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

CE Review Level:

☐ 1 ☒ 2 ☐ 3 ☐ Re-evaluation

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

Appendix: B

Paragraph: 23

Project Name:

Spencer Southeast

Project Number:

NH-281-4(122)

Control Number:

80950

Location and Study Area:

The project is located in Boyd County, starting approximately 1.8 miles north of the US Highway 281 (US-281) bridge over the Niobrara River and extends to the Village of Spencer. The project includes 3.95 miles along US-281 and 500 feet along Nebraska Highway 12 (N-12).

The Environmental Study Area is confined to the length of this project (3.95 miles along US-281 and 500 feet along N-12) plus 200 feet on either end, including the existing right of way (ROW) plus 50 feet beyond ROW for most of the project length, and extending to 150 feet beyond the ROW at the bridge and culverts for wetlands and most other resources. The study area extended to 0.1 mile for regulated materials and 0.25 mile beyond the ROW for Section 4(f) resources.

The project termini are based on limits identified by Nebraska Department of Roads (NDOR) pavement management system, District 8, and previous construction projects on this segment of highway.

Begin Point(s):

Mile Marker (MM) 209.81, US-281 / MM 126.63, N-12

End Point(s):

MM 213.90, US-281 / MM 126.72, N-12

Highway Number, Street, etc.:

US-281, N-12

Project Description:

This 3.95-mile project would resurface 3.13 miles and reconstruct 0.82 miles of US-281 located in Boyd County. The project begins at MM 209.81, 1.8 miles north of the Niobrara River bridge and extends north and west to MM 213.90, where the asphalt ends in the village of Spencer. The east junction (channelized intersection) of US-281/N-12, starting at MM 126.63 (N-12), would be reconstructed for 500 feet to MM 126.72 (N-12). Construction may begin and/or end approximately 200 feet ahead of or beyond the actual project limits to accommodate transitioning the pavement. The reconstructed segment of US-281 begins at MM 210.51 and ends at MM 211.29.

The existing roadway on this segment of US-281 consists of two 12 foot wide asphalt lanes and 10 foot wide shoulders, of which 8 feet is paved with asphalt.

The improvements on this project would consist of milling and resurfacing the roadway and surfaced shoulders, removing and replacing guardrail, partial depth deck repair of bridge S281 21201, and reconstructing the channelized intersection at the east junction of US-281/N-12.

Scope details include:
• Grading beyond the hinge point would be required for the following work:
- Guardrail replacement at bridge S281 21201.
- Reconstruction of the roadway segment at the east junction of US-281 with N-12 would consist of asphaltic concrete for the new roadway and cutting standard ditches to convey the runoff from roadway.
- Temporary road for traffic handling at the reconstruction segment.
• The scope of work at one culvert site would be extended on this project.
• As-built plans indicate that existing culvert ends are outside of the lateral obstacle clear zone. One culvert pipe would be replaced and a concrete box culvert would be extended in the segment of the project that is being reconstructed.
• Remove and replace guardrail with grading inside the hinge point.
• The existing asphalt would be milled prior to resurfacing for the 3R segments.
• The existing asphalt would be removed for the reconstruction segment of the project and replaced with asphaltic concrete.
• Asphalt patching operations would be performed prior to resurfacing for the 3R segments.
• The deck on bridge S281 21201 would be repaired prior to resurfacing with an asphalt membrane. The deck rails and a portion of the underside of the deck at the edge would be sealed and the piling would be painted 1 foot below grade.
• There are surfaced drives and intersections within the project limits. Rock or gravel would be placed behind driveways and intersections as appropriate to match the new asphalt.
• Surfacing would be placed under the guardrail.
• Rumble strips would be included with the surfaced shoulder.
• The existing earth shoulders would be brought up to match the new asphalt.
• Project surveying and staking would be required.
• Areas disturbed during construction would be stabilized utilizing methods of erosion control as shown in the Storm Water Pollution Prevention Plan (SWPPP).
• Permanent pavement markings would be applied to all new surfacing.
• Temporary surfacing and widening would be required to maintain traffic.
• Right-of-way would be needed on the project.
• Special ditches would be constructed.
• Access to adjacent properties would be maintained during construction but may be limited at times due to phasing requirements.
• This project would be constructed under traffic with lane closures controlled with approved temporary traffic control.

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

N/A

Action is identified in the Current STIP Date:	Subsequent Phase:	Estimated Cost *($)*:
9/9/2016	Construction	$3,996,000

If the action qualifies for (c)(23), identify the federal portion ($): $3,009,000

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

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

Right of Way and Property Impacts

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

[X] 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) [X] No (2)

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

Land required for ROW outside of the village of Spencer limits is used for agriculture (crop and ranch/pasture land). No ROW would be acquired within the village of Spencer.

