

DRAFT

Property Rights Acquisition and Mitigation Plan v.4

ADA Accessible Version

August 13, 2018



This is a draft Property Rights Acquisition and Mitigation Plan and the Diversion Authority requests MDNR provide input and comments on the Plan.

Table of Contents

Preface	5
Property Acquisition Philosophies	6
Mission	6
Overarching Property Acquisition Philosophies	6
Typical MN Property Acquisition Process	8
Typical ND Property Acquisition Process	11
Appraisal Review Plan	14
Introduction	14
Appraisal Review Process.....	14
Attachments.....	15
APPRAISAL REVIEW ANALYSIS and CERTIFICATION	16
Offer Presentation and Negotiations Process	22
Introduction	22
Offer Presentation & Negotiation Process	22
Property Rights Map	24
Property Acquisition Schedule.....	25
Early Property Acquisition Program.....	26
Introduction	26
Early Acquisition Process	26
Organic Farmland Acquisition Plan	27
Introduction	27
Organic Farmland Acquisition Plan	27
Introduction	30
Disposal Process.....	30
Mitigation of Properties in the Upstream Mitigation Area	31
Introduction	31
USACE / FEMA Coordination Plan	32
Structure Mitigation in the Upstream Mitigation Area	33

Land Mitigation in the Upstream Mitigation Area..... 34

 Attachments..... 35

USACE / FEMA Coordination Plan..... 47

Flowage Easement Plan 58

 Why is a Flowage Easement needed?..... 58

 What is a Flowage Easement? 58

 How will the value of the Flowage Easement be determined? 58

 What are the terms and conditions of the Flowage Easement? 59

 When will the Flowage Easements be obtained? 59

 Who will obtain the Flowage Easements? 59

Sample Flowage Easement 60

Dispute Resolution Board 67

 Introduction 67

 Intent..... 67

 Jurisdiction 67

 Purpose 67

 Creation..... 67

 Composition 67

 Procedure..... 68

 Compensation for Damages..... 68

 Release of All Claims 69

 Judicial Review 69

Sample Claim Form 70

Cemetery Mitigation Plan 72

 Introduction 72

 Local Cemetery Mitigation Plan 72

 Minimum Federal Mitigation Plan and Requirements 72

 Clean-Up Assistance..... 73

 National Register of Historic Places 73

 Cemetery Mitigation Alternatives..... 73

 Attachments..... 74

Attachments.....	82
Post-Operation Debris Clean-Up Plan: Private Lands	97
Introduction	97
Post-Operation Debris Clean-Up Plan.....	97
Post-Operation Repair and Clean-Up Plan: Public Lands	98
Introduction	98
Post-Operation Public Lands Repair and Clean-Up Plan.....	98
Summer Operation Supplemental Crop Loss Program.....	99
Introduction	99
Proposed Summer Operation Supplemental Crop Loss Program.....	99
Additional Background:.....	100
Financial Assurance Plan for O&M and On-Going Mitigation	102
Introduction	102
O&M Funding Program	102
Mitigation Communication Plan	105
Introduction	105
Existing Communication Structures.....	105
Future Project-Specific Communication Methods.....	105
Oxbow Hickson Bakke Mitigation Project.....	107
Summary	107
Supplemental EA Appendix C.....	107
Additional Details.....	107
In-Town Levee Mitigation Projects	108
Summary	108
Pre-PPA Medical Hardship Acquisition Program	109

Preface

The Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project) was authorized by Section 7002 of the Water Resources Reform and Development Act of 2014 (WRRDA). The purpose of the Project is to reduce flood risk, flood damages and flood protection costs related to flooding in the Fargo-Moorhead metropolitan area. The project is led by the St. Paul District, Army Corps of Engineers (USACE), and the non-federal sponsors Fargo, North Dakota; Moorhead, Minnesota; and the Metro Flood Diversion Authority (collectively Sponsors).

The Project is located in the Fargo-Moorhead Metropolitan Area. The Project consists of a diversion channel system including, but not limited to: excavated channels; control structures; aqueducts; tie-back embankments; an upstream staging area; levees; and environmental mitigation projects located inside and outside the project area.

The Project originated as a recommendation from the Final Feasibility Report and Environmental Impact Statement (FEIS), Fargo-Moorhead Metropolitan Area Flood Risk Management, July 2011. As outlined within the FEIS, the Project would have various environmental effects and require various property rights. These impacts, property needs, and mitigation needs were updated through the 2013 Supplemental Environmental Assessment and the 2018 Supplemental Environmental Assessment.

