and automotive maintenance activities. Based on their proximity to the project footprint these facilities are evaluated further in **Section 4.0** below.

The feedlot depicted south of Alliance on the west side of US-385 was depicted on the 1993 through 2010 aerial photographs. Associated activities with feedlots include the use and storage of petroleum products related to large-scale equipment and operating of a rural business. Other activities include large-scale grain storage and the generation of waste water, treated in settling ponds. Based on the proximity to the project area, this facility is considered to be **[high risk to the project alternatives]** at this time. This facility is evaluated further in **Section 4.0** below.

The grain elevator and storage facility(s) located on adjoining property east and west of the project area in Angora, was depicted on the 1965 topographic map through 2010 aerial photographs. Other grain elevators on nearby properties north (of Alliance) and east of the project area were also depicted on the aerial photographs. Associated activities with grain elevators include the use of grain fumigants (i.e., carbon tetrachloride) and petroleum product storage. Based upon the above information, the grain elevator and storage facility on adjoining property east and adjoining property west to the project area in Angora are considered **[high risk to the project alternatives]** at this time. This facility is evaluated further in **Section 4.0** below.

Other industries that may impact the project footprint include automotive maintenance and repair, a scrap yard, and a filling station. Associated activities of concern include the use of petroleum products, solvents, spent solvents (degreasers), heavy metal accumulation in soil, and other common manufacturing practices like bulk storage. Concerns associated with filling stations include leaking underground storage tanks and the potential for contaminated soil and/or groundwater. These facilities are evaluated further in **Section 4.0** below.

### **3.4 Summary of Regulatory File Review** *[Remove this Section if Not Required for HMR]*

A detailed records review was conducted for identified sites located adjacent to, up-gradient, and or near the project footprint where the potential for impacts to the project were considered high. As stated in **Section 3.1**, the remaining identified sites were determined to be low potential for impact to the project due to their location either down-gradient, cross-gradient, and/or distance from the project footprint. Therefore, a review of regulatory files for those identified sites was not completed.

The objective of the detailed records review was to examine available information regarding the extent of the known impacts to soil, groundwater, and surface water due to an existing or past release of a hazardous substance or petroleum product and to evaluate the potential for residual soil and groundwater contamination to remain on the site. The findings of the regulatory file review are included below. Refer to **Appendix C** for pertinent regulatory records.

#### **3.4.1 [Insert Identified Site Name #1 – Create new subsection for as many sites necessary to cover all regulatory record file reviews completed]**

**[Provide a brief summary of the facility history, background, source of release, remedial activity, etc. used to determine the level of impact to the project footprint and, if applicable, the level of risk for the alternatives analysis.] [Example: The Big Landfill Superfund site operated from 1965 to 1980 and accepted a variety of wastes. In the southern portion of the site near the Club Road/Q Avenue intersection, approximately 75 unlined waste pits or trenches were excavated to accommodate a mixture of liquids, industrial waste, and municipal waste. These pits and trenches were filled about three-quarters full with liquid wastes and topped with 25 to 60 ft of municipal waste. No measures are known to have been implemented to prevent leachate or liquid waste seepage from the pits. Consequently, over time, the liquid seeped out of the pits and mixed with the surrounding refuse and groundwater.]**

The contaminants of concern in groundwater are:

- ▶ arsenic
- ▶ bromodichloromethane
- ▶ cadmium
- ▶ bromoform
- ▶ iron
- ▶ carbon tetrachloride
- ▶ ethylbenzene
- ▶ 1,1-dichloroethane
- ▶ methylene chloride
- ▶ 1,1-dichloroethene
- ▶ naphthalene
- ▶ 1,2-dichloroethane

The contaminants of concern in surface soil and surface water are:

- ▶ 2,3,7,8-tetrachlorodibenzo-p-dioxin
- ▶ barium
- ▶ cyanide
- ▶ vanadium
- ▶ chloroform
- ▶
- ▶ manganese
- ▶ toluene
- ▶ chromium
- ▶ mercury
- ▶ aluminum
- ▶

In addition to these remedial actions, restrictions on property ownership, institutional controls, and land use restrictions have been placed on off-site land and groundwater use. Refer to **Appendix C** for pertinent regulatory records.

### 3.4.2 [Insert Identified Site Name #2 – Create new subsection for as many sites necessary to cover all regulatory record file reviews completed]

The [Insert Identified Site Name #2] site, located on the [insert location reference] of the project area is identified as [Low or High Potential] to impact the project.

[Provide a brief summary of the facility history, background, source of release, remedial activity, etc. used to determine the level of impact to the project footprint and, if applicable, the level of risk for the alternatives analysis.]

The contaminants of concern in groundwater are:

- ▶
- ▶
- ▶
- ▶

The contaminants of concern in surface soil and surface water are:

- ▶
- ▶
- ▶
- ▶

In addition to these remedial actions, restrictions on property ownership, institutional controls, and land use restrictions have been placed on off-site land and groundwater use. Refer to **Appendix C** for pertinent regulatory records.

