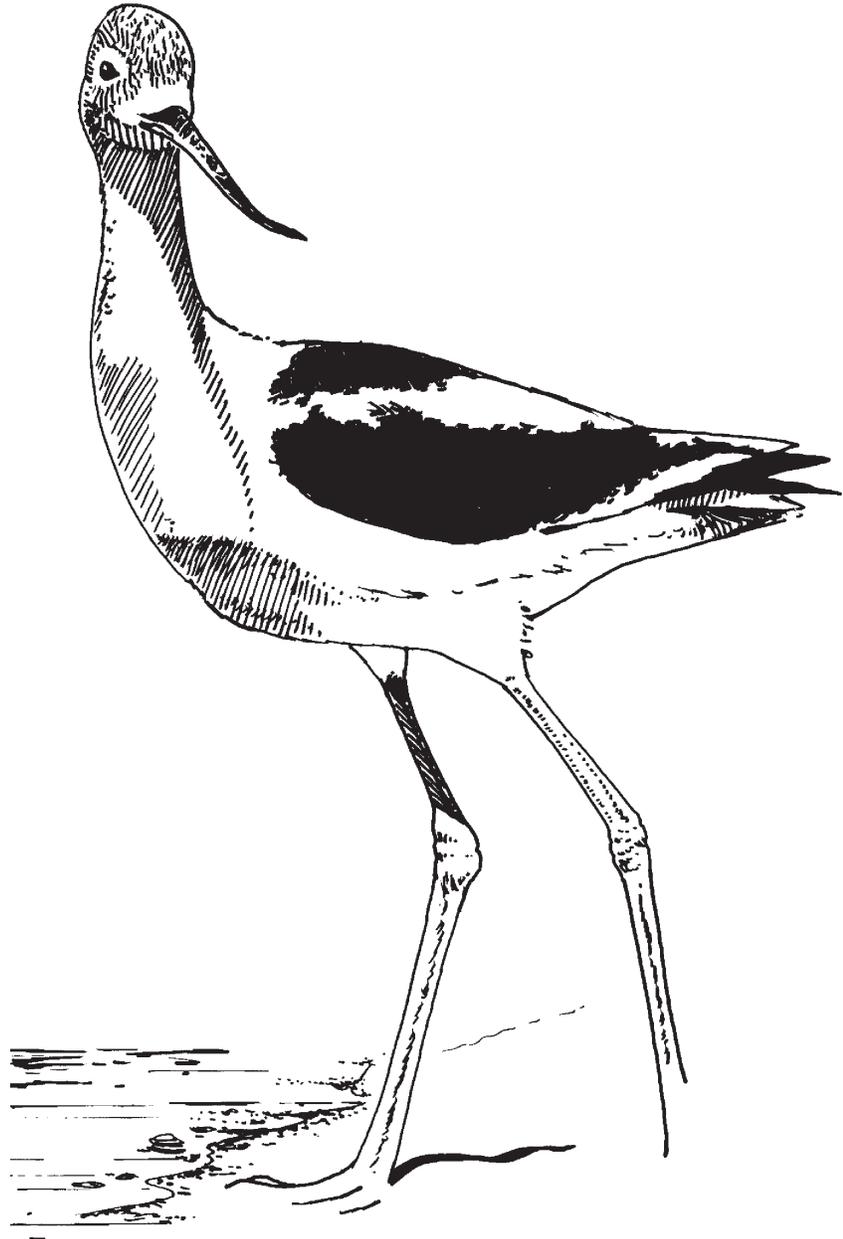


2 The Limited-interest Refuge



2 The Limited-interest Refuge

ESTABLISHMENT, ACQUISITION, AND MANAGEMENT HISTORY

The easement refuge is almost identical to other easements acquired during the 1930s that established the right to impound water and close the area to hunting. During this period, the United States faced the Great Depression, a massive drought, and declining waterfowl and wildlife populations. To address this problem, the federal government developed limited-interest refuges through easement agreements with private landowners and states. Originally, easements were purchased from private landowners; however, almost the entire refuge boundary under easement is now owned by the state. A small area within the refuge boundary is not owned by the state, but is also not under an easement.

It is important to note that a small area within the approved refuge boundary has never had an easement acquired. These easements were not needed to complete the dam, impound water, or complete the recreational developments, so they were not pursued.

