

**KUEBER
WETLAND
MITIGATION BANK – SITE PLAN
NELSON COUNTY**

**Project Number: SS-6-999(031)
PCN: 20697**

Sponsor Information:

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

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

**DIRECTOR
Grant Levi, P.E.**

**PROJECT DEVELOPMENT DIRECTOR
Robert A Fode, P.E.**

Principal Author: David Dewald

March 2015

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I. OBJECTIVE

This Bank Site Plan is addended to the North Dakota Umbrella Mitigation Banking Instrument (UMBI) dated June 24, 2013. This Bank Site Plan describes the establishment, use, operation, and maintenance of the Kueber Wetland Mitigation Bank (hereinafter, the "Kueber Bank") by the North Dakota Department of Transportation (hereinafter, "Sponsor").

The objective is to restore four drained prairie pothole, depressional wetlands by the installation of four ditch blocks, removing accumulated sediment, establishing wetland buffers and adjacent uplands to native vegetation. In addition, one existing wetland, along with the four restored wetlands, will be protected under a perpetual agreement.

The purpose of the Kueber Bank is to provide compensatory wetland mitigation credits within the Red River Basin Regional Service Area (RSA). **Please refer to Exhibit 2, Regional Service Areas.** The Kueber Bank will provide compensatory wetland mitigation credits designed to offset authorized unavoidable impacts incurred by the Sponsor during road and bridge construction and maintenance under Section 401 and 404 of the Clean Water Act, provided such activities have met all applicable requirements and are authorized by the appropriate authority. In addition, the Kueber Bank will be used for compensatory mitigation for impacts to wetlands protected under Executive Order 11990. This Kueber Bank is not intended for use by other parties; nor is it being developed for an in-lieu fee program.

II. SITE SELECTION

This Kueber Bank was selected because wetland hydrology was impaired by sedimentation or removed with surface drainage. Landowner interest to restore the wetland basins led to the potential development of the site, restoring a temporary and seasonal wetland complex. Drained prairie pothole wetlands are relatively easy to restore by installing ditch blocks and removing accumulated sediment allowing wetland hydrology to quickly return after snow melt or rainfall events. In addition, restoring the wetlands will complement the complex of various wetland hydrological types located within the surrounding area, included flood attenuation since these drained wetlands drain into tributaries of the Red River.

The Kueber Bank site is 13 miles north northeast of Aneta, ND located in the NE1/4NE1/4 section 15, T150N, R57W. **Please refer to Exhibit 1, Wetland Bank Vicinity Map.**

1. Contact Person/Landowner:

Greg Kueber
12372 28th St. NE
Aneta, ND 58212
(701) 215-2076

2. Contact Person/Sponsor of Compensatory Mitigation Plan:

Cassandra Torstenson
Environmental Services 2 Section Leader
North Dakota Department of Transportation
608 E. Boulevard Avenue
Bismarck, ND 58505-0700
(701) 328-2188

The Site can be accessed by traveling 9 miles north of Aneta on Hwy 32 to 28th St. NE and east 3 miles. The site is located on the south side of 28th St.

III. Site Protection

The Sponsor will enter into a Wetlands Mitigation Agreement with the landowner. **Please refer to Exhibit 5, Wetland Mitigation Agreement.** In addition, the landowner will be required to sign an easement which the Sponsor will file with the Nelson County Recorder. **Please refer to Exhibit 6, Wetland Mitigation Easement.** The easement and the wetland mitigation agreement will protect the wetland restorations for 99 years. See the UMBI for additional Sponsor requirements.

IV. Baseline Information

A. Site Information

Wetland Delineation - National Wetlands Inventory (NWI) maps administered by the U.S. Fish and Wildlife Service (USFWS) did not delineate wetland 1 and 3. NWI delineated wetland 3, 4 and 5 but not with a drained modifier. **Please refer to Exhibit 4, NIW Map.** Review of off-site photography indicates surface drainage was visible in 1985 associated with wetland 4 and 5.

1. Wetland Hydrology – The sponsor completed a scope and effect determination to determine the extent hydrology was impacted by surface drainage and sedimentation. Scope and effect refers to documentation of the wetland hydrologic conditions and manipulation that have previously occurred.

Wetland 1: Not drained, 12 inches of sediment over entire wetland basin.

Wetland 2: Not drained

Wetland 3 – Drained to township road ditch and then into wetland 4. Bottom elevation of wetland 3 is 2.1 ft. higher than the pipe outlet in wetland 4. Wetland 3 surface outlet has 0.4 inches of sediment causing the wetland to currently pond 0.4 ft. Maintenance of the surface ditch will remove all surface water from the wetland.

Wetland 4 – Drained with surface ditch to an 8 inch PVC pipe at the southeast corner of wetland basin. Size of pipe and distance to outlet limits the effect of drainage. Pipe outlets approximately 1620 ft. downstream and has a drop 1.1 ft. or a 0.07% slope.

Wetland 5 – Drained with a surface ditch to wetland 4. Bottom elevation of wetland 5 is 1.2 ft. higher than the pipe outlet in wetland 4. Wetland 5 surface outlet has 0.7 inches of sediment causing the wetland to currently pond 0.5 ft. Maintenance of the surface ditch will remove all surface water from the wetland to a depth of 0.2 ft. below the wetland bottom elevation.