The Metro Flood Diversion Authority (Diversion Authority) has prepared this Property Rights Acquisition and Mitigation Plan to document the property rights acquisition and mitigation policies that will be followed for the Fargo-Moorhead (FM) Area Diversion Project (Project). This Property Rights Acquisition and Mitigation Plan has been drafted in coordination with the US Army Corps of Engineers (USACE), and in consultation with the North Dakota State Water Commission (NDSWC) and the Minnesota Department of Natural Resources (MDNR), along with input from The Diversion Authority's Land Management Committee and the Agricultural Policy Subcommittee. Throughout this Property Rights Acquisition and Mitigation Plan, the Project is commonly referred to as the 'FM Area Diversion Project', but it should be noted that USACE, other agencies, and certain documents identify the Project as the 'Fargo-Moorhead Metro Flood Risk Management Project'.

It should also be noted that the Project being referenced in this Property Rights Acquisition and Mitigation Plan is a refined and updated version of the Project that the Diversion Authority submitted to MDNR as part of a permit application. The refinements and updates include a micro-sited alignment of the southern embankment and updated hydraulic modeling. The Project is considered "Plan B", and is intended to be consistent with the recommendations of the Governors' Task Force.

This Property Rights Acquisition and Mitigation Plan is intended to be a living document that will be reviewed and amended periodically as additional information and operations prompt updates.

This Property Rights Acquisition and Mitigation Plan contains information about the acquisition of property rights needed for the Project and property mitigation programs. This document is a compilation of a series of plans for a variety of topics. Collectively, the individual topics contained within this document serve as the comprehensive Property Rights Acquisition and Mitigation Plan for the Project.

Property Acquisition Philosophies

Mission

To acquire the property necessary for the Project, in compliance with Minnesota and North Dakota law and Federal guidelines and in accordance with the philosophy of being friendly, fair, and flexible to those whose property is required for the Project.

Overarching Property Acquisition Philosophies

- Follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (PL 91-646) as the basis for establishing the minimum standards for property acquisitions. The objectives of the URA are to:
 - Provide uniform, fair, and equitable treatment of persons whose real property is acquired or are displaced in connection with the Project.
 - Ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement.
 - Ensure no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means.
- Work to be friendly, fair, and flexible with those whose property is being acquired and in the facilitation of the acquisition and relocation process.
- Use Eminent Domain as a last resort measure to acquire the necessary property.
- Acquisition costs will stay within the Project's annual budget.
- Property acquisition program will comply with Minnesota and North Dakota law, the URA, permit requirements, interagency agreements, and applicable project agreements and Memorandums of Understanding as each applies to the acquisition process for the Diversion Authority, the Cass County Joint Water Resource District (CCJWRD), and the Moorhead-Clay County Joint Powers Authority (MCCJPA). (Note: the MCCJPA is expected to be formed in 2018.)
- Program will acquire land impacted by the Project as opportunities arise with willing sellers.
- Program, upon request from seller, will offer a 'right of first refusal' to purchase back the property in the event the Project does not need the property.
- Payment for relocation benefits are a reimbursement of costs incurred by the displaced person(s).
- Negotiations: Negotiations are a necessary component of property acquisitions. Negotiation teams do their best to secure the property for the most equitable price possible and use Eminent Domain as a last resort. Property owners have been able to counter offer their appraised values and are encouraged to support these counter offers with factual data to support their position, this could include:
 - Updated comparable sales.
 - Updated cost approach information.
 - Updated financial information (for businesses).
 - Issues in the appraisal (i.e., square footage difference, missed features, incorrect data).

- Per the Project Partnership Agreement (PPA) executed on July 11, 2016, the federal government can also acquire land on behalf of the non-Federal sponsor.

Typical MN Property Acquisition Process

The Diversion Authority and the MCCJPA are responsible for the acquisition of real property in Minnesota for the Project. The parties will utilize the following steps for acquiring properties in Minnesota:

