Federal and State Listed Species Conservation Conditions (CC)

The conservation conditions listed in this document correspond to the conditions identified in the Federal Species Matrix and State Species Matrix (Matrix) document. A project evaluation through the Matrix identifies which activities require associated conservation conditions under the programmatic consultation process. When identified, CC's shall be incorporated into the NEPA decision document, Green Sheet process, construction contract, Overview of Effects and Required Conservation Conditions form (OERCC), and executed in the field. **If CC's for a specific project appear contradictory, the NDOR Biologist will either stipulate in the OERCC form where within the project limits each apply, or will only include the most restrictive CC. Within the notes section of the OERCC, the NDOR Biologist will document which condition was dropped, and the reason why, if applicable**. **In this instance, an IPLE isn't needed**. If the CC's cannot be fully executed (other than the exception previously stated), then FHWA will be contacted by NDOR for guidance. Following is the list of CC's that are utilized with the Matrix to offset possible impacts.

NOTE: The Matrix and associated findings, and any associated Conservation Condition only apply to species that have been identified by the Species Evaluation Parameters as having a "yes" answer to indicate a planning concern exists. For those species of concern, the Matrix is used to identify the status of impacts for the individual activity/practice being implemented.

1. **General Conservation Conditions for All Projects (Responsible Party for the measure is found in parentheses).** These conditions are numbered beginning with an "A" to designate application to ALL projects.

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

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

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

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

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

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

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

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

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

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

2. **<u>General Conservation Conditions for Specific Impacts/Activities, as applicable</u>** **(Responsible Party for the measure is found in parentheses).** These conditions are numbered beginning with an "S" to designate application to SPECIFIC impacts or activities.

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 not within swift fox or mountain plover 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
c. within the **whooping crane** migration corridor, work occurring within a half of a mile of wetlands or perennial waters will occur between the hours of 10:00 am to 4:00pm when the work is between March 6 – April 29 or October 9 – November 15

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

*Once ROW notifies NDOR Environmental, Environmental will check to see if suitable habitat for **American burying beetle, Salt Creek tiger beetle, whooping crane, swift fox, mountain plover, river otter, massasauga,** or any protected **plants** exist in the fencing area. IF the suitable habitat exists, NDOR Environmental shall coordinate with FHWA and resource agencies for guidance. If suitable habitat does not exist, then the work would be considered a no effect to listed species. THIS COMMITMENT IS NOT WRITTEN IN THE INDIVIDUAL PROJECT BIOLOGY DOCUMENT; the commitment is located in the NDOR ROW manual.*

S-2 **Platte River Depletions**. If within the Platte River watershed (including the Elkhorn, Salt Creek, Loup, Calamus, and Lower Platte drainage basins) include the following for all detention basin/retention basins, and borrow sites:

All 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, NDOR (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) any diverted water will be returned to its natural basin within 30 days, or d) creates a one-time depletion of less than 10 acre feet.

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

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

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

3. **<u>Standard Conservation Conditions for Range</u>.** When project work occurs within the range of the species listed below, and habitat is present according to the Habitat Evaluation form, the following measures will be incorporated into project contracts, the Green Sheet, the NEPA document and the O*verview of Effects and required Conservation Conditions because they apply to every project within that area. These conditions are numbered beginning with an "R" to designate application to RANGE.*

R-1 For the **American burying beetle**, nighttime work with lights from June 1 – July 1 and August 7 – September 1 is not authorized. If nighttime work is required during this timeframe, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

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

R-3 For activities within suitable habitat for the **American burying beetle** *where a NE determination* is made, include the following mitigation measure: Asphalt plants and staging areas for construction supplies and Contractor's equipment shall be located in areas that are frequently disturbed such as, but not limited to, field entrances, crop fields, abandoned roadway, farmsteads and roads. If this is not possible, the contractor shall coordinate with NDOR Environmental with a site plan showing the desired staging/stockpile location(s), which will be sited in such a way as to avoid impacting protected species (Contractor).

