

Minatare US-385

Project Number: NH-26-1(172)

Control Number: 51521

Final Environmental Assessment - Errata

This Final Environmental Assessment has been prepared in accordance with provisions and requirements of 23 Code of Federal Regulations 771 and 774, relating to the implementation of the National Environmental Policy Act of 1969. The signatures below indicate verification that the content of the attached document/errata sheet accurately reflects the scope of this project.

**RICHARD W
FEDORA**

Digitally signed by RICHARD W
FEDORA
Date: 2025.05.09 10:08:54 -05'00'

for



5/9/2025

Date

A handwritten signature in black ink, appearing to read "Kyle G. Keller".

for
Project Sponsor



5/6/2025

Date

The following persons may be contacted for additional information concerning this document:

Wayne Fedora
Division Administrator
Federal Highway Administration
100 Centennial Mall North, Room 220
Lincoln, NE 68558-3803
Phone: (402) 742-8461

Kyle G. Keller, PE
Project Development Engineer
Nebraska Department of Transportation
1500 Nebraska Parkway
Lincoln, NE 68502-4759
Phone: (402) 479-4795

Federal Highway Administration

Finding of No Significant Impact

for

Project Number: NH-26-1(172)
Control Number: 51521

Minatare US-385

The Federal Highway Administration (FHWA) has determined that this project will not have any significant impact on the human environment or natural environment. This Finding of No Significant Impact (FONSI) is based on the enclosed Final Environmental Assessment, which has been independently evaluated by FHWA and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required. FHWA takes full responsibility for the accuracy, scope, and content of the attached Final Environmental Assessment.

5/9/2025

Date

**RICHARD W
FEDORA**



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FEDORA
Date: 2025.05.09 10:09:33 -05'00'

Division Administrator

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Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
ACM	Asbestos Containing Material
AST	Aboveground Storage Tanks
BMP	Best Management Practice
CIA	Community Impact Assessment
CWA	Clean Water Act of 1972
DHHS	Department of Health and Human Services
DOT	Department of Transportation
EA	Environmental Assessment
EO	Executive Order
EPA	US Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
HPM	Highway Project Manager
HSPP	Highway Salvage Paleontology Program
LEP	Limited English Proficiency
MM	Mile Marker
NDEE	Nebraska Department of Environment and Energy
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act of 1969
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NGPC	Nebraska Game and Parks Commission
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
PEM	Palustrine Emergent
PFO	Palustrine Forested
PM	Project Manager
PSS	Palustrine Scrub-Shrub
RDM	NDOT Roadway Design Manual
ROW	Right-Of-Way
SFM	Nebraska State Fire Marshal
SVE	Soil Vapor Extraction
SWPPP	Stormwater Pollution Prevention Plan

Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
US	United States
USACE	US Army Corps of Engineers
USC	United States Code
USDOT	United States Department of Transportation
USFWS	US Fish and Wildlife Service
UST	Underground Storage Tank
UWAP	Unexpected Waste Action Plan

Chapter 1 Introduction

A Draft Environmental Assessment (EA) for the above-referenced project was submitted by the Nebraska Department of Transportation (NDOT) to the Federal Highway Administration (FHWA) and was signed and approved by FHWA on October 25, 2024. The Draft EA was made available at the following locations for review for a 30-day public comment period, which began on November 5, 2024, and ended on December 6, 2024:

- NDOT Headquarters (1500 Nebraska Parkway, Lincoln, NE)
- FHWA Nebraska Division (100 Centennial Mall North, Lincoln, NE)
- NDOT District 5 Headquarters (140375 Rundell Rd, Gering, NE)
- Minatare Public Library (309 Main St., Minatare, NE)

In addition, an electronic version of the Draft EA was available for review on the NDOT website at <https://dot.nebraska.gov/projects/environment/environmental-documents/>. Resource agencies, stakeholders, and other members of the public were notified via public notice and targeted mailer of the availability of the Draft EA and the public hearing. The public notification involved mailing a postcard with a project location map to a distribution list of 272 property owners adjacent to the project location, as well as potentially interested parties. Additionally, 208 public and private agencies with potential interest in the project were included in the distribution list, including the Nebraska Trucking Association. A legal notice was placed in Nebraska Press Association (NPA) recognized newspapers, the Alliance Times-Herald on November 6, 2024, Bayard Transcript on November 6, 2024 and Scottsbluff Star-Herald on November 5, 2024. Project information was placed on NDOT's website at ndot.info/51521.

The public hearing was held at Minatare Elementary School Gymnasium at 851 7th Street in Minatare, Nebraska, on Thursday, November 21, 2024, from 5:30 p.m. to 7:30 p.m. Temporary highway signs advertising the meeting were placed near the project location. Approximately 98 people attended the public hearing, including members of the public and personnel from NDOT, FHWA, and the consultants associated with the project. The public hearing began with an open house and continued with a formal presentation and forum for recorded public input. The presentation and public forum were followed by an open house providing additional opportunity for the public to provide input. The public was encouraged to make oral or written comments, or public statements during the hearing, if they desired.

After the public hearing, comments (written, email, phone calls) were accepted on the Draft EA until December 6, 2024. NDOT received and responded to approximately 15 public comments summarized in Chapter 2, Table 2-1, and included in Appendix A of the Final EA.

This Final EA – Errata documents public comments from the public hearing and any other comments received during the 30-day review period of the Draft EA. It also identifies any changes to the project design or analysis, as described in the Draft EA, resulting from the comments received. This document, in conjunction with the October 25, 2024, Draft EA document, constitutes the completed National Environmental Policy Act (NEPA) document.

Chapter 2 Public and Agency Involvement

2.1 Public Involvement

Public hearing attendees had the opportunity to submit written comments and provide verbal public testimony. Ten public statements were given during the open forum and an additional five comments were also accepted from the public via mail, email, and phone during the comment period. The Public Involvement Summary Memo is provided in Appendix A of the Final EA.

The memo includes the public hearing notifications, the materials presented to the public, the public hearing transcript, the public and agency comments received during the public comment period, and the official response letters. The response letters were mailed on February 20, 2025.

Table 2-1 summarizes all written and verbal public comments received at the public hearing and during the public comment period, and NDOT/FHWA responses. No agency correspondence or comments were received on the Draft EA.

2.2 Agency Coordination

Coordination with the US Army Corps of Engineers (USACE) and the Nebraska Department of Environment and Energy (NDEE) has been ongoing throughout project development. Since the publication of the Draft EA, NDOT met with USACE for a pre-application December 3, 2024, to kick-off the Individual Section 404 Permit (IP) for the project and gather information/preferences from the USACE on the application contents. Notes from that meeting can be found in the project file. It is anticipated that NDOT will submit the application for an IP to the USACE in the Spring of 2025. NDOT will also submit a Section 401 Water quality certification request to NDEE. Wetland mitigation is proposed at NDOT's existing Scottsbluff wetland mitigation bank.

Table 2.1 Public and Agency Comments

#	Comment	Response Suggestion Summary
Verbal Comments from the Public Forum (Full Comment in Attached Transcript)		
1	Stakeholder encouraged others potentially impacted to contribute comments regarding property and concerns. Stated they met with the department and encouraged hearing about the negotiation process. Encouraged others to be involved in the negotiation process and review documentation before signing. Encouraged others to contact Doug Hoevet.	Appreciated input concerning the project. Thanked for thoughtful comments regarding negotiations and the right-of-way process. NDOT values input and appreciates sharing concerns. Thanked again.
2	Stakeholder thanked NDOT for work and shared contact information as a representative of Banner, Kimball, and Scottsbluff Counties.	Appreciated input concerning the project. Thanked for thoughtful comments. NDOT values input and appreciates sharing concerns. Thanked again.

3	Stakeholder shared support for the Heartland Expressway on behalf of the City of Alliance. Shared benefits of the Expressway, from economic to safety. Expressed full support of the recommendations.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.
4	Stakeholder shared perspective from Minatare Planning Commission. Stated Scottsbluff would benefit from the project. Concerned that Minatare would not benefit. Concerned about safety with speed. Concerned about pedestrians crossing to the Dollar General.	Appreciated input concerning the project. Thanked for sharing comments regarding safety and traffic control measures. Construction highway would be expected to increase safety by reducing potential collisions with opposing vehicles and passing lane violations. NDOT will consider concerns related to pedestrian crossing facilities to access the Dollar General. Contractor would maintain access for both vehicles and pedestrians during construction to Dollar General. Thank you again for your participation.
5	Stakeholder shared support for the Heartland Expressway on behalf of County of Scottsbluff. Appreciated Expressway changed in Alliance. Been working to secure funding and encourage project. Aware that project would impact property owners and if can help in anyway please let know.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.
6	Stakeholder shared concerns as homeowner and previously expressed concerns regarding impacts. Received generic letter in return. Takes pride in property and considers it one of a kind. Concerned with house being close to the road. Felt disrespected by not having concerns addressed specifically.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts. Property rights would adequate for the construction and maintenance of the project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Acquisitions conducted by paying fair market value. Right-of-way acquisition conducted in conformance with law. Thanked again.
7	Stakeholder shared support for the project as the Heartland Expressway Association. Heartland Expressway Association has been working over 30 years. Supports creating modern, safe, efficient way to move people and goods. Supports entire route for the Heartland Expressway.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.

8	Stakeholder concerned since owns property on north and south. Concerned with increased speeds and property being located closer to road. Concerned with impacts to irrigation pivots and if will be compensated for acres no longer irrigated.	Appreciated input concerning the project. Thanked for sharing concerns regarding speeds and right-of-way. New expressway speed 70 MPH for the rural sections. NDOT will review all intersections and features of the new roadway. Four-lane divided highway expected to increase safety by reducing likelihood of collision with opposing vehicles and passing lane violations. Right-of-way based on conceptual design. Impacts on right-of-way and properties would be further refined and minimized during final design. Acquisitions conducted by paying fair market value. Right-of-way acquisition conducted in conformance with law. Damages paid to the owners of all affected pivots based on estimates. Damages could include the cost to modify the pivot and any acres "dried up". If property impacted, would be contacted by a representative from NDOT's Right of Way Division. Thanked again.
9	Stakeholder shared son impacted by alternative. Shared perspective as semi driver. Concerned major accidents in Minatare at 3 rd Avenue. Semis need to slow down at intersections. Highway 26 bottleneck down to a single lane concern. Noticed same bottleneck at ethanol plant.	Appreciated input concerning the project. Thanked for sharing concerns as a semi driver. NDOT values input and appreciates sharing concerns. Reduction in lanes at Highway 26 removed with the proposed project. Would construct a four-lane divided highway throughout the proposed project area. Construction of a four-lane divided highway expected to increase safety by reducing the likelihood of collision with opposing vehicles and passing lane violations. Semis also be able to slow down in the right lane while vehicles would be able to pass on the left. Thanked again.
10	Stakeholder shared their family potentially impacted with children living near highway and pivots. Children will not lose home but will be nearer road. Concerned will not be compensated enough to move but feel have to relocate. Concerned for other in same situation.	Appreciated input concerning the project. Thanked for sharing concerns about potential impacts to your property. NDOT values input and appreciates sharing concerns. Damages paid to the owners of all affected pivots based on estimates. Damages could include the cost to modify the pivot and any acres "dried up". Property rights would be adequate for the construction and maintenance of the project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Acquisitions conducted by paying fair market value. Right-of-way acquisition conducted in conformance with law. Thanked again.

Written Comments and Phone Log		
11	Stakeholder thought should have been done years ago. Somewhat dissatisfied with project.	Appreciated input concerning the project. NDOT values input and appreciates sharing concerns. Thanked again.
12	Stakeholder represented Nine Mile Irrigation District. Concerned project could affect water delivery. Stated law is clear that any design and construction must not interfere with irrigation water supplies and diversion. Assumed NDOT would address Nine Mile's concerns in design and construction activities.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts to the Nine Mile Irrigation District. NDOT values input and appreciates sharing concerns. Scheduled meeting with directly affected irrigation districts to discuss potential impacts. Nine Mile Irrigation District had not been identified as a directly affected irrigation district so was not invited. Reached out to Nine Mile Irrigation District after receiving letter and Nine Mile Irrigation District representatives attended the meeting. Understand interest in receiving the flows from the same sources for the Nine Mile Irrigation District. Minatare Drain currently siphoned under the Nine Mile Creek, conveyed east and conveyed into Nine Mile Creek. Current alignment of the Minatare Drain conflicts with highway improvements. Conducted hydraulic analysis and determined it to be most cost effective to discharge the Minatare Drain directly into the Nine Mile Creek. Discharge from both sources would be combined immediately upstream of the bridge. Project mimics the total volume of water that the Nine Mile Irrigation District receives currently. Let know if response addresses concerns. Thanked again.
13	Requested an underpass since pastures are divided on the north and south side and possibly a new water well.	Appreciated input concerning the project. Thanked for sharing concerns regarding an underpass. NDOT values input and appreciates sharing concerns. Costs associated with underpass borne by the landowner. Will continue to work to find a solution. Thanked again.
14	Stakeholder located on Highway 26. Concerned regarding relocating driveway would make seeing traffic from the west would be difficult. Believed County Road 73 intersection should be studied. Driveway relocation would also require a lot more snow removal. Wanted driveway fenced in.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts to driveway. NDOT values input and appreciates sharing concerns. Sight distance remain same over the hill to the west of Co Rd 73 as today. Intersection of US-26 and Co Rd 73 provides adequate sight distance. Somewhat reduced sight distance available for large semi. However, with two lanes eastbound, larger trucks have ability to use the right eastbound lane to accelerate; other vehicles traveling eastbound would have the left eastbound lane. Regarding driveway, request for fencing

		discussed during the right-of-way negotiations. Thanked again.
15	Stakeholder concerned trees could be impacted and removed. Concerned relocated driveway would be where current septic tank located. Mentioned irrigation facility nearby. Does not know where septic take could be moved. Stated sound study held during time stakeholder considered quiet time of year.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts and the noise study. NDOT values input and appreciates sharing concerns. Understand complexity of impacts related to driveway relocation and nearby irrigation facilities. Will continue to evaluate alternative solutions to minimize impacts. Property rights would be adequate for the construction and maintenance of the project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Any septic systems included in the compensation. Noise studies analyze average conditions. Approach ensures study captures a variety of traffic conditions. Recognize traffic during sugar beet harvest may increase noise levels, study's methodology aligned guidelines. Although noise model does not account for Jake brake noise, acknowledge that it can contribute to additional noise and vibration. Encourage share concerns about Jake brake noise with representatives. Thanked again.

Chapter 3 Errata Sheet – Changes to the Draft EA

The following pages of the Final EA – Errata include additions and revisions to the Draft EA based on public and agency input, as well as associated design changes. The discussion below references the corresponding sections of the Draft EA. Text removed from the Draft EA is shown in ~~strikeout~~ and text added is shown in red.

3.1 Changes to the Draft EA

Several universal changes apply to the Draft EA text:

- References to "Preferred Alternative" are hereby changed to "Selected Alternative."
- References to "would" in the Preferred Alternative are hereby changed to "will," including the description of the Selected Alternative, design features, affected environment, and environmental consequences.
- In the Environmental Commitments and Mitigation chapter, all references to "would" in connection with NDOT or the Contractor's responsibility to comply with required mitigation measures are hereby changed to "will" and "shall."

The following two commitments were revised to reflect current NDOT standard mitigation language:

- DEA 4.18 Floodplains
 - DEA 4.18.4 Avoidance, Minimization, and Mitigation
 - The US-26 and L62A roadway and bridges shall be designed to adequately convey flood flows ~~along existing drainage patterns~~. Construction of the Project will have floodplain encroachments, but Project impacts shall be certified that federal, state, and local floodplain regulations are met, and a Floodplain Development Permit shall be obtained from the appropriate jurisdictions prior to construction. All conditions of the permit shall be adhered to during construction. (NDOT Environmental, Contractor)
- DEA 4.22 Fish, Wildlife, and Vegetation
 - DEA 4.22.4 Avoidance, Minimization, and Mitigation
 - To avoid impacts on fish and other aquatic organisms, an erosion control plan and a SWPPP shall be developed and implemented. In accordance with the SWPPP and the requirements in the General Construction Storm Water Permit, NDOT shall inspect all erosion and sediment control BMPs every 14 days and after every precipitation event of 0.5 inch or greater. ~~Any BMP adjustments and repairs shall occur within 7 days of the inspection to ensure that water quality is being protected to the maximum extent practicable.~~ **NDOT shall inspect all erosion and sediment control BMPs at the frequency prescribed by the Construction Storm Water General Permit.** The SWPPP shall be maintained, and discharge points shall be monitored by NDOT until the site is 70 percent revegetated. (NDOT Environmental, Contractor)

The following commitment has been added to the Transportation section of the Draft EA and will be carried forward through the final commitments.

- DEA 4.6 Transportation
 - DEA 4.6.4 Avoidance, Minimization, and Mitigation
 - **The contractor shall maintain access for both vehicles and pedestrians during the construction phase to facilitate travel across US-26 to and from Minatare to the Dollar General store located at 130910 Stonegate Rd, Minatare, NE 69356. (Contractor)**

3.2 Design Changes After Approval of the Draft EA

3.2.1 Pedestrian Crossing

Throughout the public involvement process, including a public meeting in 2022 and the public hearing in 2024, a recurring concern was raised about pedestrian crossings at US-26 in Minatare, particularly regarding access to the Dollar General on the north side of the highway.

In response, the DEA included commitments to evaluate a pedestrian crossing at this location. Following DEA approval, NDOT conducted a design investigation and determined that the project will include a wider median at US-26 and 3rd Street to accommodate a future pedestrian crossing. The wider median will be constructed as part of the current project, with continued coordination with the City and Dollar General. Once a sidewalk facility is in place, NDOT will install an official pedestrian crossing, providing a designated refuge area for pedestrians crossing the highway.

The following resources were reviewed in this Final EA as a result of the design change, and the corresponding edits to the Draft EA, including text deletions and additions, are provided below for context.

Section 4.4 of the Draft EA notes that the design would explore considerations for pedestrian access. As a result of this review, NDOT has decided to include a wider median to accommodate a future pedestrian crossing, addressing the concerns raised in the paragraph below. The following changes to the paragraph can be made to reflect this design update:

- DEA 4.4 Community Impact Assessment
 - DEA 4.4.3 Impacts of the ~~Preferred~~ **Selected** Alternative
 - Local community or seasonal events may incur minor, short-term, adverse impacts during construction activities, and moderate, long-term, beneficial impacts beyond that due to improved connectivity and cohesion resulting from a more efficient and reliable roadway. During public involvement for this project, several commenters expressed concerns about pedestrian access in Minatare, particularly regarding safe crossings to access businesses north of US-26, such as the Dollar General. ~~NDOT has indicated it would explore design considerations for pedestrian access and crossing facilities to address these concerns.~~ **NDOT has indicated it will construct a wider median near 3rd Street to accommodate a future pedestrian crossing.**

The following mitigation was included in the DEA and can now be updated to reflect the revised design.

- DEA 4.4.4 Avoidance, Minimization, and Mitigation
 - Efforts ~~would~~ **shall** be made during the final design phase to minimize necessary property acquisition and relocations, where feasible. Property rights acquisition ~~would~~ **shall** be conducted by paying fair market value for the property rights and damages that may occur. Right-of-way acquisition ~~would~~ **shall** be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.). ~~The design process will also take into consideration the community concern related to the need for pedestrian crossing facilities in the City of Minatare to maintain existing community connectivity and access to the City's only grocery store on the north side of US-26. Elements for enhancing non-motorized safety at this location would be considered and incorporated, where feasible.~~ (NDOT Design)

3.2.2 Minatare Drain

The DEA described the Minatare Drain realignment as relocating the drain to the south of US-26, with a new siphon to be constructed at Ninemile Creek. However, due to constructability considerations, the updated approach now proposes relocating the Minatare Drain to the north of the new westbound US-26 lanes. The drain will flow parallel to US-26 before discharging into Ninemile Creek on the north side of the bridge. This new alignment eliminates the need for a siphon, as the water will be discharged directly into Ninemile Creek. A hydraulic study conducted in November 2024 analyzed several alternatives, and the selected approach is the most cost-effective and constructible option. Appendix B of the Final EA illustrates the updated Minatare Drain design.

