



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



JUN 24 2010

Mr. Aaron Diehl
HDR Engineering, Inc.
701 Xenia Avenue South, Suite 600
Minneapolis, Minnesota 55416

Dear Mr. Diehl:

The U.S. Fish and Wildlife Service (Service) has reviewed the proposed Montana-Dakota Utilities Company's (MDU) proposed 230 kilovolt (kV) Merricourt Wind Farm to the Ellendale Junction Substation transmission line project, as described in your May 27, 2010, letter. The proposed project includes construction of approximately 30 miles of 230 kV transmission line from the existing Ellendale Junction Substation, located about 1.5 miles west of Ellendale, North Dakota, in Section 10, T. 129 N., R. 63 W., Dickey County, to a proposed new Merricourt Wind Farm Substation, located about 15 miles east-northeast of Ashley in Section 3, T. 130 N., R. 67 W., McIntosh County, North Dakota. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), and National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended).

The Service, MDU, and MDU's consultant, HDR Engineering, Inc., and several State and Federal Agencies met at the U.S. Army Corps of Engineer's Bismarck Regulatory Office Interagency Coordination Meeting on June 10, 2010. The Service discussed our concerns related to potential project impacts to Service trust resources, including migratory birds, federally-listed threatened and endangered species of plants and animals and their habitats, bald and golden eagles, and units of the National Wildlife Refuge system. When planning an activity, project proponents should give careful consideration to potential impacts to these trust resources and compliance with the laws mentioned above. Additional information is provided below.

Adequate consideration for avian resources early in the project planning process can help to minimize impacts to migratory birds. The Service has coordinated with the Avian Power Line Interaction Committee (APLIC) to develop guidelines to assist companies in formulating Avian Protection Plans (APP). These plans are utility-specific and designed to provide a structured way for a company to reduce avian mortality resulting from interactions with electric utility facilities (e.g. collisions and electrocutions). The APP can be tailored to each utility's industry-specific and site specific wildlife needs, while in the process furthering avian conservation and improved

reliability and customer service. A utility that implements the principles contained in these APP guidelines will greatly reduce avian risk as well its own risk of enforcement under the Migratory Bird Treaty Act (MBTA). The guidelines can be accessed from the Service's website at <http://www.fws.gov/migratorybirds/>.

To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. The recommended guidelines can be found in "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends new power lines that cross or run adjacent to rivers or large wetlands be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the Edison Electric Institute, P.O. Box 266, Waldorf, Maryland 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org. Marking of overhead lines can also reduce the hazard of line strikes to whooping cranes and piping plovers (see below).

The Migratory Bird Treaty Act (Act) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for allowing unintentional take, the Service realizes that some birds may be killed by power lines even if all reasonable measures to protect them are used. The Service's Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to minimize their impacts on migratory birds, and by encouraging others to enact such programs. It is not possible to absolve individuals, companies, or agencies from liability even if they implement avian mortality avoidance or similar conservation measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without regard for their actions or without following recommendations such as this to avoid take. Siting, constructing, and operating facilities, in accordance with the recommendations provided by the Service, and implementing an APP that has been reviewed and approved by the Service, are strong indicators of a good faith effort by utilities to reduce the impacts to migratory birds.

To avoid take and minimize disturbance to migratory bird resources in the project area, the Service provides the following recommendations:

- To the extent practicable, schedule construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of bald or golden eagles or other migratory birds, their eggs, or active nests, the Service recommends that the project proponent implement all practicable measures to avoid all take, such as suspending construction where necessary and/or maintaining adequate buffers to protect the birds, until the young have fledged. The Service further recommends that if you choose to conduct field surveys for nesting birds,

including eagles, with the intent of avoiding take, that you maintain any documentation of the presence of eagles or other migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the survey(s), and any avoidance measures implemented at the project site. Should surveys or other available information indicate a potential for take, including disturbance, of eagles or other migratory birds, their eggs, or active nests, the Service requests that you contact this office for further coordination on the extent of the impact and the long-term implications of the intended use of the project on eagles or other migratory bird populations

A list of federally endangered and threatened species that may be present within the proposed project's area of influence is enclosed (enclosure 1). This list fulfills requirements of the Service under Section 7 of the Endangered Species Act.