For activities where equipment may pull off and pull back onto pavement (ex, paving) where a no effect determination was made and the NDOR Biologist knows there is a potential for occupied habitat within 15 feet of the paved road surface, then the NDOR biologist will coordinate with FHWA, NGPC, and USFWS to determine if additional conditions should be included in the biology document. This coordination shall occur during the NEPA review and shall be included in the OERCC document.

R-4 For the **interior least tern** and **piping plover**, nighttime work with lights from April 15 – August 15 is not authorized. If nighttime work is required during this timeframe, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Surveys may be required to determine if nesting birds are present within ½ mile of the nighttime activity. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

R-5 For the **massasauga**, all work activities must avoid harming any snakes, whether on the road or within the general area.

R-6 For the **massasauga**, all Contractor activities including, but not limited to, borrow, haul roads, stock-piling, staging, parking, and material storage will be located in areas that are frequently disturbed such as, but not limited to, field entrances, crop fields, abandoned roadway, farmsteads and roads. For any areas outside those listed above, the Contractor will have a qualified biologist inspect the proposed sites prior to use to ensure they will not be placed within suitable massasauga habitat.

R-7 For the **mountain plover**, nighttime work with lights from March 15 –May 15 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required. (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

R-8 For activities within suitable habitat for the listed **plants** *where a NE determination* is made, include the following mitigation measure: Asphalt plants and staging areas for construction supplies and Contractor's equipment shall be located in areas that are frequently disturbed such as, but not limited to, field entrances, crop fields, abandoned roadway, farmsteads and roads. If this is not possible, the contractor shall coordinate with NDOR Environmental with a site plan showing the desired staging/stockpile location(s), which will be sited in such a way as to avoid impacting protected species (Contractor).

For activities where equipment may pull off and pull back onto pavement (ex. paving) where a no effect determination was made and the NDOR Biologist knows there is a potential for occupied habitat within 15 feet of the paved road surface, then the NDOR biologist will coordinate with FHWA, NGPC, and USFWS to determine if additional conditions should be included in the biology document. This coordination shall occur during the NEPA review and shall be included in the OERCC document.

R-9 For the **Salt Creek tiger beetle**, nighttime work with lights from May 15 – July 15 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

R-10 For the **southern flying squirrel**, nighttime work with lights from June 7 - July 1 and August 7 - September 1 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

R-11 For the **whooping crane**, nighttime work with lights from March 6 – April 29 and October 9 – November 15 is not authorized. If nighttime work is required during this timeframe, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required (NDOR Environmental, District Construction, Contractor). (*This language is only included when nighttime work has not been identified in the proposed plan of work activity*).

R-12 For **Southern Flying Squirrel**, all activities, including construction, staging, and fueling of equipment are limited to the timeframe between ½ hour after sunrise to ½ hour before sunset. No workers are allowed within the project vicinity outside of these hours. (Construction, Contractor)

4. **<u>Standard Conservation Conditions for Species</u>.** The implementation of the following Conservation Conditions for specific species will result in a reduction of impacts from the threshold of a *May Affect, Likely to Adversely Affect* determination to a *May Affect, Not Likely to Adversely Affect* determination. These conditions are numbered beginning with the initials indicating the common name of the species.

American Burying Beetle:

Note to Preparer: ABB-1 has been removed from the current Conservation Conditions per 2014 discussion among signatories. Conservation Condition ABB-2 has been revised.

ABB-2 Mowing/vegetation removal and carrion (roadkill carcasses) removal must be done according to American Burying Beetle Conservation Measures Protocol and must be implemented at the following locations: _____ *(Location of suitable habitat)*. This work will be conducted by *<u>either the District or the Contractor, as determined by the District during contracting</u>*.

**DRAFT Note to Preparer: Generally small (≤1-acre), isolated areas of grading outside the hinge point for activities such as field drive relocation, mailbox turnouts, guardrail removal, and intersection repairs, will implement ABB-2. Large-scale grading outside the hinge point throughout the project, such as re-shaping foreslopes and backslopes, adding lanes, and reshaping or re-directing ditches will require further consultation with agencies*.

