

FINDING OF NO SIGNIFICANT IMPACT

US Highway 85
7.5 Miles North of Grassy Butte
to the Long X Bridge, McKenzie County

Project No. AC-HPP-NH-7-085(032)120 and
SNH-7-085(037)120

PCN 1558 and 1559



Prepared by

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
BISMARCK, NORTH DAKOTA**

<http://www.dot.nd.gov/>

DIRECTOR
Francis G. Ziegler, P.E.

PROJECT DEVELOPMENT DIRECTOR
Ronald J. Henke, P.E.

July 2008

FEDERAL HIGHWAY ADMINISTRATION
FINDING OF NO SIGNIFICANT IMPACT

For
US HIGHWAY 85
FROM 7.5 MILES NORTH of GRASSY BUTTE
to the LONG X BRIDGE, McKENZIE COUNTY

FEDERAL AID PROJECT NO. AC-HPP-NH-7-085(032)120 and SNH-7-085(037)120

The Federal Highway Administration (FHWA) has determined that the preferred alternative will have no significant impact on the environment.

The preferred alternative is Alternative D. The design would be based on a 65 mph posted speed limit. Horizontal alignment would follow the existing alignment except at the south end of the project and curve 11. At the south end, (curves 1 and 2) the alignment would be offset to the east to avoid the archaeological sites located just west of the current back-slope with the curves corrected to meet the 65 mph design speed. The radius at curve 11 will be flattened and the roadway centerline shifted to meet the 65 mph design speed. Impacts have been estimated for offsetting the roadway centerline. A consideration that will determine the final outcome is the stability of the hill above and below the reconstructed roadway. The estimated cost for Alternative D is \$12.7 million.

This FONSI is based on the February 2008 Environmental Assessment (EA), which has been independently evaluated by FHWA and adequately and accurately discuss the need, environmental issues and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required. The FHWA takes full responsibility for the accuracy, scope, and content of the EA.

8/14/08

Date



Wendall L. Meyer
Division Administrator
Federal Highway Administration

Table of Contents

- 1.0 Purpose and Need for the Proposed Action..... 1
- 2.0 Selection of the Preferred Alternatives..... 1
 - 2.1 Preferred Alternative Description 1
- 3.0 Wetland Finding..... 1
- 4.0 Permits..... 2
- 5.0 Environmental Commitments and Compliance 2
- 6.0 Summary of Comments and Coordination 4
- 7.0 Errata to the Environmental Assessment..... 4

TABLES

- Table 1.1 Summary of Impacts2

Appendix A

- Newspaper Advertisement
- News Release

Appendix B

- Sign-in Sheet
- Handout
- PowerPoint Presentation Slides

Appendix C

- Response to Agency Comments

1.0 Purpose and Need for the Proposed Action

The need for the proposed reconstruction of Hwy 85 is driven because of a number of deficiencies along the project corridor. These deficiencies include deteriorated pavement, inadequate roadway section, inadequate drainage, deficient bridge rail, deteriorating bridge deck, and poor paint condition on the bridge in the splash zone.

The purpose of the proposed project is to rehabilitate a deteriorating pavement surface, upgrade the roadway section to meet current standards/guidelines, improve drainage, and update the bridge to current safety standards.

2.0 Selection of the Preferred Alternative

The North Dakota Department of Transportation (NDDOT) has determined that the build alternative based on a 65 mph posted speed limit, Alternative D, is the preferred alternative. The preferred alternative would meet the purpose of the project, and would best accommodate the future 1,735 Average Daily Traffic (ADT) of which approximately 26% are truck and recreational vehicle traffic. Further, this portion of roadway is included in the northern segment of the Great Plains International Trade Corridor, known as the Theodore Roosevelt Expressway and is part of the National Highway System (NHS); the preferred alternative would best accommodate the future needs of the corridor, with minimal impacts. *Please refer to Table 1-1 Summary of Impacts.*

2.1 Preferred Alternative Description

The design would be based on a 65 mph posted speed limit. Horizontal alignment would follow the existing alignment except at the south end of the project and curve 11. At the south end, (curves 1 and 2) the alignment would be offset to the east to avoid the archaeological sites located just west of the current back-slope with the curves corrected to meet the 65 mph design speed. The radius at curve 11 will be flattened and the roadway centerline shifted to meet the 65 mph design speed. Impacts have been estimated for offsetting the roadway centerline. A consideration that will determine the final outcome is the stability of the hill above and below the reconstructed roadway. The estimated cost for Alternative D is \$12.7 million.

3.0 Wetland Finding

A wetland field delineation was completed by NDDOT environmental scientists on August 27, 2007. Five wetlands were identified in the study area, in addition to the Little Missouri River. A wetland jurisdictional request was submitted to the US Army Corps of Engineers (USACE) to determine which wetlands and water bodies are under the jurisdiction of the USACE.

Approximately 0.08 acres of wetlands, of which 0.05 acres are jurisdictional, would be permanently impacted. Impacts would be the result of the placement of riprap in and around the scour areas in the Little Missouri River and by the construction of fill slopes.

Table 1.1 Summary of Impacts

Impact Categories	Alternative D (65 mph Design Speed) - Preferred
Land Use	Minor conversions of land from existing use to a transportation corridor
Social	Would increase safety and mobility
Relocation	5.9 acres of permanent easement needed from the USFS; 5.24 acres of land would be acquired from private land owners
Wetlands	0.08 acres of wetlands, of which 0.05 acres are jurisdictional, would be impacted
Water Body Modification and Wildlife	No known raptor nests in project area; no effect to raptor species of concern; no impact to twelve sensitive species; may impact six sensitive species and habitat, but will not likely contribute to a trend towards federal listing or a loss of viability to the population or species; and no impact to sensitive plant species and no known impact to watch plant species
Threatened and Endangered Species	May effect, but is not likely to adversely affect 7 listed species and is not likely to jeopardize the continued existence of these species
Historical and Archaeological Preservation	No historic properties affected
Section 4(f) Properties	No use of land
Visual	No significant change in setting would occur and the site would retain its recreational use as a scenic overlook. Cut and fill slopes would be designed in a manner to blend in with the existing environment
Temporary Construction Impacts	Minimal temporary impacts

4.0 Permits

The following permits would be needed to construct this project:

U.S. Army Corps of Engineers – A *Section 404 Permit* is required for any activity in water or wetlands, which involves discharge of dredged or fill materials into waters of the United States and adjacent wetlands. To obtain a Section 404 Permit, impacts to wetlands must be mitigated through avoidance, minimization, and compensation measures in accordance with the “Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines” (February 1990).

North Dakota Department of Health – A National Pollution Discharge Elimination System (NPDES) Permit is required to discharge storm water runoff. To apply for a permit, a Notice of Intent must be submitted along with a Storm Water Pollution Prevention Plan (SWPPP). The authorization to discharge storm water requires storm water to be held onsite to allow sediment to settle or be filtered out. The contractor will be responsible for obtaining the NPDES Permit.

5.0 Environmental Commitments and Compliance

NDDOT and Federal Highway Administration (FHWA) have made the following commitments for this project:

- No river channel alterations or major changes in drainage patterns will be made.

- Unavoidable impacts to wetlands will be mitigated on-site, adjacent to the project or by withdrawing credits from an approved NDDOT wetland mitigation site. Appropriate avoidance, minimization, and mitigation measures will be determined in cooperation with the USACE and US Fish and Wildlife Service (USFWS) during the design phase.
- Trees impacted during construction will be mitigated on site in accordance with the NDDOT Design Manual. If not feasible, mitigation may occur on US Forest Service (USFS) lands in locations identified and in cooperation with the USFS.
- Coordinate with USFWS to update the raptor nest survey prior to construction between April 15 and June 1.
- Contact USFWS immediately if raptor nests are encountered during construction. If nests are observed, disturbance will be minimized during the timeframe of March 1 thru July 31.
- Coordinate with ND Game and Fish Department (NDGFD) during design to develop measures to minimize impacts to the bighorn sheep.
- The contractor staging area shall not be placed on the north end of the project.
- Construction shall not take place on the northern three miles of the project from October 15 to June 15, during the breeding and lambing season of the bighorn sheep, unless approval is received from the NDGFD.
- Final surfacing shall not begin until after June 15 the following year to minimize disturbance during lambing and must be completed by October 15, unless approval is received from the NDGFD.
- The design will incorporate measures to make the fill slopes appear more natural with rolling features.
- Minimize erosion and sedimentation into the Little Missouri River and its adjacent habitat. These measures include, but are not limited to, floating turbidity barrier, silt fence, coconut matting, or other suitable material on steep slopes to minimize erosion and sedimentation into the Little Missouri River and its adjacent habitat.
- Construction will be avoided in the river during the fish spawning and migration period between April 15 and June 1 unless floating turbidity barriers are used.
- Unavoidable impacts to previously undisturbed shrub pockets, and wooded draw and slope habitats will be mitigated in consultation with the USFS.
- Waste material must be disposed of at an approved upland site pursuant to NDDOT Standard Specification 107.04. Further, excess material shall be disposed of in a manner that will not impact aquatic resources, woodland habitat, and native grasslands.
- All noxious weeds found in the project area need to be treated with the most effective approved herbicide prior to any waste material being disposed of.
- Construction equipment must be cleaned prior to entering the project area to avoid introduction of non-native species, noxious weed and invasive plant propagules into the National Grasslands.
- Reseed disturbed areas with a native grass and forb mixture.
- Fencing will be used to mark-off avoidance areas surrounding archaeological sites S2, S3, and S4.
- NDDOT will continue the consultation process with the Tribal Consultation Committee throughout the project as needed.
- The rail will not be removed during the bridge rail retrofit.
- Advance message signs will be utilized to inform the traveling public of road closures and to encourage truck traffic to travel using other routes.

- Road closures would be minimized during the school year.
- Access would be provided for emergency vehicles during road closures.
- Coordination will take place with the affected utility companies during the project design, including Western Area Power Administration regarding the transmission line parallel and crossing the highway.

6.0 Summary of Comments and Coordination

Two techniques were used to notify the public of the Public Hearing: a newspaper advertisement was published in the McKenzie County Farmer two weeks prior to the hearing; and prior to the Public Hearing, a news release was circulated to local television, radio stations, and newspapers. ***Please refer to Appendix A that contains the newspaper advertisement and news release.***

The Environmental Assessment was made available for public viewing at four public viewing locations, as identified in the newspaper advertisement, by February 26, 2008. A Public Hearing was held at the Watford City Hall Civic Center in Watford City on March 13, 2008 from 4:00 p.m. to 7:00 p.m. Three people attended the hearing. Public comments were accepted for two weeks (March 27, 2008), following the hearing. No written comments were received from the public. ***Please refer to Appendix B, which contains the sign-in sheet, handout, and PowerPoint presentation slides.***

The NDDOT distributed the Environmental Assessment to the following federal, state and local agencies/parties on February 25, 2008 for their review and comment:

US Army Corps of Engineers
US Forest Service

US Fish and Wildlife Service
North Dakota Game and Fish

Comments were received from USACE, USFWS, and USFS. ***Responses to Agency comment are provided in Appendix C.***

7.0 Errata to the Environmental Assessment

The purpose of this section is to provide corrections to errors and omissions, as well as additional information, to the documentation in the EA.

