

## **Chapter 4 – Summary of Environmental Commitments**

### ***A. Vegetation***

FHWA will coordinate with the resource agencies to determine appropriate mitigation for the loss of wooded areas.

### ***B. Transportation***

Continual use of local roads for the transportation of project personnel and materials may cause some use damage to these roads. Roads intended for use as haul roads will be assessed before and after construction and repairs will be made to return the roads to their pre-construction condition.

### ***C. Utilities***

Project proponents would coordinate with all utility companies that have service lines and facilities in areas potentially affected by the proposed project, either by inundation or construction. All utility impacts would be resolved to ensure continued service.

### ***D. Relocation***

Relocations required by the conversion of land to ROW uses would be compensated for based on fair market value of the land and according to the Uniform Act and applicable state laws. Businesses and landowners that require relocation due to immediate inundation would be provided the option of being compensated for in accordance with the Uniform Act. All necessary relocations within a zone would occur prior to construction or equalization of the portion of the project that affects the property within that zone. Homeowners that are affected by changes in groundwater due to a direct effect of the project will be eligible for relocation and/or compensation under the Uniform Act.

### ***E. Agricultural Land***

The conversion of agricultural land to ROW uses would be compensated for based on fair market value of the land and according to the Uniform Act and applicable state laws. Owners of farmland that would be immediately inundated due to equalization of RAADs would be provided the option of being compensated for in accordance with the Uniform Act. Compensation would occur prior to equalization.

### ***F. Prime, Unique, and Important Farmland***

In addition to the mitigation identified above under “Agricultural Land,” should completion of the Farmland Conversion Impact Rating, Form AD-1006, produce a score of 160, the FHWA would consult with the NRCS as needed to determine appropriate mitigation measures, if any, are needed.

### ***G. Indian Trust Assets***

ITAs that would be converted to ROW uses would be compensated for based on fair market value of the land and according to the Uniform Act. Owners of ITAs that would be immediately inundated due to equalization of RAADs would be provided the option of being compensated for in accordance with the Uniform Act.

### ***H. Wetlands***

Negative impacts to regulated wetlands would be mitigated as agreed to with the USACE through the establishment of a wetland mitigation site(s). The FHWA is in the process of identifying likely sites for mitigation. Non-regulated wetlands will be mitigated in accordance with E.O. 11990.

### ***I. Threatened and Endangered and Sensitive Species***

No mitigation is needed for threatened and endangered species. In the event that bald eagles are found nesting within the project area, the FHWA would consult with the USFWS regarding any necessary avoidance measures to be taken during the nesting season.

### ***J. Cultural Resources***

Cultural resources would not be disturbed. If necessary, fencing would be used to assist in site avoidance. If previously unknown cultural resources were inadvertently discovered during construction, work would stop in the immediate vicinity until the resource and the SHPO and the SLN and other appropriate tribes would be notified by the agency administering the construction contract. If it is determined that such resources are burials or are eligible for listing in the NRHP, mitigation measures would be developed in consultation with the SHPO, SLN, and other tribe(s) as needed and implemented. SLN will notify FHWA of the location of any traditional cultural or medicinal plants. The implementing agency will coordinate with SLN to either avoid or mitigate for the loss of the plants.

### ***K. Hazardous Materials***

Prior to construction, the implementing agency would investigate any hazardous materials sites within the construction limits that have the potential to involve associated soil or ground water contamination. The agency with construction oversight would have all waste materials that lie within the construction limits removed and disposed of in a permitted landfill prior to construction activities. Any materials deemed hazardous would be disposed of in a manner appropriate for the waste type. Any hazardous materials would be transported by a licensed hazardous waste transporter.

### ***L. Visual Resources***

Mitigation measures may include revegetation of roads, RAADs, and perimeter dam slopes.

### ***M. Materials Sources***

Material will not be removed from sources below an elevation of 1460. Materials sources must be compliant with all Federal, State, and local laws pertaining to the protection of resources.

## Chapter 5 – De Minimis Section 4(f) Evaluation

The intent of the Section 4(f) Statute, 49 U.S.C. Section 303, and the policy of the FHWA is to avoid transportation use of historic sites and publicly owned recreational areas, parks, and wildlife and waterfowl refuges. If the FHWA determines that a transportation use of these types of properties, also known as Section 4(f) properties, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required, and the Section 4(f) evaluation process is complete. *De minimis* impacts on publicly owned parks, recreation areas, and wildlife and waterfowl refuges are defined as those that do not “adversely affect the activities, features and attributes” of the Section 4(f) resource.

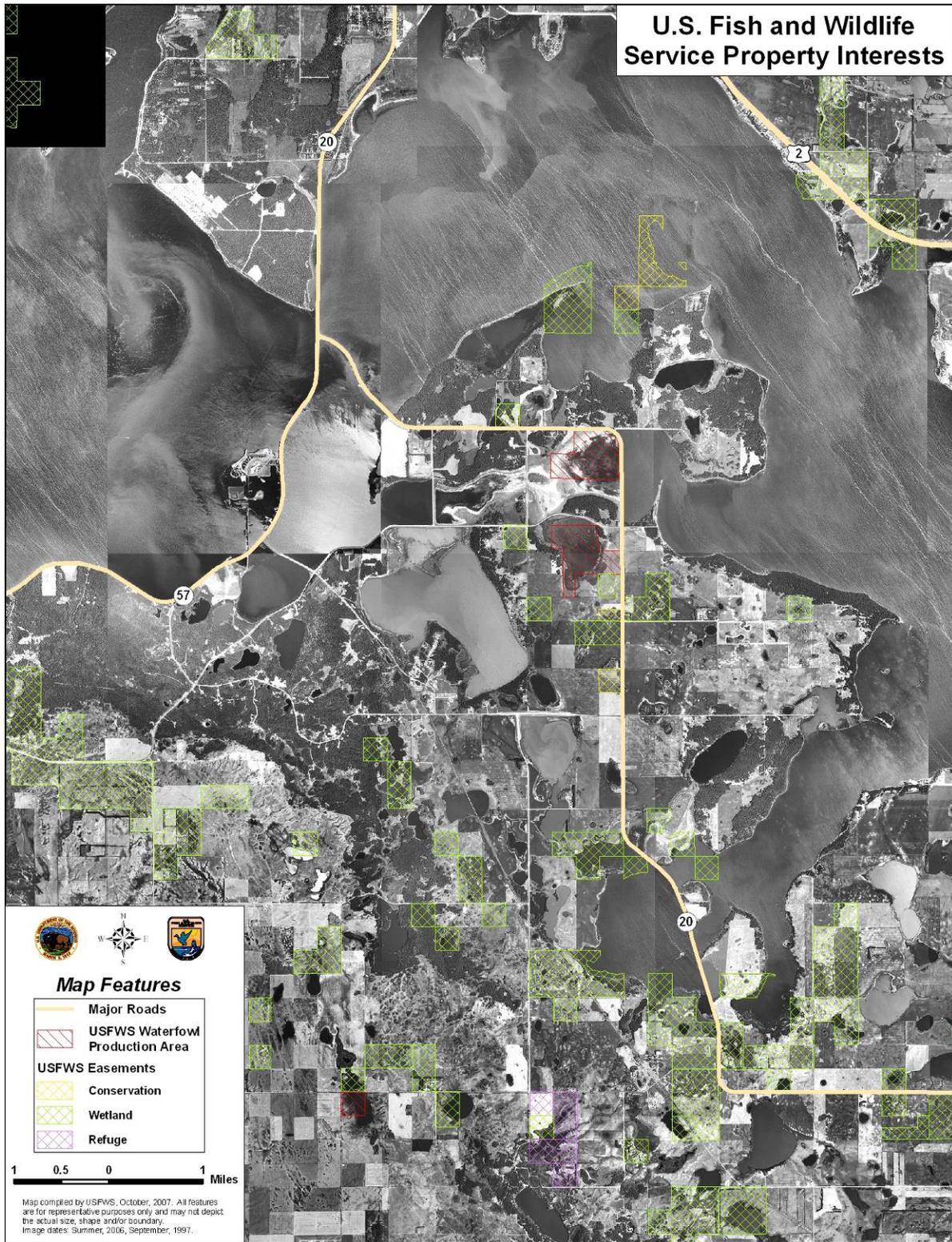
Section 4(f) properties in the project area include the East Bay Recreation Area, two Waterfowl Production Areas (WPAs) and numerous wetland and conservation easements. The East Bay Recreation Area, in Zone 4, located on the eastern side of ND 20, is approximately three acres in size and provides two boat ramps into Devils Lake. The gravel parking area can accommodate 30 to 40 vehicles. All impacts of the proposed project would be on the western side of ND 20. Therefore, a Section 4(f) analysis is not required for this site. Of the WPAs and wetland and conservation easements in the project area (**Figure 5-1**), the proposed project could affect one WPA, five wetland easements, and no conservation easements. Impacts to these resources are being evaluated for the full build-out of the alternatives to an elevation of 1,468 feet.