2. Soils – Soils Series and Description

Wetland 1 and 2 are inclusions in soil map unit G167B, Balaton-Wyard. This map unit does have hydric soil inclusions of Tonka, Vallery and Parnell. Wetlands 3 and 5 are inclusions within soil map unit G100A, Hamerly-Tonka. Hydric soils Tonka, Vallery and Parnell are hydric soils in this map unit. Wetland 5 is mapped as map unit G12A, Vallery, saline-Parnell complex. The entire map unit is considered hydric. On-site soils investigation indicates the soils in all five wetlands meet hydric soil indicators. All soil map units are underlain by loam, silt loam, and clay loam soils to 60 inches. **Please refer to Exhibit 7, Soil Survey.**

3. Vegetation

Wetland 1: Species composition: Dominated by *Phalaris arundinacea* (reed canary grass) at approximately 30% cover and *Typha* sp. at 60% cover with minor amounts of *Hordeum jubatum* and *Panicum amphibium*. Existing vegetation will be removed with sediment.

Wetland 2: Species composition: Dominated by *Elymus repens* (quack grass) at approximately 20% cover, *Typha* sp. at 40% cover, *Carex pellita* at 20% cover, and *Poa palustris* at 20% cover.

Wetland 3 – Species composition: Dominated by *Phalaris arundinacea* at approximately 50% cover and *Poa palustris* at 40% cover with minor amounts of *Hordeum jubatum*, *Panicum amphibium*, *Rumex crispus*, *Melilotus officinalis*, and *Elymus repens*.

Wetland 4 – Species composition: Dominated by *Poa pratensis* at 40% and *Bromus inermis* at 50% cover with minor amounts of *Sonchus arvensis* at the historic wetland boundary.

Wetland 5 – Species composition: *Cyperus* sp. at 20%, *Beckmannia syzigachne* at 10%, *Phalaris arundinacea* at 10% and *Rumex crispus* at 10% with 50% bare ground due to annual tillage.

B. Cultural Resources

The Sponsor has completed Class III Cultural Resource Survey. No historic properties were found. **Please refer to Appendix B.**

C. Threatened and Endangered Species

Endangered Species Act (ESA): According to the United States Fish and Wildlife (USFWS) website the whooping crane (E), gray wolf (E) and northern long-eared bat (P) is found in Nelson County.

Whooping Crane (E) – Whooping cranes inhabit shallow wetlands that are characterized by cattails, bulrushes, and sedges (USFWS 2015). They can also be found in upland areas, especially during migration. Although whooping cranes can

be found in Nelson County, this site is not located within the 95% migration route of the whooping crane. **Please see Exhibit 9 - Whooping Crane Migration Map.** Currently the site does not provide whooping crane habitat. However, restoring wetland basins in Nelson County may provide possible roosting, feeding or wading habitat for migratory whooping cranes. The surrounding wetland buffer will provide added protection to the wetland since the surrounding adjacent upland will be managed as grassland with vegetation management by haying or grazing. If the site is hayed, it will occur between spring and fall migration. This project is likely to have a no effect on the whooping crane.

Gray Wolf (E) - The gray wolf was historically present in Nelson County. The gray wolf has been restricted to habitats with low densities of roads and people. Rural areas throughout the state of North Dakota function as dispersal corridors for wolves representing the Western Great Lakes (east of the Missouri River and US Highway 83) distinct population segment (DPS) and the Wyoming portion of the Northern Rocky Mountain DPS. Dispersal habitat may be important for maintaining gene flow between DPSs, but is not thought to be a limiting factor for the recovery of the species (USFWS, 2009). Most suitable habitat in North Dakota is in the forested areas in the north central and northeast parts of the state (USFWS 2015). This site is not located adjacent to any forested areas. Since the presence of wolves, in most of North Dakota, will likely remain sporadic and consist of occasional dispersing animals from Minnesota and Manitoba, this project is not expected to hinder the potential for gray wolves to disperse through the project area.

Northern long-eared bat (P) - Distinguished from other Myotis species by its long ears, the northern long-eared bat (NLEB) has been documented in most of the eastern and northcentral United States including North Dakota (USFWS 2015b and 2014). NLEBs typically occupy their summer habitat from mid-May through mid-August (April 1-September 30 in North Dakota) each year, and the species may arrive or leave some time before or after this period. NLEBs prefer to roost in tall trees with a dynamic forest structure including old growth and some young trees (Foster and Kurta 1999), and commonly forage within the forest and below the canopy mainly in upland forests on hillsides and ridges (Owen et al. 2003). NLEBs spend winter hibernating in caves and mines, called hibernacula. They typically use large caves or mines with large passages and entrances; constant temperatures; and high humidity with no air currents. Specific areas where they hibernate have very high humidity. This bat seems opportunistic in selecting roosts, using tree species based on suitability to retain bark or provide cavities or crevices. It has also been rarely found, roosting in structures like barns and sheds. NLEBs emerge at dusk to fly through the understory of forested hillsides and ridges feeding on moths, flies, leafhoppers, caddisflies, and beetles, which they catch while in flight using echolocation. This bat also feeds by gleaning motionless insects from vegetation and water surfaces (USFWS 2013).

