Biological Assessment PQS Memorandum

DATE	10/29/2015
TO	Ryan Walkowiak, NEPA Project Manager
Cc	Kimberly Baker, EPU Project Manager
FROM	Melissa Marinovich, T&E Species Biologist
SUBJECT	Ord South; STP-70-4(109); CN 42575 Threatened & Endangered Species Concurrence

The biological assessment final approval on: **10/29/2015**

Threatened and Endangered Species Effect Determination:

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

☒ A "May Affect, Not Likely to Adversely Affect" determination is made for the following species/critical habitat with the conservation conditions listed below: **Northern Long-Eared Bat**.

☐ This BA required FHWA Review and Approval.

FHWA Concurrence Date:

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

USFWS Concurrence Date:

NGPC Concurrence Date:

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

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

Additional Coordination with Other Tribal or Federal Agencies:

Description of Coordination:

Bald and Golden Eagle Protection Act:

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

Migratory Bird Treaty Act:

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

Fish and Wildlife Coordination Act:

A wetland delineation was completed; however, impacts are not yet available. Based on current project design, this project will require a NPDES permit and Section 404 permit from the Corps of Engineers.

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

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

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

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

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

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

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

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

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

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

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

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

S-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)

Northern Long-Eared Bat:

NLEB-1 Tree clearing and >5-ft box-culvert removal activities will be scheduled to occur between October 1st – March 31st to avoid impacts to the northern long-eared bat roosting period. (NDOR Environmental, Construction, Contractor)

OR

NLEB-2 If tree clearing or removal of >5-ft box-culvert structures occurs during the northern long-eared bat roosting period (April 1st – September 30th), NDOR personnel will perform surveys prior to the start of these activities at the following locations: ***the 10-foot x 6-foot concrete box culvert at Sta. 900+24***. If the species is absent, work may proceed. If the species is found, NDOR Environmental Section will consult with the USFWS, NGPC, and FHWA prior to the start of construction. (NDOR Environmental, Construction, Contractor)