CURRENT STATUS OF THE LIMITED-INTEREST REFUGE

The Bear Butte limited-interest refuge is currently owned and operated by the state as part of the Bear Butte State Park, which is part of the state park system. Nearly all of the Bear Butte limited-interest refuge is currently owned in fee title and managed by the SDGFP as part of Bear Butte State Park or the Bureau of Land Management as part of Bear Butte Recreation Area. The butte itself is sacred to many American Indian tribes who come here to hold religious ceremonies. Mato Paha, or Bear Mountain, is the Lakota name for the site.

The butte is located on the east side of Highway 79. It is within the boundaries of Bear Butte State Park but is not on the refuge. Visitors can learn the geological story of this volcano-like structure, its role as a pioneer landmark, and its continuing role as a sacred mountain and founding place of religion for several plains tribes when visiting the Bear Butte Education Center.

The butte has a 1.75-mile limestone-surface trail that ascends from the foot of Bear Butte to its 4,426-foot summit. Designated a National Recreational Trail, it is maintained by state park personnel. Visitors can view four states from the butte's summit, which is also the north end of the Centennial Trail that meanders through the east-central Black Hills and extends 111 miles south to Wind Cave National Park.



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Red-winged Blackbird

Bear Butte Lake, which lies in the limited-interest refuge, is where the cooperative agreement is implemented. The state manages a campground and picnic area at the lake and provides opportunities for fishing, hiking, and horseback riding as part of the state park.

Bear Butte State Park is home to a small herd of bison.

REFUGE PURPOSE

The purposes of the refuge are as follows:

- Executive Order, August 26, 1935, “*as a refuge and breeding ground for migratory birds and other wild animals.*”
- Migratory Bird Conservation Act “*for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.*”

In addition to the legal drivers listed above, the refuge was established under the easement agreement in the late 1930s. As part of the purpose of the refuge the easement reads, “*The exclusive and perpetual right and easement to flood with water, and to maintain and operate a natural or artificial lake thereon or in connection with other land included in what is known as the Bear Butte Lake Project, and to raise the water level thereof by means of dams, dikes, fill, ditches, spillways, and other structures, for water conservation, drought relief, and for migratory bird and wildlife conservation purposes and to operate upon said lands and waters and maintain a wildlife conservation demonstration unit and a closed refuge and reservation for migratory birds and other wildlife.*” It was stipulated that if the purposes for which the easement was granted were abandoned, the land will revert to the grantors or their successors.