No suitable hibernating habitat (caves or mines) is located in the project area. Wetland restoration will not impact any woody habitat in the vicinity of the project area. This project will have no effect on the NLEB. **Please see Exhibit 8 for more in information relative to threatened and endangered species.**

D. Permits

Correspondence from the North Dakota State Water Commission (NDSWC) has specified that permitting will not be required, as the restoration will only re-establish the wetland to its prior state and not create additional acreage. A jurisdictional determination has been requested from the Bismarck Office of the Omaha District of the Corps of Engineers (Corps) to determine permitting needs.

V. Determination of Credits

Based on credit calculation using the ratios obtained from *UMBI*, the total compensatory credit for restoring this site is approximately 13.45 credits for the Bank, with 11.65 eligible for UASCE credit. **Please refer to Table 1, Wetland Credit Ratios and Credit Calculation.**

Table 1: Wetland Credit Ratios and Credit Calculation

Type of Mitigation	Acre - Credit Ratio	Acres	Bank Mitigation Credit	USACE Mitigation Credit
Preserved Wetlands	10:1			
Wetland 2	10:1	0.4	0.04	0.04
Sediment Removal	2:1			
Wetland 1	2:1	0.07	0.035	0.035
Restored Wetlands				
Wetland 3	1:1	0.68	0.68	*0.07
Wetland 4	2:1	16.64	**8.32	**8.32
Wetland 5	1:1	1.32	1.32	*0.13
Wetland Buffer 50 ft.	5:1	11.78	2.36	2.36
Upland	20:1	13.90	0.70	0.70
TOTALS		44.19	13.45	11.65

*USACE preservation credit only – currently functions as wetland due to lack of drain maintenance

**Inefficient drain; North Dakota Interagency Review Team (NDIRT) recommends 2:1 ratio for wetland restoration

The Sponsor will establish and maintain a Banking Ledger which documents credits and debits to the Bank account. The Sponsor will generate an annual ledger report to be submitted to the Corps and to all members of NDIRT. The ledger will be available for inspection upon written request by any participating agency. **Please refer to Table 2, Wetland Credit Release Schedule.**

Table 2: Wetland Credit Release Schedule

Type of Mitigation	Acres	Mitigation Credit	Credit Release Dates
Preserved Wetland	0.4	0.04	Nov. 31, 2015
Sediment Removal	0.07	0.035	Nov. 31, 2016
Restored Wetlands	17.89	8.52	Nov. 31, 2016
Wetland Buffer	12.50	2.36	Nov. 31, 2017
Upland	13.33	0.70	Nov. 31, 2017
Total	44.79	11.65	

The wetland restoration ditch blocks, sediment removal, and pipe riser will be scheduled for completion by the contractor prior to November 15, 2015. After the ditch blocks and sediment removal is completed, the sponsor expects a fully functional wetlands after the first snowmelt runoff in the spring of 2016

Prior to release of any credits at the Site, a site visit will be conducted to determine if all three wetland criteria are being met and the buffer and adjacent upland are meeting plant success criteria. In addition, the site visit will determine if the area is managed according to the grazing plan.

VI. Mitigation Work Plan

Development of the Site includes installing wetland ditch blocks, one pipe riser, and seeding of the buffers and uplands

Wetland 1: 12 inches of sediment over entire wetland basin and seeded to wetland vegetation as outlined in Table 3.

Wetland 2: Wetland will be maintained

Wetland 3 – The drain ditch from wetland east to the township road will be plugged for the entire length. Elevation of ditch block will be 0.5 ft. higher than hydric soils boundary to fully restore the wetland's hydrology. Existing hydrophytic vegetation will be allowed to revegetate the restored wetland. The ditch block will be seeded to native vegetation as outlined in Table 4.

Wetland 4 – Wetland hydrology will be restored by installing a pipe riser on the existing 8 inch PVC drain. Top of riser elevation will be 0.5 ft. higher than hydric soils boundary to fully restore the wetland's hydrology. An additional ditch block will be installed to fully restore the hydrology to the southwest lobe of the wetland. Elevation of the ditch block will be at the same elevation of the hydric soil boundary of the wetland. Existing hydrophytic vegetation will be allowed to revegetate the restored wetland.

Wetland 5 – The drain ditch from wetland north edge of the wetland to wetland 5 will be plugged for the entire length. Elevation of ditch block will be 0.5 ft. higher than hydric soils boundary to fully restore the wetland's hydrology. The wetland will be seeded wetland vegetation as outlined in Table 3. The ditch block will be seeded to native vegetation as outlined in Table 4.

Wetland Buffer – Buffer areas not currently vegetated or disturbed by construction activities will be seeded to the buffer and upland mix outlined in Table 4.

Adjacent Upland – Upland areas, outside the 50 ft. buffer area, not currently vegetated or disturbed by construction activities will be seeded to the buffer and upland mix outlined in Table 4

Table 3 – Wetland Seed Mix

Grass			Full Seeding Rate PLS/Acre	% of full seeding rate	PLS lbs./Ac
Common Name	Scientific Name	Variety			
Prairie Cord Grass	<i>Spartina pectinata</i>	Red River	7.0	15	1.1
American Slough Grass	<i>Beckmannia syzigachne</i>	Common	0.9	20	0.2
Virginia Wild-rye	<i>Elymus virginicus</i>	Omaha	10.0	20	2.0
Fowl Blue Grass	<i>Poa palustris</i>	Common	1.0	20	0.2
Fox Sedge	<i>Carex vulpinoidea</i>	Common	1.0	15	0.2
American Manna Grass**	<i>Glyceria grandis</i>	Common	1.5	10	0.2
Fowl Manna Grass**	<i>Glyceria striata</i>	Common	1.0	10	0.1
Bluejoint Grass***	<i>Calamagrostis canadensis</i>	Common	1.0	10	0.1
			Total	120	3.9
**American, fowl or both may be used. If only one is used the seeding rate of other species does not need to be increased.					
***seed may not be available and can be removed without increasing the seeding rate of other species					

Table 4 – Upland and Buffer Seeding Mix

Species	Variety	Full Seeding Rate - PLS/ac.	% in Mixture	PLS Lbs./ac
Blue Grama	Bad River	2.5	10	0.25
Green Needlegrass	Lordom, Fowler, AC Mallard	7.5	30	2.25
Sideoats Grama	Killdeer	7.5	10	0.75
Western Wheatgrass	Rodan, Rosana	10	20	2.00
Big Bluestem	Bison	7.5	20	1.50
Little Bluestem	Itasca, Badlands	4.5	10	0.45
Slender Wheatgrass	Dacotah	5.5	10	0.55
Switchgrass		4.5	10	0.45
Canada Wildrye		7.5	5	0.38
Total grasses			125	8.58
Forbs				
Purple prairie clover		3.8	5	0.19
Canada milkvetch		4	5	0.20
Canada Goldenrod		0.2	5	0.01
Total forbs			15	0.40

VII. Maintenance Plan

The wetland ditch blocks will be inspected for erosion, leakage, rodent damage, woody plant invasion, etc. on an annual basis for the first five years and every 5 years thereafter by Sponsor staff. Any repairs needed that are beyond the landowners control will be the responsibility of the Sponsor as per the Wetland Mitigation Bank Agreement and the UMBI. If landowner determines that the two rows of decadent trees and shrubs are no longer functional, they may be removed at no cost to the Sponsor.

VIII. Performance Standards

Wetland - All three wetland criteria are met at the delineated wetland boundary. Noxious weeds will be controlled.

Buffer – Buffer – 100% of the buffer is intact with no gaps. The vegetative cover will exceed 90% canopy cover. The buffer may be hayed after July 15 or grazed with a planned grazing system. Noxious weeds will be controlled.

Adjacent upland – Adjacent upland – The vegetative cover will exceed 70% canopy cover - Hayed after July 15 or grazed with a planned grazing system. Noxious weeds will be controlled.

IX. Monitoring Requirements

The Site will be monitored in accordance with terms and conditions outlined in the UMBI following the completion of construction and planting. The wetland ditch block will be inspected for erosion, leakage, rodent damage, woody plant invasion, etc. on an annual basis for the first five years and every 5 years after that. The buffer will be monitored to determine amount of living plants (estimated canopy cover by species), impacts of management (positive and negative) and continuity. The adjacent upland will be monitored to determine amount of living plants (estimated canopy cover by species) and impacts of management (positive and negative). NDDOT monitoring reports will be submitted to the Corps and NDIRT according to a schedule set forth in the UMBI and will be used to evaluate Site performance relative to the performance criteria established for the Site.

X. Long-Term Management Plan

The sponsor is responsible for working with the landowner to manage the site for the duration of the NDDOT easement. As outlined in the Wetland Mitigation Agreement, the Sponsor is responsible for a site repairs beyond the control of the landowner. **Please see Exhibit 5.** The entire site will be protected with a 99 year (maximum length by ND Century Code 47-05-02.1) easement. **Please see Exhibit 6.**

XI. Adaptive Management Plan

Remedial action may be necessary during the operational life of the Site to meet performance criteria. Any repairs needed that are beyond the landowners control will be the responsibility of the Sponsor as per the Wetland Mitigation Agreement. If the Sponsor does not follow the approved UMBI and as a result the performance criteria are not met, the Sponsor will implement corrective measures to achieve performance criteria. This may include the Bank Sponsor soliciting recommendations from the Corps and NDIRT

concerning remedial actions necessary to achieve successful performance criteria during the operational life of the Site.

XII. Financial Assurances

The Sponsor has submitted a financial assurances letter that was attached to the UMBI dated May 9, 2013. In addition, the Sponsor will enter into a Wetland Mitigation Agreement with the landowners and the Sponsor will acquire a 99 year easement on the property. ***Please refer to Exhibit 5 Wetland Mitigation Agreement and to Exhibit 6, Wetland Mitigation Easement.*** The Sponsor will file the easement with the Towner County Recorder.

XIII. Other Information (reserved for Corps)

Literature Cited:

Foster, R.W., A. Kurta. 1999. Roosting ecology of the northern bat (*Myotis septentrionalis*) and comparisons with the endangered Indiana bat (*Myotis sodalis*). *Journal of Mammology* 80: 659-672.

Owen, S.F., M. Menzel, W.M. Ford, B.R. Chapman, K.V. Miller, J.W. Edwards, P.B. Wood. 2003. Home range size and habitat used by the northern *Myotis* (*Myotis septentrionalis*). *American Midland Naturalist* 150:352-359.

U.S. Fish and Wildlife Service. 2009. Federal Register, Final Rule to Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife. Retrieved from <http://www.fws.gov/policy/library/2009/E9-5991.html>

U.S. Fish and Wildlife Service. 2013. Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Endangered or Threatened Species; Listing the Northern Long-Eared Bat as an Endangered Species; Proposed Rule. *Federal Register* 78:191 (02 October 2013) pp. 61046-61080.

U.S. Fish and Wildlife Service. 2014. Northern Long-Eared Bat Interim Conference and Planning Guidance. USFWS Regions 2, 3, 4, 5 and 6.

U.S. Fish and Wildlife Service. 2015. County Occurrence of Endangered, Threatened, and Candidate Species and Designated Critical Habitat in North Dakota. USFWS Website: http://www.fws.gov/northdakotafieldoffice/endspecies/endangered_species.htm (accessed March 2015)

U.S. Fish and Wildlife Service. 2015a. Endangered Species Webpages, Mountain-Prairie Region, North Dakota Field Office. Available at: http://www.fws.gov/northdakotafieldoffice/endspecies/endangered_species.htm (accessed March 2015)

U.S. Fish and Wildlife Service. 2015b. USFWS Endangered Species Midwest – Northern Long-eared Bat. USFWS Website:
<http://www.fws.gov/midwest/endangered/mammals/nlba/nlbaFactSheet.html>
[accessed March 2015].

Appendix A – U.S. Army Corps of Engineers Jurisdictional Determination



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640
March 17, 2015

North Dakota Regulatory Office

[NWO-2015-0421-BIS]

Ms. Cassandra Torstenson
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58505-0700

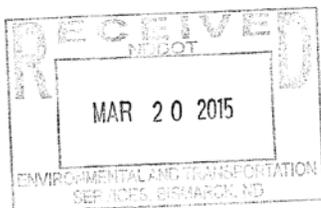
Dear Ms. Torstenson:

This is in reference to your request for a jurisdictional determination (JD) for a planned mitigation bank site [PCN 20697]. The project is located in Section 15, Township 150 North, Range 57 West, in Nelson County, North Dakota.

The enclosed preliminary JD is our written indication that waters in your project area may be jurisdictional WOUS. Such waters will be treated as jurisdictional WOUS for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the enclosed preliminary JD, please sign it and return it to the letterhead address. If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to your commencement of any work in a WOUS. Completion of an approved JD may require a field delineation and coordination with the U.S. Environmental Protection Agency.

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 our 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.

Should you have any questions regarding this determination, please do not hesitate to contact Swade Hammond of this office by letter or telephone (701)-255-0015 ext. 2012 and reference Project Number **NWO-2015-0421-BIS**.



Enclosure

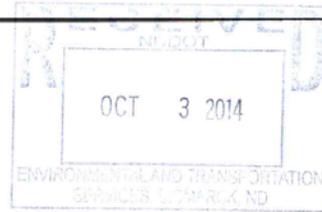
Sincerely,

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota Regulatory Office

Appendix B – North Dakota State Preservation Office Concurrence



STATE
HISTORICAL
SOCIETY
OF NORTH DAKOTA



Jack Dalrymple
Governor of North Dakota

September 29, 2014

North Dakota
State Historical Board

Mr. Bob Christensen
Archaeologist, ETS Division
Dept of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Calvin Grinnell
New Town - President

A. Ruric Todd III
Jamestown - Vice President

Margaret Puetz
Bismarck - Secretary

Albert I. Berger
Grand Forks

Gereld Gerntholz
Valley City

Diane K. Larson
Bismarck

Chester E Nelson, Jr.
Bismarck

Sara Otte Coleman
Director
Tourism Division

Kelly Schmidt
State Treasurer

Alvin A. Jaeger
Secretary of State

Mark Zimmerman
Director
Parks and Recreation Department

Grant Levi
Director
Department of Transportation

Merlan E. Paaverud, Jr.
Director

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ND SHPO Ref.: 14-6215, NDDOT SS-6-999(031) PCN 20697, "Kueber Wetland Mitigation Site, NDDOT PCN 20697: A Class III Cultural Resource Inventory in Nelson County, North Dakota" in portions of [T150N R57W Section 15]

Dear Mr. Christensen,

We reviewed ND SHPO Ref.: 14-6215, NDDOT SS-6-999(031) PCN 20697, "Kueber Wetland Mitigation Site, NDDOT PCN 20697: A Class III Cultural Resource Inventory in Nelson County, North Dakota" in portions of [T150N R57W Section 15] and find the report by RC Christensen acceptable. We concur with the determination of "No Historic Properties Affected" for this project provided that it takes place in the location and in the manner described in the documentation and that all borrow comes from an approved source.

Thank you for the opportunity to review this project. If you have any questions please contact Lisa Steckler, Preservation Planner at (701) 328-3577, e-mail lsteckler@nd.gov

Sincerely,

Merlan E. Paaverud, Jr.
State Historic Preservation Officer
(North Dakota)

Exhibit 1 – Wetland Bank Site Vicinity Map



Exhibit 2 - Regional Service Areas

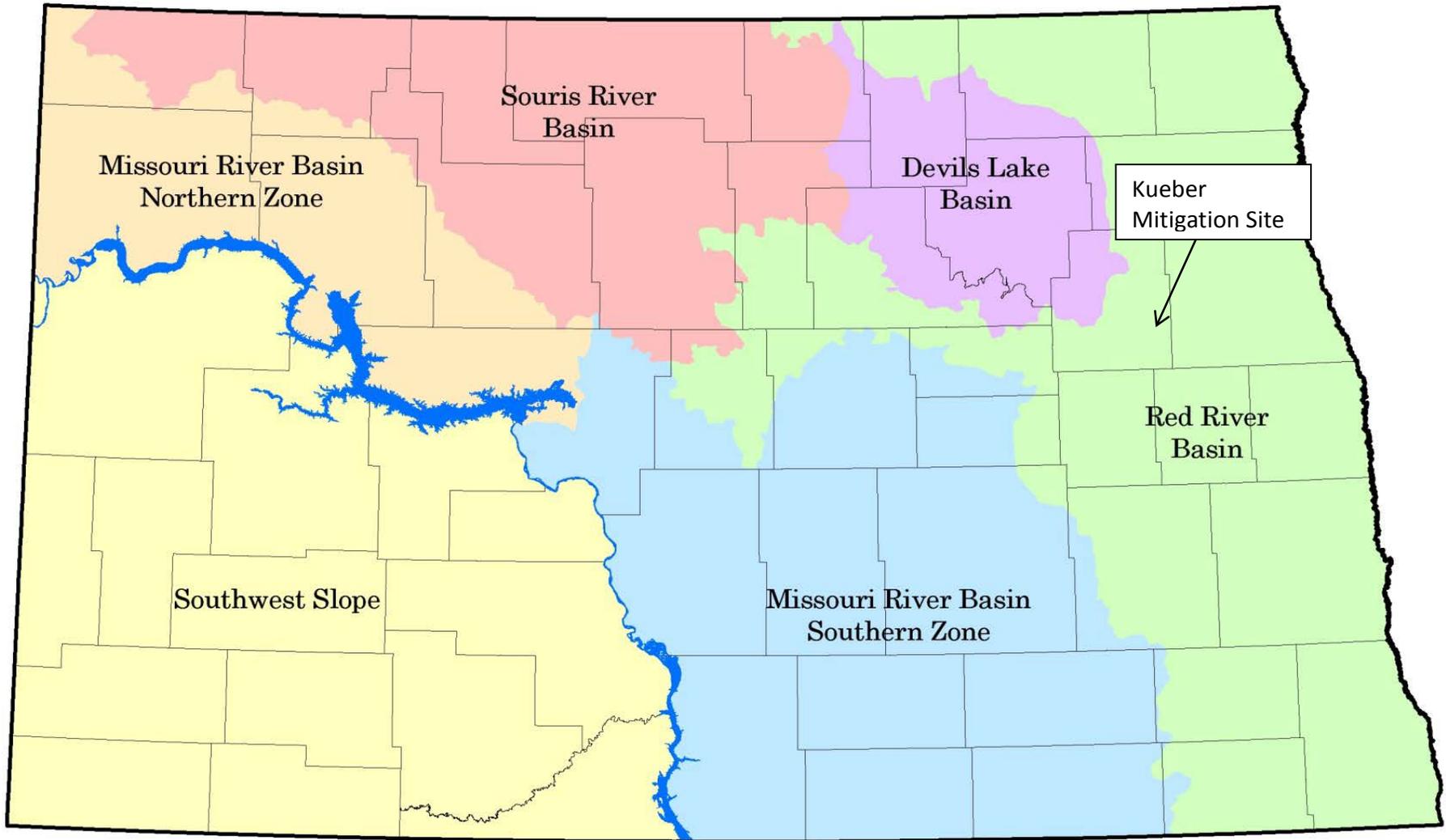


Exhibit 3 – Mitigation Site Development Map



Nelson County,
North Dakota

- Project Boundary
- Environmental - Mitigation Test Holes
- Environmental - Mitigation Wetlands
- Final_Buffer
- Interstate Highway
- State Highway
- US Highway
- Bypass
- Gravel
- Paved
- County Boundaries
- PLSS Sections
- PLSS Townships

Orthophoto Source: NAIIP
Date of Photography: 2012
Data Source: NDGIS Hub & NDDOT

Wetland Map			
Drawn By: KSS	Date: 3/10/15	Project ID: Kueber Site	PCN: Sheet: N/A 1 of 1
 North Dakota Department of Transportation			

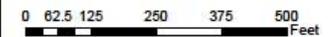


Exhibit 4 – NWI Map



Exhibit 5 – NDDOT Mitigation Agreement

NDDOT Contract No. 19150537
(NDDOT Constructed)

**WETLAND MITIGATION AGREEMENT
BETWEEN
GREGORY J. & JANICE L. KUEBER
AND THE
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**PROJECT NO.: SS-6-999(031)
PCN: 20697**

I. INTRODUCTION

This Wetland Mitigation Agreement (Agreement) is entered into by and between the State of North Dakota, acting by and through its Director of Transportation, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, hereinafter referred to as NDDOT, and Gregory J. and Janice L. Kueber, their successors and assigns, whose address is 12372 28th St NE, Aneta, North Dakota 58212-9237, hereinafter referred to as the Landowner.

II. NDDOT AND LANDOWNERS OBLIGATIONS

- A. Upon signing the Wetland Mitigation Easement (Easement) the Landowner shall:
1. Allow for the development of the mitigation site/bank according to Wetland Mitigation Site Plan (Site Plan).
 2. Provide for management considerations for the period of time necessary for the Easement site to properly re-vegetate after construction activities have occurred.
 3. Maintain in place the wetlands, upland buffer area, and adjacent upland area as outlined in the Easement.
 4. Allow the wetland area to remain undisturbed by not draining, whether through construction of ditches or transfer of water rights, or surface waters, or by not filling or leveling. The Landowner will not allow the destruction of vegetation root structure by digging, plowing or disking.
 5. Not plant or harvest a crop.
 6. Be allowed to graze animals in accordance with an approved prescribed grazing plan developed by NRCS or other individuals trained in grazing management; will be allowed to hay, mow, or harvest seed in the wetland or upland buffer, but not until after July 15 of each year unless prior approval is granted in writing from NDDOT. Should any damages occur from the presence of livestock, resulting in the failure of the site, the Landowner shall be responsible for repairs for the duration of the easement. NDDOT or its designee will notify the landowner prior to site inspections.
 7. Pay taxes and assessments, if any, which may be levied against the land.



8. Control noxious weeds necessary to protect the public good subject to federal and state statutes and regulations. Mowing or haying noxious weeds is not prohibited by the terms of the Easement or as stated above.
9. Not make any modifications to the wetlands, buffer area or adjacent upland that could significantly change the purpose of the Easement without the written consent of NDDOT.
10. Be liable to reimburse all costs incurred by the NDDOT for the restoration of the mitigation bank site, including construction costs, if at any time it has been determined by the NDDOT that if it is not used for the intent of the Agreement between the Landowner and the NDDOT.
11. Not store equipment or other property on the Easement tract.
12. Comply with and fulfill all requirements as outlined by state and local statutes and regulations as they relate to Landowners in the State of North Dakota.
13. Grant access to the property to NDDOT and its designee. NDDOT may make on-site inspections at any time to monitor and maintain the mitigation bank site.

B. NDDOT will:

1. Provide a Site Plan outlining the wetland restoration/creations; grass seeding specifications (if needed) for the wetland, wetland buffer and adjacent upland; and management options for the mitigation bank site.
2. Contract for the restoration/creation of wetlands and grass seeding on the Easement area.
3. Be responsible for the repair and maintenance of dikes or dams should damage occur which is beyond the Landowner's control. Responsibility will begin at the time the construction of the mitigation bank site is formally accepted by the NDDOT and continue for the duration of the Easement.
4. Record the Easement following signing of the Easement by both parties.
5. Make payment according to the Memorandum Agreement.

III. DURATION OF AGREEMENT

This Agreement shall go into effect on the date last below signed, and remain in effect for the duration of the Easement unless otherwise terminated in accordance with the language contained within this Agreement.

IV. GENERAL

- A. The Wetland Mitigation Site Plan will be developed by NDDOT outlining the development and management of the Easement tract. This agreement may be amended, in whole or in



part, upon the mutual consent of all parties to this Agreement. Amendments shall be in writing and signed by the authorized representatives before any additional work is performed or changes in management of the wetlands occur beyond that specified in the original Agreement.

- B. Any decisions in regards to the fulfillment and compliance of this Agreement by either party will be made by NDDOT and are considered final and binding.
- C. Landowner shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond Landowner's reasonable control, and Landowner gives notice to NDDOT immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- D. Payments by NDDOT beyond the current state biennium shall be contingent on sufficient funds being appropriated by the Federal Government or State Legislature for the Department. In the event of insufficient appropriations in future biennium, NDDOT may give a minimum of 30 days notice to terminate this Agreement and have no further obligation to the Landowner.
- E. Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this contract shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time this Agreement was executed. All disputes arising from this Agreement shall be brought in the South Central District Court of the state of North Dakota.
- F. This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. The Landowner, by the signature below of its authorized representative, hereby acknowledges that the Landowner has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- G. The Landowner shall not assign any portion of the work under this Agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this Agreement without written consent of NDDOT. Any Agreement with a subcontractor does not create a contractual relationship between NDDOT and the subcontractor.
- H. The Landowner shall not assign nor transfer the Landowner's interests or duties under this Agreement without the express written consent of the State.
- I. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.
- J. The Landowner agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.



IN WITNESS WHEREOF, the Landowner hereunto sets his hand the day and year first above-written.

WITNESS:

LANDOWNER:

NAME(TYPE OR PRINT)

NAME(TYPE OR PRINT)

SIGNATURE

SIGNATURE

WITNESS:

DATE
LANDOWNER:

NAME(TYPE OR PRINT)

NAME(TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

WITNESS:

**NORTH DAKOTA DEPARTMENT
OF TRANSPORTATION:**

NAME (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1040 (Div. 19)
L.D. Approved 04/2013



Exhibit 6 – NDDOT Mitigation Easement

WETLAND MITIGATION EASEMENT NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

PROJECT NO.: SS-6-999(031)
PCN: 20697

This EASEMENT, made this ____ day of ____, 2015, between Gregory J. and Janice L. Kueber, hereinafter referred to as the Landowner, whose address is 12372 28th St NE, Aneta, North Dakota 58212-9237, and the state of North Dakota, for the use and benefit of the North Dakota Department of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, ND 58505-0700.

WITNESSETH, that in consideration of the sum of One Dollar (\$1.00), receipt whereof is herewith acknowledged, the Landowner, does hereby grant to NDDOT, its successors and assigns, the exclusive and perpetual right and Easement for the period of 99 years for the construction and maintenance of a wetland mitigation area on, over, and across lands situated in the county of Dunn and the state of North Dakota, and more specifically described as follows, to wit:

Legal Description
See Attached

This Easement is subject to the terms and conditions as set forth in the Wetland Mitigation Agreement.

Landowner shall not alter the condition of the land subject to this Easement. Landowner shall not store equipment or other property on the Easement.

It is the intent of this Easement to give to NDDOT control over the removal of any and all solid minerals underlying the above-described tract, and the Landowner specifically covenants that he will not cause or authorize any removal of solid minerals of any type from below the surface underlying the above-described tract without the written consent of NDDOT.



Exhibit 7 – Soil Survey



Map Unit Legend

Nelson County, North Dakota (ND063)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
G12A	Vallers, saline-Parnell complex, 0 to 1 percent slopes	14.0	31.4%
G100A	Hamerly-Tonka complex, 0 to 3 percent slopes	15.9	35.7%
G143C	Barnes-Buse-Langhei loams, 6 to 9 percent slopes	5.1	11.4%
G144B	Barnes-Buse loams, 3 to 6 percent slopes	1.5	3.3%
G167B	Balaton-Wyard loams, 0 to 6 percent slopes	8.1	18.2%
Totals for Area of Interest		44.5	100.0%

Exhibit 8 - NDDOT Threatened, Endangered, Proposed, Candidate Species and Critical Habitat Affect Determination Table

Project: Kueber Mitigation Bank Site		PCN: 20697	Location: NE1/4NE1/4 section 15, T150N, R57W	County: Nelson			
Species	Listing	Guidance	FHWA Review Required?		Determination		Additional Documentation Included
			Yes	No	Not Present	No Effect	
Interior Least Tern	E	FHWA Review required for work in or along the shoreline of the Missouri River System including reservoirs from April 15 through August 1.			X		
Whooping Crane	E	FHWA Review required for work involving above ground utilities or towers, or new guy wires unless lines are buried.		X		X	
Black-footed Ferret	E	FHWA Review required for ground disturbing activities within 100 feet of prairie dog towns of at least 80 acres in size. Projects within the existing right-of-way will not require FHWA review.			X		
Pallid Sturgeon	E	FHWA Review required for work in or along the shoreline of the Missouri River (including reservoirs) and Yellowstone River Systems.			X		
Gray Wolf	E	FHWA Review required for roadway projects of 2 or more lanes on a new location (i.e. construction of a new roadway).		X		X	
Poweshiek Skipperling	E	FHWA Review required for work occurring outside of the right of way in undisturbed native tall grass prairie and wet swales.			X		
Piping Plover	T	FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/			X		
Western Prairie Fringed Orchid	T	FHWA Review required for all ground disturbing activities on non-flooded, undisturbed ground, known habitat, and native prairie. High probability of species in or near the Sheyenne National Grassland.			X		
Dakota Skipper	T	FHWA Review required for work occurring outside of the right of way in high quality native prairie containing a high diversity of wildflowers and grasses.			X		
Rufa Red Knot	T	FHWA Review required for work activities impacting Piping Plover Critical Habitat or sewage lagoons. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/			X		
Northern Long-Eared Bat	P	FHWA Review required for work involving the removal of trees or buildings, ground disturbance in areas with caves, mines, and rock crevices, or work on structures. See NLEB Guidance for NDDOT Projects for further assistance.		X		X	
Greater Sage Grouse	C	FHWA Review Required for work activities occurring outside the right of way in native sagebrush grasslands where big sagebrush (<i>Artemisia tridentata</i>) is present.			X		
Sprague's Pipit	C	FHWA Review Required for work activities occurring outside the right of way in large native short-to-mixed grass prairie patches of approximately 72 acres or greater.			X		
Piping Plover Critical Habitat	D	FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/			X		
Poweshiek Skipperling Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Poweshiek Skipperling critical habitat. See link for Poweshiek Skipperling proposed critical habitat maps: http://www.fws.gov/midwest/Endangered/insects/dask/CHmaps/daskNDCHmaps24Oct2013.pdf			X		
Dakota Skipper Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Dakota Skipper critical habitat. See link for Dakota Skipper proposed critical habitat maps: http://www.fws.gov/midwest/Endangered/insects/posk/CHmaps/poskNDchUnitMaps.pdf			X		

Exhibit 9 – Whooping Crane Migration Route Map