- 1. Design Team (USACE or HMG)**
 - a. Advises Program Management Consultant (PMC) of Right of Way (ROW) needs when the work limits are defined.
 - b. PMC establishes a budget for the acquisition needs by Phase or Work Package.
- 2. PMC-Land Management Team**
 - a. Presents Land Acquisition Directive (with budget) to Diversion Authority's Finance Committee for approval.
 - b. Submits the executed Land Acquisition Directive to MCCJPA.
 - c. PMC assigns acquisition to a land acquisition firm (Land Agent).
 - d. Land Agent firm accepts assignment, prepares proposed fee for review by PMC.
 - e. PMC initiates task order amendment for Land Agent, obtains MCCJPA approval, executes documents with Land Agent, and provides fully executed documents to parties.
- 3. Right of Entry**
 - a. PMC identifies parcels which require Right of Entry (ROE) for boundary surveying.
 - b. Legal prepares ROE request for access to conduct boundary survey.
 - c. Land agents are assigned by PMC. The land agent assigned to each property initiates contact with property owners, manages ROE request and receipt forms, conducts initial follow-up calls, and notifies PMC when ROE is acquired.
- 4. Survey Parcel**
 - a. PMC or HMG conducts boundary survey and supplies initial certificate of survey exhibits to Land Agent (and appraiser).
- 5. Notice of Intent to Acquire (NOI)**
 - a. Land Agent sends property owner certified letter of NOI.
 - b. Land Agent contacts property owner by phone to describe acquisition process, offers to meet.
- 6. Parcel Appraisal**
 - a. Appraiser, using certificate of survey exhibit, conducts appraisal following federal/state standards. The property owner is allowed to accompany the appraiser during property inspection.
 - b. Appraiser will be instructed to use the Minnesota definition of market value. This will include a before and after valuation for the property impacted by the acquisition. The before and after valuation method will capture damages to the property being taken and severance damages as applicable.
 - c. Appraiser submits draft appraisal report for review (see Appraisal Review Plan for additional details).
 - d. Upon appraisal review, Just Compensation value approved by MCCJPA (in accordance with Minnesota Statutes Chapter 117).
- 7. Parcel Purchase Negotiation**
 - a. Land Agent presents appraisal to property owner and makes initial offer of just compensation based on appraisal amount.
 - b. Land agent informs property owner of the condemning authority's obligation to reimburse for the property owner's appraisal in accordance with Chapter 117.
 - c. Land Agent identifies tenants, if any.

- d. Land Agent has 60 days (goal) to negotiate fair market value for acquisition and the Relocation Specialist aids owner in establishing relocation benefits, where applicable.
- e. Legal team develops Purchase Agreement based on Land Agent recommendation.
- f. Land Agent meets with property owner to present Purchase Agreement; execute Purchase Agreement.
- g. If outstanding terms, negotiate additional terms and seek MCCJPA approval regarding any additional negotiations.
- h. PMC or HMG prepares final acquisition exhibits (Certificate of Survey) and supplies to legal team for inclusion in the closing documents.
- i. Upon final approval of Purchase Agreement by property owner and MCCJPA, legal team prepares deed and additional documents required for closing.
- j. Exhaust all reasonable negotiation opportunities via personal meetings and phone contacts.

