NEBRASKA
GAME PARKS

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February 6, 2017

Melissa Maiefski
Federal Highway Administration
100 Centennial Mall North, Room 220
Lincoln, NE 68508-3803

Re: Biological Assessment, Nebraska Biological Evaluation Process for the Federal-Aid Transportation Program in Nebraska and Programmatic Agreement (Reevaluation)

Dear Ms. Maiefski:

Please make reference to your letter dated December 29, 2016. This letter is in response to your request for concurrence regarding the potential impacts implementation of the reevaluated Nebraska Biological Evaluation Process (Process) for the Federal-Aid Transportation Program in Nebraska and Programmatic Agreement (PA) may have on state and federally listed endangered and threatened species and federally designated critical habitat in Nebraska. The Process and PA have both been in place for the past five years and are scheduled for renewal in 2017. We have completed our review of the programmatic consultation process as outlined in the Biological Assessment (BA) under Neb. Rev. Stat. § 37-807 (3) of the Nongame and Endangered Species Conservation Act (NESCA) and we offer the following comments.

In 2012, staff from Federal Highway Administration (FHWA), Nebraska Department of Roads (NDOR), Nebraska Game and Parks Commission (NGPC), and U.S. Fish and Wildlife Service (USFWS) signed the PA for streamlining the consultation process required under the Nebraska Nongame and Endangered Species Conservation Act and the federal Endangered Species Act for transportation projects receiving state and federal funds. As discussed in your letter, the implementation of the PA has proven to decrease signatory agency workloads while allowing the agencies to focus on a more holistic approach to species recovery. The signatory agencies have met annually for the past five years to conduct audits and update assessment tools as needed to improve the Process and assure the agencies the correct conservation efforts are being implemented to protect our state and federally listed species in Nebraska.

Based on the information in the Programmatic Biological Assessment and five years of annual reviews, the NGPC concurs that implementation of the Process for the Federal-Aid Transportation Program in Nebraska and the associated Programmatic Agreement "May Affect but are Not Likely to Adversely Affect" state and federally listed endangered or threatened species or federally designated critical habitat. Species evaluated in the BA that are included in this determination include the following: American burying beetle (*Nicrophorus americanus*), American ginseng (*Panax quinquefolius*), black-footed ferret (*Mustela nigripes*), blacknose shiner (*Notropis heterolepis*), blowout penstemon (*Penstemon haydenii*), Colorado butterfly plant (*Gaura neomexicana coloradensis*), eskimo curlew (*Numenius borealis*), finescale dace (Chrosomus *neogaeus*), gray wolf (*Canis lupus*), interior least tern (*Sternula antillarum athalassos*), lake sturgeon (*Acipenser fulvescens*), western massasauga (*Sistrurus catenatus tergeminus*), mountain plover (*Charadrius montanus*), northern long-eared bat (*Myotis*

septentrionalis), northern redbelly dace (Chrosomus *eos*), pallid sturgeon (*Scaphirhynchus albus*), piping plover (*Charadrius melodus*), river otter (*Lontra canadensis*), *rufa* red knot (*Calidris canutus rufa*), Salt Creek tiger beetle (*Cicindela nevadica lincolniana*), saltwort (*Salicornia rubra*), scaleshell mussel (*Leptodea leptodon*), small white lady's slipper (*Cypripedium candidum*), southern flying squirrel (*Glaucomys volans*), sturgeon chub (*Macrhybopsis gelida*), swift fox (*Vulpes velox*), Topeka shiner (*Notropis topeka*), Ute ladies'-tresses (*Spiranthes diluvialis*), western prairie fringed orchid (*Platanthera praeclara*), and whooping crane (*Grus Americana*). Impacts to federally designated critical habitat for Salt Creek tiger beetle, Topeka shiner, and whooping crane are also included in this determination.

If the proposed process/project is changed or new information regarding endangered and threatened species becomes available, then this determination is no longer valid and further consultation with the Nebraska Game and Parks Commission will be necessary.

The NGPC appreciates the time and effort NDOR, FHWA, and USFWS have contributed to this consultation effort and implementation of the PA. We look forward to the continued coordination with all agencies involved. Thank you for your dedication to protecting our state trust resources. If you have any questions or need additional information, please feel free to contact me at (402) 471-5554 or ryan.joe@nebraska.gov.

Sincerely,

Ryan Joe
Environmental Analyst
Planning and Programming Division
Nebraska Game and Parks Commission

cc: FHWA (Scott Stapp, Taylor Peters)
NDOR (Jason Jurgens, Dillon Dittmer, Melissa Marinovich, Zach Cunningham)
NGPC (Michelle Koch, Carey Grell, Mike Fritz)
USFWS (Eliza Hines, John Cochnar, Brooke Stansberry)