1.4 Estimated Acres of Permanent ROW/Easements: 0.10

1.5 Estimated Acres of Temporary ROW/Easements 0.00

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

[ ] Yes (3) [X] No (2) [ ] N/A

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

[ ] Yes (2) [X] No (1) [ ] N/A

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

[ ] Yes (1) [ ] No (1) [X] N/A

Other Non-Threshold Property Impacts

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

☐ Yes ☒ No

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

☐ Yes ☒ No ☐ Unknown

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

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

☐ Yes ☒ No

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

☒ Yes ☐ No

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

☐ Yes ☒ No ☐ N/A

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

The NRCS-CPA-106 (Farmland Conversion Impact Rating For Corridor Type Projects) form shows that the Part VI section assessment point total is 57. The NRCS-CPA-106 form is based on a point system that has 160 points set as the minimum number limit for “Total Points” that triggers additional in-depth site reviews. The NRCS evaluation portion Part V is on a scale of 0 to 100 points. That means that the Federal Agency Part VI “Total Site Assessment Points” must be at least 60 to even warrant the possibility of reaching the 160 “Total Points” level of concern. In the case with this project, the highest possible "Total Points” that could be reached would only be 157. No further coordination would be required.

4.7 Describe Mitigation for Above Non-Threshold Resources:

Utility relocation or replacement is not anticipated for the project. If utility relocation or replacement is required in a later phase of the project, a re-evaluation 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 re-evaluation prior to project letting. If the work is identified during construction, the project sponsor will initiate the re-evaluation prior to the commencing utility work. (NDOR Environmental, NDOR District)

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

Water and Ecological Resources:

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

☐ Yes* ☒ No ☐ N/A

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

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

☒ Yes (1) ☐ No (1) ☐ N/A

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

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

☐ Yes (3) ☒ No (1) ☐ N/A

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

☐ Yes (3) ☐ No ☒ N/A

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

The project encounters a Zone A floodplain at one location. Bridge S281 21201 crosses Crooked Creek at MM 212.01. Proposed bridge work would include deck repair prior to resurfacing with an asphalt membrane. The deck rails and a portion of the underside of the deck at the edge would be sealed and piling would be painted one foot below grade. Based on the nature of this work, floodplain impacts are not anticipated.

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

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

☒ Yes (1) ☐ No (1)

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

☐ Yes (1) ☒ No (1)

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

☐ Yes (2) ☐ No (1) ☒ N/A

7.4 Estimated Permanent Wetlands Impacts:

N/A

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

☐ Yes (2) ☐ No (1) ☒ N/A

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

☐ Yes (3) ☐ No (2) ☒ N/A

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

An on-site wetland delineation was completed on August 24, 2013. Six delineated wetlands and one other aquatic resource (Crooked Creek) were identified in the project area. Based on the impact analysis for the project, all wetlands, stream channels, or other waters would be avoided.

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

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

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

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

☒ Yes ☐ No

8.2 Does the project occur within a MS4 community?

☐ Yes ☒ No

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

[X] Yes [ ] No

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

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

The segment of Ponca Creek (NI1-10100, Beaver Creek to the Missouri River) adjacent to the project is a Category 5 impaired water for recreation (E. coli) and aquatic life (selenium).

No work would take place within Ponca Creek, and areas disturbed during construction would be stabilized using methods of erosion control as shown in the Storm Water Pollution Prevention Plan (SWPPP).

8.5 Impaired Waters, Section 402, and MS4 Mitigation:

There are Category 5 impaired waters in the project study area; best management practices (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 project's erosion control plan sheets and special provisions. (NDOR Roadside Stabilization Unit)

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 BMPs 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 for the General Construction Storm Water Permit and completion of the SWPPP responsibilities shall be filed with NDEQ. (NDOR Environmental)

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

[ ] Yes (2) [X] No (1)

NDOR PQS Determination Date:

9/16/2016

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

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

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

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

☒

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

☐ Coordination Required ☒ N/A

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

The project, as proposed, has been determined to "may affect, not likely to adversely affect" the following listed species with the implementation of conservation conditions: American Burying Beetle. The project would have "no effect" to all other state or federally listed species or their designated critical habitat.