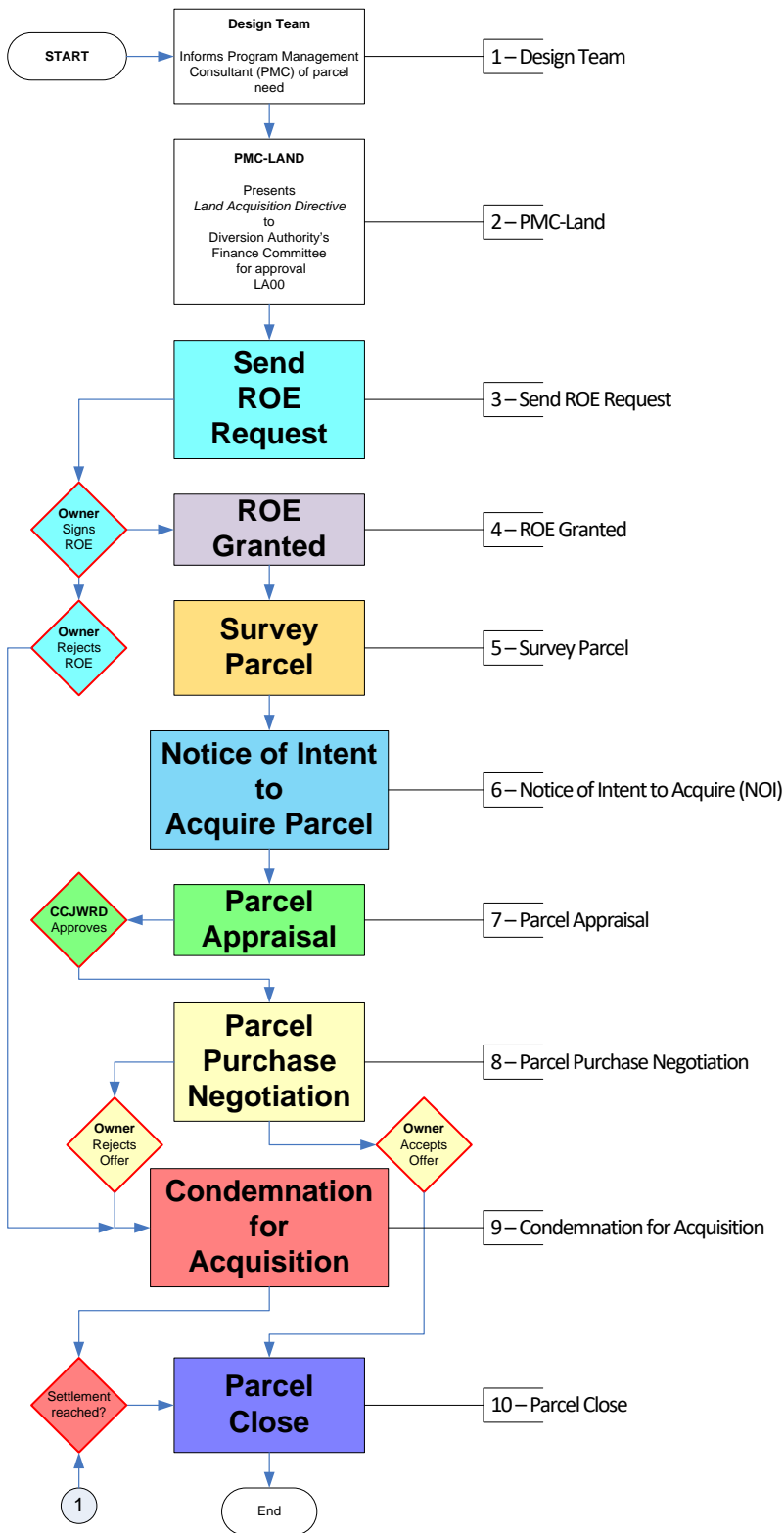
8. Parcel Close

- a. The Title Company prepares partial mortgage releases, closing statements, 1099, and conducts the closing with owner.

9. Eminent Domain for Acquisition

- a. If negotiation opportunities are exhausted and a negotiated acquisition is unlikely within the given timeline, Design Team, Land Agent, and PMC present negotiation details to MCCJPA.
- b. If negotiated acquisition of the necessary property appears unlikely within the given timeline, MCCJPA notifies the City of Moorhead about the necessary property and the acquisition efforts to date.
- c. If Moorhead concludes negotiated acquisition unlikely and judicial action will be necessary to acquire the property, legal team, in coordination with Design Team, Land Agent, and PMC, presents RESOLUTION OF NECESSITY and RESOLUTION OF OFFER TO PURCHASE for Moorhead's consideration and approval.
- d. Upon approval of RESOLUTIONS by Moorhead, Land Agent presents RESOLUTIONS, along with final written offer to property owner and notifies owner of one-week deadline for acceptance.
- e. If no acceptance, legal team starts an eminent domain action to acquire the necessary property.
- f. Notice of intent to take possession is served by certified mail.
- g. A hearing seeking title and possession will be held no less than 90 days following the notice of intent to take possession is served.
- h. Before possession and title is transferred, the amount of the appraisal will be deposited with the district court.
- i. Legal team continues negotiations with property owner or property owner's counsel throughout judicial process. Legal team engages property owner's counsel in discovery and pre-trial motions and otherwise prepares for trial.
- j. The Project will not be completed until the property rights necessary for the operation of the Project have been acquired. Final certificate filed and recorded in accordance with Minn. Stat. § 117.205.
- k. Following acquisition of the property through the judicial process, Diversion Authority, USACE, etc., may proceed with construction on parcel.

Typical Property Acquisition Workflow Diagram Graphic presented below, as described above.



Typical ND Property Acquisition Process

The Diversion Authority and CCJWRD are responsible for the acquisition of real property. The parties will utilize the following steps for acquiring properties in North Dakota:

- 1. Design Team (USACE, HMG, or P3 Developer)**
 - a. Advises Program Management Consultant (PMC) of Right of Way (ROW) needs when the work limits are defined.
 - b. PMC establishes a budget for the acquisition needs by Phase or Work Package.
- 2. PMC-Land Management Team**
 - a. Presents Land Acquisition Directive (with budget) to Diversion Authority's Finance Committee for approval.
 - b. Submits the executed Land Acquisition Directive to CCJWRD.
 - c. PMC assigns acquisition to a land acquisition firm (Land Agent).
 - d. Land Agent accepts assignment, prepares proposed fee for review by PMC.
 - e. PMC initiates task order amendment for Land Agent, obtains CCJWRD approval, executes documents with Land Agent, and provides fully executed documents to parties.
- 3. Right of Entry**
 - a. PMC identifies parcels which require Right of Entry (ROE) for boundary surveying.
 - b. Legal team prepares ROE request for access to conduct boundary survey.
 - c. Land agents are assigned by PMC. The land agent assigned to each property initiates contact with property owners, manages ROE request and receipt forms, conducts initial follow-up calls, and notifies PMC when ROE is acquired.
- 4. Survey Parcel**
 - a. PMC or HMG conducts boundary survey and supplies initial certificate of survey exhibits to Land Agent (and appraiser).
- 5. Notice of Intent to Acquire (NOI)**
 - a. Land Agent sends property owner certified letter of NOI.
 - b. Land Agent contacts property owner by phone to describe acquisition process, offers to meet.
- 6. Parcel Appraisal**
 - a. Appraiser, using certificate of survey exhibit, conducts appraisal following federal/state standards. The property owner is allowed to accompany the appraiser during property inspection.
 - b. Appraiser will be instructed to use the North Dakota definition of market value. This will include a before and after valuation for the property impacted by the acquisition. The before and after valuation method will capture damages to the property being taken and severance damages as applicable.
 - c. Appraiser submits draft appraisal report for review (see Appraisal Review Plan for additional details).
 - d. Upon appraisal review, Just Compensation value approved by CCJWRD (in accordance with NDCC § 32-15-06.1).
- 7. Parcel Purchase Negotiation**
 - a. Land Agent presents appraisal to property owner and makes initial offer of just compensation based on appraisal amount.
 - b. Land Agent has 60 days (goal) to negotiate fair market value for acquisition and the Relocation Specialist aids owner in establishing relocation benefits, where applicable.
 - c. Legal team develops Purchase Agreement based on Land Agent recommendation.
 - d. Land Agent meets with property owner to present Purchase Agreement; execute Purchase Agreement.

- e. If outstanding terms, negotiate additional terms and seek CCJWRD approval regarding any additional negotiations.
- f. PMC or HMG prepares final acquisition exhibits (Certificate of Survey) and supplies to legal team for inclusion in the closing documents.
- g. Upon final approval of Purchase Agreement by property owner and CCJWRD, legal team prepares deed and additional documents required for closing.
- h. Exhaust all reasonable negotiation opportunities via personal meetings and phone contacts.

