Minnkota Power
COOPERATIVE

A Touchstone Energy® Cooperative

5301 32nd Ave S
Grand Forks, ND 58201-3312
Phone 701.795.4000
www.minnkota.com

August 16, 2023

Victor Schock
Executive Director
North Dakota Public Service Commission
600 East Boulevard; Department 408
Bismarck, ND 58505-0480

Re: Minnkota Power Cooperative, Inc. –345 kV Structure Replacement Project
Kidder and Stutsman County, ND

Dear Mr. Schock:

Due to damaged foundations, Minnkota Power Cooperative, Inc, (Minnkota) is proposing to replace three 1980's era 345 kV lattice structures (467, 780, and 781). The structures are located in Township 141, Range 71, Section 2, and Township 141, Range 62, Section 30 ("Project").

Replacement of the structures is needed to prevent a failure and maintain reliability. The Project includes removal of the lattice portion of the old structure and abandoning the concrete footings in place. The structures will be replaced by a new steel pole H-frame structure which is directly imbedded into the subsurface. Each of the new structures will be located approximately 10 feet from the original. The structure replacements located in Stutsman County meet the definition of construction as defined by North Dakota Century Code (NDCC) 49-22-03 3 (a)(1)(c), (a)(2), (a)(3)(c), and (a)(4). The Kidder County replacement meets the definition of construction as defined by NDCC 49-22-03 3(b), as an avoidance area will be impacted by this structure. The structures are beneath Minnkota's existing 345 kV high voltage transmission line (HVTL). Please see the attached Environmental Report for additional details.

Once construction is complete, maintenance of the HVTL and structures would consist of periodic inspections conducted by an inspector walking or riding on a four-wheel ATV. After construction, vegetation would be controlled according to Minnkota's vegetation management program.

Minnkota completed an impact assessment of the transmission facility corridor and route criteria as specified by North Dakota Administrative Code (NDAC) 69-06-08-02. The results have been compiled in the attached Environmental Report. Minnkota contracted Barr Engineering, Inc. (Barr), to complete a Natural Resources Survey for the Project. The report identified sensitive species and the potential effects of the project, as shown in the below table. On August 2, 2023, Minnkota submitted the Natural Resources Survey to the US Fish and Wildlife Service (US FWS) Ecological Office in Bismarck. No response has been received from the US FWS Ecological Office as of the date of this letter. The surrounding habitats at each structure location were also evaluated for potential impacts. A summary of findings and potential impacts is included in this letter.

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Table 1. Species Determination of Affects

Name	Status	Finding
Bald Eagle	Protected	May Affect, Not Likely to Adversely Affect
Dakota Skipper	Threatened	No Affect
Monarch Butterfly	Candidate	No Affect
Piping Plover	Threatened	May Affect, Not Likely to Adversely Affect
Rufa Red Knot	Threatened	May Affect, Not Likely to Adversely Affect
Whooping Crane[1]	Endangered	May Affect, Not Likely to Adversely Affect

Structure 467 (Kidder County)

No exclusion areas[2] will be impacted by structure 467. The structure is within an area that has been identified on the national wetland inventory (NWI). Minnkota began coordination with the US Army Corp of Engineers (USACE) on June 8, 2023, to establish jurisdiction. An application was submitted for Project authorization under Nationwide Permit 57. The USACE granted authorization on July 27, 2023, see attached.

The structure is also located within the US FWS Kidder County Waterfowl Production Area (WPA). Since this is a wildlife refuge, it is considered an avoidance area[3] for siting criteria. Minnkota coordinated with the US FWS Long Lake Wetland Management District for guidance. The Long Lake Wetland Management District ultimately agreed with the Project and abandonment of the concrete footings. The correspondence is included in the Environmental Report.

The vegetative community surrounding structure 467 consists mainly of narrow-leaf cattail. Minnkota will complete construction during the winter to avoid any major impacts to the wetland community and surrounding community. No other alternatives exist as the structure is already a part of the existing transmission line and prior impacts to the community have already occurred.

Structures 780 and 781 (Stutsman County)

The structures located in Stutsman County do not impact any exclusion[2] or avoidance[3] areas. The vegetative community surrounding structures 780 and 781 consists of the native western wheat grass species. The impact to the surrounding community will be temporary. The concrete footings for both structures will be buried onsite approximately 10 feet below ground surface, the spoils will be used to bring the excavation to the same land contour

[1] The Whooping Crane was identified only at structure 467
[2] Pursuant to ND Administrative Code 69-06-08-02 (1) (a-g)
[3] Pursuant to ND Administrative Code 69-06-08-02 (2) (a)

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prior to construction. The replacement structures will have minor impacts to the native species community as prior impacts have already occurred.

Structures 467, 780 and 781

Minnkota contracted with Barr to complete archaeological and historical studies consistent with Section 106 of the National Historic Preservation Act (NHPA) and the North Dakota Historical Society. A summary of the studies completed and affect determination is below:

- A Class I and Class III Literature Review and Pedestrian Surveys were completed. None of the previously recorded cultural resources or previous studies lie within the area of potential effect (APE), identified as the area directly around each structure within the designated right of way easement. No cultural resources were encountered during the shovel probe activities.
- On July 7, 2023, Barr on behalf of Minnkota submitted the findings, conclusions, and recommendations to the ND State Historic Preservation Office (SHPO). On July 28, 2023, the ND SHPO issued their letter of concurrence with "No Historic Properties Affected", see attached.

No significant adverse effects will result from the Project as related to the following impact evaluations, which are consistent with NDAC 69-06-08-02.

- Agricultural – Farmland will not be significantly impacted. On June 12, 2023, the USDA provided Minnkota with a letter indicating that no significant impact to farmland will occur due to the Project.
- Floodplain – The Project is not located within an area that has been evaluated for a floodplain determination.
- Land Use -The project will have no effect on the current land use. The land use will not be altered due to the Project.
- Visual Effect - No visual effect is anticipated since the structures will be replacing older structures.
- Human and Animal Health and Safety - No impacts to human or animal health and safety are expected.
- Contamination and Toxic Substances - The proposed project will result in no impacts involving contamination or Toxic Substances. There are no hazardous waste site or contaminated sites within a 1-mile radius of the Project.
- Air Quality – The proposed project will have no permanent impact on air quality.
- Water Quality - The proposed project will result in no impacts to water quality. The Project area is not near any sensitive groundwater[4] resources.
- Violation of Federal or State Permits – On July 27, 2023, Minnkota received authorization under Nationwide Permit 57 from USACE to replace structure 467 and abandon the footings. A copy of the authorization letter is included in the Environmental Report.

[4] ND GIS data portal reviewed on 08/09/2023.

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This submittal is in accordance with the NDCC 49-22-03(3). Please find enclosed a notarized certification indicating the planned improvement qualifies for exclusion in accordance with NDCC 49-22-03.

In addition to the certification, an Environmental Report which includes information regarding the studies and evaluations completed for the project. Please contact me at sroberts@minnkota.com or 701-795-4289 if you have any questions or require additional information.

Sincerely,

Samantha Roberts

Samantha L. Roberts
Environmental Specialist II
Minnkota Power Cooperative, Inc.

Attachment: 345 kV Structure Replacement Project – Environmental Report, August 3, 2023

CERTIFICATION OF APPLICANT PURSUANT TO N.D. CENTURY CODE 49-22-03(3)(b) MINNKOTA POWER COOPERATIVE, INC.

I, Brendan Kennelly, a duly authorized agent of Minnkota Power Cooperative, Inc. (Minnkota) that has authority to bind the company in these matters, do hereby certify under oath:

1. That the replacement of structures 467, 780 and 781 on Minnkota's 345 kV transmission line, will not affect any known exclusion areas as defined under the N.D. Administrative Code 69-06-08-02 (1).

2. That the replacement of structures 780 and 781 on Minnkota's 345 kV transmission line, will not affect any known avoidance area as defined under the N.D. Administrative Code 69-06-08-02 (2).

3. That the replacement of structure 467 is expected to impact an avoidance area as defined under N.D. Administrative Code 69-06-08-02 (2). The avoidance area is the Kidder County Waterfowl Production Area. The area cannot be avoided due to the structure already being sited within a previously approved route.

4. That the replacement of structures 467, 780, and 781 is intended to improve system reliability needs of Minnkota's service area.

5. That Minnkota will comply with all applicable conditions and protections in applicable North Dakota siting laws and rules and commission orders that may apply.

Dated at Grand Forks, North Dakota this day of August 17, 2023.

Brendan Kennelly, VP Power Delivery

STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

This instrument was acknowledged before me this 17 day of August, 2023 by Brendan Kennelly, VP Power Delivery on behalf of Minnkota Power Cooperative, Inc.

KIMBERLY JOHNSON RUSTAD
Notary Public
State of North Dakota
My Commission Expires Oct. 9, 2026

Notary Public

Signature

345 KV STRUCTURE REPLACEMENT PROJECT ENVIRONMENTAL REPORT

ND PSC SITING EXCLUSION CERTIFCATION

Located in T141 R62 S30 and T141 R71 S2
Kidder and Stutsman County, ND
August 3, 2023

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Contents

1. Project Description

Project Name: 345 kV Structure replacement project

Project Description: Installation of new 345 kV steel pole H-frame structures

The project consists of replacing three 345 kV lattice structures, along with abandonment of the concrete footings of the old structures ("Project"). The purpose of the Project is to replace 1980's era 345 kV structures that have been identified as damaged due to foundation issues. The damage has occurred due to frost heave and weathering causing alignment issues. The alignment issues of the structures could compromise the line. Minnkota has determined the best way to address the structural integrity is to replace the structures.

The location for each of the structures can be found in Table 1. A map showing the locations is included in Appendix A. Each structure will be replaced with a new steel pole H-frame structure that is directly imbedded. The structures will be installed using an auger device. The concrete footings from the old structures will remain in place. The old footings for structures 780 and 781 will be buried 10 feet below ground. Due to the location of structure 467, the concrete footings will remain in place as is. Each structure has 2 footings.

Tree clearing and removal is not necessary for this proposed project. To the extent practical, MPC will coordinate these activities with the affected property owner(s) and/or state and local highway departments, as appropriate.

Table 1 – Structure Locations

Name	County	Latitude	Longitude	Township	Range	Section	Wetland
467	Kidder	47.064350	-99.638876	141	71	2	Yes
780	Stutsman	46.997795	-98.578274	141	62	30	No
781	Stutsman	46.997795	-98.574583	141	62	30	No

2. Land Ownership and Use

Structure 467 is within a 40-acre parcel identified as 38043-22002010. The parcel is owned by the Robert A Bowerman Revocable Living Trust. Structures 780 and 781, located in Stutsman County, are within a 40-acre parcel identified as 38093-46304000. The parcel is owned by Dennis and Elizabeth Lorenz. Minnkota has easements with each of the identified entities for the purposes of installation and maintaining the line within the boundaries of the easement.

3. Section 106

Minnkota contracted with Barr Engineering, Inc. (Barr) for archaeological services. Juniper Environmental Consulting (Juniper) as a subcontractor to Barr, completed a Class I Literature Review dated April 5, 2023 (ROI 798). The Class I Literature Review was conducted for a one-mile search radius. The Class I Literature Review, was submitted to the ND State Historical Preservation Office (ND SHPO). On May 8, 2023, the ND SHPO responded to Barr requesting a Class III pedestrian survey, see Appendix B (Letter Ref. 23-0237).

On June 14, 2023, Juniper conducted the pedestrian survey and prepared a report dated June 2023 (ROI 809). The inventoried area consisted of a 700' diameter around the base of each structure. The inventory

block for each structure consisted of 8.8 acres for a total of 26.4 acres inventoried. The Report recommended a finding of "No Historic Properties Affected" for the Project.

On July 7, 2023, Barr submitted the Class III report to Lisa Steckler via certified mail. The ND SHPO responded on July 28, 2023, with a concurrence of "No Historic Properties Affected", see Appendix B. Due to the sensitive nature of the archaeological studies they have not been included in this report.

4. Natural Resources Survey

Minnkota contracted with Barr to complete a Natural Resources Survey. A Report dated May 2023, was prepared. The purpose of the report was to evaluate the potential for the Project to impact species protected by the Endangered Species Act (ESA) and to assess habitat conditions with respect to North Dakota Administrative Code (NDAC) 69-06-08-02. A copy of the report can be found in Appendix C.

A summary of the findings in regards to the ESA can be found in Table 2.

Table 2- Species

Name	Scientific Name	Status	Determination
Bald Eagle	Haliaeetus leucocephalus	Protected	May Affect, Not Likely to Adversely Affect
Dakota Skipper	Hesperia dacotae	Threatened	No Affect
Monarch Butterfly	Danaus plexippus	Candidate	No Affect
Piping Plover	Charadrius melodus	Threatened	May Affect, Not Likely to Adversely Affect
Rufa Red Knot	Calidris canutus rufa	Threatened	May Affect, Not Likely to Adversely Affect

Minnkota will conduct an Eagle survey prior to beginning any construction of the project. In the event, an Eagle or Eagle nest is observed, Minnkota will contact USFWS for guidance.

On August 2, 2023, Minnkota submitted a request to USFWS ND Ecological Field Office, for further guidance on protection and mitigation measures for the Dakota Skipper, Piping Plover, and Rufa Red Knot. The correspondence can be found in Appendix C.

Structures 467, 780, and 781 are not located in any of the natural resource exclusion areas as identified in NDAC 69-06-08-02. Western wheat grass, a native species, was noted near structures 780 and 781. It is anticipated that impacts will be minimal as construction will occur during the fall. The area near these structures is also noted as being used for cattle grazing operations.

Structure 467 is located within Kidder County National Waterfowl Production Area, which is protected by USFWS and considered an avoidance area under ND 69-08-06-02. On June 7, 2023, Minnkota emailed a

letter to Jared Newton of the USFWS Long Lake Wetland Management District to solicit comments on the Project. Mr. Newton contacted Minnkota via email on July 7, 2023. Mr. Newton indicated that the wetland area is protected by USFWS Kidder County Wetland Easement 544X, which was acquired in 2004. Mr. Newton indicated that the structure could be replaced, but their preference was to remove the old foundations. Minnkota considered the USFWS request, ultimately, it was determined that removal of the structures would cause a larger area to be excavated and may cause more significant damage. Currently, Minnkota is proposing to leave the footings in place, the lattice steel part of the structure will be removed. The below picture shows the current view of structure 467 footings with the lattice structure still in place. Correspondence between Minnkota and USFWS can be found in Appendix C.

5. Wetlands

The EPA NEPA Assist Tool was consulted on August 2, 2023. Several wetlands are located near structures 780 and 781 within a .5 mile radius. Structures 780 and 781 do not intersect any of these wetlands.

Structure 467 is located within a freshwater pond (PABG) and emergent wetland (PEM1C) and considered an avoidance area under NDAC 69-08-06-02. The wetland may also be protected as a possible Water of the United States (WOTUS) under Section 404. Minnkota obtained authorization from the USACE to complete construction of the project, see section 5.1 for details.

Temporary disturbance of cattails during construction could occur. However, the project is proposed to be completed during the winter freeze between late October through March. Since construction occurs outside of a time period when vegetation is present the impacts to vegetation and the sensitive community is minimal. See Appendix D for maps showing the wetland locations.

5.1 USACE Communications

On June 8, 2023, Minnkota sent an email to Jason Renschler with USACE to solicit comments regarding the Project. Mr. Renschler responded by email and a follow-up phone call on June 12, 2023. Due to the current status regarding the definition of WOTUS, the USACE headquarters has put all jurisdictional determinations on hold. On June 14, 2023, Minnkota notified USACE of the desire to move forward with permitting. USACE authorized the Project on July 27, 2023, and

assigned reference number NOW-2023-896-BIS. The permit authorizes abandonment of the footings in place and installation of a new structure 467 within 10 feet of the old structure. A copy of the permit can be found in Appendix D.

6. Floodplains

FEMA's Flood Insurance Rate Maps (FIRMette) were consulted on August 3, 2023, the results indicated that no studies had been completed for the area around Structures 467, 780, or 781.