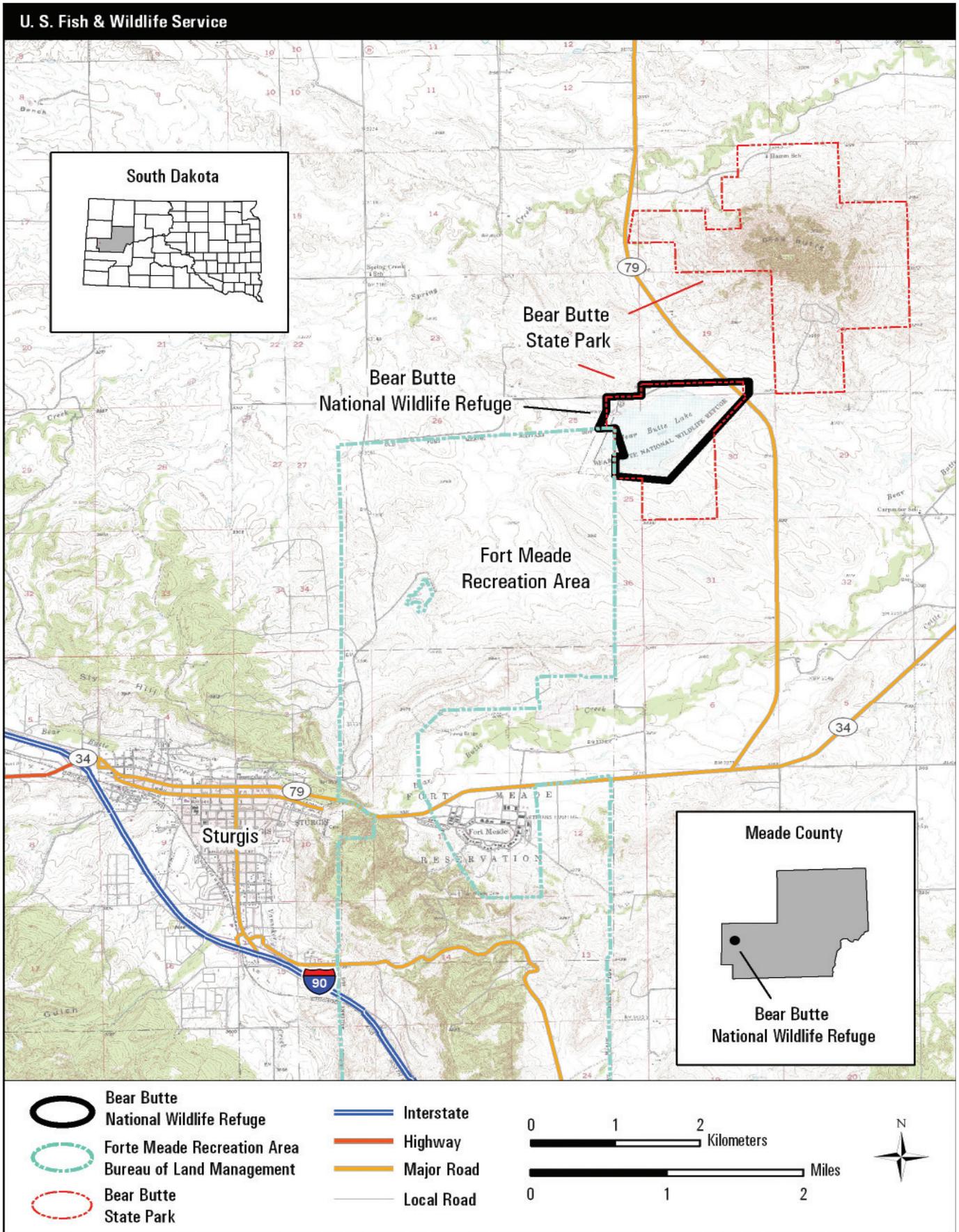


Figure 2. Location map for Bear Butte NWR, South Dakota

COMPATIBILITY POLICY

Lands within the Refuge System are different from federal, multiple-use public lands, such as National Forest System lands, in that they are closed to all public uses unless specifically and legally opened. The Improvement Act clearly establishes that wildlife conservation is the singular Refuge System mission. To ensure the primacy of the Refuge System's wildlife conservation mission, a compatibility policy was developed and put into effect on November 17, 2000 (<http://policy.fws.gov/library/00fr62457.pdf>). The compatibility policy states that the Service will not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Service has determined that the use is a compatible use, and that use is not inconsistent with public safety.

A refuge use is defined as any activity on a refuge, except administrative or law enforcement activity, carried out by or under the direction of an authorized Service employee. Recreational uses, including all actions associated with a recreational use, refuge management, economic activities, or other use by the public, are considered to be refuge uses. Facilities and activities associated with recreational public uses, or where there is an economic benefit associated with a use, require compatibility determinations (CDs). Refuge management activities, such as invasive species control, prescribed fire, and scientific monitoring, as well as the facilities for managing a refuge, do not require CDs.

A compatible use is a proposed or existing wildlife-dependent recreational use, or any other use of a refuge that, based on sound professional judgment, will not materially interfere with, or detract from, the fulfillment of the Refuge System mission or the purposes of the refuge. Sound professional judgment is further defined as a decision that is consistent with principles of fish and wildlife management and administration, available science and resources, and adherence to law.

CDs are written determinations signed and dated by the refuge manager and the refuge supervisor stating that a proposed or existing use of a refuge is, or is not, a compatible use. CDs are typically completed as part of the CCP or step-down management plan process. Draft CDs are open to public input and comment. Once a final CD is made by the refuge manager, it is not subject to administrative appeal.

A CD is not required when the Service does not have jurisdiction over the use. Jurisdiction is not to be viewed as what type of law enforcement jurisdiction the Service has over the refuge (i.e., proprietary or concurrent); rather, it asks the question of whether the Service has the legal authority to prohibit a use.

Property rights that are not vested in the federal government must be recognized and allowed whether or not the use might be compatible. In these cases CDs should not be done because the finding is moot, and because the determination may be misinterpreted to mean an activity that otherwise will not be compatible is found to be compatible under certain "circumstances."

