

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT



8901 S. 154TH ST.
OMAHA, NE 68138-3621
(402) 444-6222
FAX (402) 895-6543
www.papionrd.org

Federal Transportation Projects
Summit Meeting
Papio-Missouri River Natural Resources District Comments

The transition to the "Federal Process" has caused a massive delay in implementing trails, as well as other transportation projects in the state. The delays have caused a multitude of problems for local sponsors. NDOR's establishment of a "Local Projects Division" and the writing of a "how to" manual delayed everything two years.

Further, the requirement of having each local entity to have a trained "responsible charge" necessitated a massive training effort by NDOR and local sponsors. Each training class was limited in size adding to the time needed to certify "RCs" in the state.

Federal Process:

The "Federal Process" that is being required of sponsors for federal transportation projects includes 67 separate and unique steps with 23 specific "stopping" points. Each stopping point requires NDOR/FHWA written approval before proceeding with the next step in the process. To date, these reviews and written approvals have taken an indeterminate amount of time to achieve. This leads to project delays that are frustrating to all concerned parties, including the general public.

Apparently, the federal process is "one size fits all", while not fitting anyone. Trail projects are different from superhighways in many regards, but are required to follow the same procedures.

Changing the rules in the middle of the game:

1. All transportation projects, regardless of stage of completion, were required to "start over" and follow the federal process from the beginning. No projects were allowed to be "grandfathered". A specific starting date to follow the new rules would have been preferable.

Example #1 – The federal process requires a "plan-in-hand" meeting at the 30% stage of design, prior to acquisition of right-of-way. The purpose of a "plan-in-hand meeting" was to identify issues pertinent to design of the project. The Papio-Missouri River NRD's Platte River Trail plans were at the 90% stage (essentially final) and all right-of-way had been acquired when the strict following of the federal process was instituted. NDOR/FHWA required the NRD to hold a "plan-in-hand" meeting anyway. In addition, environmental concerns were recognized and were being addressed, but the NRD was required to go back and complete NEPA document for the project, revisiting all of the environmental issues covered by the NEPA process.

Example #2 – The NRD's Missouri River Trail Phase 2 project was basically bid ready when the transition occurred. NDOR's procedures had been followed, with various necessary "approvals" along the way. This project has been delayed due to FHWA bringing into question those approvals. This adds to consultant time to address, adding more costs to the project.

2. Increased consultant costs resulted from "scope of services" changes made necessary by the new federal process.

Example #3 – The NRD's Western Douglas County Trails, Platte River Trail, and Missouri River Trail Projects were all required by the federal process to complete NEPA documentation for the respective projects. These costs were "extra services" increasing consultant costs.

Consultant Selection:

1. The NRD has, as a rule, hired the consultants for trail projects and did not request reimbursement with federal funds. This aids in the efficient implementation of projects as they are ready to bid when funding approval occurs. Additionally, this frees up the federal funds to be used to offset construction costs. Even though the NRD follows a quality-based selection process, this has caused delays.
2. The federal process requires consultants to be certified by NDOR and, presumably FHWA, to work on federal transportation projects. In addition, certification and specialized training, is also required for preparing NEPA documents and biological evaluations (wetlands, mitigation planning).
3. The federal process does not allow the design consultant to handle construction engineering on the project. This is especially disconcerting to local sponsors when a problem occurs during construction; design flaw, or contractor error, error in inspection. There is no clear line designating "blame". A single consultant could be held responsible.
4. The quality-based selection process, which we support, takes time. Selecting a second consultant for construction engineering adds additional time to the project.

Right-of-way Acquisition

1. Right-of-way plans have to exactly match legal descriptions, appraisals, review appraisals, and vice versa.

Example #4 – On the Platte River Trail project, the surveyor wrote the legal description and summarized the description as "x" square feet. The appraiser converted square feet to acres and wrote the appraisal as "y" acres. Since all three (legal description, appraisal, and right-of-way plans) did not match exactly, the negotiations were stalled until the revisions were completed.

