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## **5. APPLICABLE REGULATORY COMPLIANCE ISSUES**

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Compliance issues are environmental conditions that may affect the transfer or use of the subject property. These conditions include historic property, prehistoric sites, traditional cultural resources, sensitive habitats, threatened or endangered species, wetlands, floodplains, seismic conditions, mineral resources, prime and unique farmlands or timberlands, and water rights. Compliance issues also include violations or potential violations of federal, state, or local laws and regulations that have occurred on lands proposed for relinquishment. No prehistoric or traditional cultural resources have been found at any of the 446 MS sites.

### **5.1. LIST OF COMPLIANCE ISSUES**

#### **5.1.1. Historic Property**

The State Historical Society of North Dakota (SHSND) and the Advisory Council on Historic Preservation were consulted as part of the MM III Dismantlement EIS (USAF, 1999a). The missile sites were considered as eligible for the National Register of Historic Places based on their roles in the Cold War. The Air Force and the SHSND have negotiated a Programmatic Agreement to retain a MAF (O-0) and LF (N-33), both located within the 448 MS, and those two sites were not dismantled. No restrictions for transfer of properties are required for MAFs or LFs within the 446 MS.

#### **5.1.2. Sensitive Habitats**

The LFs or MAFs in the 446 MS are not adjacent to or within any protected areas, such as national wildlife refuges, national or state wildlife management areas, or waterfowl protection areas. No disturbance to these protected habitats should occur if the lands are sold; therefore, no restrictions for the transfer of the properties are required.

#### **5.1.3. Threatened and Endangered Species**

No known threatened or endangered plant or animal species, or suitable habitat for such species, inhabit the LFs or MAFs within the 446 MS (USAF, 1999a). No impacts to any protected species or their habitat should occur if the properties are sold; therefore, no restrictions are required.

#### **5.1.4. Wetlands**

Wetlands are regulated under Section 404 of the *Clean Water Act (CWA)*<sup>1</sup> and Executive Order (EO) 11990, *Protection of Wetlands*. Region 6 of the USFWS manages Wetland Management Districts in North Dakota to provide wetland areas needed by waterfowl for

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<sup>1</sup> Generally, CWA Section 404 requires that a permit be obtained before dredging or filling wetlands that are greater than one-third acre in size, within a naturally occurring basin, or connected to another wetland by a perennial or intermittent stream. More information on wetland permits in North Dakota can be found at <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>. More information on wetlands and prairie potholes can be found at the National Wetlands Inventory website, <http://wetlands.fws.gov/>.

nesting and feeding. Wetlands in the vicinity of the LFs and MAFs are discussed in Section 3.2.4 and Table C-2, and in the site-specific EBSs (Section 3.2.5).

There are 8 sites in the 446 MS having National Wetland Inventory wetlands within Air Force property boundaries; 3 of these also have nearby wetlands. An additional site has an ephemeral wetland within its property boundaries as well as nearby wetlands. These wetlands may be subject to the CWA, and future owners may be required to coordinate with the USACE before disturbing (e.g., filling) the wetlands.

Of the remaining 46 sites, 36 have nearby wetlands. The nearby wetlands would not be directly affected by the property transfer. Although it is unlikely these wetlands would be disturbed, they may be subject to the CWA.

No disturbance to wetlands would occur from selling the properties; therefore, no restrictions are required.

#### **5.1.5. Floodplains**

The MAFs and LFs in the 446 MS are not located within floodplains (USAF, 1999a). No impacts to any type of floodplain would occur if the properties are sold; therefore, no restrictions are required.

#### **5.1.6. Seismic Conditions**

The 446 MS is in a zone of low seismicity and there are no major faults in the deployment area (USAF, 1999a). Seismic conditions would not change as a result of the sale of the properties; therefore, no restrictions are required.

#### **5.1.7. Mineral Resources**

No economically recoverable mineral resources have been identified in the vicinity of the LFs or MAFs within the 446 MS; therefore, no restrictions are required.

#### **5.1.8. Prime and Unique Farmlands or Timberlands**

The determination of prime and unique farmland is based on soil type (soil series) as defined by the USDA Natural Resources Conservation Service (NRCS) (formerly the Soil Conservation Service). The county soil surveys published by the NRCS contain detailed soil maps showing the areas that are prime farmland. The soil surveys are available from the USDA county extension agents.

Within the 446 MS, 6 former missile sites contain no prime farmland soils, 16 sites are partially designated as prime farmland, and 33 are completely covered with prime farmland soils. The sites or portions thereof designated as prime farmland are subject to the *Farmland Protection Policy Act* (Public Law 97-98), and restrictions would apply to the conversion of the land to a non-agricultural use. Table C3 shows the sites and their designations.

No timberlands have been designated in the vicinity of the LFs or MAFs.

### **5.1.9. Water Rights**

If any water rights were acquired, they will be addressed in the Report of Excess to be prepared for each site by the USACE (Nordham, 2001).

## **5.2. DESCRIPTION OF CORRECTIVE ACTIONS**

The dual-celled lagoon at MAF E-0 was evaluated for a reduction in nitrogen levels. Alfalfa, a plant which fixes nitrogen (i.e., absorbs excess nitrogen into the plant tissues), is planted to balance nitrate levels in the soil; this method has been approved by USEPA. Representatives of the Air Force and USEPA monitored the results of alfalfa growth at the sewage lagoon for a year and determined that no further action was needed.

Former LFs C-24, C-26, C-27, and E-44, and former MAFs B-0 and D-0, had sampled areas where DRO concentrations were above the criteria level; E-44 also had a GRO detection above the criteria level. The NDDH gave approval for the Air Force to incorporate the contaminated soil from areas with excess DRO and GRO concentrations into existing soil stockpiles (Koop, 2001; NDDH, 2001). The Air Force reduced the concentrations below criteria levels by excavating and spreading the soil near the surface to facilitate degradation of the organic contamination.

Groundwater sampling data from former LF sites B-13, C-21, C-22, C-28, and D-34 will be used to determine the potential for impacts from non-liquid PCB coatings at the other LFs. The results will also be used to evaluate the need, if any, for further action at the LFs. Monitoring is scheduled to continue at the five LFs in the 446 MS through June 2007.

At the present time, no further action is required for PCBs (see Section 3.14). If PCBs were to be detected in the future, the Air Force would perform remediation in accordance with applicable regulations and cleanup standards.

No other corrective actions were determined to be necessary.

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