The following resources were reviewed in this Final EA as a result of the design change, and the corresponding edits to the Draft EA, including text deletions and additions, are provided below for context.

Section 3.4.2 lists the design components of the preferred alternative and includes a narrative describing it. Due to this design change, the second bullet point and the corresponding excerpt will be updated to reflect the revised design.

- DEA 3.4 Alternatives Carried Forward

- DEA 3.4.2 ~~Preferred~~ **Selected** Alternative

- Offset lanes to the north and relocate Minatare Drain to the ~~south~~ **north**
 - Full reconstruction ~~would~~ **will** be required for the urban cross section in Minatare and east of 3rd Ave, but this modification ~~would~~ **will** avoid impacts to the historic buildings and the historic district at Harry's Curve. The relocation of Minatare Drain ~~would~~ **will** require new ROW ~~and a new siphon to be constructed at Ninemile Creek~~; however, these impacts ~~would~~ **will** be minor or temporary and ~~would~~ **will** avoid long-term maintenance problems with placing an irrigation drain within the median of a 4-lane divided highway

The following paragraph describes the project's impact to the Minatare Drain and has been updated to reflect the revised design of the Minatare Drain.

- DEA 4.8 Irrigation Canals and Districts

- DEA 4.8.3 Impacts of the ~~Preferred~~ **Selected** Alternative

- The **Minatare Canal** does not cross US-26, but it does empty into the **Minatare Drain** on the north side of US-26 at MM 34.65. Minatare Drain flows along the north side of the corridor for approximately 1.0 mile, from approximately MM 34.09 to MM 35.05. ~~The Minatare Drain would be relocated to the south side of the roadway prior to crossing Ninemile Creek at MM 34.09. A new siphon structure would need to be constructed to cross under Ninemile Creek. The relocated Minatare Drain would continue along the south side of US-26 until it would re-enter the existing Minatare Drain at MM 35.05. The termination point of the Minatare Canal would be extended under the highway at MM 34.65 to empty into the Minatare Drain on the south side of the highway.~~ **The Minatare Drain will be relocated to the north of the new westbound US-26 lanes, running parallel to the highway before discharging directly into Ninemile Creek on the north side of the bridge at MM 34.70. This design eliminates the need for a new siphon structure at Nine Mile Creek.** Coordination has occurred with the Minatare Mutual Canal & Drainage District and they are in favor of relocating the Minatare Drain to the ~~south~~ **north** side of the new lanes. A formal agreement between the Minatare Mutual Canal & Drainage District and the NDOT ~~would~~ **will** be completed prior to construction.

The following paragraph describes impacts to the Minatare Canal, a historic feature connected to the Minatare Drain. While the updated design shifts the Minatare Drain's alignment to the north, this paragraph remains accurate, and the no effect determination remains appropriate.

- DEA 4.9 Historic Properties

- DEA 4.9.3 Impacts of the ~~Preferred~~ **Selected** Alternative

- The ~~preferred~~ **Selected** Alternative ~~would~~ **will** have **no effect** on the **Minatare Canal & Irrigation system**. Unlike the other two canals, this canal terminates

207 near the project corridor and the end of the canal ~~would~~ **will** be shifted north
208 where a new pipe may be added that extends to the Minatare Drain. All
209 connectivity of the canal and its connection to the larger system ~~would~~ **will** be
210 maintained.

211 The following paragraph describes impacts to the Minatare Canal, a Section 4(f) resource connected
212 to the Minatare Drain. While the updated design shifts the Minatare Drain's alignment to the north, this
213 paragraph remains accurate, and the Section 4(f) de minimis for Historic Sites remains appropriate

214 • DEA 4.12 Section 4(f) Properties

215 ○ DEA 4.12.3 Impacts of the ~~Preferred~~ **Selected** Alternative

216 ■ As part of the project, the endpoint of the Minatare Canal (US-26 MM 34.64)
217 ~~would~~ **will** be shifted slightly north, with a new pipe installation to connect to
218 the Minatare drain. All connectivity with the larger canal system ~~would~~ **will** be
219 maintained, ensuring no adverse effects on historic properties. NDOT may
220 acquire additional property rights, such as temporary or permanent
221 easements, or new ROW, but these acquisitions ~~would~~ **will** not impact the
222 canal's historic significance. Visual, noise, and vibratory effects during
223 construction ~~would~~ **will** be minimal and temporary. No long-term or cumulative
224 effects are expected, and the Minatare Canal & Irrigation Company ~~would~~ **will**
225 retain its NRHP significance under Criterion A. A Section 4(f) de minimis for
226 Historic Sites (23 CFR 774.3(b)) applies and can be found in **Appendix G**.

227 The excerpt below from the summary of impacts table in the DEA indicates the Minatare Drain would
228 be relocated to the south side of the roadway. This text in the table will be updated to reflect the
229 revised design.

230 • DEA 4.24 Summary of Impacts

231 ○ DEA Table 4.13 Summary of Impacts

232 ■

Irrigation Canals and Districts	Three (3) canal systems, the Interstate Canal, the Tri-State Canal, and the Minatare Canal cross the study area. The Preferred Selected Alternative would will impact all three irrigation canals in some capacity. The Pathfinder Irrigation District and Farmers Irrigation District agree that extending box culverts to accommodate the roadway widening is feasible. The Minatare Mutual Canal and Drainage District is in favor of relocating the Minatare Drain to the south side of the roadway north of the new westbound US-26 lanes and reconnecting the terminus of the Minatare Canal. A formal agreement between each canal's irrigation district and the Nebraska Department of Transportation would will be completed prior to construction.
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233

234 3.2.3 Project Phasing

235 The project is anticipated to be constructed in two separate packages, with a re-evaluation completed
236 for each package. This change does not affect any determinations made in the DEA.

3.3 Updated Resource Determinations

3.3.1 Environmental Justice (Resource Removed)

In compliance with recently enacted executive orders, the EA has been revised. On January 20, 2025, President Trump signed Executive Order (E.O.) 14154 – Unleashing American Energy. The E.O. revoked E.O. 14096 – Revitalizing Our Nation’s Commitment to Environmental Justice for All (April 21, 2023). Subsequently on January 21, 2025, President Trump signed E.O. 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity. This E.O. revoked E.O. 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994). As a result of E.O. 14154 and 14173, all federal environmental justice requirements are revoked and no longer applicable to the environmental review process. DEA 4.5 Environmental Justice is removed in its entirety.

• ~~DEA 4.5 Environmental Justice~~

- ~~○ Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (issued February 11, 1994) directs federal agencies to take the appropriate and necessary steps to identify and address “disproportionately high and adverse” effects of federal projects on the human health or environment of low-income and minority populations. Additionally, representatives of any low-income or minority populations in the community that may be affected by a project must be given the opportunity to be included in the impact assessment and public involvement process. Title VI of the Civil Rights Act of 1964 ensures that “no person in the United States shall, on the grounds of race, color, or national origin, be subjected to discrimination under any program or activity receiving Federal financial assistance”. Title VI prevents discrimination, whether intentional or unintentional in any program or activity receiving Federal financial assistance.~~

• ~~DEA 4.5.1 Affected Environment~~

- ~~○ An environmental justice review was completed for the Project and can be found in **Appendix D**. The environmental justice study area spans multiple block groups within Census Tracts 9525 and 9529 in Scotts Bluff and Morrill counties, Nebraska, including parts of the city of Minatare. Recent data highlights that Block Group 1 of Census Tract 9529 contains meaningfully greater percentages of minority (primarily Hispanic/Latino) and low-income populations compared to statewide figures. However, the study area does not contain Limited English Proficiency (LEP) populations that meet or exceed the NDOT thresholds for translations or specialized LEP, which are either 5% of the population or 1,000 persons for any specific language.~~

~~After review of the study area, the following businesses and agencies were identified as likely to serve a minority and/or low-income population and/or provide services:~~

- ~~• Assembly of God Church~~
- ~~• Minatare Park~~
- ~~• Minatare High School Football Field~~
- ~~• Minatare High School Track~~
- ~~• Dollar General~~

• ~~DEA 4.5.2 Impacts of the No Build Alternative~~

- ~~○ There would be no construction of the Project with the No Build Alternative. As a result, there would be no effects to minority and/or low-income populations identified in the study area.~~

●—DEA 4.5.3 Impacts of the Preferred Alternative

- Minority populations and low-income populations were identified in the Study Area. However, there are no anticipated disproportionately high and adverse human health or environmental effects to these groups, as defined in FHWA Order 6640.23A. This is because The project would be constructed under traffic with lane closures controlled by appropriate traffic control devices and practices. Additionally, the project is not expected to result in temporary or permanent adverse effects to through-traffic dependent businesses, nor would it cause substantial permanent traffic pattern changes or disruptions. Access to adjacent properties and local businesses would be maintained throughout the construction period, although access may occasionally be limited. During public involvement for this project, several commenters expressed concerns about pedestrian access in Minatare, particularly regarding safe crossings to access businesses north of US-26, such as the Dollar General. NDOT has indicated it would explore design considerations for pedestrian access and crossing facilities to address these concerns. The project would not restrict access to emergency services, and all ROW acquisitions and property relocations required would not affect the block group associated with the identified Environmental Justice population. Moreover, there would be no isolation, exclusion, or separation of minority or low-income individuals within a given community or from the broader community. Lastly, although night-time work may occur, it would be planned to minimize overall disruption to the community

●—DEA 4.5.4 Avoidance, Minimization, and Mitigation

- The contractor shall maintain access for both vehicles and pedestrians during the construction phase to facilitate travel across US-26 to and from Minatare to the Dollar General store located at 130910 Stonegate Rd, Minatare, NE 69356. (Contractor)
- The project design shall explore the creation of pedestrian refuge areas within the US-26 raised median while crossing the highway. (NDOT Design)
- NDOT shall ensure the businesses and organizations, identified in the following bullet points, are included on the distribution list for the pending project Public Hearing. (NDOT Public Involvement)
 - Assembly of God Church, located at 907 Main St, Minatare, NE 69356
 - Minatare Park, located at 909 Main St, Minatare, NE 69356
 - Minatare High School Football Field, located at 1107 7th St, Minatare, NE 69356
 - Minatare High School Track, located at 1107 7th St, Minatare, NE 69356
 - Dollar General, located at 130910 Stonegate Rd, Minatare, NE 69356

- DEA 3.19 Summary of Impacts
 - DEA Table 3.15 Summary of Impacts
 -

Environmental Justice	Minority and low-income populations were identified in the Study Area based on NDOT's Environmental Justice methodology developed in coordination with FHWA. However, there are no anticipated disproportionately high and adverse human health or environmental effects to these groups, as defined in FHWA Order 6640.23A. No translations or specialized outreach for limited English proficiency persons are required for this Project because a population with limited English proficiency was not identified for the total population affected by the Project. NDOT would provide language assistance if requested.
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3.3.2 Wetlands

Since the approval of the DEA, the impacts to wetlands and water resources have been updated to reflect changes from the USACE field review, the approved Jurisdictional Determination (JD), and design refinements. Table 3.1 in the DEA included total Wetland and Water Resource impacts, that table would be replaced with following two tables, one for Jurisdictional impacts, and another with Non-Jurisdictional Impacts. The following sections from DEA have been updated to reflect the latest information:

- DEA 4.20 Wetlands and Water Resources
 - DEA 4.20.3 Impacts of the ~~Preferred~~ **Selected** Alternative
 - The ~~Preferred~~ **Selected** Alternative would permanently affect approximately ~~13,452~~ **13,401** acres of **jurisdictional and non-jurisdictional** wetlands and approximately ~~7,253~~ **13,177** linear feet (~~1,571~~ **2,351** acres) (**both jurisdictional and non-jurisdictional**) of waterways including Ninemile Creek, Wildhorse Creek, Wildhorse ~~Creek~~ **Canyon**, Red Willow Creek, West Water Creek, Minatare Canal, Minatare Drain, Bayard Drain; other unnamed perennial, intermittent, and ephemeral channels; and several unnamed drains, canals and irrigation conveyance structures, as shown in **Table 4.8**. Construction of the ~~Preferred~~ **Selected** Alternative ~~would~~ **will** require a CWA Section 404 Individual Permit from USACE.

DEA Table 3.1 Wetland and Water Resource Impacts (Jurisdictional)

Wetland Impacts		Waterway Impacts		
Wetland Type ¹	Acreage	Waterway Type		Linear Feet / Acreage
PEMA/C	13.198 10.494	Streams	Ephemeral	239 25 / 0.04 0.002
PFOA	0.209 0.211		Intermittent	1,703 1,790 / 0.31 0.441
PSSA	0.045		Perennial	601 354 / 0.33 0.055
PEMF	1.009			
		Streams Subtotal		2,543 2,169 / 0.68 0.497
		Irrigation	Drain	4,130 2,833 / 0.856 0.676
			Canal	80 652 / 0.003 0.398
			Irrigation Conveyance	500 1,471 / 0.061 0.222
		Irrigation Subtotal		4,710 4,956 / 0.92 1.296
Total	13.452 11.759	Total		7,253 7,125 / 1.571 1.793

1 PEMA/C = palustrine emergent temporarily / seasonally flooded; PFOA = palustrine forested temporarily flooded; PSSA = palustrine scrub-shrub temporarily flooded.

Table 3.1 (Continued) Wetland and Water Resource Impacts (Non-Jurisdictional)

Wetland Impacts		Waterway Impacts		
Wetland Type ¹	Acreage	Waterway Type		Linear Feet / Acreage
PEMA/C	1.642	Streams	Ephemeral	232 / 0.005
PFOA	0		Intermittent	0/0
PSSA	0		Perennial	0/0
		Streams Subtotal		232 / 0.005
		Irrigation	Drain	0/0
			Canal	160 / 0.055
			Irrigation Conveyance	5,660 / 0.489
		Irrigation Subtotal		5,820 / 0.553
Total	1.642	Total		6,052 / 0.558

1 PEMA/C = palustrine emergent temporarily / seasonally flooded; PFOA = palustrine forested temporarily flooded; PSSA = palustrine scrub-shrub temporarily flooded.

3.3.3 Threatened and Endangered Species

The Biological Assessment for this project has been reviewed and approved by the U.S. Fish and Wildlife Service (USFWS) and the Nebraska Game and Parks Commission (NGPC) on February 12, 2025. As a result, the following changes to Section 4.21, Threatened and Endangered Species, in the DEA are captured below. The NDOT T&E PQS memo, which includes relevant findings, provided in Appendix C of the Final EA.

- DEA 4.21 Threatened and Endangered Species

- DEA 4.21.1 Affected Environment

- ~~Along the eastern edge of the project alignment, within the escarpment landscape, prairie dog colonies exist on both sides of L62A and east US-385. This area, part of the shortgrass prairie ecosystem would provide suitable habitat for both the black-footed ferret and swift fox. However, it should be noted that native populations of black-footed ferret have been extirpated from Nebraska and no known populations exist.~~

~~Waterways in the form of creeks, canals, and drainages exist throughout the project alignment. The major waterways include: Ninemile Creek, Wildhorse Drain, Wildhorse Canyon, Red Willow Creek, Minatare Drain, Tri State Canal, and Interstate Canal. These waterways have associated drainage ditches that feed the irrigated farmland throughout the corridor. Several of these waterways support wooded riparian corridors that may be suitable for the northern long-eared bat and tri-colored bat. Beyond the riparian corridors associated with waterways, wooded areas across the Project Action Area include farmsteads and windbreaks. However, most of the woodland areas along the project alignment are isolated, and are not well connected to other suitable habitat. It's likely that the northern long-eared bat and tricolored bat would utilize the larger woodland tracts associated with the riparian corridors, although either species may use any of these habitats for summer roosting and foraging activities.~~

The project area includes several active prairie dog towns, which provide suitable habitat for the black-footed ferret. Six active prairie dog towns intersect the project alignment, covering approximately 1,232 acres, and the surrounding escarpment region, between the sandhills and North Platte River valley, contains thousands of additional prairie dog acres. Prairie dog populations in this area have expanded in recent years. While the project area offers suitable habitat for black-footed ferrets, the species is not known to occur in Nebraska or within the project area.

The eastern portion of the project area, which contains active prairie dog colonies, provides a food source and shelter for the swift fox. East of the Lowline Canal along L62A, the area will be considered suitable for swift fox. West of the Lowline Canal, the study area predominantly comprises rural farmland and rangeland, with a mix of natural and semi-natural environments. Due to agricultural disturbance, the project area west of the Lowline Canal is considered marginally suitable habitat for the swift fox.

The Northern Long-Eared (NLEB) and Tricolored Bat (TCB) are forest-dependent species, specialized for living within and adjacent to forested areas. The project area is predominantly rural, with a mix of farmland, rangeland, and small pockets of natural habitats. While some riparian corridors along waterways such as Nine-mile Creek, Wildhorse Drain, Wildhorse Canyon, and Red Willow Creek contain trees, most of these areas are narrow, disconnected, and unsuitable for the species. NLEB and TCB typically use treed corridors as travel routes, but the project area's sparsely wooded corridors do not provide sufficient connections to larger forested areas for roosting or foraging. The

only potential habitat for these bats within the project alignment is near Red Willow Creek, specifically from MM 5.87 to MM 6.17, where a moderate to low connectivity to the North Platte River's wooded riparian corridor exists to the south. However, Red Willow Creek is an intermittent channel, which could pose challenges for the bats, as they require access to water. This area is also the only location along the alignment identified by NGPC within the range of NLEB.

○ DEA 4.21.3 Impacts of the Preferred ~~Selected~~ Alternative

- The USFWS has reviewed the draft biological assessment for this project and has provided "Reasonable Assurance" that their requirements can be met. Upon completion of the consultation with the USFWS, a summary of the findings will be incorporated into this document, and supporting documentation would be added to **Appendix Q**

Swift Fox

Potentially suitable habitat for Swift Fox is present, and there are historical records for this species within the Project Action Area. When reviewing the project's activities and effects, it was determined that construction activities, including the installation of fencing, could impact the species by directly harming animals, disturb breeding or foraging behaviors, and affect occupied or suitable unoccupied dens, or indirectly modifying habitat. However, with the implementation of conservation conditions listed in **Section 4.21.4**, potential impacts would be minimized; therefore, these activities may affect, but are not likely to adversely affect the species, Swift fox

Black Footed Ferret

Potentially suitable habitat for the black-footed ferret exists along the project, particularly within the prairie dog complex near the L-62A and US-385 intersection; however, there are no historical records of black-footed ferrets in the area. Given the absence of ferrets in Nebraska and that re-introductions are not planned for this site, NDOT has determined that the project may affect, but is not likely to adversely affect, the black-footed ferret or its habitat.

Northern Long-eared Bat and Tri-colored Bat

Potentially suitable habitat for northern long-eared bat and tri-colored bat is present, but there are no historic records for either species within the Project Action Area and there are no identified hibernacula or maternity roosts within 1 mile of the Preferred Alternative. Tree clearing, wood vegetation removal, and structure removal activities associated with the Preferred Alternative have the potential to impact both bat species. Based on NDOT's commitment to implement the avoidance and minimization measures listed in Section 4.21.4, the Preferred Alternative may affect, but is not likely to adversely affect, northern long-eared bat or tri-colored bat.

The USFWS and NGPC reviewed and concurred with the determinations made in the biological assessment on 2/12/2025. A summary of the findings has been incorporated into this document, and the supporting documentation can be found in Appendix C.