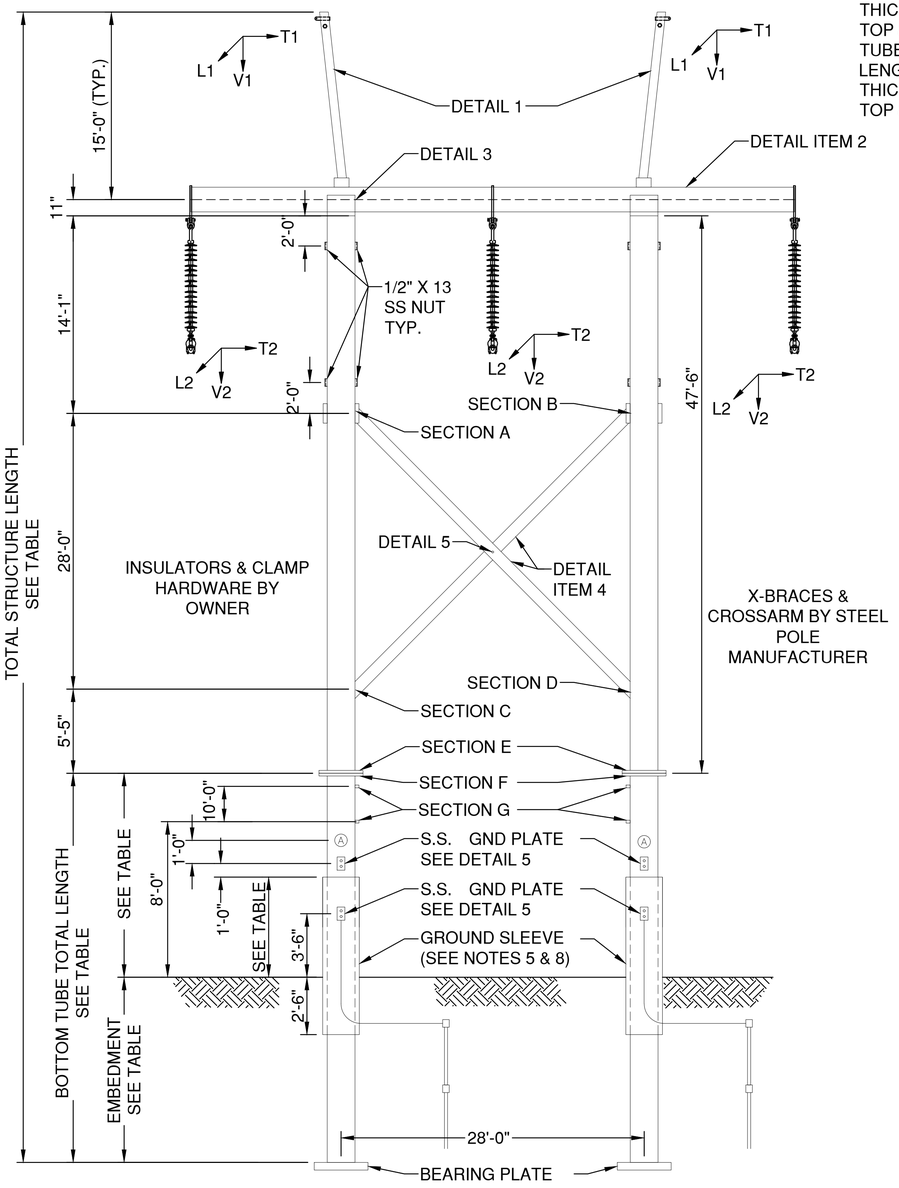
7. Important Farmland

On June 7, 2023, Minnkota provided a scoping letter to the NRCS soliciting comments on the proposed Project. The USDA NRCS responded on June 12, 2023, indicating that the project will not significantly impact farming. A copy of the correspondence can be found in Appendix E.

8. Water Resources

NEPAssist was consulted on August 2, 2023, no sole source aquifers were identified near any of the structures. An impaired stream identified as the Seven Mile Coulee is located approximately .45 miles west of structures 780 and 781. The Des Moines Lake is located within .5 miles of structure 467. No other water resources were identified, see Appendix F.

CONFIGURATION 1
STANDARD



ELEVATION

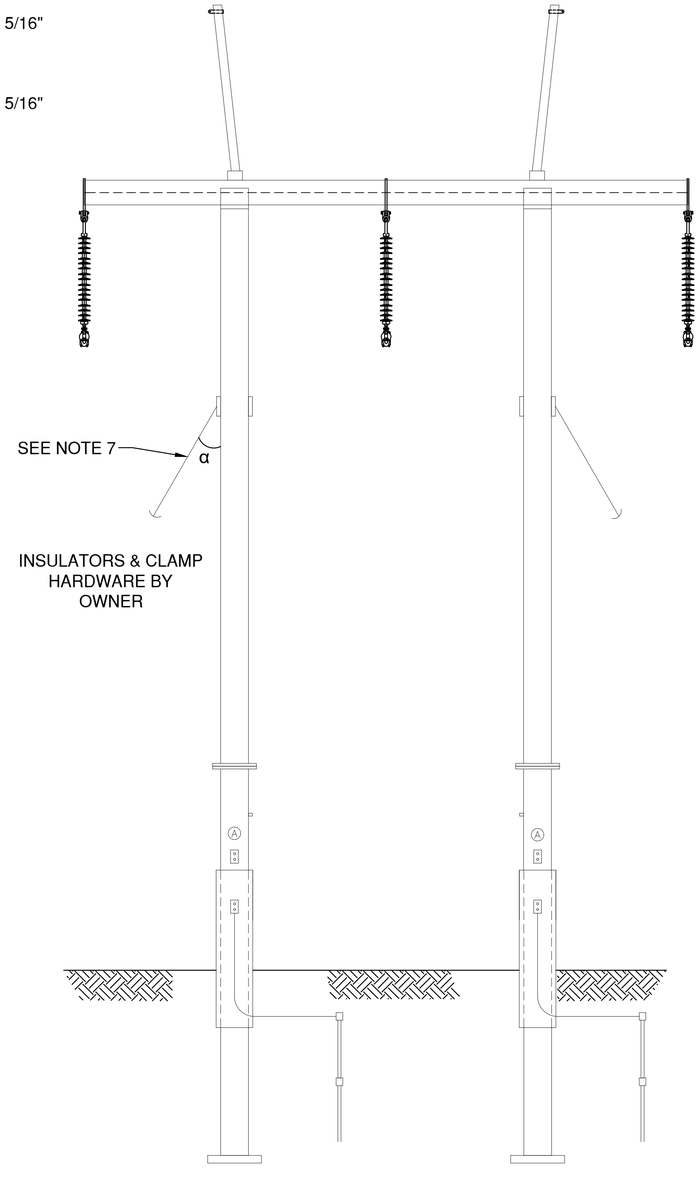
SHAFT INFORMATION

1. TOP TUBE:
   LENGTH - 47'-4 3/4"
   THICKNESS - 3/16"
   TOP DIAMETER - 16 9/16"
   BOTTOM DIAMETER - 23 11/16"
   TAPER - 0.15 IN. / FT.
2. BOTTOM TUBE:
   LENGTH - VARIES, SEE TABLE
   THICKNESS - 3/16"
   TOP DIAMETER - 23 11/16"
   BOTTOM DIAMETER - 23 11/16"
   TAPER - 0.00 IN. / FT.
3. CROSSARM ASSEMBLY
   TUBE 1:
   LENGTH - 30'-0"
   THICKNESS - 1/4"
   TOP & BOTTOM DIAMETER - 17 5/16"
   TUBE 2:
   LENGTH - 26'-0"
   THICKNESS - 1/4"
   TOP & BOTTOM DIAMETER - 17 5/16"

SHAFT INFORMATION CONTINUED

4. SHIELD WIRE ARM
   LENGTH - 13'-10"
   THICKNESS - 3/16"
   SMALL DIA / LARGE DIA - 6" / 12"
5. X-BRACE
   LENGTH - 36'-7 11/16"
   TUBING - 6" X 6" X 3/16"

CONFIGURATION 2
SAME DIMENSIONS AS CONFIGURATION 1
BUT WITH GUYS AND WITHOUT X-BRACE



ELEVATION

STRUCTURE #	SEE TABLE
POLE LENGTH	SEE TABLE
ANGLE	ACTUAL 0° (DESIGN 2°)
SETTING DEPTH	SEE TABLE
H. SPAN	1000 FT
V. SPAN	1350 FT

Ⓐ IDENTIFICATION TAG-(FLAT 6)

STR. #	SEE TABLE
LENGTH (FEET)	SEE TABLE
STRUCTURE TYPE:	TH-345-MS-STL
MANUFACTURED DATE:	(DATE)
GRD. LINE MOM. IN FT-KIPS	

LOAD VECTOR DIRECTIONS

TRANSVERSE
LONGITUDINAL
VERTICAL

T - TRANSVERSE LOAD
V - VERTICAL LOAD
L - LONGITUDINAL LOAD

NOTES:

1. PREFERRED DIMENSIONS AND THICKNESSES SHOWN IN THESE DETAILS TO MATCH AN EXISTING POLE DESIGN PREVIOUSLY PROCURED BY MINNKOTA POWER COOPERATIVE. MANUFACTURER TO VERIFY STRENGTH OF ALL COMPONENTS AND CONNECTIONS PROPOSED. MANUFACTURER MAY CHANGE DIMENSIONS OR THICKNESSES OF STEEL ELEMENTS TO MEET STRENGTH REQUIREMENTS.
2. FLANGED JOINTS SHALL BE USED. LAP SPLICES WILL NOT BE ALLOWED. FLANGE PLATES TO BE LOCATED SAME ON EACH LEG TO BE INTERCHANGEABLE.
3. BEGIN CLIMBING CLIPS 10' FROM GROUND TO TOP OF POLE.
4. BEGIN WORKING CLIPS 5' BELOW BOTTOM ATTACHMENT TO TOP OF POLE.
5. BITUMASTIC COATING SHALL EXTEND TO THE TOP OF THE GROUND SLEEVE. GROUNDING PLATES SHALL NOT BE COATED.
6. STRUCTURES SHALL BE GALVANIZED STEEL.
7. SIDE GUYS MAY BE INSTALLED ON STRUCTURES WITH POOR SOIL CONDITIONS. X-BRACES WOULD THEN NOT BE INSTALLED. MANUFACTURER TO VERIFY POLE DESIGN WITH SIDE GUYS AND NO X-BRACES.
   GUYING INFORMATION:
   SIZE - 3/4" EHS 19 STRAND STEEL
   SLOPE (α) - 30°
8. ADDITIONAL LENGTH OF GROUND SLEEVE FOR PROVISIONS TO INSTALL STRUCTURE IN POOR SOIL CONDITIONS

G:\2020\20.01935\Transmission\DWG\LOAD & DESIGN\CAD\TH345-MS-STL.dwg

REV.	DATE	DESCRIPTION	BY
1	12/14/20	ORIGINAL ISSUE FOR BID	RJL

MINNKOTA POWER COOPERATIVE
345KV TRANSMISSION LINE
MORANVILLE–LUND

TH–345–MS–STL
STEEL POLE DESIGN DWG

DRAWN BY:	GJP	SCALE: AS SHOWN	PROJECT NO. 20.01935
CHECKED BY:	RJL	DATE: 12/14/20	SHEET 1 OF 5
APPROVED BY:	RJL		

Ulteig
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Fargo, North Dakota 58104
Phone: 701.280.8000 Fax: 701.280.8799
Web: www.ulteig.com
Ulteig Project: R16.01176

APPENDIX A. PROJECT LOCATION

012C Structure Replacement

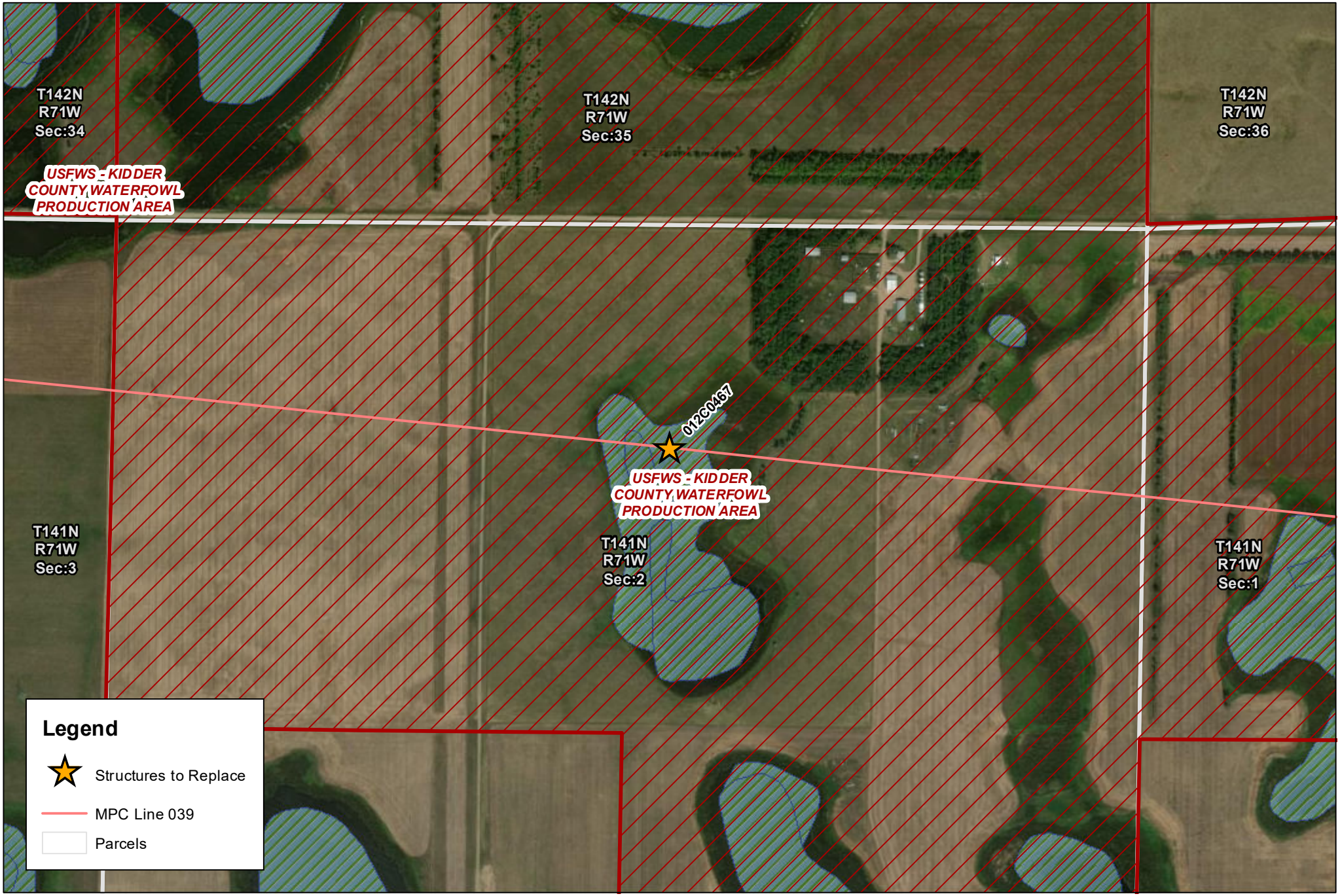
STR #: 012C0467 / Valley City Outpost

Kidder County, ND

0 640 Feet

N

MPC Lines
USFWS Lands
NHIS Polygons
Calcareous Fens
State Lands
Wellhead Protection Areas
Aquifers
Federal Lands
Wetlands



012H Structure Replacement

STR #: 012H0780 / Valley City Outpost

Stutsman County, ND

0 640 Feet

N

MPC Lines
USFWS Lands
NHIS Polygons
Calcareous Fens
State Lands
Wellhead Protection Areas
Aquifers
Federal Lands
Wetlands

012H Structure Replacement

STR #: 012H0781 / Valley City Outpost

Stutsman County, ND

0 640 Feet

N

MPC Lines
USFWS Lands
NHIS Polygons
Calcareous Fens
State Lands
Wellhead Protection Areas
Aquifers
Federal Lands
Wetlands

APPENDIX B. HISTORIC PRESERVATION (SECT. 106)

Copies of archaeological reports have been removed to protect sensitive information

May 8, 2023

Veronica A. Parsell
Barr Engineering Co.
4300 Market Pointe Drive, Ste 200
Minneapolis, MN 55435

ND SHPO Ref.: 23-0237 345kV Structure replacements on Line 12, in portions of [T141N R71W Section 2 and T141N R62W Section 30] in Kidder and Stutsman Counties, North Dakota

Dear Veronica,

We reviewed ND SHPO Ref.: 23-0237 345kV Structure replacements on Line 12, in portions of [T141N R71W Section 2 and T141N R62W Section 30] in Kidder and Stutsman Counties, North Dakota. We do not agree with your consultant and recommend a Class III (pedestrian survey) of archaeological resources in the project area as the described project will result in new disturbance and there is potential for intact cultural resources.

Thank you for the opportunity to review this project to date. We look forward to review of the Class III survey for archaeological resources. If you have any questions please contact Lorna Meidinger, Lead Historic Preservation Specialist at (701) 328-2089 or lbmeidinger@nd.gov.

Sincerely,

for William D. Peterson, PhD
Director, State Historical Society of North Dakota

23-0237

July 28, 2023

Veronica Parsell
Barr Engineering
4300 Market Pointe Drive, Suite 200
Minneapolis, MN 55435

ND SHPO Ref: 23-0237 345kV Structure Replacements on Line 012 in portions of [T141N R62W Section 30 and T141N R71W Section 2], Kidder and Stutsman Counties, North Dakota

Dear Veronica,

We've received the report for ND SHPO Ref: 23-0237 345kV Structure Replacements on Line 012 in portions of [T141N R62W Section 30 and T141N R71W Section 2], Kidder and Stutsman Counties, North Dakota, titled "Line 12 C Structure Replacement Project: A Class III Cultural Resource Inventory in Kidder and Stutsman Counties, North Dakota" from Juniper Environmental Consulting by Andrea Kulevsky and find the report acceptable.

We would concur with a determination of "No Historic Properties Affected" for this project, provided it takes place in the location and manner described in the documentation.

Thank you for the opportunity to review this project. Please include the ND SHPO Reference number listed above in further correspondence for this specific project. If you have any questions please contact Margie Patton, Research Archaeologist at 701-328-3576 or mmpatton@nd.gov.

Sincerely,

for William D. Peterson, PhD
State Historic Preservation Officer
(North Dakota)

23-0237

APPENDIX C. NATURAL RESOURCES SURVEY

Natural Resources Report
Line 012 345 kv STR Replacement

Prepared for
Minnkota Power Cooperative, Inc.