Compatibility determinations are usually prepared and provided for public review and comment in the draft CCP/EA. However, since the proposed action in the draft CCP/EA recommended divestiture, CDs were not prepared. A public notice was prepared and disseminated to the public requesting that they review and provide comments on the draft CDs. The final CDs are found in appendix G. They reflect public comments and recognize that the SDGFP is managing the area based on the 1967 cooperative agreement.

VISION AND GOALS

The planning team developed a vision and a set of goals for the refuge. The vision describes what the refuge will be, or what the Service hopes to do, and is based on the Refuge System mission and purposes of Bear Butte NWR.



Bridge

VISION

The refuge is located in the foothills of the Black Hills, adjacent to Bear Butte, a sacred site for several Northern Plains tribes. Management will work with partners to protect the cultural significance of the area and to maintain its natural resource values. Opportunities to enjoy wildlife-dependent recreation shall continue to be available to all visitors.

GOALS

The goals are descriptive, broad statements of desired future condition of the refuge. Four goals were identified for the refuge:

1. *Wildlife and Habitat Management:* Work with partners to maintain habitat for migratory birds and other wildlife.
2. *Public Use:* Work with partners to provide opportunities for quality wildlife-dependent recreation and to promote awareness of the area's resources.
3. *Cultural Resources:* Recognize the cultural significance and sacredness of the Bear Butte area to plains tribes.
4. *Partnerships:* Support existing partnerships that protect the cultural significance of the area, maintain natural resource values, and manage visitor use.

REFUGE AND RESOURCE DESCRIPTION

SPECIAL VALUES

During the vision and goals workshop, the planning team identified the outstanding qualities of the refuge. Qualities are the characteristics and features that are evident when a person visits the refuge.

The refuge lies in a wide valley within the Black Hills region of South Dakota. Its proximity to Bear Butte itself and the surrounding area makes it an appealing place to view the butte from a distance.

Some of the refuge's structures were constructed during the Depression under programs designed by President Franklin D. Roosevelt to rebuild the country's resources. Remnants of that era can be found in the campground, including a former bathhouse, a picnic shelter, stone walls, and the dam structure.

Although no longer running, an artesian well fed Bear Butte Lake in the past and was a unique and special value on the refuge.

ISSUES

Prior to writing the draft CCP, Service staff and other planning team members met to identify any significant issues that should be addressed in the plan. A public open house, news releases in the local and regional press, an announcement in the "Federal Register," and numerous mailings were conducted to solicit public input on important issues to be addressed. Following are the most significant issues identified during public scoping.

Habitat and Wildlife

The Service acquired a limited-interest easement to flood with water and to maintain and operate a natural or artificial lake for migratory birds and conservation purposes. One of the easements also secured the right to develop public use facilities and allow public use at the site. From the beginning, Bear Butte NWR was developed more as a recreation area with many non-wildlife-dependent public use facilities such as a beach, swimming pond, boat ramps, and campground and picnic areas. A more appropriate establishing authority would have been as a recreation area rather than a limited-interest national wildlife refuge.