1. Revise the distance in line 3 of Section 1.2, Description of the Proposed Action, as follows:

“...approximately 7.5 miles north of Grassy Butte...”

2. Revise the naming of Custer National Campground to Summit Campground in Sections 1.1, 3.2, and 3.9.1.
3. Replace the fourth paragraph of Section 3.5.1, Impacts/Mitigation, with the following:

There are no practical alternatives that would avoid impacts to wetlands. Design of the build alternatives would include measures to minimize both temporary and permanent impacts to wetlands. Minimization of impacts due to the construction of fill slopes may be accomplished by designing steeper fill slopes. This will be determined in cooperation with the USACE and USFWS during the design

phase. In cases where impacts cannot be avoided, the NDDOT proposes to mitigate the minimal loss (approximately 0.05 acres) associated with the placement of riprap in and around scour holes, by mitigating on-site, adjacent to the project, or by withdrawing credits from an approved NDDOT wetland mitigation site. This same method will be utilized for the non-jurisdictional wetland impacts.

4. Replace Section 3.6, Waterbody Modification and Wildlife, with the following:

3.6 WATERBODY MODIFICATION AND WILDLIFE

Pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 662), if the proposed improvements would affect water resources, then consultation with the US Fish and Wildlife Service (USFWS) and with the state agency having administrative responsibilities over wildlife resources must be initiated. This consultation is to determine the possible wildlife resources, as well as the means and measures that should be adopted to prevent the loss of, or damage to, those resources, as well as to provide concurrently for the development and improvement of such resources. The Act also provides for the protection of any publicly owned wildlife or waterfowl refuge of national, state or local significance as addressed under Section 4(f) discussed later in this Section, as well as threatened and endangered species.

The Little Missouri River is classified as a Class I Critical Water body since it is a critical spawning area for the channel catfish population of Lake Sakakawea. The rare sturgeon chub and flathead catfish also inhabit this river. The Little Missouri River supports a moderate sport fishery on channel catfish, sauger, and northern pike, and has moderate value for forage fish production. The area also maintains good furbearer population in portions of the river. The river has been declared a State Wild and Scenic River and has been proposed for federal designation.

The botanical survey information was presented in the report, *Botanical Survey for the State of North Dakota Department of Transportation Proposed US Highway 85 Road Upgrade*, and is appended by reference. The report was prepared by Kathie J. Diller in 1999. The botanical survey found that no sensitive or watch plant species, as identified by the USFS, were detected on the proposed disturbance areas at the time of the survey and the USFS concurred with the findings on February 13, 2002. In 2004, the USFS updated the sensitive species list. Therefore, the USFS reviewed the 1999 botanical report and determined no further field review was necessary. The concurrence letter was updated on April 11, 2008 and further stated that the “proposed project will disrupt minimal acres and species habitat in an area that has been previously disturbed and will not produce a significant reduction in habitat quality and quantity. No sensitive or watch plant populations were observed during any of the field visits. Based on field surveys, the determination of effects conclusion from the proposed activities **will have “no impact” on any of the sensitive plant species. There are no known impacts to watch plant species.**”

The survey information contained below was presented in the report, *Biological Assessment/Evaluation of Threatened, Endangered and Sensitive Wildlife Species for the North Dakota Department of Transportation Highway #85*

Reconstruction, and is appended by reference. The report was prepared by Nancy J. Dietz in July 2000. Assessments on the species were conducted by evaluating past and present known occurrences of the species and by determining if potential habitat exists in the project area. Based on these criteria, a determination was made about the project's effect on the species. The report contains the determinations and the USFS concurred with the findings on August 8, 2000. In addition to the assessment of threatened and endangered species discussed in the following section, 5 raptor species of concern and 17 sensitive species (collectively known as species of concern) were assessed. The USFWS and ND Game and Fish Department were also consulted for known and potential occurrences of species of concern in the project area. In 2004, the USFS updated the sensitive species list. Therefore, the USFS reviewed the 2000 wildlife report and a concurrence letter was updated on April 11, 2008 to reflect a determination of effect for 7 species not previously covered and the removal of 6 species that were dropped from the sensitive species list, for a total of 18 sensitive species.

Raptor Species of Concern (5)

Peregrine falcon – The peregrine falcon historically nested in North Dakota in badlands habitat. Current habitat use in the badlands is by migratory individuals only. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within or near the project area. Therefore, it is expected that there will be no impact to the species of concern from the project.

Ferruginous hawk – The ferruginous hawk is native to North Dakota and nests on butte tops, haystacks, rocky outcrops, and utility structures. Many buttes in the badlands provide this type of habitat, as well as isolated trees in the upper ends of wooded draws and juniper woods. Ferruginous hawks arrive in North Dakota to establish nesting territories in late March and incubate eggs as early as mid-April. The hawk is very susceptible to disturbance and will select nest sites to avoid human habitation and may be less productive in areas with disturbance. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within or near the project area. Therefore, it is expected that there will be no impact to the species of concern from the project.

Golden eagle – The golden eagle nests in the rugged portions of the badlands, typically on buttes with adjoining expanses of native prairie. The golden eagle breeds from mid-March to late July, with peak nesting in early April to late June. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within or near the project area. Therefore, it is expected that there will be no impact to the species of concern from the project.

Prairie falcon – Prairie falcon are found only in southwestern North Dakota, west of the Missouri River. The falcon builds aeries in badlands and high cliffs along stream valleys or isolated buttes on the high plains. Their nesting season is mid-March to late July. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within

or near the project area. Therefore, it is expected that there will be no impact to the species of concern from the project.

Merlin – The merlin is a rare breeding species over much of its breeding range in North Dakota. Merlin's have been found to nest in Slope and Dunn counties. Merlin's primarily use nests constructed by crows and magpies. Occasionally, they will nest on cliff ledges or in tree cavities left by woodpeckers. The woody draw habitat in the Little Missouri National Grasslands may provide potential nest sites and foraging areas. The nesting season in North Dakota is from March 1 to July 31. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within or near the project area. Therefore, it is expected that there will be no impact to the species of concern from the project.

Sensitive Species (18)

Baird's sparrow – Found throughout most of North Dakota where ungrazed or lightly grazed native grass remains, their habitat consists of upland prairies of mixed-grass or tall grass habitat types. The sparrow breeding season occurs from early June to late July. It was determined that suitable habitat was nonexistent; therefore it is expected that there will be no impacts to the sensitive species from the project.

Sprague's pipit – The breeding habitat of Sprague's pipit is characterized by extensive tracts of grasslands of mid-height grass-like plants, and avoidance of shrubs. The ungrazed to lightly grazed mixed-grass prairie of the Little Missouri Grasslands is considered suitable breeding habitats. The early breeding season begins in late April to early June and the late breeding activity is from mid-July to early September. It was determined that suitable habitat was nonexistent; therefore it is expected that there will be no impacts to the sensitive species from the project.

Sturgeon chub – Commonly found in gravel and rock rapids as well as sandy areas with some gravel, the chub is known to occur in the Missouri, Little Missouri, and Lower Yellowstone rivers in North Dakota. The fish is most frequently collected in water less than three feet deep. High turbidity and swift currents are vital habitat components. The last known collection was in 1994 in the Lower Yellowstone. It was determined that suitable habitat was nonexistent; therefore it is expected that there will be no impacts to the sensitive species from the project.

Dakota skipper butterfly – North Dakota has been identified as having one of the largest and most stable population of dakota skippers in the world. The skipper can survive only in undisturbed tall grass and mid-grass prairie. In the western part of its range the dakota skipper can be found in ungrazed native pastures. It was determined that suitable habitat was nonexistent; therefore it is expected that there will be no impacts to the sensitive species from the project.

Ottoe skipper butterfly – The ottoe skipper prefers drier ungrazed native prairie and grasslands, and is often found in similar habitats and travels in association with the dakota skipper. It was determined that suitable habitat was nonexistent;

therefore it is expected that there will be no impacts to the sensitive species from the project.

Black-tailed prairie dogs – Prairie dog colonies are found on relatively flat terrain with little vegetation, often in areas of heavy grazing. It was determined that suitable habitat was nonexistent; therefore it is expected that there will be no impacts to the sensitive species from the project. Further, USFWS indicated in their SOV response (1999) that they do not anticipate any significant impact on prairie dog towns.

Burrowing owl – The burrowing owl prefers heavily grazed mixed grass native prairie and are often associated with colonies of large rodents such as the black-tailed prairie dog. The owl will utilize the abandoned dens of the prairie dog as well as badgers, and will use the same burrow annually if they are not disturbed. The breeding season for the owl begins in mid-May to early September. It was determined that there may be potential suitable habitat for this species of concern. However, there were no sightings of the species and known observations of these species were more than three miles from the proposed project. Therefore, it is expected that there will be no impacts to the sensitive species from the project.

Bighorn sheep – the proposed project is within the Northwest Lone Butte bighorn sheep herd. The bighorn sheep habitat (40% or greater slope habitat) is located on both sides of the proposed project in Sections 1, 2, 12, and 13, Township 147 North, Range 99 West (northern three roadway miles of the project). The potential for disturbance to bighorn sheep from the proposed project is limited due to the existing low volume of traffic. Further, because the reconstruction project is located directly adjacent to existing areas of human disturbance, impacts to bighorn sheep may be minimal since they are likely acclimated to the existing disturbances. Therefore, there may be minor impacts upon the bighorn sheep habitat.

Migrant loggerhead shrike – This species are typically found in open country that has thickets of trees or shrubs with a native prairie nearby. They typically nest in small trees with dense foliage or thickets of small trees and shrubs. The peak of the breeding season is from early May to mid-July. The proposed project may impact several acres of wooded habitat; therefore, the proposed project may impact individuals and habitat, but will not likely contribute to a trend towards federal listing or a loss of viability to the population or species.

Tawny crescent butterfly – This species is uncommon or rare throughout its distribution with disjoined populations that are assumed to be genetically isolated. The tawny crescent butterfly inhabits the most diverse vegetative aspects of riparian woodland margins. In western North Dakota, it is restricted to north-facing slopes and other moist environments. The proposed project may impact several acres of wooded habitat; therefore, the proposed project may impact individuals and habitat, but will not likely to contribute to a trend towards federal listing or a loss of viability to the population or species.