4300 MarketPointe Drive, Suite 200
Minneapolis, MN 55435
952.832.2600
www.barr.com

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May 2023

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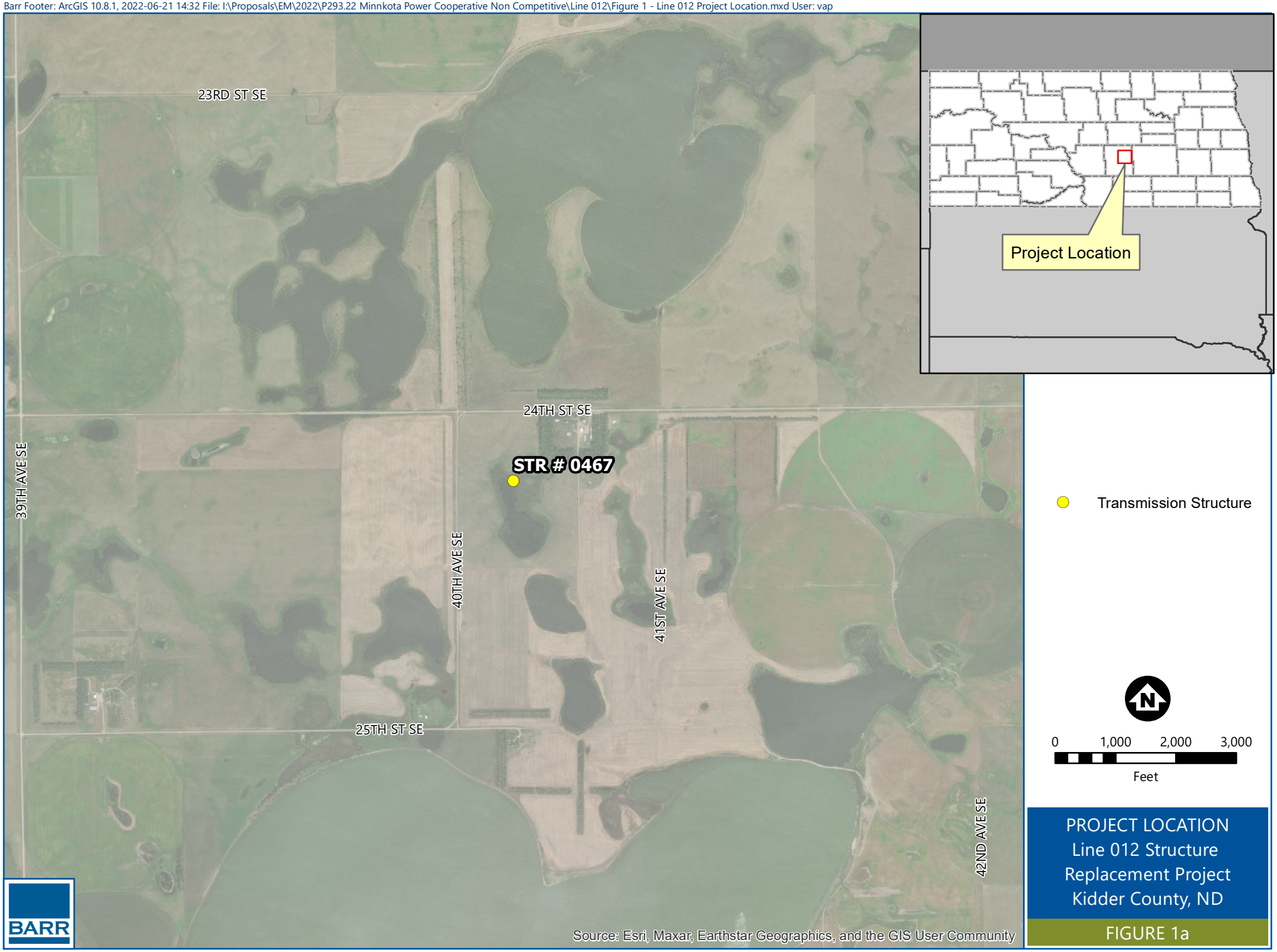
Abbreviations

Barr	Barr Engineering Co.
BGEPA	Bald and Golden Eagle Protection Act
ESA	Endangered Species Act
IPaC	Information for Planning and Consultation
MBTA	Migratory Bird Treaty Act
MPC	Minnkota Power Cooperative, Inc
NDGF	North Dakota Game and Fish
NDPSC	North Dakota Public Service Commission
NLEB	Northern Long-eared Bat
USFWS	United States Fish and Wildlife Service
WPA	Waterfowl Production Area

1 Summary and Purpose

Minnkota Power Cooperative, Inc. (MPC) is working to obtain a siting exclusion certification from the North Dakota Public Service Commission (NDPSC) for the replacement of three existing structures on their Line 012, 345 kV transmission line in Kidder and Stutsman Counties, North Dakota (the Project). The old structures would be abandoned with the lattice structure removed. Remaining concrete footings would be left in place. The new structures would be installed immediately adjacent to the old structures. One structure is located in Section 2, Township 141N, Range 71W in Kidder County, and the remaining two structures are located in Section 30, Township 141N, Range 62W in Stutsman County (Figure 1).

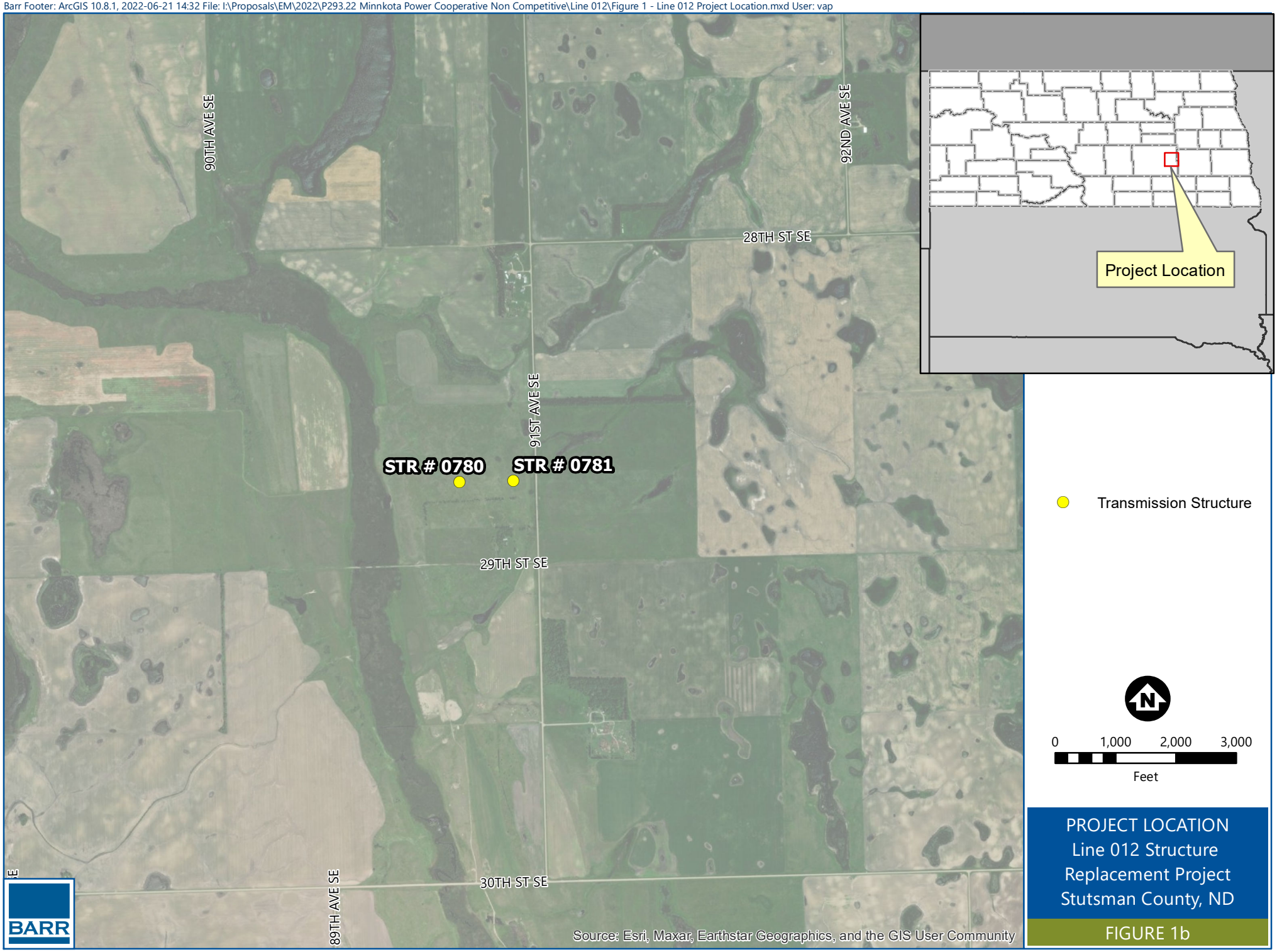
The purpose of this report is to evaluate the potential for this Project to impact species protected by the Endangered Species Act (ESA) and to assess habitat conditions with respect to North Dakota statute 69-06-08-02 which sets forth the criteria for corridor and route suitability for transmission facilities. This evaluation has been completed by Barr Engineering Co. (Barr) on behalf of MPC.



PROJECT LOCATION
Line 012 Structure Replacement Project
Kidder County, ND

FIGURE 1a

Barr Footer: ArcGIS 10.8.1, 2022-06-21 14:32 File: I:\Proposals\EM\2022\P293.22 Minnkota Power Cooperative Non Competitive\Line 012\Figure 1 - Line 012 Project Location.mxd User: vap



BARR

PROJECT LOCATION
Line 012 Structure Replacement Project
Stutsman County, ND

FIGURE 1b

2 Threatened & Endangered Species Review

Threatened and endangered species which may occur within the scope of or otherwise be impacted by this Project have been assessed at the state and federal level. At the federal level, threatened and endangered species are afforded protections under the ESA. The act is administered by the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service. The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, while a threatened species is likely to become endangered in the near future. The act prohibits the "taking" of any listed species, which includes killing, harming, harassing, or disturbing the species in any way. It also prohibits the trade of any listed species, as well as the destruction or modification of their critical habitats. The ESA provides for the listing of species as endangered or threatened, the designation of critical habitats, and the development of plans to help these species recover to a point where they no longer need ESA protection.

Another federal regulation, the Bald and Golden Eagle Protection Act (BGEPA), prevents the unlawful taking of these species and their nests. In addition, the USFWS administrates the Migratory Bird Treaty Act (MBTA) which extends protections to the active nests of migratory birds.

The USFWS Information for Planning and Consultation (IPaC) tool was used to generate an official species list for each project location. The North Dakota determination key was utilized to assist in determining the likelihood of impacts to protected species. Guidance from the USFWS Timing/Buffer Recommendations document produced by the USFWS North Dakota Ecological Services Field Office dated March 2023 was also reviewed and incorporated into this evaluation and is included for reference as Appendix A.

2.1 Line 12C Structure #467

This Project location was reviewed using a combination of desktop and field-based methods. At the desktop level, data sources such as aerial photography, USFWS National Wetlands Inventory data, North Dakota Game and Fish (NDGF) native grasslands data, as well as IPaC were reviewed. In addition to the desktop review, a site visit was conducted on May 1, 2023 to assess the suitability of habitat within the Project area to support sensitive species and to document other sensitive natural features. A summary of the vegetation community documented at the Project location during this site visit is provided in Table 1.

Table 1 Line 12C Structure #467 Documented Vegetation Community

Common Name	Scientific name	Approximate % cover
Narrow-leaf cattail	*Typha angustifolia*	73
Western wheat grass	*Pascopyrum smithii*	10
Prairie cordgrass	*Spartina pectinata*	8
Reed canary grass	*Phalaris arundinacea*	5
Goldenrod	*Solidago*	2
Canada thistle	*Cirsium arvense*	2

Note(s): 100% cattails surrounding the structure. Structure in 2-3ft water, open water located to the south. Small section of other vegetation located on northern edge of 250ft study area radius. Canda thistle is an invasive species.

An official species list was requested from USFWS via IPaC on May 22, 2023 and given Project Code 2023-0084759. This list has been included as Appendix B. In addition, the North Dakota determination key was reviewed May 22,2023 and a consistency letter generated, included as Appendix C. This key and consistency letter determined that the Project would have no effect on the Dakota Skipper and resulted in determinations of may affect for piping plover, rufa red knot, and whooping crane. This key did not evaluate impacts for the monarch butterfly or bald eagle, though Barr has included these species in this review. Based on the desktop review and site visit, it is determined that the Project may affect but is not likely to adversely affect the piping plover, rufa redknot, and whooping crane.

A summary of the review is presented in Table 2 and discussed in depth later in this section. A photo log of the May 1, 2023 site visit is also included as Appendix D. Photos included are representative of the overall site condition, vegetative community, and wetland extent.

Table 2 Line 12C Structure #467 Sensitive Species Review Summary

Common Name	Scientific Name	Federal Status	Habitat	Decision and Justification
Bald Eagle	*Haliaeetus leucocephalus*	Protected by BGA and MBTA	Nests in mature trees near bodies of water.	May Affect, Not Likely to Adversely Affect; suitable habitat may be present in project area
Dakota Skipper	*Hesperia dacotae*	Threatened	Native dry-mesic to dry prairie where mid-height grasses, such as little bluestem (*Schizachyrium scoparium* var. *scoparium*), prairie dropseed (*Sporobolus heterolepis*), and side-oats grama (*Bouteloua curtipendula* var. *curtipendula*), are a major component of the vegetation. Prefer *Echinacea angustifolia* for foraging.	No Effect; suitable habitat is not present in project area
Monarch Butterfly	*Danaus plexippus*	Candidate	Obligate of milkweed species for reproduction.	No Effect; suitable habitat is not present in project area
Piping Plover	*Charadrius melodus*	Threatened	Associated with fairly wide, sandy, sparsely or unvegetated beaches when nesting. Outside breeding season birds may be found on beaches, lagoon edges or areas of rubble. Nests on sandy beaches with areas of gravel or pebble substrate and little or no vegetation.	May Affect, Not Likely to Adversely Affect; although the project area does not contain suitable habitat, determination key indicates species may be present. However, pole replacement is not anticipated to jeopardize species.
Rufa Red Knot	*Calidris canutus rufa*	Threatened	During migration, utilizes coastal zones, generally coastal marine and estuarine habitats, with large areas of exposed intertidal sediments. Prefer muddy or sandy coastal areas, specifically the mouths of bays and estuaries and tidal flats/inlets. Nests near wetlands and lakes in the Canadian arctic.	May Affect, Not Likely to Adversely Affect; although the project area does not contain suitable habitat, determination key indicates species may be present. However, pole replacement is not anticipated to jeopardize species.
Whooping Crane	*Grus americana*	Endangered	During migration, use primarily wetlands and cropland ponds for roosting, feeding, or both. Seasonal and semipermanent wetlands are the most commonly used. Large greater than 40 ha wetlands are used for roosting and smaller wetlands for foraging.	May Affect, Not Likely to Adversely Affect; suitable habitat may be present in project area. However, pole replacement is not anticipated to jeopardize species.

2.1.1 Bald Eagle

Bald eagles (*Haliaeetus leucocephalus)*, although not protected under the ESA, remain protected under the BGEPA. Bald eagles are large birds with brown bodies, yellow beaks and feet, and a distinguished white head. Bald eagles commonly nest in large mature trees, both alive and dead, near water or substantial prey sources. In North Dakota, bald eagles may be year-round residents or seasonal migrants. Peak breeding season for bald eagles in North Dakota is generally March through July but adult birds may establish nests and territories as early as January or February.

Due to the potential presence of suitable nesting habitat, if work will occur between February 1 and July 15, bald eagle nest surveys within a 660-ft buffer (minimum) around the Project area and access routes should be completed prior to initiation of construction activities. If a nest is identified within the 660-ft buffer, USFWS and NDGF should be consulted prior to construction initiation. If the nest is active, the agencies may require that construction be paused until the fledglings have left the nest.

2.1.2 Dakota Skipper

Dakota skippers (*Hesperia dacotae*) are small, dull, golden to brown butterfly found in northern native prairies. The Dakota skipper is generally found in native tall and mixed grass prairies but prefers two distinct types of prairies; 1) moist to wet prairie dominated by bluestem grasses (*Andropogon gerardi*), with wood lilies (*Lilium philadelphicum*), harebells (*Campanula rotundifolia*) and smooth camas (*Zygadenus elegans*) wildflowers; 2) dry upland prairies dominated with bluestem grasses and needlegrasses, with purple coneflowers (*Echinacea angustifolia*).

Based on the information provided in the IPaC North Dakota determination key as well as the observed vegetation community at the Project location, this Project will have no effect on the Dakota Skipper. No native prairie habitat is present at this location.

2.1.3 Piping Plover

Piping plovers (*Charadrius melodus circumcinctus*) are small, white, birds with gray backs and crown with a black collar. Piping plovers are breeding residents of North Dakota between mid-April to August along the Missouri River. In North Dakota, piping plovers use exposed, sparsely vegetated shorelines and islands for breeding. Rivers with wide shorelines of gravel, sand, or pebbles are preferred. (https://gf.nd.gov/wildlife/id/shorebirds/piping-plover).