2. If during negotiations with a landowner, some slight changes in the project were agreed to achieve a voluntary settlement, requiring a slight change in right-of-way, negotiations had to stop and wait until the right-of-way plans, legal descriptions, and appraisals were all revised. Further delays resulted when NDOR written approval was necessary before negotiations could be concluded causing further delays.
3. The delays in project implementation appraisals and studies to be "out-of-date" and needing updating. The increased costs associated have to be borne by the local sponsor.

Example #5 – Appraisals were completed and reviewed for the NRD's Western Douglas County Trails Project in 2008. The two year delay, through no fault of the NRD, made these appraisals outdated. The costs for these updates are local. Further, in the interim, several properties have been sold to other owners, necessitating updated title searches.

Administrative/Budgeting Issues

1. The NRD operates on an annual budget year between July 1 and June 30 each year. The delays have caused several trail projects to be "budgeted" several years with the anticipation of the process being completed so that construction could occur. In the NRD's case, this amounts to nearly \$5 million in construction costs that are not spent each year, and the difficult explanations given to elected officials as to why.
2. The same budgeting problem occurs with consultant services, land rights acquisition, and legal fees.
3. Project delays increase construction costs.

Example #6 – The NRD's Missouri River Trail Phase 2 construction costs have increased from \$2.3 million to \$3.5 million during the delay. The NRD's Platte River Trail construction costs have increased from \$1.3 million to \$2.4 million.

Public Support

Every project has some measure of public support. Delays affect these projects in a number of ways.

1. Every transportation project was initiated to solve a problem, or address a need in the community. The seemingly endless delays mean that the need or problem has gone unaddressed.
2. More outside influences come into play further eroding public confidence.
 - The Nebraska Legislature's review of the NRDs' use of eminent domain for trails casts a negative pall on all trail projects.

- Negative publicity about other non-transportation projects further erodes public support for projects.

Summary and Recommendations

1. All transportation projects in the "pipeline" should have been "grandfathered" and allowed to be completed under the rules, guidelines, and procedures in place when they were initiated.
2. As has been stated before, the Federal Process has a "one size fits all" mentality. Highways and trails both serve a transportation function, but vary greatly in scope and complexity. We recommend that small projects (less than \$3 million) be treated differently than more complex highway projects. For example, the Corps of Engineers allow "nationwide" permits on certain projects in an effort to efficiently process applications.
3. Parameters need to be established setting out a timetable for review agencies to complete their review and get comments back to the sponsors to address. Further, once review comments are addressed, projects need to be able to proceed to the next step in an efficient manner.

The bottom line is that the endless delays have eroded public confidence that "government" knows what it is doing. The constant delays and "arguing" among agencies make all government entities appear incompetent. This situation is unacceptable and needs to be corrected as soon as possible.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

30 March, 2010

Missouri River Trail - Phase 2

NDOR Project No.: ENH-28(89); Control No.: 22252

General Coordination and Concerns:

1. FY budgets - criticism from taxpayers annually budgeting for a trail and not using it.
2. Not 'delivering' a trail when promised to the trail user.
3. Schedules for reviews are open-ended or non-existent with unlimited review questions with no finalization of comments.
4. Political concerns - County, City, NRD.

A Brief Bit of History of the Missouri River Trail

The Missouri River Trail is a long awaited and overdue project. It has been cited in numerous City/County/MAPA planning documents dating back over thirty-five years. This final 1.5 mile Missouri River Trail Phase 2 link would connect rural Washington County's Boyer Chute National Wildlife Refuge in the north with a 16 mile, hard surface trail to the Old Market area of Downtown Omaha's Riverfront and across the recently completed Bob Kerrey Pedestrian Bridge, to Iowa's trail system that extends all the way south to the State of Missouri.

That being said as an overview of the entire Missouri River Trail System, the Papio-Missouri River NRD set about to complete this final link in 2004.

Now here is a key element of concern: The final three miles of Missouri River Trail was thought to be too expensive and complex to complete as a single project, so this segment of trail was legitimately broken into two distinct Phases of which Phase 2 is the one we are concerned about at this time. Phase 1 was completed in 2006.