### A. *Waterfowl Production Areas*

#### 1. **Affected Environment**

WPAs preserve wetlands and grasslands critical to waterfowl and other wildlife. The Duck Stamp Act, passed in 1934, was amended by Congress in 1958 to authorize acquisition of wetlands as WPAs. These public lands, managed by the USFWS, were included in the National Wildlife Refuge System in 1966 through the National Wildlife Refuge Administration Act. Nearly 95 percent of WPAs are located in the prairie pothole areas of North and South Dakota, Minnesota, and Montana. North Dakota alone has 39 percent of the Nation's WPAs. In accordance with the National Wildlife Refuge System Improvement Act of 1997, USFWS property interests, including WPAs, cannot be mitigated in any way other than exchange for lands of equal biological and economic value to keep the National Wildlife Refuge System whole.

Zone 2 contains two WPAs totaling approximately 400 acres. Of these two sites, only WPA Site 1 is within the vicinity of the proposed construction. WPA Site 1 contains 199.7 acres of which 178.7 acres are currently inundated.



**Figure 5-1. U.S. Fish and Wildlife Service Property Interests – Devils Lake RAADs Project**

## 2. Environmental Consequences

### a) No-Action Alternative

Under the No-Action Alternative, there would be no Section 4(f) impacts. At a lake elevation of 1,460 feet, the entire easement would be inundated, flooding an additional 21.0 acres.

### b) Build Alternatives

Placement of fill into the WPA is considered an impact to Section 4(f) properties. These impacts are presented in **Table 5-1**.

**Table 5-1. Impacts to WPA Site 1 Due to Filling (acres)**

Alternative	4(f) Impacts
No Action at 1,449 feet and 1,460 feet	NA
Alternatives 2-A and 2-B	10
Alternative 2-C	17.6
Alternatives 2-D and 2-E	0

#### **(1) Direct and Indirect Effects**

No inundation of this WPA would occur at the current elevation of 1,449 feet as a result of any of the build alternatives in Zone 2.

Impacts from placing fill in the WPA are presented in **Table 5-1**. The least amount of impacts a build alternative would have to the WPA is zero acres filled under Alternatives 2-D and 2-E while the greatest amount would be 17.6 acres filled under Alternative 2-C (**Figure 5-2**). Under Alternatives 2-A and 2-B, ten acres would be filled (**Figure 5-3**). The proposed project would have an added benefit in that all of the build alternatives would prevent between 3.4 to 21 acres of WPA Site 1 from inundation should the Lake continue to rise (**Table 5-2**). In addition, any of the build alternatives in Zone 2, in combination with any of the build alternatives in Zones 1 and 3, would protect approximately 200 acres of the second WPA in the Commonly Protected Area from inundation, should the Lake rise to an elevation of 1,460 feet. This land protected does not reduce the number of acres that would have to be mitigated by exchange in any alternative, but is presented as an added benefit of the proposed project, since these acres would remain available for waterfowl and other wildlife use.