Swift Fox

Potentially suitable habitat for swift fox is present within the project area, and

historical records indicate the species has been documented in the vicinity. The expansion of the roadway from a two-lane highway to a four-lane highway may result in habitat fragmentation and modification of connectivity, potentially impacting swift fox movement, reducing vantage points, and leading to habitat loss. Additionally, these changes could increase the risk of direct mortality due to further fragmentation. Construction activities, including fencing installation, could also harm individuals, disturb breeding or foraging behaviors, and affect occupied or suitable unoccupied dens. However, with the implementation of conservation measures (**Section 4.21.4**), including installing escape dens to reduce mortality from predation, incorporating a wide grassy median to maintain wildlife permeability, conducting pre-construction surveys for swift fox, implementing a vegetative barrier to deter prairie dogs from establishing within the NDOT ROW, and developing a prairie dog management plan for District 5, potential impacts will be minimized. Given these measures and the minimal impacts to existing prairie dog colonies, the project *May Affect, but is Not Likely to Adversely Affect* the swift fox or their habitat.

Black Footed Ferret

Potentially suitable habitat for the black-footed ferret exists within the project area, particularly near the intersection of L-62A and US-385, where active prairie dog colonies are present. However, there are no historical records of black-footed ferrets in the area, and the species is not known to occur in Nebraska. The project is expected to result in minimal loss of prairie dog towns, and a vegetative barrier will be implemented to assist in their management. Furthermore, project lighting will follow specifications designed to reduce environmental impacts. Given these factors, the project *May Affect, but is Not Likely to Adversely Affect* the black-footed ferret or its habitat.

Northern Long-eared Bat and Tri-colored Bat

Potentially suitable habitat for the NLEB and TCB is present within the project area, with the only identified suitable habitat occurring near Red Willow Creek. The highway expansion at this location will occur to the north of the existing highway, resulting in approximately 0.48 acres of tree removal on the north side and approximately 0.07 acres of tree removal south of L-62A for the installation of a new concrete box culvert. While this tree removal may reduce the ability of these species to travel between forested areas, the small forested area to the north is not expected to be critical for foraging or roosting, as it lacks connectivity to larger tracts of forest and transitions into arid escarpments. To further reduce potential impacts, NDOT will implement a time-of-year restriction, avoiding tree clearing during the maternity roosting season (**Section 4.21.4**). Considering the scope of the project, the location and amount of suitable habitat within the project's proximity, and the implementation of conservation conditions, NDOT concludes that the project *May Affect, but is Not Likely to Adversely Affect* the NLEB or TCB or their habitat.

Mitigation measures for **S-1 Fencing** and **S-2 Platte River Depletions** will be removed from the documentation:

- DEA 4.21.4 Avoidance, Minimization, and Mitigation

- ~~**S-1 Fencing.** When project-related fence construction/relocation work is required to be done prior to the start of construction, and if the fence work occurs outside urban or cropland areas that are not within swift fox range, then fencing can be installed/relocated at any time using the following criteria:~~

- ~~• a. the fencing is temporary in nature and/or consists of only hand-driven posts~~
- ~~• b. the work does not compact the soils (ex. through the use of heavy equipment) or cause soil disturbance beyond the driving of posts~~

~~If the fencing work cannot meet these criteria, then NDOT Right-of-Way Division shall coordinate with NDOT Environmental Section prior to the completion of Right-of-way negotiations.~~

~~**S-2 Platte River Depletions** To the maximum extent practical, efforts will be made to design the project and select borrow sites to prevent depletions to the Platte River. If there is any potential to create a depletion, NDOT (during design) and the Contractor (for borrow sites) shall follow the current Platte River depletion protocols for coordination, minimization, and mitigation. In general, the following are considered de minimis depletions, but may still require agency coordination; a project which: a) creates an annual depletion less than 0.1 acre feet, b) creates a detention basin that detains water for less than 72 hours, c) diverted water that will be returned to its natural basin within 30 days, or d) creates a one-time depletion of less than 10 acre feet. (NDOT Roadway Design, Contractor)~~

Additional mitigation measures for the **swift fox** will be included in the documentation, which now includes SF-A, SF-B, SF-C, SF-D, and SF-E. Please note that the mitigation measure previously labeled SF-A has been renamed SF-B.

- **SF-A:** Soil-disturbing activities along L62A at the prairie dog colonies will not occur during the swift fox pup-rearing season (April 1st to August 31st). (Contractor, Construction)

SF-A SF-B: NDOT shall coordinate with the NGPC regarding the installation of artificial escape dens in suitable locations along the L62A corridor. Swift Fox Escape Den Installation protocols shall be utilized. (NDOT Environmental, NDOT Design)

SF-C: NDOT shall establish a 3' vegetative barrier within the ROW of L62A east of the Lowline canal to deter prairie dogs from establishing within the ROW. The vegetative barrier will be established by following the seeding and management outlined in the erosion control plan, (Utilizing the Type A-Seed Mixture for the Panhandle as outlined in the NDOT Roadside Vegetation Establishment and Management Manual (2024)). A temporary silt fence will be established at the edge of the NDOT ROW in locations bordering prairie dog towns to deter prairie dog establishment in the ROW while the vegetative barrier is being established. The silt fence will be removed once vegetation reaches 3' in height or two growing seasons have passed and the vegetative barrier has not reached sufficient height, NDOT will coordinate with NGPC and USFWS. (Contractor, NDOT Environmental, District)

SF-D NDOT will coordinate with the NGPC and USFWS to develop a management plan for Prairie Dog in district 5. (NDOT Environmental, District)

544 **SF-E** District maintenance staff will only mow the first 16' of the ROW for
545 maintenance activities to protect the vegetative barrier for prairie dog
546 deterrence. (*District*).

547 Mitigation measures for the **Northern long-eared Bat / Tri-colored Bat** have been updated in the
548 approved biological assessment. The following mitigation will be included in the documentation.

549 ~~■ **NLEB / TCB -3:** All phases and aspects of the project shall be modified, to the~~
550 ~~extent practicable, to avoid tree removal in excess of what is required to~~
551 ~~implement the project safely. Tree removal shall be limited to removals~~
552 ~~specified in the project plans, which will be clearly marked in the field. (Design,~~
553 ~~Contractor)~~

554 ~~**NLEB / TCB CM-2:** No removal of suitable trees or roosting structures~~
555 ~~between May 15 and July 31 (maternity roosting season) (Contractor)~~

556 **NLEB / TCB CM-5** Culvert maintenance and/or removal will not occur between
557 May 15 – July 31 (maternity roosting season), to avoid impacts to northern
558 long-eared bats. (*District, Contractor*)

559 **OR**

560 **NLEB / TCB CM-6** If culvert maintenance and/or removal MUST occur during
561 the northern long-eared bat maternity roosting season (May 15 – July 31),
562 before work may begin, a qualified biologist or trained personnel must first
563 conduct a Culvert Assessment per USFWS's Range-wide Indiana Bat &
564 Northern Long-Eared Bat Survey Guidelines to determine if bat species are
565 present. If bat presence is detected, then FURTHER CONSULTATION is
566 required with Nebraska Game and Parks Commission Environmental Review
567 staff before any work may begin (*District, Contractor*)

568 **AND**

569 **NLEB / TCB - 1:** Bridge deck joint replacement over the bridge deck, and bridge
570 deck/superstructure removal activities will not occur between May 15th - July
571 31st to avoid impacts to the northern long-eared bat maternity roosting period.
572 (*District, Contractor*)

573 **OR**

574 **NLEB / TCB - 2:** If bridge deck joint replacement over the bridge deck, or
575 removal of bridge or bridge superstructure occurs during the northern long-
576 eared bat maternity roosting period (May 15th – July 31st), qualified
577 biologists/trained personnel will perform bat roosting surveys prior to the start
578 of these activities at the following locations: **All locations of bridge work**
579 (location of suitable roosting habitat). If bat species are found, Qualified
580 Biologist and Project Manager will immediately notify USFWS
581 (nebraskaes@fws.gov) and NGPC (Shaun Dunn 402-471-5419) for additional
582 consultation prior to the start of construction. (*District, Contractor*)

583 **AND**

584 **NLEB / TCB -3:** All phases and aspects of the project shall be modified, to the
585 extent practicable, to avoid tree removal in excess of what is required to
586 implement the project safely. Tree removal shall be limited to removals
587 specified in the project plans, which will be clearly marked in the field. (*Design,*
588 *Contractor*)

NLEB / TCB CM-2: No removal of suitable trees or roosting structures between May 15 and July 31 (maternity roosting season) (*Contractor*)

Mitigation measures for the **Bald and Golden Eagle** have been added in the approved biological assessment. The following mitigation will be included in the documentation.

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

Suitable **Golden 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 golden eagles are nesting in the area, consultation with NGPC and USFWS will be required prior to beginning construction activities. (NDOT Environmental, Contractor)

Chapter 4 Commitments and Mitigation

The following mitigation measures were presented in the Draft EA and are listed here in their final version. These mitigation measures will be implemented by NDOT by incorporating them into either the project construction documents or the final design. These mitigation measures supersede any of those identified in the Draft EA. The following mitigation measures and commitments are not subject to modification without the prior written approval of FHWA. Each mitigation measure is presented in association with the resource to which it most directly applies; although some of the listed measures apply to multiple resources, they are listed only under the resource that they most directly benefit. In addition to the mitigation measures listed herein, NDOT Standard Specifications will be applied to the Selected Alternative and will result in impact avoidance and minimization on resources.

4.2 Agriculture and Farmland

NDOT shall compensate the landowners and/or current leaseholders for impacts on the center pivot irrigation systems. Compensation shall include, but not be limited to, relocating the center pivot system, modifying the center pivot equipment, and/or relocating the well supplying the center pivot system. NDOT shall coordinate with the landowner during the ROW process. (NDOT)

4.3 Right-of-Way and Relocations

ROW acquisitions, types, and amounts are based on conceptual design. Impacts on ROW and properties shall be further refined and minimized to the extent possible during the final design phase of the Project. (NDOT)

Access to adjacent properties shall be maintained throughout construction. Access restrictions shall be coordinated with the property owner prior to the restriction. (NDOT, Contractor)

Property rights acquisition shall be conducted by paying fair market value for the property rights and damages that may occur. ROW acquisition shall be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.). (NDOT)

4.4 Community Cohesion and Community Facilities

The design and construction phases of the project shall incorporate and follow the NDOT Roadway Design Manual's standards related to work zone traffic control plans, NDOT's Standard Specifications for Highway Construction, and adherence to all federal, state, and local laws and regulations.

Construction activities shall be coordinated with annual local events in an effort to minimize traffic delays and travel pattern disruptions, where possible. (NDOT Design)

Efforts shall be made during the design phase to minimize necessary property acquisition and relocations, where feasible. Property rights acquisition shall be conducted by paying fair market value for the property rights and damages that may occur. Right-of-way acquisition shall be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.). (NDOT Design)

4.6 Transportation

For county roadway realignments, county roads adjacent to the closed roadway shall not be closed at the same time and shall remain open to traffic. (NDOT, Contractor)

Access to properties may be limited at times throughout construction but shall remain open. The Contractor shall coordinate with property owners to maintain access to fields and residences. (Contractor)

Any contractor involved in the project shall file a 7460-1 Form with the FAA for all structures or equipment over 200' tall, or that break a 100:1 slope from a public-use airport. This includes any trucks, cranes, or any equipment used on the project. A 7460-1 form shall need to be filed for each new structure that may be part of this project, like bridges or overpasses or if an existing structure's elevation would change. (Contractor)

The contractor shall maintain access for both vehicles and pedestrians during the construction phase to facilitate travel across US-26 to and from Minatare to the Dollar General store located at 130910 Stonegate Rd, Minatare, NE 69356. (Contractor)

4.7 Utilities

Impacts on utilities are not avoidable because several utilities are located near or within the existing ROW. The Contractor should follow the guidelines of NDOT's Utility Accommodation Policy (NDOT 2024). It is NDOT's responsibility to notify utility companies of the need for relocation during the design stage of the Project. The NDOT Utility Section shall coordinate utility agreements with the utility

companies prior to construction. It is the Contractor's responsibility to notify utility companies of relocation needs during the construction phase of the Project for utilities that were not relocated before construction. (NDOT, Utility Provider(s))

If utility relocation or replacement is required in a later phase of the Project, a re-evaluation shall 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, NDOT shall initiate the re-evaluation prior to Project letting. If the work is identified during construction, NDOT shall initiate the re-evaluation prior to commencing utility work. (NDOT Environmental, NDOT District)

If either one of the above two conditions does not apply, later relocation or replacement of utilities shall be coordinated through NDOT and the Contractor per NDOT'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. (NDOT District, Utility Provider(s))

4.9 Historic Properties

Five Sensitive Areas have been identified along this project. These Sensitive Area(s) shall be indicated on project plans. (Design)

Five Sensitive Areas have been identified along this project.

- 1) Harry's Curve, US-26, MM 33.19 – 33.38, north side (STA 113+27 R to 123+00 L). No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur beyond the temporary easement. (Contractor)
- 2) Sod House, US-26, MM 1.19 – 1.21, south side & an area along CR 77 (see stationing) (STA 635+00 – 636+21 R & STA 5601+00 – 5602+65 R). No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur beyond the newly acquired ROW. (Contractor)
- 3) Tri-State Canal (3 locations), L62A, MM 5.37, north & south side (STA 854+77 L&R); L62A, MM 5.81, north & south side (STA 879+74 L&R); L62A, MM 6.13, north & south side (STA 894+36 L&R). No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur beyond the temporary or permanent easement. (Contractor)
- 4) Interstate Canal, L62A, MM 7.43, north & south side (STA 963+52 L&R). No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur beyond the temporary or permanent easement. (Contractor)
- 5) Minatare Canal, US-26, MM 34.64, north side (STA 191+57 R). No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur beyond the temporary or permanent easement required to move the end point of the canal north. (Contractor)

4.10 Paleontology

For paleontological resources, additional field surveys and test excavations shall be conducted prior to construction by the HSPP. The HSPP shall be informed throughout the planning process with regard to alignment choice, grading details, and borrow pit locations. On-site monitoring and the fossil mitigation plan shall be implemented throughout all phases of construction. (NDOT, Contractor)

In the event of a discovery of paleontological materials during construction, NDOT Standard Specifications for Highway Construction, Subsection 107.10 (2017, pg. 64) states, "The Engineer should be immediately notified when any such articles are uncovered, and the Contractor should immediately suspend operations in the area involved until such time that arrangements are made for their removal and preservation." (Contractor)

4.12 Section 4(f) Properties

The contractor shall not complete work, stage, stockpile or store materials within the boundaries of the following Section 4(f) properties: Minatare Elementary School, Minatare High School, and Minatare City Park. If it is determined that temporary or permanent right-of-way is required from or access is restricted to a Section 4(f) property, coordination shall occur with NDOT Environmental. (Contractor)

The following properties shall be marked on the project plans as sensitive areas: Minatare Elementary School, Minatare High School, and Minatare City Park. (Design)

4.14 Hazardous Materials

The following commitments are needed for the selected alternative. It should be noted that the specific "Contractor Commitments" are those that will be included in the contract documents and provide more basic information for field personnel. All commitments below are included in Chapter 6.

Unexpected Waste:

If contaminated soils/groundwater or unexpected wastes are discovered, The Contractor shall stop all work within the immediate area. The Contractor shall secure the area of the discovery and notify the Highway Project Manager (HPM). The Contractor shall not re-enter the discovery area until notified by the HPM. At the time of discovery, the HPM and Contractor shall utilize the NDOT Unexpected Waste Action Plan (UWAP) to coordinate appropriate actions. The actions to be carried out by the HPM are (but not limited to): verification that the Contractor has suspended construction activities in the area of the discovery, contact the Roadside Development & Compliance Unit (RDCU) hazmat representative and make an entry into AASHTOware Project that an unexpected waste discovery was made. The HPM shall then utilize the UWAP Notification Form (NDOT Form 691) to properly document the extent and type of waste. The HPM will ensure that proper disposal of the waste and any required health and safety mitigation is implemented by the Contractor. The Contractor is required by NDOT's Standard Specification section 107.11 (Hazardous Material Discoveries) to handle and dispose of regulated material in accordance with applicable laws.

Contractor Commitment: If contaminated soils/groundwater or unexpected wastes are discovered, The Contractor shall stop all work within the immediate area. The Contractor shall limit access to authorized personnel within the area of the discovery and notify the Highway Project Manager (HPM). The Contractor shall not re-enter the discovery area until notified by the HPM. At the time of discovery, the HPM and Contractor shall utilize the NDOT Unexpected Waste Action Plan (UWAP) to coordinate appropriate actions. The Contractor is required by NDOT's Standard Specification section 107.11 (Hazardous Material Discoveries) to handle and dispose of regulated material in accordance with applicable laws.

Encountering Contamination:

There is a medium potential for petroleum contamination to be present in the soils/groundwater at project Minatare-US-385 (CN 51521), as well as at least one confirmed UST that will require excavation. Two locations identified below will have a medium potential for contamination to impact the project:

Minatare Plaza: North side of US-26 from MM 33.30 to 33.40. Potential to encounter existing petroleum contamination in active monitoring area during grading.

Former Tony's Service Station: NE corner of US-26 and L62A intersection from L62A MM 0.15 to 0.20. Existence of at least one underground storage tank in the SW corner of this parcel was confirmed with ground penetrating radar. Potential for a second tank exists adjacent to the north of the first tank.

The Contractor shall be aware of the possibility of encountering contamination in this area during construction activities and look for signs such as odor and/or discolored soil. The Highway Project Manager shall be notified seven days prior to when construction is expected to begin in the suspect area. If contamination is discovered, all work in the immediate area shall be stopped until the Nebraska Department of Environment & Energy (NDEE) and NDOT RDCU hazmat representative are notified, and a materials management plan has been developed and approved. The Contractor shall manage the waste in accordance with Title 128, Nebraska Hazardous Waste Regulations and/or Title 132 Integrated Solid Waste Management Regulations. The Contractor is required by Standard Specification Section 107, Legal Relations and Responsibilities To The Public, to handle and dispose of contaminated material in accordance with applicable laws.

A licensed contractor will be required to remove the tank/s at the former Tony's Service Station location. The licensed contractor shall provide Closure Assessment Report (CAR) services, including excavation pit field samples, for submittal to the Nebraska State Fire Marshal. The CAR will be conducted in accordance with NDEE regulations detailed in Petroleum Underground Storage Tanks: Closure Assessment Sample Collection and Over-Excavation, Revised September 2022.

Remediation of hazardous materials at the Minatare Plaza located between MM 33.30 and 33.40 on US-26, if any, will be paid for as extra work according to Subsection 104.02, paragraph 5 and Subsection 109.05 of the Standard Specifications. Removal of the tank(s) at the former Tony's Service Station located at MM 0.18 on L62A will be paid for as "Clear Tract" in accordance with the Special Provision titled "Clear Tract at MM 0.18 on L62A".

Monitoring/Remediation Wells:

There are one or more monitoring wells and/or soil vapor extraction (SVE) wells at Minatare Plaza located on US-26 between MM 33.30 to 33.40 at the Minatare Plaza facility. The monitoring/SVE wells will be located and marked by the Highway Project Manager (HPM) in the field. Construction activities near the wells will be performed as to avoid damage to the wells. In the event that a monitoring/SVE well is damaged, the Contractor shall notify the HPM immediately. The NDOT HPM will coordinate with the NDOT RDCU hazmat representative for guidance regarding remediation of the damage. The Contractor shall remediate any damaged monitoring/SVE wells as directed by the Engineer. The HPM will upload documentation of the Contractor's remediation to OnBase (NDOT Dist. Environmental, description: monitoring well remediation).

Contractor Commitment: The Contractor shall avoid damaging any monitoring or SVE well as marked in plans or in the field. In the event that a monitoring well/SVE well is damaged, the Contractor shall stop work at that location and notify the Highway Project Manager immediately. The Contractor shall comply with the Engineer's direction concerning remediation of damaged monitoring/SVE wells and shall not continue construction activities in the vicinity of the damaged well until notified by the Engineer.