**OR present Section 3.5 in Tabular Format**

**Table 4. Regulatory Records Review for Identified Sites**

Facility	Address	Regulatory Database and Facility Status	Distance Relative to Project
Conoco Station (NDEQ IIS# XXXXX)	555 Flower Street City, NE 68116	EDR UST (Active)	>0.75-mile north and topographically up-gradient
<p><b>Findings:</b> The Conoco Station facility is listed in the EDR report as a regulated site. It is also listed on the DEQ IMS website. Additionally, the Nebraska State Fire Marshal's list of registered tanks (accessed June 27, 2014) lists this facility by name and address. Two underground storage tanks with 10,000-gallon capacity each are registered for this site. No known or recorded releases were identified for this facility. Based on the above information and the proposed scope of work, the Conoco Station is considered low potential [and low risk] to impact materials management or worker health and safety related to project construction.</p>			
Superfund Site (NDEQ IIS# XXXXX)	4 <sup>th</sup> & A Street City, NE 68805	Brownfields (Active)	Adjoining
<p><b>Findings:</b> The Superfund Site facility is listed in the EDR report as a regulated site. It is also listed on the DEQ IMS website. Recorded releases were identified for this facility. The contaminants of concerns are petroleum compounds and volatile organic compounds (VOCs) such as ethylbenzene and 1,2 dichloroethane. Remedial actions at the facility are listed as on-going. A plume map is included in <b>Appendix C</b>. Based on the above information and the proposed scope of work, the Superfund Site is considered high potential to impact materials management or worker health and safety related to project construction [or high risk to the construction schedule and property acquisition process.]</p>			

DRAFT

## 4 Findings and Mitigation Measures

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The findings and recommendations of this hazardous materials assessment must be viewed in recognition of certain limiting conditions. Results of this HMR are based on a visual site reconnaissance of current conditions within the project area, a review of readily available standard historical sources, environmental agency database search, and regulatory records review.

### 4.1 Findings

The following summarizes findings from the hazardous materials due diligence activities performed for this project:

**[Insert findings/conclusion – see example below.]**

Based on review of the **[EDR Report and]** NDEQ IMS, the site reconnaissance, **[INSERT, historical review, regulatory file review, etc.]** and the proposed scope of work; it is considered **[low or high potential]** for contamination in **[soil and/or groundwater]** to be encountered during construction. There are **[number of sites]** identified sites that would impact construction of the project or cause a materials management and/or worker health and safety concerns related to project construction.

### 4.2 Mitigation Measures

The following mitigation measures shall be carried forward through the NEPA documentation and NDOR Green Sheets for this project:

**[Insert required commitment below.]**

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/FHWA is notified and a plan to dispose of the Hazardous Materials has been developed. Then DEQ 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 DEQ 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. (Contractor)

**[Insert applicable commitments – see examples below.]**

Evidence of potential lead-based paint was observed on the existing bridge during the site reconnaissance. The Contractor would be required to conduct its own monitoring at project startup and adjust worker protection and work practices according to the results. It should be assumed that lead-based paint is present on the bridge structures if construction occurred before 1980. The Contractor would be required to recycle at a legitimate recycling facility for scrap metal, in the same manner described for lead plates in Paragraph 3 (Environmental Requirements) in Section 203.01 of the Standard Specifications.

**[For Positive ACM test results]**

The scope of work for the bridge structure **[insert structure no.]** required an inspection for asbestos containing material (ACM). ACM was found in the **[insert approximate amount of ACM material and where it was found]**. The ACM must be removed in a way that allows the ACM to remain in a non-friable condition. Removal and disposal of the ACM shall be in accordance with Nebraska Department of Health and Human Services (DHHS) Nebraska Asbestos Control Program Regulations, Title 178. The contractor shall develop a removal and disposal plan in coordination with a licensed Asbestos Removal Contractor and NDOR. A list of Licensed Asbestos Removal Contractors can be found at: <http://dhhs.ne.gov/publichealth/Documents/asbestosbusinessentities.pdf>

**Comment [AS1]:** Update with new ACM and LBP on structures commitments.

Demolition work on the bridge structure [insert structure no.] will require the contractor to submit a written NESHAP (National Emission Standards for Hazardous Air Pollutants) notification to the Nebraska Department of Environmental Quality (NDEQ). In addition, the Department of Health and Human Services and the shall also be notified by the contractor, using DHHS Form 5, at least 10 working days prior to commencement of bridge demolition or renovation activities where ACM was found. The ten day clock starts with the day the Notification is postmarked, hand delivered or picked up by a commercial delivery service, such as UPS, FedEx, etc. Faxing documents is prohibited. The NDOR Project Manager shall be provided copies of said notifications and their submittal date, which shall be recorded with the ECOD [or Site Manager for local projects].

**[For Removing Painted Bridge Component]**

The bridge structure [insert structure no.] is being replaced/rehabilitated. There is potential for lead based paint to be found on the bridges painted components. If the method of removal of the components generates paint debris, the waste shall be handled in accordance with NDOR's Standard Specification for Highway Construction Section 732 (Lead-based Paint Removal) and Title 128, Nebraska Hazardous Waste Regulations. Extreme caution shall be taken to minimize the amount of potential lead based painted material or debris from causing or threatening to cause pollution of the air, land and waters of the State. The Contractors implementation plan efforts shall be documented in [insert either ECOD or Site Manager here]. (Contractor)

**[For Removing LBP by Scraping/Cleaning/Sandblasting/Painting]**

The bridge structure [insert structure no.] is being cleaned and sandblasted piles are being sandblasted/painted. There is potential for lead based paint to be found on the bridges painted components. If the method of cleaning and painting generates paint debris, the waste shall be handled in accordance with NDOR's Standard Specification for Highway Construction Section 732 (Lead-based Paint Removal) and Title 128, Nebraska Hazardous Waste Regulations. Extreme caution shall be taken to minimize the amount of potential lead based painted material or debris from causing or threatening to cause pollution of the air, land and waters of the State. The Contractors implementation plan efforts shall be documented in [insert either ECOD or Site Manager here]. (Contractor)

**[For Handling Lead Plates or Shims for Bridge Replacement]**

The bridge structure [insert structure no.] is being replaced. The Contractor shall recycle any lead plates or shims at a legitimate recycling facility as found in paragraph 3 (environmental requirements) in Section 203.01 of the Standard Specification for Highway Construction and in accordance with Title 128, Nebraska Hazardous Waste Regulations. The Contractors implementation plan efforts shall be documented in [insert either ECOD or Site Manager here]. (Contractor)

## 5 References

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### [Example citations below]

American Association of Petroleum Geologists. 1984. Geological Highway Map: Northern Great Plains North Dakota, South Dakota, Nebraska, Iowa, and Minnesota. December 15.