The IPaC North Dakota determination key resulted in a determination of may affect for this species. However, the site visit indicated that no suitable nesting habitat is present. This Project location is placed on private land that is in the general vicinity of a number of WPAs (waterfowl production areas) and lakes, the closest of which is Kunkel Lake approximately 0.8 miles to the south. An open water cattail marsh was observed at this Project location, however the marsh did not contain exposed, sparsely vegetated shorelines. There are no suitable large rivers in the area. Piping plovers in this general area would likely avoid this location due to its lack of suitable habitat and close proximity to human activity with an occupied residence approximately 1,100 feet to the northwest. Based on USFWS guidance, the period of concern for this species is approximately April 15 to August 15. If plausible this Project will be executed outside of that time period. Given the feasibility of avoiding the period of concern and the

variety of nearby and more suitable habitat areas for this species, it is concluded that this Project may affect but is not likely to adversely affect the piping plover.

2.1.4 Rufa Red Knot

Rufa red knots (*Calidris canutus rufa*) are red (males) or dull gray (females) shorebirds with black beaks and legs. Rufa red knots are rare migrants through North Dakota with limited recorded observations on the Missouri River, sewage lagoons, and large permanent wetlands. Rufa red knot observations in North Dakota are scattered with little evidence of consistent stop-over site use. Generally, red knots migrate through North Dakota in May in spring and September and October in fall (https://gf.nd.gov/wildlife/id/shorebirds/red-knot#.) During migration, red knots will commonly rest on dry, sandy ground (https://www.allaboutbirds.org/guide/Red_Knot/lifehistory#habitat).

The IPaC North Dakota determination key resulted in a determination of may affect for this species. However, the site visit indicated the stopover habitat present for this species is poor quality. This Project location is placed on private land that is in the general vicinity of a number of WPAs and lakes, the closest of which is Kunkel Lake approximately 0.8 miles to the south. An open water cattail marsh was observed at this Project location; however dry, sandy ground was not documented. Rufa red knot in this general area would likely avoid this location due to its lack of suitable habitat and close proximity to human activity with an occupied residence approximately 1,100 feet to the northwest. Given the variety of more suitable habitat areas for this species nearby, it is concluded that this Project may affect but is not likely to adversely affect rufa red knot.

2.1.5 Whooping Crane

Whooping cranes (*Grus americana*) are large, white birds with black wing tips and red crown. Whooping cranes are a seasonal migrant in North Dakota, commonly appearing in the state between April to mid-May in spring and September to November in fall. Whooping cranes in North Dakota, primarily use inland marshes, swamps, and floodplain wetlands and cropland ponds (https://gf.nd.gov/wildlife/id/grassland-birds/whooping-crane) during their migration. Whooping cranes will use large, shallow wetlands for roosting and smaller wetlands for foraging, feed on frogs, fish, plant tubers, insects, crayfish, and waste grains during migration.

The IPaC North Dakota determination key resulted in a determination of may affect for this species. However, the site visit indicated that stopover habitat present for this species is poor quality. This Project location is placed on private land that is in the general vicinity of a number of WPAs and lakes, the closest of which is Kunkel Lake approximately 0.8 miles to the south. Though a potentially suitable open water cattail marsh was observed at this Project location, whooping crane would likely avoid this location due to its close proximity to human activity and an occupied residence approximately 1,100 feet to the northwest. Given the variety of nearby and more suitable habitat areas for this species, it is concluded that this Project may affect but is not likely to adversely affect whooping crane.

2.1.6 Monarch Butterfly

Adult monarch butterflies are large and conspicuous, with bright orange wings surrounded by a black border and covered with black veins. The black border has a double row of white spots, present on the upper side of the wings. Adult monarchs are sexually dimorphic, with males having narrower wing venation and scent patches. The

bright coloring of a monarch serves as a warning to predators that eating them can be toxic. During the breeding season, monarchs lay their eggs on their obligate milkweed host plant (primarily Asclepias spp.).

No milkweed species were identified during the site visit. As a result, it is determined that no suitable habitat is present for this species and that this Project will have no effect on the monarch butterfly.

2.2 Line 12H Structure #0780 & 0781

This project location was reviewed using a combination of desktop and field-based methods. At the desktop level, data sources such as aerial photography, USFWS National Wetlands Inventory data, NDGF native grasslands data, as well as IPaC were utilized. In addition to the desktop review, a site visit was conducted on May 1, 2023 to assess the suitability of habitat within the Project area to support sensitive species and to document other sensitive natural features. A summary of the vegetation community documented at the Project location during this site visit is provided in Table 3 and Table 4. At this location, there are two structures in close proximity to each other that both require replacement.

Table 3 Line 12H Structure #0780 Documented Vegetation Community

Common Name	Scientific name	Approximate % Cover
Western wheat grass	*Pascopyrum smithii*	30
Other unidentifiable grass		19
Common snowberry	*Symphoricarpos albus*	15
Absinth wormwood	*Artemisia absinthium*	15
Kentucky bluegrass	*Poa pratensis*	10
Canada thistle	*Cirsium arvense*	5
Goldenrod	*Solidago*	3
Curly-cup gumweed	*Grindelia squarrosa*	3

Note(s): Only grasses in 50-ft radius surrounding structure. Canada thistle and Absinth wormwood are invasive species.

Table 4 Line 12H Structure #0781 Documented Vegetation Community

Common Name	Scientific name	Approximate % Cover
Western wheat grass	*Pascopyrum smithii*	30
Common snowberry	*Symphoricarpos albus*	25
Other unidentifiable grass		11
Kentucky bluegrass	*Poa pratensis*	10
Absinth wormwood	*Artemisia absinthium*	10
Canada thistle	*Cirsium arvense*	5
Goldenrod	*Solidago*	3
Curly-cup gumweed	*Grindelia squarrosa*	3
Cocklebur	*Xanthium strumarium*	3

Note(s): Canada thistle and Absinth wormwood are invasive species.

An official species list was requested from USFWS via IPaC on May 22, 2023 and given Project Code 2023-0084759. This list has been included as Appendix E. In addition, the North Dakota determination key was reviewed on May 22, 2023 and a consistency letter generated, included as Appendix F. This key and consistency letter determined that the project would have no effect on the Dakota Skipper and resulted in determinations of may affect for piping plover and rufa red knot. This key did not evaluate impacts for the monarch butterfly or bald eagle, though Barr has included these species in this review. Based on our desktop review and site visit, it is determined that the project may affect but is not likely to adversely affect the piping plover and rufa redknot, as summarized in Table 5.

Table 5 Line 12C Structure #467 Sensitive Species Review Summary

Common Name	Scientific Name	Federal ESA Status	Habitat	Decision and Justification
Bald Eagle	*Haliaeetus leucocephalus*	Protected by BGA and MBTA	Nests in mature trees near bodies of water.	May Affect, Not Likely to Adversely Affect; suitable habitat may be present in project area
Dakota Skipper	*Hesperia dacotae*	Threatened	Native dry-mesic to dry prairie where mid-height grasses, such as little bluestem (*Schizachyrium scoparium* var. *scoparium*), prairie dropseed (*Sporobolus heterolepis*), and side-oats grama (*Bouteloua curtipendula* var. *curtipendula*), are a major component of the vegetation. Prefer *Echinacea angustifolia* for foraging.	No Effect; no suitable habitat is present
Monarch Butterfly	*Danaus plexippus*	Candidate	Obligate of milkweed species for reproduction.	No Effect; no suitable habitat is present
Piping Plover	*Charadrius melodus*	Threatened	Associated with fairly wide, sandy, sparsely or unvegetated beaches when nesting. Outside breeding season birds may be found on beaches, lagoon edges or areas of rubble. Nests on sandy beaches with areas of gravel or pebble substrate and little or no vegetation.	May Affect, Not Likely to Adversely Affect; although the project area does not contain suitable habitat, determination key indicates species may be present. However, pole replacement is not anticipated to jeopardize species.
Rufa Red Knot	*Calidris canutus rufa*	Threatened	During migration, utilizes coastal zones, generally coastal marine and estuarine habitats, with large areas of exposed intertidal sediments. Prefer muddy or sandy coastal areas, specifically the mouths of bays and estuaries and tidal flats/inlets. Nests near wetlands and lakes in the Canadian arctic.	May Affect, Not Likely to Adversely Affect; although the project area does not contain suitable habitat, determination key indicates species may be present. However, pole replacement is not anticipated to jeopardize species.

Note(s):

2.2.1 Bald Eagle

Bald eagles (*Haliaeetus leucocephalus)*, although not protected under the ESA, remain protected under the BGEPA. Bald eagles are large birds with brown bodies, yellow beaks and feet, and a distinguished white head. Bald eagles commonly nest in large mature trees, both alive and dead, near water or substantial prey sources. In North Dakota, bald eagles may be year-round residents or seasonal migrants. Peak breeding season for bald eagles in North Dakota is generally March through July but adult birds may establish nests and territories as early as January or February.

Due to the potential presence of suitable nesting habitat, if work will occur between February 1 and July 15, bald eagle nest surveys within a 660-ft buffer (minimum) around the Project area and access routes should be completed prior to initiation of construction activities. If a nest is identified within the 660-ft buffer, USFWS and

NDGF should be consulted prior to construction initiation. If the nest is active, the agencies may require that construction be paused until the fledglings have left the nest.

2.2.2 Dakota Skipper

Dakota skippers (*Hesperia dacotae*) are small, dull, golden to brown butterfly found in northern native prairies. The Dakota skipper is generally found in native tall and mixed grass prairies but prefers two distinct types of prairies; 1) moist to wet prairie dominated by bluestem grasses (*Andropogon gerardi*), with wood lilies (*Lilium philadelphicum*), harebells (*Campanula rotundifolia*) and smooth camas (*Zygadenus elegans*) wildflowers; 2) dry upland prairies dominated with bluestem grasses and needlegrasses, with purple coneflowers (*Echinacea angustifolia*).

Based on the information provided in the IPaC North Dakota determination key as well as the observed vegetation community at the Project location, we determine that this Project will have no effect on the Dakota Skipper. No native prairie habitat is present at this location.

2.2.3 Piping Plover

Piping plovers (*Charadrius melodus circumcinctus*) are small, white, birds with gray backs and crown with a black collar. Piping plovers are breeding residents of North Dakota, between mid-April to August, along the Missouri River. In North Dakota, piping plovers use exposed, sparsely vegetated shorelines and islands for breeding. Rivers with wide shorelines of gravel, sand, or pebbles are preferred. (https://gf.nd.gov/wildlife/id/shorebirds/piping-plover).

The IPaC North Dakota determination key resulted in a determination of may affect for this species. However, the site visit indicated that no suitable nesting habitat is present. This Project location is placed on private land that is approximately 4 miles from the Rush Island Lake WPA and 6 miles from the Jamestown Reservoir.

No suitable wetland or shoreline habitat was observed at this location. The NWI does indicate the presence of one emergent wetland along the access route and a larger wetland west of the Project area; however these wetland areas lack the types of shoreline features that would provide suitable habitat for this species. There are no suitable large rivers in the area. Piping plovers are expected avoid this location due to its lack of suitable habitat and close proximity to human activity with an occupied residence approximately 750 feet to the south. Based on USFWS guidance, the period of concern for this species is approximately April 15 to August 15. If plausible, this Project will be executed outside of that time period. Given the feasibility of avoiding the period of concern and the variety of nearby and more suitable habitat areas for this species, it is concluded that this Project may affect but is not likely to adversely affect the piping plover.

2.2.4 Rufa Red Knot

Rufa red knots (*Calidris canutus rufa*) are red (males) or dull gray (females) shorebirds with black beaks and legs. Rufa red knots are rare migrants through North Dakota with limited recorded observation on the Missouri River, sewage lagoons, and large permanent wetlands. Rufa red knot observations in North Dakota are scattered with little evidence of consistent stop-over site use. Generally, red knots migrate through North Dakota in May in spring and September and October in fall (https://gf.nd.gov/wildlife/id/shorebirds/red-knot#.) During migration, red knots will commonly rest on dry, sandy ground (https://www.allaboutbirds.org/guide/Red_Knot/lifehistory#habitat).

The IPaC North Dakota determination key resulted in a determination of may affect for this species. However, the site visit indicatedthat the stopover habitat present for this species is poor quality. This Project location is placed on private land that is approximately 4 miles from the Rush Island Lake WPA and 6 miles from the Jamestown Reservoir. No suitable wetland or shoreline habitat was observed at this location. The NWI does indicate the presence of one emergent wetland along the access route and a larger emergent wetland west of the Project area. However, no dry sand ground was observed. Rufa red knot in this general area would likely avoid this location due to its lack of suitable habitat and close proximity to human activity with an occupied residence approximately 750 feet to the south. Given the variety of more suitable habitat areas for this species nearby, it is concluded that this Project may affect but is not likely to adversely affect rufa red knot.

2.2.5 Monarch Butterfly

Adult monarch butterflies are large and conspicuous, with bright orange wings surrounded by a black border and covered with black veins. The black border has a double row of white spots, present on the upper side of the wings. Adult monarchs are sexually dimorphic, with males having narrower wing venation and scent patches. The bright coloring of a monarch serves as a warning to predators that eating them can be toxic. During the breeding season, monarchs lay their eggs on their obligate milkweed host plant (primarily Asclepias spp.).

No milkweed species were identified during the site visit. As a result, it is determined that no suitable habitat is present for this species and that this Project will have no effect on the monarch butterfly.

3 Natural Resources Inventory

North Dakota statute 69-06-08-02 sets forth the criteria for the corridor and route suitability evaluation process for transmission facilities. This statute and a list of exclusion and avoidance areas has been included in this document as Appendix I. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

Barr completed a desktop review of natural resources-based items on the exclusion and avoidance areas list. This review included a review of literature, geospatial data, environmental and climatological data, rangeland data and farmland data. Sources for this data include the US Geological Survey, Natural Resource Conservation Service, Farm Service Administration, and the USFWS. The desktop assessment indicates that wetland is present within the Line 12 STR 0467 project area but that wetland does not comprise more than 50 percent of the corridor; it covers

approximately 20 percent. Additionally, this location is within the USFWS Kidder County WPA which may constitute a federally designated wildlife area. With regards to the structure replacement proposed for this area, there is no reasonable alternative since the transmission facility already exists through the WPA and a pole currently exists immediately adjacent to the replacement proposed by this project. Due to the limited scope of this project, impacts to the WPA are expected to be negligible. Barr recommends the project coordinate with USFWS to secure appropriate easements that may be required for construction in the WPA; these easements may have unique construction conditions intended to minimize impact(s) to the area.

The Line 12 STR 0467 project area and the Line 12 STR 0780 and 0781 project area are not anticipated to substantively impact agriculture due the limited size and scope of the work to be completed (i.e. pole replacement for an existing line adjacent to existing poles).

Similarly, these projects will not cause impacts to areas critical to the life stages of threatened or endangered animal or plant species. They also will not affect areas where animal or plant species that are unique or rare to this state would be irreversibly damaged. A more thorough analysis of this topic has been provided in Section 2 above.

3.1.1 Line 12 STR 0467 Natural Resources

As indicated in Section 2, a site visit was conducted on May 1, 2023 to assess the vegetation community and overall state of natural resources in the project area. A summary of the vegetation documented at this location is provided above in Table 1. A representative photo log of the location is also provided as Appendix D.

This area is dominated by narrow-leaf cattail (more than 70% cover), a species typical of disturbed and low-quality wetlands. Photo 2 and Photo 3 in the photo log in Appendix D demonstrate both the low-quality of the vegetation community at this location as well as the large extent of the wetland present compared to the limited footprint of the pole replacement. The Project will have only temporary impacts on the cattail marsh, which extends approximately 1,250 feet south of the structure replacement.

3.1.2 Line 12 STR 0780 and 0781 Natural Resources

As indicated in Section 2, a site visit was conducted on May 1, 2023 to assess the vegetation community and overall state of natural resources in the project area. A summary of the vegetation documented at this location is provided above in Table 3 and Table 4. Representative photo logs of the locations are also provided as Appendix G and Appendix H.

Though western wheat grass is a native species, impacts to this community will be temporary and minor due to the nature of the pole replacement project. No wetlands were observed on site, though the NWI does indicate the presence of a narrow wetland along the access route adjacent to 91st Ave SE. Photo 6 in Appendix H shows this area, which may be upland at this time. Impacts to this area will be similarly minor and temporary. Appendices G and H demonstrate the state of the vegetative community at this location and general landscape features. These photos are representative of the upland vegetation present at this location, which is dominated by a variety of grasses including Western wheatgrass, Kentucky bluegrass, and reed canay grass.

4 Conclusions and Recommendations

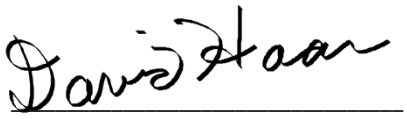
Based on a review of ND Statute 69-06-08-02, publicly available natural resource data sets, and a site visit to each of the pole replacement locations, this Project is in compliance with the citing rules laid out in ND Statute 69-06-08-02 for the following reasons:

- This Project will not occur in any of the natural resource exclusion areas laid out in Section 1 of the statute.
- This Project will not occur in any of the natural resource avoidance areas laid out in Section 2 of the statute.
- Impacts to areas described in the selection criteria in Section 3 will be managed and maintained at an acceptable minimum.

No significant impacts are anticipated to threated or endangered species or their habitat. No additional fieldwork is recommended to evaluate dakota skipper, monarch butterfly, piping plover, or rufa red knot. It is our understanding, based on previous projects, that the PSC may engage USFWS for concurrence and/or guidance with the findings of this document.

Due to the potential presence of suitable bald eagle nesting habitat, if work will occur between February 1 and July 15, bald eagle nest surveys within a 660-ft buffer (minimum) around the Project area and access routes should be completed prior to initiation of construction activities. If a nest is identified within the 660-ft buffer, USFWS and NDGF should be consulted prior to construction initiation. If the nest is active, the agencies may require that construction be paused until the fledglings have left the nest.