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

ABB-4 Sodium vapor lighting will be used with directional shielding to focus the lighting onto the driving surface. Lighting will be limited to the extent necessary to meet safety requirements. (Design and Contractor)

American Ginseng:

AG-1 A qualified biologist will survey according to protocol during the growing season (May 15 – August 31) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, since the year 1975, there will be another survey according to protocol during the growing season immediately prior to construction. If species are not found during the survey, then the May Affect, Not Likely to Adversely Affect stands. If positive finding, then consultation is required. It is noted that the species is easier to identify during the fruiting period (July – August) than during the blooming period (May – July).

(NDOR Environmental Note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

AG-2 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Black-footed Ferret: No conservation measures specified.

Blacknose Shiner:

BNS-1 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

BNS-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

BNS-3 Construction activities within channels can occur during periods when water is absent from the channel. No discharge of water or spoil directly into the channel is allowed regardless of whether water is present. Upon completion of work activities, the stream bank/bed will be re-shaped to pre-disturbance condition. No flow modifications or disturbances in the channel are allowed when water is present. No work can occur in the channel if water is present without prior approval from NDOR Environmental and may require a re-initiation of consultation with resource agencies. The approval/disapproval may take up to 30 days. (Design, District, Contractor)

BNS-4 Woody vegetation and shrub plantings used for erosin control within 100 feet of the channel shall be limited to the same native species as those removed. (NDOR Environmental, District, Contractor)

BNS-5 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required due to MA to the species.

Blowout Penstemon:

BOP-1 A qualified biologist will survey according to protocol during the growing season (June - July) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, since the year 1975, there will be another survey according to protocol during the growing season immediately prior to construction. If species are not found during the survey, then the May Affect, Not Likely to Adversely Affect stands. If positive finding, then consultation is required.

NDOR Environmental Note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.

BOP-2 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Colorado Butterfly Plant:

CBP-1 A qualified biologist will survey according to protocol during the blooming period (August) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, since the year 1975, there will be another survey according to protocol immediately prior to construction. If species are not found during the survey, then the May Affect, Not Likely to Adversely Affect stands. If positive finding, then consultation is required.

NDOR Environmental Note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.

CBP-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. All work will remain on the roadway surface. (District, Contractor)

Eskimo Curlew: No conservation measures specified.

Finescale Dace:

FSD-1 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

FSD-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

FSD-3 Construction activities within channels can occur during periods when water is absent from the channel. No discharge of water or spoil directly into the channel is allowed regardless of whether water is present. Upon completion of work activities, the stream bank/bed will be re-shaped to pre-disturbance condition. No flow modifications or disturbances in the channel are allowed when water is present. No work can occur in the channel if water is present without prior approval from NDOR Environmental and may require a re-initiation of consultation with resource agencies. The approval/disapproval may take up to 30 days. (Design, District, Contractor)

FSD-4 Woody vegetation and shrub plantings used for erosin control within 100 feet of the channel shall be limited to the same native species as those removed. (NDOR Environmental, District, Contractor)

FSD-5 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required due to MA to the species.

Gray Wolf: No conservation measures specified.

Interior Least Tern:

ILT-1 For construction activities that <u>begin prior</u> to April 15 and continue beyond April 15, surveys will be conducted starting April 8 and continue through the end of construction or August 15 whichever comes first. NDOR Environmental, NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: _____ (location of suitable habitat). If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT-2 When initiating construction activities between April 15 and August 15, surveys will start one week prior to construction activities and will continue through the end of construction or August 15th, whichever comes first. NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: _____ (location of suitable habitat). If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

ILT-3 River transport and placement of barge(s) will occur outside of Interior least tern nesting season which is April 15 - August 15. (Contractor)

ILT-4 Herbaceous species used for re-seeding within ¼ mile of the following location: _____ (location of suitable habitat) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design)

ILT-5 If nighttime work is planned between April 15 and August 15, lighting must be shielded and directed away from the suitable habitat at the following locations: _____ (location of suitable habitat). (NDOR Environmental, Contractor)

Lake Sturgeon:

LS-1 No vibratory or impact pile driving from April 1 through June 30 within the channel. (Contractor)

LS-2 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

LS-3 The Contractor will dispose of drill cuttings in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. (Contractor)

LS-4 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

LS-5 No discharge of water or spoil directly into the channel from April 1 through July 31. (Contractor)

LS-6 No flow modifications or disturbance in the channel from February 1 through July 31. Work is allowed within a cofferdam if the work is conducted from the temporary work platform or another location not directly in the channel (i.e., the riverbank). Temporary bridges can be constructed between July1st and April 1st, provided they are constructed according to the terms and conditions of the associated 404 permit. *Note to Preparer: Condition not necessary if not working in the channel.* (Contractor)

LS-7 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required.