Section 10(a)(1)(B) of the ESA allows non-Federal parties planning activities that have no Federal nexus, but which is likely to result in the incidental taking of listed animals, to apply for an incidental take permit. The application must include a Habitat Conservation Plan (HCP) laying out the proposed actions, determining the effects of those actions on affected federally-listed fish and wildlife species and their habitats (often including proposed or candidate species), and defining measures to minimize and mitigate adverse effects.

Piping plovers, a federally threatened species, are known to use alkali lakes in the project area during the breeding season (enclosure 2). The Great Plains population of the piping plover nests in 23 counties in North Dakota, primarily on alkali wetlands in the Missouri Coteau with some on the Missouri River. Piping plovers fit into the category of birds with low wing aspect and high wing loading making them more susceptible to collisions with overhead lines than some other birds. Piping plovers have been documented being killed by transmission lines in North Dakota.

The Aransas Wood Buffalo Population (AWBP) of whooping cranes is the only self-sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Endangered whooping cranes could use roosting/feeding habitat in the vicinity of the proposed transmission line route for migration stopovers. The proposed project area is located within the whooping crane migration corridor that includes 95 percent of all confirmed whooping crane sightings in North Dakota (enclosure 3). The presence of suitable roosting and feeding habitat for whooping cranes along the proposed route document the potential for whooping crane presence in the area. A new transmission line in this area has the potential to adversely affect whooping cranes during their annual spring and fall migration through North Dakota. Currently, collisions with power lines are the greatest known source of mortality for fledged whooping cranes, and have accounted for the death or serious injury of at least 46 whooping cranes since 1956.

Conservation measures to avoid or reduce potential impacts to whooping cranes and piping plovers include, but are not limited to: burying all new electrical transmission lines; if new

transmission lines cannot be buried, mark all new overhead transmission lines within one mile of suitable whooping crane stopover habitat with visual marking devices such as aviation marker balls, swinging plates, spiral vibration dampeners, or swan flight diverters to make the lines more visible, reducing the potential for avian collision.

The Service administers Waterfowl Production Areas owned in fee title as well as wetland and grassland easements throughout North Dakota. A review of Service realty records indicates Service property interests are located in the planning area (enclosure 4). The Service has an ongoing easement acquisition program and we recommend that you contact Mr. Mick Erickson, Project Leader, Kulm Wetland Management District, 1 First Street, SW, P.O. Box E, Kulm, North Dakota 58456, (701-647-2866), for more specific information relative to Service easements and up to date realty records.

- Following are some suggestions and explanations of the various land interests the Service is responsible for in the proposed project area. Wetland easements are legal agreements with private landowners that permanently protect wetland basins from being drained, burned, leveled, or filled. Grassland easements are legal agreements with landowners that permanently protect grassland vegetation, primarily native prairie, from being destroyed or developed. The primary responsibility in protecting these easements is to review all proposed uses to ensure that the requests are compatible with Service easement regulations and various laws and policies. Therefore, these comments and suggestions are made in an attempt to accomplish three goals: 1) avoid impacts to Service grassland and wetland easements in the project area as much as possible; 2) if unavoidable, ensure that any proposed project and associated infrastructure impacts on any Service easement areas are kept to a minimum; and 3) investigate potential alternatives to eliminate or reduce impacts to easement areas to protect the integrity of the easement. If Service lands are proposed to be impacted, the Service will be required to conduct an analysis of impacts and examine alternatives, pursuant to NEPA.

