NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

September 4, 2018

Joseph Werning
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Jim Douglas, Director
Nebraska Game and Parks Commission
2200 N. 33rd Street
Lincoln, NE 68503

Subject: *NEPA Assignment Proposed Amendment to the Programmatic Agreement (PA) Among the Federal Highway Administration, U.S. Fish and Wildlife Service, Nebraska Department of *Transportation, and the Nebraska Game and Parks Commission for the Determination of Effects to State and Federally Listed Species from the Federal-Aid Highway Program (the Matrix PA)*

Dear Signatory:

Title 23 United States Code (U.S.C.) Section 326 allows the U.S. Department of Transportation (USDOT) Secretary, acting through FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal Environmental laws to a State DOT through a Memorandum of Understanding (MOU). FHWA and the Nebraska Department of Transportation (NDOT) will execute such an agreement on September 5, 2018, entitled: *Memorandum of Understanding between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation, State Assumption of Responsibility for Categorical Exclusions, 23 USC §326* (the Section 326 MOU). Specifically, the Section 326 MOU assigns to NDOT the USDOT's responsibility for determining whether certain designated activities are included within classes of action that are classified as Categorical Exclusions (CEs). NDOT will assume the responsibilities of FHWA in accordance with the Section 326 MOU in a process referred to as NEPA Assignment, **effective September 5, 2018.**

*Please note, that per Nebraska Statute, the Nebraska Department of Roads (NDOR) was officially renamed to the Nebraska Department of Transportation (NDOT), effective July 1, 2017, and any responsibilities previously assigned to "NDOR" pursuant to the Matrix PA continued to "NDOT" under its new title by operation of law.

The purpose Pursuant to Section IV.A.6 of the Section 326 MOU, if interagency agreements exist which involve signatories other than FHWA and the State, then FHWA and the State "will work to obtain any necessary consents or amendments. Such actions include:

1. "Consulting with the other parties to obtain written consent to the continuation of the interagency agreement in its existing form, but with the substitution through assignment of the State for FHWA with respect to interagency agreement provisions applicable to CE projects;
2. Negotiating with the other parties to amend the interagency agreement as needed so that the interagency agreement continues but that the State assumes FHWA's responsibilities with respect to CE projects."

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Pete Ricketts, Governor

In order to comply with this section of the MOU, NDOT intends to pursue Option 1 above, and to continue under the terms of the existing Matrix PA, substituting NDOT as the "agency official" for FHWA with respect to CE Projects. NDOT would continue under the Amended Matrix PA until it is otherwise revised by the parties or until its expiration, whichever occurs first. This letter will constitute written consent from all signatories of the substitution of NDOT for FHWA in accordance with the following statements:

1. Pursuant to the Section 326 MOU, NDOT has been assigned and assumes all of the US DOT Secretary's (FHWA's) responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of Federal-Aid highway projects classified as Categorical Exclusions that NDOT has assumed. In that capacity, NDOT has been assigned the role of "agency official" for the purpose of compliance with Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Section 7).
2. FHWA, as a Federal agency, has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions, and while an Indian tribe may agree to work directly with NDOT, the FHWA remains legally responsible for government-to-government consultation with Indian tribes.
3. The FHWA Nebraska Division Administrator retains responsibility as "agency official" for environmental review, consultation, and decision-making for all other projects not assigned by the MOU.
4. NDOT will clearly identify in its consultations when it is serving as the "agency official" under the Section 326 MOU.

In summary, this letter constitutes written consent to substitute, through NEPA Assignment, NDOT for FHWA in the Matrix PA as stated in the bullet points above. This letter containing your signed acknowledgement will serve as an Amendment to the Matrix PA until such time that the Matrix PA is revised by the parties or expires.

To effectuate the above-referenced amendment to the Matrix PA, I request that you sign the acknowledgement page of this letter and return it by 09/21/2018. You may send it to my attention to the email address noted below. Once all signatories to the Matrix PA have signed the acknowledgement page, we will provide copies for your records and use. The effective date of this letter amendment will be the date of the last signature applied, or September 5, 2018 (the date of the CE Assignment MOU), whichever is later.

If you have any questions, please feel free to contact me.

Respectfully,

Dillon Dittmer
Environmental Program Manager
Project Development Division
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ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE MATRIX PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)

By signing below, each party consents to Amendment 1 of the *Programmatic Agreement among the Federal Highway Administration, U.S. Fish and Wildlife Service, Nebraska Department of Transportation, and the Nebraska Game and Parks Commission for the Determination of Effects to State and Federally Listed Species from the Federal-Aid Highway Program (Matrix PA)*, as described in this letter.

Dated this _____ day of _____, 2018

FEDERAL HIGHWAY ADMINSTRATION

9-5-2018

Joseph A. Werning, Division Administrator
Federal Highway Administration, Nebraska Division

DATE

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TO THE MATRIX PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)

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Dated this 6 day of Sept, 2018

NEBRASKA GAME AND PARKS COMMISSION

Jim Douglas, Director
Nebraska Game and Parks Commission

9-6-2018
DATE

ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE MATRIX PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)

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Dated this _____ day of _____, 2018

SIGNATORIES
NEBRASKA DEPARTMENT OF TRANSPORTATION (formerly NEBRASKA DEPARTMENT OF ROADS)

9/7/18

Kyle Schneweis, P.E. Director
Nebraska Department of Transportation

DATE

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Dated this 11th day of Sept., 2018

U.S. FISH AND WILDLIFE SERVICE

Eliza Hines, Nebraska Field Supervisor
U.S. Fish and Wildlife Service

9/11/2018
DATE