Bear Butte NWR

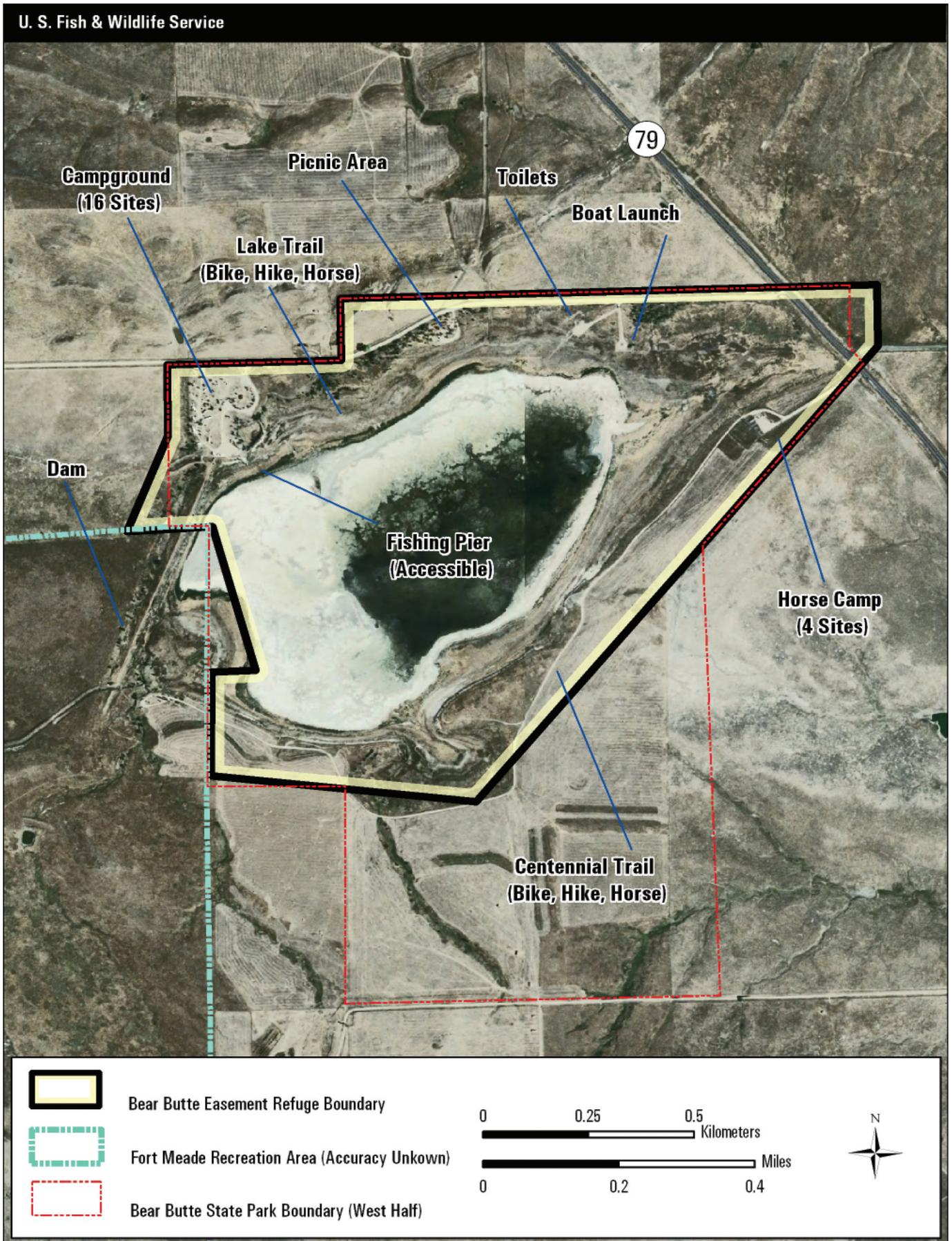


Figure 3. Base map of Bear Butte NWR, South Dakota

During the Depression, however, the Works Progress Administration and the Civilian Conservation Corps were looking for sites to develop water, and this area was one of the few suitable sites west of the Missouri River identified.

Public Use

The Improvement Act recognized that wildlife-dependent recreational uses—hunting, fishing, wildlife observation and photography, and environmental education and interpretation—when determined to be compatible are legitimate and appropriate public uses of a refuge.

From the beginning, one of the primary purposes intended for the Bear Butte area was recreation. As mentioned earlier, a number of facilities were constructed at about the same time as the dam, to encourage and support camping, swimming, boating, and picnicking.

The Service also has the right to close the area to hunting, and current state park regulations allow hunting on the refuge.

Water Management

The Bear Butte Lake Project created an artificial lake, which raised water levels by means of an earthen dam and spillway. Originally the lake was filled by an artesian well; however, it stopped flowing and was plugged by the state in May 1987. The water levels are now completely dependent on annual rainfall. The watershed for Bear Butte Lake is relatively small compared to its size. Without supplemental flows of the artesian well, the water levels of the lake have remained low and depend almost entirely on runoff from snow and rain in the local watershed.