I certify this report was prepared by me. Please contact me directly with questions or comments on this report at dhaar@barr.com or 952.842.3625.



David Haar
Senior Environmental Scientist

May 31, 2023
Date

Appendix A – ND Buffers and Timing Recommendations

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501
(701) 250-4481, ndfieldoffice@fws.gov

USFWS Timing/Buffer Recommendations

03/2023

Species/ Type	Recommended Buffer	Additional Specific Measures	Period of Concern
Bald Eagle[1]	660 ft if activity visible from nest 330 ft if visual screen	Aerial survey recommended in the spring, before leaf-out	February 1–July 15
Dakota skipper	250m – 500m from suitable habitat	Flight period varies year to year, but generally occurs for approximately 14 days between June 10 and July 25.	June 10 - July 25
Golden Eagle[2]	No visual buffer – ½ mile buffer Visual buffer – 660 feet Avoid activities during the nesting season (Feb. 1 –July15)	Aerial survey recommended in the spring, before leaf-out	February 1-July 15
Migratory birds[1,3,4]		Avoid direct removal and indirect disturbance in proximity to the nest.	Feb 1 - July 15 (some species may nest longer)
Northern Long Eared Bat		Suggested Tree Removal	Nov. 1 - March 31
Piping plover	0.5 mile during nesting season		April 15-August 15
Pallid sturgeon		Migration and Spawning Period	April 1 – July 31
Whooping Crane	1 mile no-activity zone when present	General Migration Periods	March 15-May 15 September 10-November 15

1 USFWS. May 2007. National Bald Eagle Management Guidelines. Available at http://www.fws.gov/midwest/eagle/guidelines/NationalBaldEagleManagementGuidelines.pdf.
2 Romin, L.A. and J.A. Muck. 1999. Utah field office guidelines for raptor protection from human and land use disturbances. USFWS. Salt Lake City, UT. 42 pp.
3 Jones, S. L., Dieni, J. S., & Gouse, P. J. (2010). Reproductive biology of a grassland songbird community in northcentral Montana. The Wilson Journal of Ornithology, 122(3), 455–464. http://www.jstor.org/stable/40962167
4 Igl, Lawrence D. (2003). New Nesting Dates for Some Breeding Birds in North Dakota. The Prairie Naturalist, 35(4) December 2003.

Dakota Skipper

- DASK flight period generally occurs from **June 10 – July 25**. The actual flight period varies year to year based on weather conditions prior to and during the flight period.
- A buffer of 250 m should be maintained between a project and suitable DASK habitat and a 500 m buffer between occupied suitable habitat and/or designated critical habitat and the proposed project. (USFWS 2022).Occupancy surveys are conducted during the flight period and are performed within identified patches of suitable habitat. The habitat patches should be mapped (location and size) in order to evaluate the landscape habitat connectivity.
- The initiation date for surveys by a permitted surveyor is a critical component of data reliability for the Dakota skipper. Multiple surveys (minimum of three (3) during each flight period) are necessary to determine the species' likelihood of occurrence at a site.
- Occupancy is best determined with two consecutive seasons of surveys during the flight season, if only one season is available for survey for a project, then a minimum of 250 m of habitat around a site should be surveyed. When a known Dakota skipper site is located within 0.6 mile of a proposed project, then the buffer survey distance should be increased to 500 m. During occupancy surveys total numbers and locations of individuals should be recorded for the entire action area.

Determining if Dakota skipper habitat is present requires an assessment of the vegetation by a qualified biologist. Sites containing native prairie grassland and having features indicative of Dakota skipper habitat, described on pages 7-9 of the survey protocol document, may harbor the species. Dakota skippers are not likely to be present in cropped areas.

Persons with sufficient expertise in prairie ecology, Dakota skipper ecology, or both should preview sites before the flight period to delineate survey areas. Pre-survey reconnaissance of action area and adjacent habitat could facilitate efficient use of limited surveyor time by delineating habitat patches that should be surveyed during the flight period. In some cases, occupancy surveys may be limited to those habitat patches directly affected by the footprint of the action.

Occupancy survey results from prior years may be available for the site, section, or township of interest. This may be sufficient to inform the likelihood of occupancy at the site. We recommend that you coordinate with the NDFO to ensure survey results being considered are reliable regarding the Dakota skipper's status at a site.

U.S. Fish and Wildlife Service, (FWS). 2022. Dakota Skipper (Hesperia dacotae) North Dakota Survey Protocol.

Northern Long Eared Bat

- **Recommended Tree Removal Period for ND: November 1 – March 31**
- Active Season: April 1 – October 31
- Pup Season: June 1 – July 31
- Staging and Swarming Seasons: April 1 – May 15; August 15 – November 14

The Service has completed an Interim Consultation Framework (Framework) to provide for exemptions from section 9 prohibitions for incidental take that is reasonably certain to occur before April 1, 2024. We recommend using the Information for Planning and Consultation (IPaC) website to assist in making your determination. When an action agency enters the project information into IPaC, one of three outcomes will be reached, and it will prompt the action agency to follow a corresponding action.

Be advised that this system will be updated regularly as new information becomes available and/or survey results are added, therefore project proponents should ensure their IPaC report is current for their project timeline.

- https://www.fws.gov/sites/default/files/documents/Interim%20Consultation%20Framework_21Mar23.pdf
- https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis

The following are recommended conservation measures for the NLEB:

- Conduct tree removal activities between November 1 and March 31 to ensure NLEB are not present.
- Incidental take from tree removal activities is not prohibited *unless* it results from removing a known occupied maternity roost tree or from tree removal activities within 150 feet of a known occupied maternity roost tree from June 1 through July 31 or results from tree removal activities within 0.25 mile of a hibernaculum at any time. Avoid clearing suitable spring staging and fall swarming habitat/s/ within a 5-mile radius of known or assumed northern long-eared bat hibernacula during the staging and swarming seasons *OR* you are within an area that intersects a known occurrence location.
- Perform any bridge repair, retrofit, maintenance, and rehabilitation work outside of the northern long-eared bat active season in areas where northern long-eared bats are known to roost on bridges or where such use is likely.
- Do not use military smoke and obscurants within forested suitable northern long-eared bat habitat during the pup season or the active season (https://pubs.er.usgs.gov/publication/70039214).

Pallid Sturgeon

- Avoid in-stream work in waters occupied by pallid sturgeon, if possible, from during the migration and spawning season.
- If pallid sturgeon is documented (remote tracking data, etc.) at or near the project site, particularly during construction, the USFWS will be contacted immediately.

Cooling Water Intake Recommendations

- EPA requires owners or operators to comply with one of following BTA Standards for impingement mortality, explained in detail in 40 CFR 125.94(c) and summarized below:

- Closed-cycle recirculating system and daily monitoring of actual intake flows; or
- Demonstrated ≤ 0.5 ft/sec through-screen design velocity: or
- Demonstrated ≤ 0.5 ft/sec through-screen actual velocity and daily monitoring of velocity: or
- Existing offshore velocity cap and daily monitoring of intake flow; or
- Modified traveling screens, optimized to minimize impingement mortality; or
- BTA systems of technology, management practices, and operational measures; or
- 12-month impingement mortality performance standard and monthly monitoring: # fish killed or # fish impinged < 24 percent

General Intake Recommendations

- FWS recommends that intake velocities should not exceed 0.5 feet per second (fps).
- Mesh size at intake screens should have a maximum mesh opening of 1/4 inch to reduce the size of aquatic organisms that can be entrained (Environmental Protection Agency 1976).
- A Johnson (or Johnson type) screen/intake should be used if feasible.

Additional Intake Recommendations for Pallid Sturgeon in the Yellowstone River and in that portion of the Missouri River above river mile 1519 in Williams and McKenzie Counties (Potential Reproduction Areas).

- When possible floating intakes should be installed
- Intakes shall be located over water with a minimum depth of 20 feet.
- If the 20 foot depth is not attainable, the intake shall be located over the deepest water available at the start of the irrigation season.
- If the water depth falls below 6 feet the intake shall be moved to deeper water or maximum intake velocity limited to ¼ foot per second, with intake placed over maximum practicable attainable depth.

Piping Plover

- Piping plover Nesting Period **April 15 – August 15.**
- Surveys must begin 7 days prior to any onsite activities.
  - Survey in the morning, prior to the start of project/construction activities for the day and record a start and stop time.
  - Surveys must be conducted when there is adequate light to detect and identify birds. If cloudy or foggy, take additional time to ensure a good quality survey.
  - Surveys will be conducted daily.
- Survey will be conducted within 0.5 miles of proposed activity.
  - If suitable habitat is identified, a qualified wildlife biologist will conduct daily surveys of the identified areas to monitor for the **presence** of piping plovers.

  - From a good vantage point, survey areas within 0.5 miles of where project/construction activities will occur. Use binoculars or spotting scope to survey for a minimum of 20 minutes in each viewing area.
  - Look specifically for bird movements along sandbars in the middle of the channel, along the shoreline, and on recently formed floodplain sand deposits.
- Nesting behavior: copulations, birds returning to the same place, sitting on the sand for a long period of time, or nest exchange (males and females will generally take 20-minute shifts to incubate).
- Foraging behavior: looking for food along sandbar, probing the sand, hovering over river channel, and diving into water for fish, and bringing back fish to sandbar.
- If nesting activity is not observed, project/construction activities may commence.
- If a possible sighting occurs, then further investigation may be needed from a different vantage point or using higher-powered optics to verify if a nest, eggs, or chicks are present. Landowner permission must be obtained by the contractor if entering private land.
- **If at any time, an active nest, chick or adult bird is observed within 0.5 miles of the project:**
  - Do not attempt to disturb or remove the birds or nests.
  - Do not conduct construction activities that could result in the adults abandoning the nest.
  - Do not start or continue construction activity within 0.5 miles of the nest.
  - Immediately contact (within 1 hour) the USFWS for direction on continuation of work in the area.
  - Do not resume construction activity within .5 mile of the nest until individuals leave the site or it is determined by the USFWS that there is no risk for disturbance.

Rufa Red Knot

- If a rufa red knot is sighted within 0.6 mile of the action area during plan activities, the USFWS would be contacted immediately at 701-250-4481or ndfieldoffice@fws.gov. In coordination with the USFWS, work may resume after the bird(s) leave the area.

Western Prairie Fringed Orchid

- If a project is proposed in Ransom or Richland counties or near the Sheyenne National Grasslands in North Dakota, and includes herbicide application, water drainage or other water/wetland alteration, breaking native prairie, or burning, please contact the USFWS at 701-250-4481 or ndfieldoffice@fws.gov for measures to avoid or minimize impacts to western prairie fringed orchids.

Whooping Crane

- Whooping Crane migration is generally **March 15-May 15** and **September 10-November 15**.
  - If project activities were to occur during this timeframe and whooping cranes were to occupy the area within 1 mile of construction or other activity, then the activity could cause whooping cranes to be disturbed and leave the area. If this were to occur, it would most likely occur first thing in the morning, as whooping cranes overnight in one area before continuing the next morning. Disturbance, such as flushing the cranes, stresses them at critical times of the year, including migration.
  - If any whooping cranes do stopover, sightings within a mile of the project should also be reported to this office 701-250-4481or ndfieldoffice@fws.gov

Migratory Bird Treaty Act (MBTA)

- The Migratory Bird Treaty Act prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service.
  - A complete list of species that are covered as well as not covered under MBTA can be found here: https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php
  - For projects that may impact migratory birds or if further information is needed concerning migratory birds, please contact the Service at 701-250-4481 or ndfieldoffice@fws.gov

Bald and Golden Eagle Protection Act (BGEPA)

- The Bald and Golden Eagle Protection Act prohibits anyone, without a permit issued by the Service, from "taking" bald or golden eagles, including their parts, nests, or eggs.
  - The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part*, nest, or egg thereof."
  - The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."
  - "Disturb" means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

Bald Eagles

To avoid/minimize impacts to nesting bald eagles from construction activities, the Service recommends: (1) keeping a minimum 660-foot buffer between the activity and any bald eagle nest if no landscape buffer exists; (2) keeping a minimum 330-foot buffer and maintaining a landscape buffer or natural areas between the activity and around nest trees; and (3) avoiding activities during the bald eagle breeding season (**February 1 – July 15**).

The National Bald Eagle Management Guidelines can be found at: https://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf

Golden Eagles

Unlike bald eagles, whose numbers have clearly increased in recent years, golden eagle populations appear to be slightly decreasing. We believe this is due to several factors, including susceptibility to human disturbance, especially during breeding. We recommend that your analysis consider possible effects to golden eagles if there is a nest within ½ mile of your project. For projects that may impact Bald or Golden Eagles or if further information is needed concerning eagles, please contact the Service at 701-250-4481 or ndfieldoffice@fws.gov

Appendix B – Official Species List L12 STR 0467

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To: May 22, 2023
Project Code: 2023-0084759
Project Name: Line 12 STR 0467

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

Section 7 of the Endangered Species Act
The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).
New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.
The Act requires that actions authorized, funded, or carried out by Federal agencies not jeopardize federally threatened or endangered species or adversely modify designated critical habitat. To fulfill this mandate, Federal agencies (or their designated non-federal representative) must consult with the Service *if they determine their project and associated actions "may affect" listed species or critical habitat*. If Federal agencies or their non-federal representatives determine their project and associated actions will have "no effect" on listed species, their habitats, or designated critical habitat, consultation is not required. However, if a "no effect" is determined, we recommend that you maintain a written record in support of your conclusion.
Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act
Additionally, while not all are listed as threatened or endangered, eagles and migratory birds

have protections under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). The BGEPA prohibits take which is defined as, “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (50 CFR 22.3). Disturb is defined in regulations as, “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”. The MBTA makes it unlawful without a waiver to pursue, hunt, take, capture, kill, or sell birds listed as migratory birds, including eagles. The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs, and nests.

Service Property Interests

As part of the National Wildlife Refuge System, the Service administers fee title Refuge and Waterfowl Production Areas, as well as wetland and grassland easements, throughout North Dakota. For exact locations of Service interest lands, please contact the appropriate Wetland Management Districts (WMD) for guidance regarding FWS easements.

Northwest ND WMD Complex: Kyle Flanery, (701) 768-2548
Eastern ND WMD Complex: Dave Azure, (701) 285-3341
Central ND WMD Complex (also covers south and west): Todd Luke, (701) 442-5474

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Wetlands

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
(701) 250-4481

PROJECT SUMMARY

Project Code: 2023-0084759
Project Name: Line 12 STR 0467
Project Type: Transmission Line - Maintenance/Modification - Above Ground
Project Description: TBD
Project Location:

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@47.06351995,-99.637456235858,14z

Counties: Kidder County, North Dakota

ENDANGERED SPECIES ACT SPECIES

There is a total of 5 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

BIRDS

NAME	STATUS
Piping Plover *Charadrius melodus* Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot *Calidris canutus rufa* There is **proposed** critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened
Whooping Crane *Grus americana* Population: Wherever found, except where listed as an experimental population There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/758	Endangered

INSECTS

NAME	STATUS
Dakota Skipper *Hesperia dacotae* There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1028	Threatened
Monarch Butterfly *Danaus plexippus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the National Wildlife Refuge system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

The following FWS National Wildlife Refuge Lands and Fish Hatcheries lie fully or partially within your project area:

FACILITY NAME	ACRES
KIDDER COUNTY WATERFOWL PRODUCTION AREA https://www.fws.gov/refuges/profiles/index.cfm?id=62522	0

WETLANDS

Impacts to NWI wetlands and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local U.S. Army Corps of Engineers District.

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

FRESHWATER EMERGENT WETLAND

- PEM1C
- PEM1A

FRESHWATER POND

- PABG

IPAC USER CONTACT INFORMATION

Agency: Barr Engineering Co
Name: David Haar
Address: 4300 MarketPointe Dr Suite 200
City: Minneapolis
State: MN
Zip: 55345
Email dhaar@barr.com
Phone: 9528423625

Appendix C – Consistency Letter L12 STR 0467

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To:
Project code: 2023-0084759
Project Name: Line 12 STR 0467

May 22, 2023

Subject: Consistency letter for 'Line 12 STR 0467' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the North Dakota Determination Key (DKey) for project review and guidance for federally listed species.

David Haar:

The U.S. Fish and Wildlife Service (Service) received on **May 22, 2023** your effects determination for the 'Line 12 STR 0467' (the Action) using the North Dakota DKey for project review and guidance for federally-listed species within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service's North Dakota DKey, you made the following effect determination(s) for the proposed Action:

Species	**Listing Status**	**Determination**
Dakota Skipper (*Hesperia dacotae*)	Threatened	No effect
Piping Plover (*Charadrius melodus*)	Threatened	May affect
Red Knot (*Calidris canutus rufa*)	Threatened	May affect
Whooping Crane (*Grus americana*)	Endangered	May affect

Further coordination with the North Dakota Ecological Services Field Office is recommended for those species with a determination of "may affect" listed above. Please contact our office at (701) 250-4481 or your Service point of contact in the North Dakota Ecological Services Field Office to discuss methods to avoid or minimize potential adverse effects to those species.

In addition to the species listed above, the following species and/or critical habitats may also occur in your project area and **are not** covered by this conclusion:

- Monarch Butterfly *Danaus plexippus* Candidate

Bald and Golden Eagle Protection Act(BGEPA): The following resources are provided to project proponents and consulting agencies as additional information. Bald and golden eagles are not included in this section 7(a)(2) consultation and this information does not constitute a determination of effects by the Service.