American Society for Testing and Materials. 2013. ASTM Designation E 1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

Environmental Data Resources, Inc. (EDR). [Year]. Radius Map Report with GeoCheck. [Insert Month Day]

MILCO, Inc. 2011. RBCA Tier 1 Report. October [Example Regulatory Record Citation]

Natural Resources Conservation Service Web Soil Survey. [Year]. [Name of County] – Nebraska. Retrieved from <http://websoilsurvey.nrcs.usda.gov> on [Insert Month Day Year].

Nebraska Department of Environmental Quality (NDEQ). 2005. NDEQ Environmental Guidance Document - Investigation-Derived Waste (IDW) & Remediation Waste Considerations.

NDEQ. 2015. Interactive Mapping System (IMS). Retrieved from <http://degims2.deq.state.ne.us/deqflex/DEQ.html> on [Insert Month Day Year]

NDEQ. 2015. Record of Conversation. [Project Manager] – Waste Management Division – Petroleum Remediation. [Insert Month Day Year].

Nebraska Department of Natural Resources (NDNR). 2015. Natural Resources Data Bank – Registered Groundwater Wells. Retrieved from <http://www.dnr.ne.gov/databank/dbindex.html> on [Insert Month Day Year]

Nebraska Department of Roads (NDOR). 2002. Construction Manual.

NDOR. 2007. Standard Specifications for Highway Construction.

NDOR. 2009. Local Public Agency Manual for Federal Aid Projects – Chapter 5 Environmental.

NDOR. 2015. Hazardous Material Review Guidance Document.

Nebraska Highways and Bridges Act. Chap. 39. Sec. 39-1324. Surveys; authority to enter land; damages. 1955.

Nebraska Highways and Bridges Act. Chap. 39. Sec. 39-8,102. Interstate bridges, Department of Roads; authority to enter upon property; damages. 1959.

Occupational Safety & Health Administration (OSHA). 1990. Hazardous Waste Operations & Emergency Response (HAZWOPER) 29 CFR 1910.120.

University of Nebraska – Lincoln Conservation & Survey Division. 1986. Bedrock Geology of Nebraska. April.

University of Nebraska – Lincoln School of Natural Resources and Conservation & Survey Division. 1995. Configuration of the Water Table - 1995.

University of Nebraska – Lincoln Conservation & Survey Division, Institute of Agriculture and Natural Resources. 1986. The Groundwater Atlas of Nebraska. April.

US Environmental Protection Agency (EPA). 2005. Standards and Practices for All Appropriate Inquiries, Final Rule. Federal Register 70 (November 1): 66070 – 66113.

USGS. [Insert Year]. [Insert Name of Quad Map] 7.5-Minute Topographic Map.

USGS. Provisional Version [Insert Year]. [Insert Name of Quad Map] 7.5-Minute Topographic Map.

USGS. [Insert Year]. Photorevised [Insert Year]. [Insert Name of Quad Map] 7.5-Minute Topographic Map.

USGS. 2010. "High Plains Water-Level Monitoring Study – Physical/Cultural Setting" December 17. Retrieved from <http://ne.water.usgs.gov/ogw/hpwims/physsett.html> on [Insert Month Day Year].

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<b>NEBRASKA DEPARTMENT OF ROADS</b> <b>VISUAL RECONNAISSANCE FORM</b>	District No.:	Project No.:
	Route ID:	Control Number (CN):

**Project Description**

Project Name: \_\_\_\_\_  
Milepost Begin: \_\_\_\_\_ Milepost End: \_\_\_\_\_ County: \_\_\_\_\_  
Location: \_\_\_\_\_  
Main Project Elements: \_\_\_\_\_

**Project Features (Check if applies)**

<input type="checkbox"/> Structure Acquisition	<input type="checkbox"/> Structure Modification	<input type="checkbox"/> Structure Demolition
<input type="checkbox"/> New ROW	<input type="checkbox"/> Easements	<input type="checkbox"/> Utility Relocation
<input type="checkbox"/> Excavation/Drilling	<input type="checkbox"/> Dewatering	

GW Anticipated to be Encountered: \_\_\_\_\_ Disturbance Depth (if known): \_\_\_\_\_ ft

**Records Review & Interview(s)**

The following records/sources were used in this assessment (**'No' is implied if unchecked**):

<input type="checkbox"/> ASTM Standard Environmental Record Sources	<input type="checkbox"/> NDEQ	<input type="checkbox"/> SFM Tank List	<input type="checkbox"/> EPA EnviroFacts
<input type="checkbox"/> ASTM Standard Search Radii or <input type="checkbox"/> Modified Search Radii:			
<input type="checkbox"/> Previous Environmental Reports:			
<input type="checkbox"/> Other Files/Databases (Assessor, Fire dept., Building, Planning, etc.):			

**Site Reconnaissance & Description**

Inspection Date: \_\_\_\_\_  
Limitations to inspection (e.g., snow cover, dangerous/safety conditions): \_\_\_\_\_  
Project area and land use(s) description: \_\_\_\_\_

Industrial    Light Industrial    Commercial    Residential    Agricultural    Undeveloped    Other: \_\_\_\_\_