Massasauga:

M-1 The project area will be surveyed for suitable massasauga habitat prior to the completion of the process. Survey results will be sent to NGPC for approval. Areas with massasauga habitat (hibernating & foraging) shall be marked on the plans, in

the field, and in the contract. IF hibernacula are present, a May Affect determination is made and consultation with NGPC will occur through FHWA (federal-aid projects). IF hibernacula are not present, but suitable foraging/breeding habitat (grassland) is present, include the following conservation condition into the biology document to carry forward:

The Massasauga Impact Avoidance Protocol shall be followed during final design and construction.

NDOR Environmental Note: copy the entire condition into the OERCC "conditions already completed" section and summarize results. IF habitat is present, include the protocol condition of this measure in the OERCC "conditions to carry forward" section.

M-2 Any continuous run of silt fence shall not exceed 100 feet in length. (NDOR Environmental, Design, Contractor)

M-3 Utilize only net-free erosion control devices. (NDOR Environmental, Design, Contractor)

M-4 All construction activities shall be limited to the roadway surface or bridge deck. (Contractor)

Mountain Plover:

MP-1 When initiating construction activities between March 15 and May 15, a survey will be required one week prior to construction activities to determine mountain plover nesting activities directly adjacent to or within the project limits of construction. If active nests are found, NDOR Environmental Section will notify the District and will consult with the USFWS, NGPC, and FHWA. If species are present the District will notify the Contractor to not work within 150-feet of the active nest until NDOR Environmental completes consultation. (NDOR Environmental, District, Contractor)

MP-2 Permanent and temporary lighting will be used with directional shielding to focus the lighting onto the driving surface. Lighting will be limited to the extent necessary to meet safety requirements. (Design and Contractor)

MP-3 When initiating construction activities within suitable habitat between March 15 and May 15 a survey for active nest sites within the right-of-way and visible active nests outside the right-of-way shall be completed by a qualified biologist one week prior to the start of field work and prior to construction. Markings shall be made adjacent to the road shoulder to demark 100 feet on either side of an identified nest. All construction activities, field work, and staging shall be limited to the travel lanes only within the delineated active nest site. NO staging, stockpiling or travelling off the travel lanes is permitted within delineated areas until nesting activities cease. Marking materials shall be removed at the conclusion of the project. (NDOR Environmental, Contractor)

MP-4 If suitable habitat is present all vehicles will stay on the roadway unless a nesting survey is completed when initiating construction activities between March 15 and May 15 a survey for active nest sites within the right-of-way and visible active nests outside the right-of-way shall be completed by a qualified biologist one week prior to the start of field work and prior to construction. Markings shall be made adjacent to the road shoulder to demark 100ft on either side of an identified nest. All construction activities, field work, and staging shall be limited to the travel lanes only within the delineated active nest site. NO staging, stockpiling or travelling off the

travel lanes is permitted within delineated areas until nesting activities cease. Marking materials shall be removed at the conclusion of the project. (NDOR Environmental, Contractor)

Northern Long-Eared Bat:

Note to Preparer for Bridge Deck Repair activity: Conditions not necessary if not replacing expansion joints over the bridge deck. Bridge joints that occur on approaches or over soil are not considered "expansion joints over the bridge deck."

Note to Preparer for Clearing and Grubbing – Trees & Shrubs activity: If tree clearing occurs within ¼-mile of a known hibernacula or 150-ft of a known roost tree, then consultation is required.

