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 (CC's) 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 NDOT 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 NDOT Biologist will document which condition was dropped, and the reason why, if applicable**. **In this instance, an IPLE isn't needed**. 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 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)*

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 that are 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 NDOT Right-of-Way Division shall coordinate with NDOT Environmental Section prior to the completion of Right-of-way negotiations.

Once ROW notifies NDOT Environmental, Environmental will check to see if suitable habitat for ***American burying beetle, Salt Creek tiger beetle, whooping crane, swift fox, mountain plover, western massasauga,*** *or any protected* ***plants*** *exist in the fencing area. IF the suitable habitat exists, NDOT Environmental shall coordinate with the 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 NDOT 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, dust control, and borrow sites:

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*)

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 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.

3. **<u>Standard Conservation Conditions for Range</u> (Responsible Party for the measure is found in parentheses).** When project work occurs within the range of the species listed below, and habitat is present according to Step 2: Habitat Evaluation on the SEP form, the following measures will be incorporated into project contracts, the Green Sheet, the NEPA document and the Overview 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 activities within the **American burying beetle** range, 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 NDOT 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)*

R-2 For the **western massasauga**, all work activities must avoid harming any snakes, whether on the road or within the general area. *(District Construction, Contractor)*

R-3 For the **western 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. *(Contractor)*

R-4 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 NDOT 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 NDOT Biologist knows there is a potential for occupied habitat within 15 feet of the paved road surface, then the NDOT biologist will coordinate with the 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-5 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. *(District Construction, Contractor)*

R-6 For the **timber rattlesnake**, all work activities must avoid harming any snakes, whether on the road or within the general area. *(District Construction, Contractor)*

R-7 For the **timber rattlesnake**, 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 timber rattlesnake habitat. *(Contractor)*

4. <u>Standard Conservation Conditions for Species</u> (Responsible Party for the measure is found in parentheses). 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: Insert conservation conditions or avoidance and minimization measures into the OERCC from the species-specific programmatic agreement for ABB (in development). In the interim, include conservation conditions or avoidance and minimization measures in the OERCC resulting from coordination with NGPC and USFWS through the use of IPLEs or through the formal consultation process.*

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).

(NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*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 debris will be captured and/or contained. (*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 NDOT 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 erosion control within 100 feet of the channel shall be limited to the same native species as those removed. (*NDOT 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, within the last 30 years 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.

NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

Colorado Butterfly Plant:

CBP-1 A qualified biologist will survey according to protocol during the blooming period (Late June – Late September) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, within the last 30 years, 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.

NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

Eastern Black Rail: No conservation measures specified.

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 debris will be captured and/or contained. (*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 NDOT 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 erosion control within 100 feet of the channel shall be limited to the same native species as those removed. (*NDOT 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. NDOT Environmental, NDOT 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. (*NDOT Environmental, District, Contractor*)

ILT-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 15, whichever comes first. NDOT 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. (*NDOT 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 shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded, and directed away from the suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

Lake Sturgeon:

LS-1 No vibratory or impact pile driving from March 1 through July 31 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 debris will be captured and/or contained. (*Contractor*)

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

LS-6 No flow modifications or disturbance in the channel from March 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 August 1 and March 1, 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.

Mountain Plover:

MP-1 When initiating construction activities between March 15 and July 15, a survey by a qualified biologist will be required one week prior to construction activities to determine mountain plover nesting activities within the Environmental Study Area. If active nests are found, NDOT Environmental Section will notify the District and will consult with the USFWS and NGPC. If species are present, the District will notify the Contractor to not work within 150 feet of the active nest until NDOT Environmental completes consultation. (*NDOT Environmental, District, Contractor*)

MP-2 If nighttime work is planned between March 15 and August 15, lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded, and directed away from suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

MP-3 When initiating construction activities within suitable habitat between March 15 and July 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 150 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. (*NDOT Environmental, Contractor*)

Northern Long-eared Bat:

**Note to preparer: Insert the avoidance and minimization measures resulting from the IPaC analysis and USFWS and NGPC coordination in the OERCC.*

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 debris will be captured and/or contained. (*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 NDOT 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 erosion control within 100 feet of the channel shall be limited to the same native species as those removed. (*NDOT 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 March 1 through July 31 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 debris will be captured and/or contained. (*Contractor*)

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

PS-6 No flow modifications or disturbance in the channel from March 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 August 1 and March 1, provided they are constructed according to the terms and conditions of the associated Section 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 begin prior 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. NDOT Environmental, NDOT 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. (*NDOT Environmental, District, Contractor*)

PP-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 15, whichever comes first. NDOT 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. (*NDOT 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, NDOT Environmental*)

PP-5 If nighttime work is planned between April 15 and August 15, lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded and directed away from the suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

Rufa Red Knot: No conservation measures specified

Salt Creek Tiger Beetle:

SCTB-1 Bridge debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

SCTB-2 Nighttime work with lights is not authorized from May 25 to August 1 at the following locations:_____ (location of suitable habitat). If temporary nighttime work is requested and approved during this timeframe, temporary construction lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, down shielded, and directed away from suitable habitat. Nighttime work requested during construction may require survey and consultation with and approval from the USFWS and NGPC. (*Contractor*)

Salt Creek Tiger Beetle - Critical Habitat:

SCTB-CH-1 Bridge debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

SCTB-CH-2 Nighttime work with lights is not authorized from May 25 to August 1 at the following locations:_____ (location of suitable habitat). If temporary nighttime work is requested and approved during this timeframe, temporary construction lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, down shielded, and directed away from suitable habitat. Nighttime work requested during construction may require survey and consultation with and approval from the USFWS and NGPC. (*Contractor*)

Saltwort:

SW-1 Bridge debris will be captured and/or contained. All work will be performed from the roadway surface. (*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 NDOT Environmental will consult with the USFWS and NGPC. (*NDOT Environmental*)

(NDOT 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.)