Adjacent land use(s) description: \_\_\_\_\_

Industrial    Light Industrial    Commercial    Residential    Agricultural    Undeveloped    Other: \_\_\_\_\_

**Physical Setting:**

Area Characteristics:    rural setting    urban setting  
Site topography:    flat    sloping    rolling    other: \_\_\_\_\_  
Surface hydrology/Direction of drainage: \_\_\_\_\_  
Surface cover:    primarily vegetation    primarily concrete/asphalt  
Depth to groundwater / static water level (if known): \_\_\_\_\_ ft  
Groundwater flow direction (if known): \_\_\_\_\_

**Potential Environmental Concerns on the immediate project area or directly adjacent to it**

(Select from dropdown menu – Yes, No, Expected, or Unknown)

Potential Environmental Concern	Project Area	Adjacent Area	Potential Environmental Concern	Project Area	Adjacent Area
Evidence of underground tanks (pipes, vents, fill caps, etc.)			Protected/fenced/placarded area(s)		
Aboveground storage tank(s)			Liquid waste (pits, ponds, etc.)		
Monitoring/water well(s)			Oil sheen (soil/water)		
Electrical/transformer Equipment			Oil/gas well(s) / Pipeline Markers		
Cistern(s), sump(s), drain(s)			Mine tailings/waste		
Barrel(s), drum(s), container(s)			Painted/preserved material(s)		

**Potential Environmental Concerns on the immediate project area or directly adjacent to it**

(Select from dropdown menu – Yes, No, Expected, or Unknown)

Potential Environmental Concern	Project Area	Adjacent Area	Potential Environmental Concern	Project Area	Adjacent Area
Stockpile, surface trash, debris			Odor		
Exposed/buried landfill			Chemical storage		
Batteries			Suspect asbestos containing material		
Surface staining			Suspected methamphetamine lab		
Stressed vegetation					

**Bridges:**

Is there a bridge? Yes  No

Is the bridge painted (i.e. preserved materials such as lead-based paint)? Yes  No

*(Inspect under the bridge for LBP evidence and photo document. If physical inspection of the bridge cannot be completed at the time of the visual reconnaissance, bridge inspection photos need requested from NDOR.)*

Has it been tested? Yes  No  Unknown

**Findings/Conclusions:**

Are known hazardous or other waste sites on or adjacent to the project area, which may affect the project?  Yes  No

Discuss:

**Recommendations:**

Materials Management Plan  Mitigation Measures  Modified Specification(s)  Additional Assessment/Investigation\*

Explain:

**\*Additional work must be approved by NDOR (for State and Local Projects) and the LPA (for Local Projects only)**

Completed by (Name and Title): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Revised (if necessary): \_\_\_\_\_

## Appendix A - Project Figures

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## Appendix B - Project Description

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## Appendix C – Pertinent Regulatory Record Files

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A-8

QA/QC

(Insert

tab

here)





## Environmental Document QC Review Form

(To Be Completed By the NEPA Specialist or PM)

Date QC Review is initiated: \_\_\_\_\_

Project Name: \_\_\_\_\_

Control Number: \_\_\_\_\_ Project Number: \_\_\_\_\_

NEPA Specialist: \_\_\_\_\_

QC Review Due Date: \_\_\_\_\_

### CE Review Level:

	Yes	No
Has the appropriate CE level been selected according to the project scope and Action Criteria?	<input type="checkbox"/>	<input type="checkbox"/>

### Location and Study Area:

	Yes	No
Are Project Termini consistent in the document, maps and attachments?	<input type="checkbox"/>	<input type="checkbox"/>
Are the Project Termini justified and logical?	<input type="checkbox"/>	<input type="checkbox"/>
Are Detours included in the Study Area?	<input type="checkbox"/>	<input type="checkbox"/>

### Project Description:

	Yes	No
Does the Project Description match the Activity Checklist?	<input type="checkbox"/>	<input type="checkbox"/>
Does the Project Description match the most current one on OnBase?	<input type="checkbox"/>	<input type="checkbox"/>
Are the Project Descriptions the same for all technical documents?	<input type="checkbox"/>	<input type="checkbox"/>
If the Project Description was updated after resource agency consultations were received, is there an updated agency or Professionally Qualified Staff (PQS) Memo addressing the changes?	<input type="checkbox"/>	<input type="checkbox"/>
If the LPA developed their own Project Description, does it state if property tax assessments are planned to help fund the project?	<input type="checkbox"/>	<input type="checkbox"/>
If not, is there a PQS Memo from each technical area that addresses the differences?	<input type="checkbox"/>	<input type="checkbox"/>
Have all 'wills' been changed to 'would,' plus-signs changed to periods?	<input type="checkbox"/>	<input type="checkbox"/>

### Purpose and Need (Level 3):

	Yes	No
Is the Need supported with facts?	<input type="checkbox"/>	<input type="checkbox"/>
Are solutions excluded from the Purpose and Need statement?	<input type="checkbox"/>	<input type="checkbox"/>

### STIP Identification:

	Yes	No
Was the most recent STIP referenced?	<input type="checkbox"/>	<input type="checkbox"/>

**Right of Way and Property Impacts:**

	<b>Yes</b>	<b>No</b>
Are affected structures and land use function changes well described, including relocations, access changes, loss of parking, etc.?	<input type="checkbox"/>	<input type="checkbox"/>