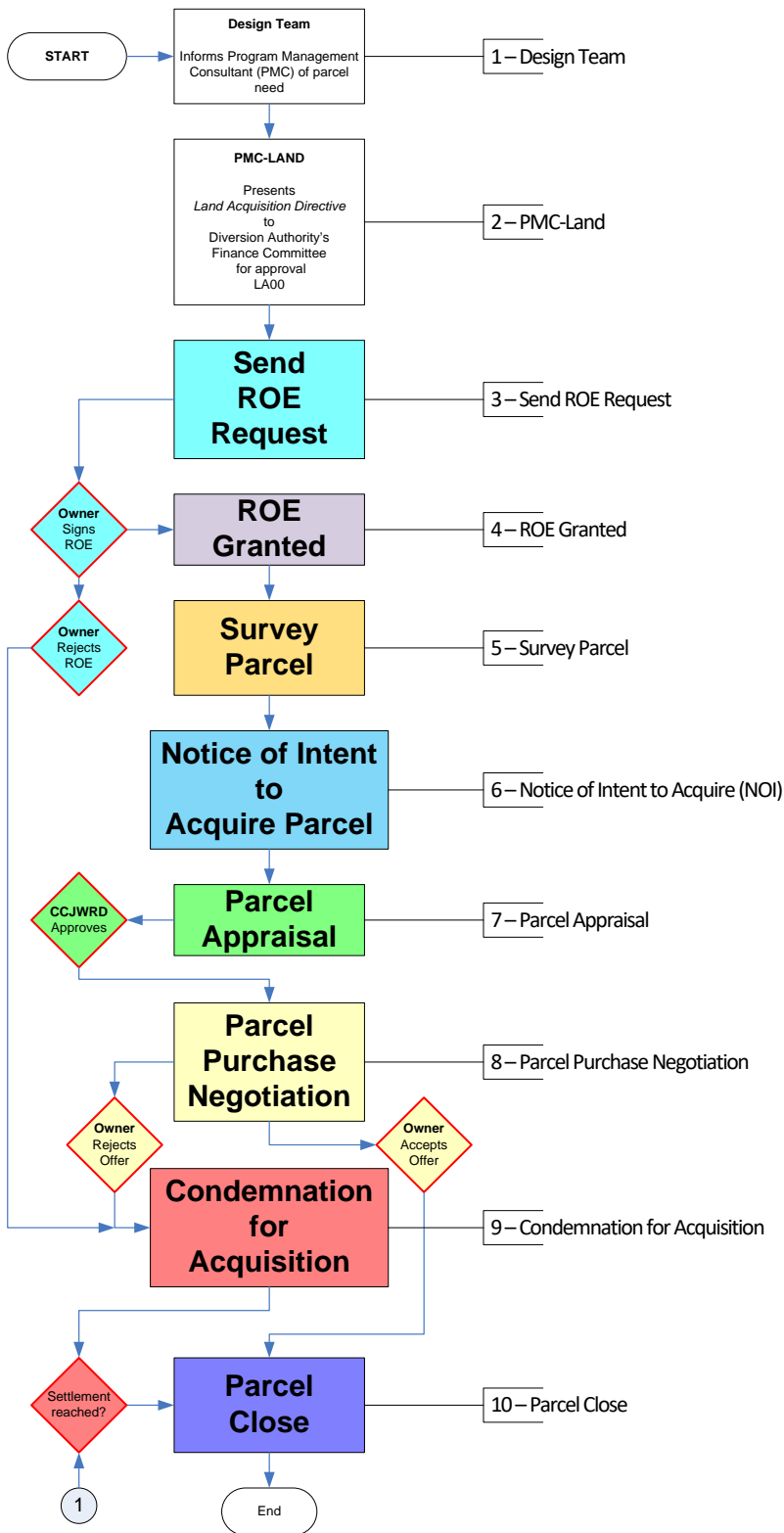
8. Parcel Close

- a. The Title Company prepares partial mortgage releases, closing statement, 1099, and conducts the closing with owner.

9. Eminent Domain for Acquisition

- a. If negotiation opportunities are exhausted and a negotiated acquisition is unlikely within the given timeline, Design Team, Land Agent, and PMC present negotiation details to CCJWRD.
- b. If CCJWRD concludes negotiated acquisition unlikely and judicial action will be necessary to acquire the property within the given timeline, legal team, in coordination with Design Team, Land Agent, and PMC shall follow the process for water resource districts to exercise eminent domain. Note that the quick-take process for water resource districts was revised during the North Dakota 65th Legislative Assembly, and became effective August 1, 2017.
- c. In summary, the process requires informal negotiations for a minimum of 60-days, and then the following steps:
 - i. If no agreement after 60 days (minimum) of informal negotiations, send the appraisal and offer of just compensation to property owner by certified mail.
 - ii. If no agreement, no sooner than 15 days, send to property owners by certified mail, an invitation to meet in person with CCJWRD representatives.
 - iii. Meet with property owner, if desired.
 - iv. If no agreement, no sooner than 30 days, send to property owner by certified mail, a notice that CCJWRD intends to take possession of the right of way within 30 days if there is not agreement regarding compensation.
 - v. If no agreement, CCJWRD requests approval from Cass County Commission for approval to take possession of the right of way by utilizing quick take eminent domain.
 - vi. Cass County Commission agrees to consider request from CCWJRD, places the topic on its agenda, and provides a 30-day notice to the property owner of the public meeting.
 - vii. CCJWRD board chair files affidavit to Cass County Commission verifying that no reference or threat of quick take eminent domain was used during negotiations.
 - viii. Cass County Commission holds public meeting and votes to approve use of quick take eminent domain by CCJWRD to take possession of right of way.
 - ix. CCJWRD board chair files affidavit stating the CCWJRD fulfilled the negotiating steps and deposits the amount of the written offer with the clerk of district court.
 - x. Legal team continues negotiations with property owner or property owner's counsel throughout judicial process. Legal team engages property owner's counsel in discovery and pre-trial motions and otherwise prepares for trial.
 - xi. Following acquisition of the property through the judicial process, Diversion Authority, USACE, etc., may proceed with construction on parcel.

Typical Property Acquisition Workflow Diagram Graphic presented below, as described above.



Appraisal Review Plan

Introduction

The Project will require acquisition of various land rights. Acquisitions will be conducted following the process defined in the Uniform Act (URA) (PL-91-646), the Code of Federal Regulations (49 CFR 24.104), along with any relevant state laws or regulations. The appraisals will be prepared in conformance with the Uniform Standards for Professional Appraisal Practice (“USPAP”) and the standards of North Dakota or Minnesota (as appropriate).

Appraisal Review Process

Appraisal reviews are an important step in the land acquisitions process. As such, the Diversion Authority has adopted a plan to conduct formal appraisal reviews for each tract appraisal. The reviews shall be completed prior to beginning negotiations with the property owner. The following approach will be used for appraisal reviews for the Project.