9.8 Species Mitigation:

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

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

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

American Burying Beetle:

ABB-2 Mowing/vegetation removal and carrion (roadkill carcasses) removal must be done according to American Burying Beetle Conservation Measures Protocol and must be implemented at the following locations: Along the length of the Project in areas where soil disturbance would occur (Location of suitable habitat). This work will be conducted by either the District or the Contractor, as determined by the District during contracting.

ABB-3 Bridge deck debris will be captured and/or contained from falling onto ground and/or dry channel. If debris cannot be captured, mowing and carrion removal will be implemented according to Protocol. (Contractor)

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

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

Bald and Golden Eagles:

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

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

Human and Social Resources

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

☐ Yes (1) ☒ No (1)

10.4 Historic Property Determination

No Historic Properties Affected

NDOR PQS Determination Date:

8/22/2016

Has coordination occurred with SHPO?

☒ Yes ☐ No

SHPO Concurrence Date:

2/19/2015

Has coordination occurred with THPO?

☐ Yes ☒ No

Has coordination occurred with CLG?

☐ Yes ☒ No

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

☒ Yes (1) ☐ No (1)

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

☐ Yes (2) ☒ No (1)

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

☒ Yes ☐ N/A

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

☐ Yes ☒ N/A

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

☐ Yes (3) ☒ No (1)

NDOR PQS Determination Date:

8/22/2016

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

The HMR identified several facilities where past releases within the village of Spencer and within the hazardous materials study area. The releases were all related to leaking underground storage tanks. Only one site (R K Auto Sales and Repair) was adjacent to the project. The scope of work within the village of Spencer includes milling and filling the roadway and resurfacing drives. Based on the minimal scope of work with minor soil disturbance for resurfacing drives and the distance from the contamination to the project, there is a low potential of encountering contamination within the urban portion of the project.

The former Spencer Landfill was identified on the south side of the roadway near MM 212.90. In addition, a junkyard was identified on the north side of the roadway near MM 212.82. The scope of work in this area consists of resurfacing the roadway with minimal soil disturbance within the pre-existing roadway fill. Based on the minimal scope of work, there is a low potential of encountering contamination originating from these sites.

No superfund sites were identified within the hazardous materials study area.

11.6 Hazardous Materials Mitigation:

The Spencer Southeast project includes cleaning and painting of the bridge piles on structure S281 21201. There is potential for lead based paint to be found on the pilings. If lead-based paint is being removed in a manner that would create waste debris (i.e. sandblasting, abrasive removal, scraping), the Contractor shall remove the paint in accordance with NDOR's Standard Specification for Highway Construction Section 732 (Lead-based Paint Removal) and Title 128, Rules and Regulation Governing Hazardous Waste Management in Nebraska. Extreme caution shall be implemented to minimize the amount of potential lead based paint material or debris from falling to the watercourse below the bridge. The Contractor's implementation plan efforts shall be documented in ECOD. (Contractor)

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

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

☐ Yes (3) ☒ No (1) ☐ N/A

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

☐ Yes (3) ☒ No ☐ N/A

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

☐ Yes (3) ☒ No (1) ☐ N/A

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

☐ Yes (2) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

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

15.9 Traffic Disruption Mitigation:

This project shall be constructed under traffic with lane closures controlled by approved temporary traffic control. The project shall not result in traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 30 working days. (Contractor)

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

☐ Yes (1) ☒ No (1)

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

☐ Yes (3) ☒ No (1)

16.6 Will the action change the functionality of adjacent properties?

☐ Yes (3) ☒ No (1)

16.8 Substantial Access Disruption Mitigation:

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

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

☐ Yes (1) ☒ No (1)

NDOR Highway Civil Rights Specialist Determination Date:

9/24/2014

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

There would be no disproportionately high and adverse human health or environmental effects visited upon minority and low-income populations, as defined in US Department of Transportation (USDOT) Order 5610.2(a), because these protected populations are not present in the project area.

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

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

The areas in which this project is located are mostly English-speaking. In the areas surveyed, none of the data indicates the presence of a Limited English Proficiency (LEP) population that reaches the NDOR LEP outreach triggers of 5% or 1,000 persons. No LEP outreach is required for this project.