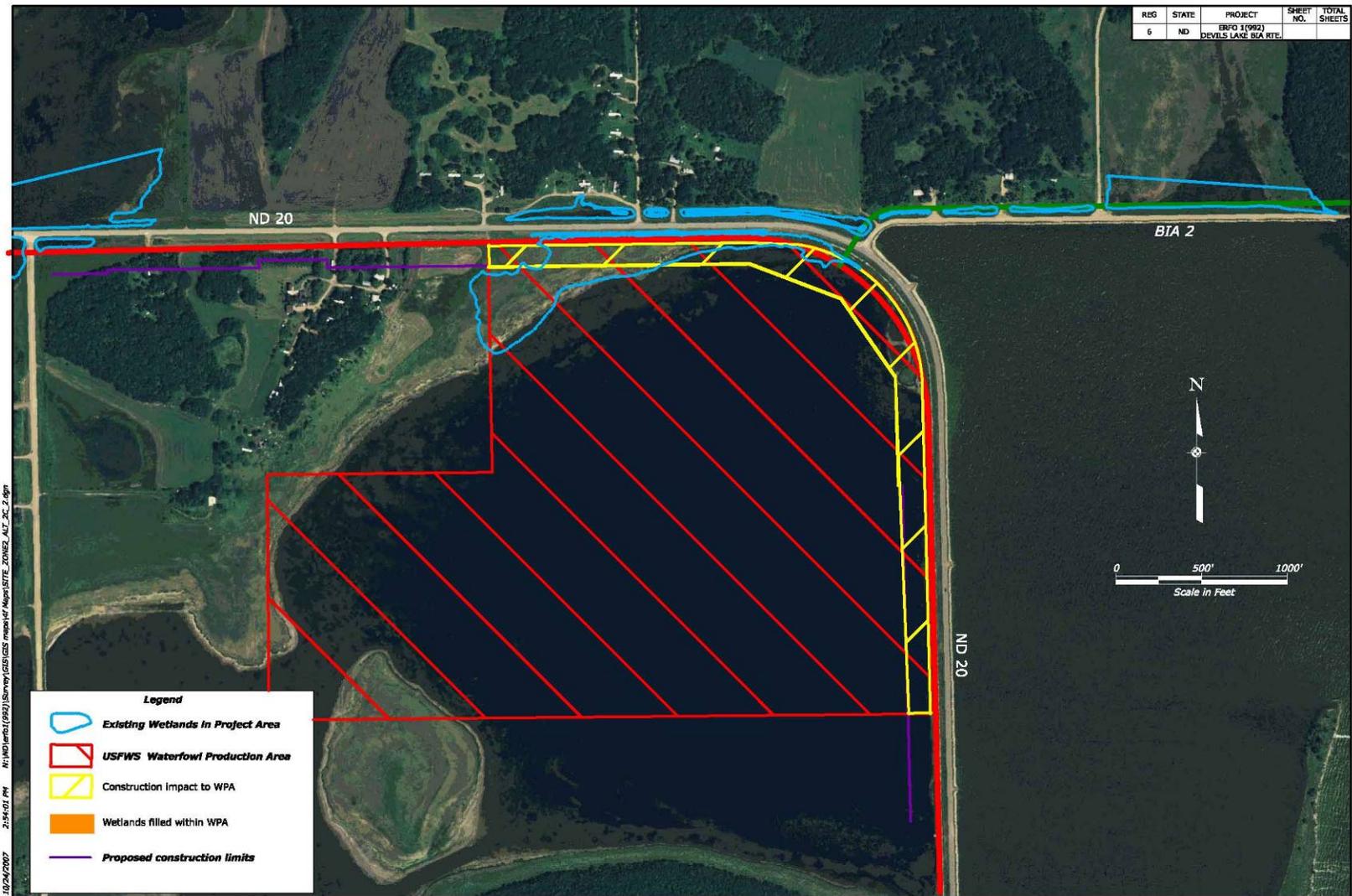


Figure 5-2. Zone 2 Alternative 2-C USFWS WPA Site 1

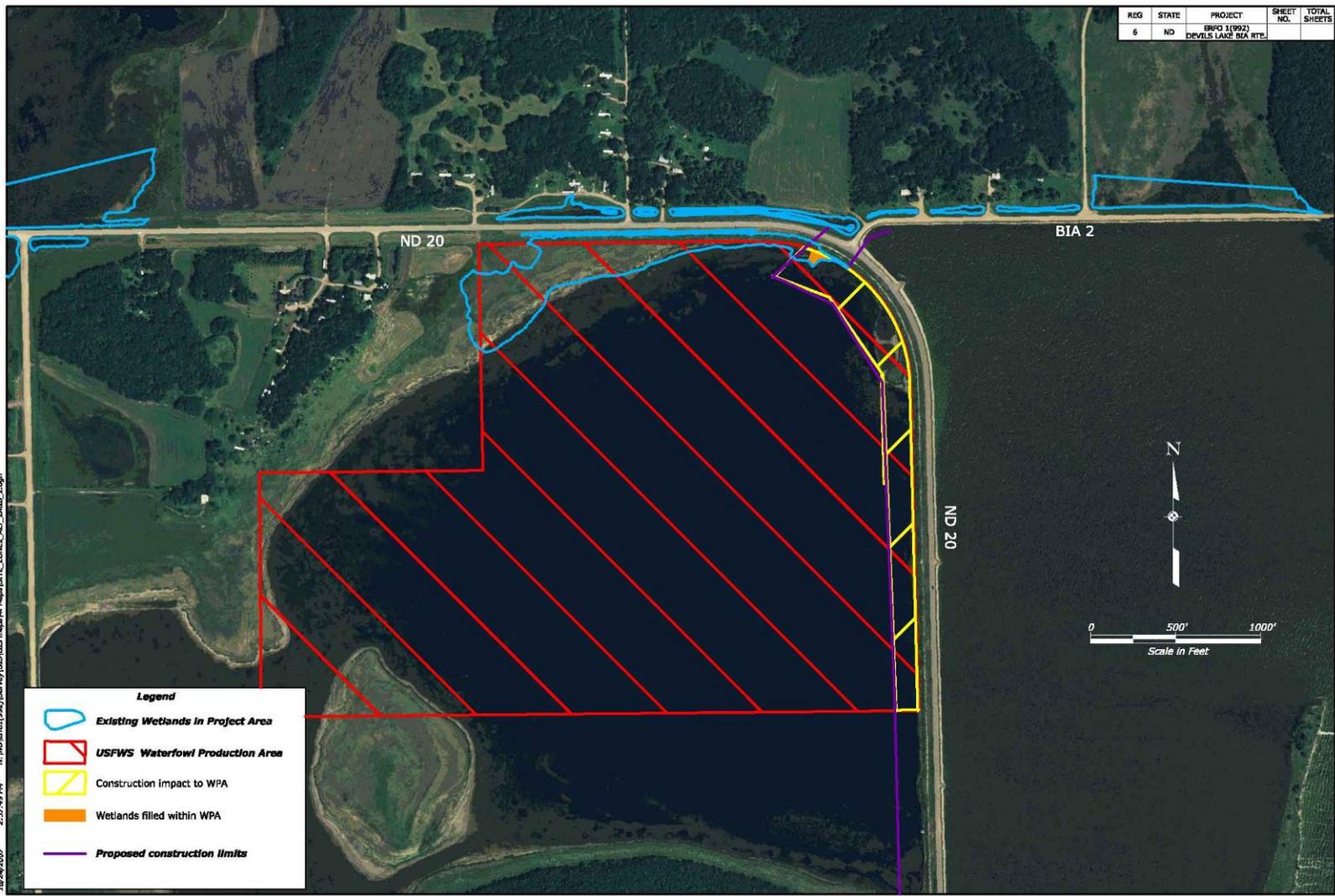


Figure 5-3. Zone 2 Alternatives 2-A and 2-B USFWS WPA Site 1

**Table 5-2. Project Added Benefit of Protection to WPAs (acres)**

Alternative	Site 1	Commonly Protected Area	Total Added Protection
Alternatives 2-A and 2-B	11	<b>200</b>	<b>211</b>
Alternative 2-C	3.4		<b>203.4</b>
Alternatives 2-D and 2-E	21		<b>221</b>

No indirect effects to the WPAs in the project area are anticipated as a result of the proposed project.

**(2) Temporary Effects**

Construction activities occurring in the WPA might affect water quality in the WPA by temporarily increasing turbidity.

**(3) Mitigation**

Impacts to the WPA would be mitigated through the purchase and exchange of lands of equal biological and economic value to prevent any overall loss to the National Wildlife Refuge System. These sites would be established on lands capable of supporting a wetland in coordination with the USFWS.