Asbestos:

The Contractor shall survey any building structures acquired for demolition for the presence or absence of asbestos containing material (ACM). The inspector must be certified in accordance with the Nebraska Department of Health and Human Services (DHHS) Nebraska Asbestos Control Program Regulations, Title 178. A list of Licensed Asbestos Inspectors can be found at: <http://dhhs.ne.gov/Pages/Asbestos.aspx>. Documentation of the survey shall be provided to the Highway Project Manager by the Contractor prior to structure demolition. The Highway Project Manager will record survey documentation in OnBase.

If ACM is found to be present, removal and disposal of the ACM shall be in accordance with DHHS Nebraska Asbestos Control Program Regulations, Title 178 and will occur prior to any bridge demolition or renovation activities. The Contractor shall develop a removal and disposal plan in coordination with a licensed asbestos removal contractor and NDOT. A list of licensed asbestos removal contractors can be found at: <http://dhhs.ne.gov/Pages/Asbestos.aspx>

Contractor Commitment: The Contractor shall survey any building structures acquired for demolition for the presence or absence of asbestos containing material (ACM). The Contractor's inspector must be certified in accordance with the Nebraska Department of Health and Human Services (DHHS) Nebraska Asbestos Control Program Regulations, Title 178. If ACM is found to be present, the Contractor shall develop a removal and disposal plan in coordination with a licensed asbestos removal contractor.

Building Removal:

(Standard Specifications for Highway Construction 2017 Section 203.01; paragraph 4.)

a. It shall be the responsibility of the Contractor to determine if any of the buildings to be removed have materials containing asbestos. If it is determined that some or all of the buildings contain asbestos, the asbestos shall be removed prior to the building removal. All asbestos shall be removed in accordance with State of Nebraska Health and Human Services Department, Environmental Protection Agency, and the Nebraska Department of Environment and Energy regulations. A Contractor trained and certified in asbestos handling shall perform all asbestos removal and handling operations.

b. The work of determining if any of the buildings contain asbestos shall be considered subsidiary to the item "Remove Building at ____."

c. The work of asbestos abatement will be paid for as "Extra Work" as described in Subsection 104.04.

Contractor Commitment: The Contractor shall submit a written National Emissions Standards for Hazardous Air Pollutants (NESHAP) notification to the Nebraska Department of Environment and Energy (NDEE) and a Department of Health and Human Services (DHHS) Form 5 at least 10 business days prior to demolition/renovation. The 10-day clock starts when the NESHAP and Form 5 notifications are post marked, hand delivered, or picked up by a commercial delivery service. Faxing documents is prohibited. The Contractor shall provide the Highway Project Manager copies of the notifications and their submittal date prior to demolition/renovation activities. The Highway Project Manager will upload NDEE NESHAP and DHHS Form 5 documentation to OnBase.

Toxic Metal-Based Paint/Lead-Based Paint:

There is potential for lead or toxic metal-based paint to be found on the structures to be demolished or repaired. Regardless of toxicity, extreme caution shall be taken to minimize the amount of painted material or debris from causing or threatening to cause pollution of the air, land, and waters of the State. The Contractor shall create an implementation plan to dispose of paint waste in accordance with NDOT's Standard Specification for Highway Construction Section 732 (Lead-based Paint

Removal) and Title 128 Nebraska Hazardous Waste Regulations. The Contractors implementation plan shall be provided to the HPM and documented in OnBase.

4.16 Noise

Exhaust and muffler systems on construction equipment shall be in good working order. Construction equipment shall be maintained on a regular basis, and equipment may be subject to inspection by the construction project manager to ensure maintenance. (Contractor, NDOT Project Manager [PM])

The Contractor shall locate noise-emitting stationary equipment (for example, compressors, and generators) to avoid unnecessary impacts on residents and businesses. (Contractor, NDOT PM)

Noise impacts are based on conceptual design. Additional design refinement and coordination regarding noise abatement shall occur during the final design stages per NDOT's Noise Analysis and Abatement Policy. (NDOT Environmental)

4.18 Floodplains

The US-26 and L62A roadway and bridges shall be designed to adequately convey flood flows. Construction of the Project will have floodplain encroachments, but Project impacts shall be certified that federal, state, and local floodplain regulations are met, and a Floodplain Development Permit shall be obtained from the appropriate jurisdictions prior to construction. All conditions of the permit shall be adhered to during construction. (NDOT Environmental, Contractor)

4.19 Water Quality

NDOT shall coordinate with the owners of wells that will be directly impacted by the Project during the ROW process. If the well is actively used, NDOT shall have the well relocated and replaced. If a well is not currently in use, the Contractor shall decommission the well, as needed, during construction in accordance with Nebraska Administrative Code Title 178, Chapter 13. (NDOT Right-of- Way, Contractor)

A licensed Water Well Contractor shall decommission any wells in accordance with the Department of Health and Human Services (DHHS) regulations under Nebraska Administrative Code Title 178, Water Well Standards, Chapter 12, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards (Nebraska DHHS 2005). (NDOT, Contractor)

This project requires a Construction Stormwater Permit and that a Storm Water Pollution Prevention Plan (SWPPP) be maintained for the project. The Contractor shall understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with activity from the construction site. For reference, the general permit is posted on the Department's website. (Contractor)

Manure has not been specified for this project, however, existing soil material from former feedlot pens may be encountered during grading operations. Stockpiled material from the locations identified in the Special Provision will be utilized on the project as prescribed by the Manure Topdressing Special Provision. (NDOT Roadway Design)

4.20 Wetlands and Water Resources

All wetlands within the Project limits that are not permitted for impact shall be marked on the Project plans and the E Sheet as avoidance areas. (NDOT Roadway Design, NDOT Environmental)

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)

The Project will require an Individual Permit for impacts to waters of the US. The Contractor shall adhere to all permit conditions, including regional and general conditions, during construction. All wetlands/waters within the project area that are not permitted for impacts shall be marked on the project plan aerial sheets for the Contractor as avoidance areas. (NDOT Design, NDOT Environmental, Contractor)

Avoidance and minimization measures shall be further refined during the preliminary and final design processes as appropriate. The design shall comply with the policy of Executive Order 11990 (42 FR 26961) regarding impacts on wetlands. Additionally, any project using federal transportation funds must adhere to the net gain of wetland policy (23 CFR 777.11(g)), where there shall be no net loss of wetlands across the program in a given year. (NDOT Roadway Design, NDOT Environmental)

4.21 Threatened and Endangered Species

A-1 Changes in Project Scope. If there is a change in the project scope, the project limits, or environmental commitments, the Highway Project Manager shall coordinate with the NDOT Environmental Section to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the NDOT Environmental Section. (*District Construction*)

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

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

A-4 T&E Species. If federal or state listed species are observed during construction, the Highway Project Manager will contact NDOT Environmental Section to determine if additional species conservation conditions will be required prior to continuing project construction activities. Contact NDOT Environmental for a reference of federal and state listed species. Coordination with the USFWS and NGPC may be required depending on the species identified and construction activities. (*NDOT 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 the T&E Matrix agreement (on NDOT's

website), where species survey protocols 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 contractor must receive notice of acceptance from NDOT environmental, prior to starting the above listed project activities. These project activities cannot adversely affect state and/or federally listed species or designated critical habitat. *(NDOT 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 carried out by NDOT Maintenance or others after construction is complete, but prior to project close-out, shall adhere to any standard conservation conditions for species designated for the project limits during construction. *(NDOT 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 or 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, any seed mix requirements identified during resource agency consultations shall be used for the project. *(NDOT Environmental)*

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

S-5 Species Surveys. If species surveys are required during the construction phase of the project (including pre-construction surveys), results will be sent by NDOT Environmental Section to the USFWS, NGPC, and if applicable the USACE. *(NDOT Environmental, District Construction)*

S-6 Permanent LED Lighting (NDOT Design Commitment): Only LED roadway luminaires listed on the NDOT "Nebraska Qualified Material Vendors List" will be considered for use on Nebraska highway lighting projects. Proposed changes to the following LED lighting requirements will require resource agency (USFWS and/or NGPC) coordination and approval prior to installation:

- Nominal CCT – 3000 +/- 300 K
- BUG Ratings – Maximum nominal Backlight (N/A), Uplight (0), Glare (N/A)
- Lumen Output – N/A

Any proposed changes to the listed requirement(s) must be presented to the NDOT Environmental Section for Agency Coordination and approval.

Black-footed Ferret:

No Conservation Conditions are required for the Black-footed Ferret.

Northern Long-eared Bat / Tri-Colored Bat

NLEB / TCB CM-5 Culvert maintenance and/or removal will not occur between May 15 – July 31 (maternity roosting season), to avoid impacts to northern long-eared bats. (*District, Contractor*)

OR

NLEB / TCB CM-6 If culvert maintenance and/or removal MUST occur during the northern long-eared bat maternity roosting season (May 15 – July 31), before work may begin, a qualified biologist or trained personnel must first conduct a Culvert Assessment per USFWS's Range-wide Indiana Bat & Northern Long-Eared Bat Survey Guidelines to determine if bat species are present. If bat presence is detected, then FURTHER CONSULTATION is required with Nebraska Game and Parks Commission Environmental Review staff before any work may begin (*District, Contractor*)

AND

NLEB / TCB - 1: Bridge deck joint replacement over the bridge deck, and bridge deck/superstructure removal activities will not occur between May 15th - July 31st to avoid impacts to the northern long-eared bat maternity roosting period. (*District, Contractor*)

OR

NLEB / TCB - 2: If bridge deck joint replacement over the bridge deck, or removal of bridge or bridge superstructure occurs during the northern long-eared bat maternity roosting period (May 15th – July 31st), qualified biologists/trained personnel will perform bat roosting surveys prior to the start of these activities at the following locations: All locations of bridge work (location of suitable roosting habitat). If bat species are found, Qualified Biologist and Project Manager will immediately notify USFWS (nebraskaes@fws.gov) and NGPC (Shaun Dunn 402-471-5419) for additional consultation prior to the start of construction. (*District, Contractor*)

AND

NLEB / TCB -3: All phases and aspects of the project shall be modified, to the extent practicable, to avoid tree removal in excess of what is required to implement the project safely. Tree removal shall be limited to removals specified in the project plans, which will be clearly marked in the field. (*Design, Contractor*)

NLEB / TCB CM-2: No removal of suitable trees or roosting structures between May 15 and July 31 (maternity roosting season) (*Contractor*)

Swift Fox:

SF-1 Two weeks prior to the start of construction, a qualified biologist shall survey the environmental study area according to protocol to determine if active swift fox den sites are present. If an active den with young is located and it is outside the project limits, then a buffer zone shall be established around the den and all construction activities shall avoid the buffer until the den is abandoned. If an occupied den with or without young is identified within the project limits or staging areas, NDOT shall immediately coordinate with the NGPC to determine how to proceed. A buffer zone shall be established around the den and all construction activities shall avoid the buffer until NDOT gives approval to enter the buffer area. Between April 1 and August 31, the buffer zone shall be 250 yards around the active den site; other times of the year, the buffer shall be 100 yards around the active den site. (*NDOT Environmental*)

SF-2 Fencing shall be designed for wildlife safety and wildlife friendly passage with a bottom wire at least 16" from the ground. If different fencing design is required for safety or access control, additional coordination with resource agencies shall be required. (*NDOT Design, NDOT Environmental*)

SF-3 Fence posts shall not be placed within potential den sites that appear to have animal activity. If fence posts cannot avoid potential den sites that appear to have animal activity, NDOT Environmental

will be notified and will re-initiate consultation with resource agencies. Work will not commence until agency concurrence is received. (Contractor)

SF-A Soil disturbing activities along L62A at the prairie dog colonies will not occur during the Swift Fox pup rearing season (April 1st to August 31st) (*Contractor, Construction*)

SF-B NDOT shall coordinate with the NGPC regarding the installation of artificial escape dens in suitable locations along the L62A corridor. Swift Fox Escape Den Installation protocols shall be utilized. (NDOT Environmental, NDOT Design)

SF-C NDOT shall establish a 3' vegetative barrier within the ROW of L62A east of the Lowline canal to deter prairie dogs from establishing within the ROW. The vegetative barrier will be established by following the seeding and management outlined in the erosion control plan (Utilizing the Type- A -Seed Mixture for the Panhandle outlined in the NDOT Roadside Vegetation Establishment and Management Manual (2024)). A temporary silt fence will be established at the edge of NDOT ROW in locations bordering prairie dog towns to deter prairie dog establishment in the ROW while the vegetative barrier is being established. The silt fence will be removed once vegetation has reached 3' in height or if two growing seasons have passed and the vegetative barrier has not reached sufficient height, NDOT will coordinate with the NGPC and USFWS (*Contractor, NDOT Environmental, District*)

SF-D NDOT will coordinate with the NGPC and USFWS to develop a management plan for Prairie Dog in district 5. (*NDOT Environmental, District*)

SF-E District maintenance staff will only mow the first 16' of the ROW for maintenance activities to protect the vegetative barrier for prairie dog deterrence. (*District*).

Bald and Golden Eagle Protection Act

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

- Suitable **Golden 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 golden eagles are nesting in the area, consultation with NGPC and USFWS will be required prior to beginning construction activities. (*NDOT Environmental, Contractor*)

4.22 Fish, Wildlife, and Vegetation

In accordance with NDOT's Avian Protection Plan (NDOT 2018), NDOT shall make every effort to schedule clearing and grubbing, large tree removal, or other work activities that may impact migratory bird nests, outside of the primary Nebraska nesting season of April 1 to September 1. If any of the aforementioned activities will be required during this period, a nesting survey shall be completed by a qualified biologist prior to work commencing. Specific to bridge and culvert work, the required survey period extends through September 30. (NDOT Environmental, Contractor)

1059 In efforts to maintain aquatic wildlife connectivity, the Selected Alternative may use temporary
1060 structures during construction. The use of temporary structures shall facilitate aquatic life
1061 movements during construction in accordance with CWA Section 404 Nationwide Permit General
1062 Condition No. 2: Aquatic Life Movements. Proposed structures shall be constructed at appropriate
1063 sizes and elevations so as not to impede aquatic life movements. (NDOT Environmental, Contractor)

1064 To avoid impacts on fish and other aquatic organisms, an erosion control plan and a SWPPP shall be
1065 developed and implemented. In accordance with the SWPPP and the requirements in the General
1066 Construction Storm Water Permit, NDOT shall inspect all erosion and sediment control BMPs every 14
1067 days and after every precipitation event of 0.5 inch or greater. NDOT shall inspect all erosion and
1068 sediment control BMPs at the frequency prescribed by the Construction Storm Water General Permit.
1069 The SWPPP shall be maintained, and discharge points shall be monitored by NDOT until the site is 70
1070 percent revegetated. (NDOT Environmental, Contractor)

1071 According to NDOT's Standard Specifications for Highway Construction, Subsection 202.01(2)(b), the
1072 Contractor shall be responsible for disposal of all vegetation for NDOT ROW and the limits of
1073 construction. Disturbed areas shall be seeded in accordance with NDOT's Standard Specifications,
1074 Subsection 803.02. Revegetation of the area following construction shall occur using seed mixtures
1075 containing native grasses, legumes, and forbs to appropriately landscape the region, as specified in
1076 NDOT's Plan for the Roadside Environment for a rural highway corridor (NDOT 2008). (NDOT
1077 Environmental, Contractor)

1078 As stated in NDOT's Standard Specifications for Highway Construction, Subsection 107.12, "The
1079 Contractor should prevent the transfer of invasive plant and animal species and should wash all
1080 equipment at the Contractor's storage facility prior to entering the construction site. The Contractor
1081 should inspect all construction equipment and remove all attached vegetation and animal prior to
1082 leaving the construction site." (NDOT Environmental, Contractor)

1083 Appropriate mulching materials, as defined in NDOT's Standard Specifications for Highway
1084 Construction, Subsection 806.02(1), should be applied and should not include brome hay, rushes,
1085 cattails, reed canary grass, wide-bladed grass, or invasive species. All sod, if required, to be applied to
1086 the Project should be free from noxious weeds and all other weeds. (NDOT Environmental, Contractor)

To: NDOT Environmental
From: Sierra Luhn, Public Involvement Specialist NDOT
Date: 20 February 2025
RE: Public Involvement Summary Memo, NH-26-1(172) Minatare - US-385; C.N. 51521

Public Involvement Outreach Requirements for Public Hearing: C.N. 51521, NH-26-1(172), Minatare - US-385

Based on an analysis of the project scope, a public hearing, a targeted mailer in the form of a postcard, legal notice, news release, temporary highway signs, website and a 30-day comment period were used as outreach tools for public involvement on this project.

A public hearing was held at Minatare Elementary School in Minatare, Nebraska on November 21, 2024, from 5:30 – 7:30 p.m., with approximately 98 people in attendance. The public notification involved mailing a postcard with a project location map to a compiled distribution list of 272 property owners and businesses adjacent to the project location, as well as potentially interested parties. Additionally, 208 public and private agencies with potential interest in the project were included in the distribution list, including the Nebraska Trucking Association. A legal notice was placed in Nebraska Press Association (NPA) recognized newspapers, the *Alliance Times-Herald* on November 6, 2024, *Bayard Transcript* on November 6, 2024, and *Scottsbluff Star-Herald* on November 5, 2024. Project information was placed on NDOT's website at ndot.info/51521.

NDOT received 15 written comments during the specified comment period (November 5 – December 6, 2024), summarized below.