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 debris will be captured and/or contained. (*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.

(NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*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, NDOT Environmental Section will consult with the USFWS and NGPC.

(NDOT 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. (*NDOT Environmental, Design*)

SFS-3 Temporary nighttime construction lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded, and directed away from suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

Sturgeon Chub:

SC-1 No vibratory or impact pile driving from March 1 through July 31 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 debris will be captured and/or contained. (*Contractor*)

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

SC-6 No flow modifications or disturbance in the channel from March 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 August 1 and March 1, 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

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)

Thick-billed Longspur:

TBL-1 When initiating construction activities between March 15 and July 15, a survey by a qualified biologist will be required one week prior to construction activities to determine Thick-Billed Longspur nesting activities within the Environmental Study Area. If active nests are found, NDOT Environmental Section will notify the District and will consult with the USFWS and NGPC If species are present, the District will notify the Contractor to not work within 150 feet of the active nest until NDOT Environmental completes consultation. *(NDOT Environmental, District, Contractor)*

TBL-2 If nighttime work is planned between March 15 and August 15, lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded, and directed away from suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

TBL-3 When initiating construction activities within suitable habitat between March 15 and July 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 150 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 traveling off the travel lanes is permitted within delineated areas until nesting activities cease. Marking materials shall be removed at the conclusion of the project. *(NDOT Environmental, Contractor)*

Timber Rattlesnake:

TR-1 Areas of suitable habitat will be surveyed for hibernacula and presence of the species by a qualified biologist prior to the completion of the process. Survey results will be sent to NGPC for approval. Areas with timber rattlesnake habitat (hibernating & foraging) shall be marked on the plans, in the field, and in the contract. IF potential hibernacula and/or individuals are present, a May Affect determination is made and consultation with NGPC will occur. IF neither potential hibernacula and/or individuals are present, but suitable foraging/breeding habitat (grassland) is present, include the following conservation condition into the biology document to carry forward:

The Timber Rattlesnake Impact Avoidance Protocol (TRIAP) shall be followed during final design and construction.

(*NDOT 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.)*

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

TR-3 Utilize only net-free erosion control devices. *(NDOT Environmental, Design, Contractor)*

TR-4 All construction activities shall be limited to the roadway surface or bridge deck. *(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 debris will be captured and/or contained. (*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. (*NDOT Environmental, District, Contractor*)

Topeka Shiner - Critical Habitat:

Note: The effects assessment for Topeka shiner critical habitat only examined the impacts to critical habitat and not the Topeka shiner. Assessments for Topeka shiner could affect physical and biological features for critical habitat i.e. disturbance (noise, light, human forms) was assessed in the Topeka shiner Matrix assessment.

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 debris will be captured and/or contained. (*Contractor*)

TS-CH-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. (*NDOT Environmental, District, Contractor*)

Ute Ladies'-tresses:

ULT-1 A qualified biologist will survey according to protocol during the blooming season (Late July – September 1) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, within the last 30 years, 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.

(NDOT 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 (Late July – September 1) prior to the completion of the Process. If the Natural Heritage Database identifies a known occurrence within 1.0 mile of the project, within the last 30 years, 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.

(NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

Western Massasauga:

WM-1 The project limits will be surveyed for suitable massasauga habitat by a qualified biologist 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. 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.

NDOT 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.

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

WM-3 Utilize only net-free erosion control devices. (*NDOT Environmental, Design, Contractor*)

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

Western Prairie Fringed Orchid:

WPFO-1 A qualified biologist will survey according to protocol during the blooming season (June 15 – July 15) 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.

(NDOT 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 debris will be captured and/or contained. All work will be performed from the roadway surface. (*Contractor*)

WPFO-3 Nighttime work with lights is not authorized from June 15 to July 15 at the following locations:_____ (location of suitable habitat). If temporary nighttime work is requested and approved during this timeframe, temporary construction lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, down shielded, and directed away from suitable habitat. Nighttime work requested during construction may require survey and consultation with and approval from the USFWS and NGPC. (*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). (*NDOT 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), NDOT 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 (*NDOT 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, NDOT Environmental*).

WC-4 If nighttime work is planned during Whooping Crane migration periods (Spring migration: March 6 – April 29; and fall migration: October 9 – November 15), work may not begin until evening surveys have been completed according to protocol (see WC-2). Lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, shielded, and directed away from suitable habitat at the following locations: _____ (location of suitable habitat). (*NDOT Environmental, Contractor*)

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 physical and biological features 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). (*NDOT Environmental, Construction, Contractor*)

WC-CH-2 Bridge debris will be captured and/or contained. (*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, NDOT Environmental*)

WC-CH-4 Nighttime work with lights is not authorized during Whooping Crane migration periods (Spring migration: March 6 – April 29; and fall migration: October 9 – November 15) at the following locations:_____ (location of suitable habitat). If temporary nighttime work is requested and approved during this timeframe, temporary construction lighting shall be limited to a Nominal CCT of 3000 +/- 300 K, down shielded, and directed away from suitable habitat. Nighttime work requested during construction may require survey and consultation with and approval from the USFWS and NGPC. (*Contractor*)