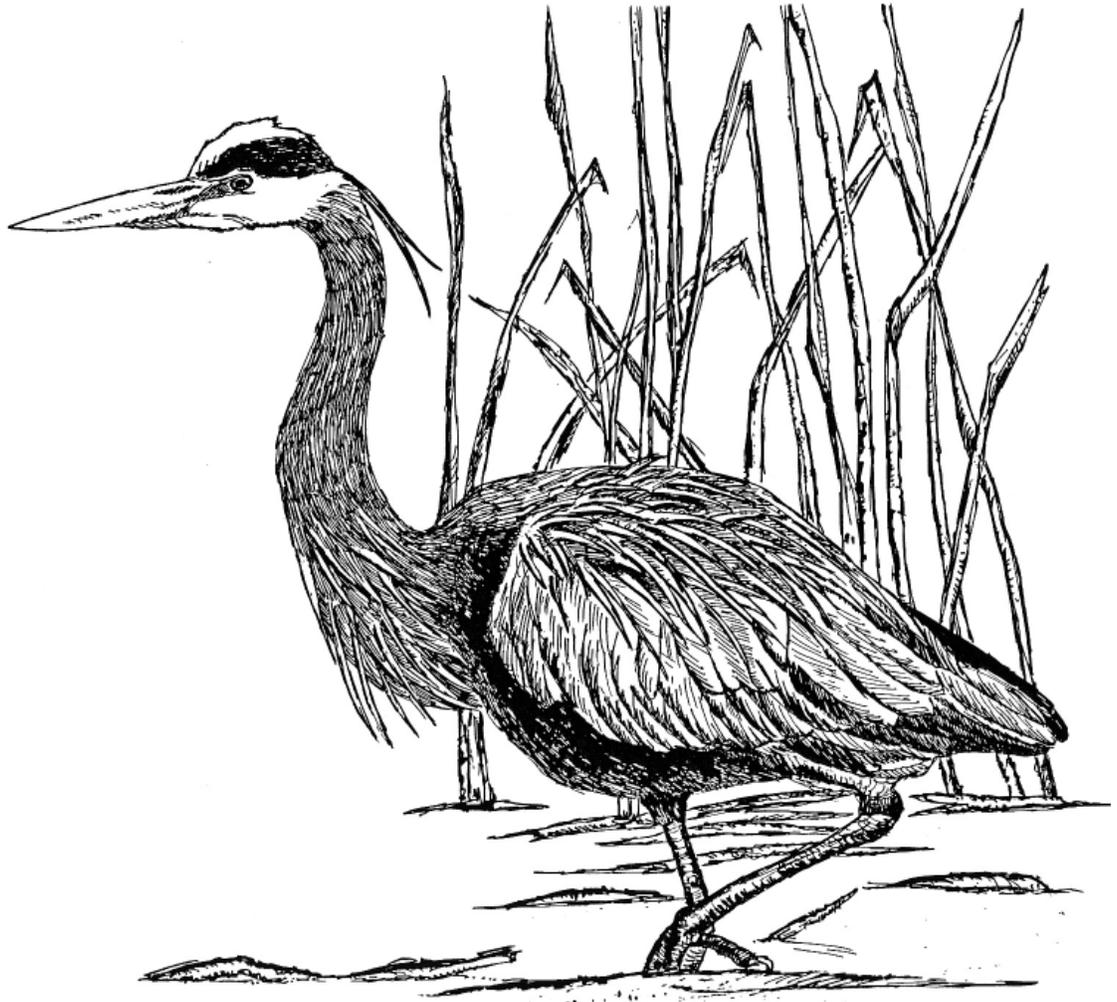
Cultural Resources

The refuge staff recognizes the importance of the cultural resources at the refuge to the Native American community. Refuge staff will continue to work with the state of South Dakota, the BLM, and Native American tribes to preserve these resources for all to enjoy.

Administration

Limited management activities by the Service have occurred at the refuge since its establishment. As a limited-interest refuge, the Service entered into a cooperative agreement with the state, recognizing that significant cultural and recreational values exist. The Service will continue to work with the state to administer the refuge and maintain the wildlife values that have existed since the refuges establishment.

3 Alternatives



3 Alternatives

INTRODUCTION

Alternatives are different approaches to management of the refuge. They are designed to resolve issues, achieve the refuge purpose, vision, and goals as identified in the CCP, and fulfill the mission of the Refuge System. They must also comply with current laws, regulations, and policies. NEPA requires an equal and full analysis of all alternatives considered for implementation.

In fall 2004 the Service held a meeting with the public to identify the issues and concerns that were associated with the management of the refuge. The public involvement process is summarized in greater detail in chapter 2. Based on public input, as well as guidelines from NEPA, the Improvement Act, and Service planning policy, the planning team selected the substantive issues that will be addressed in the alternatives. Substantive issues identified for the refuge are:

- habitat and wildlife management
- public use
- water management
- management activities
- cultural resources

A draft CCP/EA was developed and released for public review and comment. An open house was held in Sturgis, South Dakota, on February 28, 2007, at the Community Center. Ten individuals attended representing state, county, tribal, local conservation organizations, and landowners interests. In addition, nearly 90 comment letters were received as well as phone calls. These comments were all reviewed by the planning team and taken into consideration (see appendix C).