NLEB-1 Tree clearing, bridge deck joint replacements over the bridge deck, bridge removal activities will not occur between June 1st – July 31st to avoid impacts to the northern long-eared bat maternity roosting period. (NDOR Environmental, Construction, Contractor)

OR

NLEB-2 If tree clearing, bridge deck joint replacement over the bridge deck, or removal of bridge structures occurs during the northern long-eared bat maternity roosting period (June 1st – July 31st), NDOR personnel will perform surveys prior to the start of these activities at the following locations: _____ (*location of suitable habitat*). If the species is absent, work may proceed. If the species is found, NDOR Environmental Section will consult with the USFWS, NGPC, and FHWA prior to the start of construction. (NDOR Environmental, Construction, Contractor)

Northern Redbelly Dace:

NRBD-1 Any detention basin outlet will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

NRBD-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

NRBD-3 Construction activities within channels can occur during periods when water is absent from the channel. No discharge of water or spoil directly into the channel is allowed regardless of whether water is present. Upon completion of work activities, the stream bank/bed will be re-shaped to pre-disturbance condition. No flow modifications or disturbances in the channel are allowed when water is present. No work can occur in the channel if water is present without prior approval from NDOR Environmental and may require a re-initiation of consultation with resource agencies. The approval/disapproval may take up to 30 days. (Design, District, Contractor)

NRBD-4 Woody vegetation and shrub plantings used for erosin control within 100 feet of the channel shall be limited to the same native species as those removed. (NDOR Environmental, District, Contractor)

NRBD-5 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required due to MA to the species.

Pallid Sturgeon:

PS-1 No vibratory or impact pile driving from April 1 through June 30 within the channel. (Contractor)

PS-2 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

PS-3 The Contractor will dispose of drill cuttings in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. (Contractor)

PS-4 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

PS-5 No discharge of water or spoil directly into the channel from April 1 through July 31. (Contractor)

PS-6 No flow modifications or disturbance in the channel from February 1 through July 31. Work is allowed within a cofferdam if the work is conducted from the temporary work platform or another location not directly in the channel (i.e., the riverbank). Temporary bridges can be constructed between July1st and April 1st, provided they are constructed according to the terms and conditions of the associated 404 permit. (Contractor)

Note to Preparer: Condition not necessary if not working in the channel.

PS-7 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required.

Piping Plover:

PP-1 For construction activities that <u>begin prior</u> to April 15 and continue beyond April 15, surveys will be conducted starting April 8 and continue through the end of construction or August 15 whichever comes first. NDOR Environmental, NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: _____ (location of suitable habitat). If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

PP-2 When <u>initiating</u> construction activities <u>between</u> April 15 and August 15, surveys will start one week prior to construction activities and will continue through the end of construction or August 15th, whichever comes first. NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: _____ (location of suitable habitat). If species are present the District will notify the Contractor to stop work within ¼ mile of nesting activities and follow the protocol to determine when work can resume. (NDOR Environmental, District, Contractor)

PP-3 River transport and placement of barge(s) will occur outside of piping plover nesting season which is April 15 - August 15. (Contractor)

PP-4 Herbaceous species used for re-seeding within ¼ mile of the following location: _____ (location of suitable habitat) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design, NDOR Environmental)

PP-5 If nighttime work is planned between April 15 and August 15, lighting must be shielded and directed away from the suitable habitat at the following locations: _____ (location of suitable habitat). (NDOR Environmental, Contractor)

River Otter:

RO-1 A qualified biologist will survey according to protocol no more than 10 days prior to construction. If no active den sites are found, then the project can proceed. If active den sites are found, NDOR Environmental Section will notify the District and will consult with the USFWS, NGPC, and FHWA. If species are present the District will notify the Contractor to stop work within 1/2 mile of the active den until NDOR Environmental completes consultation. (NDOR Environmental, District Construction, Contractor)

RO-2 If work is confined to an area between the hinge-points of the roadway or bridge deck, work may proceed. If work is required off the bridge deck or roadway surface, a qualified biologist will survey according to protocol no more than 10 days prior to construction. If no active den sites are found, then the project can proceed. If active den sites are found, NDOR Environmental Section will notify the District and will consult with the USFWS, NGPC, and FHWA. If species are present the District will notify the Contractor to stop work within 1/2 mile of the active den until NDOR Environmental completes consultation. (NDOR Environmental, District Construction, Contractor)