Our review of the National Wetland Inventory (NWI) maps and photographs indicate the proposed planning area includes numerous wetland basins and stream channels. You may access the NWI data directly through their website (wetlands.fws.gov). Other high value wildlife habitat types in North Dakota include native prairie, wooded draws, and riparian forests. The Service recommends that construction through or adjacent to these areas be avoided, where possible, or measures be taken to minimize disturbance to these areas.

To minimize disturbance to existing fish and wildlife resources in the project area, the Service provides the following recommendations:

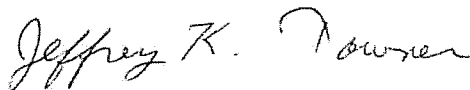
- Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. Obtain seed stock from nurseries within 250 miles of the project area to insure the particular cultivars are well adapted to the local climate.
- Make no stream channel alterations or changes in drainage patterns.

- Install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels.

If construction routes intersect wetlands, streams, or rivers, the Corps of Engineers (Corps) may require a Department of the Army permit for the placement of dredge or fill material into waters of the U.S., including wetlands, or other impacts to navigable waters. We suggest you contact Mr. Daniel Cimarosti, Regulatory Office, Corps of Engineers, 1513 South 12th Street, Bismarck, North Dakota 58504, (701-255-0015), to determine the Corps' permit requirements.

Thank you for the opportunity to comment on this project. If additional information is required, please have your staff contact Terry Ellsworth of my staff, or contact me directly, at (701) 250-4481 or at the letterhead address.

Sincerely,



Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures (4)

cc: Project Leader, Kulm NWR
Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: D. Cimarosti)
Director, ND Game & Fish Department, Bismarck
(Attn: M. McKenna)

FEDERAL ENDANGERED SPECIES
FOUND IN DICKEY COUNTY
NORTH DAKOTA
June 2010

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

FEDERAL THREATENED AND ENDANGERED SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
MCINTOSH COUNTY, NORTH DAKOTA
June 2010

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Mammals

Gray wolf (Canis lupus): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

THREATENED SPECIES

Birds

Piping plover (Charadrius melodus): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