Cofferdams, water bladders, other technology as appropriate, and BMPs would be implemented during construction to minimize soil sedimentation and erosion. Contractors will be strongly encouraged to contact the USFWS prior to contract bid to determine whether potential materials sources are 4(f) resources. In the event that a 4(f) resource cannot be avoided, the implementing agency will work with USFWS to ensure that mitigation measures are appropriate.

**c) Effects Due to Rising Lake Waters**

Because none of the build alternatives affecting the WPA proposes the equalization of RAADs, there would be no further inundation of WPAs should the Lake continue to rise beyond its current elevation of 1,449 feet.

**d) De Minimis Finding**

The proposed project would have a *de minimis* impact on the WPA because it would not affect the ability of the WPA to protect wildlife and waterfowl. Although the proposed project would fill some areas within the WPA, the filled area comprises a small portion of the total area of the WPAs (two to four percent) in the project area. In addition, any of the build alternatives would prevent the remainder of WPA Site 1 and 200 acres of the second WPA site from being inundated should the Lake rise to an elevation of 1,460 feet.

## B. Wetland Easements

### 1. Affected Environment

The Wetland Easement Program was also authorized by the 1958 amendment of the Duck Stamp Act. Unlike WPAs, wetland easements, also called wetland easement tracts, remain in private ownership. The wetland easement tract is protected by a perpetual deed entered into by the landowner and the USFWS. In return for a single lump sum payment, the landowner agrees not to drain, burn, level, or fill wetlands covered by the easement tract. The FHWA Division Office in North Dakota has an agreement with the USFWS stating that wetlands within the USFWS wetland easement tract system in North Dakota will be treated as if they are a Section 4(f) resource. This evaluation is in compliance with that agreement.

The boundaries of wetlands within the easement tract are defined by the USFWS based on a high-water average using decades of aerial photographs. So, although most easement tract deeds show the easement tract covering an entire property, only the wetlands, referred to as wetland basins, within the easement tract deed are actually covered by the easement. Wetland basins within the easement tracts are considered part of the National Wildlife Refuge System and are administered for public benefit. Final impacts to wetland basins within the easement tracts would be calculated in cooperation with the USFWS. However, for the purposes of comparison for this analysis, wetland easement basin impacts are estimated from wetland delineations prepared for this project (*ERO 2006, 2007d*) and are noted as such.

There are approximately 1,800 acres of easement tracts in the St. Michael area. Zones 1 and 4 do not have easement tracts within or immediately adjacent to the proposed project. Zone 2 contains one easement tract immediately adjacent to the proposed project, Site 2, totaling 37.1 acres including both delineated wetland and non-wetland areas. This easement tract is located on the northern side of ND 20 (**Figure 5-4**) and outside of the construction limits of any of the build alternatives in Zone 2. As a result, there would be no Section 4(f) impacts, and this easement is not addressed any further.

Zone 3 has four easement tracts immediately adjacent to the proposed project, Sites 3 through 6, totaling 267 acres, including both delineated wetland and non-wetland areas.

- Site 3 (**Figure 5-5**) totals 161.3 acres. At the current lake elevation of 1,449 feet, Site 3 has 8.5 delineated acres of wetlands and 46.1 acres of open water.
- Site 4 (**Figures 5-6 and 5-7**) totals 21.9 acres. At the current lake elevation of 1,449 feet, there are 4.4 delineated acres of wetlands. None of the easement is open water.
- Site 5 (**Figure 5-6 and 5-7**) totals 40.6 acres. At the current lake elevation of 1,449 feet, there are 2.7 acres of delineated wetlands and 14.6 acres are open water.
- Site 6 (**Figure 5-8**) totals 43.3 acres. At the current lake elevation of 1,449 feet, there are 2.3 acres of delineated wetlands and no open water.