**Section 4(f):**

	<b>Yes</b>	<b>No</b>
Is the Section 4(f) Initial Assessment form attached ( <i>required for all projects</i> )?	<input type="checkbox"/>	<input type="checkbox"/>
If the Project involves a Section 4(f) use or exception, are all appropriate Section 4(f) attachments included and described in 2.3?	<input type="checkbox"/>	<input type="checkbox"/>
Are all Section 4(f) properties identified on a Figure?	<input type="checkbox"/>	<input type="checkbox"/>
If mitigation is required, are mitigation measures from all types of impacted Section 4(f) properties included?	<input type="checkbox"/>	<input type="checkbox"/>

**Section 6(f):**

	<b>Yes</b>	<b>No</b>
If there is a Section 6(f) conversion, has appropriate coordination been conducted and are all mitigation measures and/or land purchases discussed?	<input type="checkbox"/>	<input type="checkbox"/>

**Federal and Tribal Lands:**

	<b>Yes</b>	<b>No</b>
If Federal or Tribal lands are affected, were agency comments solicited and are letters, emails attached?	<input type="checkbox"/>	<input type="checkbox"/>

**Utilities:**

	<b>Yes</b>	<b>No</b>
If federal funds are used for utility relocation, is the utility relocation included within the Environmental Study Area?	<input type="checkbox"/>	<input type="checkbox"/>
Were the appropriate commitments placed in Block 4.7?	<input type="checkbox"/>	<input type="checkbox"/>

**Farmland:**

	<b>Yes</b>	<b>No</b>
If the prime or unique farmland score on the NRCS-CPA-106 form is greater than 60, are the following attached: 1) NRC coordination correspondence; and 2) the NRCS-CPA-106 form?	<input type="checkbox"/>	<input type="checkbox"/>

**Wild and Scenic/National Recreational Rivers:**

	<b>Yes</b>	<b>No</b>
If agency coordination was conducted for a Wild and Scenic and/or National Recreational River located within 0.25 miles, or within 1.5 miles up/down stream of its tributaries, is evidence of such coordination attached (email, meeting notes, memos or correspondence)?	<input type="checkbox"/>	<input type="checkbox"/>

**Floodplain/Floodway:**

	<b>Yes</b>	<b>No</b>
If a floodplain or floodway is present, does Block 6.4 state where and is a FIRM map attached?	<input type="checkbox"/>	<input type="checkbox"/>
Is the floodplain permit attached or the commitment included in Block 6.5?	<input type="checkbox"/>	<input type="checkbox"/>
If work is happening over a floodplain, is the appropriate amount of detail or reasoning included about the type of work to occur?	<input type="checkbox"/>	<input type="checkbox"/>

**Wetlands:**

	<b>Yes</b>	<b>No</b>
Is the description of the type and amount of wetland impacts included from the Wetlands Memo?	<input type="checkbox"/>	<input type="checkbox"/>
Are the total estimated permanent impacts to wetlands greater than 0.5 acres for the project?	<input type="checkbox"/>	<input type="checkbox"/>
If an Individual Permit is required, has there been coordination with the US Army Corps of Engineers through a pre-application meeting?	<input type="checkbox"/>	<input type="checkbox"/>
Are wetland commitments included in the CE Form, or is standard language included if not?	<input type="checkbox"/>	<input type="checkbox"/>

**Impaired Waters, MS4, NPDES/SWPPP:**

	<b>Yes</b>	<b>No</b>
Is mitigation needed for impaired waters on this project?	<input type="checkbox"/>	<input type="checkbox"/>
Are all Category 5 impaired waters described in detail in Block 8.4?	<input type="checkbox"/>	<input type="checkbox"/>
Is the impaired waters commitment included in Block 8.5?	<input type="checkbox"/>	<input type="checkbox"/>
If the project is located within an MS4 community, is descriptive language included in the field above the mitigation field?	<input type="checkbox"/>	<input type="checkbox"/>
If the project needs an NPDES Permit and SWPPP, is appropriate mitigation language included?	<input type="checkbox"/>	<input type="checkbox"/>

**Threatened and Endangered Species:**

	<b>Yes</b>	<b>No</b>
Is the T&E Memo attached?	<input type="checkbox"/>	<input type="checkbox"/>
If the Project Description is substantially different from that used in the T&E review/consultation, is there a PQS memo addressing the differences?	<input type="checkbox"/>	<input type="checkbox"/>
Are agency concurrences (if needed) from FHWA, USFWS and NGPC attached and included in their respective boxes in Block 9?	<input type="checkbox"/>	<input type="checkbox"/>

**Historic Properties:**

	<b>Yes</b>	<b>No</b>
If the Project Description is substantially different from that used in the Section 106 review/consultation, is there a PQS memo addressing the differences?	<input type="checkbox"/>	<input type="checkbox"/>
If the effect determination is a "No Potential to Cause Effect" or "No Historic Properties Affected", is NDOR's PQS Review memo attached?	<input type="checkbox"/>	<input type="checkbox"/>
If the project is an "Adverse Effect" or "No Adverse Effect", are SHPO, THPO (as needed), CLG (as needed) FHWA and Consulting Party concurrence or no response letters/memos attached?	<input type="checkbox"/>	<input type="checkbox"/>
If mitigation is required, is it detailed in the mitigation block (10.6) of the form?	<input type="checkbox"/>	<input type="checkbox"/>

**Hazardous Materials:**

	<b>Yes</b>	<b>No</b>
Does the current project description match that used for the hazardous materials review?	<input type="checkbox"/>	<input type="checkbox"/>
Is the Hazardous Materials memo attached?	<input type="checkbox"/>	<input type="checkbox"/>
If the potential for encountering hazardous waste is high, is there documentation in the project file regarding consultation with FHWA?	<input type="checkbox"/>	<input type="checkbox"/>