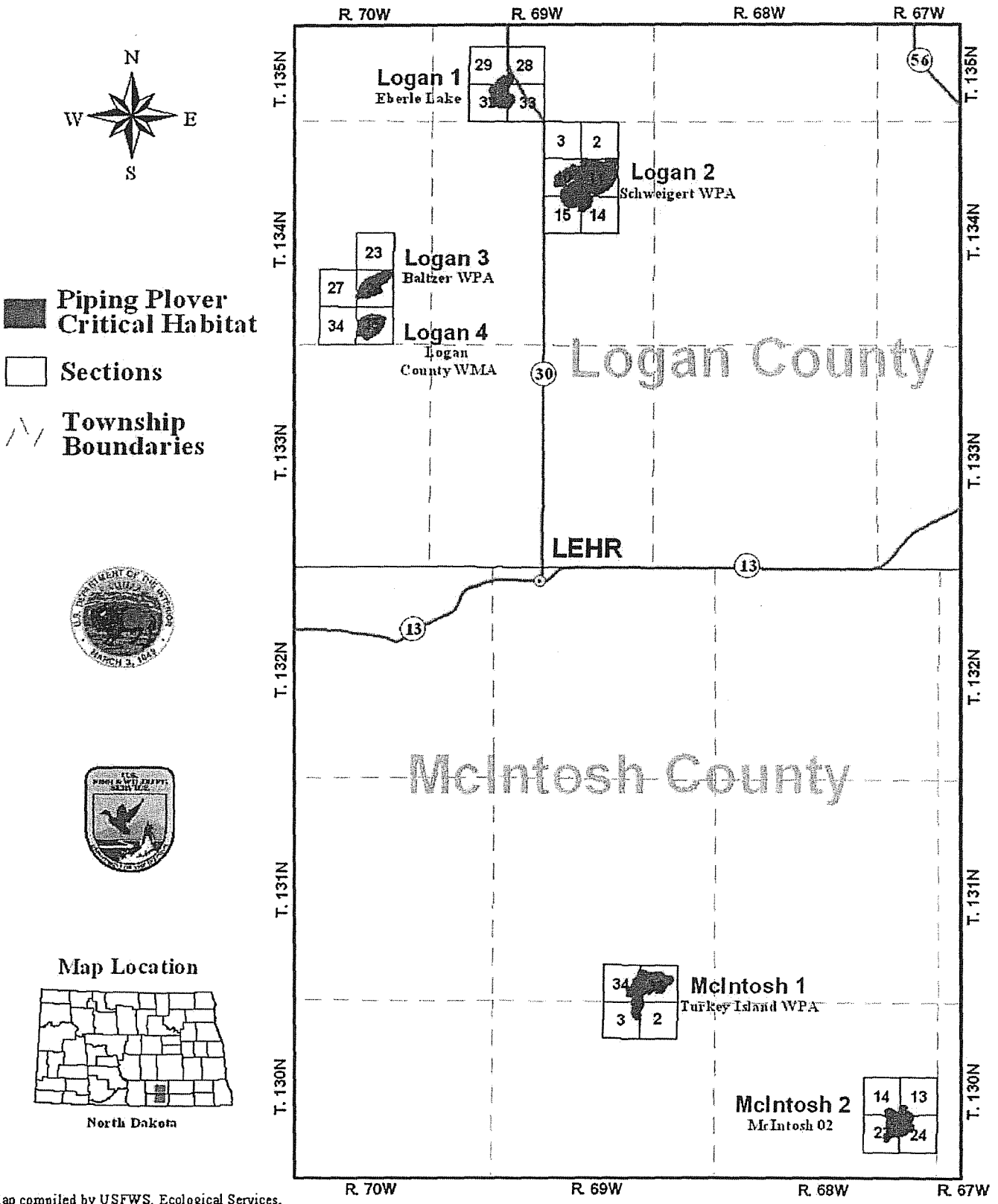
DESIGNATED CRITICAL HABITAT

Birds

Piping Plover - Alkali Lakes and Wetlands - Critical habitat includes: (1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland.

Piping Plover Critical Habitat

Unit 9 (North Dakota)