#	Comment	Response Suggestion Summary
Verbal Comments from the Public Forum (Full Comment in Attached Transcript)		
1	Stakeholder encouraged others potentially impacted to contribute comments regarding property and concerns. Stated they met with the department and encouraged hearing about the negotiation process. Encouraged others to be involved in the negotiation process and review documentation before signing. Encouraged others to contact Doug Hoevet.	Appreciated input concerning the project. Thanked for thoughtful comments regarding negotiations and the right-of-way process. NDOT values input and appreciates sharing concerns. Thanked again.
2	Stakeholder thanked NDOT for work and shared contact information as a representative of Banner, Kimball, and Scottsbluff Counties.	Appreciated input concerning the project. Thanked for thoughtful comments. NDOT values input and appreciates sharing concerns. Thanked again.
3	Stakeholder shared support for the Heartland Expressway on behalf of the City of Alliance. Shared benefits of the Expressway, from economic to safety. Expressed full support of the recommendations.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.
4	Stakeholder shared perspective from Minatare Planning Commission. Stated Scottsbluff would benefit from the project. Concerned that Minatare would not benefit. Concerned about safety with speed. Concerned about pedestrians crossing to the Dollar General.	Appreciated input concerning the project. Thanked for sharing comments regarding safety and traffic control measures. Construction highway would be expected to increase safety by reducing potential collisions with opposing vehicles and passing lane violations. NDOT will consider concerns related to pedestrian crossing facilities to access the Dollar General. Contractor would maintain access for both vehicles and pedestrians during construction to Dollar General. Thank you again for your participation.
5	Stakeholder shared support for the Heartland Expressway on behalf of County of Scottsbluff. Appreciated Expressway changed in Alliance. Been working to secure funding and encourage project. Aware that project would impact property owners and if can help in anyway please let know.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.
6	Stakeholder shared concerns as homeowner and previously expressed concerns regarding impacts. Received generic letter in return. Takes pride in property and considers it one of a kind. Concerned with house being close to the road. Felt disrespected by not having concerns addressed specifically.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts. Property rights would adequate for the construction and maintenance of the project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Acquisitions conducted by

		paying fair market value. Right-of-way acquisition conducted in conformance with law. Thanked again.
7	Stakeholder shared support for the project as the Heartland Expressway Association. Heartland Expressway Association has been working over 30 years. Supports creating modern, safe, efficient way to move people and goods. Supports entire route for the Heartland Expressway.	Appreciated input concerning the project. Thanked for expressing support. NDOT values input and appreciates sharing concerns. Thanked again.
8	Stakeholder concerned since owns property on north and south. Concerned with increased speeds and property being located closer to road. Concerned with impacts to irrigation pivots and if will be compensated for acres no longer irrigated.	Appreciated input concerning the project. Thanked for sharing concerns regarding speeds and right-of-way. New expressway speed 70 MPH for the rural sections. NDOT will review all intersections and features of the new roadway. Four-lane divided highway expected to increase safety by reducing likelihood of collision with opposing vehicles and passing lane violations. Right-of-way based on conceptual design. Impacts on right-of-way and properties would be further refined and minimized during final design. Acquisitions conducted by paying fair market value. Right-of-way acquisition conducted in conformance with law. Damages paid to the owners of all affected pivots based on estimates. Damages could include the cost to modify the pivot and any acres “dried up”. If property impacted, would be contacted by a representative from NDOT’s Right of Way Division. Thanked again.
9	Stakeholder shared son impacted by alternative. Shared perspective as semi driver. Concerned major accidents in Minatare at 3 rd Avenue. Semis need to slow down at intersections. Highway 26 bottleneck down to a single lane concern. Noticed same bottleneck at ethanol plant.	Appreciated input concerning the project. Thanked for sharing concerns as a semi driver. NDOT values input and appreciates sharing concerns. Reduction in lanes at Highway 26 removed with the proposed project. Would construct a four-lane divided highway throughout the proposed project area. Construction of a four-lane divided highway expected to increase safety by reducing the likelihood of collision with opposing vehicles and passing lane violations. Semis also be able to slow down in the right lane while vehicles would be able to pass on the left. Thanked again.
10	Stakeholder shared their family potentially impacted with children living near highway and pivots. Children will not lose home but will be nearer road. Concerned will not be compensated enough to move but feel have to relocate. Concerned for other in same situation.	Appreciated input concerning the project. Thanked for sharing concerns about potential impacts to your property. NDOT values input and appreciates sharing concerns. Damages paid to the owners of all affected pivots based on estimates. Damages could include the cost to modify the pivot and any acres “dried up”. Property rights would be adequate for the construction and maintenance of the

		project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Acquisitions conducted by paying fair market value. Right-of-way acquisition conducted in conformance with law. Thanked again.
Written Comments and Phone Log		
11	Stakeholder thought should have been done years ago. Somewhat dissatisfied with project.	Appreciated input concerning the project. NDOT values input and appreciates sharing concerns. Thanked again.
12	Stakeholder represented Nine Mile Irrigation District. Concerned project could affect water delivery. Stated law is clear that any design and construction must not interfere with irrigation water supplies and diversion. Assumed NDOT would address Nine Mile's concerns in design and construction activities.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts to the Nine Mile Irrigation District. NDOT values input and appreciates sharing concerns. Scheduled meeting with directly affected irrigation districts to discuss potential impacts. Nine Mile Irrigation District had not been identified as a directly affected irrigation district so was not invited. Reached out to Nine Mile Irrigation District after receiving letter and Nine Mile Irrigation District representatives attended the meeting. Understand interest in receiving the flows from the same sources for the Nine Mile Irrigation District. Minatare Drain currently siphoned under the Nine Mile Creek, conveyed east and conveyed into Nine Mile Creek. Current alignment of the Minatare Drain conflicts with highway improvements. Conducted hydraulic analysis and determined it to be most cost effective to discharge the Minatare Drain directly into the Nine Mile Creek. Discharge from both sources would be combined immediately upstream of the bridge. Project mimics the total volume of water that the Nine Mile Irrigation District receives currently. Let know if response addresses concerns. Thanked again.
13	Requested an underpass since pastures are divided on the north and south side and possibly a new water well.	Appreciated input concerning the project. Thanked for sharing concerns regarding an underpass. NDOT values input and appreciates sharing concerns. Costs associated with underpass borne by the landowner. Will continue to work to find a solution. Thanked again.
14	Stakeholder located on Highway 26. Concerned regarding relocating driveway would make seeing traffic from the west would be difficult. Believed County Road 73 intersection should be studied. Driveway relocation would also require a lot more snow removal. Wanted driveway fenced in.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts to driveway. NDOT values input and appreciates sharing concerns. Sight distance remain same over the hill to the west of Co Rd 73 as today. Intersection of US-26 and Co Rd 73 provides adequate sight distance. Somewhat reduced sight distance available for large semi. However,

		with two lanes eastbound, larger trucks have ability to use the right eastbound lane to accelerate; other vehicles traveling eastbound would have the left eastbound lane. Regarding driveway, request for fencing discussed during the right-of-way negotiations. Thanked again.
15	Stakeholder concerned trees could be impacted and removed. Concerned relocated driveway would be where current septic tank located. Mentioned irrigation facility nearby. Does not know where septic take could be moved. Stated sound study held during time stakeholder considered quiet time of year.	Appreciated input concerning the project. Thanked for sharing concerns regarding potential impacts and the noise study. NDOT values input and appreciates sharing concerns. Understand complexity of impacts related to driveway relocation and nearby irrigation facilities. Will continue to evaluate alternative solutions to minimize impacts. Property rights would be adequate for the construction and maintenance of the project. Acquisitions established once the roadway designs have been finalized. Once established, will have more detailed plans illustrating acquisitions. When contacted by a Right-Of-Way representative, discuss any issues with them, including property use. Any septic systems included in the compensation. Noise studies analyze average conditions. Approach ensures study captures a variety of traffic conditions. Recognize traffic during sugar beet harvest may increase noise levels, study's methodology aligned guidelines. Although noise model does not account for Jake brake noise, acknowledge that it can contribute to additional noise and vibration. Encourage share concerns about Jake brake noise with representatives. Thanked again.


Postcard



Minatare - US-385 Project

c/o Sierra Luhn
PO Box 94759
Lincoln, NE 68509-4759

You're Invited to a Public Hearing!

-  **Date:** November 21, 2024
-  **Time:** 5:30 – 7:30 PM
Presentation at 6:00 PM
-  **Location:** Minatare Elementary School
Gymnasium
805 7th St
Minatare, NE 69356

Hard copies of the draft Environmental Assessment are available for review at the following locations:




- NDOT Headquarters (1500 Nebraska Parkway, Lincoln, NE)
- FHWA Nebraska Division (100 Centennial Mall N., Ste 220, Lincoln, NE)
- NDOT District 5 Headquarters (140375 Rundell Rd, Gering, NE)
- Minatare Public Library (309 Main St, Minatare, NE)

Public Hearing

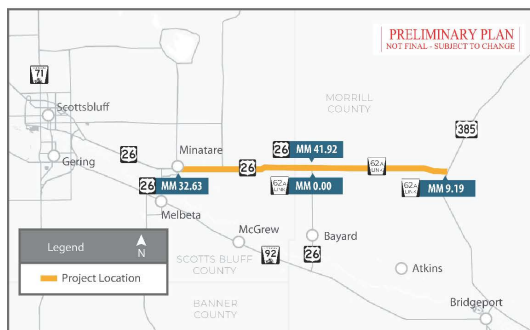
NH-26-1(172) Minatare - US-385; C.N. 51521

The Nebraska Department of Transportation (NDOT) is hosting a public hearing regarding the preliminary design and draft Environmental Assessment (EA) for the **Minatare - US-385** project. A formal presentation will begin at 6:00 PM, with an open house to follow. Project information will be available, and NDOT representatives will be present to answer your questions and receive comments.

Please Join Us!

-  **Date:** November 21, 2024
-  **Time:** 5:30 – 7:30 PM
Presentation at 6:00 PM
-  **Location:** Minatare Elementary School
Gymnasium
805 7th St
Minatare, NE 69356

NDOT will make every reasonable accommodation to provide accessible meeting facilities 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 **November 14, 2024**.



Comments will be collected through **December 6, 2024** and should be submitted to:

Sierra Luhn
NDOT Public Involvement
P.O. Box 94759, Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
(402) 479-3103

An electronic version of the draft EA is now available for review on the project website. See opposite side of the postcard for physical locations where the EA will be available. More information regarding the proposed project will be available the day of the meeting ndot.info/51521.

For those without internet access, information may be obtained at NDOT Headquarters: 1500 Nebraska Parkway, Lincoln, NE, 68502 or by contacting:

Doug Hoevet
NDOT District 5 Engineer
doug.hoevet@nebraska.gov
(308) 436-6587



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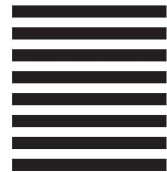


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NEBRASKA DEPT OF TRANSPORTATION
PO BOX 94759
LINCOLN, NE 68509-9983



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(Tape closed - Do not staple)

Public Comments/Responses

From: noreply@nebraska.gov
To: [NDOT, Public Involvement](#)
Cc: sdeibler55@gmail.com
Subject: Comment Inquiry for Minatare – US-385
Date: Tuesday, November 12, 2024 7:51:07 PM

Form Results

Project

Minatare – US-385

Project URL

<https://dot.nebraska.gov/projects/future-projects/minatare-us-385/>

Full Name

Scott Deibler

Email

sdeibler55@gmail.com

Address

2710 Emerson Ave

City

Alliance

State

Nebraska

Zip

69301

Comment

Should have been done years ago

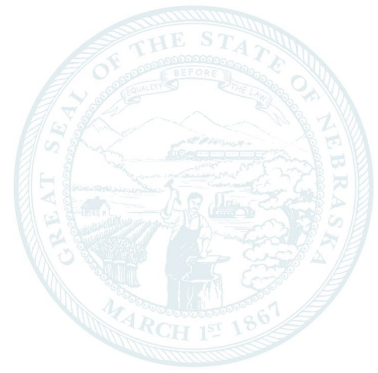
How satisfied are you with this project?

Somewhat dissatisfied



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Scott Deibler
2710 Emerson Ave
Alliance, Nebraska 69301

Dear Mr. Deibler:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

Simmons Olsen Law Firm, P.C., L.L.O.

Attorneys at Law

Steven W. Olsen
Kent A. Hadenfeldt
John L. Selzer
Elizabeth A. Stobel
Megan A. Dockery
Kyle J. Long
Jacob L. Swanson*
*Also Licensed in Wyoming

1502 Second Avenue
Scottsbluff, Nebraska 69361-3174
(308) 632-3811
Fax (308) 635-0907
www.simmonsolsen.com
Email: ssmith@simmonsolsen.com

Howard P. Olsen, Jr., Of Counsel
Rick L. Ediger, Of Counsel
John A. Selzer, Of Counsel
Steven C. Smith, Of Counsel

Robert G. Simmons, Jr. (1918-1998)

November 12, 2024

NDOT Headquarters
1500 Nebraska Parkway
Lincoln, NE 68502

NDOT District 5 Headquarters
140375 Rundell Rd.
Gering, NE 69341

Sierra Luhn
NDOT Public Involvement
PO Box 94759
Lincoln, NE 68509-4759

RE: NH-26-1(172) Minatare – US-385; C.N. 51521

Ladies & Gentlemen:

This office represents the Nine Mile Irrigation District. Recently, a Board Member viewed a Notice in a local paper concerning the proposed construction on Highway 26, which crosses both the Minatare Drain and Nine Mile Creek. This construction could affect the Nine Mile Irrigation District's water delivery, inasmuch as they receive water both from the Minatare Drain and Nine Mile Creek, south of the construction site. For your information, Shortline Irrigation District receives their water through the Nine Mile system, so it could also affect that District's water users. Apparently, Pathfinder and Farmers Irrigation District were contacted by NDOR, but not Nine Mile Irrigation District.

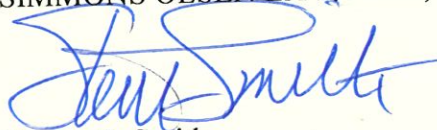
As you know, the law is clear that any design and construction must not interfere with irrigation water supplies and diversion. This precedent was clearly set forth in *Nine Mile Irrigation District v. State*, 118 Neb. 522 (1929), involving the Nebraska Department of Roads deficient design and construction of a bridge over the river between Minatare and Melbeta, which restricted the District's ability to divert and deliver its irrigation appropriation.

Page 2
November 12, 2024

We assume you will make sure to satisfactorily address Nine Mile's concerns in your design and construction activities. If you have any questions, please contact the undersigned or Board Member Jim Mai at 308-641-3921. Thank you for your attention.

Very truly yours,

SIMMONS OLSEN LAW FIRM, P.C., L.L.O.

A handwritten signature in blue ink, appearing to read "Steve Smith", is written over the printed name.

Steven C. Smith

SCS/cmc
cc: Nine Mile Irrigation, Jim Mai



Jim Pillen, Governor

February 20, 2025

Steven C. Smith
Simmons Olsen Law Firm, P.C., L.L.O.
1502 Second Avenue
Scottsbluff, Nebraska 69361-3174

Dear Mr. Smith:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns regarding potential impacts to the Nine Mile Irrigation District. NDOT values your input and appreciates you taking the time to share your concerns.

NDOT scheduled a meeting with directly affected irrigation districts on Nov. 21, 2024, to discuss potential impacts. NDOT had not included Nine Mile Irrigation District in the original invitation as they had not been identified as a directly affected irrigation district. In response to your letter on Nov. 19, 2024, Doug Hoevet, NDOT District 5 Engineer, emailed you to inform you that he reached out to Jim Mai with Nine Mile Irrigation District regarding the Nov. 21, 2024, information meeting we were hosting with the irrigation districts. Fortunately, your representatives were able to attend and engage with NDOT representatives.

We understand your interest in receiving the flows from the same sources for purposes of supplying the Nine Mile Irrigation District. As you know, the Minatare Drain currently is siphoned under the Nine Mile Creek and is conveyed east under CR 32 before it turns south under the highway and conveys into Nine Mile Creek approximately 2,800 feet downstream. The current alignment of the Minatare Drain along the north side of the highway conflicts with the proposed highway improvements. The NDOT design team has conducted hydraulic analysis of several alternatives and has determined it to be most cost effective to simply discharge the Minatare Drain directly into the Nine Mile Creek as a part of the project. The discharge from both sources would be combined immediately upstream of the bridge where they would convey south under the highway and ultimately into the Nine Mile Irrigation District. The project mimics the total volume of water that the Nine Mile Irrigation District receives currently.

Please let us know if this response, in addition to other communications that Nine Mile Irrigation District has had with NDOT, addresses your concerns.

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

Thank you again for your participation.

Sincerely,

A handwritten signature in black ink, reading "Sierra Luhn".

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

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1 All right. We're going to start with Senator
2 Erdman. You can go ahead and approach the
3 podium. And then like I said, please say and
4 state your name so the court reporter here can
5 get everybody.

6 MR. ERDMAN: Okay. My name is Steve Erdman, S-T-
7 E-V-E E-R-D-M-A-N. I'm here tonight to dispute
8 on behalf of those of you in the room that are
9 going to be affected by the addition of this
10 second lane.

11 You will see that they have drawn a map and put
12 it up on the wall for you to see that, and I
13 believe that map will be available on the
14 internet after that. So you are available to
15 pull that up at home and look at it. I've been
16 involved in 385 -- the four lane and 385. This
17 is a preliminary drawing. If there are places on
18 there where they need a turnout that's not been
19 considered, I believe that they will be
20 interested in hearing your comments. Some of
21 those changes will remain in 385. One of the
22 things that was always peculiar to me is when you
23 build a four lane, it makes it easier for people
24 to get here. It also makes it easier for people
25 to leave. And I say that because three or four

1 years ago, Scottsbluff County was one legislative
2 district, and today they have Kimball and Banner.
3 So when we talk about economic development about
4 a four lane coming, I'm not sure that we'd have a
5 lot of economic development in this area because
6 of that. I was a proponent of a super two. That
7 did not fly, as you've seen in earlier in the
8 presentation, but I would recommend -- this is my
9 suggestion -- no one in this room that's going to
10 deal with the road department sign anything until
11 you have legal counsel review your document. And
12 I believe that the department would also agree
13 that that's appropriate.

14 I met with them yesterday. I had a very good
15 meeting with them and a person -- a family whose
16 house is going to be taken. I was very pleased
17 to hear what they had to say. I was very much
18 interested in how they were going to deal with a
19 relocation. I believe that if they carried
20 through with what they said yesterday -- and Doug
21 Hoevet explained it very well -- I believe if
22 they carry through with what they said yesterday,
23 you people will be pleased with how the
24 negotiation goes. But remember when they begin
25 the negotiation, that isn't the final decision.

1 So get involved. Let them know your feelings.

2 Let them understand why it affects you. But make
3 sure that you have someone reviewing your
4 documents before you sign that because they're
5 going to be fine.

6 And I know what it's like to have somebody try to
7 condemn your land because in '99, the railroad
8 tried to take our property. They came and spoke
9 to us once, and the next time, we appeared in
10 court for condemnation. That's a difficult
11 thing.

12 MS. LUHN: Senator, you're approaching about two
13 minutes.

14 MR. ERDMAN: Two minutes? All right. Thank you.
15 So what I'm trying to say is get with the road
16 department. Doug Hoevet is willing to talk to
17 you about what your needs are and what your
18 concerns are. So please share your ideas because
19 this is the time for you to get involved. This
20 is the time for you to share your ideas and your
21 concerns.

22 I have to leave. I have to be in Lincoln
23 tomorrow at 10:30, so I'm going to depart now. I
24 appreciate you putting me up first. If you have
25 any questions, call my office. you can get a

1 hold of me. I'm going to work with you even
2 though I'm a lame duck, and I'm going out on
3 January the 8th. I will be involved until this
4 project is completed.

5 And yesterday, Doug Hoevet and I had a
6 conversation. He said, you know where my office
7 is. And I said, I do. And so he and I have had
8 numerous conversations about this road and other
9 things. And he has been very open and receptive
10 about it, and I think you'll find him to be the
11 same way.

12 Thank you.

13 MS. LUHN: Thank you.

14 Next, I call on Senator Hardin. And then again,
15 please say and spell your name.

16 MR. HARDIN: Senator Brian Hardin, District 48.

17 B-R-I-A-N H-A-R-D-I-N.

18 And so I represent Banner, Kimball, and
19 Scottsbluff Counties. So I just want to thank
20 NDOT for the work that you have taken on, and we
21 appreciate that.

22 I want to share something with you. Get out your
23 phone, take in my cell phone number. It is area
24 code 308-641-2709. Along the journey, if you
25 feel like it would be helpful to have someone



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Senator Steve Erdman
8527 L62-A
Bayard, NE 69334

Dear Senator Erdman:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you, Senator Erdman, for your thoughtful comments regarding negotiations and the right-of-way process. Your leadership continues to foster constructive dialogue and helps guide meaningful discussions on important issues.

NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

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21 appreciate that.

22 I want to share something with you. Get out your
23 phone, take in my cell phone number. It is area
24 code 308-641-2709. Along the journey, if you
25 feel like it would be helpful to have someone

1 else listen to your plea, call that number. It
2 rings this phone in this pocket. And so once
3 again, 308-641-2709 is my number. Appreciate all
4 that you're doing. They want to move forward,
5 and I know we want to move forward with a sense
6 of consensus. And so along that very large \$95
7 million project, if there's a way that I can help
8 you, feel free to reach out to me.

9 Thank you.

10 MS. LUHN: Thank you.

11 Next on my list I have --

12 UNIDENTIFIED SPEAKER: Can you repeat that phone
13 number?

14 MR. HARDIN: 641-2709.

15 UNIDENTIFIED SPEAKER: Thank you.

16 MS. LUHN: All right. Next on my list, I have
17 Seth Sorenson. And then again, could you please
18 state and spell your name for the record?

19 MR. SORENSEN: My name is Seth Sorenson, S-E-T-H
20 S-O-R-E-N-S-E-N, and I'm the city manager for the
21 city of Alliance. And the City has been involved
22 with the Heartland Expressway since its
23 inception, and we continue to support it today,
24 as demonstrated by our mayor, John McGhehey, and
25 vice-mayor, Tearza Mashburn, as well as our Box



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Senator Brian Hardin
Room 2004
P.O. Box 94604
Lincoln, NE 68509

Dear Senator Hardin:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you, Senator Hardin, for your thoughtful comments at the recent public hearing. Your leadership continues to foster constructive dialogue and helps guide meaningful discussions on important issues.

NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
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5 and I know we want to move forward with a sense
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14 MR. HARDIN: 641-2709.

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21 city of Alliance. And the City has been involved
22 with the Heartland Expressway since its
23 inception, and we continue to support it today,
24 as demonstrated by our mayor, John McGhehey, and
25 vice-mayor, Tearza Mashburn, as well as our Box

1 Butte Development Corporation Director Hannah
2 Robinson. We're all here in support of that.
3 Unfortunately, they wanted you all to suffer and
4 listen to me instead, but we do support this
5 section. It not only benefits anyone coming from
6 385 over to Minatare and Scottsbluff, but it also
7 improves the situation for the entire panhandle.
8 The safety factors, the way that it increases
9 that, it does have economic development benefits.
10 I noticed quite a few semis on my way here today.
11 And that's a good sign of economic growth, but we
12 also want everyone to get home safely at night.
13 The induced demand of having additional lanes can
14 only help the area, especially when you look at
15 385 and 26 in conjunction with each other and the
16 way they connect to South Dakota all the way down
17 to Texas.
18 And so personally, as a civil engineer of 18
19 years, I fully support the recommendations and
20 the preferences set forth by the department of
21 transportation for cross section for alignment.
22 And I strongly believe that this project will
23 benefit the entire panhandle.
24 Thank you.
25 MS. LUHN: Thank you.



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Seth Sorensen
City of Alliance
P.O. Box D
Alliance, NE 69301

Dear Mr. Sorensen:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your comments at the recent public hearing regarding your support of the project. NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

1 Next on our list is Wayne Kilmer.

2 And again, Wayne, if you'll state and spell your
3 name up here.

4 MR. KILMER: Sure I will.

5 MS. LUHN: Thank you.

6 MR. KILMER: All right. Hello, I'm Wayne Kilmer,
7 W-A-Y-N-E, Kilmer, K-I-L-M-E-R. I'm the current
8 chairman of the Minatare Planning Commission.

9 All right. Did you get all that?

10 Well, as usual with infrastructures projects,
11 Scottsbluff will benefit; we won't. It's going
12 to go on through -- they go 70 miles an hour
13 through town now and they'll continue. And I'm
14 not really concerned about the economic side, but
15 the safety. We've had what? Three major
16 accidents in the last year because of speeders?

17 I hear no signal controls at Third and Main
18 Street. Just put a target on your back, folks.
19 We've got a lot of older people that go to the
20 Dollar General. Reflexes may not be as good as
21 they should be. Young children that go over
22 there and no traffic control. We don't have the
23 police force or the funds to put a radar car out
24 there to slow people down. The State is doing
25 this. The County is doing this. They need to

1 control traffic, or people are going to get hurt.

2 Thank you.

3 MS. LUHN: Thank you.

4 All right. Next on our list, I have Sandy
5 Saradolts.

6 MR. KILMER: Consider it.

7 MS. LUHN: Final call for Sandy. All right.
8 I'll move forward.

9 I have Mark Harris on the list. And again, if
10 you'll state and spell your name.

11 MR. HARRIS: Mark, M-A-R-K, Harris, H-A-R-R-I-S.

12 I'm also a county commissioner in the county of
13 Scottsbluff. I come to voice, certainly, our
14 support and our encouragement to proceed with the
15 project. We're certainly elated that we are as
16 far along as what we are at this point. It's
17 been a long time coming with the starting, of
18 course, at Kimball and then moving through
19 Alliance. And just recently, I had the
20 opportunity to travel back and forth to Alliance
21 several times. And it was really a privilege to
22 be able to be on that road and see how well that
23 traffic flowed and that people were using it.
24 From a commissioner standpoint, our commission
25 has been in support of this project for a long



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Wayne Kilmer
PO Box 696
Minatare, NE 69356

Dear Mr. Kilmer:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your comments at the recent public hearing regarding safety and traffic control measures. NDOT values your input and appreciates you taking the time to share your concerns.

Construction of a four-lane divided highway would be expected to increase safety by reducing the likelihood of collisions with opposing vehicles and passing lane violations.

During the final design process, NDOT will also take into consideration the community concern related to the need for pedestrian crossing facilities in the City of Minatare to access the Dollar General on the north side of US-26.

The contractor would also maintain access for both vehicles and pedestrians during the construction phase to facilitate travel across US-26 to and from Minatare to the Dollar General.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

1 control traffic, or people are going to get hurt.

2 Thank you.

3 MS. LUHN: Thank you.

4 All right. Next on our list, I have Sandy
5 Saradolts.

6 MR. KILMER: Consider it.

7 MS. LUHN: Final call for Sandy. All right.
8 I'll move forward.

9 I have Mark Harris on the list. And again, if
10 you'll state and spell your name.

11 MR. HARRIS: Mark, M-A-R-K, Harris, H-A-R-R-I-S.

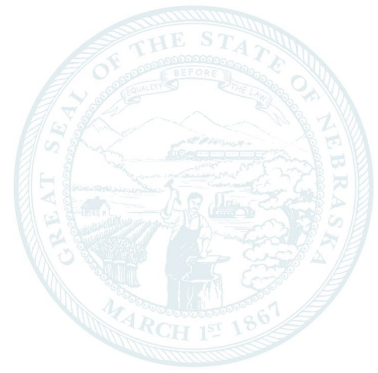
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13 Scottsbluff. I come to voice, certainly, our
14 support and our encouragement to proceed with the
15 project. We're certainly elated that we are as
16 far along as what we are at this point. It's
17 been a long time coming with the starting, of
18 course, at Kimball and then moving through
19 Alliance. And just recently, I had the
20 opportunity to travel back and forth to Alliance
21 several times. And it was really a privilege to
22 be able to be on that road and see how well that
23 traffic flowed and that people were using it.
24 From a commissioner standpoint, our commission
25 has been in support of this project for a long

1 time. I'm also a member of the Heartland
2 Expressway Committee, and we have been -- our
3 group, not me personally, but our group has been
4 working for more than 20 years to help secure
5 funding, get the right people into the right
6 places, and help encourage this project.
7 But I also realize that many of you will be
8 personally affected and could be impacted with
9 your property, whether it be raw land or houses,
10 and I understand that. I have family probably
11 here in this room. I have friends, as I grew up
12 in Morrill County, and so I have a lot of people
13 that I'm aware of that this is going to impact.
14 And I have heard good things about the State
15 trying to deal with people fairly, and I'm
16 trusting that that will happen. But we, as well
17 from a commissioner standpoint, if we can help in
18 any way, we'd be happy to try and do that. And
19 if you need to contact us, let us know.
20 Thank you.
21 MS. LUHN: Thank you. That is the end of the
22 names who got signed up, so I'll go ahead and
23 open up to the floor if anyone would like to come
24 up to the forum.
25 Absolutely. If you'll just state your name and



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Mark Harris
3641 Evergreen Drive
Scottsbluff NE 69361

Dear Mr. Harris:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your comments at the recent public hearing regarding your support of the project. NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
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1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

1 spell it for us.

2 MS. LEIBNEITZ: My name is Melissa Leibneitz, M-
3 E-L-I-S-S-A L-E-I-B-N-I-T-Z. I am a homeowner on
4 Highway 26 at County Road 36. Several times
5 during your guys' speech you talked about
6 anticipated impacts. Our house was never on the
7 list. I did write two years ago, at the last
8 public forum, two pages worth of how it would
9 impact our family. I received a generic thank
10 you letter, and that's all the communication I've
11 had from the State of Nebraska.

12 This is going to be a huge impact, as I wrote in
13 that statement before, and you can read it again.
14 It's published all over the state website. But
15 my husband and I take a lot of pride in our
16 property, and we are from the panhandle. We are
17 planning on staying in the panhandle, and this is
18 going to be very detrimental to us.

19 We can't just pick up and move. Our property is
20 very rare and one of a kind. It has a historical
21 barn on it, and it's not registered, but it is
22 was built in 1910. And we take pride in keeping
23 and maintaining that. And I've had several
24 people -- I almost get comments once a week on
25 how great our place looks and how happy it makes

1 people. And just not to hear anything about it
2 from the State -- I know that's from an emotional
3 perspective, and that's not what you're
4 interested in, but there's several other impacts
5 that we have concerns about that your work should
6 have been concerned about, so.

7 And again, with the speeds increasing on the
8 highway, the highway will now be -- it's hard to
9 tell them there, but probably 60 to 70 feet from
10 our house. A vehicle traveling 70 miles an hour
11 will leave the roadway and travel 103 feet on
12 average. That's basically the science. So that
13 puts it through our house. So it's a big concern
14 for us. And not to be contacted about our
15 concerns is pretty disrespectful.

16 Thank you.

17 MS. LUHN: Thank you. Is there anyone else who
18 would like to speak? Could you just state your
19 name and spell it, please?

20 MS. COTTIER: Good evening. Deb Cottier, D-E-B
21 C-O-T-T-I-E-R, and I have the pleasure of serving
22 as the chairperson for the board of directors for
23 the Heartland Expressway Association. I have one
24 very minor correction to Mark Harris' comments.
25 We've been at this over 30 years. We have been



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Melissa Leibnitz
360044 Highway 26
Minatare, NE 69356

Dear Ms. Leibnitz:

Thank you for sharing your concerns at the recent public hearing regarding potential impacts to your property. NDOT values your input and appreciates you taking the time to share your concerns.

Property rights to be acquired would need to be of such nature and extent as are adequate for the construction operation and maintenance of the project. The types and sizes of these acquisitions would be established once the roadway designs have been finalized. Once the design footprint has been established, we will have more detailed plans illustrating the size and type of the acquisitions. When you are contacted by a Right-Of-Way representative, please be sure to discuss any issues with them, including how you are using the property for livestock, grazing, or other uses. Acquisitions would be conducted by paying fair market value for the property rights and the damages that may occur due to the acquisitions. Right-of-way acquisition would be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.).

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
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1500 Nebraska Parkway
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2 from the State -- I know that's from an emotional
3 perspective, and that's not what you're
4 interested in, but there's several other impacts
5 that we have concerns about that your work should
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16 Thank you.

17 MS. LUHN: Thank you. Is there anyone else who
18 would like to speak? Could you just state your
19 name and spell it, please?

20 MS. COTTIER: Good evening. Deb Cottier, D-E-B
21 C-O-T-T-I-E-R, and I have the pleasure of serving
22 as the chairperson for the board of directors for
23 the Heartland Expressway Association. I have one
24 very minor correction to Mark Harris' comments.
25 We've been at this over 30 years. We have been

1 stalwart supporters of creating a modern, safe,
2 efficient way to move people and goods and ag
3 products and tourists and all of those things to
4 and through our region. We know people that come
5 to our part of the world come from somewhere
6 else, and people from here like to go somewhere
7 else. And our main goal is to provide an
8 opportunity for folks to do that in the safest
9 manner that we can.

10 We know that traffic is extremely busy in some
11 places, particularly on this piece that we're
12 talking about tonight. It is the single most
13 complicated piece of the Heartland Expressway
14 that's been accomplished in the various phases.
15 I personally come from Chadron, Nebraska, and we
16 have long wished for additional four-lane
17 capacity up there, too. But we also understand
18 that it is kind of a build it and they'll come.
19 So I think that Senator Erdman was correct that
20 this maybe routes people differently, but we
21 believe that the opportunity to bring those folks
22 through our part of the world gives us a lot more
23 opportunity to get them to stop and spend money
24 and perhaps build a business or move to our area
25 than if they didn't come through at all.

1 So we are Stalwart supporters of the entire route
2 for the Heartland Expressway Association, as well
3 as our connection to two other high priority
4 corridors on either side of us, the Ports-to-
5 Plains Corridor south and the Theodore Roosevelt
6 Corridor in the north. And together, we refer to
7 them as the Ports-to-Plains Alliance. And
8 together, we've worked for a lot of years
9 lobbying in D.C., talking with our state
10 senators, working with the Department of
11 Transportation, and we so appreciate the
12 opportunity to have Doug and Doug host you folks
13 out here tonight and the opportunity to let you
14 know that there are a great number of folks that
15 support all of the efforts that have gone into
16 this over those 30 years.

17 Thank you.

18 MS. LUHN: Thank you.

19 Is there anyone else? Please state and spell
20 your name for us.

21 MR. JANSSEN: I'm Ben, Ben Janssen, B-E-N J-A-N-
22 S-S-E-N, and I want to reiterate on your comment
23 here. My concern is with the -- we won't --
24 we'll lose a property on the north side, but we
25 also have a property on the south side of our



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Deb Cottier
1620 Broadway
Scottsbluff, NE 69361

Dear Ms. Cottier:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your comments at the recent public hearing regarding your support of the project. NDOT values your input and appreciates you taking the time to share your concerns.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

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dot.nebraska.gov

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2 for the Heartland Expressway Association, as well
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4 corridors on either side of us, the Ports-to-
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15 support all of the efforts that have gone into
16 this over those 30 years.

17 Thank you.

18 MS. LUHN: Thank you.

19 Is there anyone else? Please state and spell
20 your name for us.

21 MR. JANSSEN: I'm Ben, Ben Janssen, B-E-N J-A-N-
22 S-S-E-N, and I want to reiterate on your comment
23 here. My concern is with the -- we won't --
24 we'll lose a property on the north side, but we
25 also have a property on the south side of our

1 main residence. And currently we are 30 feet off
2 in the right of way right now. And my concern is
3 also with the increased speeds. And besides the
4 big turn to Bear Junction, we live on county road
5 1083, which is the other paved road, which is
6 probably the second-busiest north to south road
7 in Morrill County going up to 380 to 62.

8 What is the State going to do with these
9 increased speeds and these major intersections
10 like this? If people get in wrecks, it does not
11 -- how are we going to be safe if a semi veers
12 off the road? A car pile up? It doesn't come
13 plowing through our houses with these increased
14 speeds. That is something, I think, that
15 seriously needs to be considered with the right
16 of way because from what I understand right now,
17 the right of way does not widen on the other
18 southern side, and we have nothing to protect us
19 from the flow of traffic if something happens.

20 You know? And I would hate to see something
21 happen where middle of the night, my family is
22 sleeping in the house and we have a semi come
23 plowing through a house that kills my whole
24 family. And I wonder if that's been considered,
25 and I think it's something that seriously needs

1 to be considered.

2 And the other question I have, too, is with the
3 farm land, the shortening of these pits and stuff
4 like that. Are we going to be compensated for
5 irrigated acres that are no longer irrigable
6 because of shortening spans on the circumference
7 of the field on the corridor. We have to shorten
8 by 75 to a hundred feet on an entire pivot all
9 the way around. They are already be compensated
10 for that. And that was two main things I have,
11 yes.

12 MS. LUHN: Thank you.

13 Anyone else? Do you want to state your spell
14 your name, please?

15 MR. KREMAS: Yes. It is Allan Kremas, A-L-L-A-N
16 K-R-E-M-A-S. I am a resident of Morrill County,
17 pretty close to the intersection of 26th and the
18 link that goes into Banner. A couple different
19 perspectives. Yes, it is going to affect the
20 property lines. I've got a son that's going to
21 be involved with that, but they're picking the
22 property. And again, the questions are -- just
23 was raised a moment ago about shortening the
24 pivots, but it does affect the north as well.
25 And I think those are going to be pretty



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Ben Janssen
11298 Road 83
Bayard, NE 69334

Dear Mr. Janssen:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns at the recent public hearing regarding increased speeds and right-of-way. NDOT values your input and appreciates you taking the time to share your concerns. Per State Statutes, the new expressway speed would be posted at 70 MPH for the rural sections of the corridor. NDOT will review all intersections and features of the new roadway for the new design standards.

Construction of a four-lane divided highway would be expected to increase safety by reducing the likelihood of collision with opposing vehicles and passing lane violations.

Right-of-way acquisitions, types, and amounts are based on conceptual design. Impacts on right-of-way and properties would be further refined and minimized to the extent possible during the final design phase of the Project. Property rights acquisition would be conducted by paying fair market value for the property rights and damages that may occur. Right-of-way acquisition would be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.).

Regarding farmland right-of-way, damages would be paid to the owners of all affected pivots based on estimates from local contractors. Damages could include the cost to modify the pivot and any acres "dried up" as a result of this modification. Systems may be shortened, moved, or a combination of both.

If your property is impacted by this project, you would be contacted by a representative from NDOT's Right of Way Division once the design footprint has been established.

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

Thank you again for your participation.

Sincerely,

A handwritten signature in black ink that reads "Sierra Luhn".

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
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4 like that. Are we going to be compensated for
5 irrigated acres that are no longer irrigable
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7 of the field on the corridor. We have to shorten
8 by 75 to a hundred feet on an entire pivot all
9 the way around. They are already be compensated
10 for that. And that was two main things I have,
11 yes.

12 MS. LUHN: Thank you.

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14 your name, please?

15 MR. KREMAS: Yes. It is Allan Kremas, A-L-L-A-N
16 K-R-E-M-A-S. I am a resident of Morrill County,
17 pretty close to the intersection of 26th and the
18 link that goes into Banner. A couple different
19 perspectives. Yes, it is going to affect the
20 property lines. I've got a son that's going to
21 be involved with that, but they're picking the
22 property. And again, the questions are -- just
23 was raised a moment ago about shortening the
24 pivots, but it does affect the north as well.
25 And I think those are going to be pretty

1 significant.

2 The other thing is I do drive a semi, and my
3 perspective is on that I work for a company that
4 does supplement here in the town of Minatare.

5 And so we have to use 3rd Avenue as well as six -
6 - I think it's 62 link that joins them -- 526 by
7 Kelly B. And there has been some major accidents
8 there because of people not observing and turning
9 out. It is about -- not quite as bad as the
10 bypass going through Scottsbluff on avenues I,
11 5th, and East Overland area. This is going to be
12 just about as bad.

13 My concern is these semis need to slow down.
14 They need to slow down and go into fields. They
15 need to slow down and go into intersections. And
16 I don't think the speed is going to represent
17 very well in that, and we are usually the ones
18 that get blamed for it because we are semi
19 drivers. And I've heard that story so many
20 times.

21 The thing of it is that the intersections and the
22 areas that we need to pull into our fields, we
23 have to slow down. I'll give two examples of the
24 State's inability to do things correctly. It's
25 right out here on Highway 26. They make a four

1 lane and then what do they do? They bottleneck
2 you into a single lane and then they turn it
3 right back into a turning lane.

4 Now, I have never understood that concept in my
5 life. There's nice, big white stripes that says
6 turn lane only. They had that there for a while,
7 and then for some unknown reason, they turned
8 that away and made it into a bottleneck and then
9 turning lane. You cannot slow down.

10 Another example is on the ethanol plant east on,
11 I believe that's Highway 26, they did the same
12 thing. Heavy traffic going into the ethanol
13 plant. What do they do? They build a nice turn
14 lane for the turn off, but they bottleneck you
15 into a single lane and then make it into a right
16 turning lane. I cannot understand the concept.

17 So those are the two concerns I have with the
18 engineering department on how they're going to
19 address these things as a semi driver.

20 MS. LUHN: Thank you. Just state your name and
21 spell it.

22 MS. STUART: Hello. I am Donna Stuart, D-O-N-N-A
23 S-T-U-A-R-T. My family is affected on L 62 A in
24 several places. We have we have half a dozen
25 pivots, and I have my kids living on the highway.



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Allan Kreman
11236 US Highway 26
Bayard, NE 69334

Dear Mr. Kreman:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns at the recent public hearing as a semi driver. NDOT values your input and appreciates you taking the time to share your concerns.

The reduction in lanes at Highway 26 would be removed with the proposed project. The proposed project would construct a four-lane divided highway throughout the proposed project area.

Construction of a four-lane divided highway would be expected to increase safety by reducing the likelihood of collision with opposing vehicles and passing lane violations. With the proposed project, semis would also be able to slow down in the right lane while vehicles would be able to pass on the left.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

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MAILING ADDRESS

PO Box 94759
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20 MS. LUHN: Thank you. Just state your name and
21 spell it.