The planning team discussed alternatives for management that addressed the substantive refuge issues and met the goals of the Refuge System. Each alternative described in the following sections addresses the substantive issues somewhat differently. Based on further evaluation, consideration of tribal concerns, issues raised by the public, and comments from the initial scoping and the draft public review, alternative A—current management (no action) is the preferred alternative.

According to refuge planning policy (May 25, 2000), the CCP should be revised when significant new information becomes available. This should occur every 15 years or sooner, if necessary. It is important to note that if conditions change, the Service could reconsider actions approved in the CCP. If revisions were considered, full disclosure through extensive

public involvement using NEPA and other compliance procedures would be closely followed. The draft CCP/EA identified alternative B as the proposed action.

This chapter describes two management alternatives for the refuge: the preferred alternative A—current management (no action), and alternative B—relinquish easement to current landowners.

ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED STUDY

One alternative the planning team considered would increase the Service's management activities at the refuge. This alternative was rejected because current management of the refuge is provided by the SDGFP, and the area is currently managed as a state park. Increased management by Service personnel would conflict with the state's ability to administer, operate, and maintain the area as they have been doing under the cooperative agreement since 1967.

This alternative was also eliminated from further study because Service personnel determined that it is not feasible to maintain the refuge's habitat alongside the recreational uses (e.g., camping and picnicking) that occur at the park.

The other alternative considered but eliminated from further study was to transfer the easement to another entity. Under the provisions of the easement agreements, however, the Service cannot turn over the easement to any party except the current landowners.

DESCRIPTION OF ALTERNATIVES

The theme and general management direction for each alternative are described below.

PREFERRED ALTERNATIVE A—CURRENT MANAGEMENT (NO ACTION)

Under the no-action alternative, the Service would continue to manage the refuge within the parameters of the cooperative agreement with the SDGFP. Existing habitat within the easement and all public programs would continue to be administered and maintained by the state.

Current habitat and wildlife practices would be carried out by park personnel and levels of public use would remain the same. The park facilities and activities—hiking, picnicking, designated camping, fishing, and a horse camp—that are provided on the southeast side of Bear Butte Lake would continue to be offered.

Refuge staff would support partnerships between the state and the tribes for the ongoing protection of cultural resources. The Service would continue passive management and maintenance of facilities (no refuge staff is currently assigned to the station).

ALTERNATIVE B—RELINQUISH EASEMENT TO CURRENT LANDOWNERS

Alternative B would take the refuge out of the Refuge System and relinquish the easement to the current landowners. Under this alternative, the habitat, public use, cultural resources, and operations would be managed by the landowners. The Service's easement requirements would no longer exist.

The Service would divest its interest in the refuge. This would be carried out within the life of the plan. Once the CCP is approved, the managing station would work with the Service's Division of Realty and the Land Protection Planning Branch within the Division of Planning to prepare a combined program proposal to divest this refuge. The proposal would be submitted to the Migratory Bird Conservation Commission for concurrence and then submitted for congressional approval.

COMPARISON OF ALTERNATIVES

The two alternatives evaluated in this planning process are: (1) alternative A—current management (no action), and (2) alternative B—relinquish easement to current landowners. A comparison of the alternatives is shown in table 1.



Bear Butte State Park

Table 1. Comparison of the alternatives

<i>Issue</i>	<i>Preferred Alternative A (No Action)</i>	<i>Alternative B (Relinquish Easement to Current Landowners*)</i>
Habitat and Wildlife	Passive management; maintain existing habitat with easement	The landowners have sole responsibility to manage habitat and wildlife
Public Use	Continue to allow the state, the Bureau of Land Management, and private landowner to manage all public-use programs	Same as A
Cultural Resources	Support partnerships between the state and the tribes for the ongoing protection of cultural resources	The landowners have sole responsibility to protect cultural resources
Operations and Maintenance	Passive management and no maintenance	The landowners are responsible for operations and maintenance
Partnerships	Continue to work with state, tribal, and federal partners	Continue to work with state, tribal, and federal partners
Easement Rights	Maintain the right to impound water	All easement rights, including the right to impound water, would be voluntarily relinquished to the state

* *i.e. the SDGFP and other current landowners*