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the BGEPA may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. This document may be downloaded from the following site: https://www.fws.gov/media/national-bald-eagle-management-guidelines-0

To determine if your proposed activity is likely to take or disturb Golden or Bald Eagles, please call our office at 702-250-4481 for further review.

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. The application form is located at http://www.fws.gov/forms/3-200-72.pdf.

Action Description
You provided to IPaC the following name and description for the subject Action.

1. Name

Line 12 STR 0467

2. Description

The following description was provided for the project 'Line 12 STR 0467':

TBD

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@47.06351995,-99.637456235858,14z

QUALIFICATION INTERVIEW

1. Is your project a federal project or have a federal nexus (funded, permitted or other authorization by a federal agency)?

   No

2. Does your project consist solely of interior or exterior rehabilitation and renovations of existing residential, commercial buildings and public facilities?

   Note: These activities may involve exterior painting, replacement of doors, windows, siding or roofing.

   No

3. Does your project consist solely of work done within the existing footprint of a building such as electrical, heating plumbing, basement and foundation repairs?

   No

4. Does your project consist solely of additions onto an existing structure?

   No

5. Does your project consist solely of renting or purchasing existing buildings?

   No

6. Does your project consist solely of demolition of structures within Incorporated City Boundaries?

   No

7. Does your project consist solely of repair or replacement of existing parking lots, sidewalks, roads or other paved or graveled surfaces?

   No

8. Does your project consist solely of repair or replacement or upgrading playground equipment?

   No

9. Is your project a wind farm?

   No

10. Is your project a new construction on an existing residential infill lot within Incorporated City Boundaries?

    No

11. Are you building overhead power lines?

    Yes

12. Are you constructing a communication tower or other permanent structure over 200 feet above ground line without guy wires?

    No

13. Are there any wetlands in your project area?

    Yes

14. Will the project impact a wetland?

    Note: Common impacts to wetlands include filling, grading, removal of vegetation, building construction and changes in water levels and drainage patterns.

    Yes

15. Is your project located entirely within a developed area?

    Note: A developed area is an area that is already paved or supports structures and the only vegetation is limited to frequently mowed grass or conventional landscaping.

    No

16. [Semantic] Does the action area intersect the Dakota Skipper area of influence?

    Automatically answered
    Yes

17. Is the project area on disturbed land (e.g. urban areas, previously cropped areas, non-native haylands, pasture or other grassland that is dominated by non-native species, or in areas where trees or shrubs predominate)?

    Yes

18. [Semantic] Does the action area intersect the Whooping Crane area of infuence?

    Automatically answered
    Yes

19. [Semantic] Does the action area intersect the Piping Plover area of infuence?

    Automatically answered
    Yes

20. Will the project result in changes to river hydrology (i.e. via construction of lock & dams, major waterbody diversion/major (over 1,000,000 gallons/day water withdrawals, etc.)?

    No

21. Is the project a cooling water intake for a power plant regulated under section 316 of the Clean Water Act?

    Note: This applies to facilities that are designed to withdraw at least two million gallons per day of cooling water from waters of the U.S.

    No

22. [Semantic] Does the action area intersect the Rufa Red Knot area of infuence?

    Automatically answered
    Yes

IPAC USER CONTACT INFORMATION

Agency: Barr Engineering Co
Name: David Haar
Address: 4300 MarketPointe Dr Suite 200
City: Minneapolis
State: MN
Zip: 55345
Email dhaar@barr.com
Phone: 9528423625

Appendix D – Photo Log STR 0467

Photo 1: Representative photo of wetland condition at L12 STR 0467

Photo 2: Representative photo of wetland extent

Photo 3: View facing along the utility corridor

Photo 4: Representative photo of wetland extent

Photo 5: Representative photo of vegetative community

Photo 6: View of upland edge

Appendix E – Official Species List L12 STR 0780 & 0781

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To: May 22, 2023
Project Code: 2023-0084788
Project Name: Line 12 STR 0780 and 0781

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

Section 7 of the Endangered Species Act

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act

Additionally, while not all are listed as threatened or endangered, eagles and migratory birds

have protections under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). The BGEPA prohibits take which is defined as, “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (50 CFR 22.3). Disturb is defined in regulations as, “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”. The MBTA makes it unlawful without a waiver to pursue, hunt, take, capture, kill, or sell birds listed as migratory birds, including eagles. The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs, and nests.

Service Property Interests

As part of the National Wildlife Refuge System, the Service administers fee title Refuge and Waterfowl Production Areas, as well as wetland and grassland easements, throughout North Dakota. For exact locations of Service interest lands, please contact the appropriate Wetland Management Districts (WMD) for guidance regarding FWS easements.

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Eastern ND WMD Complex: Dave Azure, (701) 285-3341
Central ND WMD Complex (also covers south and west): Todd Luke, (701) 442-5474

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Wetlands

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
(701) 250-4481

PROJECT SUMMARY

Project Code: 2023-0084788
Project Name: Line 12 STR 0780 and 0781
Project Type: Transmission Line - Maintenance/Modification - Above Ground
Project Description: TBD
Project Location:

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@46.9978388,-98.57758645998064,14z

Counties: Stutsman County, North Dakota

ENDANGERED SPECIES ACT SPECIES

There is a total of 4 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

BIRDS

NAME	STATUS
Piping Plover *Charadrius melodus* Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot *Calidris canutus rufa* There is **proposed** critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

INSECTS

NAME	STATUS
Dakota Skipper *Hesperia dacotae* There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1028	Threatened
Monarch Butterfly *Danaus plexippus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the National Wildlife Refuge system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

WETLANDS

Impacts to NWI wetlands and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local U.S. Army Corps of Engineers District.

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

FRESHWATER EMERGENT WETLAND

- PEM1A

IPAC USER CONTACT INFORMATION

Agency: Barr Engineering
Name: David Haar
Address: 4300 MarketPointe Dr Suite 200
City: Minneapolis
State: MN
Zip: 55345
Email dhaar@barr.com
Phone: 9528423625

Appendix F – Consistency Letter L12 STR 0780 & 0781

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To: May 22, 2023
Project code: 2023-0084788
Project Name: Line 12 STR 0780 and 0781

Subject: Consistency letter for 'Line 12 STR 0780 and 0781' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the North Dakota Determination Key (DKey) for project review and guidance for federally listed species.

David Haar:

The U.S. Fish and Wildlife Service (Service) received on **May 22, 2023** your effects determination for the 'Line 12 STR 0780 and 0781' (the Action) using the North Dakota DKey for project review and guidance for federally-listed species within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service's North Dakota DKey, you made the following effect determination(s) for the proposed Action:

Species	**Listing Status**	**Determination**
Dakota Skipper (*Hesperia dacotae*)	Threatened	No effect
Piping Plover (*Charadrius melodus*)	Threatened	May affect
Red Knot (*Calidris canutus rufa*)	Threatened	May affect

Further coordination with the North Dakota Ecological Services Field Office is recommended for those species with a determination of "may affect" listed above. Please contact our office at (701) 250-4481 or your Service point of contact in the North Dakota Ecological Services Field Office to discuss methods to avoid or minimize potential adverse effects to those species.

In addition to the species listed above, the following species and/or critical habitats may also occur in your project area and **are not** covered by this conclusion:

- Monarch Butterfly *Danaus plexippus* Candidate

Bald and Golden Eagle Protection Act(BGEPA): The following resources are provided to project proponents and consulting agencies as additional information. Bald and golden eagles are not included in this section 7(a)(2) consultation and this information does not constitute a determination of effects by the Service.

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the BGEPA may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. This document may be downloaded from the following site: https://www.fws.gov/media/national-bald-eagle-management-guidelines-0

To determine if your proposed activity is likely to take or disturb Golden or Bald Eagles, please call our office at 702-250-4481 for further review.

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. The application form is located at http://www.fws.gov/forms/3-200-72.pdf.

Action Description
You provided to IPaC the following name and description for the subject Action.

1. Name

Line 12 STR 0780 and 0781

2. Description

The following description was provided for the project 'Line 12 STR 0780 and 0781':

TBD

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@46.9978388,-98.57758645998064,14z

QUALIFICATION INTERVIEW

1. Is your project a federal project or have a federal nexus (funded, permitted or other authorization by a federal agency)?

   No

2. Does your project consist solely of interior or exterior rehabilitation and renovations of existing residential, commercial buildings and public facilities?

   Note: These activities may involve exterior painting, replacement of doors, windows, siding or roofing.

   No

3. Does your project consist solely of work done within the existing footprint of a building such as electrical, heating plumbing, basement and foundation repairs?

   No

4. Does your project consist solely of additions onto an existing structure?

   No

5. Does your project consist solely of renting or purchasing existing buildings?

   No

6. Does your project consist solely of demolition of structures within Incorporated City Boundaries?

   No

7. Does your project consist solely of repair or replacement of existing parking lots, sidewalks, roads or other paved or graveled surfaces?

   No

8. Does your project consist solely of repair or replacement or upgrading playground equipment?

   No

9. Is your project a wind farm?

   No

10. Is your project a new construction on an existing residential infill lot within Incorporated City Boundaries?

    No

11. Are you building overhead power lines?

    Yes

12. Are you constructing a communication tower or other permanent structure over 200 feet above ground line without guy wires?

    No

13. Are there any wetlands in your project area?

    Yes

14. Will the project impact a wetland?

    Note: Common impacts to wetlands include filling, grading, removal of vegetation, building construction and changes in water levels and drainage patterns.

    No

15. Is your project located entirely within a developed area?

    Note: A developed area is an area that is already paved or supports structures and the only vegetation is limited to frequently mowed grass or conventional landscaping.

    No

16. [Semantic] Does the action area intersect the Dakota Skipper area of influence?

    Automatically answered
    Yes

17. Is the project area on disturbed land (e.g. urban areas, previously cropped areas, non-native haylands, pasture or other grassland that is dominated by non-native species, or in areas where trees or shrubs predominate)?

    Yes

18. [Semantic] Does the action area intersect the Piping Plover area of infuence?

    Automatically answered
    Yes

19. Will the project result in changes to river hydrology (i.e. via construction of lock & dams, major waterbody diversion/major (over 1,000,000 gallons/day water withdrawals, etc.)?

    No

20. Is the project a cooling water intake for a power plant regulated under section 316 of the Clean Water Act?

    Note: This applies to facilities that are designed to withdraw at least two million gallons per day of cooling water from waters of the U.S.

    No

21. [Semantic] Does the action area intersect the Rufa Red Knot area of infuence?

    Automatically answered
    Yes

IPAC USER CONTACT INFORMATION

Agency: Barr Engineering
Name: David Haar
Address: 4300 MarketPointe Dr Suite 200
City: Minneapolis
State: MN
Zip: 55345
Email dhaar@barr.com
Phone: 9528423625

Appendix G – Photo Log STR 0780

	
Photo 1: Representative photo of upland habitat	Photo 2: Representative photo of ROW vegetation community
	
Photo 3: Upland vegetation community	Photo 4: Representative photo of grazed vegetation and potential compacted soils
	
Photo 5: Representative photo of vegetative community	Photo 6: Evidence of cattle grazing at project area

Appendix H – Photo Log STR 0781

	
Photo 1: Representative photo of upland habitat	Photo 2: Representative photo of ROW vegetation community
	
Photo 3: Upland vegetation community	Photo 4: Representative photo of utility corridor
	
Photo 5: Representative photo of vegetative community	Photo 6: Photo of area depicted as wetland by NWI adjacent roadway

Appendix I – ND Statute 69-06-08

CHAPTER 69-06-08
CRITERIA

Section
69-06-08-01 Energy Conversion Facility Siting Criteria
69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

   b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

   c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

   d. Areas critical to the life stages of threatened or endangered animal or plant species.

   e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

   f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

   g. Areas within thirty feet [9.14 meters] on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

   a. Areas within:

      (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;

      (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;

      (3) One and one-tenth times the height of the turbine from the nearest edge of railroad right of way;

      (4) One and one-tenth times the height of the turbine from the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and

(5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Historical resources which are not designated as exclusion areas.

   b. Areas within the city limits of a city or the boundaries of a military installation.

   c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.

   d. Areas that are geologically unstable.

   e. Woodlands and wetlands.

   f. Areas of recreational significance which are not designated as exclusion areas.

4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed forty-five dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

      (5) The agricultural quality of the cropland.

b. The impact upon the availability and adequacy of:

(1) Law enforcement.

(2) School systems and education programs.

(3) Governmental services and facilities.

(4) General and mental health care facilities.

(5) Recreational programs and facilities.

(6) Transportation facilities and networks.

(7) Retail service facilities.

(8) Utility services.

c. The impact upon:

(1) Local institutions.

(2) Noise-sensitive land uses.

(3) Light-sensitive land uses.

(4) Rural residences and businesses.

(5) Aquifers.

(6) Human health and safety.

(7) Animal health and safety.

(8) Plant life.

(9) Temporary and permanent housing.

(10) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

e. The impact upon military installations, assets, and operations.

6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

a. Recycling of the conversion byproducts and effluents.

b. Energy conservation through location, process, and design.

c. Training and utilization of available labor in this state for the general and specialized skills required.

d. Use of a primary energy source or raw material located within the state.

e. Not relocating residents.

f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

g. Economies of construction and operation.

h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.

i. Use of citizen coordinating committees.

j. A commitment of a portion of the energy produced for use in this state.

k. Labor relations.

l. The coordination of facilities.

m. Monitoring of impacts.

n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July 1, 2018; July 1, 2019; July 1, 2020; January 1, 2022.
General Authority: NDCC 28-32-02, 49-22-18
Law Implemented: NDCC 49-22-05.1, 49-22.1-03

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.

   b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

   c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

   d. Areas critical to the life stages of threatened or endangered animal or plant species.

   e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

   f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

   g. Areas within thirty feet on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid

microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

   b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

   c. Historical resources which are not specifically designated as exclusion or avoidance areas.

   d. Areas which are geologically unstable.

   e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility. This avoidance area may be waived by the owner.

   f. Reservoirs and municipal water supplies.

   g. Water sources for organized rural water districts.

   h. Irrigated land. This criterion shall not apply to an underground transmission facility.

   i. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

   b. The impact upon:

      (1) Sound-sensitive land uses.

(2) The visual effect on the adjacent area.

(3) Extractive and storage resources.

(4) Wetlands, woodlands, and wooded areas.

(5) Radio and television reception, and other communication or electronic control facilities.

(6) Human health and safety.

(7) Animal health and safety.

(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

   a. Location and design.

   b. Training and utilization of available labor in this state for the general and specialized skills required.

   c. Economies of construction and operation.

   d. Use of citizen coordinating committees.

   e. A commitment of a portion of the transmitted product for use in this state.

   f. Labor relations.

   g. The coordination of facilities.

   h. Monitoring of impacts.

   i. Utilization of existing and proposed rights of way and corridors.

   j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013; July 1, 2020; January 1, 2022.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

5301 32nd Ave. South
Grand Forks, ND 58201
Phone 701.795.4000
www.minnkota.com

June 7, 2023

Jared Newton
Long Lake WMD
US Fish and Wildlife
12000 353rd Street SE
Moffit, ND 58560-9740

RE: Minnkota Power Cooperative
Line 012-345 kV Structure Replacement Project
Located in Stutsman and Kidder County, North Dakota

Dear Jared Newton,

I am contacting in regards to our project located in Stutsman and Kidder County, ND. Due to significant structure footing damage incurred from years of frost heave and weathering damage, Minnkota Power Cooperative (MPC) has determined (through our inspection program) that three of the High Voltage Transmission Line (HVTL) structures need replacement. The structure numbers to be replaced are #467 located in Kidder County; and #780, #781 located in Stutsman County. The existing (original) aluminum H-frame lattice type structures were built on concrete footings. Because the footings have heaved, the structure is now out of alignment and the misalignment has caused undue stress to the structure's lattice members which could compromise the line during a storm event. Based on MPC's experience and design considerations, it has been determined that the best way of addressing the footing and structural integrity problem is to completely replace the structures. This 345 kV line is a critical part of the MPC transmission system as well as the regional grid and as such, its integrity needs to be improved.

The new steel pole H-frame structures will be installed approximately 10' (in line and within the existing right of way) from the existing structure locations. The structure footings will remain in place and new footings will be placed at the new locations. Structure #467, located on private property is within the Kidder County Waterfowl Production Area. This area is classified as a wetland on the NWI mapper. Structures #780 and #781 are located on private agricultural land. Table 1 represents the location of each of the structures.

Table 1. Location

Name	County	Latitude	Longitude	Township	Range	Section	Wetland
467	Kidder	47.064371	-99.638859	141	71	2	Yes
780	Stutsman	46.997795	-98.578274	141	62	30	No
781	Stutsman	46.997795	-98.574583	141	62	30	No

We are soliciting your views and comments on the proposed project. Please provide any comments or concerns to our office within 30 days of receipt of this letter. Thank you for your consideration of this request. If you require additional information regarding the Project, please contact me via email at sroberts@minnkota.com or phone at (701) 795-4289.