**Traffic Noise:**

	<b>Yes</b>	<b>No</b>
Was a noise study required and conducted for the project?	<input type="checkbox"/>	<input type="checkbox"/>
If the project is a Type 1, is the noise study and graphic attached to the CE?	<input type="checkbox"/>	<input type="checkbox"/>
Was the noise study available at the public meeting?	<input type="checkbox"/>	<input type="checkbox"/>

**Traffic Disruption:**

	<b>Yes</b>	<b>No</b>
Have all detour distances and estimated length of time needed been described?	<input type="checkbox"/>	<input type="checkbox"/>
If a detour is planned, is a figure showing the location of the detour attached and impacts assessed?	<input type="checkbox"/>	<input type="checkbox"/>
If access will be disrupted, are mitigation measures identified?	<input type="checkbox"/>	<input type="checkbox"/>

**Environmental Justice (Protected Populations):**

	<b>Yes</b>	<b>No</b>
Is the Environmental Justice PQS Memo attached?	<input type="checkbox"/>	<input type="checkbox"/>
If potential disproportionately high and adverse impacts were discovered, have those effects been mitigated so that they are no longer disproportionately high and adverse to the protected populations?	<input type="checkbox"/>	<input type="checkbox"/>
Have mitigation commitments been incorporated into the public involvement process?	<input type="checkbox"/>	<input type="checkbox"/>

**Public Involvement (PI):**

	<b>Yes</b>	<b>No</b>
If PI was required, are details of the meeting(s) included?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a summary table of comments and responses?	<input type="checkbox"/>	<input type="checkbox"/>
Are all substantive comments addressed thoroughly?	<input type="checkbox"/>	<input type="checkbox"/>

**Unresolved Controversy:**

	<b>Yes</b>	<b>No</b>
If the project includes unresolved controversy, is coordination with FHWA attached?	<input type="checkbox"/>	<input type="checkbox"/>
Are commitments made for resolution of controversy included in the appropriate section of the CE?	<input type="checkbox"/>	<input type="checkbox"/>

**Cumulative Effects:**

	<b>Yes</b>	<b>No</b>
If substantial impacts to resources are identified, are the sources of information reviewed to identify other past, present and reasonably foreseeable actions included in the text box?	<input type="checkbox"/>	<input type="checkbox"/>
Is the context and intensity of any cumulative impacts identified, so that whether it rises to a level of potential significance is discernable?	<input type="checkbox"/>	<input type="checkbox"/>
If the context and intensity of cumulative impacts is potentially significant, has coordination with FHWA occurred? (Provide date and outcome in CE comments box)	<input type="checkbox"/>	<input type="checkbox"/>

**Contract Provisions:**

If needed, are contract provisions included for wellhead protection areas, Nationwide Permits, airport coordination or the T&E Matrix general conditions?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

**Project Mitigation:**

Check the document to be sure all commitments are included from every section.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

---

*(To Be Completed by the QC Reviewer)*

**QC Reviewer Signature (Initial Review):**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**QC Reviewer Signature (Final Review - Acknowledgement of Satisfactory Comment Resolutions):**

\_\_\_\_\_ **Date:** \_\_\_\_\_

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*(To Be Completed by the NEPA Analyst and EDU Manager – as appropriate)*

**NDOR NEPA Specialist's Signature (QC Review is Complete – Document is Ready for Approval):**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**EDU Manager Signature - If CE Level 2, 3, EA, EIS, Reevaluation (Initial Review):**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**EDU Manager Signature (Final Review - Acknowledgement of Satisfactory Comment Resolutions):**

\_\_\_\_\_ **Date:** \_\_\_\_\_

## Environmental Document Quality Control (QC) Reviewer Actions

The following actions are provided as guidance for use in Quality Control Reviews of NEPA documents. The list is intended to guide the reviewer in the QC Review activity, but is not all-inclusive. The CE QC Checklist (August 21, 2015) covers many of the items below, but not all.

- I. Compare the environmental document's Project Description to the most current one on Falcon, as well as to the Project's Activity Checklist, to be sure it is current and complete. Check Project Start and End points for consistency with those in the Project file and Scoping Document.
- II. Is the Environmental Study Area explained well enough and mapped such that someone 5 years from now with no prior Project experience could re-evaluate what was considered in the original document and determine if there are any design changes or new ROW needs?
- III. Review Scoping Documents for project details and compare to information used in the environmental document.
- IV. Review Purpose and Need Statement for clear problem statement of need with supporting data/discussion (be sure the problem's solution is not discussed in the Statement). Is Project Termini justified?
- V. Review all attachments for the following:
  - a. Current Project Description was used for each environmental resource review. If the Project Description changed during the course of development, check that the attachment contains either an agency review update or an NDOR Resource Specialist memo documenting why an agency review update is not needed.
  - b. Attachments are in the appropriate order that they are discussed in the document.
  - c. Attachment Figures (NDOR TEMPLATE TO BE DEVELOPED):
    1. Do not contain a consultant's logo or project number;
    2. Have the appropriate NDOR Project Name, Project Number and Control Number;
    3. Have a North arrow, scale, and legend with appropriate identifying features (i.e.; landmarks – airports, railroads, major highways or streets), as well as

consistently mapped features (size of environmental study area, Project start and end points – use decimals not +/- symbol, alignment color, etc.);

4. Figure numbers and Title;
  5. Figure format is consistent - location of title, legend, Figure number, scale and north arrow;
  6. Be sure that items directly discussed in the document (specific streets names, schools, businesses, etc.) are shown on the appropriate Figure.
- d. Each individual Resource Attachment should be checked for:
1. Its age (*generally* Hazmat should be less than 1 year old, T&E less than 2 years old, Wetlands delineation less than 5 years old, and Historic Section 106 review less than 5 years old.) If the Attachment's age is greater than the general guidelines, check with the Technical Resource Specialist to gauge whether or not an update is needed.
  2. Resource issue definition and issue resolution (including concurrence signatures by appropriate resource agency representatives);
  3. Commitments, and consistency with their discussion in the body of the environmental document and the Commitments section;
  4. That concurrence dates and other important dates from the Attachments are consistent with those in the environmental document.