Regal fritillary butterfly – This species is found in native mid to tall grass prairies in southern North Dakota but is more common in the eastern part of the state, in

Slope County. The proposed project may impact several acres of coulee bottoms and wooded slopes which provide habitat components that are required by the regal fritillary butterflies; therefore, the proposed project may impact individuals and habitat, but will not likely contribute to a trend towards federal listing or a loss of viability to the population or species.

Arogos skipper – The arogos skipper butterfly requires relatively undisturbed grasslands, prairies, sand prairies, and serpentine barrens. Females deposit individual eggs under host plant leaves. In North Dakota, arogos skipper butterflies have one brood from June-July. Caterpillars feed on leaves and live in tents of two leaves silked together. Fourth-stage caterpillars hibernate, complete their feeding the next spring, and pupate in a leaf cocoon in vegetation about 3 feet above the ground. Host plants for caterpillars include Big Bluestem (*Andropogon gerardi*) and other native grass species. Adults feed on nectar from flowers of purple vetch, Canada thistle, dogbane, stiff coreopsis, purple coneflower, green milkweed, and ox-eye daisy. This butterfly has been recorded in Ward, Ransom and Richland counties in North Dakota.¹ In 2008 the USFS determined that the species and its habitat are not documented to occur in the project area and a determination of no impact was warranted.

Broad-winged skipper – The broad-winged skipper butterfly's habitat consists of freshwater and saltwater marshes. Females lay eggs singly under the host plant leaves, which are eaten by the caterpillars. In North Dakota, broad-winged skipper butterflies have one brood from late June to early August. Caterpillars rest between a leaf and a stem, strengthening the area with silk before they molt. The primary host plant for caterpillars is hairy sedge (*Carex lacustris*). Adults feed on nectar from swamp milkweed, purple loosestrife, and blue vervain. This butterfly has been recorded in Ransom and Richland counties in North Dakota.¹ In 2008 the USFS determined that the species and its habitat are not documented to occur in the project area and a determination of no impact was warranted.

Dion skipper – The dion skipper butterfly's habitat consists of swamps, open marshes, and bogs. In North Dakota, dion skipper butterflies have one brood from July to early August. Third-stage caterpillars hibernate, emerge in the spring to complete feeding, and pupate in nests of leaves and silk. Host plants for caterpillars include various sedges including wool grass, (*Scirpus cyperinus*), hairy sedge (*Carex lacustris*), and shoreline sedge (*Carex hyalinolepis*). Adults feed on nectar from flowers of pickerelweed, sneezeweed, buttonbush, Alsike clover, and others. This butterfly has been recorded in Ransom and Richland counties in North Dakota.¹ In 2008 the USFS determined that the species and its habitat are not documented to occur in the project area and a determination of no impact was warranted.

Mulberry wing – The mulberry wing butterfly requires freshwater marshes or bogs for habitat. In North Dakota, mulberry wing butterflies have one brood from late June to mid-August. The primary host plant for caterpillars is upright sedge

¹ Opler, Paul A., Harry Pavulaan, Ray E. Stanford, Michael Pogue, coordinators. 2006. Butterflies and Moths of North America. Bozeman, MT: NBII Mountain Prairie Information Node. <http://www.butterfliesandmoths.org/> (04/16/2008).

(*Carex stricta*). Adults feed on flower nectar. This butterfly has been recorded in Cass, Ransom, Sargent, and Richland counties in North Dakota. ¹ In 2008 the USFS determined that the species and its habitat are not documented to occur in the project area and a determination of no impact was warranted.

Powesheik skipperling – The powesheik skipperling butterfly’s habitat consists of undisturbed remnants of native tall-grass prairie. Females deposit eggs singly on leaves of the host plant, which the caterpillars eat. Fifth-stage caterpillars hibernate. In North Dakota, powesheik skipperling butterflies have one brood from June-August. The primary host plant for caterpillars is spikerush (*Eleocharis elliptica*). Adults feed on nectar from flowers including black-eyed susans, purple coneflower, ox-eye daisy, stiff-leaved coreopsis, and white clover. Little of this butterfly’s habitat remains, and it has been recorded in Cass, LaMoure, Dickey, Ransom, Sargent, and Richland counties in North Dakota. ¹ In 2008 the USFS determined that the species and its habitat are not documented to occur in the project area and a determination of no impact was warranted.

Long-billed curlew – Long-billed curlew prefer habitats such as short-growth grasslands, mixed-grass prairies, meadows, grazed mixed-grass and scrub communities, cultivated fields, lawns, mud flats, grassy floodplains, sandy islands, shoals, and edges of ponds, lakes, and other non-flowing bodies of water. They require 35-120 acres of suitable breeding and nesting habitat depending on the topographic and vegetative diversity of an area. Long-billed curlews rely on the cover and openness of grasslands, prairies, and pastures to nest and rear young. They are opportunistic feeders, consuming available food items by probing their bills in the mud and in animal burrows. They feed on insects, marine and freshwater invertebrates, mollusks, amphibians, and wild fruits. When foraging in uplands, long-billed curlews feed on grasshoppers, beetles, and caterpillars and other invertebrates in low-growing grassy areas.² In 2008 the USFS found that the project area contained minimal habitat for the species and acknowledged that mitigation measures would include replanting disturbed areas with native species. Therefore, the USFS determined the proposed project “may impact individuals and/or their habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species”.

Northern redbelly dace – The northern redbelly dace is known from the Rush, Sheyenne, Cannonball, Heart, Knife, and Little Missouri Rivers. This is one of the keystone species of small fishes forming a distinctive community in the Great Plains. Habitat consists of sluggish, spring-fed streams with a lot of vegetation and woody debris. They can also be found in small, spring-fed lakes and bogs. The best habitat for this species can be described as a series of beaver ponds filled with a constant supply of cool groundwater. These fish are omnivorous, feeding on small plants and animals taken from the entire water column. As adults, they are primarily sight-feeding particle feeders, selecting relatively small

² NRCS Wildlife Habitat Management Institute. 2000. Long-Billed Curlew. Fish and Wildlife Habitat Management Leaflet, Number 7.

<ftp://ftp-fc.sc.egov.usda.gov/WHMI/WEB/pdf/LONGBILLED1.pdf> (04/16/2008).

individual target prey. Northern redbelly dace in this area are restricted to relatively small regions where ecological conditions remain much as they were during the cooler and wetter immediate post-glacial times. Suitable habitat for this species in this region has been undergoing a natural contraction as the climate has warmed and become drier.³ In 2008 the USFS found that the project area contained minimal habitat for the species and acknowledged that mitigation measures would include minimization of impacts to the Little Missouri River. Therefore, the USFS determined the proposed project “may impact individuals and/or their habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species”.

3.6.1 Impacts/Mitigation

Alternative A (No-Build Alternative) – If no action is taken, there would be no water body modifications or impacts to wildlife.

Alternatives B, C, and D – The following are measures to minimize harm:

Measures to minimize erosion and sedimentation into the Little Missouri River and its adjacent habitat include the incorporation of BMPs. These measures include, but are not limited to floating turbidity barriers, silt fence, coconut matting, or other suitable material on steep slopes to minimize erosion and sedimentation.

Measures to minimize harm to raptors include the commitment to conduct the nesting survey between April 15 and June 1. This date is used because data has shown that the raptors of concern have typically established nesting territories by this time and migratory raptors of concern are typically no longer present in the Little Missouri Grasslands. Based on the USFWS raptor databank and the raptor survey conducted in May 2003, there are no known active or inactive raptor nests within or near the project area. However, if a nest is observed, USFWS will be contacted within 24 hours and disturbance will be minimized during the timeframe of March 1 thru August 31.

Measures to minimize harm include the commitment to minimize disturbance impacts to the bighorn sheep during the breeding and lambing seasons from October 15 thru June 15 on the northern three miles of the project area, unless approval is received from the ND Game and Fish Department. Further, the NDDOT will coordinate with ND Game and Fish Department during design to develop measures to minimize impacts to the bighorn sheep.

Measures to minimize harm to the Migrant loggerhead shrike, Tawny crescent butterfly and the Regal fritillary butterfly include the commitment to avoid disposing of excess material into depressions containing tree or juniper

³ Stasiak, R. 2006, February 10. Northern Redbelly Dace (*Phoxinus eos*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region.
<http://www.fs.fed.us/r2/projects/scp/assessments/northernredbellydace.pdf>
(4/16/2008).

dominated woodlands, and to revegetate disturbed areas with native plant species. Impacts to previously undisturbed shrub pockets, and wooded draw and slope habitats should be mitigated in consultation with the USFS District Biologist.

5. Replace Section 3.7, Threatened and Endangered Species with the following:

3.7 THREATENED AND ENDANGERED SPECIES

Section 7 of the Endangered Species Act of 1973, as amended (U.S.C. 1536), requires each federal agency to ensure that any action funded or carried out by such agency is not likely to jeopardize the continued existence of any federally-listed endangered or threatened species or species proposed to be listed, or likely to result in the destruction or adverse modification of habitat of such species which is determined to be critical by the Secretary of the Interior. An endangered species is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered in the near future. A candidate species is one for which the USFWS has sufficient information on their biological status and threats to propose the species as endangered or threatened but for which development of a listing regulation is precluded by other higher priority listing activities.

Consultation with USFWS indicated that seven species occur in McKenzie County. These include the endangered Interior least tern (*Sterna antiglare*), Whooping crane (*Grus Americana*), Pallid sturgeon (*Scaphirhynchus albus*), Black-footed ferret (*Mustera nigripes*), and Gray wolf (*Canis lupus*); and the threatened Piping plover (*Charadrius melodus*); as well as the candidate species Dakota skipper (*Hesperia dacotae*).

Interior Least Tern – The interior least tern can be found in the major interior rivers of the United States including the Missouri River and its tributaries, nesting on barren sandbars and beaches comprised of sand, gravel, shells, or salt encrusted soils and at sand and gravel pits adjacent to the river and its tributaries. They feed on small fish captured by hovering and diving into shallow water. Least terns began nesting in loose colonies of 1 to 20 nests on the Missouri River in early June. The female typically lays a three egg clutch in a shallow nest bowl scraped in an open sandy area. Both the male and female share incubation duties with eggs hatching in 18 days. Adults jointly care for and feed the young even after fledging at 18 days of age.