Sincerely,

Samantha Roberts

Samantha Roberts
Environmental Specialist II

Samantha Roberts

From: Newton, Jared <Jared_Newton@fws.gov>
Sent: Thursday, July 20, 2023 3:12 PM
To: Samantha Roberts
Cc: Zick, Tom
Subject: Re: [EXTERNAL] RE: Line 012-345kV Structure #467 Replacement Project

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Hi Samantha,
I appreciate the thought and discussions you all have put into this. I think we would like to avoid the nesting platform or bird house idea. The nesting platform would likely facilitate only Canada geese nesting, which we aren't necessarily encouraging. They can become a nuisance in some areas with overpopulation and seem to do fine on their own for nesting locations. Without the scaffolding, they will probably use it anyway! Any type of bird house structure requires yearly maintenance, which is likely not something that would be consistently done, if done at all. I don't know that I would be terribly concerned about long-term impacts of shards or dust. As the pictures show, plenty of the material has already deteriorated itself into the wetland and will continue to do so with freeze/thaw cycles. I would only suggest the partial removal if conditions were dry enough to reduce impacts. Again, these are only suggestions.

Jared Newton
Station Manager
Long Lake NWR Complex
701-387-4397x14
c)701-329-0857

From: Samantha Roberts <sroberts@minnkota.com>
Sent: Wednesday, July 19, 2023 10:39 AM
To: Newton, Jared <Jared_Newton@fws.gov>
Cc: Zick, Tom <tom_zick@fws.gov>
Subject: [EXTERNAL] RE: Line 012-345kV Structure #467 Replacement Project

Hi Jared
After our discussion in regards to abandoning the footings of structure 467 in place I met with the engineering team. Engineering had another proposal that I wanted to discuss with you. The attached pictures show the current footings with the steel lattice attached. After abandonment the lattice would be removed. Our thought is that we could repurpose the footings by converting to a bird house stand or platform for nesting. The bird stand would be attached to the footing and installed at a height no more than 5’ above ground.

Currently after having further discussion with engineering and operations the removal of even 2 feet of concrete will be more intrusive and cause more damage to the wetland. Removal of the top 2 feet by using a jack hammer would create

small shards and dust that could not be removed as well as impacts from additional equipment. We want to minimize impacts as much as possible. As you indicated, it is the USFWS preference to remove the footings but not necessarily a requirement, we thought installation of a bird stand could be another option. Your thoughts?

Samantha Roberts
Environmental Specialist II

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5301 32nd Ave. S.
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Cell: (701) 213-1537
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Web: www.minnkota.com

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

From: Newton, Jared <Jared_Newton@fws.gov>
Sent: Friday, July 7, 2023 1:32 PM
To: Samantha Roberts <sroberts@minnkota.com>
Cc: Zick, Tom <tom_zick@fws.gov>
Subject: [EXTERNAL] Line 012-345kV Structure #467 Replacement Project

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Hello Samantha,
I received your letter regarding Minnkota Power Cooperative replacing the subject transmission line structure in Kidder County, ND. You referenced structure #467 which needs replacing and is in a wetland area identified by the NWI mapper and within a wetland easement Waterfowl Production Area. The wetland area is protected by USFWS Kidder County Wetland Easement 544X. The wetland easement, acquired in 2004, is subject to all existing rights-of-way, including electrical transmission lines, that were in place at the time of acquisition. This appears to be the case with the subject structure and you may replace the structure, within the r-o-w, as you see fit. You state that your plan is to leave the old structure footings in place. Our preference would be to have the old foundations removed and fill placed and compacted in the holes to the original contour of the land. I understand that this may not be a feasible option with the current depth of water in the wetland area, but we would like the option to be considered. Thank you for the notification of the project and the opportunity to provide comments.

Jared Newton
Station Manager
Long Lake NWR Complex
701-387-4397x14
c)701-329-0857

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

5301 32nd Ave. South
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Phone 701.795.4000
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June 8, 2023

Jason Renschler
US Army Corp of Engineers
North Dakota Regulatory Office
1513 S 12th Street
Bismarck, ND 58504

RE: Minnkota Power Cooperative
Line 012-345 kV Structure Replacement Project
Located in Stutsman and Kidder County, North Dakota

Dear Mr. Renschler,

I am contacting in regards to our project located in Stutsman and Kidder County, ND. Due to significant structure footing damage incurred from years of frost heave and weathering damage, Minnkota Power Cooperative (MPC) has determined (through our inspection program) that three of the High Voltage Transmission Line (HVTL) structures need replacement. The structure numbers to be replaced are #467 located in Kidder County; and #780, #781 located in Stutsman County. The existing (original) aluminum H-frame lattice type structures were built on concrete footings. Because the footings have heaved, the structure is now out of alignment and the misalignment has caused undue stress to the structure's lattice members which could compromise the line during a storm event. Based on MPC's experience and design considerations, it has been determined that the best way of addressing the footing and structural integrity problem is to completely replace the structures. This 345 kV line is a critical part of the MPC transmission system as well as the regional grid and as such, its integrity needs to be improved.

The new steel pole H-frame structures will be installed approximately 10' (in line and within the existing right of way) from the existing structure locations. The structure footings will remain in place and new footings will be placed at the new locations. Structure #467, located on private property is within the Kidder County Waterfowl Production Area. This area is classified as a wetland on the NWI mapper. Structures #780 and #781 are located on private agricultural land. Table 1 represents the location of each of the structures.

Table 1. Location

Name	County	Latitude	Longitude	Township	Range	Section	Wetland
467	Kidder	47.064371	-99.638859	141	71	2	Yes
780	Stutsman	46.997795	-98.578274	141	62	30	No
781	Stutsman	46.997795	-98.574583	141	62	30	No

We are soliciting your views and comments on the proposed project. Please provide any comments or concerns to our office within 30 days of receipt of this letter. Thank you for your consideration of this request. If you require additional information regarding the Project, please contact me via email at sroberts@minnkota.com or phone at (701) 795-4289.

Sincerely,

Samantha Roberts

Samantha Roberts
Environmental Specialist II

Samantha Roberts

From: Renschler, Jason J CIV USARMY CENWO (USA) <Jason.J.Renschler@usace.army.mil>
Sent: Monday, June 12, 2023 9:53 AM
To: Samantha Roberts
Subject: [EXTERNAL] RE: Minnkota Power Cooperative - Structure Replacement project

Hi Samantha – we can move forward under a preliminary jurisdictional determination (PJD) and into permitting mode, if you prefer and proceed that way. I'll give you a call to further discuss. Thanks, Jason.

From: Samantha Roberts <sroberts@minnkota.com>
Sent: Thursday, June 8, 2023 12:36 PM
To: Renschler, Jason J CIV USARMY CENWO (USA) <Jason.J.Renschler@usace.army.mil>
Subject: [URL Verdict: Neutral][Non-DoD Source] Minnkota Power Cooperative - Structure Replacement project

Hi Jason,
I am contacting you in regards to a structure replacement project that we are proposing in Stutsman County. One of our 345 kV structures, which is located in the middle of an wetland, needs to be replaced. The structure is on private property, we would be installing a similar structure within 10' of the current structure. Unfortunately there is no other solution as we cannot relocate the structure to any significant degree. I know that the recent decision regarding the supreme court has changed the interpretation. Would you be able to tell me if our project would require a permit under the US Army Corp? Any information you could provide would be helpful.

Thank You

Samantha Roberts
Environmental Specialist II

Minnkota Power Cooperative, Inc
5301 32nd Ave. S.
Grand Forks, ND 58201
Office: (701) 795-4289
Cell: (701) 213-1537
Email: sroberts@minnkota.com
Web: www.minnkota.com

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK ND 58504

July 27, 2023

NWO-2023-896-BIS

Minnkota Power Cooperative, Inc.
Attn: Samantha Roberts
5301 32nd Avenue South
Grand Forks, North Dakota 58201

Dear Ms. Roberts:

We have reviewed your request for a Department of the Army (DA) permit for the proposed replacement of a 345 kV transmission line structure (#467). This project is located in a wetland area in the NE¼ of Section 2, Township 141 North, Range 71 West, Kidder County, North Dakota. [lat. 47.06437, long. -99.63885]

Based on the information that was provided to this office, the project would include construction of a new steel pole H-frame structure located approximately 10-feet from the existing structure, including new concrete footings. The existing aluminum H-frame lattice type structure will be removed, with the existing structures concrete footings to remain in place.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 57 Electric Utility Line and Telecommunications Activities found in the December 27, 2021 Federal Register (86 FR 73522) and January 13, 2021 Federal Register (86 FR 2744), Reissuance and Modification of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of the project could require additional authorization from this office.

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, state, tribal and local approvals as required before beginning work. Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.

Minnkota Power Cooperative is responsible for all work accomplished in accordance with the terms and conditions of this Nationwide Permit, including the Regional Conditions specific to projects undertaken in North Dakota. If a contractor or other authorized representative will be accomplishing the work authorized by this Nationwide

Permit on their behalf, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

This verification will be valid until **March 14, 2026.** If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. If the nationwide permit is modified, suspended, or revoked, and construction has commenced or is under contract to commence before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete out Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mr. Jason Renschler of this office by letter or telephone at (701) 255-0015 ext. 2010 and reference project identification number **NWO-2023-896-BIS**.

Sincerely,

Jason Renschler
Senior Project Manager
North Dakota

Enclosures
- Fact Sheet NWP #57
- Compliance Certification.

US Army Corps of Engineers
Omaha District

Nationwide Permit 57: Electric Utility Line and Telecommunications Activities (2021)

Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An "electric utility line and telecommunication line" is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.,* backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines,

including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.,* at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (*i.e.,* section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

General Conditions

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.,* through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas.

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds.

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material.

No activity may use unsuitable material (*e.g.,* trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes.

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments.

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows.

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*e.g.,* stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls.

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills.

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance.

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project.

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers.

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (*e.g.,* National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

17. Tribal Rights.

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or

critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (*e.g.,* an ESA Section 10 Permit, a Biological Opinion with

"incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at *http://www.fws.gov/* or *http://www.fws.gov/ipac/* and *http://www.nmfs.noaa.gov/pr/species/esa/* respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify

the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity

proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.,* on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement,

maintenance, and legal protection (*e.g.,* conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.,* riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory

mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (*e.g.,* resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with

established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete

crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (*e.g.*, a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide

documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (*e.g.,* via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms

and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that

will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.,* partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.,* watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's

submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

US Army Corps of Engineers
Omaha District

Regional Conditions
Omaha District
State of North Dakota

The following Nationwide permit (NWP) regional conditions will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPS FOR LIMITED REVOCATION OF NWPS

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. **Wetlands Classified as Peatlands:**
   For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12-inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

   a. Reserved
   b. All NWPs listed above are revoked for use in peatlands.

2. **Waters Adjacent to Natural Springs:**
   PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source. Springs do not include drain tile outlets.

3. **Bank Stabilization Activities:**
   PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. **Specific Waterways:**
   PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.

B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP.

5. Reserved

C. BEST MANAGEMENT PRACTICES

Best Management Practices

In addition to Regional Conditions 1 through 5, additional required best management practices apply to NWPs within the Omaha District. These follow and are available at: https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/

US Army Corps of Engineers
Omaha District

2021 Nationwide Permits
Regional Conditions
Omaha District
Required Best Management Practices

The following Nationwide Permit (NWP) regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. REQUIRED BEST MANAGEMENT PRACTICE APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING

1. **Suitable Material**
   Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:
   http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx

B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

2. **Minimum Culvert Width:**
   For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stabile stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).

3. **Culvert Countersink Depth:**
   For all NWPs in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where lowing of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or the result in lowering the elevation of the stream reach.

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	<100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	0.5 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter >8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.

b. The slope of the culvert should be parallel to the slope of the stream flow line.

c. The culvert invert depression depth shall be measured at the culvert for culverts installed at a slope less than the slope of the stream flow line.

4. **Spawning Areas:**
Spawning areas and seasons can be accessed on the North Dakota Game and Fish Department's website at: http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf

5. **Intake Structures:**
a. Intake screens with a maximum mesh opening of ¼-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-fot per second.

b. Pumping plant sound levels will not exceed 75 dB at 50 feet.

c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:

i. The intakes shall be floating.

ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.

iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼-foot per second.

d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below Garrison Dam are subject to the following conditions:

i. The intakes shall be submerged.

ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.

iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.

iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.

e. Intakes and associated Utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.

f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable.

6. **Boat Docks:**
To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

b. Any boat dock shall be anchored to the top of the high bank.

c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.

d. Section 10 Waters located in the State of North Dakota area:
i. Bois de Sioux River

ii. James River Missouri River

iii. Red River of the North

iv. Upper Des Lacs Lake

v. Yellowstone River

US Army Corps of Engineers
Omaha District

2021 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 12 – Oil or Natural Gas Pipeline Activities**
  -EPA denied for all activities.
  -NDDEQ denied for activities affecting Class I, IA, II and III rivers and streams, and classified lakes listed in Appendixes I and II of the State Water Quality Standards and certified for activities affecting all other waters in the State.

- **NWP 21 – Surface Coal Mining Activities**
  -EPA denied for all activities.
  -NDDEQ certified for all activities.

- **NWP 29 – Residential Developments**
  -EPA denied for all activities.
  -NDDEQ certified with the condition that the project will not result in a stream bank loss exceeding 300 linear feet in Class I, IA, II and III rivers and streams. Projects that cannot meet the condition will require an individual certification.

- **NWP 39 – Commercial and Institutional Developments**
  -EPA denied WQC for all activities.
  -NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.

- **NWP 40 – Agricultural Activities**
  -EPA denied WQC for all activities.
  -NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.

- **NWP 42 – Recreational Facilities**
  -EPA denied WQC for all activities.

-NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.

- **NWP 43 – Stormwater Management Facilities**
  -EPA denied WQC for all activities.
  -NDDEQ certified for all activities.

- **NWP 44 – Mining Activities**
  -EPA denied WQC for all activities.
  -NDDEQ certified for all activities.

- **NWP 48 – Commercial Shellfish Mariculture Activities**
  -EPA waived WQC for all activities.
  -NDDEQ certified for all activities.

- **NWP 50 – Underground Coal Mining Activities**
  -EPA denied WQC for all activities.
  -NDDEQ certified for all activities.

- **NWP 51 – Land-Based Renewable Energy Generation Facilities**
  -EPA denied for all activities.
  -NDDEQ certified for all activities.

- **NWP 52 – Water-Based Renewable Energy Generation Pilot Projects**
  -EPA denied WQC for all activities.
  -NDDEQ certified with the condition that a copy of the PCN is provided to NDDEQ for projects in, over or under Class I, IA, II and III rivers and streams, and classified lakes for compliance purposes.

- **NWP 55 – Seaweed Mariculture Activities**
  -EPA denied WQC for all activities.
  -NDDEQ N/A

- **NWP 56 – Finfish Mariculture Activities**
  -EPA denied WQC for all activities.
  -NDDEQ N/A

- **NWP 57 – Electric Utility Line and Telecommunications Activities**
  -EPA denied for all activities.
  -NDDEQ certified for all activities.

- **NWP 58 – Utility Line Activities for Water and Other Substances**
  -EPA denied WQC for all activities.
  -NDDEQ certified with the condition that the lines do not carry oil and gas production water, produced water, or brine water. Pipelines that carry oil or gas production water,

produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and III rivers and streams, and classified lakes require individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, or after construction.

COMPLIANCE CERTIFICATION

Permit File Name: Minnkota Power Cooperative, Inc. Replacement of a H-frame structure (#467) within the line 012 345 kV transmission corridor. N½ of Section 2, Township 141 North, Range 71 West, Kidder County, North Dakota.

Action ID: NWO-2023-896-BIS.

Nationwide Permit Number: #57

Permittee: Minnkota Power Cooperative, Inc.
Attn: Samantha Roberts
5301 32nd Avenue South
Grand Forks, North Dakota 58201

County: Kidder.