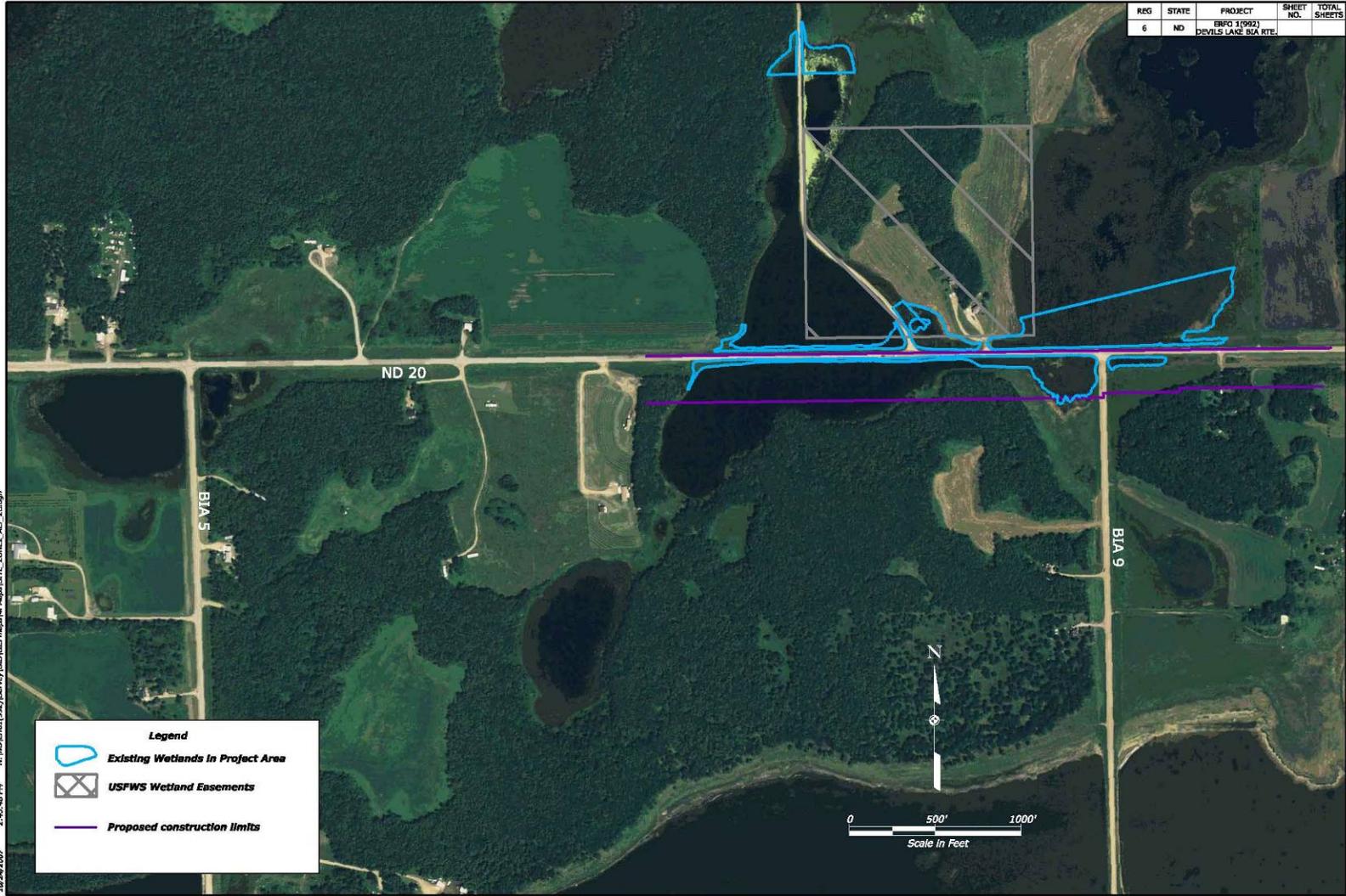


Figure 5-4. Zone 2 Alternative 2-C – Wetland Easement Tract Site 2



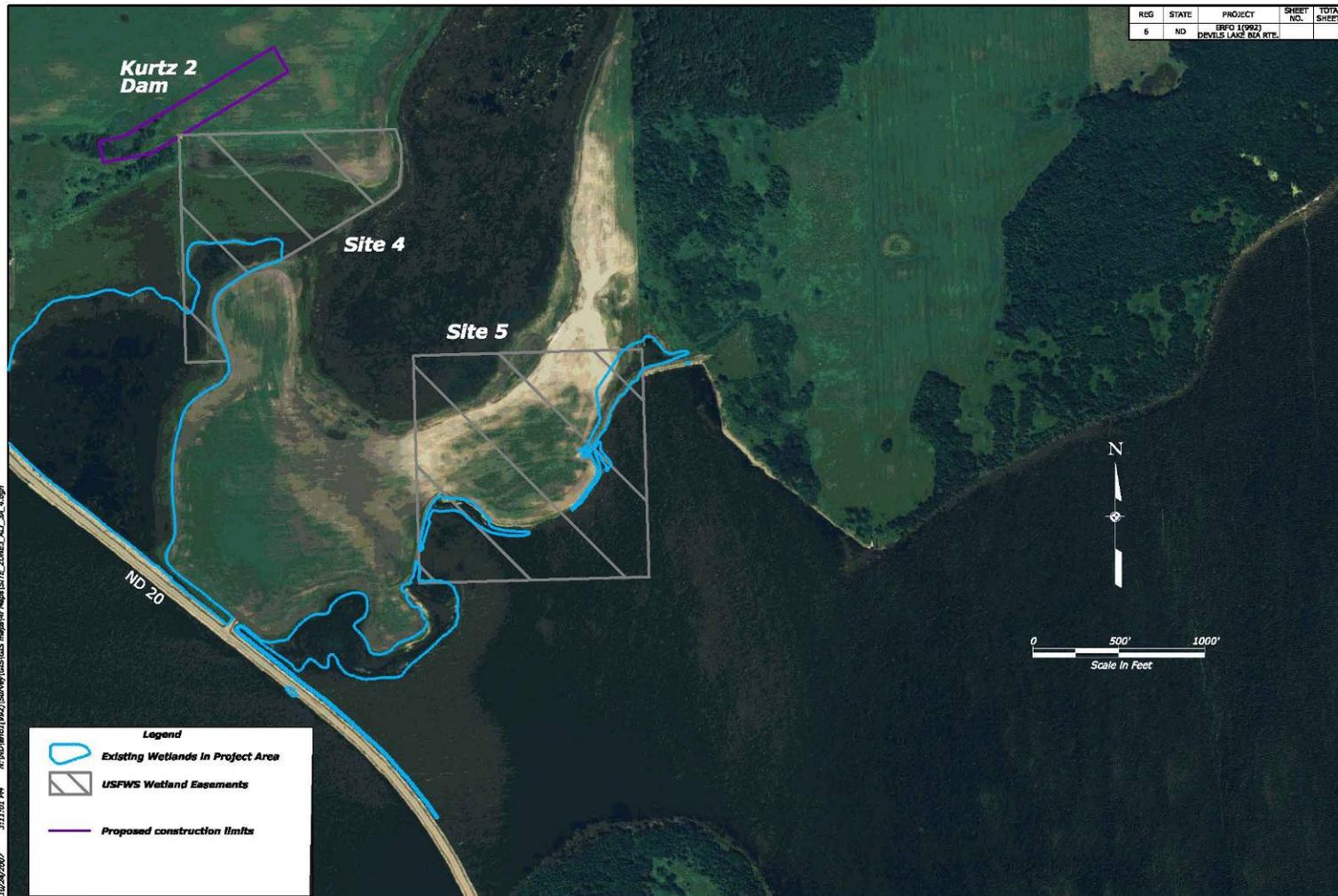


Figure 5-6. Zone 3 Alternative 3-A – Wetland Easement Tracts Sites 4 and 5

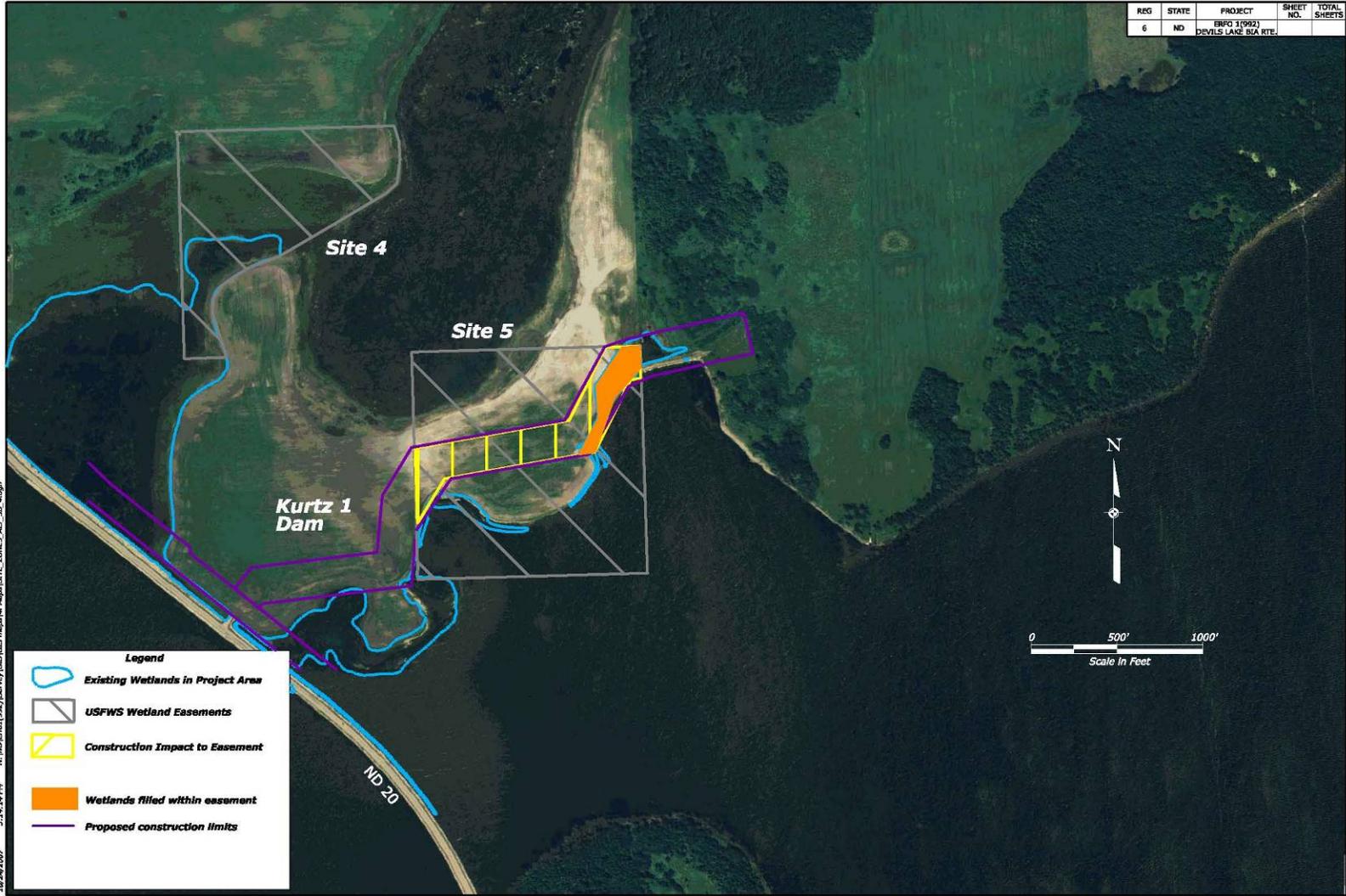


Figure 5-7. Zone 3 Alternative 3-B – Wetland Easement Tracts Sites 4 and 5

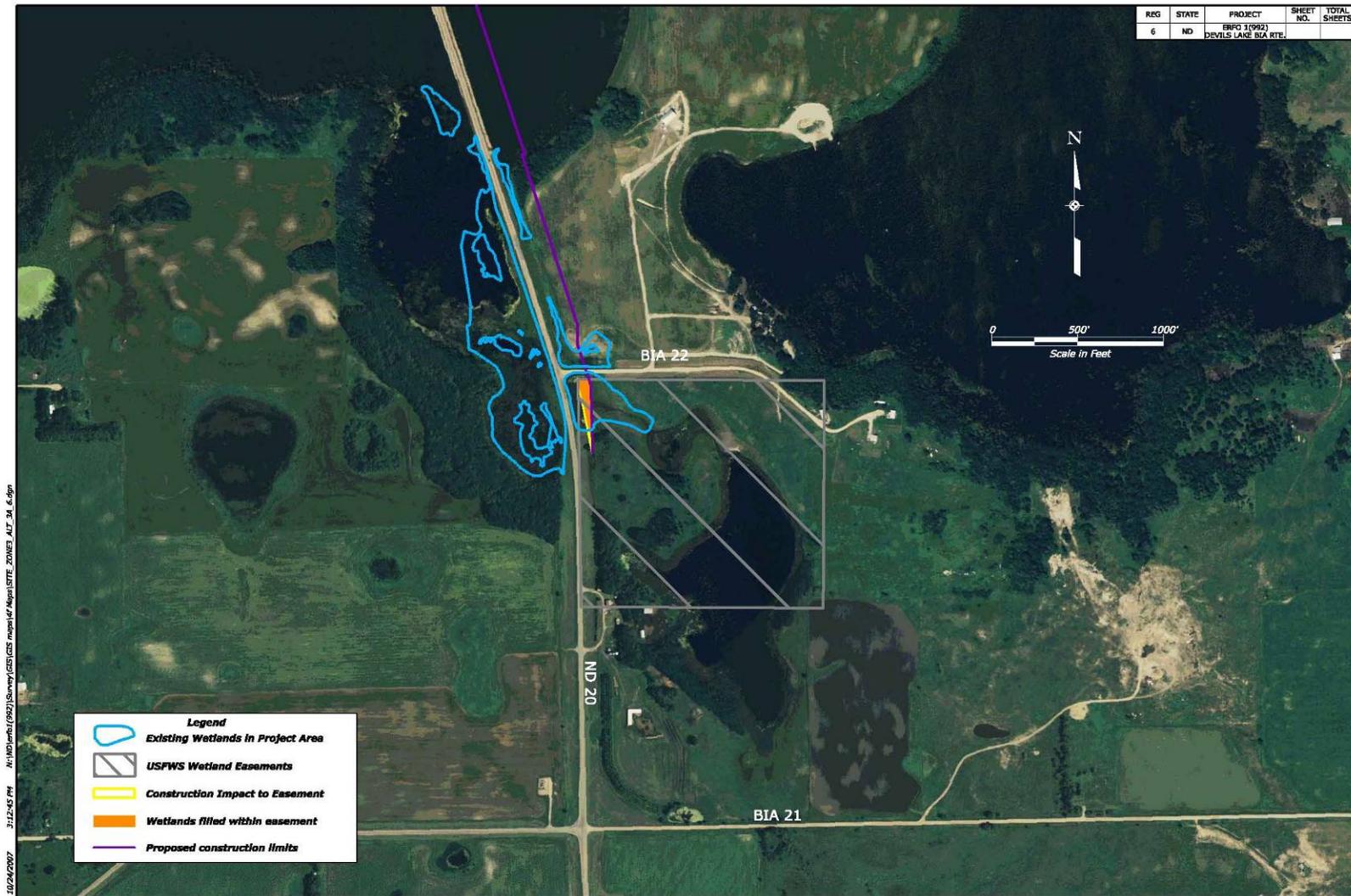


Figure 5-8. Zone 3 Alternatives 3-A and 3-B – Wetland Easement Tract Site 6.

## 2. Environmental Consequences

### a) No Action Alternative

Because there is no action by a U.S. Department of Transportation agency under this alternative, Section 4(f) is not applicable. However, for comparison purposes to the build alternatives, following are the impacts to the delineated wetlands within the easement tracts resulting from inundation that would occur under the No Action Alternative at lake elevations 1,449 feet and 1,460 feet.

Under the No Action Alternative at a lake elevation of 1,449 feet, there are no inundation impacts to Sites 3 through 6.