## VI. Environmental Document Review

- a. Level 1,2,3 Categorical Exclusions
  1. See CE QC Checklist
- b. Environmental Assessment
  1. Previously, an EA Checklist was developed for document review – However, this checklist is in need of update to incorporate current FHWA EA practices, procedures, structure and content.
- c. Environmental Impact Statement

Previously, an EIS Checklist was developed for document reviews– This checklist is also in need of updating.

## VII. Project Mitigations and Commitments

- a. Mitigations and Commitments should be listed in the order that they are discussed in the document.
- b. Commitment language should match that in the document – except ‘would’ becomes ‘shall’ and responsible parties are included in parentheses at the end of the commitment.

A-9

PQS Examples  
(Insert tab  
here)





# Environmental Justice PQS Memorandum

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Date:  
To:  
Cc:  
From:  
Subject:

**Environmental Justice Regulatory Background and Methodology:**

Text

**Project Location and Description:**

Text

**Examination of Study Area Population: Census Data and Other Observations**

Text

**Potential Disproportionately High and Adverse Effects to Low-Income and/or Minority Populations (if needed):**

Text

**Proposed Mitigation (if needed):**

Text

**Conclusions:**

Text

# Example Memo



## HazMat PQS Memorandum

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**Date:** XXXXXXXX, 2015

**To:** XXXXXXXX, NEPA Project Manager

**From:** XXXXXXXX, Highway Environmental Specialist, Planning and Project Development

**Subject:** Hazardous Materials Review Memo for the NDOR Project XXXXXXXX, CN XXXXXXXX.

### Overview

A hazardous materials review (HMR) was completed by XXXXX for the XXXXXXXX project and approved by NDOR on XXXXXXXX, 2015. The purpose of the HMR is to identify environmental concerns associated with hazardous materials and petroleum products which could potentially be encountered during the construction project. This memo summarizes the conclusions and applicable mitigation measures found in the HMR and assists the Environmental Documents manager in completing the Hazardous Materials section of the CE Determination Form for Federal-Aid Projects.

### Hazardous Material Sites and Impacts

The HMR identified XX facility(ies) within the hazardous materials study area where a release had occurred. *[Results of the investigation are summarized here – Example follows:]* The petroleum release was related to an underground storage tank. Based on shallow excavations for NDOR construction and distance from the facility to the project, there is a low potential of encountering contamination during construction. In addition, no Superfund sites were identified near the project.

### Asbestos

Structure Numbers XXXXXXXX and XXXXXXXXX have been tested for the presence of asbestos. The results were found to be [negative / positive]; therefore, it is [likely / unlikely] that these structures contain asbestos. *[Depending upon results, commitments will be included here.]*

# Example Memo

## Lead Commitments

There [is/is not] potential for lead based paint to be found on the bridge's painted components. [*Results of the investigation are summarized here – Example commitments follow:*] If the method of removal of the components generates paint debris, the waste shall be handled in accordance with NDOR's Standard Specification for Highway Construction Section 732 (Lead- based Paint Removal) and Title 128, Nebraska Hazardous Waste Regulations. Extreme caution shall be taken to minimize the amount of potential lead based painted material or debris from causing or threatening to cause pollution of the air, land and waters of the State. The Contractor shall recycle any lead bearing plates and/or lead shims at a legitimate recycling facility as found in paragraph 3 (environmental requirements) in Section 203.01 of the Standard Specification for Highway Construction and in accordance with Title 128, Nebraska Hazardous Waste Regulations. The Contractor's implementation plan efforts shall be documented in ECOD.

## Unexpected Waste Commitment

The contractor and the NDOR District will adhere to the following commitment:

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).

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Name

---

Date

XXXXXXXXX, Highway Environmental Specialist  
Planning and Project Development  
NDOR



# ***Wetlands PQS Memorandum***

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DATE [Click here to enter a date.](#)

TO [Click here to enter text., NDOR EDU](#)

FROM [Click here to enter text., NDOR EPU](#)

SUBJECT **Wetland Memo**  
Project No: [Click here to enter text.](#)  
Control No: [Click here to enter text.](#)  
Project Name: [Click here to enter text.](#)

A wetland delineation was completed on [Click here to enter a date.](#)

Or

A desktop review was completed on [Click here to enter a date.](#)

Are there wetlands, stream channels, or other waters within the study area?

Yes  No

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

Yes  No  Not Applicable

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

Yes  No  Not Applicable

Describe resources, potential impacts and anticipated permit type: [Click here to enter text.](#)

Describe any coordination conducted to date with officials/agencies: [Click here to enter text.](#)

Wetlands/Waters of the U.S. Mitigation

On-Site/Permittee Responsible  USACE Approved Mitigation Bank Site  Not Applicable

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.

All wetlands/waters within the project area that are not permitted for impacts will be marked on the 2W aerial sheets for the contractor as avoidance areas.