Date of Verification: July 27, 2023

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Omaha District
North Dakota Regulatory Office
3319 University Drive
Bismarck, North Dakota 58504
CENWO-OD-RND@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

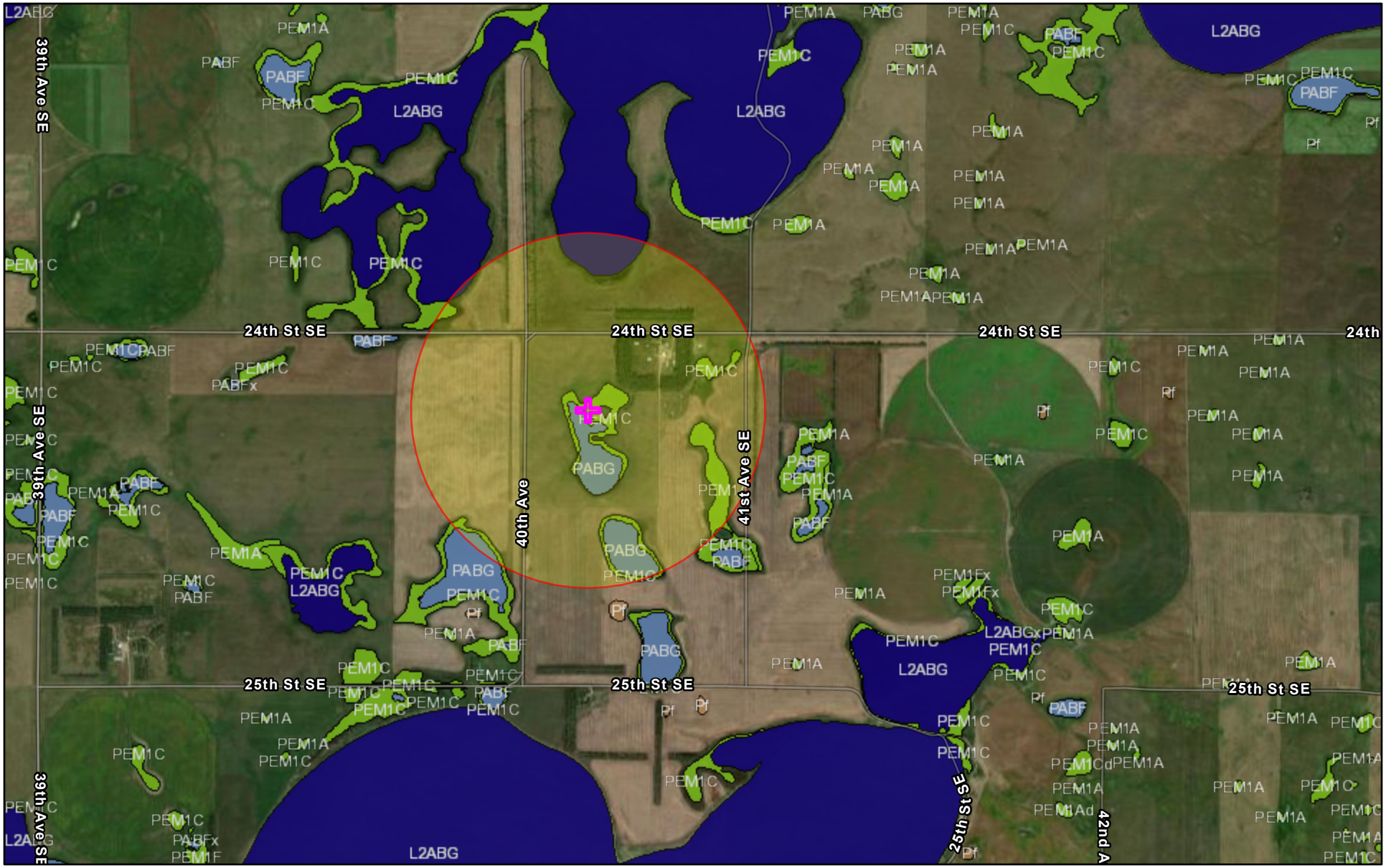
* * * * * * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

_____ _____

APPENDIX D. WETLANDS

STR 467- Wetland



August 2, 2023

STR 467

Project Buffer

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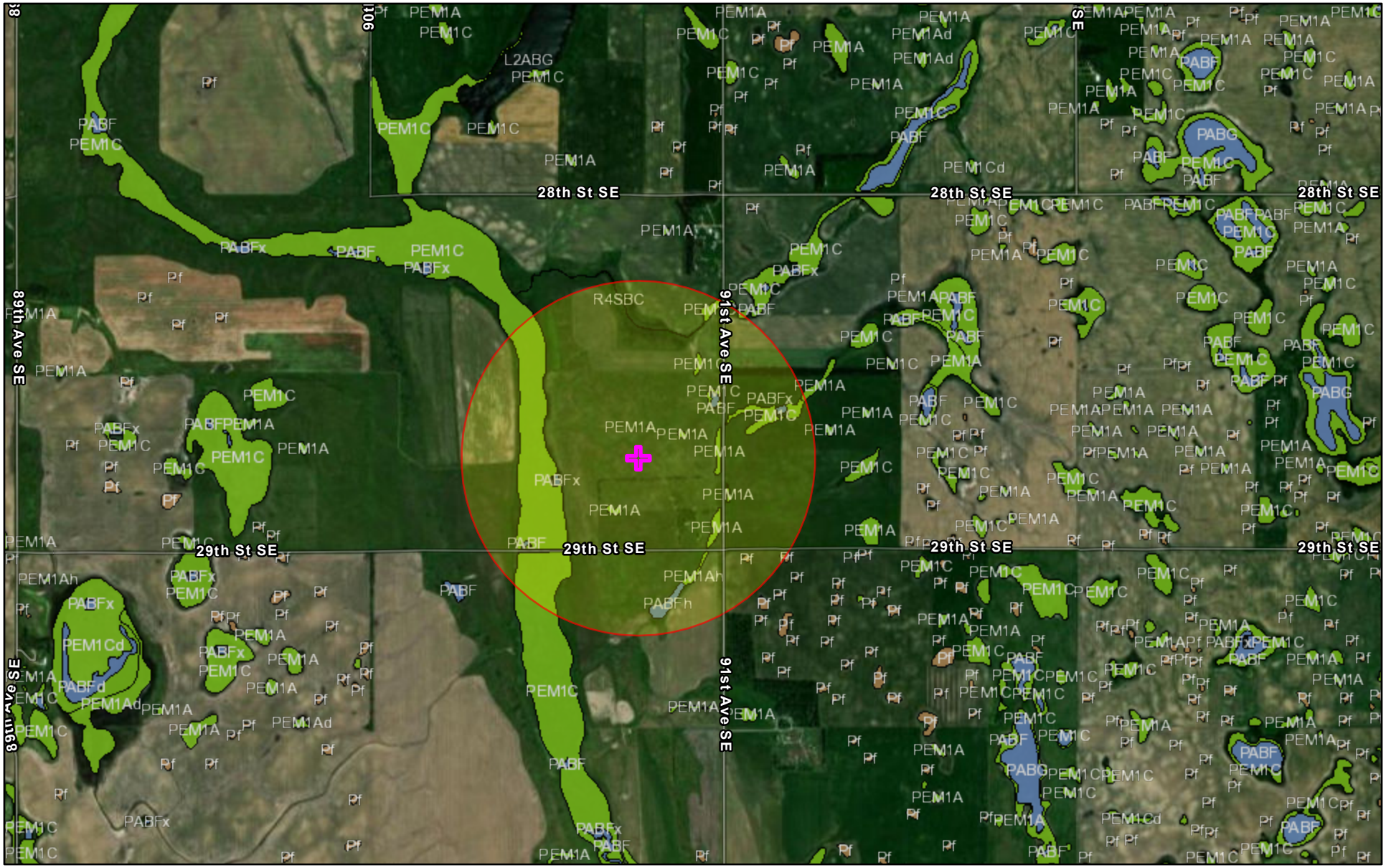
U.S. Fish and Wildlife Service, National Standards and Support Team, wetlands_team@fws.gov, State of North Dakota, Esri, HERE, Garmin,

STR 780 and 781- Wetland



August 2, 2023

Search Result (point)

Project Buffer

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APPENDIX E. IMPORTANT FARMLAND

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

5301 32nd Ave. South
Grand Forks, ND 58201
Phone 701.795.4000
www.minnkota.com

June 7, 2023

Wade D. Bott, State Soil Scientist
USDA-NRCS
PO Box 1458
Bismarck, ND

RE: Minnkota Power Cooperative
Line 012-345 kV Structure Replacement Project
Located in Stutsman and Kidder County, North Dakota

Dear Wade Bott,

We are contacting in regards to our project located in Stutsman and Kidder County, ND. Due to significant structure footing damage incurred from years of frost heave and weathering damage, Minnkota Power Cooperative (MPC) has determined (through our inspection program) that three of the High Voltage Transmission Line (HVTL) structures need replacement. The structure numbers to be replaced are #467 located in Kidder County; and #780, #781 located in Stutsman County. The existing (original) aluminum H-frame lattice type structures were built on concrete footings. Because the footings have heaved, the structure is now out of alignment and the misalignment has caused undue stress to the structure's lattice members which could compromise the line during a storm event. Based on MPC's experience and design considerations, it has been determined that the best way of addressing the footing and structural integrity problem is to completely replace the structures. This 345 kV line is a critical part of the MPC transmission system as well as the regional grid and as such, its integrity needs to be improved.

The new steel pole H-frame structures will be installed approximately 10' (in line and within the existing right of way) from the existing structure locations. The structure footings will remain in place and new footings will be placed at the new locations. Structure #467, located on private property is within the Kidder County Waterfowl Production Area. This area is classified as a wetland on the NWI mapper. Structures #780 and #781 are located on private agricultural land. Table 1 represents the location of each of the structures.

Table 1. Location

Name	County	Latitude	Longitude	Township	Range	Section	Wetland
467	Kidder	47.064371	-99.638859	141	71	2	Yes
780	Stutsman	46.997795	-98.578274	141	62	30	No
781	Stutsman	46.997795	-98.574583	141	62	30	No

We are soliciting your views and comments on the proposed project. Please provide any comments or concerns to our office within 30 days of receipt of this letter. Thank you for your consideration of this request. If you require additional information regarding the Project, please contact me via email at sroberts@minnkota.com or phone at (701) 795-4289.

Sincerely,

Samantha Roberts

Samantha Roberts
Environmental Specialist II

USDA
United States Department of Agriculture

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

June 12, 2023

Samantha Roberts
Minnkota Power Cooperative, Inc.
5301 32nd Ave South
Grand Forks, ND 58201

Dear Ms. Roberts:

The Natural Resources Conservation Service (NRCS) has reviewed your letter dated June 7, 2023, concerning Line 012-345 kV Structure Replacement Project in Stutsman and Kidder Counties, North Dakota

NRCS has a major responsibility with the Farmland Protection Policy Act (FPPA) in documenting conversion of farmland (i.e., Prime, Statewide Importance and/or Local Importance) to non-agricultural use when federal funding is used. Farming in this project area will not be significantly impacted due to minimal acreage; therefore, FPPA does not apply.

If you have additional questions pertaining to FPPA, please contact Wade Bott, State Soil Scientist, NRCS, Bismarck, North Dakota, at (701) 530-2021.

Sincerely,

WADE BOTT

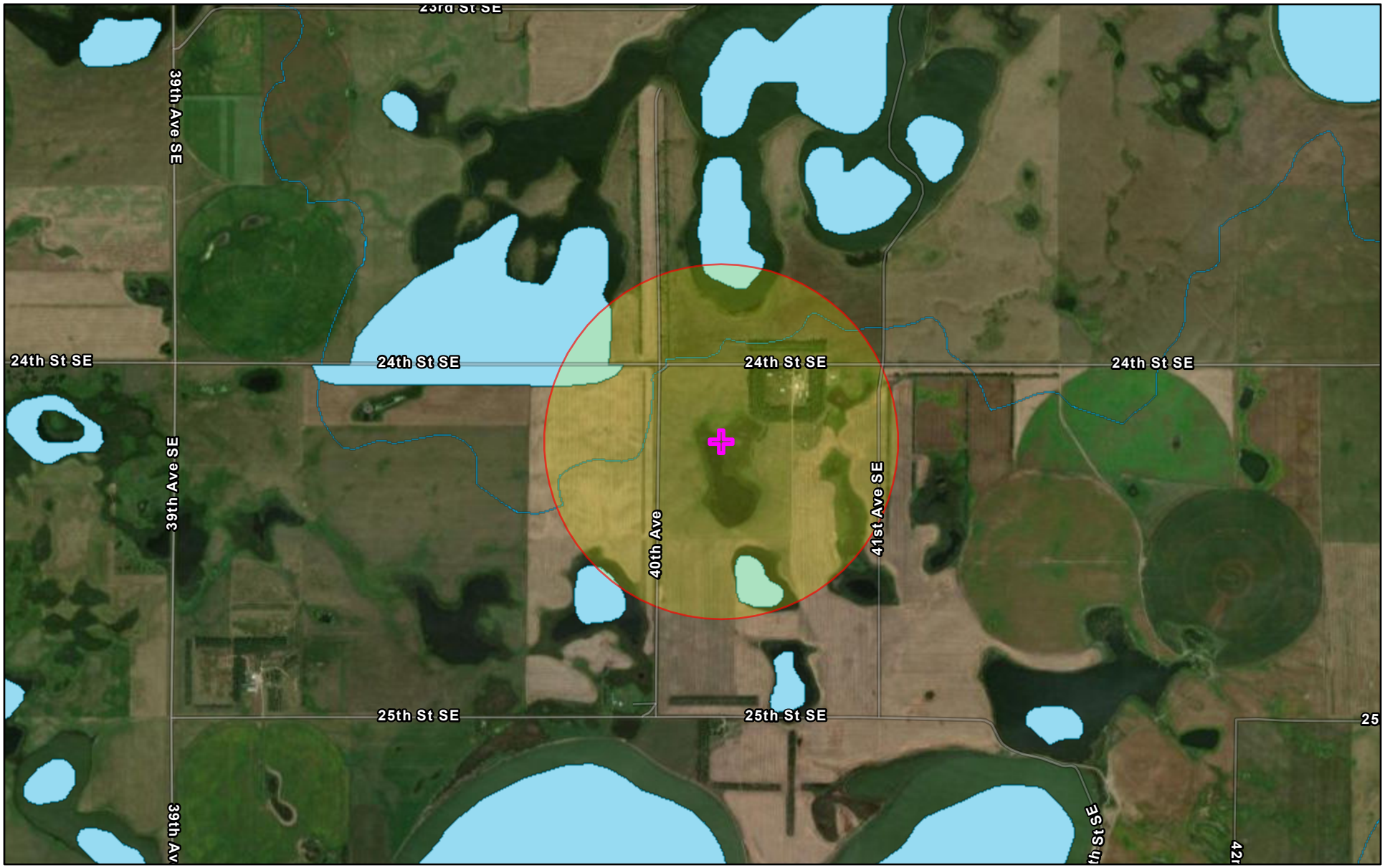
Digitally signed by WADE BOTT
Date: 2023.06.12 12:38:03 -05'00'

WADE D. BOTT
State Soil Scientist

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

APPENDIX F. WATER RESOURCES

STR 467- Water



August 2, 2023

- STR 467
- Project Buffer
- Impaired Water Points
- Impaired Streams
- Impaired Waterbodies
- Catchments (ATTAINS)
- Streams
- Water Bodies
- Sole Source Aquifers
- Watersheds (HUC12)
- Wild and Scenic Rivers

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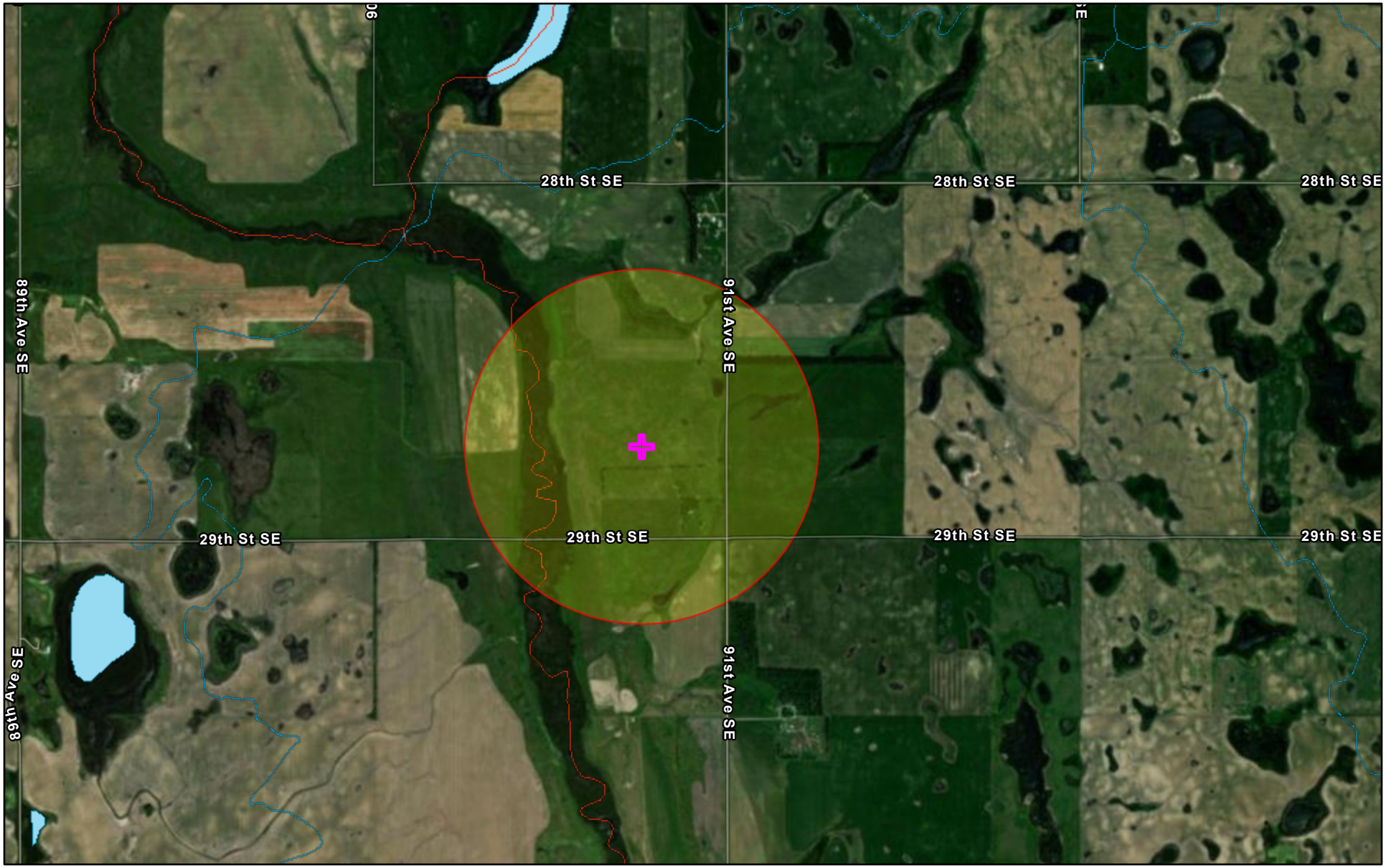
0 0.33 0.65 1.3 km

State of North Dakota, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, Maxar

STR 780 and 781- Water



August 2, 2023

- Search Result (point)
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- Impaired Water Points
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- Sole Source Aquifers
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