Under the No Action Alternative at a lake elevation of 1,460 feet, the RAADs and perimeter dams would be overtopped or fail. As a result, approximately 16.9 acres of delineated wetlands within the easements would be inundated and the impacts are distributed as follows:

- Site 3 – an additional 8.5 acres of delineated wetlands would be inundated
- Site 4 – the entire easement would be inundated, including 4.4 acres of delineated wetlands
- Site 5 – the entire easement would be inundated, including 2.7 acres of delineated wetlands
- Site 6 – 1.3 acres of delineated wetlands would be inundated

### b) Build Alternatives

#### (1) Direct and Indirect Effects

Placement of fill into the wetland portions of these easement tracts is considered an impact to Section 4(f) properties. These impacts are presented in **Table 5-3**.

**Table 5-3. Section 4(f) Impacts to Wetland Easements (acres)**

Alternative	Site 3 (approx. 8.5 acres of wetlands)	Site 4 (approx. 4.4 acres of wetlands)	Site 5 (approx. 2.7 acres of wetlands)	Site 6 (approx. 1.9 acres of wetlands)	Total (4)f Impacts
Alternative 3-A	1.1	0	0	0.3	1.4
Alternative 3-B	1.1	0	1.7	0.3	3.1

#### (a) Alternative 3-A

No inundation of these easement tracts would occur at the current elevation of 1,449 feet as a result of this alternative.

Alternative 3-A would fill 1.1 acres of the total 8.5 acres of delineated wetlands in Site 3. Total easement tract impacts to Site

3 amount to 6.6 acres (**Figure 5-5**). No fill would be placed in Sites 4 or 5 under this alternative (**Figure 5-6**). For Site 6, Alternative 3-A would fill approximately a total of 0.7 acre of the easement tract of which only 0.3 acre would be in delineated wetlands (**Figure 5-8**). Alternative 3-A would result in a Section 4(f) impact of approximately 1.4 acres of wetlands within the wetland easement tracts.

Alternative 3-A, in combination with the protection provided by any of the build alternatives in Zones 1 and 2, would provide the added benefit of preventing approximately 245 acres of easement tracts within the Commonly Protected Area from being inundated should the lake elevation rise to 1,460 feet elevation (**Table 5-4**).

**Table 5-4. Project Added Benefit of Protection to Wetland Easements (acres)**

Alternative	Site 3	Site 4	Site 5	Site 6	Commonly Protected Area	Total Added Protection
Alternative 3-A	0.6	4.4	0	0	240	245
Alternative 3-B	0.6	0	0	0		240.6

**(b) Alternative 3-B**

No inundation of easement tracts would occur at the current elevation of 1,449 feet as a result of this alternative.

Under Alternative 3-B, fill impacts to Sites 3, 4, and 6 are the same as those described for Alternative 3-A (**Figures 5-5, 5-6, and 5-8**). For Site 5, this alternative would fill a total of 8.5 acres of this easement tract of which 1.7 acres would be delineated wetlands (**Figure 5-7**). This alternative would result in a Section 4(f) impact of approximately 3.1 acres of wetlands.

This alternative, in combination with the protection provided by any of the build alternatives in Zones 1 and 2, would provide the added benefit of preventing approximately 240.6 acres of easement tracts within the Commonly Protected Area from being inundated at a lake elevation rise to 1,460 feet elevation (**Table 5-4**).

No indirect effects to easement tracts are anticipated as a result of the proposed project.

**(2) Temporary Effects**

Construction activities occurring in the easement tracts might affect water quality in the tracts by temporarily increasing turbidity.

### **(3) Mitigation**

Impacts to wetland easement tracts would be mitigated through the purchase and exchange of lands of equal biological and economic value to prevent any overall loss to the National Wildlife Refuge System. These sites are anticipated to be established by purchase of property or easements on lands capable of supporting a wetland. This exchange would be a coordinated effort with the USFWS in accordance with the Devils Lake Wetland Management District responsibilities concerning refuge compatibility.

Cofferdams and best management practices would be implemented during construction to minimize soil sedimentation and erosion. Contractors will be strongly encouraged to contact the USFWS prior to contract bid to determine whether potential materials sources are 4(f) resources. In the event that a 4(f) resource cannot be avoided, the implementing agency will work with USFWS to ensure that mitigation measures are appropriate.

#### **c) Effects Due to Rising Lake Waters**

Should the Lake continue to rise beyond its current elevation of 1,449 feet to the ultimate elevation of 1,460 feet, the rising lake waters could inundate up to 5.4 acres of easement tracts under Alternative 3-A and one acre of easement tract under Alternative 3-B.

#### **d) De Minimis Finding**

Any of the build alternatives would have a *de minimis* impact on the easement tracts because they would not affect the ability of the easement tracts as a whole in the St. Michael area to protect wildlife and waterfowl. Although the proposed project would fill portions of the wetlands within the easement tracts, this represents an extremely small percentage of the easement tracts in the project area. In addition, the proposed project would prevent between 240.6 acres and 245 acres of easement tracts from being inundated by the rising lake elevation.

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## **Chapter 6 –Coordination and Collaboration/Consultation**

### ***A. Public Meeting and Hearings and Tribal District Meetings***

On September 25, 2006, the FHWA held a public scoping meeting to provide information and solicit public issues and concerns about a proposal to address the roads-acting-as-dams issue at Devils Lake. Before the meeting, the FHWA placed public notices in multiple issues of the Devils Lake Journal, sent announcements to local radio stations, and provided flyers to tribal representatives to post in public locations. The meeting took place at the Spirit Lake Casino at 7889 State Highway 57 in St. Michael, ND on Monday, September 25. The public meeting began at 4:00 p.m. and ended at 7:00 p.m. The meeting was conducted in an open-house format with approximately 20 display boards and representatives from the PDT available to answer questions. There was also a court reporter available to take verbal comments. The meeting was attended by seven members of the general public. Substantive comments included the need to include representatives from Benson County and the City of Minnewaukan on the PDT, the effects building perimeter dams and roads as dams has with regards to the displacement of water, and the impacts the proposed alternatives would have on private property owners.

Following the release of the EA, on November 1, 2007, the FHWA held public hearings to receive comments and to answer questions on the EA. Before the meeting, the FHWA placed public notices in multiple issues of the Devils Lake Journal, sent announcements to local radio stations, and provided flyers to tribal representatives to post in public locations. The meetings took place at the Spirit Lake Casino on Monday, December 3, and at the Lake Region State College, 1801 College Drive, Devils Lake, ND on Tuesday, December 4. The public meetings began at 4:00 p.m. and ended at 7:00 p.m. The meetings were conducted in an open-house format from 4:00 p.m. to 5:00 p.m. and from 6:00 p.m. to 7:00 p.m. with approximately 20 display boards and representatives from the PDT available to answer questions. From 5:00 p.m. to 6:00 p.m. FHWA's project manager gave a formal overview presentation of the project. There was also a court reporter available to take verbal comments. The meetings were attended by approximately 35-40 members of the general public. Comments received are addressed in the Comment Response Table attached to the FONSI.