22 MS. STUART: Hello. I am Donna Stuart, D-O-N-N-A
23 S-T-U-A-R-T. My family is affected on L 62 A in
24 several places. We have we have half a dozen
25 pivots, and I have my kids living on the highway.

1 And my concern, or what I'd like to have you guys
2 at least consider or look at, involves my kids'
3 home. It sits on the north side of L 62 A.

4 Looking at the map tonight, it is not going to
5 take their home. So there it is not -- it's not
6 going to take their home, but the right of way,
7 it comes from here to maybe, if not quite, that
8 American flag away from their home. So they're
9 going to end up moving or having to move.

10 They've got three kids and hopefully another
11 dozen on the way, who knows, but they all -- you
12 know, and some dogs and some cats and similar to
13 Melissa, has a beautiful yard and it has been a
14 great place to raise her family.

15 You're going to pull that highway, now, up to
16 within the wall of their home with their three
17 kids out running around and their animals and
18 where they live. So my concern is that they
19 won't be compensated enough just to pick up and
20 move and rebuild a home anywhere. They probably
21 will be compensated for a little bit of grass in
22 their front yard maybe, and that's not enough to
23 relocate them. But yet it'll be a situation
24 where -- we have been talking about it for the
25 last year -- that they are going to have to

1 relocate because they don't feel that they can
2 raise their family with their children growing up
3 right now. Their children are all under the age
4 of five.

5 So they're still running around the yard and
6 doing things and they won't be compensated to
7 rebuild a home. So what do they do? Do they --
8 how do they handle it? Do they stay by the
9 highway and have a four lane within just a
10 minimal distance of their home, or do they uproot
11 their family? And so those people that are in
12 those situations, I'd like you to consider what
13 they're having to go through. And if there's
14 somehow they could be compensated for that,
15 because they are going to lose their home. They
16 might not be in pink on the map, but they are
17 going to lose their home and they're going to
18 have to move. And they're not the only ones like
19 that. Like I said, I know Melissa is in the same
20 boat.

21 And when you talk about the semis coming through,
22 what if the girls are outside in the front yard
23 and they're playing in the front yard and the
24 semi comes off the highway and drove - dumps a
25 load of beats

1 in their front yard, you know, and you have your little
2 ones out there playing baseball in the front yard.

3 So I just want that to be taken into
4 consideration -- the bad situation.

5 Thank you.

6 MS. LUHN: Is there anyone else?

7 All right. We're going to close the public
8 forum. The time is 7:01 p.m.

9 All right. Seeing as there is no other question
10 or comments, we'll go ahead and move forward with
11 that open house. Staff is going to be available
12 throughout to answer any other questions you
13 have. I would encourage you, those of you who
14 had questions during the forum, to seek out the
15 staff and get the answers. If not, like I said,
16 we will be responding to you. But sometimes
17 those in person conversations are just better.

18 If you didn't receive one when you arrived, like
19 I said, the fact sheet and comment sheets, they
20 are still available at the sign in table. Please
21 grab one. And we encourage you to send that
22 comment sheet in.

23 There's also a prepaid postage on it. So if you
24 need some time to think about your comment and
25 don't want to submit it to us tonight, just fold



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



February 20, 2025

Jim Pillen, Governor

Donna Stuart
11498 RD 81
Bayard NE 69334

Dear Mrs. Stuart:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns at the recent public hearing regarding potential impacts to your property. NDOT values your input and appreciates you taking the time to share your concerns.

Damages would be paid to the owners of all affected pivots based on estimates from local contractors. Damages could include the cost to modify the pivot and any acres "dried up" as a result of this modification. Systems may be shortened, moved, or a combination of both.

Property rights to be acquired would need to be of such nature and extent as are adequate for the construction operation and maintenance of the project. The types and sizes of these acquisitions would be established once the roadway design has been finalized. Once the design footprints have been established, we would have more detailed plans illustrating the size and type of the acquisitions. When your family members are contacted by a Right-Of-Way representative, please be sure they discuss any issues with them, including how they are using the property. Acquisitions would be conducted by paying fair market value for the property rights and the damages that may occur due to the acquisition. Right-of-way acquisition would be conducted in conformance with the Uniform Act (42 USC 4601 et seq.), Title VI of the Civil Rights Act of 1964, and the Nebraska Relocation Assistance Act (Nebraska Revised Statutes Section 76-1214 et seq.).

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov



NH-26-1(172) Minatare - US-385; C.N. 51521

Please submit your written comments by **December 6, 2024.**

Return to: Sierra Luhn, NDOT Public Involvement
P.O. Box 94759
Lincoln, NE 68509-4759

sierra.luhn@nebraska.gov
(402) 479-3103

Everett Loomis = 1, 21, 51 Land
13, 21, 51 Land } Land numbers

Requesting an underpass since our pastures
are divided on the North and South Side.

We have to call the State Patrol in order for us
to cross the highway.

If dynamite is used to get through the terrain
possibility a new water well.

(Please Print)

The Nebraska Department of
Transportation (NDOT) 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.

Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____



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DEPARTMENT OF TRANSPORTATION



February 20, 2025

Jim Pillen, Governor

Everett Loomis
11437 Road 89
Bayard NE 69334

Dear Mr. Loomis:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your request regarding an underpass. NDOT values your input and appreciates you taking the time to share your concerns.

Typically, costs associated with installation of an underpass for moving livestock are borne by the landowner. NDOT will continue to work with you regarding a solution that meets both the transportation needs and the requested underpass.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

From: noreply@nebraska.gov
To: [NDOT, Public Involvement](#)
Cc: emilyclapp16@gmail.com
Subject: Comment Inquiry for Minatare – US-385
Date: Wednesday, November 27, 2024 11:08:49 AM

Form Results

Project

Minatare – US-385

Project URL

<https://dot.nebraska.gov/projects/future-projects/minatare-us-385/>

Full Name

Greg and Emily Clapp

Email

emilyclapp16@gmail.com

Address

7189 US Highway 26

City

Bayard

State

Nebraska

Zip

69334

Comment

We are located at 7189 US Highway 26, $\frac{3}{4}$ of a mile west of the link62 intersection. Our biggest concern with the anticipated project is with the relocation of our current driveway. Right now, our driveway allows us access to the highway on a hill so we can see traffic in both directions and make a safe turn on to the highway. The location you have proposed to move our driveway (to CR 73)

would force us to enter the highway in a valley where you can not see traffic coming from the west. With the increasing speeds for a four-lane highway this makes trying to enter the highway very dangerous. The county road 73 intersection on the south side of the property should be studied. When driving a car there is about 600 feet of visibility to the west which gives less then 6 seconds to cross all proposed lanes of traffic. With the increased speed, and increased traffic, the limited visibility becomes a major issue. The problem gets worse on snow packed or icy roads every winter. The proposed driveway relocation would also require a lot more snow removal every time it snows for us to leave our property. So we would like to know if you are going to raise that county road intersection so traffic can be more easily seen or allow us to keep our driveway where it is currently located? Also the proposed driveway will be along the south border of our property and we are concerned the farmers next door will try to use that access with their farm equipment and tractors which will destroy the driveway and make it difficult for us to use. Are you willing to fence in the driveway so it only accesses our property?

How satisfied are you with this project?

Somewhat dissatisfied



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Greg and Emily Clapp
7189 US Highway 26
Bayard, Nebraska 69334

Dear Mr. and Mrs. Clapp:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns regarding potential impacts to your driveway. NDOT values your input and appreciates you taking the time to share your concerns.

As no improvements are anticipated for the existing eastbound lanes of US-26, the sight distance would remain the same over the hill to the west of Co Rd 73 as it is today. The intersection of US-26 and Co Rd 73 provides adequate sight distance to the west for cars and small trucks. Somewhat reduced sight distance is available for large semi-trucks entering the highway. However, with the proposed roadway providing two lanes eastbound, larger trucks would have the ability to use the right eastbound lane to accelerate to highway speeds; other vehicles traveling eastbound would have the ability to use the left eastbound lane and pass on the left.

Regarding the driveway being relocated to the southern property line, your request for fencing to be installed along the property line would be discussed during the right-of-way negotiations.

Thank you again for your participation.

Sincerely,

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

From: [Luhn, Sierra](#)
To: [Lamb, Faith](#); [Mielke, Craig](#); [Dirks, Anthony](#)
Cc: [Bui, Tony](#); [Schweitzer, Emily](#)
Subject: FW: Minatare-US-385 comment (Heigel)
Date: Monday, December 9, 2024 9:08:51 AM
Attachments: [image001.png](#)

See additional comment emailed to me below.

Thanks,



Sierra Luhn

Public Involvement Specialist

**Communications & Public Policy Division
Nebraska Department of Transportation**

OFFICE 402-479-3103

MOBILE 402-432-2281

sierra.luhn@nebraska.gov

dot.nebraska.gov [dot.nebraska.gov]

From: Mark Heigel <markheigel@gmail.com>
Sent: Thursday, December 5, 2024 10:42 PM
To: Luhn, Sierra <Sierra.Luhn@nebraska.gov>
Subject: Minatare-US-385 comments

You don't often get email from markheigel@gmail.com. [Learn why this is important \[aka.ms\]](#)

Project # NH-26-1(172)

Control # 51521

1. I see no reason why they would be affected but please do not remove any trees on the west side of my property. They are plenty far enough back to not cause any problems with the reconstruction of the US-26 and L62A intersection. (Moomaw's corner). If the roadway is moved closer to my home those trees become even more important. Not only do they provide privacy, but they also serve as a noise buffer from the traffic and most importantly provide a great natural barrier to prevent a distracted driver from plowing into my property and buildings or even my home. I can't imagine losing them. Please leave them in place.

2. The current preliminary design shows my driveway being relocated. I am ok with that but where they are showing the new driveway entering my yard the septic tank and drain

field would have to be relocated. I only own 2.25 acres here so I am very limited on space. The only place the septic system could be moved to would be slightly southwest of the house into that small triangle parcel of land that putting in the new driveway creates. I do not own that piece of land though and currently there is a pit there that is used to supply the water to a center pivot. A concrete irrigation structure at the entrance to my current driveway provides the water for that center pivot but since farmers irrigation district will have to move the structure that feeds that center pivot anyway perhaps the pit could also be moved to the south at that time as well.

3. Lastly, unless my research is incorrect a sound study was performed at the US-26 and L62A intersection (Moomaw's corner) on 4-3-24 at 9:00 a.m. in the morning. That is a fairly calm time of year for traffic. Even considering spring planting traffic. This test should have been performed the first or second week of October during sugar beet harvest when there is a truck going into or coming out of Bayard from the sugar factory every few minutes. The jake brakes on the majority of trucks are insanely loud. I encourage you to take a second look into the noise levels at this intersection during that time of year. I am confident you will get much different results than you did in April of 2024.

Thank you for taking my concerns into consideration.

Mark Heigel
11291 US Hwy 26
Bayard NE 69334
308-631-1057
markheigel@gmail.com

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links or responding to this email.



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

February 20, 2025

Mark Heigel
11291 US Hwy 26
Bayard NE 69334

Dear Mr. Heigel:

The Nebraska Department of Transportation (NDOT) appreciates your input concerning the Minatare - US-385 project.

Thank you for sharing your concerns regarding potential impacts to your property and the noise study conducted. NDOT values your input and appreciates you taking the time to share your concerns.

NDOT understands the complexity of impacts related to the relocation of your driveway and nearby irrigation facilities and will continue to evaluate alternative solutions to minimize these impacts. Property rights to be acquired would need to be of such nature and extent as are adequate for the construction operation and maintenance of the project. The types and sizes of these acquisitions would be established once the roadway designs have been finalized. Once the design footprints have been established, we will have a more detailed plan illustrating the acquisitions that will be needed. When you are contacted by a Right-Of-Way representative, please be sure to discuss any issues with them at that time. Any septic systems requiring modification or replacement would be included in the compensation to the landowner based on the recommendations and estimates from a qualified contractor.

Noise studies are designed to analyze representative average conditions throughout the year, rather than focusing solely on the loudest weeks or peak activity periods. This approach ensures that the study captures a variety of traffic conditions. While we recognize that traffic during the sugar beet harvest season may temporarily increase noise levels, the study's methodology is aligned with established federal and state guidelines, ensuring consistent and representative results. Although the noise model does not specifically account for Jake brake noise, we acknowledge that it can contribute to additional noise and vibration. We encourage you to share your concerns about Jake brake noise with your state and local representatives, who can address potential restrictions at this intersection.

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

Thank you again for your participation.

Sincerely,

A handwritten signature in black ink that reads "Sierra Luhn".

Sierra Luhn
Public Involvement Specialist
P.O. Box 94759
Lincoln, NE 68509-4759
sierra.luhn@nebraska.gov
402-479-3103

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS

PO Box 94759
Lincoln, NE 68509-4759

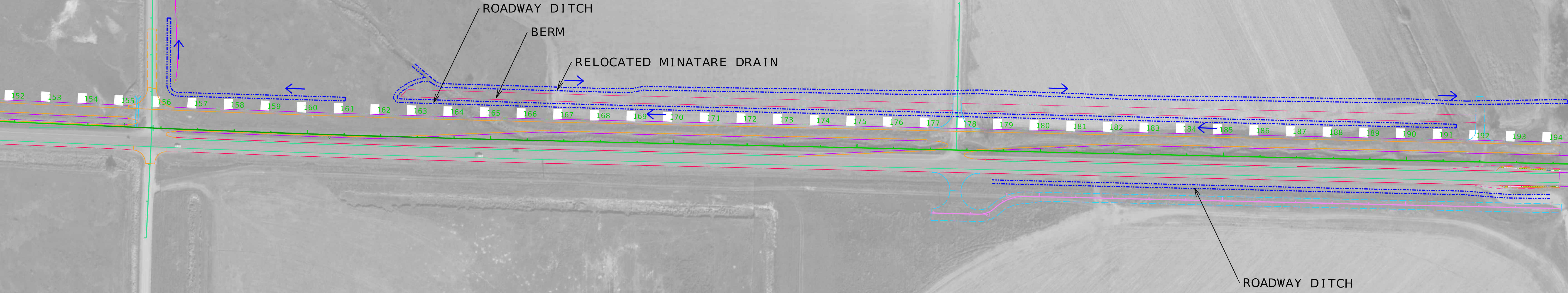
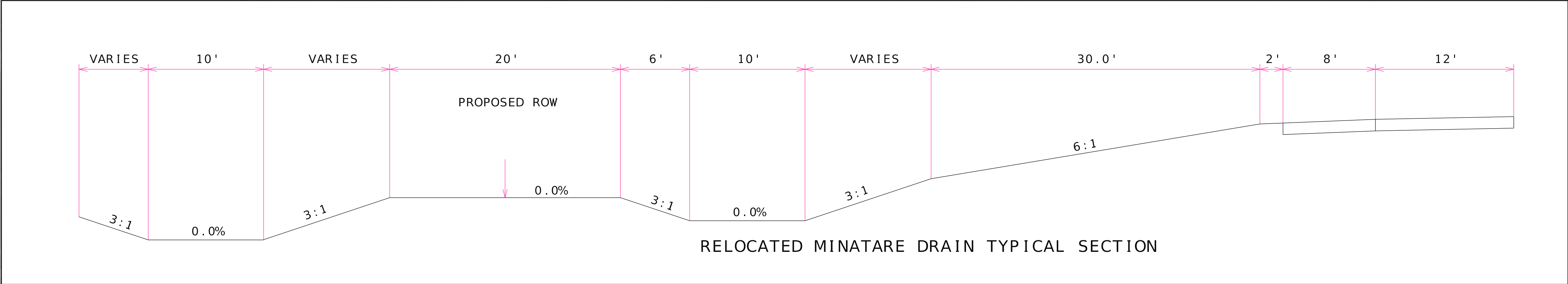
PHYSICAL ADDRESS

1500 Nebraska Parkway
Lincoln, NE 68502

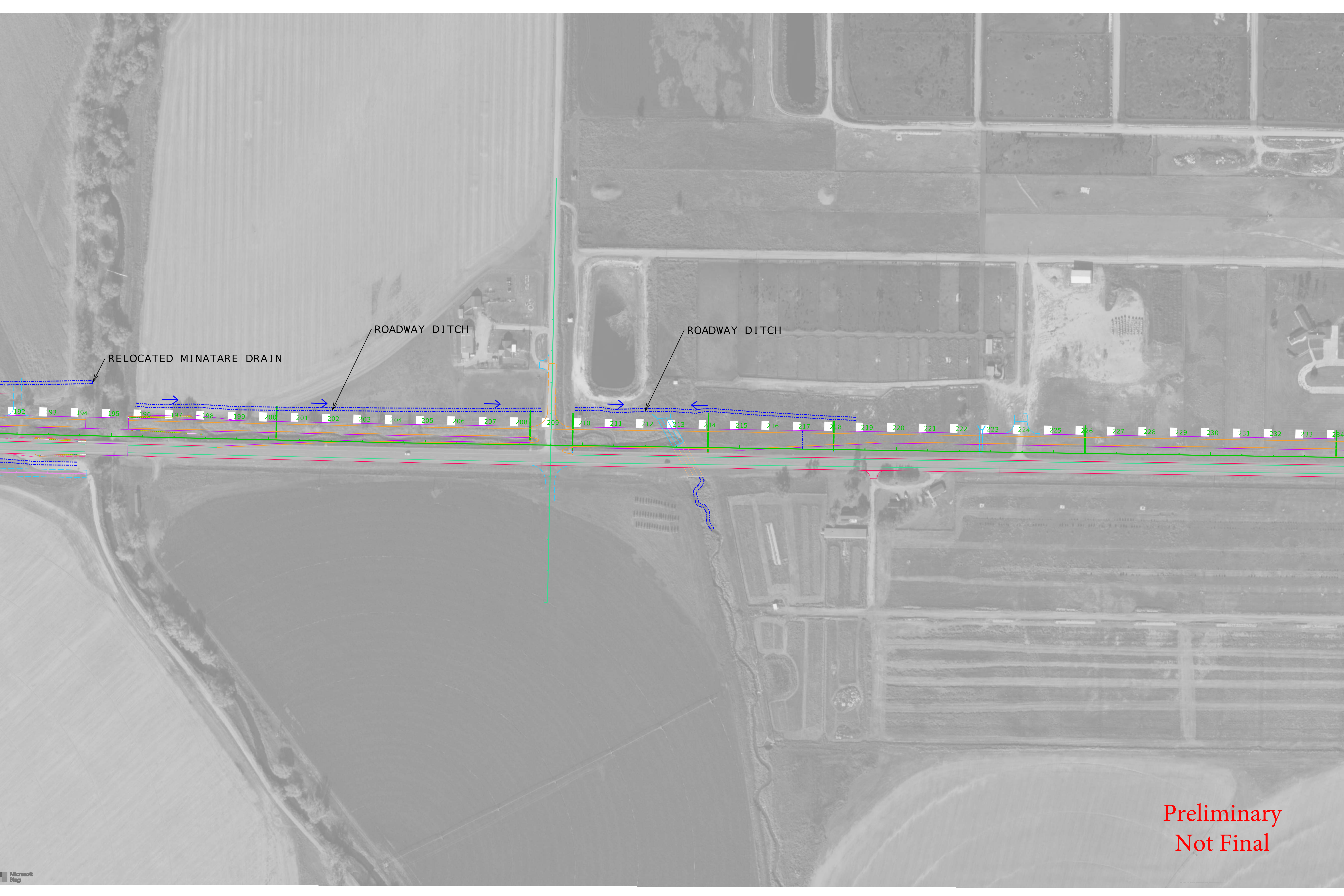
PHONE 402-471-4567

EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov



Preliminary
Not Final



Preliminary
Not Final



Biological Assessment

NDOT PQS Memorandum

Project Name: **Minatare to US-385** Project Number: **NH-26-1(172)** Control Number: **51521**

The biological assessment final approval on: **2/4/2025**

Date of Project Description used for this review: 10/3/2024

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 (CE 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: **Black-footed ferret, Northern Long-eared Bat, Tri-colored Bat, and Swift Fox**

☐ This BA did NOT require FHWA Review and Approval.