The planning, studies and design elements of both Phase 1 and Phase 2 were completed under a single consulting contract, in an effort to gain efficiency, reduce duplicity of effort and savings of both time and money for everyone. ALL of the required studies, permits, approvals and designs for the entire, three mile Phase 1 and Phase 2 stretch of this Missouri River Trail segment were essentially completed during the initial 1.2 mile, Phase 1

planning in 2005. If we had not done so, critical elements for the trail alignment such as wetland issues, SHPO concerns, wildlife nesting, floodways, etc. may not have been discerned until after Phase 1 was constructed - and these "critical elements" may have precluded the 1.5 mile Phase 2 from ever being completed. We wanted to know from early on if the entire three mile segment of trail was feasible. Reasonable? We thought so....at the time.

The NRD made an application for cost-share funding in 2005 for Phase 1 and was approved for the maximum amount of \$500,000.00 in early 2006. Construction of this Phase 1 Missouri River Trail link was completed in less than six months.

An application for construction of the Missouri River Trail Phase 2 was made in 2006 and approved in 2007. IF all went as in Phase 1, this final 1.5 mile Phase 2 section should have been completed by fall of 2007. Three years following funding approval by the NDOR, the ROW approval by the NDOR in mid 2008 and the trail design essentially completed earlier in 2006 (as part of Phase 1 but not funded by the NDOR) we are no closer to bid letting and construction than we were three years ago when the cost share agreement was originally approved - and the estimate of cost was \$1.1 million less.

Cost - Important Enough to Re-emphasize:

Cost escalates annually. Studies, permits, letters of approval - completed years ago have to be re-done if construction is not timely. These 'repeat planning efforts' cost time AND money. With no firm review or comment schedules or deadlines from either federal or state offices - the studies, permits and approval letters need to be completed over and over again. This MR Trail project has been waiting approval from March of 2007 - the date of the original signed agreement with NDOR. Since the project was originally designed in 2006 and the NRD began budgeting for construction in 2007, there has been an estimated 33% increase in construction costs. The originally estimated construction cost of \$2.4 million is now estimated at \$3.5 million with no end in sight.