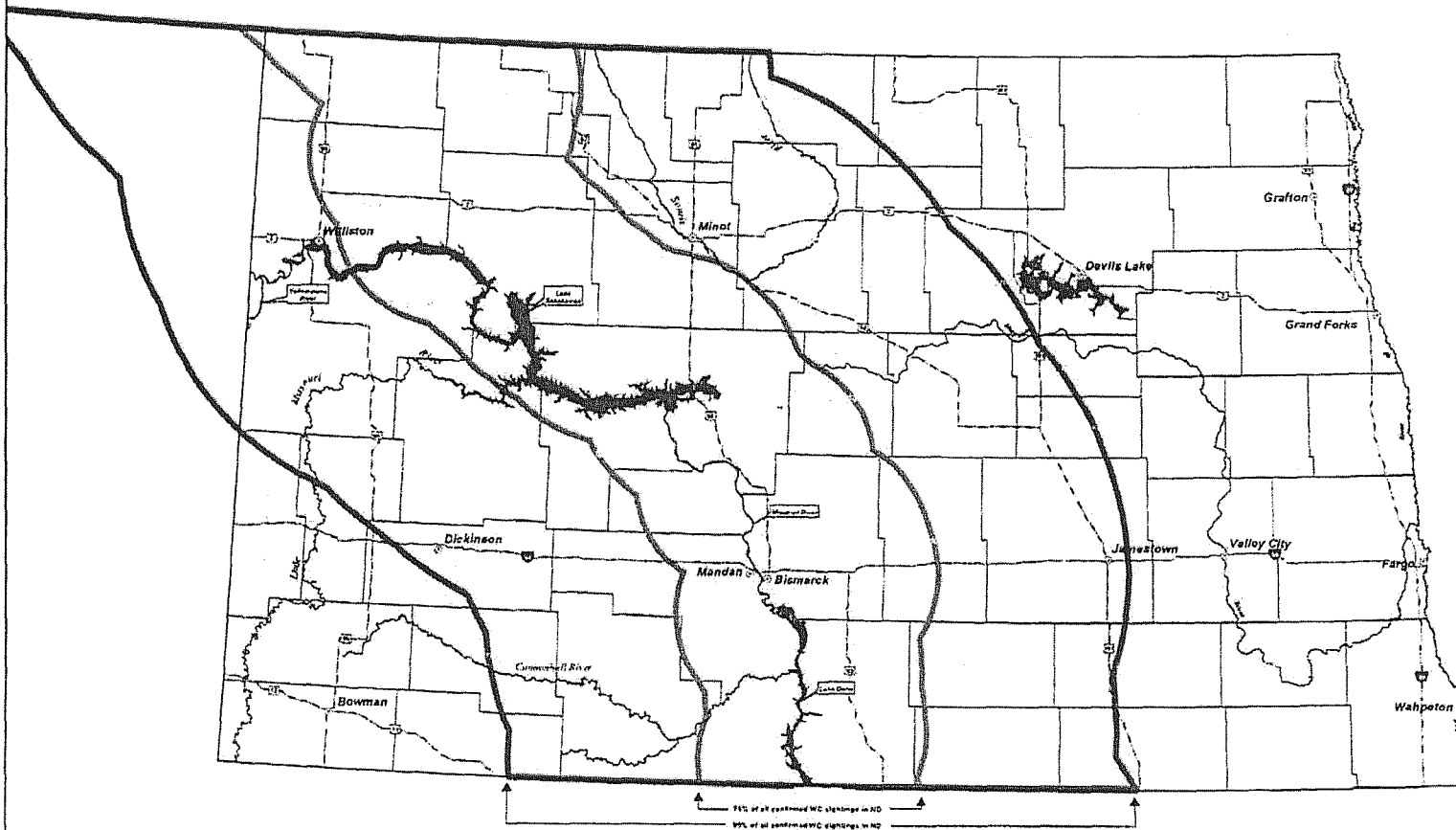
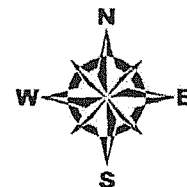


Map compiled by USFWS, Ecological Services,
 Bismarck, ND, September, 2002. All features are
 for representative purposes only and may not
 depict the the actual size, shape and/or boundary.





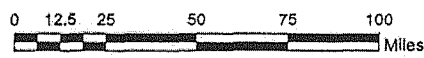
North Dakota Whooping Crane Migration Corridor



75% of all confirmed WC sightings in ND
95% of all confirmed WC sightings in ND

DISCLAIMER:
The USFWS makes no claim as to the accuracy or completeness of the displayed information. Species occurrence and habitat information is provided for illustrative purposes only. Federal action agencies and project proponents should contact the USFWS North Dakota Field Office for more detailed species information and technical assistance in evaluating potential project impacts to fish and wildlife resources.
Map produced 04/21/2010 by USFWS Ecological Services, Bismarck, ND.