Whooping Crane – Whooping cranes historically nested in North Dakota; however the crane is currently only a migrant through North Dakota in the spring and fall. During migration, large shallow marshes are used for roost sites, and upland cropland and pastures are used for feeding areas. Whooping cranes are omnivorous, probing and gleaning foods from soil, water, and vegetation. On breeding grounds they feed primarily on mollusks, crustaceans, aquatic insects, minnows, frogs, and snakes. Pairs return to nesting areas in late April. Eggs are normally laid late April to mid-May. Pairs are faithful to breeding territories and normally nest in the same general area each year. Nest sites are marshes, sloughs, or lake margins, and are often constructed on a shallow-water island made of surrounding vegetation (i.e., bulrush, sedges, and cattail). The

vegetation is heaped on a firm substrate with a shallow depression for the eggs to protect against predators and where emergent aquatics in the vicinity help hide incubating birds. Minimum distance between nests is approximately 1,500 feet. New nests are constructed each year, sometimes near the site used the previous year. A clutch of 2 eggs is laid. Incubation is typically 29 to 31 days in captivity and 30-35 days in the wild. Chicks can walk and swim within a few hours after hatching and are capable of sustained flight at age 80–100 days.

Pallid Sturgeon - Pallid sturgeons are found in the Missouri and Yellowstone Rivers and their larger tributaries; however, only portions of these rivers are presently suitable pallid sturgeon habitat. Pallid sturgeon are adapted for living close to the bottom of large, silty rivers with swift currents. The preferred habitat is comprised of sand flats and gravel bars. Pallid sturgeon feed on aquatic insects, mollusks and small fishes. The changes in the river from dam construction have altered its habitat to the extent that natural reproduction is very difficult. Pallid sturgeon do not appear to be sexually mature until they reach at least 3 to 4 years of age. In North Dakota, pallid sturgeon spawning occurs in May or June over gravel or other hard surfaces. The eggs take 5 to 8 days to hatch. Both male and female sturgeon may go 3 to 10 years between spawnings. Pallid sturgeon are long lived, with individuals reaching perhaps 50 years of age.

Black-footed Ferret - The black-footed ferret inhabits short grass prairies, always within close proximity to prairie dog towns. The southwestern part of North Dakota was home to the ferret historically because prairie dogs were abundant. They also utilize prairie dog burrows for shelter and raising young. Black-footed ferrets can breed when 1 year old. Breeding takes place from March to May. Gestation ranges from 41 to 45 days. Typically, there are 3 to 4 young per litter. Young ferrets leave the family group around September. Juvenile males suffer high mortality, a result of their dispersing to new areas. Prairie dogs comprise about 90 percent of this mammal's diet; a family of four will consume an average of 763 prairie dogs per year.

Gray Wolf - The gray wolf was historically found throughout North America with the exception of parts of the southwest and southeast United States. In North Dakota the gray wolf can be found in the forested areas in north-central and north-east North Dakota. Gray wolves usually hunt large animals such as moose and deer although beaver and other smaller animals supplement their diet. Gray wolves generally do not breed until they are three years of age. Gray wolves breed in late winter. After a gestation period of 63 days, an average litter of 6 pups is born in a den in the ground, rockpile, hollow log or other shelter. When the pups reach 8 weeks of age the adults may move them to another den. By October the pups will weigh about 60 pounds and travel with the adults. Young gray wolves usually stay with the adults for two years, forming a pack. At two years of age, gray wolves may disperse hundreds of miles from their original home.

Piping Plover - The piping plover is a migratory shorebird that nests along sand and gravel bars of prairie rivers, rocky beaches of glacial lakes and ponds, and shores of alkali wetlands in the Northern Great Plains; wintering along the Gulf Coast and Caribbean islands. They feed primarily on insects and other invertebrates found along the water's edge. Piping plovers begin nesting on the

Missouri River in early May. The male and female both actively defend their territory. The female typically lays three to four eggs in a small, shallow nest scraped in the sand and lined with pebbles. Both the male and female share incubation duties with eggs hatching in 28 days. Young plovers leave the nest and join the adults to forage soon after hatching. Young plovers are capable of flying 22 to 25 days after hatching.

Dakota Skipper - The Dakota skipper likely occurred throughout a relatively unbroken and vast area of grassland in the north-central U.S. and south-central Canada; however, it now occurs only in scattered remnants of high-quality native prairie. Its current distribution straddles the border between tallgrass and mixed grass prairie ecoregions; specifically in relatively flat and moist native bluestem prairie and upland prairie that is often on ridges and hillsides. Populations have declined historically due to widespread conversion of native prairie for agriculture and other uses. This has left remaining populations isolated from one another in relatively small areas of remnant native prairie. The most significant remaining populations of Dakota skipper occur in western Minnesota, northeastern South Dakota, north-central North Dakota, and southern Manitoba. Nectar provides Dakota skippers with both water and food and is crucial for the survival of both sexes during the flight period. Dakota skippers appear to prefer plants, such as purple coneflowers (*Echinacea spp.*), whose nectar cannot be obtained by insect species that do not have a relatively long, slender feeding tube (proboscis).

Dakota skippers have four basic life stages - egg, larva, pupa, and adult. During the brief adult (flight) period in June and July, female Dakota skippers lay eggs on the underside of leaves approximately 1-2 inches above the ground. These eggs take about 10 days to hatch into larvae. After hatching, the pale-brown larvae build shelters at or below the ground surface and emerge at night to feed on grass leaves until late summer or early fall when they become dormant. They winter as mid-stage larvae in shelters at or just below ground level, typically in the bases of native bunchgrasses. The larvae emerge to continue development the following spring. Pupation takes about 10 days and occurs primarily in June. Males emerge as adults about five days before females. Maximum life span as adults is about three weeks. This brief period is the only time during which Dakota skippers can reproduce. If they attain maximum longevity of about three weeks and if adequate sources of nectar are available, females may lay up to about 250 eggs.

3.7.1 Impacts/Mitigation

Alternative A (No-Build Alternative) – If no action is taken, there would be no impacts to any federally-listed species.

Alternatives B, C, and D – There is minimal habitat available to the interior least tern, piping plover, pallid sturgeon, gray wolf, and Dakota skipper near the project area surveyed. The proposed project may effect, but is not likely to adversely affect the listed species, and is not likely to jeopardize the continued existence of the species. In addition, the project is not likely to destroy or adversely modify the critical habitat of the species.

There is no known existing or potential roost habitat of the whooping crane within or near the project area surveyed. The proposed project should have no effect to the whooping crane. There is no known existing or potential prairie dog towns on or near the project area surveyed. The proposed project should have no effect to the black-footed ferret.

6. Add to the end of Section 3.11.3, Water Quality Impacts/Mitigation the following:

BMPs may include, but are not limited to floating turbidity barriers, silt fence, coconut matting, or other suitable material on steep slopes to minimize erosion and sedimentation into the Little Missouri River and adjacent habitat.

7. Replace Section 3.14.2 Impacts with the following:

3.14.2 Impacts

Minimal impacts associated with the proposed US 85 project, when added to past, present, and reasonably foreseeable future actions, would not contribute to the significance of those impacts. Impacts considered include wetlands, water quality, and habitat. It can be assumed that past, present, and reasonably foreseeable future actions have had, or will have, a cumulative impact to these resources. Following the Executive Order 11990 and Section 404 of the Clean Water Act, impacts to wetlands must be avoided or minimized. In cases where impacts do occur, the wetland impacts would be mitigated following NDDOT guidelines (on-site, adjacent to the project, or by withdrawing credits from an approved NDDOT wetland mitigation site). Therefore, the cumulative effects to wetlands would not be significant, when added to the impacts from other development projects in the area.

Similarly, water quality impacts are minimized through the use of BMPs during construction. BMPs may include, but are not limited to floating turbidity barriers, silt fence, coconut matting, or other suitable material on steep slopes to minimize erosion and sedimentation into the Little Missouri River and adjacent habitat. Therefore, the cumulative effect to water quality would not be significant, when added to the impacts from other development projects in the area. Lastly, habitat loss or fragmentation attribute to impacts to flora and fauna (plant and animal) communities. However, the proposed project is located on an existing alignment and suitable habitat exists outside the project area. Therefore, the cumulative effect to habitat would not be significant, when added to the impacts from other development in the area. Further, the project is not intended to induce additional traffic since there is not additional capacity nor is it expected to change growth or development patterns.

8. Replace Section 3.16 Environmental Commitments and Compliance with the following:

3.16 ENVIRONMENTAL COMMITMENTS AND COMPLIANCE

NDDOT and FHWA have made the following commitments for this project:

- No river channel alterations or major changes in drainage patterns will be made.

- Unavoidable impacts to wetlands will be mitigated on-site, adjacent to the project or by withdrawing credits from an approved NDDOT wetland mitigation site. Appropriate avoidance, minimization, and mitigation measures will be determined in cooperation with the USACE and US Fish and Wildlife Service (USFWS) during the design phase.
- Trees impacted during construction will be mitigated on site in accordance with the NDDOT Design Manual. If not feasible, mitigation may occur on US Forest Service (USFS) lands in locations identified and in cooperation with the USFS.
- Coordinate with USFWS to update the raptor nest survey prior to construction between April 15 and June 1.
- Contact USFWS immediately if raptor nests are encountered during construction. If nests are observed, disturbance will be minimized during the timeframe of March 1 thru July 31.
- Coordinate with ND Game and Fish Department (NDGFD) during design to develop measures to minimize impacts to the bighorn sheep.
- The contractor staging area shall not be placed on the north end of the project.
- Construction shall not take place on the northern three miles of the project from October 15 to June 15, during the breeding and lambing season of the bighorn sheep, unless approval is received from the NDGFD.
- Final surfacing shall not begin until after June 15 the following year to minimize disturbance during lambing and must be completed by October 15, unless approval is received from the NDGFD.
- The design will incorporate measures to make the fill slopes appear more natural with rolling features.
- Minimize erosion and sedimentation into the Little Missouri River and its adjacent habitat. These measures include, but are not limited to, floating turbidity barrier, silt fence, coconut matting, or other suitable material on steep slopes to minimize erosion and sedimentation into the Little Missouri River and its adjacent habitat.
- Construction will be avoided in the river during the fish spawning and migration period between April 15 and June 1 unless floating turbidity barriers are used.
- Unavoidable impacts to previously undisturbed shrub pockets, and wooded draw and slope habitats will be mitigated in consultation with the USFS.
- Waste material must be disposed of at an approved upland site pursuant to NDDOT Standard Specification 107.04. Further, excess material shall be disposed of in a manner that will not impact aquatic resources, woodland habitat, and native grasslands.
- All noxious weeds found in the project area need to be treated with the most effective approved herbicide prior to any waste material being disposed of.
- Construction equipment must be cleaned prior to entering the project area to avoid introduction of non-native species, noxious weed and invasive plant propagules into the National Grasslands.
- Reseed disturbed areas with a native grass and forb mixture.
- Fencing will be used to mark-off avoidance areas surrounding archaeological sites S2, S3, and S4.
- NDDOT will continue the consultation process with the Tribal Consultation Committee throughout the project as needed.
- The rail will not be removed during the bridge rail retrofit.
- Advance message signs will be utilized to inform the traveling public of road closures and to encourage truck traffic to travel using other routes.