Project Location / Orientation

John J.
Pershing

Hummel
Park

Ponca
Road

Washington
County Line

Ponca
Creek

White Deer Lane

Phase Two

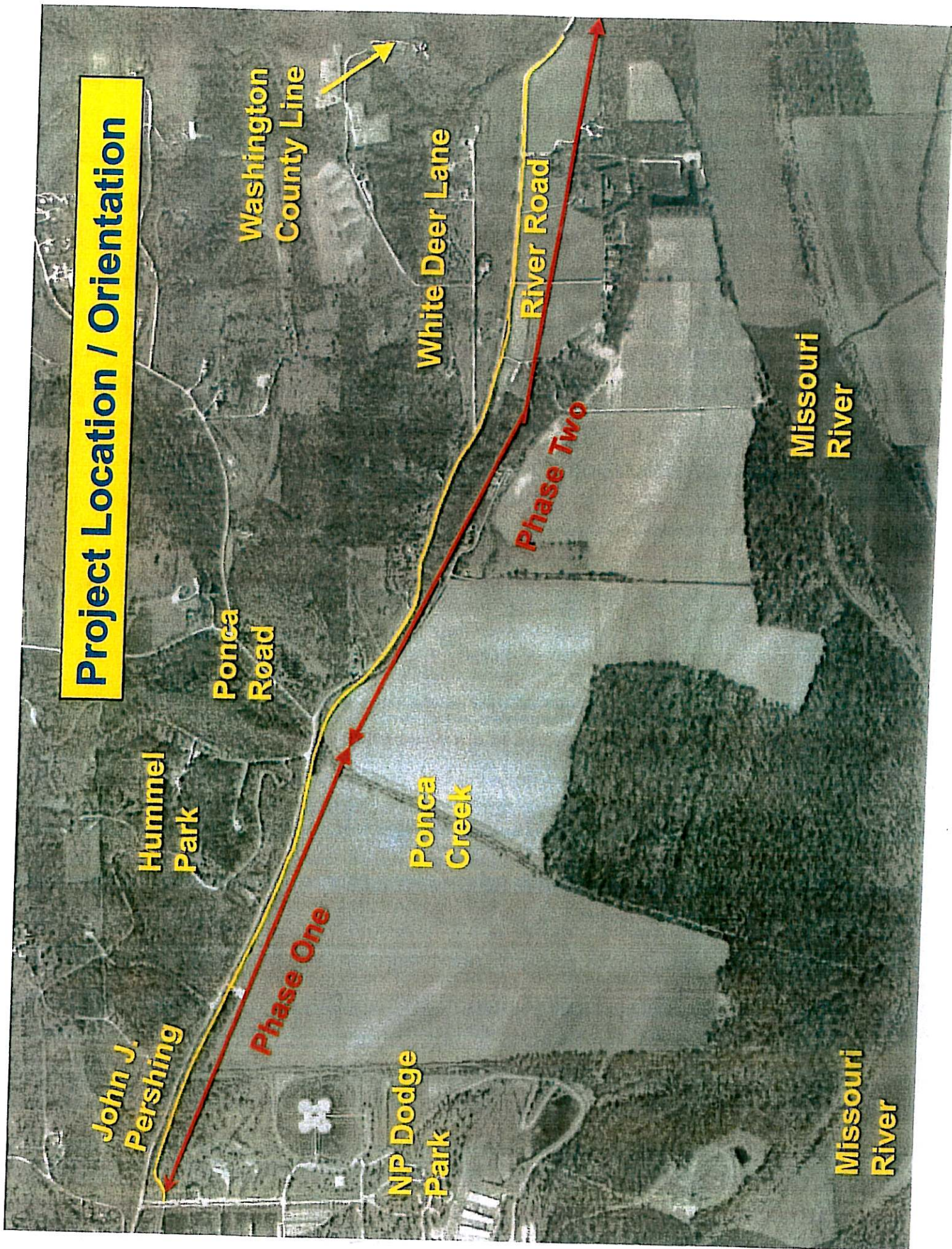