- 75% Whooping Crane Migration Corridor
- 95% Whooping Crane Migration Corridor



Enclosure 3

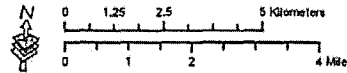
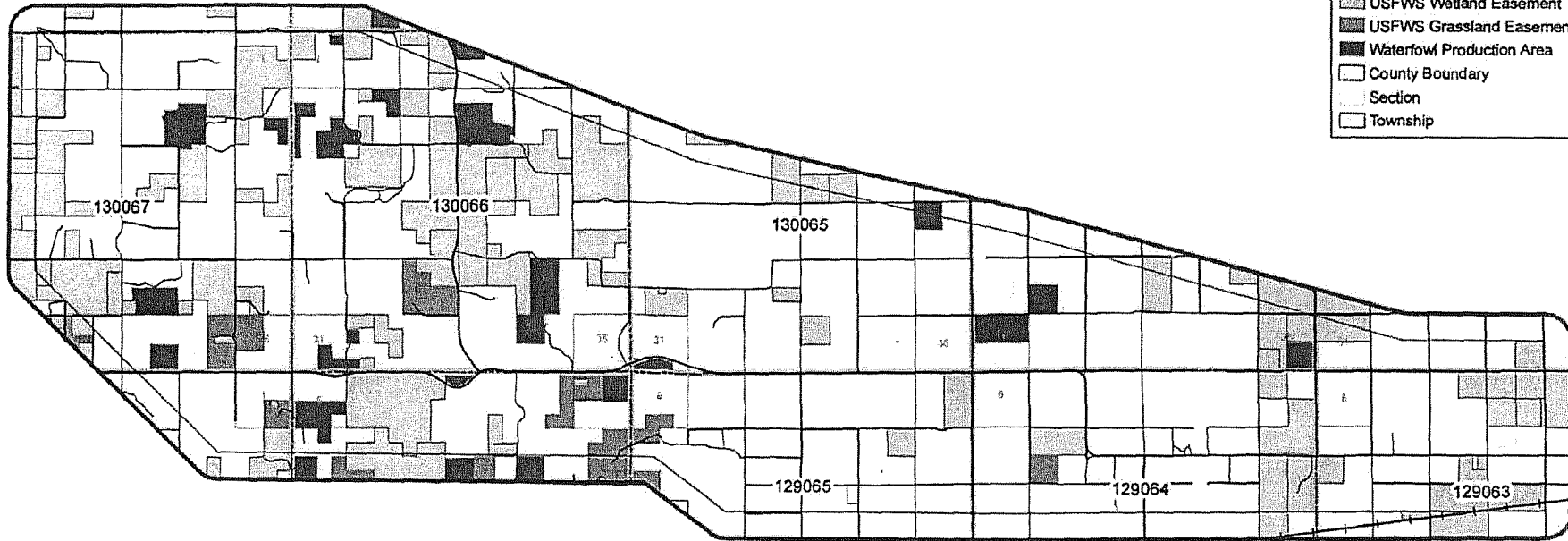


U.S. Fish & Wildlife Service

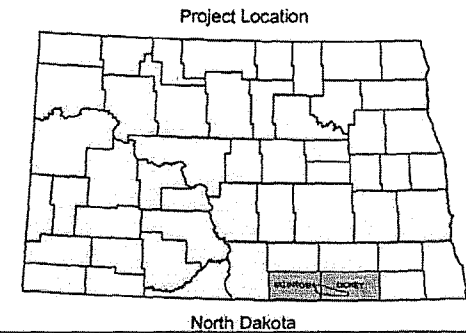
230 kV Transmission Line - HDR

Dickey and McIntosh Counties, North Dakota

Legend	
	Project Boundary
	USFWS Conservation Easement
	USFWS Wetland Easement
	USFWS Grassland Easement
	Waterfowl Production Area
	County Boundary
	Section
	Township



Projection Information:
 Universal Transverse Mercator
 Datum NAD83
 Zone 14



DISCLAIMER:

The USFWS makes no claim as to the accuracy or completeness of the displayed information. Shaded areas depicting the location of USFWS WPA fee lands and limited interest easements are for illustrative purposes only and do not represent legal boundaries or in the case of easements, the acreage of wetland or grassland resources included in the easement contract. For more detailed information, please contact one of the USFWS Realty Offices located in Bismarck and Minot, North Dakota, Aberdeen and Huron, South Dakota, or Great Falls, Montana.

The USFWS easement layer is current through October 2009. Please contact the appropriate Wetland Management District for any newly acquired easements.

Map was produced by HAPET Office of Conservation Science, Bismarck, North Dakota, June 2010.

Enclosure 4