- Road closures would be minimized during the school year.
 - Access would be provided for emergency vehicles during road closures.
 - Coordination will take place with the affected utility companies during the project design, including Western Area Power Administration regarding the transmission line parallel and crossing the highway.
9. Replace columns 3-5 (Alternatives B, C, and D) in the row titled *Water Body Modification and Wildlife* in Table 3-4 with the following:

No known raptor nests in project area; no effect to raptor species of concern; no impact to twelve sensitive species; may impact six sensitive species and habitat, but will not likely contribute to a trend towards federal listing or a loss of viability to the population or species; and no impact to sensitive plant species and no known impact to watch plant species.

APPENDIX A

**Newspaper Advertisement
News Release**

PUBLIC HEARING OPEN HOUSE

WHY?

To discuss the proposed reconstruction of US 85 from approximately 8 miles north of Grassy Butte to just north of the Little Missouri River including the Long X Bridge. The project consists of reconstructing US 85 and Bridge Improvements.

WHEN?

March 13, 2008
Open House 4:00 p.m. to 7:00 p.m. CST

WHERE?

City Hall – Civic Center
213 2nd St., NE – Watford City, ND

OPEN HOUSE CONDUCTED BY

ND Department of Transportation (NDDOT)

This hearing is designed to allow for public input which is required for compliance with the National Environmental Policy Act of 1970 and National Historic Preservation Act of 1966.

Representatives from the NDDOT and Federal Highway will be on hand to answer your questions and discuss your concerns.

WRITTEN STATEMENTS or comments about this project must be mailed by 03/27/2008, to Chad Orn, Program Manager, Environmental and Transportation Services Division, ND Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700.
Email: corn@nd.gov

Note "Public Hearing" in email subject heading.

DISABILITIES: People with disabilities who plan to attend the meeting and need special arrangements should contact Chad Orn, Program Manager, Environmental and Transportation Services Division before the meeting.
Phone: 701-328-4587 TTY : 701-328-4156

NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT

In accordance with National Environmental Policy Act of 1969, an EA is written documentation that summarizes the project purpose and need, alternatives under consideration, impacts of proposed alternatives, and comments and coordination. Copies of the EA are available for public viewing at the following locations.

Watford City Public Library
213 2nd Street NE
Watford City, ND

Federal Highway Administration
1471 Interstate Loop
Bismarck, ND

NDDOT Central Office
608 East Boulevard Avenue
Bismarck, ND

NDDOT Williston District Office
605 Dakota Parkway West
Williston, ND

Affidavit of Publication

Colleen Park

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

ND Transportation Department, US 85 Reconstruction,

1 time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed:

Colleen Park

State of

ND

County of

Burleigh

Subscribed and sworn to before me this

3rd

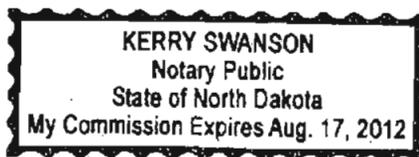
day of

March

20

08.

Kerry Swanson



Neigum, Gina M.

From: Lorius, Billie Jo
Sent: Monday, February 25, 2008 3:56 PM
To: appbismarck; bnicholson; dalewetzal; dewetzal; dkoipack; jmacpherson; pmensing; Beulah Beacon; Bowman County Pioneer; Dickinson Press; Hazen Star; Hettinger Adams County Record; Killdeer Dunn County Herald; Medora Billings County Pioneer; New England Herald ; Radio-- Dickinson (Clear Channel); Radio--Beulah; Radio--Dickinson (KDIX); Radio--Hettinger; Radio--New Town (KMHA); Bowbells Burke County Tribune; Crosby Journal; Mountrail County Promoter; Radio--Williston (KDSR); Radio--Williston (N. Plains); Tioga Tribune; TV--Minot (KXMC-TV); TV--Williston (KUMV); Watford City McKenzie County Farmer; Williston Daily Herald
Cc: Neigum, Gina M.
Subject: NR/NDDOT - Public Hearing to discuss proposed improvements to US 85 to be held March 13

North Dakota Department of Transportation NEWS

608 East Boulevard Avenue, Bismarck ND 58505-0700 ■ Fax 701-328-1420 ■ TTY 701-328-4156

February 25, 2008

For more information:
Chad Orn, NDDOT
701-328-4587

Public Hearing to discuss proposed improvements to US 85 to be held March 13

The North Dakota Department of Transportation (NDDOT) Environmental and Transportation Services Division will be holding a Public Hearing on March 13, 2008, at City Hall-Civic Center in Watford City from 4 to 7 p.m. to discuss proposed improvements on US Highway 85.

The hearing is to discuss proposed reconstruction of US 85 from approximately eight miles north of Grassy Butte to just north of the Little Missouri River including the Long X Bridge.

The hearing will utilize an open house format and provide opportunity for public input. Representatives from the NDDOT and Federal Highway will be on hand to answer questions and discuss concerns.

If unable to attend the Public Hearing, written statements or comments must be mailed by March 27, 2008, to Chad Orn, Program Manager, Environmental and Transportation Services Division, N.D. Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700 with "Public Hearing" in the e-mail subject heading.

The Environmental Assessment for the US 85 reconstruction project is available for public viewing at the Public Library in Watford City, 213 2nd Street NE, Watford City; NDDOT Williston District Office, 605 Dakota Parkway West, Williston; Federal Highway Administration Office, 1471 Interstate Loop, Bismarck; and NDDOT Central Office, 608 East Boulevard Avenue, Bismarck.

People with disabilities who plan to attend the Public Hearing and need special arrangements should contact Chad Orn, Program Manager, Environmental and Transportation Services Division 701-328-4587, or TTY: 701-328-4156.

###

Billie Jo Lorus

Communications Specialist

701.328.4444

ND Department of Transportation

608 E. Boulevard Avenue

Bismarck, ND 58505-0700

www.dot.nd.gov

Buckle Up. Every Trip. Every Time.

APPENDIX B

**Sign-in Sheet
Handout
PowerPoint Presentation Slides**

**US Highway 85
Public Hearing
City Hall-Civic Center
March 13, 2008
(Sign in sheet)**

PLEASE PRINT

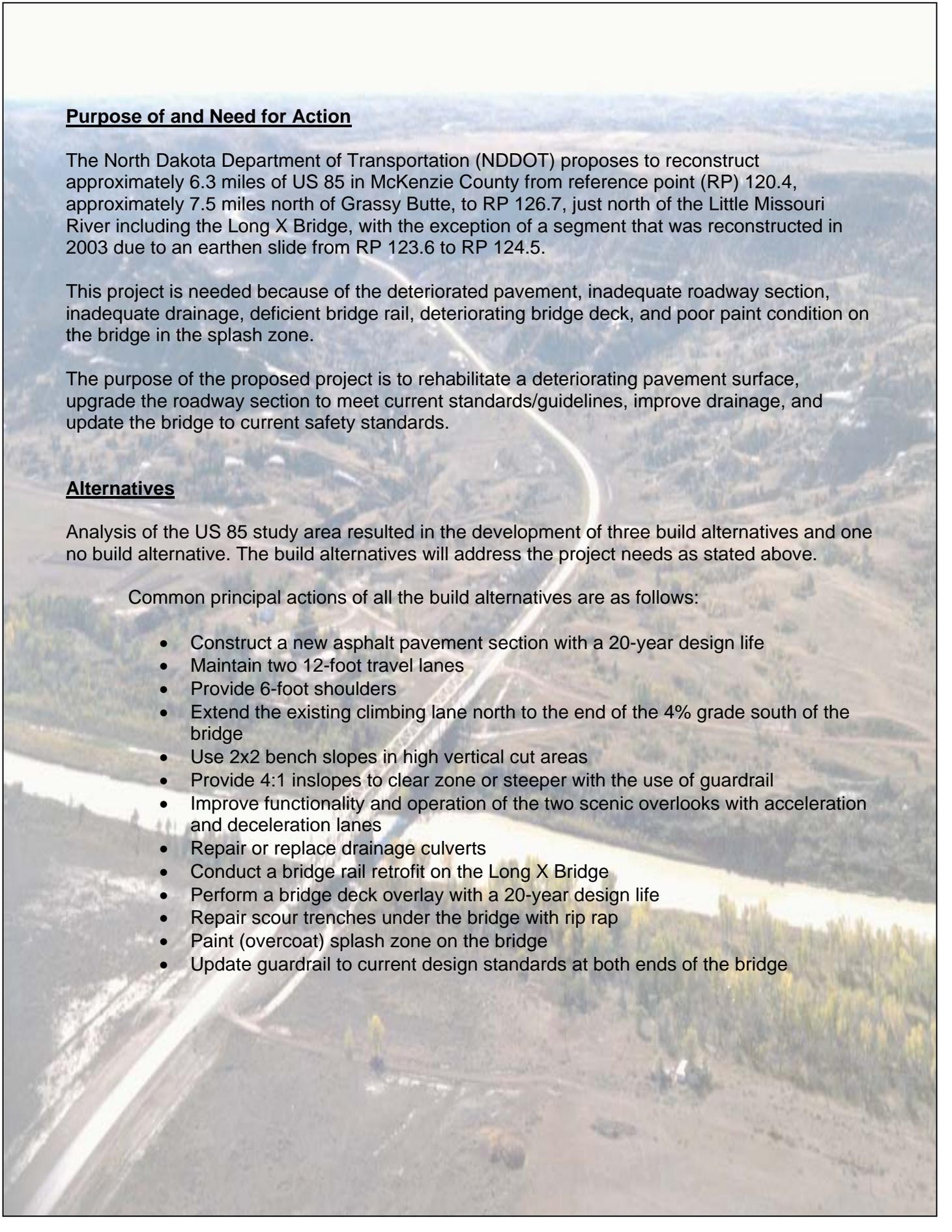
Name (Individual)	Business Name	Business/Individual Address (Mailing Address)	E-mail Address
Sheri Lares	NDDOT	608 E. Boulevard, Bismarck ND 58504	
Chad M. Orn	NDDOT	608 E. Boulevard, Bismarck ND 58505	
JOEL WELT	NDDOT	608 PO Box 698, Williston ND 58802	
WALT PETERSON	NDDOT	PO Box 698, Williston ND 58802	
Steve Hessler	NDDOT	608 E Boulevard, Bismarck ND 58504	
Melvin Wegner	NDDOT	" " " "	
Morris TARNAVSKY		1271 Lonsk Road Watford City, ND	
Lowell CUTSHAW		15092 Hwy Draw RD, Sidney, MT	
Lynn CARSEN		W.C.	
jean J. boscher	NDDOT	608 E Boulevard Ave	jboscher@nd.gov

**US Highway 85
7.5 Miles North of Grassy Butte to the
Long X Bridge, McKenzie County**

Public Hearing



**City Hall-Civic Center
Watford City, ND
March 13, 2008
4:00 p.m. to 7:00 p.m. CST**

An aerial photograph showing a long bridge crossing a wide river. The bridge is a multi-lane highway bridge. The surrounding landscape is a mix of green fields and some trees. The sky is clear and blue.