RO-3 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Salt Creek Tiger Beetle:

SCTB-1 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. All work will remain on the roadway surface. (District, Contractor)

Salt Creek Tiger Beetle - Critical Habitat:

SCTB-CH -1 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. All work will remain on the roadway surface. (District, Contractor)

Saltwort:

SW-1 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. All work will remain on the roadway surface. (District, Contractor)

Scaleshell Mussel:

SSM-1 Presence/absence survey will be completed by a qualified biologist in the wetted river channel prior to completion of the Process. If survey is negative, consultation is complete. If mussels are found NDOR Environmental will consult with the USFWS, NGPC, and FHWA. (NDOR Environmental)

SSM-2 Any outlets, bank disturbance, and/or in stream work will be designed to avoid or minimize sedimentation and stream bank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

SSM-3 Prior to use at the construction site, barges and any equipment that will be used in the water must be de-contaminated of invasive aquatic species according to protocol. (Contractor)

SSM-4 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

SSM-5 No discharge of water or spoil directly into the channel. (Contractor)

Small White Lady's Slipper:

SWLS-1 A qualified biologist will survey according to protocol during the blooming season (May 15 - June 10) prior to the completion of the Process. If suitable habitat is identified, there will be another survey according to protocol during the growing season immediately prior to construction. If the species is found, then consultation is required.

(NDOR Environmental – note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

SWLS-2 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Southern Flying Squirrel:

SFS-1 A qualified biologist will survey for nesting cavities (active or inactive) within suitable habitat to a distance 250 yards of construction prior to completion of the Process. If suitable habitat or cavities are not found within 250 yards of construction, then the May Affect, Not Likely to Adversely Affect stands. If suitable habitat or cavities are found, NDOR Environmental Section will consult with the USFWS, NGPC, and FHWA.

(NDOR Environmental – note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

SFS-2 If mast producing woody vegetation will be removed the re-vegetation plan will include the same native mast producing woody vegetation as occurs in adjacent habitat. (NDOR Environmental, Design)

SFS-3 Sodium vapor lighting will be used with directional shielding to focus the lighting onto the driving surface. Lighting will be limited to the extent necessary to meet safety requirements. (Design and Contractor)

Sturgeon Chub:

SC-1 No vibratory or impact pile driving from April 1 through June 30 within the channel. (Contractor)

SC-2 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

SC-3 The Contractor will dispose of drill cuttings in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. (Contractor)

SC-4 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

SC-5 No discharge of water or spoil directly into the channel from April 1 through July 31. (Contractor)

SC-6 No flow modifications or disturbance in the channel from February 1 through July 31. Work is allowed within a cofferdam if the work is conducted from the temporary work platform or another location not directly in the channel (i.e., the riverbank). Temporary bridges can be constructed between July1st and April 1st, provided they are constructed according to the terms and conditions of the associated 404 permit. (Contractor)

Note to Preparer: Condition not necessary if not working in the channel.

SC-7 Any upland soil disturbances will be designed to avoid or minimize sedimentation. (Design, Contractor)

Note to Preparer: If work occurs in the channel, then consultation is required.

Swift Fox:

SF-1 Up to a year prior to construction, NDOR or a qualified contractor may survey for potential swift fox den sites within the projects' environmental study area. Any potential den sites that are not in use by any species may be covered with 2" by 4" weld-wire fencing and adequately secured to the ground. 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, NDOR shall immediately coordinate with the NGPC and notify FHWA (if applicable) to determine how to proceed. A buffer zone shall be established around the den and all construction

activities shall avoid the buffer until NDOR 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. (NDOR Environmental)

SF-2 A survey for active den sites within the right-of-way and visible active dens outside the right-of-way shall be completed by a qualified biologist two weeks prior to the start of field work and prior to construction. Markings shall be made adjacent to the road shoulder to demark 100 feet on either side of an identified active den. Within the delineated active den areas, all construction activities, field work, and staging shall be limited to existing travel lanes. NO staging, stockpiling, or traveling off the travel lanes are permitted within delineated areas. If avoidance of the site isn't possible, then the location must be avoided until the den is abandoned. Marking materials shall be removed at the conclusion of the project. (NDOR Environmental, Contractor)