## **Project Description**

[Click here to enter text.](#)

**EXAMPLE**



Noise Study PQS Memorandum

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**Date:** xxxxxxx, 2015

**To:** xxxxxxx, Highway Environmental/NEPA Specialist, Planning and Project Development

**From:** xxxxxxx, Highway Environmental Specialist, Planning and Project Development

**Subject:** Noise study determination memo for the NDOR project xxxxxxx (C.N. xxxxxx) in xxxxxx County, NE

The NDOR Noise Section staff has reviewed project description for the xxxxxxx project to determine if a noise study is warranted. Based on the materials reviewed, this project does not fit the definition of a Type I project and is therefore exempt from a noise study.

[If the project *does* fit the definition of a Type I project and a noise study is prepared, the memo would provide relevant approval language specific to the noise policy and process, as well as any mitigation language.]

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

XXXXXXXX, Highway Environmental Specialist  
Planning and Project Development  
NDOR



# Biological Assessment PQS Memorandum

DATE [Click here to enter a date.](#)

TO \_\_\_\_\_, NEPA Project Manager

Cc \_\_\_\_\_, EPU Project Manager

FROM \_\_\_\_\_, T&E Species Biologist

SUBJECT [Click here to enter text.;](#) [Click here to enter text.;](#) CN  
Threatened & Endangered Species Concurrence

The biological assessment final approval on: [Click here to enter a date.](#)

### 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).

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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: [Click here to enter a date.](#)

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

USFWS Concurrence Date: [Click here to enter a date.](#)

NGPC Concurrence Date: [Click here to enter a 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: [Click here to enter text.](#)

Description of Coordination:

**Bald and Golden Eagle Protection Act:**

**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:**

**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 – 10**

**Example**

**Committment**

**Guidance**

**(Insert tab  
here)**



## Example Commitment Guidance

Please note that while some of the below commitments/mitigation are commonly used, *they should be added, removed, or edited based on project specific requirements*. If you have questions on whether a commitment will fit your project, please consult with your NDOR NEPA PM. Please be sure that it is clear in the commitment who is responsible for what, where, when (and why, when appropriate).

### Borrow Site:

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)

\*Please note that this commitment will be listed first only in Section 23.

### Section 2 – Section 4(f)

All commitments will be copied and pasted from the Section 4(f) documentation.

### Section 3 – Section 6(f)

All commitments will be copied and pasted from the Section 6(f) documentation.

### 4 –Non-Threshold Resources

If utility work using federal funds is NOT needed or is unknown:

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 the 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))

**If utility work using federal funds IS needed:**

If federal funds are used for any utility relocation deemed necessary later in the project, or if a determination is made that the construction contractor will relocate or remove utilities, a re-evaluation would be necessary. (NDOR Environmental)

All affected utilities shall be coordinated through NDOR and the Contractor as per NDOR's Standard environmental commitments, the NDOR Environmental commitments are not subject to change without prior written approval from the Federal Highway Administration. (District Construction, Contractor)

Any utility adjustments or interruption of service for the convenience of the Contractor shall be the sole responsibility of the Utility. Any environmental permits required for utility relocations shall be the responsibility of the Utility. (Utility Provider(s))

**Section 6– Floodplain/Floodway**

Floodplain permit is required but has not been obtained:

Floodplain permits will be required for the project action. Floodplain permits shall be acquired from the appropriate local Floodplain Administrator(s), in accordance with Nebraska Floodplain regulations, prior to the construction obligation phase. (NDOR Environmental)

**Section 7 - Wetlands/Waters of the U.S.**

All commitments will be copied and pasted from the Wetland/WOUS PQS memo or found in the Categorical Exclusion Guidance Document.

**Section 8– Impaired Waters, MS4, and NPDES/SWPPP**

Project is within 0.5 miles of a Category 5 impaired stream:

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)

Project is within an MS4 community or on an MS4 roadway:

Stormwater Treatment consideration is a condition of NDOR's Municipal Separate Storm Sewer System (MS4) permit. Stormwater treatment requirements will be applied to this project if it meets the criteria outlined in Chapter Three (Stormwater Treatment within Municipal Separate Storm Sewer System MS4 Communities) of the NDOR Drainage Design and Erosion Control Manual. This determination and any necessary coordination with the MS4 community will be made during the design process.

NPDES/SWPPP permit required:

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)

### **Section 9 – T&E Species**

All commitments will be copied and pasted from the T&E PQS memo.

### **Section 10 – Historic Properties**

All commitments will be copied and pasted from the Section 106 Tier PQS memo.

### **Section 11 – Hazardous Materials**

All commitments will be copied and pasted from the Hazardous Materials PQS memo.

### **Section 12 – Noise**

All commitments will be copied and pasted from the Noise PQS memo, if available.

### **Section 13 – Air Quality**

All commitments will be copied and pasted from the Air Quality PQS memo, if available.

### **Section 15 – Traffic Disruption**

Traffic disruptions are not anticipated:

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)

\*Please note that this commitment can and will change based on project specific requirements (i.e. 30 days, 135 days, detours, etc.). Please consult your NDOR NEPA PM if you need further guidance.

### **Section 16 – Access Disruption**

Access may be disrupted but not closed:

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

### **Section 17 – Environmental Justice**

All commitments will be copied and pasted from the Civil Rights (Environmental Justice Section) PQS memo

## **Section 18 – LEP and Public Involvement**

All commitments will be copied and pasted from the Civil Rights (LEP Section) PQS memo PI:

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)

Insert any other public outreach related commitments here. For example, a response to a public comment may include a commitment for notification or seasonal considerations or access, etc. (see the Public Involvement Appendix A-6 of the CE Training Workbook).

## **Section 22– Contract Provisions:**

Wellhead Protection

A portion of the project has been identified as being located within or adjacent to a Wellhead Protection Area. 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)

Airport within a 2 mile radius:

Because of the proximity to the ----- Airport in -----, 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>. 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)