River Road

Missouri
River

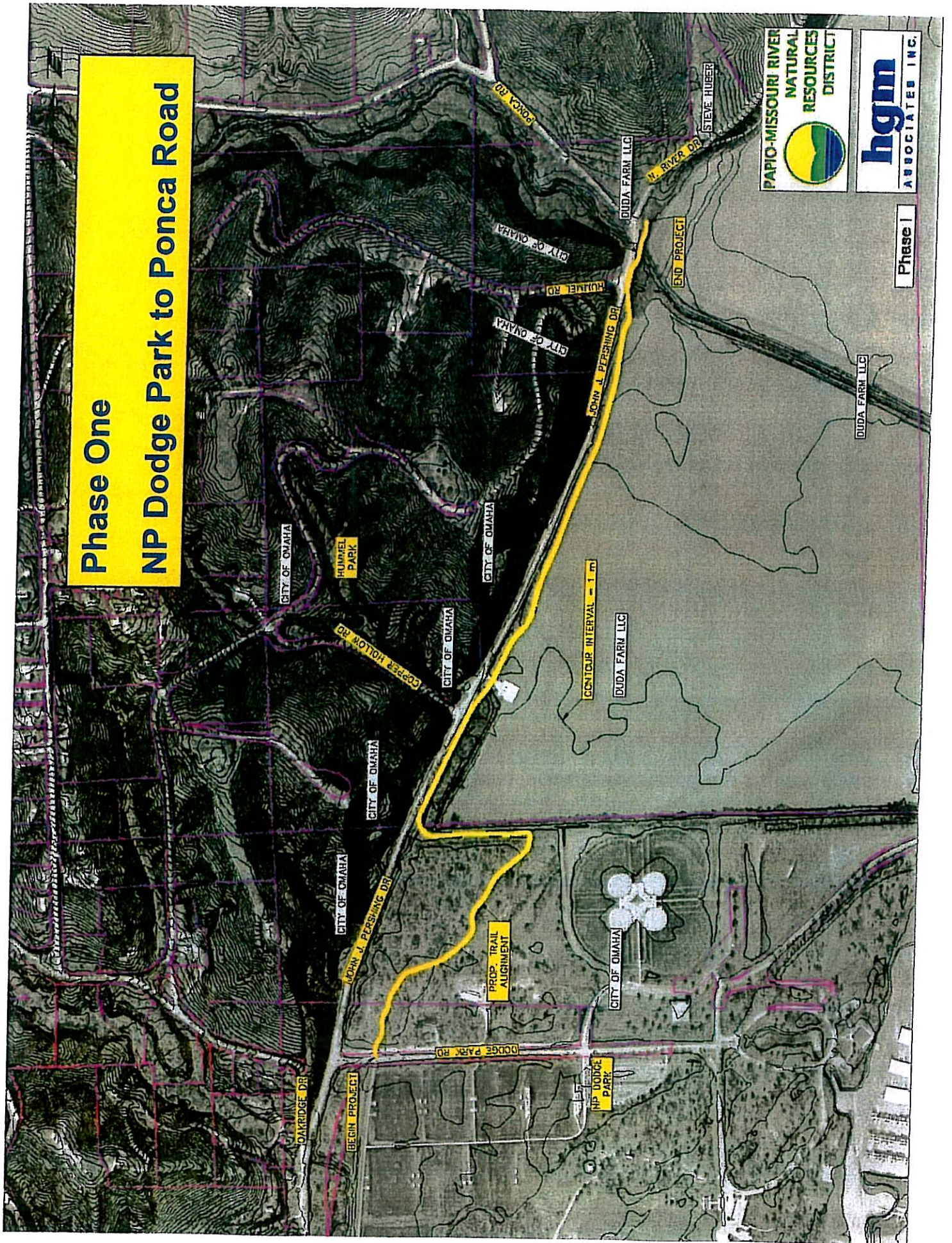
NP Dodge
Park

Missouri
River

Phase One



Phase One NP Dodge Park to Ponca Road



hgm
ASSOCIATES INC.