#### **Tribal District Meetings**

Following an invitation from the Tribal Council, FHWA attended Tribal District Meetings. The meetings were held in the Mission District on January 19<sup>th</sup>, 2008 from 10:00 a.m. to 1:00 p.m. and in the Wood Lake District January 20<sup>th</sup>, 2008 from 1:20 p.m. to 3:20 p.m. The purpose of the meetings was to explain the project to tribal members in these districts and to provide tribal members an opportunity to ask questions and to provide comments. FHWA's project manager gave an overview presentation of the project and answered questions from local residents regarding the project and potential impacts. A court reporter was available to record the meetings and any additional comments. Comments received are addressed in the Comment Response Table attached to this FONSI.

## ***B. Coordination with Partner and Resource Agencies***

During project development, the FHWA held several meetings and corresponded with the PDT, the PST, the natural resources advisory group, and with individual agencies. The following provides a brief summary of the meetings and critical correspondence.

- **April 5, 2006** – Letter from SHPO concurring with eligibility and effect determinations in original cultural resource survey.
- **April 12, 2006** – Interagency Meeting – Discussed beginning scoping for Phase II project.
- **August 22, 2006** – Partner Meeting with PDT and PST – Discussions of the Project Agreement, purpose and need, and alternatives.
- **September 25, 2006** – Public Meeting Prep Meeting with PDT.
- **September 25, 2006** – Public Scoping Meeting.
- **October 12, 2006** – Natural Resources Interagency Meeting – Discussion of purpose and need and possible alternatives and implications to natural resources.
- **October 12, 2006** – Cultural Resources Interagency Meeting – Discussed setting up a clearance process for borrow sites.
- **November 28-30, 2006** – Partnering Meetings – Informal meeting with representatives from the partnering agencies to introduce Gary Strike as the new Project Manager and to review the project area.
- **November 30, 2006** – Wetland Teleconference with Natural Resource Agencies – Discussions of the effects to wetlands.
- **December 7, 2006** – Meeting with the Environmental Protection Agency – Because the EPA was unable to attend the meetings scheduled that were held on October 12, 2006, the CFLHD-FHWA set up a separate briefing meeting.
- **January 4, 2007** – Teleconference with EPA – Follow-up to December 7, 2006 meeting.
- **March 14, 2007** – Letter from the FHWA to the USACE requesting jurisdictional determination of wetland delineation.
- **April 3-4, 2007** – Partners Meeting with PDT and PST – Review of Chapter One and alternatives.
- **April 5, 2007** – Natural Resources Interagency Meeting – Review of Chapter One and alternatives.
- **May 9, 2007** – Meeting with EPA and USACE – Discussion of Purpose and Need and implications for permitting under the Clean Water Act.
- **May 14-17, 2007** – Meetings and Field Review with PDT and PST – Discussion and on-the-ground review of alternatives, materials sites, and mitigation.
- **May 25, 2007** – Letter from SHPO concurring with FHWA’s revised area of potential effect and survey methods.
- **May 29, 2007** – Meeting with FEMA – Review of FEMA policies regarding Devils Lake to ensure consistency in application of relocation or mitigation proposal.
- **June 7, 2007** – Executive Committee Meeting.
- **June 29, 2007** – Letter from the USFWS concurring with FHWA’s Biological Assessment determinations.
- **July 9, 11, 12, and August 8, 2007** – Hydraulic Criteria Teleconferences – Series of teleconferences with PDT and PST to discuss use of hydraulic criteria for design.

- **August 16, 2007** – Meeting with FEMA – Follow-up to May 29, 2007 meeting.
- **August 21, 2007** – PDT Meeting – Discuss the project schedule and review fall work.
- **August 22, 2007** – Field Review with the SLN – On-the-ground review of Phase 1 project.
- **August 23, 2007** – Natural Resources Interagency Meeting – Provide resource agencies with an update on the project.
- **August 23, 2007** – Letter from the USFWS concurring with FHWA’s Biological Assessment addendum determinations.
- **August 28, 2007** – Executive Committee Meeting.
- **September 26, 2007** – PDT-ROW team meeting – Discuss the effects of equalization on property owners.
- **October 5, 2007** – Executive Committee Meeting.
- **October 22, 2007** – Web conference with PDT and PST to review the administrative draft of the EA.
- **November 11, 2007** – Executive Committee Meeting.
- **December 19, 2007** – Executive Committee Meeting.
- **February 1, 2008** – Teleconference with Tribal Health – Clarify comments on the EA.
- **February 4, 2008** – PDT Teleconference – Coordinate final design and processes.

### *C. Teleconferences*

Teleconferences to discuss project progress with project partners were held on the following dates: August 1, 2006; September 14, 2006; September 26, 2006; October 11, 2006; and November 2, 2006. Beginning January 10, 2007, teleconferences were held approximately biweekly. Individuals from the following agencies or organizations were consistently invited: Benson County, BIA Fort Totten, BIA Aberdeen, Camp Grafton, City of Devil’s Lake, FEMA, FHWA-CFLHD, FHWA-ND Division, Kadrmas, Lee, and Jackson (KLJ), NDDOT, NDDDES, NDSWC, Ramsey County, Senator Conrad’s Office, SLN, USACE.

### *D. Collaboration/Consultation with SLN*

FHWA projects often involve Tribal Consultation, which is defined or described in Title 25 [§170.100](#) CFR as “government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to: (1) Secure meaningful tribal input and involvement in the decision-making process; and (2) Advise the tribe of the final decision and provide an explanation.” Consultation is generally used when the tribe and the Federal agency have different goals. Collaboration, on the other hand, is defined such that “all parties involved in carrying out planning and project development work together in a timely manner to achieve a common objective.” It is used when the tribe and the agency have shared interests and goals. The Devils Lake RAADs project involves collaboration between the FHWA and SLN, since the agency and the Tribe share common goals.

As part of the collaborative process, Spirit Lake Nation has had representatives involved in or invited to meetings at each level of the project development process, as listed above. In Spring of 2006, when discussions began on Phase II of the project, the Project Development Team was

formed and included representatives from each of the project partners, including Spirit Lake Nation. The Project Support Team included representatives from Tribal EPA, and the Tribal Chairwoman was invited to sit on the Executive Committee. The rest of the Tribal Council was also invited to attend Executive Committee meetings. In addition to representative attendance at most of the meetings or teleconferences listed above, the FHWA specifically met with the Tribal Council to solicit questions, comments, or concerns about the project on the following dates:

- **August 21, 2007** – SLN Tribal Council Meeting – Discuss project process with Tribal Council.
- **December 4, 2007** – SLN Tribal Council Meeting – Continue consultation with the Spirit Lake Nation regarding the public hearings and the information in the Environmental Assessment
- **January 4, 2008** – SLN Tribal Council Teleconference – Discuss the comments received from the Spirit Lake Nation Tribal Council on the EA
- **March 10-11, 2008** — SLN Tribal Council Meeting — Discuss FHWA’s response to tribal comments