Topeka Shiner:

TS-1 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

TS-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

TS-3 Woody vegetation and shrub plantings used for erosion control within 100 feet of the channel shall be limited to the same native species as those removed. (NDOR Environmental, District, Contractor)

Topeka Shiner - Critical Habitat:

TS-CH-1 Any detention basin outlets will be designed such that it is stabilized to prevent streambank erosion and will not otherwise impact stream channel/bank. (Design, Contractor)

TS-CH-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

TS-CH-3 Woody vegetation and shrub plantings used for erosin control within 100 feet of the channel shall be limited to the same native species as those removed. (NDOR Environmental, District, Contractor)

Ute Ladies'-tresses:

ULT-1 A qualified biologist will survey according to protocol during the blooming season (August 7 - 21) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, since the year 1975, there will be another survey according to protocol during the growing season immediately prior to construction. If species are not found during the survey, then the May Affect, Not Likely to Adversely Affect stands. If positive finding, then consultation is required.

(NDOR Environmental – note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

ULT-2 If work is confined to an area between the hinge-points of the roadway or bridge deck, work may proceed. If work occurs outside of the hinge-points then a qualified biologist will survey according to protocol during the blooming season (August 7 - 21) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, since the year 1975, there will be another survey according to protocol during the growing season immediately prior to construction. If species are not found during the survey, then the May Affect, Not Likely to Adversely Affect stands. If positive finding, then consultation is required.

(NDOR Environmental – note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

UTL-3 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Western Prairie Fringed Orchid:

WPFO-1 A qualified biologist will survey according to protocol during the blooming season (June 15-July 7) prior to the completion of the Process. If suitable habitat is identified, there will be another survey according to protocol during the blooming season immediately prior to construction. If the species is found, then consultation is required.

(NDOR Environmental – note: since this is a condition to complete before the completion of the process, this conservation condition#1 language is not copied verbatim as a condition in the biology document, NEPA document and Green Sheet. Document the survey finding in the text of the biology document and NEPA document.)

WPFO-2 Bridge deck debris will be captured and/or contained to prevent material from falling below the structure. All work will remain on the roadway surface. (District, Contractor)

Whooping Crane:

WC-1 Construction activities will not occur during Whooping Crane migration periods. (Spring migration: March 6 – April 29; and fall migration: October 9 – November 15). (NDOR Environmental, Construction, Contractor)

WC-2 If construction activities occur during Whooping Crane migration periods (Spring migration: March 6 – April 29; and fall migration: October 9 – November 15), NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: _____ (*location of suitable habitat*). **(prior to the start of daily construction activities)**. If species are present the District will notify the Contractor to stop work within 1/2 mile of the whooping crane and follow the

protocol to determine when work can resume **(also not initiate work if species is found in the morning survey)**. Options for resuming work may include but are not limited to (NDOR Environmental, Construction, Contractor):

- Construction activities are limited to the hours from 10:00 a.m. to 4:00 p.m. (CST) during the migration period, unless morning survey indicates Whooping Cranes are not present.
- If a whooping crane is observed during the survey within ½ mile of the project, but departs the area (further than ½ mile from the project) then work can resume. Document this departure according to protocol.

WC-3 Herbaceous species used for re-seeding within ¼ mile of the following location: _____ (location of suitable habitat) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design, NDOR Environmental).

Whooping Crane - Critical Habitat:

Note: The effects assessment for Whooping Crane Critical Habitat only examined the impacts to critical habitat and not the whooping crane. Assessments for whooping crane could affect Primary Constituent Elements for critical habitat i.e. disturbance (noise, light, human forms) was assessed in the whooping crane Matrix assessment.

WC-CH-1 Construction activities would not occur during Whooping Crane migration periods. (Spring migration: March 6 – April 29; and fall migration: October 9 – November 15). (NDOR Environmental, Construction, Contractor)

WC-CH-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

WC-CH-3 Herbaceous species used for re-seeding within ¼ mile of the following location: _____ (location of suitable habitat) will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. (Design, NDOR Environmental)