Purpose of and Need for Action

The North Dakota Department of Transportation (NDDOT) proposes to reconstruct approximately 6.3 miles of US 85 in McKenzie County from reference point (RP) 120.4, approximately 7.5 miles north of Grassy Butte, to RP 126.7, just north of the Little Missouri River including the Long X Bridge, with the exception of a segment that was reconstructed in 2003 due to an earthen slide from RP 123.6 to RP 124.5.

This project is needed because of the deteriorated pavement, inadequate roadway section, inadequate drainage, deficient bridge rail, deteriorating bridge deck, and poor paint condition on the bridge in the splash zone.

The purpose of the proposed project is to rehabilitate a deteriorating pavement surface, upgrade the roadway section to meet current standards/guidelines, improve drainage, and update the bridge to current safety standards.

Alternatives

Analysis of the US 85 study area resulted in the development of three build alternatives and one no build alternative. The build alternatives will address the project needs as stated above.

Common principal actions of all the build alternatives are as follows:

- Construct a new asphalt pavement section with a 20-year design life
- Maintain two 12-foot travel lanes
- Provide 6-foot shoulders
- Extend the existing climbing lane north to the end of the 4% grade south of the bridge
- Use 2x2 bench slopes in high vertical cut areas
- Provide 4:1 inslopes to clear zone or steeper with the use of guardrail
- Improve functionality and operation of the two scenic overlooks with acceleration and deceleration lanes
- Repair or replace drainage culverts
- Conduct a bridge rail retrofit on the Long X Bridge
- Perform a bridge deck overlay with a 20-year design life
- Repair scour trenches under the bridge with rip rap
- Paint (overcoat) splash zone on the bridge
- Update guardrail to current design standards at both ends of the bridge

Objective	Alternative A (No Build)	Alternative B (55 mph Design Speed)	Alternative C (65 mph Design Speed with Speed Advisory Signs on Curves)	Alternative D (65 mph Design Speed) - Preferred
Rehabilitate deteriorating pavement	<5 Years	20 Years	20 Years	20 Years
Upgrade roadway section to meet current standards/guidelines	12 ft lanes 4 ft shoulders ±4:1 inslopes	12 ft lanes 6 ft shoulders 4:1 inslopes	12 ft lanes 6 ft shoulders 4:1 inslopes	12 ft lanes 6 ft shoulders 4:1 inslopes
Improve drainage to control erosion	Perpetual erosion problems	Repair or replace culverts Install 2 x 2 bench slopes	Repair or replace culverts Install 2 x 2 bench slopes	Repair or replace culverts Install 2 x 2 bench slopes
Update bridge to current safety standards	Bridge rail does not meet current standards	Bridge rail retrofit	Bridge rail retrofit	Bridge rail retrofit
Improve bridge deck	<5 Years	20 Years	20 Years	20 Years
Control erosion at bridge piers	Scour trenches	Repair scour trenches	Repair scour trenches	Repair scour trenches
Replace paint in splash zone	Poor paint condition	Apply paint in splash zone	Apply paint in splash zone	Apply paint in splash zone
Cost	±\$2,203 per mile average annual maintenance cost	\$10.4 million	\$10.4 million	\$12.7 million

Environmental Consequences

The NDDOT has determined that the build alternative based on a 65 mph design speed, Alternative D, is the preferred alternative. The preferred alternative would meet the purpose of the project and would best accommodate the future 1,735 ADT, of which approximately 25% is truck traffic. Further, this portion of the roadway is included in the northern segment of the Great Plains International Trade Corridor, known as the Theodore Roosevelt Expressway; the preferred alternative would best accommodate the future needs of the corridor, with minimal impacts.

Impact Category	Alternate A (No Build)	Alternate B (55 mph Design Speed)	Alternate C (65 mph Design Speed with Speed Advisory Signs on Curves)	Alternate D (65 mph Design Speed)-Preferred
Wetland Impacts (acre)	0.00	0.14	0.14	0.08
Right of Way Needed (acre)	0.00	1.30	1.30	5.24
USFS Easement Needed (acre)	0.00	3.00	3.00	5.90

What is the next step?

Following the Public Hearing and 15-day comment period, a final environmental document will be prepared by the NDDOT. The FHWA will review the document, agency and public comments, and responses to comments, to determine whether an EIS (Environmental Impact Statement) or a FONSI (Finding of No Significant Impact) should be prepared. If environmental clearance is received in the Spring of 2008, design and right of way could commence, with construction to begin possibly as early as 2010.

Public Comments

Written comments on the February 2008 EA must be received or postmarked no later than March 27, 2008 to be included in the final environmental document. Please mail comments to Chad M. Orn, Program Manager, Environmental and Transportation Services Division, ND Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700 or Email: corn@nd.gov with "US Hwy 85 Comment" in the e-mail subject heading.

Copies of the February EA are available for public viewing at the following locations:

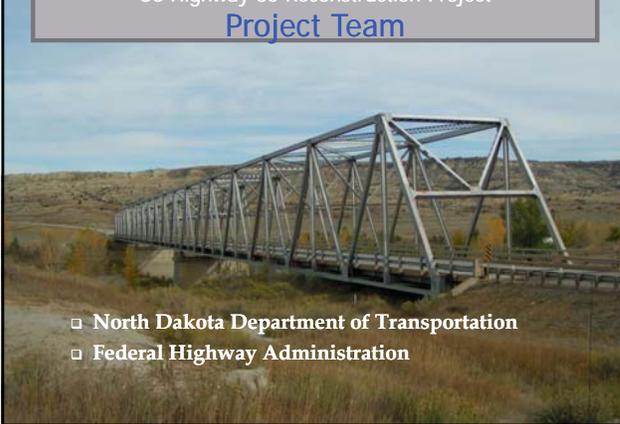
Watford City Public Library 213 2 nd Street NE Watford City, ND	Federal Highway Administration 1471 Interstate Loop Bismarck, ND
NDDOT Central Office 608 East Boulevard Avenue Bismarck, ND	NDDOT Williston District Office 605 Dakota Parkway West Williston, ND

This Public Hearing is being conducted by the ND Department of Transportation. The Public Hearing is designed to allow for public comment, which is required for compliance with the National Environmental Policy Act of 1970 and the National Historic Preservation Act of 1966.



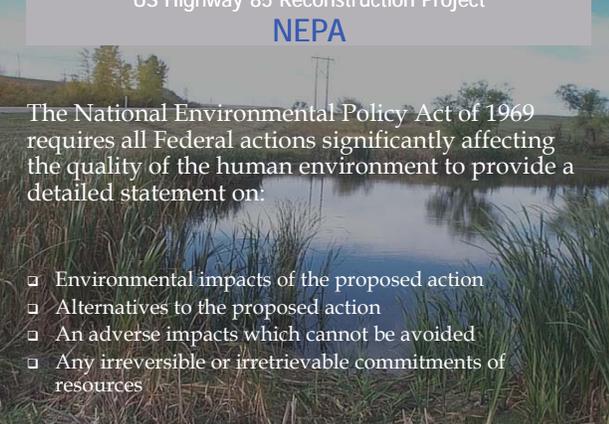


**US Highway 85
Reconstruction Project**
Public Input Meeting
Thursday, March 13, 2008
4:00 - 7:00 p.m. CST



US Highway 85 Reconstruction Project
Project Team

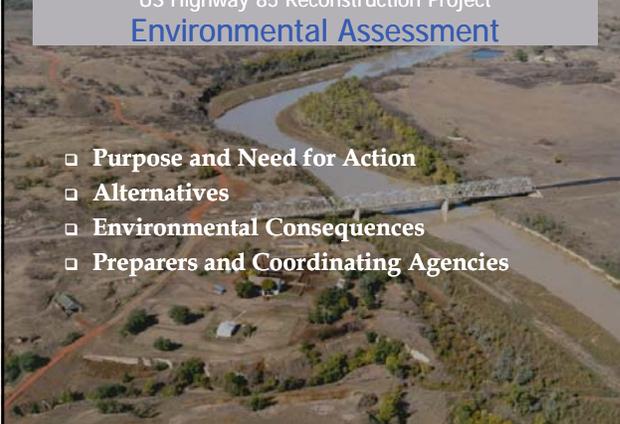
- North Dakota Department of Transportation
- Federal Highway Administration



US Highway 85 Reconstruction Project
NEPA

The National Environmental Policy Act of 1969 requires all Federal actions significantly affecting the quality of the human environment to provide a detailed statement on:

- Environmental impacts of the proposed action
- Alternatives to the proposed action
- An adverse impacts which cannot be avoided
- Any irreversible or irretrievable commitments of resources



US Highway 85 Reconstruction Project
Environmental Assessment

- **Purpose and Need for Action**
- **Alternatives**
- **Environmental Consequences**
- **Preparers and Coordinating Agencies**

US Highway 85 Reconstruction Project
Purpose and Need for Action

- ❑ Deteriorated Pavement
- ❑ Inadequate Roadway Section
 - ❑ 3 Curves do not meet 65 mph design speed
- ❑ Inadequate Drainage
- ❑ Deficient Bridge Rail
- ❑ Deteriorating Bridge Deck
- ❑ Poor Paint Condition on the Bridge in the Splash Zone

US Highway 85 Reconstruction Project
Proposed Alternatives

- ❑ Alt A - No Build
- ❑ Alt B - 55 mph Design Speed
- ❑ Alt C - 65 mph Design Speed with Speed Advisory Signs on 3 Curves
- ❑ Alt D - 65 mph Design Speed with regrading of the 3 curves

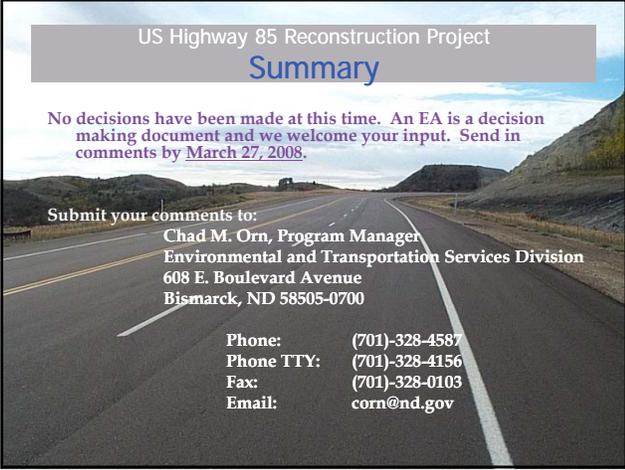
Alternative D is the preferred alternative by the NDDOT.