18.2 Public Involvement Mitigation:

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

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

☐ Yes ☒ No

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

Contract Provisions Required

20.1 Wellhead Protection Special Provisions

☐ Yes ☒ No

20.2 General Conditions for Nationwide Permit

Nationwide Permit: N/A

☐ Yes ☒ No

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

☐ Yes ☒ No

20.4 General Conservation Conditions from the Matrix PA

☒ Yes ☐ No

T&E General Conditions:

A-1 Changes in Project Scope. If there is a change in the project scope, the project limits, or environmental commitments, the NDOR Environmental Section must be contacted to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the Federal Highway Administration. (District Construction, Contractor)

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

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

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

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

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

For activities outside the project limits, the contractor should refer to the Nebraska Game and Park Commission website to determine which species ranges occur within the off-site area. The contractor should plan accordingly for any species surveys that may be required to approve the use of a borrow site, or other off-site activities. The

contractor should review Chapter 11 of the Matrix (on NDOR's website), where species survey protocol can be found, to estimate the level of effort and timing requirements for surveys.

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

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

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

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

[X]

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."*

22.1 **Additional Comments**:

10.4: The project received SHPO concurrence on 2/19/2015. After SHPO concurrence was received, the project description was updated to include the acquisition of additional ROW and the addition of 500 feet of reconstruction on Nebraska Highway N-12. A supplemental Section 106 evaluation, considering these updates, was completed on 8/22/2016.

23.1 **Project Mitigation**:

Mitigation for Above Non-Threshold Resources:
Utility relocation or replacement is not anticipated for the project. If utility relocation or replacement is required in a later phase of the project, a re-evaluation 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 re-evaluation prior to project letting. If the work is identified during construction, the project sponsor will initiate the re-evaluation prior to the commencing utility work. (NDOR Environmental, NDOR District)

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

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

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

Impaired Waters, Section 402, and MS4 Mitigation:
There are Category 5 impaired waters in the project study area; best management practices (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 project's erosion control plan sheets and special provisions. (NDOR Roadside Stabilization Unit)

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 BMPs 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 for the General Construction Storm Water Permit and completion of the SWPPP responsibilities shall be filed with NDEQ. (NDOR Environmental)

General Conservation Conditions from the Matrix PA:

A-1 Changes in Project Scope. If there is a change in the project scope, the project limits, or environmental commitments, the NDOR Environmental Section must be contacted to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the Federal Highway Administration. (District Construction, Contractor)

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

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

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

Environmental, District Construction, Contractor)

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

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

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

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

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

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

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

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

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

American Burying Beetle:

ABB-2 Mowing/vegetation removal and carrion (roadkill carcasses) removal must be done according to American Burying Beetle Conservation Measures Protocol and must be implemented at the following locations: Along the length of the Project in areas where soil disturbance would occur (Location of suitable habitat). This work will be conducted by either the District or the Contractor, as determined by the District during contracting.

ABB-3 Bridge deck debris will be captured and/or contained from falling onto ground and/or dry channel. If debris cannot be captured, mowing and carrion removal will be implemented according to Protocol. (Contractor)

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

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

Bald and Golden Eagles:

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

Hazardous Materials Mitigation:
The Spencer Southeast project includes cleaning and painting of the bridge piles on structure S281 21201. There is potential for lead based paint to be found on the pilings. If lead-based paint is being removed in a manner that would create waste debris (i.e. sandblasting, abrasive removal, scraping), the Contractor shall remove the paint in accordance with NDOR's Standard Specification for Highway Construction Section 732 (Lead-based Paint Removal) and Title 128, Rules and Regulation Governing Hazardous Waste Management in Nebraska. Extreme caution shall be implemented to minimize the amount of potential lead based paint material or debris from falling to the watercourse below the bridge. The Contractor's implementation plan efforts shall be documented in ECOD. (Contractor)

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

Traffic Disruption Mitigation:
This project shall be constructed under traffic with lane closures controlled by approved temporary traffic control. The project shall not result in traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 30 working days. (Contractor)

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

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

Additional Mitigation:
BORROW SITE:

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

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)

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

Paragraph: (c)

Activity: 23

Prepared by: Nicole Zappetillo

Organization: SRF Consulting Group, Inc.

Phone: (763) 475-0010

Email: nzappetillo@srfconsulting.com

Signature: Bret Danner for Nicole Zappetillo

Date: 8/29/2016

Reviewed by Project Sponsor:

Name: Tyler Schmidt

Organization: Nebraska Department of Roads

Title: Engineer 4

Signature: Tyler Schmidt

Date: 8/30/2016

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:

Wendy J. Austin

Digitally signed by Wendy J. Austin
DN: cn=Wendy J. Austin, o=Nebraska Dept. of Roads, ou=EDU - NEPA Specialist, email=wendy.austin@nebraska.gov, c=US
Date: 2016.09.20 16:12:24 -05'00'

Date:

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

Jon C Barber

Digitally signed by Jon Barber
Date: 2016.09.21 08:42:50 -05'00'

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: