

## **SECTION 7.0**

### **COMMENTS AND COORDINATION**

Agency and Public involvement in the EIS process is an important component of the NEPA process because it represents an opportunity to become involved early in the decision-making process and provides a forum for the public to identify their questions or concerns with the Project.

#### **7.1 Activities Conducted**

NDDOT, in cooperation with the FHWA, conducted a multi-faceted public involvement program for the scoping and EIS process, which has included the following activities.

- Publishing the Notice of Intent (NOI) in the Federal Register, which formally started the EIS process
- Press releases and media interviews
- Public Meetings
- Interagency Meetings
- Development of the Scoping Summary
- Preparing and distributing the DEIS
- Public Hearing(s) on the DEIS
- Preparing the FEIS

#### **7.2 Agencies Meetings and Correspondence**

Project meetings, conference calls, and written correspondence have occurred with the respective state and federal agencies with review and permit responsibilities in conjunction with the proposed improvements to US 2.

The FHWA and NDDOT are the agencies with the primary responsibility for the US 2 EIS. The ACOE, EPA, and USFWS were identified and invited as cooperating agencies. The ACOE is the only agency that agreed to be a cooperating agency. The remaining state and federal agencies have been contacted to provide their program information. The agencies that

have provided written and oral comments include the EPA, NRCS, NDDH, NDPRD, NDGFD, NDSHPO, and BIA.

The following correspondence is not a comment on the DEIS, rather correspondence or requests for more information that occurred as a prior to the DEIS. Correspondence includes the Section 106 documentation beginning on page 7-5 through page 7-9.

<b>Correspondence</b>	<b>Page</b>
US Air Force	7-3
US Department of Fish Wildlife Service. Updated Threatened and Endangered Species List	7-4
FHWA request for threatened and endangered concurrence from US Department of Fish Wildlife Service	7-7
US Department of Fish Wildlife Service. Concurrence of findings.	7-9



DEPARTMENT OF THE AIR FORCE

91ST SPACE WING (AFSPC)

15 August 2003

Colonel John S. Graham
Vice Commander
300 Minuteman Drive, Suite 101
Minot AFB ND 58705-5016

Mr. David Sprynczynatyk
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck ND 58505-0700

Form with fields: Div (checked), Project, Title, Priority, Project No. (NH 7-002 (051) 032), Project Tied To, Origin (USAF), Date (8/15/03), Item # (Hwy 2 Response)

Dear Mr. Sprynczynatyk:

It was a pleasure to meet you and share your vision for the proposed improvement to US Highway 2 between Minot and Williston. This highway is an important part of the transportation system serving the missile complex and we appreciate you taking the time to discuss this matter.

We've reviewed the construction options lined out in your 18 July letter. The best end game strategy for this section of road from our perspective is a four-lane highway. The four-lane highway will provide a safer flow for all traffic and allow ample ability for other users to pass government convoys, if required. Implementing the plan to construct a four-lane highway for travel in northwestern North Dakota will enhance the operation of the 91st Space Wing by providing a safer, more secure route. The safety of our troops and the general public is of utmost concern and your commitment to improving this roadway is appreciated.

The best execution strategy for constructing a four-lane highway is one that has minimal affect on the current traffic flow. We recommend pursuing a north alignment south alignment mixed execution alternative to avoid missile sites and other geographical features. All other alternatives will require disruption to the present flow of traffic and have a negative affect on safety.

I would also like to take this opportunity to thank the NDDOT for their excellent sander and snow removal support during the winter months. Their prompt and professional service contributes directly to the mission of the 91st Space Wing. Please feel free to contact Lt Col Randy Eide, 5 CES/CC, at (701) 723-2434, should that be necessary.

Sincerely



John S. Graham
JOHN S. GRAHAM, Colonel, USAF

7-50



## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



NOV 18 2003

Mr. Mark Gaydos, P.E.  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismarck, North Dakota 58501

Dear Mr. Gaydos:

I am providing an updated threatened, endangered and candidate species list for your use in determining impacts associated with the proposed US 2 project. This list fulfills requirements of the Fish and Wildlife Service under Section 7 of the Endangered Species Act.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the proposed action "may affect" listed species. If the Federal agency determines the action "may affect" a listed species, then the responsible Federal agency shall request formal section 7 consultation with this office. If the evaluation shows "no effect" to the listed species, further consultation is not necessary. No legal requirement exists to protect candidate species; however, it is within the spirit of the Endangered Species Act to consider these species as having significant value and worth protecting.

If further information is required, please contact Ms. Kelly McDermott of my staff at 701-250-4402, or at the letterhead address.

Sincerely,

Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

Enclosure

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES  
AND DESIGNATED CRITICAL HABITAT FOUND IN  
MOUNTRAIL, WARD, AND WILLIAMS COUNTY, NORTH DAKOTA

**ENDANGERED SPECIES**

Birds

Interior least tern (*Sterna antillarum*): Nests along midstream sandbars of the Missouri and Yellowstone Rivers.

Whooping crane (*Grus Americana*): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.

Fish

Pallid sturgeon (*Scaphirhynchus albus*): Known only from the Missouri and Yellowstone Rivers. No reproduction has been documented in 15 years.

**THREATENED SPECIES**

Birds

Bald eagle (*Haliaeetus leucocephalus*): Migrates spring and fall statewide but primarily along the major river courses. It concentrates along the Missouri River during winter and is known to nest in the floodplain forest.

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

Mammals

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

**LISTED CANDIDATE****Invertebrates**

Dakota skipper (Hesperia dactyla): Found in native prairie containing a high diversity of wildflowers and grasses. Habitat includes two prairie types: 1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; 2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower.

**DESIGNATED CRITICAL HABITAT****Birds**

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



NDDOT - Mr. Mark Gaydos

1471 Interstate Loop  
Bismarck, North Dakota 58503-0567

November 13, 2003

<input type="checkbox"/> Div	<input checked="" type="checkbox"/> Proj	<input type="checkbox"/> City	<input type="checkbox"/> Hw
NH-7-002(051)032			
PROJECT	ID TO		
ORIGIN	FHWA	DATE	11/3/03
ITEM #	Endangered Species		

Mr. Jeffrey K Towner  
US Fish and Wildlife Service  
Ecological Services  
3425 Miriam Ave  
Bismarck, North Dakota 58501

Attention: Ms. Kelly McDermott, Fish and Wildlife Biologist

Dear Mr. Towner:

Subject: Threatened or Endangered Species on US 2 Williston to Brooks Junction  
Project No. NH-7-002(051)032

NDDOT and FHWA are requesting USFWS's concurrence in our determination of effect on threatened or endangered species listed for the study area. Six species are listed by USFWS as threatened or endangered within in the three-county area (See Table D-16 in Appendices of the Environmental Impact Statement for the proposed project). Two of the six species, the interior least tern (*Sterna antillarum*) and the pallid sturgeon (*Scaphirhynchus albus*), do not exist in proximity to the project area. Therefore, it has been determined that the proposed project will have no effect on these two endangered or threatened species.

Three of the listed species, the bald eagle (*Haliaeetus leucocephalus*), the whooping crane (*Grus Americana*), and the gray wolf (*Canis lupus*), are transient species; and there are no known nesting or breeding sites in proximity to the project area. Because none of these species has been sighted in the project area and because the construction of this project will not adversely impact these species, it has been determined that the proposed project will have no effect on the bald eagle, the whooping crane, or the gray wolf.

The last of the six listed species, the piping plover (*Charadrius melodus*), was not sighted or observed living in the project area. However, critical nesting habitat (alkali deposits) for the piping plover has been identified by the USFWS in a number of wetlands (See Figure B 10 in Appendices) in the project area between Stanley and the Ward/Mountrail County line. The proposed project will not impact any of these areas. The proposed project will not impact the critical habitat identified by the USFWS for the piping plover. Because piping plover have not been sighted or observed living in the project area and because the construction of this project will not impact the critical habitat of the piping plover, it has been determined that, while the project may affect the piping plover, it is not likely to adversely affect either habitat or the species population.

Piping plover have been known to be attracted to denuded construction areas. Therefore, per USFWS's request, NDDOT will include a provision in the construction contracts, for projects in the area between Stanley and the Mountrail/Ward County line, to insure that nesting-piping plover are not impacted. NDDOT will require project oversight personnel as well as the contractor's personnel to receive training in identifying piping plover and piping plover nests prior to start of construction. The USFWS will provide training in standard breeding survey protocols. Specifics relating to the survey such as timing and locations will be determined by the USFWS prior to the beginning of the construction season. If piping plover nests are observed within the project area during construction, the contractor will be required to suspend all work immediately in the vicinity of the nests and notify the USFWS within 48 hours.

In addition to the six threatened or endangered species listed, USFWS lists the Dakota skipper butterfly (*Hesperia dacotae*) as a candidate species within the three-county area. There have been no sighting or records of the Dakota skipper in the immediate project area. Because this species has not been sighted in the project area and because the construction of this project will not adversely impact critical habitat for this species, it has been determined that the proposed project will have no effect on this candidate species.

Sincerely yours,



Allen R. Radliff, P.E.  
Division Administrator

cc: Mr. Mark Gaydos, Design Engineer, North Dakota Department of Transportation



## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



NOV 18 2003

Mr. Allen R. Radliff, Division Administrator  
Attn: Mark R. Schrader, Operations Engineer  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, North Dakota 58503

RE: US 2 Threatened & Endangered Species  
Project # NH-7-002(051)032

Dear Mr. Radliff:

In response to your November 13, 2003, letter, the U.S. Fish and Wildlife Service (Service) has reviewed the Federal Highway Administration's (FHWA) analysis of effects to threatened and endangered species along US 2, Williston to Brooks Junction. This is the portion of US 2 under consideration for four-laning at this time.

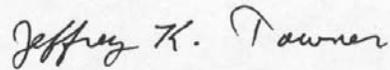
The Service concurs with the FHWA's determination that the proposed project will not affect the federally listed bald eagle, gray wolf, endangered whooping crane, pallid sturgeon and interior least tern. The Service also concurs with the FHWA's determination that the proposed project may affect, but is not likely to adversely affect the federally listed piping plover. Further, the Service concurs with the FHWA's determination that the proposed project is not likely to adversely affect designated critical habitat for the piping plover. This concurrence is contingent on the North Dakota Department of Transportation (NDDOT) meeting the commitments in the following paragraph.

The Service acknowledges the commitment by the NDDOT to survey the project area between Stanley and the Mountrail/Ward County line for piping plovers. Further guidance from the Service will be given to NDDOT for survey protocols prior to the start of construction in this area. If piping plover nests are observed within the project area during construction, the NDDOT has also committed to suspend all work immediately in the vicinity of the nests and notify the Service within 48 hours.

No legal requirement exists to protect candidate species nor is the FHWA required under the Endangered Species Act to make a determination of effects relative to candidate species. However, within the spirit of the Endangered Species Act, we appreciate your consideration of candidate species as having significant value and worth protecting. We agree with the FHWA's conclusion that the project will not affect Dakota skippers.

Thank you for the opportunity to provide comments. If further information is required, please contact Ms. Kelly McDermott of my staff at 701-250-4402, or at the letterhead address.

Sincerely,



Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

cc: Project Leader, Crosby WMD  
Project Leader, Lostwood WMD  
Project Leader, Audubon WMD  
COE, Regulatory Office, Bismarck  
(Attn: J. Winters)  
Director, ND Game and Fish Dept., Bismarck  
(Attn: M. McKenna)

### **7.3 Public Meetings and Comments**

Written public comments were requested through local publications and during informational meetings. Public meetings were held in Minot, Stanley and Williston on January 11 and 12, 2000. At the public meetings, a formal presentation was delivered describing the various aspects of the project, the need for the project, project progress, and suggestions on how to provide comments. Informational fact sheets addressing various aspects of the project were distributed. The fact sheets were provided for cultural resources, wetlands, alternatives and design options, the NEPA process, and project purpose and need. In addition to the fact sheets, project team members were available to provide information and answer questions in an informal setting. Written comment sheets were also available. Over 100 people attended the public meetings.

### **7.4 Public Scoping Meeting and Comments**

The NDDOT conducted public meetings to solicit input regarding the proposed improvements to US 2. The public meetings were held in Minot on September 13, 2000, and in Stanley and Williston on September 14, 2000. Representatives from the NDDOT were present at the public hearings to provide information and to obtain input from the public regarding the US 2 project.

Public support for the proposed improvements to US 2 was evident at the public meetings for the scoping phase of the project. The primary reasons cited in support of the project were economic development for the northwestern portion of North Dakota and safety for the inter- and intra-state users of US 2.

The people who were in favor of the project regarded the four-laning of US 2 as essential to promoting economic growth in the area, attracting new businesses to the area and expanding existing businesses. People also commented that the proposed improvements to US 2 would benefit tourism in northwestern North Dakota. Many people believed that four-laning US 2 would allow more access for truck transportation, which is extremely important to an oil-producing area and the agricultural community for shipping products. People expressed the opinion that benefits to the local economy would result in benefits to the entire state as industry and tourism flourished.

Another benefit identified by people at the public meetings was safety. People expressed concerns

about the safety of US 2 between Williston and Minot. Competing uses among local residents, local schools busing children, farmers, commuters, and truck traffic have reinforced the benefits of a divided four-lane highway. A review of the crash history for the existing highway does not identify any major safety issues. However, the people who live along the corridor and who travel it daily indicated that with the diversity of the competing traffic, there are near misses that occur on a regular basis. Hazards are compounded during the winter months because of the added issues associated with the weather-related road conditions.

People who did not support the proposed improvements to US 2 stated that there is a greater need to widen US 52. Monies that would be used on the US 2 project would be better spent on upgrading US 52. The people indicated that US 52 is in much worse shape than US 2 and the volume of heavy truck traffic on US 52 is greater. This truck traffic will continue to degrade the roadway conditions of US 52 at a faster rate than what is occurring on US 2.

The local cities, businesses and other public entities along the US 2 corridor expressed unanimous support for the proposed improvements to US 2. Their primary reason for supporting the project was the economic development benefits that would be realized with a four-lane highway. Comments indicated that the tourism industry for the northwestern portion of North Dakota would benefit from the project. City officials and economic development people stated that they could attract new businesses into the area if US 2 were a four-lane highway. In addition, people from businesses within the area stated that they would have the opportunity to expand their existing operations if a four-lane highway serviced the area.

State and federal agencies provided comments on the proposed improvements to US 2. Their primary concerns regarding the US 2 project included the need to file the proper notifications to the respective agencies and departments, and compliance with all applicable rules and regulations. The EPA provided the most extensive comments regarding the project. A summary of the comments received from the public, the local municipalities and businesses, and the state and federal agencies can be found in Appendix A of the report entitled *US Highway 2, Scoping Summary Document* (Houston Engineering, Inc., 2001)

## **7.5 Interested Persons**

The Scoping Summary and all previous documents prepared in accordance with the NEPA process are available to interested persons and organizations at the following Information Centers:

Minot Public Library  
516 Second Avenue Southwest  
Minot, North Dakota 58701-3792  
(701) 852-1045

Williston City Public Library  
1302 Davidson Drive  
Williston, North Dakota 58802  
(701) 774-8805

Questions or comments regarding the US 2 project may be directed to:

**Mr. Mark Gaydos, P.E.**  
**Design Engineer**  
ND Department of Transportation  
608 East Boulevard  
Bismarck, ND 58505-0700  
Tel: 701-328-4417  
E-mail: [mgaydos@state.nd.us](mailto:mgaydos@state.nd.us)

**Mr. Allen R. Radliff, P.E.**  
**Division Administrator**  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, ND 58501  
Tel: 701-250-4204  
E-mail: [Allen.Radliff@fhwa.dot.gov](mailto:Allen.Radliff@fhwa.dot.gov)

## **7.6 Agency Comments Received on Draft EIS and Responses**

The methodology for responding to comments received on the Draft Environmental Impact Statement is based upon the general guidelines developed as part of NEPA (National Environmental Policy Act.) The comments received from the agencies and the public on the Draft Environmental Impact Statement are included in the Transcript of Public Hearings and Comments on the Draft Environmental Impact Statement.

Responses have been provided for technical corrections, unclear information, or content requirements of the Draft Environmental Impact Statement. The necessary corrections and additional information will be incorporated into the Final Environmental Impact Statement. Responses were not drafted for statements of preference; however, they were considered in the

selection of the Recommended Preferred Alternative.

The Agency Comments and Responses on the draft EIS begins on Page 7-14.

<b>Organization</b>	<b>Comment Page</b>	<b>Response Page</b>
US Department of Health & Human Services – CDC	7-15	7-16
US Department of Transportation Federal Aviation Administration	7-17	7-18
US Department of the Interior - Fish & Wildlife Service	7-19	7-20
US Department of the Interior – Office of the Secretary	7-21	7-26
US Environmental Protection Agency email to FHWA	7-29	7-30
US Environmental Protection Agency – 2002	7-33	7-43
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North Dakota State Water Commission	7-48	7-50
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City of Minot	7-53	7-54
Ray Anderson, Mayor of the City of Ross	7-55	7-56



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control  
and Prevention

October 8, 2002

Mr. Kenneth Birst, PE  
Design Engineer  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismark, North Dakota 58505-0700

Re: Project No. NH-7-002(051)032

Dear Mr. Birst:

Thank you for sending us a copy of the Draft Environmental Impact Statement (DEIS) for US Highway 2 from US Highway 85 to West of Highway 52 Williams, Mountrail, and Ward Counties, North Dakota. We are responding on behalf of the Department of Health and Human Services (DHHS), U.S. Public Health Service.

1.

We have reviewed this document for potential health and safety impacts on human populations. We believe that the DEIS has addressed these impacts and we have project specific comments to offer at this time.

Please furnish us with one copy of the Final EIS document when it becomes available.

Sincerely yours,

Paul Joe, DO, MPH  
Medical Officer  
National Center for Environmental Health (F16)  
Centers for Disease Control & Prevention



**Department of Health & Human Services – CDC**

**Response:**

1. Comment noted.



Federal Aviation Administration  
Bismarck Airports District Office  
2301 University Drive, Building 23B  
Bismarck, North Dakota 58504

September 3, 2002

Mr. Kenneth E. Birst, P.E., Design Engineer  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

Dear Mr. Birst:

Project Number NH-7-002(051)032  
US Highway 2 – Draft Environmental Impact Statement

1.

The Bismarck Airports District Office has no objections to the Draft Environmental Impact Statement for the proposed improvements, as defined in your letter dated August 28, 2002, provided the Federal Aviation Administration (FAA) is notified of construction or alterations if required by Federal Aviation Regulations (FAR), Part 77, Objects Affecting Navigable Airspace, Paragraph 77.13 as described on the enclosed FAA Form 7460-1.

If you have additional questions, contact Mr. Brian P. Schuck at (701) 323-7380.

Sincerely,

  
Thomas T. Schauer, Program Manager  
Bismarck Airports District Office



Enclosure

**United States Department of Transportation – Federal Aviation Administration**

**Response:**

1. The FAA will be notified and afforded the chance to review project design and will be notified when construction is to commence at any portions of the project that are near airfields.



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



SEP 27 2002

Kenneth E. Birst, P.E.  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505

Re: Project # NH-7-002(051)032

Dear Mr. Birst:

1

The U.S. Fish and Wildlife Service (Service) has reviewed the Draft Environmental Impact Statement for proposed improvements to US Highway 2 between Minot and Williston, North Dakota. Our comments have been sent to our Regional Office where they will be reviewed and then forwarded to our Washington, DC offices. Service comments will be incorporated into the Department of Interior review and sent to the North Dakota Department of Transportation.

Thank you for the opportunity to provide comments. If further information is required, please contact Kelly McDermott at 701-355-8510.

Sincerely,

Roger L. Collins  
Acting Field Supervisor  
North Dakota Field Office

**United States Department of the Interior – Fish and Wildlife Service**

**Response:**

1. See responses to the United States Department of the Interior, October 29, 2003 on page 7-26.

c; W. Peterson, P. Regan, F. Ziegler



United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

ER 02/791

Mr. J. Michael Bowen  
Division Administrator  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, North Dakota 58501



Dear Mr. Bowen:

This responds to your letter dated August 22, 2002, requesting the Department of the Interior's (Department) review of the draft environmental impact statement (DEIS) and Section 4(f) Evaluation for US-2, from US-85 to west of US-52, Williams, Mountrail, and Ward Counties, North Dakota. The project is intended to make improvements to US-2 from just north of Williston to just north and west of Minot, North Dakota. We have reviewed the information included in your documents and provide the following comments for your consideration:

SECTION 4(f) EVALUATION COMMENTS

1. The DEIS does not identify a preferred alternative. Therefore, these comments address the impacts associated with all alternatives that are confined to a rather narrow corridor, approximately 1/2 mile wide, that overlies the existing highway right-of-way. Until a decision on the preferred alternative has been made, the Department will reserve its determination of whether there are no feasible and prudent alternatives to the proposal and whether all possible planning needed to minimize potential harm to these resources has been employed.
2. The evaluation indicates the project has the potential to impact properties eligible for consideration under Section 4(f) of the Department of Transportation Act (49 U.S.C. 303). The DEIS identifies one architectural property eligible for the National Register of Historic Places; however, there may be other properties that have yet to be identified.
 

The Department notes that full and complete inventories for cultural resources along the entire corridor were only completed for architectural features. The DEIS documents there are three architectural sites with the potential significance to be nominated to the National Register of Historic Places that may be affected by one or more of the alternatives. Two of these have not yet had their significance finally determined, so we must consider them as potentially eligible properties. In contrast, archeological inventories were completed for only selected portions of the corridor, and the potential does exist for impacts to undiscovered resources along the alignment that is finally selected as the preferred. In addition, the DEIS states several stone feature prehistoric

sites were recorded within those areas that were inventoried, and adds that these sites are important features to the Tribes.

3. The Section 4(f) evaluation discusses only the one architectural site that has been determined eligible for consideration. The two architectural sites which are potentially eligible for listing do not appear in the Section 4(f) evaluation, but the DEIS notes these sites as being impacted by two of the alternatives. The final evaluation will need to include any site that is determined potentially eligible and assess the impacts of the project on those sites.

4. For archeological sites, the evaluation assumes there will be no archeological sites eligible for consideration under Section 4(f); but we note not all prehistoric sites have been identified and not all areas that may be impacted in the corridor have been inventoried. The Department understands that archeological sites may be eligible as Section 4(f) resources, if there is reason to consider preservation in place. It may be premature to assume all archeological sites are not Section 4(f) resources. Because not all sites have been discovered within the corridor, it would be premature to assume there would not be eligible Section 4(f) properties.

5. Finally, the DEIS asserts that eligibility determinations for all cultural sites have been made, but there is no correspondence in either the DEIS or the Section 4(f) evaluation to confirm the State Historic Preservation Officer (SHPO) has concurred with these determinations or with any mitigation that may be necessary. This is particularly important to the stone feature sites that are said not to be eligible for the National Register. A particular group who believes certain sites are important to them should have a say in whether those sites are eligible for inclusion in the National Register. There is no indication in the DEIS or Section 4(f) evaluation whether the consultation with tribal people included discussion of eligibility and effect, despite the rather extensive consultation that took place for these sites. There is also no evidence the SHPO has been included in that consultation process.

**DRAFT ENVIRONMENTAL IMPACT STATEMENT COMMENTS**

**General Comments**

6. The subject DEIS addresses several alternatives for improving traffic flow and increasing traffic capacity along the portion of US-2 that lies between Minot and Williston, North Dakota. After reviewing the Reasonable Alternatives Subject to Detailed Study for expanding US-2 to a four-lane highway, the U.S. Fish and Wildlife Service (USFWS) believes either the South Alignment or the Selective North-South Alignment alternatives represent the best environmental solution for widening US-2. The South and Selective North-South Alignments result in the least overall impact to wetlands for both USFWS easement wetlands and privately owned non-easement

wetlands. Both alternatives also require fewer relocations of businesses and homes, further reducing overall impact on the land.

7.

The USFWS recommends North Dakota Department of Transportation (NDDOT) reconsider an alternative eliminated from further study. The "Super 2" Alternative involves locating more passing lanes along the existing US 2 route. In addition, widening the roadway and enlarging the shoulders would improve driver comfort and safety. We believe this alternative would address the issue of achieving and maintaining economic viability along the corridor, as well as improve traffic speeds. This alternative would require no new right-of-way, no relocation of businesses or homes, and result in minimal impact to wetland and upland habitats.

#### Specific Comments

8.

Section 4.1.11, Mitigation Measures for Previous Environmental Commitments - This section proposes to remove no-mow provisions associated with the 1976 Final Environmental Impact Statement and mitigate the actual net loss of 29 acres of wetlands. The USFWS is currently working with the NDDOT on a revised mitigation plan to replace no-mow areas. We look forward to resolving this issue with the NDDOT in the near future. Resolution of a plan regarding no-mow mitigation should be completed prior to project construction and serve as the basis for development of a mitigation plan specific to this project.

9.

Section 4.1.11, Mitigation Measures for Wetlands - This section reviews options for replacement of USFWS easement interests lost to the expansion of rights-of-way. The two options identified in the DEIS that provide compensation for lost easement interests are: 1) use of easement credits held in an easement bank, and 2) an exchange of easement interests. If the easement bank option is utilized, the bank must use perpetual easements or fee-title land to replace the interests lost to the Refuge System. Ninety-nine year easements are not an acceptable replacement for perpetual easements and cannot be used for an easement bank. The unsuitability of 99-year easements for the easement bank option should be clarified in this section.

10.

Section 4.1.15, Threatened and Endangered Species - This section indicates a monitoring plan will be developed and implemented by the NDDOT to observe for nesting piping plovers in denuded construction areas. This monitoring plan should be approved by USFWS personnel prior to construction of US-2.

Appendix D-16, Data Used in the Impact Assessment - The peregrine falcon was delisted from the Federal threatened and endangered species list. This information was provided to Houston Engineering in a letter dated October 13, 2000. The peregrine falcon should be removed from Table D-16, Federally Listed Threatened and Endangered Species, Mountrail, Ward, and Williams Counties, North Dakota.

10. Appendix D-16, Data Used in the Impact Assessment - In 2001, the USFWS determined the sicklefin chub and the sturgeon chub do not warrant listing, and thus, are no longer considered candidate species. Therefore, these species should be removed from Table D-16, Federally Listed Threatened and Endangered Species, Mountrail, Ward, and Williams Counties, North Dakota.

Appendix D-16, Data Used in the Impact Assessment - The paragraph under the Habitat Notes portion of the bald eagle entry should be deleted. In its place, the following information should be inserted: "Since 1988, the bald eagle has successfully nested in North Dakota. The USFWS has documented 8 active bald eagle nesting territories on the Missouri River between Garrison Dam and Lake Oahe. Additional known active territories are located in the Devils Lake and Grand Forks area."

11. Appendix D-16, Data Used in the Impact Assessment - Piping plover critical habitat has been designated in North Dakota. A map identifying piping plover critical habitat in northwestern North Dakota, including the project area, should be included in Appendix D.

**CONCLUSION**

12. The NDDOT has attempted to increase traffic capacity and improve traffic flow between Minot and Williston for nearly a quarter of a century. The USFWS believes this project can be completed without construction of four full lanes. Additional passing lanes, coupled with wider lanes and shoulders, should improve traffic flow as well as increase capacity and passenger comfort and safety. However, with proper mitigation for the project's impacts to USFWS easement wetlands, we believe that upgrading US-2 to four lanes will not have significant impact on fish and wildlife resources. We look forward to working with your staff on the development of a mutually acceptable mitigation plan.

**SUMMARY COMMENTS**

13. The Department will reserve its final evaluation of the impacts to Section 4(f) properties until after the decision by the Federal Highway Administration (FHWA) on the preferred alternative. At this point, it would be difficult to determine whether there are no feasible and prudent alternatives since each of the alternatives put forward in the EIS may impact cultural resources. The eligibility of all identified resources has yet to be determined, and not all resources are known. It would also be premature to determine whether all possible planning has been done to minimize harm to a particular resource. The evaluation only identifies one possible Section 4(f) resource but does not identify which alternative will be preferred.

The Department has a continuing interest in working with the North Dakota Department of Transportation and the Federal Highway Administration to ensure project impacts to

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resources of concern to the Department are adequately addressed. For matters related to Section 4(f) resources, please contact the Regional Environmental Coordinator, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-7286.

If further information or clarification is required regarding fish and wildlife resources, please contact Kelly McDermott, U.S. Fish and Wildlife Service, Bismarck, ND, at 701-355-8510.

We appreciate the opportunity to provide these comments.

Sincerely,



Willie R. Taylor  
Director, Office of Environmental  
Policy and Compliance

✓ cc:  
Mr. Grant Levi  
Deputy Director for Engineering  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505-0700

**United States Department of the Interior – Office of the Secretary****Responses:**

1. The FEIS identifies the North-South Alternative (Section 2.4.4 page 2-25) as the preferred alternative. The Selective North-South Alignment Alternative was selected, as the preferred alternative, because as a combination of the North Alignment and South Alignment Alternatives it has fewer impacts to both the natural and human environment. Additionally the preferred alternative is the only build alternative that does not impact any Section 4(f) resources.
2. Section 4.1.18, page 4-40, has been revised to address these concerns. Due to the potential for encountering buried, previously unidentified archaeological remains along the entire project route (including various types of features, concentrations of artifacts, and burials), a plan to address important archaeological remains discovered during construction will be in-place prior to constructing this project. Consultation with both the NDSHPO and Native American Tribes in the area was performed for both architectural and cultural resource inventories. The Advisory Council on Historic Preservation (ACHP) was also consulted on these findings. In a letter dated 10/12/03, the ACHP stated, “We don’t believe that our participation in consultation to resolve adverse effects is needed.” This letter can be found in Section 4(f) evaluation, page 4(f)-8. Initiation of consultation with tribes was documented and is included for review in Section D-17 in the appendix. SHPO concurrence in a finding of Adverse Effect and their acceptance of the Memorandum of Agreement are documented for review in Section 4(f) evaluation, on page 4(f)-9.
3. Impacts for all architectural sites are discussed in Section 4.1.18. The only architectural site that would be potentially impacted is site 32WI462. This structure would only be impacted if the North Alternative is selected. Section 4(f) evaluation was revised to reflect changes in potential impacts as well as updated with the most current eligibility determination for potentially impacted sites. The potentially eligible sites were reviewed with NDSHPO and ACHP. A letter of concurrence of findings and eligibility was issued by both agencies (see Section 4(f) evaluation, pages 4(f)-9 and 4(f)-10 in the appendices). Two eligible stone feature sites, that will be impacted, are valued only for information they contain and are not valued for preservation in place and therefore are not considered Section 4(f) resources. The preferred alternative is the only build alternative that does not impact any Section 4(f) resources.
4. The final evaluation included testing all discovered sites, which will be affected by the project, in terms of National Register eligibility. The two affected sites eligible are valued only for information they contain, not preservation in place. Therefore it was determined that none of the archeological sites affected met the conditions required for Section 4(f) resources.

The survey plan used to find potential cultural resources was developed in consultation with NDSHPO and with Tribal representatives that expressed an interest in the area. Because the survey plan was developed based on typical cultural resource features found in this area and based on the current land use and cover, it is believed that the tests results will be representative of any other sites in the area that have not been discovered at this time. Even though the survey was extensive, it is understood that there is potential for encountering buried, previously unidentified archaeological remains along the entire project route. Unknown cultural resources cannot be evaluated for consideration as Section 4(f) resources.

Never-the-less, before construction begins, a plan will be in-place to address important archaeological remains discovered during construction. Additionally, if burial remains are uncovered the ND burial law will be observed and proper authorities will be notified. Furthermore, Section 106 regulations have a procedure in place for discovery situations.

5. At the time the DEIS went to print, Section 106 process had not been completed. Section 106 process has now been completed and Section 4(f) evaluation in the appendices contains letters from NDSHPO concurring in the assessment. NDDOT consulted with the ACHP, NDSHPO, and eight tribes regarding cultural resources and the eligibility of the archeological sites. An elder and spiritual man, recognized for his expertise by the Standing Rock Sioux Tribe and the Three Affiliated Tribes, visited all of the potentially effected prehistoric stone feature sites along the entire project. Representatives of the Turtle Mountain Chippewa, Tribal Historic Preservation Office, and Intertribal Reinternment Committee, and an elder, who is looked upon as a spiritual leader, visited some of the sites. All stone features sites are of general importance to the tribes.

Because these sites are important to the tribes, avoidance of effects will be pursued as aggressively as sites eligible for the National Register. In addition, mitigation of effects of the project on these resources shall be pursued in a manner that reflects the impacts and the nature of their importance. This approach was discussed with the tribes, and NDDOT has received positive responses. See Section 4(f) evaluation, pages 4(f)-9 and 4(f)-10 for the letters of concurrence regarding cultural assessments. While many of the sites were not eligible for the National Register, the NDDOT has attempted to minimize impacts to these sites, due to the cultural significance expressed by the tribes.

6. Comment noted.
7. The discussion of the “Super 2 Alternative has been revised to more clearly explain why it was not advanced for detailed consideration. Section 2.3.4.2, beginning on page 2-6, explains why the Super 2 Alternative does not meet the purpose and need of the project. Additionally, the presence of lengthy military convoys raises both safety and national security concerns when a passing vehicle is unable to pass the entire convoy before losing access to a passing lane. The introduction of the Super Two highway configuration may lead to both safety and continuity concerns as drivers encounter an unfamiliar section of roadway because a “Super Two” configuration does not exist anywhere else in the state. Finally, the Super Two Alternative does not efficiently enhance system performance to function properly as part of the Interregional System of roads under NDDOT’s Highway Performance Classification System due to safety concerns, passing restrictions, and limits on travel speeds due to slow-moving vehicles.
8. The no-mow (managed mow) plan has been revised and summarized in Section 4.1.13 under Mitigation Measures for Previous Environmental Commitments page 4-22. House Bill 1012, passed by the Fifty-Eight Legislative Assembly, authorized the purchase of land to eliminate managed-mow areas. It also required public hearings in counties where the land is located. The same bill extended the deadline for the elimination of managed-mow to July 15, 2006. Therefore, the purchase of the mitigation tracts must be completed and in place prior to that date. A plan to move the managed-mow commitments for the highway ROW has been finalized in cooperation with the Federal and State agencies. The plan includes provisions ensure that current environmental commitments, including those made in the 1976 FEIS covering improvements to US 2, will be satisfied. The implementation plan will be approved and signed by all parties prior to construction. The replacement of managed mow areas in the right-of-way (ROW) with off-site mitigation will result in higher quality mitigation. The new plan will also allow for the purchase of replacement wetlands for the net loss of 29 acres of wetlands resulting from the 1976 improvements to US 2 that were preciously mitigated with managed mow provisions.
9. The NDDOT and USFWS will develop a Memorandum of Agreement for the replacement of USFWS easements. The Selective North-South Alignment Alternative (preferred) does not impact easement wetlands.
10. NDDOT will include a provision in the construction contracts, for projects in the area between Stanley and the Mountrail/Ward County line, to insure that nesting-piping plover are not impacted. NDDOT

will require project oversight personnel as well as the contractor's personnel to receive training in identifying piping plover and piping plover nests prior to start of construction. The USFWS will provide training in standard breeding survey protocols. Specifics relating to the survey such as timing and locations will be determined by the USFWS prior to the beginning of the construction season. If piping plover nests are observed within the project area during construction, the contractor will be required to suspend all work immediately in the vicinity of the nests and notify the USFWS within 48 hours. Comment noted. The peregrine falcon, sicklefin chub, and sturgeon chub were removed from Table D-16. Changes were also made to the Habitat Notes portion of the bald eagle.

11. Comment noted. Maps indicating piping plover critical habitat in the study area are located in Appendix B, Figure B-12. Additional information concerning the piping plover can be found on the US Fish and Wildlife Service's web site, <http://mountain-prairie.fws.gov/pipingplover/>.
12. Comment noted.
13. Comment noted. Please see Response 1 and 2 on the previous page.



"Schrader, Mark"  
<Mark.Schrader@fhwa.dot.gov>

08/14/2003 12:36 PM

To: <jmartin@state.nd.us>  
cc:  
Subject: FW: Ed Stearns' wetland notes

-----Original Message-----

From: Crowder.Brad@epamail.epa.gov [mailto:Crowder.Brad@epamail.epa.gov]  
Sent: Thursday, August 14, 2003 12:14 PM  
To: Schrader, Mark  
Subject: Ed Stearns' wetland notes

Hi Mark. Please give me a call if you want after you take a look at the wetlands Ed noted as having significant habitat & veg condition and for which Ed noted EPA would like to see impacts avoided or minimized to the extent practicable. I don't know what sort of input you've received from FWS or NRCS/USDA on their easement wetlands or if our concerns conflict with their avoidance/mitigation preferences. Practices that we envision that could be used to avoid or reduce those wetland impacts could include:

- o altering the ROW
- o eliminating or reducing the median and shoulder widths
- o no action to existing roadway
- o elevating the road and surface

Wetlands:

1. MM 53.2 S, McLeod Lake (Keep narrow road/ROW as the road exists on the west side of Ray) -- NDDOT & FHWA already envision not altering the roadway in this particular segment.
2. MM 63.7 S, Paulson Creek to W. Earth River -- Excellent vegetative state & habitat
3. MM 73.2 to 75.0, White Earth River -- Maintain narrow ROW and restore oxbows? Rewater isolated oxbows?
4. MM 91.3N, Little Knife River -- Avoid impacts if possible.
5. MM 91.7 N, Trib. to Little Knife River -- Excellent veg state/habitat -- If possible take out wetlands on S side and avoid impacts on the N side of the road.
6. MM 92.7S, Little Knife River -- South side should be protected if possible. No median/smaller shoulders?
7. MM 96.4 N/S, Palermo Mgmt Area -- Excellent wetlands, perhaps no median (jersey barrier?) and reduced shoulder widths to avoid wetland impacts altogether.
8. MM 126.4N, Fuller Coulee -- Good veg condition, would be nice if highway ROW could take the south side and put a small bend in the road to avoid impacts to the wetland on the north side of the road.

Brad Crowder  
EPA-Region 8, NEPA  
999 18th St., Suite 300, 8EPR-N  
Denver, CO 80202-2466

**Response to EPA email to Mark Schrader****Response:**

The primary purpose for developing the preferred alternative was to avoid and minimize direct impacts to or encroachment upon farmsteads, occupied residences, industrial structures, missile silos, wetlands, and easement wetlands. In light of the concerns expressed by the Environmental Protection Agency, the preferred alternative was further refined. Where wetland impacts could not be avoided, practicable steps to minimize impacts were incorporated. During design additional steps to minimize impacts, such as adjustments to roadway elevation, can be evaluated. Below are comments regarding the wetland sites EPA noted as having significant habitat for which they would like to see impacts avoided or minimized to the extent practicable:

1. Site 53.2 S, McLeod Lake: This Lake is located south of US 2 on the west edge of Ray. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. It is estimated that the Selective North-South Alignment Alternative (preferred) would impact 0.40 acres of wetland of the vegetated flat near the edge of the lake. To the east of this wetland, the current roadway is a non-divided five-lane section with a reduced speed limit through the Ray. NDDOT proposes to continue the five-lane section to the west an additional 3/8 of mile; past the wetland adjacent to McLeod Lake. Impacts to the wetland will be reduced to 0.09 acres. This impact is estimated to be less than one tenth of one percent of the total area of this wetland. The contractor will be required to submit a storm-water runoff plan incorporating best management practices (BMP) to minimize secondary impacts. Native grasses will be seeded on the inslope of the roadway after construction.

2. Site 63.7 S, Paulson Creek: This creek bed is dry most of the time with an occasional deeper depression containing water for longer periods. The wetland adjacent to US 2 is a deeper depression located upstream from the culvert that conveys the stream through the road. Cultivated farmland surrounds the wetland outside of the existing ROW. The Selective North-South Alignment Alternative (preferred) has an estimated 0.76 acres of impact to this wetland. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. The drainage will not be altered and it is anticipated that the majority of the wetland acres impacted will be reestablished in and adjacent to the new ditch.

Modifications to the median width were considered but were not practicable for the following reasons. There are seven farm or field approaches, three county road approaches, and State Highway 40 intersection, all within one half mile of this wetland. All these approaches will require access across the roadway. Crossovers and intersections are areas of concern that will be safer with the wider median (104-foot centerline to centerline) because it allows more room for vehicles making these movements. Furthermore, narrowing the median will require two sets of compound curves on a straight section of road. Drivers do not expect to encounter curves on a straight section of road therefore the safest and most practicable solution is to maintain a uniform section through this area.

3. Sites 73.2N/S–75.0N/S, White Earth River and Tributaries: The North-South Alignment Alternative (preferred) would impact 2.59 acres of wetlands. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. The preferred alternate will reduce the median width using 54 feet center to center of roadway. Wetland impacts were reduced to 1.66 acres. 54 feet is the minimum separation that can be used without barriers or reduced speed limits. This is a

hilly stretch of road, trucks will not want to reduce speeds down hill, and a reduced speed is not desirable. Barriers will cause more snow drifting problems that will be a safety concern and increase maintenance costs. For these reasons, the 54-foot separation was chosen. NDDOT agrees to restore water flow to the two oxbows on the north side of road by creating a channel between the two oxbows. It may be possible to mitigate all the White Earth River Valley wetland impacts by creating the channel between the two cut-off oxbows. During the design phase NDDOT will mitigate the river impacts within the White Earth Valley.

4. & 5. Site 91.3 N & 91.7 N, Little Knife River and Tributary: These are on the north side of the road. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. The Selective North-South Alignment Alternative (preferred) will be on the south side at this location and will not directly or indirectly impact these two sites.

6. Site 92.7 S, Little Knife River: This wetland is on the south side of US 2 upstream from the culvert that conveys the stream through the road. The Little Knife River north of US 2, at this crossing, is not a well-defined channel and is dry much of the year. In most years, the north channel is hayed. It was estimated that the Selective North-South Alignment Alternative (preferred) would directly impact 0.29 acres of the wetland south of the road. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. The drainage will not be altered and it is anticipated that the majority of the wetland acres impacted will be reestablished in and adjacent to the new ditch.

A 1975 photograph (see B-25 in appendices) taken prior to construction of this area, indicates the presences of a grass channel, but lacks the open water presently found on site. It appears that the wetland on the south side of the US 2 resulted from road construction at the present location. Shifting the roadway to the north will completely impact the wetland on the north. Reducing the median (84-foot section) will decrease the wetland impact by approximately 0.05 acres. Narrowing the median will require two sets of reverse curves on a straight section of road. Drivers do not expect to encounter curves on a straight section of road therefore the safest and most practicable solution is to maintain a uniform section through this area.

7. Site 96.4 N/S, Palermo Wildlife Management Area: This site is comprised of two separate sites, 96.4 N (.09 acres) and 96.4 S (2.67). Shifting alignment to the north of the existing roadway will impact the entire north wetland. The wetland south of US 2 is adjacent to a large wetland, approximately 244 acres, of which 40 acres are in a NDG&F wildlife management area. In the 1976 FEIS, the current roadway alignment was studied based on the impacts of a four-lane divided roadway. The alignment was adjusted and the safest and most practicable alignment was selected at that time. It estimated that the Selective North-South Alignment Alternative (preferred) would impact the 1.23 acres of wetlands adjacent to the wildlife management area. The impacted wetland is a vegetated shoreline around the open water. The ACOE has determined that this wetland is non-jurisdictional.

Narrowing the median, to an 84-foot section, will require two sets of compound curves. An 84-foot section could reduce the wetland impact by approximately 0.28 acres. The safest, least expensive and most practicable solution is to maintain a uniform section through this area. The actual impacted can likely be mitigated in the new ditch area

adjacent to the wildlife management area. All areas of the ROW will be seeded with a native grass seed so the buffer area will be reestablished. There will be no change in the use of this area resulting from the proposed construction.

8. Site 126.4 N, Fuller Coulee: This site is on the north side of US 2. The ACOE has determined that this wetland is jurisdictional and any impacts will have to be covered by a 404 permit. The Selective North-South Alignment Alternative (preferred) will be on the south side at this location where wetlands were not delineated. The north-side wetlands will not directly or indirectly be impacted.

10/22/2002 10:07 FAX 3033126071

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2486  
<http://www.epa.gov/region08>

October 21, 2002

Ref. 8EPR-N

Mr. J. Michael Bowen, P.E.  
Division Administrator  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, ND 58501

Mr. Grant Levi, P.E.  
Deputy Director for Engineering  
ND Department of Transportation  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

Re: Comments on the DEIS for Widening  
U.S. Highway 2 between Williston and  
Minot, ND, CEQ # 020377

Dear Messrs. Bowen and Levi:

This letter provides the U.S. Environmental Protection Agency's (EPA) comments for the Draft Environmental Impact Statement (DEIS) for the proposed widening of North Dakota's U.S. Highway 2, from north of Williston (milepost 32.4) to west of Minot (milepost 131.3). The EPA has reviewed this EIS in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

We thank the North Dakota Department of Transportation (NDDOT), Houston Engineering, and the North Dakota Division of the Federal Highway Administration (FHWA) for scoping materials regarding natural resources prior to the Draft Environmental Impact Statement (DEIS). We also wish to thank NDDOT and Houston Engineering for telephone conversations to provide us with further input and clarification regarding the proposed project.

EPA's concerns regarding the proposed project include the following: (1) significant impacts to wetlands and other aquatic and terrestrial resources, (2) an inadequate process to evaluate impacts and identify the least damaging practicable alternative under the Clean Water Act (CWA) Section 404(b)(1) Guidelines [40 CFR 1502.14], (3) failure to consider alternatives that would reduce wetland impacts, and (4) the project's Purpose and Need statement and how that affects the development of alternatives to develop the least damaging practicable alternative under the Clean Water Act's Section 404(b)(1) Guidelines. Our concerns are described in the detailed comments that are enclosed. We are interested in working with you in a collaborative



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process to resolve these issues before the final EIS and we anticipate your call to initiate dialogue regarding our concerns. Also, I suggest that the U.S. Army Corps of Engineers be involved in the collaborative process to resolve the mitigation and other wetland issues

Based on the procedures EPA uses to evaluate the potential effects of proposed actions and the adequacy of the information in the DEIS, the four Alternatives identified by the DEIS that will widen U.S. 2 to four lanes for all 100 miles of the project – South Alignment, North Alignment, Selective North-South Alignment, and Complete Reconstruction – will be listed as category EC-2. This rating means that the review has identified environmental impacts that should be avoided to fully protect the environment (“Environmental Concerns,” or “EC”). The DEIS was determined to have insufficient information to fully assess the environmental impacts that should be avoided to fully protect the environment (rating of “2”) EPA identified a reasonably available alternative that could reduce the environmental impacts of the proposed action. Enclosed is a summary of EPA’s rating definitions.

If you have any questions about our comments please contact Cynthia Cody Director, NEPA Program at (303)312-6228. The staff contact is Brad Crowder, who can be reached by telephone at 303-312-6396, or at [crowder.brad@epa.gov](mailto:crowder.brad@epa.gov). We welcome opportunities to work together to identify sound solutions to transportation needs and environmental protection.

Sincerely,



Max H. Dodson  
Assistant Regional Administrator  
Ecosystems Protection and Remediation

Enclosures: EPA’s Comments for DEIS to Widen Highway U.S. 2 in North Dakota  
EPA’s Rating System Criteria for the environmental impacts of an action  
EPA’s Scoping Comments for DEIS to Widen Highway U.S. 2 in North Dakota

cc: Mark Deutschmann (Houston Engineering)  
Calvin Larson (FHWA-ND)  
Jim Martin (NDDOT)  
Jim Winters (USACE)

EPA's COMMENTS FOR DEIS TO WIDEN  
U.S. HIGHWAY 2 IN NORTH DAKOTA

## Wetlands and Waters of the United States

Direct Impacts to Wetlands and Streams

Executive Order 11990 requires that all federal agencies protect wetlands. The Corps and EPA, through a Mitigation Memorandum of Agreement, state that we will "... strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions." To support those objectives, the Section 404(b)(1) Guidelines [40 C.F.R. 230] require selection of the least environmentally damaging practicable alternative for a project. Impacts include direct, indirect, and cumulative adverse impacts to adjacent wetlands and waters of the United States, including wetland fragmentation and stream morphology changes related to proposed alignments or construction. The Guidelines further require that adverse impacts to wetlands, stream morphology and riparian habitats, and streams or other waters of the United States be avoided to the maximum practicable extent.

1.

The least environmentally damaging practicable alternative was neither identified nor selected in the DEIS (see alternatives discussion below). Depending on the alternative chosen, the direct wetland fill impacts range from 80.5 acres to 94.3 acres. Additional impacts to wetlands in the proposed right of way range from 152.5 to 193.3 acres (Table 4-2, page 4-22). The functions, quality, and values of those wetlands are not evaluated in the DEIS. A rigorous alternatives analysis is needed for the 404(b)(1) Evaluation that identifies how well the alternatives meet a project's Purpose and Need. That analysis is also needed in the Evaluation to determine mitigation for unavoidable wetland losses.

2.

A potentially important impact of the proposed project is the need for gravel or "aggregate" material for road bed construction. Such material often comes from riparian areas, old river oxbows, and wetlands near the highway corridor under construction. We have found that significant wetland impacts can occur from aggregate mining associated with highway projects. Those impacts associated with U.S. 2 construction also should be evaluated and disclosed in the EIS. The sources of aggregate material should be specified by the State in its construction contracts. The removal of aggregate from wetlands for highway construction is a direct project impact and needs to be mitigated as part of the project. Based on our telephone discussion on September 17, 2002, we understand that this project will not extract gravel from riparian or wetland areas. This understanding needs to be documented in the Final EIS.

Mitigation

3.

Wetland impacts for the proposed alternatives range from 152.5 to 195.3 acres. The DEIS did not include a mitigation plan. When wetland impacts are proposed, the EIS process should incorporate the wetland mitigation plan. The first step in wetland mitigation is avoidance. Wetland impacts that cannot be avoided will need to be mitigated at an appropriate ratio and of the same type and function of wetlands that are adversely impacted by the highway project.

Mitigation ratios typically range from two-to-one to five-to-one (occasionally higher) depending on the type and function of the wetlands and the likelihood of successful mitigation.

4. Compensatory wetlands should be within the same general areas as those adversely impacted and should contribute positively to the Watershed Restoration Action Strategy that the State has developed for the waters listed under Section 303(d) of the CWA. Use of the wetland mitigation bank, as proposed in the DEIS (page 4-23) may not meet these mitigation requirements, but the lack of information about wetland impacts regarding their function and type precludes that determination with existing information. Compensatory mitigation for stream modifications may include grade control structures, maintenance of flood water capacity, stabilization and vegetation of disturbed streambanks, and maintenance of wildlife corridors.

5. The DEIS addressed impacts on an acreage basis. Additional information on wetland types and function is needed for the mitigation plan and should be incorporated into the FEIS. Also the area of mitigation is overly narrow, as the DEIS states on page 4-23, "The wetland impacts requiring mitigation are based on the estimated acreage directly filled by construction." Regulations [40 C.F.R. 230.12(a)(3)(iii)] require mitigation for all unavoidable adverse impacts to the aquatic resource. For the wetland resource, adverse impacts that must be mitigated will include filling, draining, loss of hydrology, and loss of buffers (with water quality improvement and wildlife habitat functions) around the wetlands, both for wetlands within the right-of-way and for those that are indirectly affected by the highway project. Impacts to other water resources, such as stream channel realignment and stream bank modification, may also require mitigation.

Indirect and Cumulative Impacts to Wetlands, Streams and Groundwater

6. In addition to the direct impacts (e.g., the footprint of new highway lanes), indirect and cumulative impacts will occur. The most common indirect impacts occur from maintenance, storm water runoff, and altered surface and groundwater flow patterns. The DEIS mentions that a stormwater management plan will be developed to address construction impacts. However, the indirect impacts from storm water runoff during operations and maintenance of the highway are not evaluated and disclosed in DEIS. Operations that can have a significant effect on wetland and riparian area and functions include: stockpiling materials, maintaining mechanized equipment, disrupting drainage patterns; the construction, maintenance and use of staging areas; and removing snow and ice. The approximate doubling of a highway surface and more than doubling the width of the highway corridor will affect water and other environmental resources, particularly adjacent wetlands and waters that receive salt-laden runoff following winter maintenance activities. Highway operations can eliminate or change habitat types by changing vegetation, compacting soil, and lowering the water table with eventual draining of down-gradient wetlands. Accidental spills of toxic chemicals could also be a source of water pollution. The environmental analysis of potential indirect impacts to water quality resources should be expanded.

7. Adverse impacts to wetlands and other waters from winter maintenance are not evaluated or compared to the current impacts to water resources. Those impacts should be evaluated and disclosed for the additional roadway and right of way. The impacts of winter maintenance activities have long-term, indirect and cumulative effects. Snow plowing after sanding can move

sand and salt into adjacent ditches and fill slopes, ultimately migrating downhill into streams, riparian lands, and wetlands, altering their functional values. Steps taken to minimize and mitigate the unavoidable effects on waters of the U.S. (for example, sediment traps, reuse of sanding material, maintenance program requirements) should be discussed.

8.

The EIS should address how existing and future drinking water supplies will be protected in areas, if any, where construction, maintenance, and operations may affect headwaters and wellhead areas.

Current measures used to prevent and control pollutants should be described and evaluated for their success to reduce or contain water pollution and whether they suffice to protect stream uses (e.g., aquatic life, drinking water supply) along the highway and in downstream water resource areas. Where water uses are impaired or are likely to be impaired, the EIS should determine what measures are necessary to maintain or restore water quality and designated uses. Mitigation measures and Best Management Practices should be evaluated to avoid or mitigate water-quality impacts.

Clean Water Act (CWA) Section 404 Permitting Process and 404(b)(1) Guidelines

9.

NEPA regulations (40 CFR 1500.2(c)) and CWA Regulations (40 CFR 230.10(a)(4)) envision integration of NEPA and the CWA permitting process. This DEIS does not incorporate the Section 404 requirements in the alternatives analysis nor in the mitigation discussion (see below). Rather, the DEIS indicates that the 404 permit application will be submitted later. EPA believes that selecting an alternative prior to developing the necessary documentation for the 404 requirements conflicts with Federal Highway Administration (FHWA) Memoranda: Applying the Section 404 Permit Process to Federal-Aid Highway Projects, (February 3, 1989) and Regional Agreements on NEPA and Section 404 Merger, (November 6, 1995) (see <http://www.fhwa.dot.gov/environment/guidebook/chapters/v1ch11.htm>). Combining the NEPA and 404 processes is also a major component of the FHWA "Environmental Streamlining" efforts; see <http://www.fhwa.dot.gov/environment/streaming/index.htm> for guidance and examples.

The Purpose and Need and alternatives in the EIS need to be consistent with the 404 permit requirements. By combining the NEPA and 404 processes, FHWA can avoid the difficult situation of the preferred alternative from the EIS not being acceptable for a 404 permit. In this situation it may be necessary to reopen alternatives development and conceivably require additional NEPA analysis, costing additional resources and delaying the project. We are particularly concerned that using "social demand" to define a project's Need may be too general and "system continuity" may be too limiting.

During our discussions with FHWA and the U.S. Army Corps of Engineers (Corps) on September 17, 2002, the Corps indicated that they were not informed of the details of this project prior to completion of the DEIS. The Corps had not made a determination as to whether this project would be reviewed under a single individual permit or under multiple nationwide permits. Our review of the available documents (DEIS and "US Highway 2: Wetland Assessment and Preliminary Impact Report," NH-7-002(51), Final Report) indicates there are several areas along the proposed route where wetland impacts will exceed the nationwide permit

9.

thresholds. This review was not based on a complete jurisdictional determination, since that has not been completed. Jurisdictional determinations should have been completed prior to the DEIS so that reviewers could understand the implications of the permitting process. Because of the large number of wetland impacts associated with this project, EPA believes that a single individual permit should be considered, rather than a combination of numerous individual permits and nationwide permits. This conclusion is based on the cumulative federal interest in the project (e.g., FHWA, U.S. Fish and Wildlife Service, Corps) as well as the resultant reduction in paperwork and processing time. While it could be argued that the proposed, long-term project could receive sequential permits to allow for changing permit requirements over time, the decision to construct the complete project is the decision under consideration. A sequential permit process results in the potential for subsequent permits to be denied and a partially-built project to be halted. Therefore, EPA believes the proper permitting process is a single 404 permit to cover the entire project. All information that is necessary to make the permit decision should be included in the EIS. This will allow the various decision documents (FHWA ROD, Corps 404 permit, North Dakota's CWA Section 401 certification, and so forth) to be issued concurrently and will streamline the NEPA and regulatory processes to the greatest extent possible. This also would allow the public notice processes to occur concurrently instead of sequentially.

Evaluating alternatives under the 404 permitting process is directed toward identifying the least damaging practicable alternative (to aquatic resources) that fulfills the overall purpose for a project. The CWA Section 404(b)(1) Guidelines [40 CFR 230] establish the process and criteria to determine whether the discharge of fill material in wetlands and other waters of the U.S. meets the requirements of the Act. The Corps process (with EPA review) is usually approached in a stepwise manner, to assure that the proposed discharge is necessary and to determine the least damaging approach to accomplish the overall project purpose. The first step in this process is to evaluate the project purpose and need to determine if the discharge/wetland impacts are necessary. The next steps are to determine if the proposed wetland impacts can be avoided, minimized, reduced or mitigated (compensated) and develop the "least damaging practicable alternative." Following the 404(b)(1) Guidelines at 40 CFR 230.10(a)(2), "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." For example, the "Super 2" alternative discussed below is less expensive and uses the same technology as the preferred alternatives.

#### Monitoring

10.

The DEIS should discuss monitoring for wetlands and other resource categories determined to be significantly affected by the proposed project. The monitoring plan should include the types of surveys, location and frequency of sampling, parameters to be monitored, indicator species, procedures to use data or results in project implementation, and availability of results to interested and affected groups. The DEIS should describe the feedback mechanism to compare baseline data that is available with monitoring results, to adjust operating procedures and monitoring protocols.

Alternatives and Purpose and Need

Alternatives

11. A narrow range of alternatives was analyzed in the DEIS. The DEIS fully analyzes three versions of a four-lane highway and the no action alternative. Several alternatives were screened out which have fewer environmental impacts and would cost less. In particular, EPA believes that the "Super 2" alternative (screened out) would avoid many wetland and other natural resource impacts. NEPA requires that all reasonable alternatives be rigorously explored and objectively evaluated [40 CFR 1502.14(a)] for reviewers to be able to compare the relative merits of all reasonable alternatives [40 CFR 1502.14(t)]. Also, for projects with wetland impacts, it is necessary to develop an alternative which complies with the requirements for a Section 404 permit referred to as the "least damaging practicable alternative." The DEIS does not provide this required discussion of least damaging practicable alternative(s) and does not comply with the 404 process.

12. The "Super 2" alternative should be rigorously examined to determine whether it could potentially provide greater economic and social benefits to northwestern North Dakota and minimize or avoid adverse environmental impacts from the alternatives fully developed in the DEIS. "Super 2" could include either (1) an enhanced two-lane road or (2) a combination of a four-lane, divided highway in areas without significant environmental impacts and an enhanced two-lane road in areas that have significant wetlands or other natural and cultural resource impacts. Sensitive areas could have the highway enhanced to have passing lanes, improved shoulders, reconstructed surfaces in areas where it has deteriorated, and so forth, and be designed and built to minimize adverse impacts in areas with sensitive wetlands.

13. An evaluation of how alternatives affect road maintenance, enhance recreational and business opportunities, and improve the town/highway interfaces would be helpful in the EIS.

Purpose and Need

14. The EIS should examine whether other alternatives to widen Highway U.S. 2, such as "Super 2," can enhance economic vitality while reducing environmental impacts. The alternatives evaluated in the DEIS do not indicate that business activity is likely to increase in the highway corridor as a result of implementing those alternatives or that the costs support those investments. More information is needed regarding the economic conclusion that additional highway lanes are connected to economic vitality. The costs and benefits of widening, particularly in environmentally sensitive areas, should be compared in the EIS. If information on the nexus between highway widening and economic vitality has been developed, NEPA requires such information to be reasonably summarized and incorporated by reference in the DEIS [40 CFR 1502.21].

15. The DEIS also is inconsistent regarding socioeconomic development and environmental impacts from development. After concluding that there will be economic vitality benefits associated with constructing a four-lane highway, the DEIS concludes that no additional development or indirect environmental impacts will occur. "Because substantial additional population growth is not anticipated as a result of the proposed action, land use along US 2 will

remain largely unchanged. Therefore, no secondary impacts resulting from population growth, caused by the project, are expected" (page 4-51).

16.

The DEIS should discuss and quantify why four lanes are necessary for highway consistency. No information is presented regarding any traffic capacity or congestion, safety, or other travel demand as reasons to widen U.S. 2 as important goals for highway consistency.

Alternatives development for the project is limited by the types of Purpose and Need developed for the DEIS. The DEIS indicates that there are three basic needs for the proposed project: (1) social demand, (2) regional economic viability, and (3) system continuity. Project proponents want only a four-lane highway according to the DEIS. The first two Needs are broad enough such that an alternative to widen or improve the roadway will partially meet those Needs. The third Need is narrowly defined to guarantee such that only one alternative, a four-lane highway, is sufficient to meet it. FHWA guidance papers, including the "Purpose and Need Policy Paper" and other technical memoranda, direct that the Purpose and Need of a project are supposed to identify the transportation problem with supporting data and propose solutions to solve that problem. There is no transportation problem identified in the Purpose and Need for this project. Traditional transportation needs such as traffic congestion, safety issues, and substandard design conditions are not applicable or only minor considerations. We recommend that a wider range of alternatives be explored to minimize environmental impacts to reflect the most important elements of Purpose and Need.

#### Socioeconomic Impacts

17.

The DEIS does not describe nor quantify the distribution of benefits and costs. Economic and social benefits should be quantified or otherwise presented to compare to the significant economic and environmental costs that will be incurred for each Alternative. A summary and a table, or other visual information, should be provided for reviewers to reasonably evaluate the overall benefits and costs associated with each alternative, and to understand the quality and type of analysis actually completed. As we stated in our scoping comments (September 30, 2000, enclosed), that information is necessary to support the Purpose and Need.

18.

Maintenance and improvement of the existing roadway and its interface with communities in the corridor can support economic development and public safety. A "Super 2" alternative that includes other transportation investments besides widening, using the money saved by not widening to four lanes in environmentally sensitive areas, could be examined to determine whether it could provide greater benefits to area communities and the State while avoiding many environmental impacts associated with the current alternatives.

#### Project Enhancements

19.

As one of the purposes and needs for the project is regional economic viability, it appears that FHWA may want to enhance the project through some of the flexibility in the transportation funding bill ("TEA-21"), using funds for purposes that enhance transportation systems and the environment. An alternative which includes environmental enhancements of the roadway through the towns along U.S. 2 would make those communities more attractive to new businesses, provide tourist attractions and enhance the quality of life for residents. Those

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actions, combined with something similar to the "Super 2" alternative mentioned in the DEIS to enhance safety and passing, could broadly enhance the region's economic vitality and minimize adverse impacts to environmental and community resources.

#### Impacts to Plants and Wildlife

20.

In addition to the direct impacts (for example, habitat destruction) from the footprint of new highway lanes, indirect and cumulative impacts will occur. A wider highway with more impervious surface and runoff will fragment habitats and reduce its integrity, create a greater barrier to species movement and ecological processes, degrade habitats through disturbance of resident species, cause more runoff of highway-related pollutants, alter natural hydrologic and biotic processes, and potentially introduce or spread exotic and noxious weeds. Those impacts were not evaluated and disclosed in the DEIS.

The four-lane alternatives that include a median will create a substantially wider highway crossing distance for terrestrial wildlife. Most highway improvements discussed are likely to increase the number of deer-vehicle collisions. To protect both travelers and wildlife, both of whom will cross a much wider highway corridor, it would be helpful to better understand the likely impacts of the proposed project on wildlife and vehicle collisions. There may be opportunities to create additional highway crossings dedicated for wildlife use to reduce vehicle collisions, reduce wildlife mortality, and connect habitat areas. Those actions can be planned with the assistance of wildlife agencies.

Plans to prevent and manage noxious or undesirable vegetation associated with construction activities should be evaluated. Noxious plants/weeds are a significant concern in North Dakota, both for farmland resources and wildlife habitats. Construction disturbance may increase the risk of noxious weed introduction and dispersal and should be disclosed in the EIS.

#### Secondary and Cumulative Impacts

21.

FHWA's NEPA regulations [23 CFR 771] address indirect effects, referring to them as "secondary effects." Where secondary impacts are likely to occur, there may or may not be mitigation required. The DEIS should disclose, to the extent possible, where secondary impacts are likely. Working with local and State agencies, adverse secondary impacts may be minimized or mitigated. Secondary impacts may occur from highway maintenance, frontage roads (if any) planned or anticipated in the future, and scheduled reconstruction or other improvements. NEPA regulations at 40 CFR 1508.8 state that indirect effects can include, "... growth inducing effects related to induced changes in the pattern of land use, population density, or growth rate." Cumulative impacts are those that result from the incremental impact of an action, when added to past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes other actions [40 CFR 1508.7]. Reasonably foreseeable impacts to wetlands and critical environmental receptors should be assessed, and potential wetland losses should be addressed for mitigation in the EIS.

### U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

#### Definitions and Follow-Up Action\*

##### Environmental Impact of the Action

**LO - Lack of Objections:** The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC - Environmental Concerns:** The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

**EO - Environmental Objections:** The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU - Environmentally Unsatisfactory:** The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

##### Adequacy of the Impact Statement

**Category 1 - Adequate:** EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2 - Insufficient Information:** The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

**Category 3 - Inadequate:** EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment, February, 1987.

**United States Environmental Protection Agency (October 21, 2002)****Responses:**

1. The FEIS has identified the Selective North-South Alignment Alternative as the Preferred Alternative. It appears to be the environmentally preferred alternative that meets the purpose and need. The primary purpose for development of this alternative was to avoid and minimize direct impacts to or encroachment upon farmsteads, occupied residences, industrial structures, missile silos, wetlands, and easement wetlands. In light of the concerns expressed by EPA and others, the preferred alternative, which offers maximum flexibility in shifting the roadway was further refined. Four-hundred twenty-five wetlands within the area of potential effects were field delineated according to the 1987 ACOE Wetland Delineation Manual. These wetlands were typed in accordance with USFWS-Circular 39 and classified according to the Cowardin classification system (Wetland Assessment and Preliminary Impact, January 2000, Houston Engineering, Inc). Tables D-11, D-12, and D-17 summarize the wetland impacts by type. Since EPA sent this letter, FHWA and NDDOT met with EPA to discuss their concerns. EPA agreed to review the project area and identify wetlands that they determined to have important functions. EPA identified eight wetlands that had significant habitat (see EPA e-mail dated 08/14/2003 page 7-27). NDDOT has addressed each of these wetlands (see responses on pages 7-28 to 7-30). See Section 4.1.13 for mitigation of wetland impacts.
2. Typical aggregate deposits in North Dakota are glacial deposits that are not associated with riparian locations. Aggregate deposits are typically located on or near a hill. NDDOT obtains leases on aggregate sources and includes them in the bid package for contractor's use. These leased aggregate sources are surveyed for cultural resources and wetlands prior to including them in the bid package. Occasionally, a large aggregate deposit may contain a small wetland. If the wetland cannot be avoided to economically mine the aggregate, the impacted wetland acreage will be mitigated along with any other wetland impacts in the ROW. Aggregate will not be removed from riparian areas for this highway project. Please refer to Section 4.1.22, Construction Impacts.
3. The Preferred Alternative was developed to avoid and minimize wetland impacts as well as to avoid relocation of people. Impacts to wetlands that could not be avoided were then minimized. Plans to mitigate remaining impacts will be to: 1) mitigate all that is practicable on the project site within the Right-of-Way limits; 2) mitigate at a wetland bank developed in the project area; 3) mitigate at a wetland bank within the state. NDDOT develops wetland mitigation and banking plans, including functional replacement, in cooperation with USFWS, ACOE, and NDGFD. The project is expected to take up to ten years to construct and it will be that long before many of the wetland impacts will occur. Wetland mitigation will be based on actual impacts determined at the time they occur vs. what is present today. The wetland mitigation plan is further discussed in Section 4.1.13.
4. Mitigation plans cannot be finalized at this time because the actual acreage of wetland impacts and acreage of on-site mitigation will not be determined until final design. Final design on some sections may not be completed until eight years from now. Generally, the mitigation plan follows the procedures that NDDOT has been using on highway projects in the past. Wetlands impacted will be mitigated in or adjacent to the ROW where possible. Impacts not able to be mitigated on-site will be mitigated in the area of the project where possible. Any remaining impacts will be mitigated in approved wetland banks. Final mitigation plans, including any stream modifications required, will be developed in cooperation with USFWS, ACOE, and NDGFD.
5. Grade line of the new roadway is expected to match the grade line of the current roadway, which will cause minimal changes to the hydrology of the remaining wetlands not directly filled by the footprint of the new roadway. Furthermore, many of the impacted wetlands are in or adjacent to the existing ROW and the ditch grass is the primary buffer. After construction, once the ditch vegetation is reestablished, the buffers will be reestablished. During the final design, actual wetland impacts (including draining, loss of hydrology, loss of buffers, and functions) will be determined for each individual site. These wetlands have been typed and classified according to the Cowardin classification system (see summary of impacts Tables D-11, D-12, and D-17 in the appendix and Section 3.5.4.1 Wetland Habitats and Species, page 3-27). USFWS, NDDOT, and FHWA are currently developing a Memorandum of Agreement, with guidance from ACOE, on a functional classification system for wetlands to be used for certain highway projects in the State of North Dakota. Pursuant to this agreement, additional classification of wetlands affected by the US 2 project may

- be undertaken during implementation of the mitigation plan. All impacts will be mitigated, either on-site or off-site, with wetlands of equivalent or greater function as approved by USFWS and NDGFD.
6. The pavement surface will increase from approximately 500 acres to 940 acres. This will result in an increase in use of sand and salt, which will eventually end up in the ditch, either from highway runoff or with the accumulations of snow deposited by snowplows. NDDOT uses snowplows to remove the snow from rural roadways and uses a sand-salt combination in limited areas (i.e., primarily at major intersections and hills) when the roadway is icy. Because NDDOT uses sand and salt sparingly in rural areas and because the vegetated ditch will act as a filter for the storm water, the long-term secondary impacts of maintenance on the added surface area are expected to be minimal (see Sections 4.2 and 4.3). The new roadway will be adjacent to an existing roadway with a similar grade-line. Therefore, existing drainage patterns will be maintained and changes in the hydrology (surface and groundwater) will be minimal. Impacts from post construction highway runoff (types and quantities of chemicals) are dependant on the volume and types of vehicles using the road, not on the area of roadway surface. Therefore, secondary impacts from this type of runoff are not anticipated to change from the build alternatives vs. the no build alternative (see Section 4.1.11). The contractor will be required to have a storm water runoff management plan to prevent sedimentation from leaving the construction site. The plan will have to address all aspects of construction including material stockpile sites and any maintenance/staging areas. Even though chemical or fuel spills are not anticipated, the contractor will be required to have a plan to handle such emergencies and will be responsible for any clean up should a spill occur (see Sections 4.1.22 and 4.7).
  7. The increase in pavement surface will result in an increase in use of sand and salt, which will eventually end up in the ditch, either from highway runoff or with the accumulations of snow deposited by snowplows. NDDOT uses snowplows to remove the snow from rural roadways and uses a sand-salt combination in limited areas (i.e. at major intersections and hills) when the roadway is icy. Because NDDOT uses sand and salt sparingly in rural areas and because the vegetated ditch will act as a filter for the storm water, the impacts of operating this roadway to adjacent wetlands and streams are expected to be similar to current conditions (see Sections 4.1.11, 4.2, and 4.3). Sediment traps will be required during construction and will have to be maintained until the vegetation has been reestablished.
  8. There are no sole-source aquifers and wellhead protection areas located in the US 2 corridor. If during design of the project, or during construction of the project, a well is found to be within the construction limits, NDDOT will contact the Water Appropriation Division of the State Water Commission to determine the appropriate measures needed to protect the aquifer from contamination. See Source Water Impacts (page 4-17) in Section 4.1.11. While the rivers mentioned in Section 3.5.3 (page 3-25) pass through the project corridor, the headwaters will not be impacted by the project. The headwaters of these rivers and streams, including the Little Knife River, are located north of the project corridor outside the area of potential effects.
  9. FHWA and NDDOT in cooperation with the ACOE, a cooperating agency, have included the information required to obtain a Section 404 permit. ACOE determined jurisdictional wetlands and provided a list of sites (see Table D 17). Impacts are identified in Section 4.1.13 (page 4-18) and mitigation is discussed in Section 4.7 (page 4-68). Measures that have been taken to avoid, minimize, and mitigate the jurisdictional wetlands have been addressed in comments to EPA e-mail dated August 14, 2003 (pages 7-30 to 7-32). The ACOE indicated that individual permit would be required for the entire project. NDDOT will review the design and actual impacts with the resource agencies during the design phase of each segment. A work plan has been agreed to where any changes in the impacts will need to be addressed and a supplement to the permit will be required as each segment of the project is constructed (See Section 4.1.12, Permits).
  10. The FEIS has identified the wetlands that will be impacted by the project. These wetlands have been delineated and classified. Preliminary mitigation plan is included in FEIS. NDDOT will work with interested resource agencies and include in the final mitigation plan monitoring procedures to insure the mitigation is successful.
  11. The FEIS identifies the North-South Alternative (Section 2.4.4 page 2-25) as the preferred alternative. The Selective North-South Alignment Alternative was selected, as the preferred alternative, because as a combination of the North Alignment and South Alignment Alternatives it has fewer impacts to both the natural and human environment. Overall this alternative has been determined to be the environmentally

preferred alternative. The Super Two Alternative was not advanced for detailed consideration because it does not meet the purpose and need of the project. Section 2.3.4.2, beginning on page 2-6, explains why the Super 2 Alternative does not meet the purpose and need of the project. It does not adequately address safety concerns created by traffic moving at vastly different speeds, and it creates additional safety concerns associated with determining use of the passing lane under the adverse weather conditions typical of North Dakota in the winter. Additionally, the presence of the lengthy military convoys raises both safety and national security concerns when a passing vehicle is unable to pass the entire convoy before losing access to a passing lane. Furthermore, the introduction of the Super Two highway configuration may lead to both safety and continuity concerns as drivers encounter an unfamiliar section of roadway because a “Super Two” configuration does not exist anywhere else in the state. Finally, the Super Two Alternative does not sufficiently enhance system performance to function properly as part of the Interregional System of roads under the NDDOT’s Highway Performance Classification System due to safety concerns, passing restrictions, and limits on travel speeds due to slow-moving vehicles

12. Comment noted. Please see Response 11.
13. All build alternatives will increase the amount of road maintenance, enhance recreational and business opportunities, and improve the town/highway interfaces equally.
14. In response to comments on the DEIS, Chapter 1 has been revised to provide additional detail on the purpose and need for the project and to clarify the role US 2 plays in maintaining economic vitality in the project area. Chapter 2 has been revised to provide further detail on the Super Two Alternative, and a more detailed explanation why it was not advanced for further consideration.
15. Only minor induced growth is anticipated from this proposed project (see Section 4.1.7). Because the area, which has suffered a business and population loss, has excess infrastructure (homes, commercial buildings, workshops, storage facilities, utilities, and developed commercial and residential lots, etc.) already in place, which was built up during the oil boom, any minor induced growth resulting from the project will have little or no additional impacts on the environment.
16. In response to comments on the DEIS, Chapter 1 has been revised to provide additional detail on the purpose and need for the project. The reasons for public support (“social demand”) for the project have been presented in greater detail in the enhanced discussion of safety and additional detail presented on the importance of US 2 to the project area. Additional detail on the role of US 2 as a component in maintaining economic viability has been added. Additional detail has also been provided on enhancing system performance and improving system continuity.
17. It is not feasible to apply a cost benefit ratio to all the impacts nor is it feasible to estimate final economic benefits. No cost benefit ratio study was undertaken.
18. Comment noted. Please see Response 11.
19. Comment noted.
20. Improving US 2 from a two-lane to a four-lane highway is not expected to increase or decrease the number animal crossings or effect the location of the crossings. The number of animal-vehicle incidents on US 2 is low and no high incident locations were identified. The proposed construction would not increase these occurrences. No conclusive studies have shown that wider highways result in an increase in the number of animal-vehicle collisions. Crashes with animals tend to occur over greater distances (extent of highway) versus isolated areas. However, there may be a correlation with higher traffic volumes rather than increased roadway width. Multiple lanes will separate traffic and provide crossing animals a buffer in the median. The NDDOT will continue its ongoing program for controlling noxious weeds within the highway right of way. The NDDOT has made efforts to 1) mow within the right of way in June and the fall of the year, and 2) spraying herbicides on the noxious weeds during the summer. These efforts are coordinated with local and county government officials. Efforts will also be made to have the construction equipment cleaned prior to being used in the construction areas.
21. Comment noted. Please see revised Sections 4.2 Cumulative Impacts (page 4-56) and 4.3 Secondary Impacts (page 4-63) in the FEIS.