Phase I

**MR Trail – Phase 1
Pre-Construction**



MR Trail - Phase 1 Post Construction



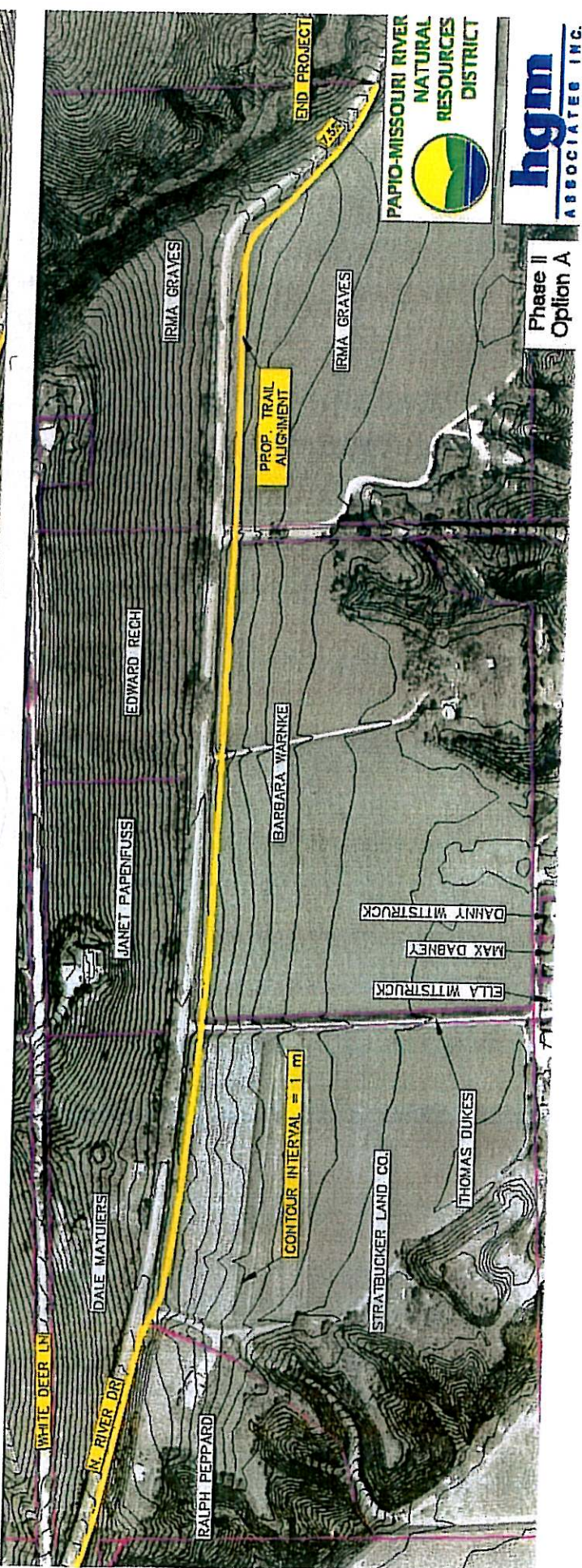
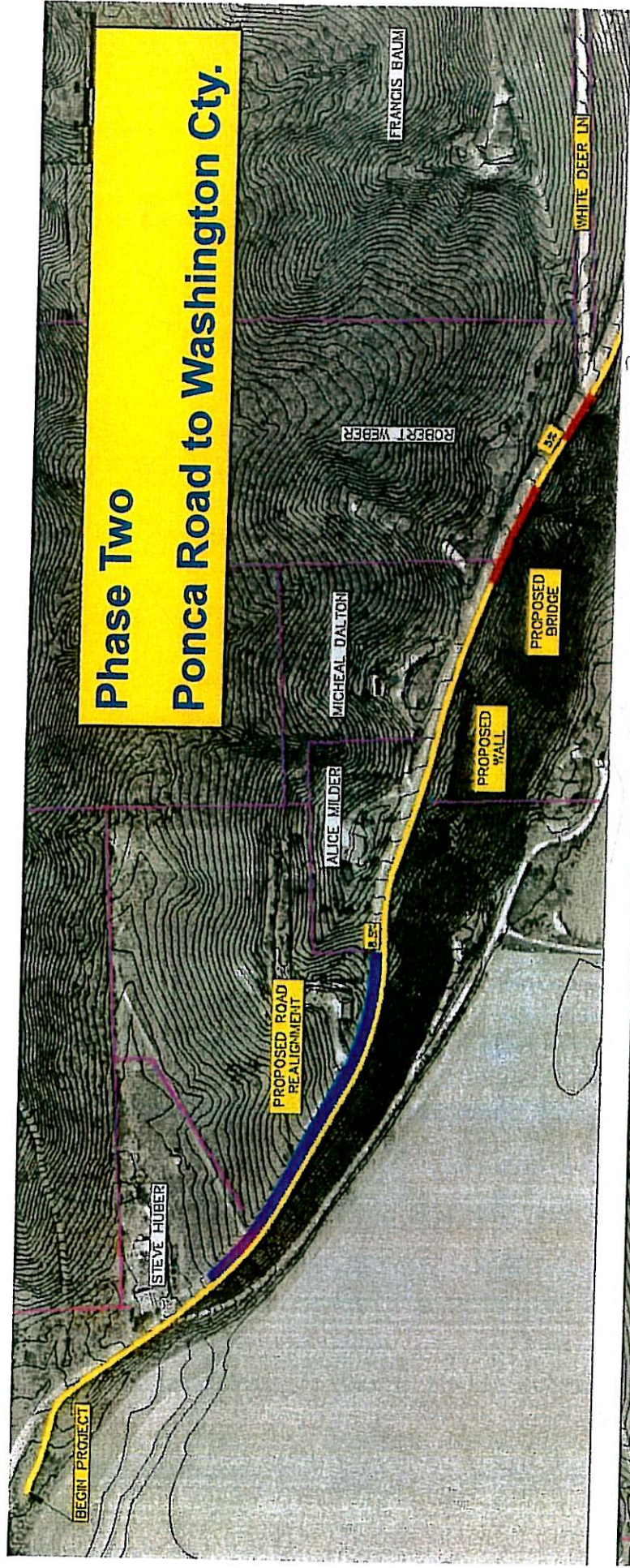
OCT 3 2008

**MR Trail - Phase 1
Post Construction**



OCT 3 2006

Phase Two Ponca Road to Washington Cty.



hgm
ASSOCIATES INC.

Phase II
Option A

**MR Trail - Phase II
Alignment - Right**



**MR Trail – Phase II
Alignment Right**