☒ This BA required FHWA Review and Approval.

FHWA Approval Date: 2/4/2025

☐ This BA did NOT require further consultation with the resource agencies.

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

USFWS Concurrence Date: 2/12/2025

NGPC Concurrence Date: 2/12/2025

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

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

Additional Coordination with Other Tribal or Federal Agencies: N/A

Description of Coordination: N/A

Bald and Golden Eagle Protection Act:

This project was also reviewed for potential impacts to bald and golden eagles. It has been determined that suitable habitat does exist within 0.5 miles of the Environmental Study Area. NDOT will utilize the Bald Eagle Survey Protocol to determine when a survey for nests and/or roosts should be conducted. If nest(s) are present within 0.5 miles of the project area, NDOT will notify the Nebraska Game and Parks Commission and United States Fish and Wildlife Service, and construction will not commence prior to their approval.

Migratory Bird Treaty Act:

NDOT has developed an Avian Protection Plan (APP) to reduce conflicts between construction of NDOT 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. NDOT will utilize its APP to reduce conflicts with migratory birds on this project.

Fish and Wildlife Coordination Act:

A wetland and water resources delineation was completed by Benesch from July 26 – July 29, 2021. Anticipated permanent impacts include 13.452 acres of wetlands and 1.571 acres/7253 linear feet of channel impacts. At this time temporary impacts have not been calculated but are expected to occur during construction. All temporary impacts would be restored to pre-construction conditions or better and planted with an appropriate seed mix. Wetlands were primarily located in the roadside ditches and along streams and irrigation ditches. At this time, the project will require an Individual Permit for impacts to waters of the U.S. Coordination under the FWCA would take place during the permitting process. Wetland mitigation is anticipated to occur at the Scottsbluff Mitigation Bank located near the project location. If additional wetland mitigation credits are required additional mitigation sites will be identified. As part of the FWCA NDOT/FHWA will discuss with the USFWS and NGPC on potential improvement to identified animal corridors.

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 Highway Project Manager shall coordinate with the NDOT Environmental Section to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the NDOT Environmental Section. *(District Construction)*
- A-2 Conservation Conditions.** Conservation conditions are to be fully implemented within the project limits as shown on the plans. *(District Construction, Contractor)*
- A-3 Early Construction Starts.** Contractor requests for early construction starts must be coordinated by the Project Construction Engineer with the NDOT Environmental Section for approval to ensure avoidance of listed species sensitive lifecycle timeframes. Early start requests may require consultation with the USFWS and NGPC. Agency coordination time will vary depending on species and project location. *(District Construction, Contractor)*
- A-4 T&E Species.** If federal or state listed species are observed during construction, the Highway Project Manager will contact NDOT Environmental Section to determine if additional species conservation conditions would be required prior to continuing project construction activities. Contact NDOT Environmental for a reference of federal and state listed species. Coordination with the USFWS and

NGPC may be required depending on the species identified and construction activities. (*NDOT 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 the T&E Matrix agreement (on NDOT's website), where species survey protocols 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 contractor must receive notice of acceptance from NDOT environmental, prior to starting the above listed project activities. These project activities cannot adversely affect state and/or federally listed species or designated critical habitat. (*NDOT Environmental, District Construction, Contractor*).

A-7 Waste/Debris. Construction waste/debris will be disposed of in areas or a manner that 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 carried out by NDOT Maintenance or others after construction is complete, but prior to project close-out, shall adhere to any standard conservation conditions for species designated for the project limits during construction. (*NDOT 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. (*NDOT Environmental*)

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

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

S-6 Permanent LED Lighting (NDOT Design Commitment): Only LED roadway luminaries listed on the NDOT “Nebraska Qualified Material Vendors List” will be considered for use on Nebraska highway lighting projects. Proposed changes to the following LED lighting requirements would require resource agency (USFWS and/or NGPC) coordination and approval prior to installation:

- Nominal CCT – 3000 +/- 300 K
- BUG Ratings – Maximum nominal Backlight (N/A), Uplight (0), Glare (N/A)
- Lumen Output – N/A

Any proposed changes to the listed requirement(s) must be presented to the NDOT Environmental Section for Agency Coordination and approval.

Black-footed Ferret:

No Conservation Conditions are required for the Black-footed Ferret.

Northern Long-eared Bat / Tri-Colored Bat

NLEB / TCB CM-5 Culvert maintenance and/or removal will not occur between May 15 – July 31 (maternity roosting season), to avoid impacts to northern long-eared bats. (*District, Contractor*)

OR

NLEB / TCB CM-6 If culvert maintenance and/or removal MUST occur during the northern long-eared bat maternity roosting season (May 15 – July 31), before work may begin, a qualified biologist or trained personnel must first conduct a Culvert Assessment per USFWS's Range-wide Indiana Bat & Northern Long-Eared Bat Survey Guidelines to determine if bat species are present. If bat presence is detected, then FURTHER CONSULTATION is required with Nebraska Game and Parks Commission Environmental Review staff before any work may begin (*District, Contractor*)

AND

NLEB / TCB - 1: Bridge deck joint replacement over the bridge deck, and bridge deck/superstructure removal activities will not occur between May 15th - July 31st to avoid impacts to the northern long-eared bat maternity roosting period. (*District, Contractor*)

OR

NLEB / TCB - 2: If bridge deck joint replacement over the bridge deck, or removal of bridge or bridge superstructure occurs during the northern long-eared bat maternity roosting period (May 15th – July 31st), qualified biologists/trained personnel will perform bat roosting surveys prior to the start of these activities at the following locations: **All locations of bridge work** (location of suitable roosting habitat). If bat species are found, Qualified Biologist and Project Manager will immediately notify USFWS (nebraskaes@fws.gov)

and NGPC (Shaun Dunn 402-471-5419) for additional consultation prior to the start of construction. (*District, Contractor*)

AND

NLEB / TCB -3: All phases and aspects of the project shall be modified, to the extent practicable, to avoid tree removal in excess of what is required to implement the project safely. Tree removal shall be limited to removals specified in the project plans, which will be clearly marked in the field. (*Design, Contractor*)

NLEB / TCB CM-2: No removal of suitable trees or roosting structures between May 15 and July 31 (maternity roosting season) (*Contractor*)

Swift Fox:

SF-1 Two weeks prior to the start of construction, a qualified biologist shall survey the environmental study area according to protocol to determine if active swift fox den sites are present. If an active den with young is located and it is outside the project limits, then a buffer zone shall be established around the den and all construction activities shall avoid the buffer until the den is abandoned. If an occupied den with or without young is identified within the project limits or staging areas, NDOT shall immediately coordinate with the NGPC to determine how to proceed. A buffer zone shall be established around the den and all construction activities shall avoid the buffer until NDOT gives approval to enter the buffer area. Between April 1 and August 31, the buffer zone shall be 250 yards around the active den site; other times of the year, the buffer shall be 100 yards around the active den site. (*NDOT Environmental*)

SF-2 Fencing shall be designed for wildlife safety and wildlife friendly passage with a bottom wire at least 16" from the ground. If different fencing design is required for safety or access control, additional coordination with resource agencies shall be required. (*NDOT Design, NDOT Environmental*)

SF-3 Fence posts shall not be placed within potential den sites that appear to have animal activity. If fence posts cannot avoid potential den sites that appear to have animal activity, NDOT Environmental will be notified and will re-initiate consultation with resource agencies. Work will not commence until agency concurrence is received. (*Contractor*)

SF-A Soil disturbing activities along L62A at the prairie dog colonies will not occur during the Swift Fox pup rearing season (April 1st to August 31st) (*Contractor, Construction*)

SF-B NDOT shall coordinate with the NGPC regarding the installation of artificial escape dens in suitable locations along the L62A corridor. Swift Fox Escape Den Installation protocols shall be utilized. (*NDOT Environmental, NDOT Design*)

SF-C NDOT shall establish a 3' vegetative barrier within the ROW of L62A east of the Lowline canal to deter prairie dogs from establishing within the ROW. The vegetative barrier will be established by following the seeding and management outlined in the erosion control plan (Utilizing the Type-A -Seed Mixture for the Panhandle outlined in the NDOT Roadside Vegetation Establishment and Management Manual (2024)). A temporary silt fence will be established at the edge of NDOT ROW in locations bordering prairie dog towns to deter prairie dog establishment in the ROW while the vegetative barrier is being established. The silt fence will be removed once vegetation

has reached 3' in height or if two growing seasons have passed and the vegetative barrier has not reached sufficient height, NDOT will coordinate with the NGPC and USFWS (*Contractor, NDOT Environmental, District*)

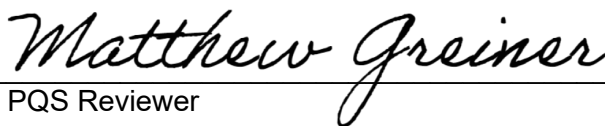
SF-D NDOT will coordinate with the NGPC and USFWS to develop a management plan for Prairie Dog in district 5. (*NDOT Environmental, District*)

SF-E District maintenance staff will only mow the first 16' of the ROW for maintenance activities to protect the vegetative barrier for prairie dog deterrence. (*District*).

Bald and Golden Eagle Protection Act

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

NDOT Construction Project Managers should contact NDOT Environmental at 402-479-4419 or matthew.greiner@nebraska.gov at least 30 days prior to construction start to schedule any required surveys.



____ NDOT PQS Reviewer

2/13/2025

Date

This(These) Project(s) has(have) been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, U.S. Fish and Wildlife Service, Nebraska Department of Transportation, and Nebraska Game and Parks Commission for the Determination of Effects to State and Federal Listed Species From the Federal-Aid Highway Program (March 2023) and meet stipulations included in this agreement.



2200 N. 33rd St. • P.O. Box 30370 • Lincoln, NE 68503-0370 • Phone: 402-471-0641

February 12, 2025

Luke Pitts
Federal Highway Administration
100 Centennial Mall North, Rm 220
Lincoln, NE 68508

Re: Minatare to US-385, NDOT CN 51521, NGPC Proj. No. NDOT22073 FHWA24001, Morrill and Scotts Bluff Counties, Nebraska

Dear Luke Pitts:

Please reference your correspondence dated February 4th, 2025. This letter is in response to your request for concurrence regarding this project's potential impacts to endangered and threatened species in Morrill and Scotts Bluff Counties, Nebraska. This project was reviewed by the Nebraska Department of Transportation (NDOT) and the Federal Highway Administration (FHWA) in accordance with the Programmatic Agreement (PA) among the FHWA, U.S. Fish and Wildlife Service, Nebraska Game and Parks Commission, and NDOT to satisfy the requirements of section 7 of the Endangered Species Act (ESA) and the Nebraska Nongame and Endangered Species Conservation Act (NESCA) for the Federal-Aid Highway Program in the State of Nebraska. As we understand it, the project includes reconstructing US-26 to a 4-lane divided roadway, widening US-26 and L-62A to a 4-lane divided roadway with a depressed median, improvements to existing or construction of additional culverts, bridges, storm sewers, intersections, and side roads, as well as other associated activities as outlined in the provided Biological Assessment. We have completed our review of the proposed project under Neb. Rev. Stat. § 37-807 (3)(c) of the Nongame and Endangered Species Conservation Act (NESCA) and we offer the following comments.

This project is within the range of the state and federally listed endangered black-footed ferret (*Mustela nigripes*), blowout penstemon (*Penstemon haydenii*), eskimo curlew (*Numenius borealis*), gray wolf (*Canis lupus*), northern long-eared bat (*Myotis septentrionalis*), pallid sturgeon (*Scaphirhynchus albus*), and whooping crane (*Grus americana*); the state and federally listed threatened eastern black rail (*Laterallus jamaicensis jamaicensis*), piping plover (*Charadrius melodus*), rufa red knot (*Calidrus canutus rufa*), and western prairie fringed orchid (*Platanthera praeclara*); the state listed endangered swift fox (*Vulpes velox*); and the federally proposed endangered tri-colored bat (*Perimyotis subflavus*). As identified in the biological assessment, there is no suitable habitat for blowout penstemon, eastern black rail, gray wolf, pallid sturgeon, piping plover, rufa red knot, western prairie fringed orchid, or whooping crane.

Suitable habitat for eskimo curlew may exist within the vicinity of the project area; however, due to the transient nature and low likelihood of occurrence of eskimo curlew, impacts to this species are not anticipated. Suitable habitat for tri-colored bat, and northern long-eared bat exists within and near the project area along Red Willow Creek. NDOT has agreed to implement standard and species-specific conservation conditions to avoid impacts to tri-colored bat, and northern long-eared bat; therefore, negative impacts to these species are not anticipated.

TIME OUTDOORS IS TIME WELL SPENT

OutdoorNebraska.org

Suitable habitat for black-footed ferret (BFF) and swift fox (SF) is present in the open expanses of prairie and prairie dog towns that exist within the project area and surrounding landscape. Although suitable habitat for BFF is present, BFF are believed to be extirpated in Nebraska, and very unlikely to be present in the project area or the state; therefore, no conservation measures have been proposed for this species and no impacts are anticipated. NDOT has agreed to implement standard and species-specific conservation conditions, as well as special conditions directly related to this project (below), to avoid impacts to swift fox; therefore, negative impacts to swift fox are not anticipated.

- SF-A** Soil disturbing activities along L62A at the prairie dog colonies will not occur during the Swift Fox pup rearing season (April 1st to August 31st) (*Contractor, Construction*)
- SF-B** NDOT shall coordinate with the NGPC regarding the installation of artificial escape dens in suitable locations along the L62A corridor. Swift Fox Escape Den Installation protocols shall be utilized. (NDOT Environmental, NDOT Design)
- SF-C** NDOT shall establish a 3' vegetative barrier within the ROW of L62A east of the Lowline canal to deter prairie dogs from establishing within the ROW. The vegetative barrier will be established by following the seeding and management outlined in the erosion control plan (Utilizing the Type-A -Seed Mixture for the Project Name: Minatare to US-385 C.N. 51521; P.N. NH-26-1(172) 19 Panhandle outlined in the NDOT Roadside Vegetation Establishment and Management Manual (2024)). A temporary silt fence will be established at the edge of NDOT ROW in locations bordering prairie dog towns to deter prairie dog establishment in the ROW while the vegetative barrier is being established. The silt fence will be removed once vegetation has reached 3' in height or if two growing seasons have passed and the vegetative barrier has not reached sufficient height, NDOT will coordinate with the NGPC and USFWS (*Contractor, NDOT Environmental, District*)
- SF-D** NDOT will coordinate with the NGPC and USFWS to develop a management plan for Prairie Dog in district 5. (*NDOT Environmental, District*)
- SF-E** District maintenance staff will only mow the first 16' of the ROW for maintenance activities to protect the vegetative barrier for prairie dog deterrence. (*District*).

In the event a borrow site associated with this project results in a depletion to the Platte River, NDOT will contact the appropriate agency, depending on the river basin in which the borrow site is located, to address offsetting a depletion.

Based on the information provided, we concur the proposed project “**May Affect but is Not Likely to Adversely Affect**” black-footed ferret, northern long-eared bat, or swift fox and acknowledge that FHWA and NDOT have determined the project will have no effect on all other state-listed endangered or threatened species. Additionally, should the tri-colored bat be federally listed as an endangered species, we concur the proposed project may affect but is not likely to adversely affect this species. This concurrence is based on a review of the material provided, aerial photographs, and information found in the Nebraska Natural Heritage Database. If the proposed project is changed or new information regarding endangered or threatened species becomes available, then this concurrence is no longer valid and further consultation with the Nebraska Game and Parks Commission will be necessary.

NDOT has reviewed the proposed project pursuant to the federal Fish and Wildlife Coordination Act (FWCA) and the federal Bald and Golden Eagle Protection Act (BGEPA). A wetland delineation was completed by Benesch from July 26-July 29, 2021, and it was determined that 13.45 acres of wetlands and 7,523 linear feet of stream channel will be permanently impacted, with temporary impacts not yet calculated. The project will require an individual 404 permit with wetland mitigation anticipated to occur at the Scottsbluff Mitigation Bank; therefore, additional coordination under the FWCA is anticipated. Due to the presence of suitable bald eagle nesting habitat within ½ mile of the project area, NDOT will use the bald eagle survey protocol to avoid adverse impacts to bald eagles. NDOT will also use its Avian Protection Plan to reduce conflicts with migratory birds and comply with the federal Migratory Bird Treaty Act. The Commission acknowledges and supports these actions and this review process to avoid impacts to other state trust resources which do not receive legal protection under NESCA but are still considered valuable for maintaining the ecological diversity within our state and are protected under federal laws.

Thank you for the opportunity to review this project. If you have any questions or need additional information, please feel free to contact me at (402) 471-5554 or ruby.rolland@nebraska.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ruby Rolland".

Ruby Rolland
Environmental Specialist III
Planning and Programming Division

EC: FHWA (Justin Luther)
NDOT (Matthew Greiner, Sammi Kerrisun, Ben Trenne)
NGPC (Melissa Marinovich, Environmental Review)
USFWS (Brooke Stansberry, Mitch Renteria, NE Field Office)



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

Nebraska Division

February 4th, 2025

100 Centennial Mall North, Room 220
Lincoln, NE, 68508
402-742-8460
402-742-8480
Nebraska.FHWA@dot.gov

Mitch Renteria, Biologist
US Fish and Wildlife Service
9325 B South Alda Road
Wood River, Nebraska 68883

2024-0089107

**Request for Concurrence for
Project: Minatare to US-385
NH-26-1(172)
CN 51521**

Dear Mr. Renteria:

The U.S. Fish and Wildlife Service concurs with your determinations that the described project will not adversely affect listed species or critical habitat. Contact this office if changes are made or new information becomes available.

MARK
PORATH
Digitally signed by
MARK PORATH
Date: 2025.02.12
15:10:48 -06'00'

Project Leader, Nebraska Field Office Supervisor

FHWA respectfully requests your review of the enclosed Biological Assessment (BA) with an IPLE addressing impacts on black-footed ferret, northern long-eared bat, tri-colored bat, and swift fox and provide your concurrence if you deem FHWA's determination appropriate. FHWA has determined that this project, Minatare to US-385, CN 51521 **may affect, but is not likely to adversely affect black-footed ferret, northern long-eared bat, tri-colored bat, and swift fox** with the implementation of the conservation conditions listed within the BA. This Project would have "No Effect" on all other federally or state-listed threatened and endangered species or their designated critical habitat. This Project is an Environmental Assessment, falling outside the September 2021 23 U.S.C. 326 Memorandum of Understanding (MOU) between the Federal Highway Administration (FHWA) and NDOT. Therefore, FHWA is the lead federal agency for the Project and has reviewed and signed the enclosed BA provided by NDOT. This project is federally funded. Impacts to wetlands are anticipated with this Project; therefore, permitting under the USACE will be required and mitigation is anticipated.

This project is 1847 miles in length and is located on Highways US-26 starting at mile marker (MM) 32.63 and extending eastward onto L-62A at MM 9.19

The improvements on this project consist of fully reconstructing US-26, on alignment, to a 4-lane divided roadway with a raised median from the project beginning to the east corporate limits of Minatare, and then widening US-26 and L-62A from an existing 2-lane roadway to a 4-lane divided roadway with a depressed median using the strategy of constructing new lanes on the north side of the US-26/L-62A corridor and milling and resurfacing the exiting lanes which will remain in place. Improvements include new paving, milling and resurfacing, culvert and storm sewer work, new guardrail, removing and replacing guardrail, a new bridge, new intersections, improved intersections, access relocations (i.e. new frontage roads) and side road modifications.

Should you have any questions, please do not hesitate to contact me at (402)-742-8466, Luke.pitts@dot.gov. Thank you for your time and consideration.