US Highway 85 Reconstruction Project
Impacts

	No Build	55 mph	65 mph with signs	65 mph
Cost	\$2,203 per mile average annual maintenance cost	\$10.4 Million	\$10.4 Million	\$12.7 Million
Wetland Impacts (acre)	0.00	0.14	0.14	0.08
Right of Way Needed (acre)	0.00	1.30	1.30	5.24
USFS Easement Needed (acre)	0.00	3.00	3.00	5.90

US Highway 85 Reconstruction Project
Tentative Schedule

- ❑ Environmental Clearance - Spring 2008
- ❑ Design, Permitting, and ROW - Summer 2008 to Fall 2009
- ❑ Construction - Summer 2010
- ❑ Final Surfacing - Summer 2011



US Highway 85 Reconstruction Project
Summary

No decisions have been made at this time. An EA is a decision making document and we welcome your input. Send in comments by March 27, 2008.

Submit your comments to:

Chad M. Orn, Program Manager
Environmental and Transportation Services Division
608 E. Boulevard Avenue
Bismarck, ND 58505-0700

Phone: (701)-328-4587
Phone TTY: (701)-328-4156
Fax: (701)-328-0103
Email: corn@nd.gov



Thank you!

APPENDIX C

Response to Agency Comments

US Army Corps of Engineers (USACE) – 03/25/08

US Fish and Wildlife Service (USFWS) – 03/28/08

US Forest Service (USFS) – 04/11/08



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640
March 25, 2008

North Dakota Regulatory Office

NWO-2007-3042-BIS

Mr. Chad M. Orn, Program Manager
Environmental and Transportation Services Division
ND Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700



Dear Mr. Orn:

We have reviewed the Environmental Assessment (EA) that was prepared for US Highway 85, 7.5 miles north of Grassy Butte to the Long X Bridge in McKenzie County. In addition, an approved jurisdictional determination (jd) has been completed for the project.

Based on the information you provided, in addition to review of wetland data at the North Dakota Regulatory Office, it has been determined the Little Missouri River is jurisdictional under Section 404 of the Clean Water Act. Wetlands 2, 3 and 4 are isolated wetlands not subject to Section 404 jurisdiction. In conversations with NDDOT personnel, wetlands 1 and 5 will not be impacted by the project and were not included as part of this approved jurisdictional determination, however, these wetlands are likely jurisdictional. A discharge of fill material into jurisdictional waters requires a Department of the Army (DA) permit prior to the discharge, in accordance with 33 C.F.R. 320-330. If however, construction activities associated with this project are designed to avoid discharges of fill in jurisdictional waters, a DA permit would not be required.

The approved jd will be made available to you upon request, or it may be viewed at our website at <https://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>. The JD will be available on the website within 30 days. If you are not in agreement with the JD, you may request an administrative appeal under U.S. Army Corps of Engineers regulations found at 33 CFR 331. The Request for Appeal must be received within 60 days from the date of this correspondence. If you would like more information on the jurisdictional appeal process, contact this office. **It is not necessary to submit a Request for Appeal if you do not object to the JD.** The jd will be valid for a period of 5 years.

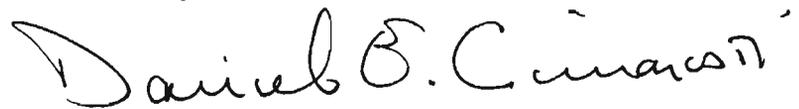
This delineation/determination has been conducted to identify the limits of Section 404 jurisdictional waters for you proposal. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985.

The EA indicates that no river channel alterations or major changes in drainage patterns will be made and that unavoidable impact to wetlands will be mitigated on-site. With Alternative D, identified as the preferred alternative, approximately 0.08 acres of wetlands, of which 0.05 are jurisdictional, will be impacted. The EA also indicates that there are no practicable alternatives that would avoid impacts to wetlands and design would include measures to minimize impacts to wetlands. Please indicate how this minimization will occur, where the mitigation will be done and how it will be accomplished.

The Little Missouri River is a Class I waterbody and no regulated activity within jurisdictional waters listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June.

Should you have any questions regarding this determination, please contact Ms. Patsy Crooke of this office by letter or telephone (701) 255-0015 and reference project number NWO-2007-3042-BIS.

Sincerely,

A handwritten signature in black ink that reads "Daniel E. Cimarosti". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota

Response to US Army Corps of Engineers

Response to Coded Comment 1 – Wetland and water quality concerns have been addressed in Sections 3.5.1, 3.11.3, 3.14.2, and 3.16 in the Errata to the Environmental Assessment.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



MAR 28 2008

Mr. Chad M. Orn, Program Manager
Environmental and Transportation Services Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58505-0700



Re: Project AC-HPP-NH-7-085(032)120 and
SNH-7-085(037)120 - PCN 1558 and 1559
U.S. Highway 85 - McKenzie County, ND

Dear Mr. Orn:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of February 25, 2008, and the accompanying Environmental Assessment (EA), concerning the North Dakota Department of Transportation's (NDDOT) plans to improve U.S. Highway 85. This project consists of reconstructing approximately 6.3 miles of the roadway in McKenzie County from reference point (RP) 120.4, approximately 8 miles north of Grassy Butte, to RP 126.7, just north of the Little Missouri River including the Long X Bridge. The segment of the project from RP 123.6 to RP 124.5 was reconstructed in 2003 due to the occurrence of an earthen slide. No additional work is required along this segment of U.S. Highway 85. We offer the following comments in accordance with the provisions of the Endangered Species Act (16 U.S.C. 1531 et seq.) and Executive Order 11990 concerning the protection of wetlands.

In general, we do not have significant concerns with the work proposed by the NDDOT to reconstruct a 6.3 mile segment of U.S. Highway 85; however, we believe the EA does not fully describe the design and planning work completed by the NDDOT. This information will assist the public and the reviewing agencies to clearly understand steps taken by the NDDOT and provide assurances that an environmentally sound alternative will be implemented. Specific examples to illustrate our concern and additional comments to strengthen the EA follow:

Page 3-6, Raptor Species of Concern: We recommend highlighting the NDDOT's commitment to conduct raptor surveys prior to the start of construction to determine if active nests are present. The surveys should be conducted between April 15 to June 1. The conclusion presented in the EA that there will be no impact to the five raptor species of concern, based on a survey conducted in May 2003, extends the data beyond its usefulness. We also suggest including information describing the measures that will be taken if an active nest is discovered in the project area. Measures to avoid/minimize impacts to an active raptor nest may include such things as timing restrictions and coordination with Federal and State natural resource agencies to develop site-specific conditions. The bald eagle, which was federally listed as threatened when we provided comments on this project in November 2004, should also be added to the list of raptor species that will be surveyed.

1
2

Page 3-6, Sensitive Species: The first three paragraphs of this section of the EA start with the phrase "It was determined that ...". No supporting information is presented to document how this determination was made. We recommend explaining the coordination process and research that enabled the NDDOT to reach the conclusions presented.

3

Page 3-7, Bighorn Sheep: Brett Wiedmann serves as the North Dakota Game and Fish Department (Department) bighorn sheep biologist. We recommend highlighting the NDDOT's efforts to coordinate with the Department and implement specific measures to avoid/minimize impacts to bighorn sheep. We believe including this information provides a better understanding of the planning and coordination efforts the NDDOT has taken to develop this project.

4

Page 3-7: The information presented for the loggerhead shrike, tawny crescent butterfly, regal fritillary butterfly, and *Belfragii's* chlorochroan bug indicate that the proposed project "... will not likely contribute to the trend towards Federal listing or cause a loss of viability to the population or species." Making a determination concerning Federal listing in accordance with the provisions of the Endangered Species Act requires the completion of a detailed 12-month finding addressing the five criteria established for listing a species. Rather than drawing a conclusion that is not supported by the data in the EA, we believe presenting information concerning the presence of these species within the project area and the extent of their habitat affected by construction provides a defensible rationale. This information will assist the public and the reviewing agencies to better understand the potential impacts associated with this project.

5

Page 3-8: Paragraphs 1 and 2 address measures to minimize disturbance to raptors and bighorn sheep but do not specify what measures will be implemented.

6

Pages 3-8 and 3-9, Threatened and Endangered Species: Based on the information presented in the EA and our knowledge of the project area, we believe this project will not adversely affect federally listed threatened and endangered species. My concerns focus on providing adequate information in the EA to allow the reader to understand the steps the NDDOT took to make its determination.

7

The EA lists the species and concludes that all action alternatives for “the proposed project may affect but is not likely to adversely affect listed species, and is not likely to jeopardize the continued existence of the species. In addition, the project is not likely to destroy or adversely modify the critical habitat of the species.” We recommend providing information that briefly addresses the occurrence of each listed species that is known to occur in McKenzie County and what, if any, impacts reconstruction of U.S. Highway 85 will have on each listed species. Based on this analysis, separate determinations should be presented for each species.

7

The piping plover is the only species in North Dakota with designated critical habitat. We recommend that the NDDOT’s determination concerning critical habitat specifically address piping plover critical habitat. With respect to the plans to reconstruct U.S. Highway 85, no critical habitat has been designated in the project area.

Page 3-12, Water Quality Impacts/Mitigation: The EA states that standard best management practices will be used to reduce turbidity and other water quality impacts. We recommend describing the types of measures that will be used such as placing silt fences at appropriate locations and using coconut matting or other suitable material/techniques on steep slopes to minimize erosion. Figure 2.1 on page 2-2 depicting bench slopes shows an area of active erosion and with little or no vegetation. We recommend working with the U.S. Forest Service and the Natural Resources Conservation Service to coordinate and implement a comprehensive revegetation plan.

8

Page 3-18, Impacts: We believe unavoidable impacts to wetland resources from the construction alternatives will be minor. The EA indicates, “wetland impacts would be mitigated following NDDOT guidelines.” We suggest including information in this section of the EA supporting the wetland environmental commitment listed on Page 3-19. For this project, the Service supports the NDDOT’s plan to evaluate practical on-site mitigation alternatives before considering offsite options. We also recommend adding the U.S. Forest Service to the list of agencies that will help to develop site-specific wetland mitigation measures.

9

Page 3-19 and 20, Environmental Commitments and Compliance: Several of the environmental commitments indicate that steps will be taken to minimize impacts. We recommend describing the specific measures the NDDOT will implement, when possible.

10

Three of the environmental commitments presented in the EA address the disposal of excess and waste material. We recommend including language that indicates that all excess and waste material will be disposed of in an approved upland site in a manner that will not impact aquatic resources, woodland habitat, and native grasslands. We believe this language provides assurances that indirect impacts associated with project construction will be avoided/minimized.

11

We appreciate the opportunity to provide comments on the NDDOT’s plans to reconstruct 6.3 miles of U.S. Highway 85 in McKenzie County, North Dakota. While this comment letter focuses on the EA prepared for this project, our primary objective is to provide information that

will assist in preparing future NEPA documents. If you have any questions concerning this letter, please contact me or Bill Bicknell of my staff at 250-4481 or at the letterhead address.

Sincerely,

Handwritten signature of Jeffrey K. Towner in blue ink.

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

cc: Division Administrator, FHWA, Bismarck
(Attn: Mark Schrader)
North Dakota Regulatory Office, COE, Bismarck
(Attn: Patsy Crooke)
Director, ND Game and Fish Dept., Bismarck
(Attn: Mike McKenna)

Response to US Fish and Wildlife Service

Response to Coded Comment 1 – The Departments coordination efforts were discussed in Sections 3.6 and 3.16 of the EA. No change was made.

Response to Coded Comment 2 – The raptor survey(s) and avoidance and minimization efforts are addressed in Sections 3.6 and 3.16 in the Errata to the Environmental Assessment.

Response to Coded Comment 3 – The Departments coordination efforts and documentation regarding sensitive species are addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 4 – The Departments coordination efforts with ND Game and Fish Department were discussed in Sections 3.6 and 3.16 of the EA. No further comments were received from the ND Game and Fish Department regarding bighorn sheep, therefore no additions was made to the text to describe in greater detail coordination efforts. Further, Section 3.16 includes the commitment to continue coordination efforts during the design phase.

Response to Coded Comment 5 – The determination concerning federal listing was made by the USFS and was documented in the EA; no changes were made to the effect determinations from USFS. Section 3.6 in the Errata to the Environmental Assessment further addresses the updates to the sensitive species list and additional concurrence letters from USFS.

Response to Coded Comment 6 – Minimization efforts with regard to raptor species and the bighorn sheep are addressed in Sections 3.6 and 3.16 in the Errata to the Environmental Assessment.

Response to Coded Comment 7 –Additional information on threatened and endangered species, habitat, and effect determination are addressed in Section 3.7 in the Errata to the Environmental Assessment.

Response to Coded Comment 8 – Additional information regarding best management practices to minimize water quality impacts are addressed in Sections 3.6.1, 3.11.3, 3.14.2, and 3.16 in the Errata to the Environmental Assessment.

Response to Coded Comment 9 – Additional information regarding cumulative wetland impacts are addressed in Sections 3.5.1, 3.6.1, 3.14.2, and 3.16 in the Errata to the Environmental Assessment. Site specific wetland mitigation measures will be coordinated with the resource and regulatory agencies that manage wetland resources, i.e. USACE, USFWS, and NDGFD.

Response to Coded Comment 10 – Additional information regarding specific measures to minimize impacts are addressed in Sections 3.5.1, 3.6.1, 3.11.3, 3.14.2, and 3.16 in the Errata to the Environmental Assessment.

Response to Coded Comment 11 – Additional information regarding the Departments standard specification for material sources and commitments to minimize impacts are addressed in Section 3.16 of the Errata to the Environmental Assessment.



File Code: 1950/2730

Date: April 11, 2008

Chad M. Orn
Program Manager, Environmental and Transportation
Services Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700



Dear Chad:

This letter is in response to your request for comments on the EA for the US Highway 85 project from 7.5 Miles North of Grassy Butte to the Long X Bridge, McKenzie County. The Forest Service is a Cooperating Agency concerning this project.

The EA has been reviewed internally and members of my staff offer the following comments and concerns for consideration and inclusion in the final environmental assessment.

Botany

The botanical report is dated September, 1999 and the subsequent concurrence letter from Forest Service Botanist, Joe Washington, is dated February 13, 2002. In 2004, the Forest Service sensitive species list was updated; some species were added to the list, some were removed. The EA needs to analyze species on the most current list. In light of this fact, acting Forest Service Botanist, Kim Dolatta, has reviewed the 1999 botanical report. Based on her professional judgment, further field review is not necessary and she has updated the Forest Service concurrence to reflect determinations for species not previously covered. A copy of her concurrence letter is enclosed. Please include the updated information in the final EA.

1

Wildlife

Similar to the botany issue, the wildlife report is dated July 20, 2000 and the subsequent concurrence letter from Forest Service Biologist, Gary Foli, is dated August 8, 2000. Again, the analysis needs to address species on the 2004 sensitive species list. Forest Service Wildlife Biologist, Jeff Ingalls, has reviewed the 2000 wildlife report. Based on his professional judgment, further field review is not necessary and he has updated the Forest Service concurrence to reflect determinations for species not previously covered. A copy of his concurrence letter is enclosed. Please include the updated information in the final EA.

2

Minor Edits

EA pages 1-2, 3-11 and possibly other pages: The "Custer National Campground" referred to in the EA is actually called Summit Campground.

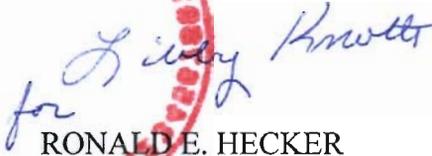
3



Coordination and Project Decision

My staff and/or staff from the Dakota Prairie Grasslands Supervisor's Office in Bismarck will continue to coordinate with you on details for the final decision on this project. If you require further information please contact Libby Knotts, District Planning Coordinator, at (701) 842-2394, Extension 30.

Sincerely,



for Libby Knotts

RONALD E. HECKER
District Ranger

Enclosures: Copy of wildlife concurrence update letter
Copy of botany concurrence update letter



File Code: 2670

Date: April 11, 2008

Route To:

Subject: Sensitive Plant Biological Evaluation, North Dakota Department of Transportation, US Highway 85, Project AC-HPP-NH-7-085(032) and SNH-7-085(037)120-PCN 1558 and 1559, Sections 2, 12, 13, & 24, T. 147 N., R. 99 W.

To: Ron Hecker, District Ranger, McKenzie Ranger District

I have reviewed the Botanical survey prepared by Kathie Diller in September 1999 and the Assessment of Sensitive Plant Biological Evaluation prepared by Joe Washington dated February 13, 2002 for the proposed US Highway 85 road upgrade. The project is located in the central portion of the district on NFS and private lands. The highway will cross NFS lands in Sections 2, 12, 13, & 24 T147N, R99W. The proposed route is located primarily in a pre-existing ROW corridor for the current highway.

Kathie Diller's report, Joe Washington's assessment, and this memo have met the guidelines set forth in FSM 2672.41, 2672.42 and 2672.43. These guidelines provide a process and standard by which to ensure that TES plant species receive consideration during the decision-making process. The Northern Region's revised sensitive species list (US Forest Service 2004) is the basis of analysis for sensitive and watch plant species and suitable habitat located on the Little Missouri National Grassland. This list has been updated since the original survey was completed. The only change to the list moved one watch species to the sensitive species list and updated the nomenclature of that species (*Myosurus apetalus* var. *montanus*). Kathie Diller's report did not find any evidence of that species that got moved to the sensitive list.

4

The proposed project will disrupt minimal acres and species habitat in an area that has been previously disturbed and will not produce a significant reduction in habitat quality and quantity. No sensitive or watch plant populations were observed during any of the field visits. Based on the field surveys, the determination of effects conclusion from the proposed activities **will have "no impact" on any of the sensitive plant species. There are no known impacts to watch plant species.**

5

Recommendations

Disturbance to native vegetation should be minimized as much as possible throughout construction, operation, and reclamation activities. Prior to entering the project area, all tools and equipment are required to be clean of noxious weed and invasive plant propagules (seeds and vegetative parts that may sprout) to prevent their spread. Periodic monitoring of noxious weeds is required and all noxious weeds found need to be immediately treated with the most effective and approved herbicide. **Leafy spurge was found on the west side of the highway near the north end of Section 24. The infestation should be treated before construction commences and monitored after construction is completed to ensure it has been controlled.**

6



Reclamation of the site should follow specification set forth by the US Forest Service using an approved native seed mix. Some other recommendations to minimize cumulative effects are: avoid woody plant communities and wetland areas when possible, use reclamation practices that promote plant diversity, and limit disturbances.



KIMBERLY L. DOLATTA
Acting Botanist
McKenzie Ranger District



File Code: 2670

Date: April 11, 2008

Subject: Concurrence of Determination of Effects for NDDOT Highway 85 Reconstruction

To: District Ranger, McKenzie Ranger District

This letter is prepared to supplement Gary Foli's concurrence letter dated August 8, 2000 for the above project. Since the time Gary wrote his concurrence and the time the EA for this project was finalized there has been some changes to the Forest Service Region 1 sensitive species list. Also, there has been some changes in the project design since the BA/BE prepared by Natural Resources Consultant dated July 20,2000 was prepared.

Five sensitive butterfly species have been added. They are the arogos skipper, broad-winged skipper, dion skipper, mulberry wing, and powesheik skipperling. While none of these species or their habitat is documented to occur in the project location a determination of no impact is warranted.

} 7

The long-billed curlew and northern redbelly dace have also been added. A determination for both species is may impact individuals and/or their habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species. Rationale for this determination for the long-billed curlew is that the project area contains minimal habitat for this species and mitigation measures in the design criteria are to replant native species back into disturbed areas where feasible. Also, mitigation measures are in place to minimize impacts to the Little Missouri River where there may be potential habitat for the northern redbelly dace.

} 8

Just to note, species that have been dropped from the sensitive species list since the BA/BE was prepared are the swift fox, western big-eared bat, spotted bat, sicklefin chub, northern leopard frog, and belfragii's chlorochroan bug.

} 9

As stated in Gary Foli's concurrence letter, any recommendations disclosed in the BA/BE should be followed unless new information or changes in the proposed project indicate the recommendations are no longer viable.

} 10

Jeff Ingalls
Zone Wildlife Biologist
Dakota Prairie Grasslands
Little Missouri National Grasslands



Response to US Forest Service

Response to Coded Comment 1 – Additional information regarding the botanical data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 2 - Additional information regarding the wildlife data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 3 – Sections 1.1, 3.2, and 3.9.1 have been updated in the Errata to the Environmental Assessment.

Response to Coded Comment 4 – Comment noted.

Response to Coded Comment 5 - Additional information regarding the botanical data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 6 – Section 3.16 in the Errata to the Environmental Assessment addresses environmental commitments and minimization of impacts. Please note that the NDDOT Williston District Office has coordinated with the McKenzie County Weed Board to control leafy spurge in the project area.

Response to Coded Comment 7 - Additional information regarding the wildlife data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 8 - Additional information regarding the wildlife data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 9 - Additional information regarding the wildlife data and update to the sensitive species list is addressed in Section 3.6 in the Errata to the Environmental Assessment.

Response to Coded Comment 10 – Comment noted.