1. The Diversion Authority has developed an independent appraisal review team. The team has identified qualified review appraisers and developed appraisal engagement and review tools, including the attached appraisal review certification report and appraisal review checklist.
2. The independent appraisal review team members, procedures, and tools have been reviewed and approved for adequacy by USACE as the Federal Agency overseeing the expenditure of federal funds.
3. The appraisal review team, using the guidance found in 49 CFR 24.102, will determine if informal value estimates or appraisals are required for the acquisition of each parcel.
4. To ensure consistency of methodology, quality assurance and confirmation, a Certified General Appraiser shall conduct a formal review on tract appraisals. The review appraiser will submit a signed cover letter certifying that each appraisal has been prepared in conformance with state (North Dakota or Minnesota) standards, and with the Uniform Standards of Professional Appraisal Practice (USPAP). The review submission will include a cover letter, the engagement documents, the tract appraisal report, and the review report.
5. Per the suggestion of the USACE Real Estate Division, USACE staff intends to review the appraisal file on 15 percent of the acquisitions. The review will include engagement documents provided to the tract appraiser, the tract appraisal report, and the review report.
6. USACE will be available to provide technical advice to the appraisal review team for those acquisitions that present unusually complex valuation issues.
7. The Diversion Authority shall attempt to use appraisers who have previously been vetted and approved by USACE Real Estate Division. When using new appraisers, the Diversion Authority appraisal review team shall determine if they are qualified to perform tract appraisals and for which property types. As a courtesy, the review team shall send the qualifications and sample appraisals of the new appraiser to USACE for awareness.
8. The Diversion Authority will track and document all appraisals and appraisal reviews (as well as acquisition documents) using a GIS-based system (ESRI Workflow Manager).

Attachments

- Appraisal Review Certification Report (sample, 3 pages)
- Appraisal Review Checklist (3 pages)

APPRAISAL REVIEW ANALYSIS and CERTIFICATION

PROPERTY OWNER: _____

PROPERTY OIN#: _____

Project: FM Area Diversion Project

County:

Parcel:

PID #:

Client: [CCJWRD or MCCJPA]

Intended User: [CCJWRD or MCCJPA]

Use/Purpose of Review: To determine adequacy of appraisal for acquisition

Fee Owner:

Property Rights Appraised:

Property Address

Appraisal Format Used:

Zoning:

Highest and Best Use:

Impacted Improvements:

Tract Size:

Appraisal By:

Date of Valuation:

Date of Report:

Review Appraiser:

VALUE CONCLUSION:

Fee Acquisition:

TOTAL TAKINGS & DAMAGES:

REVIEW APPRAISER'S CONCLUSIONS:

The report is compliant with USPAP and [North Dakota or Minnesota] Statutes, and the value conclusion is recommended for use as the basis for acquisition of the property.

Review Comments:

Scope of Work

The scope of this assignment includes USPAP and USFLA compliance, a review of the comparable sales data, reviewing of the appraisal for completeness, accuracy and appraisal methodology, and to develop an opinion with regard to the appropriateness of the appraisal report.

Reviewer Assumptions and Limiting Conditions:

- The Appraisal Review is based on information and data contained in the appraisal report which is the subject of the review. Data and information from other sources may be considered. If so, they are identified and noted as such.
- It is assumed that such data and information are factual and correct.
- The reviewer reserves the right to consider any new or additional data or information which may subsequently become available.
- Unless otherwise stated, all assumptions and limiting conditions contained in the appraisal report, which are the subject of this appraisal review, are also conditions of this review.

REVIEW APPRAISER'S CERTIFICATION:

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF:

The facts and data reported by the review appraiser and used in the review process are true and correct.

The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.

I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three- year period immediately preceding acceptance of this assignment.

My compensation is not contingent upon an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.

The appraisal review was made and the review report prepared in conformity with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice and the [INSERT STATE CODE REFERENCE].

I have completed the requirements of the continuing education program in the State of [INSERT STATE] in which I am licensed.

I do not authorize the out-of-context quoting from, or the partial reprinting of this review report. Further, neither all nor any part of this review shall be disseminated to the general public by use of media for public consumption or public communication without prior written consent of the review appraiser signing this report.

The appraisal report contains data that was obtained by appraiser from the county and other sources. I assume that this information is accurate and have not verified this information.

Date:

Review Appraiser Signature

[ND of MN] License No:

APPRAISAL REVIEW CHECKLIST

Reviewed By:
 Appraiser:
 Owner and Address:
 OIN#:

GENERAL INFORMATION

	<u>N/A</u>	<u>Yes</u>	<u>No</u>
1 Has the type of appraisal development been prominently stated? Note that the use of the Departure Provision is not acceptable for Eminent Domain Purposes.	___	___	___
2 Has the purpose and reasoning for any Jurisdictional Exception been recognized in the development of the appraisal? Have the parts of USPAP that are voided by the Jurisdictional Exception been cited and has the legal authority justifying the action been disclosed?	___	___	___
3 Has the appraisal problem been identified and correctly interpreted?	___	___	___
4 Have the correct reporting format and reporting option been used and prominently stated?	___	___	___
5 Has the purpose of the appraisal been considered and identified?	___	___	___
6 Have the intended use and intended users of the appraisal been considered and identified?	___	___	___
7 Has the real property interest to be appraised been considered and identified?	___	___	___
8 Have the effective date of the appraisal and of the date of the report been considered and identified?	___	___	___
9 Have the proper definition of market value and its source been disclosed?	___	___	___
10 Has the link between the estimate of market value and specific exposure time been disregarded?	___	___	___
11 Has the scope of the appraisal been considered and adequately addressed?	___	___	___
12 Have all the extraordinary assumptions and limiting conditions been disclosed and considered?	___	___	___

APPRAISAL REVIEW CHECKLIST

- | | | | | |
|----|--|---|---|---|
| 13 | Have all assumptions and limiting conditions that affect the analyses and conclusions been disclosed and considered? | — | — | — |
| 14 | Has an adequate history been provided for the subject; i.e., 10 years for the Uniform Standards, 5 years for North Dakota State standards or 3 years to meet USPAP requirements? | — | — | — |
| 15 | Has the owner or representative of the owner been afforded the right to accompany the appraiser on an inspection of the property? | — | — | — |

BEFORE THE ACQUISITION

- | | | | | |
|----|---|---|---|---|
| 6 | Has the larger parcel been properly and adequately described? | — | — | — |
| 17 | Has the highest and best use been properly and adequately analyzed? | — | — | — |
| 18 | Have existing land use regulations and probably modifications been properly and adequately analyzed? Identified and analyzed? | — | — | — |

ACQUISITION

- | | | | | |
|----|--|---|---|---|
| 19 | Has an adequate description of the part taken, including property rights acquired or encumbered been properly and adequately analyzed? | — | — | — |
| 20 | Has the impact of the acquisition / encumbrance on the remaining property been properly supported and explained? | — | — | — |

AFTER THE ACQUISITION

- | | | | | |
|----|--|---|---|---|
| 21 | Has the remaining larger parcel been properly and adequately described? | — | — | — |
| 22 | Has the highest and best use of the larger remaining parcel, as vacant and as improved, been properly and adequately analyzed? | — | — | — |

VALUATION

- | | | | | |
|----|---|---|---|---|
| 23 | Has all the information necessary to support the analysis, opinions and conclusions for all applicable valuation approaches, both before and after the acquisition, been properly developed and reported? | — | — | — |
| 24 | Has the exclusion of any of the usual valuation approaches been adequately explained and supported? | — | — | — |

APPRAISAL REVIEW CHECKLIST

- | | | | | |
|----|--|---|---|---|
| 25 | Have the strengths and weaknesses of all the applicable valuation approaches been reconciled into an indication of value? | — | — | — |
| 26 | Have any nominal damages to the remaining parcels been estimated either by the cost to cure method or through reasoning which fully explains those damages, and have any off-setting special benefits been fully explained and included? | — | — | — |
| 27 | Has an adequately explained and supported conclusion of the take including damages resulting from the acquisition / encumbrance been provided? | — | — | — |
| 28 | Does the reconciliation include consideration of any recent sale, offering, listing or option to purchase the subject property, as reported in the ten-year history? | — | — | — |
| 29 | Does the appraisal include a parcel summary or breakdown of the value of the parcel taken and or any improvements taken and any damages or special benefits to the remainder? | — | — | — |

REPORTING REQUIREMENTS AND ACCEPTABILITY

- | | | | | |
|----|---|---|---|---|
| 30 | Has an acceptable level of competence been demonstrated in the development, analysis and reporting of the appraisal? | — | — | — |
| 31 | Has an apparent ethical integrity been demonstrated in the development, analysis and reporting? | — | — | — |
| 32 | Has the ability to correctly employ recognized methods and techniques in the development of the appraisal been demonstrated in compliance with USPAP and the Uniform Act been included? | — | — | — |
| 33 | Has the ability to communicate the appraisal, in a manner that is sufficiently comprehensive and not misleading, been demonstrated? | — | — | — |
| 34 | Has the proper certification in compliance with USPAP been included? | — | — | — |

Offer Presentation and Negotiations Process

Introduction

The Project will require acquisition of various land rights to approximately 1,300 parcels. Acquisitions will be conducted in accordance with the 'Typical ND/MN Property Acquisition Process', and following a federal process that is defined in the Uniform Act (URA) (PL-91-646) and in the Code of Federal Regulations (49 CFR 24). The process will also be in compliance with Uniform Standards for Professional Appraisal Practice ("USPAP") and the Uniform Appraisal Standards for Federal Land Acquisitions ("The Yellow Book").

Offer Presentation & Negotiation Process

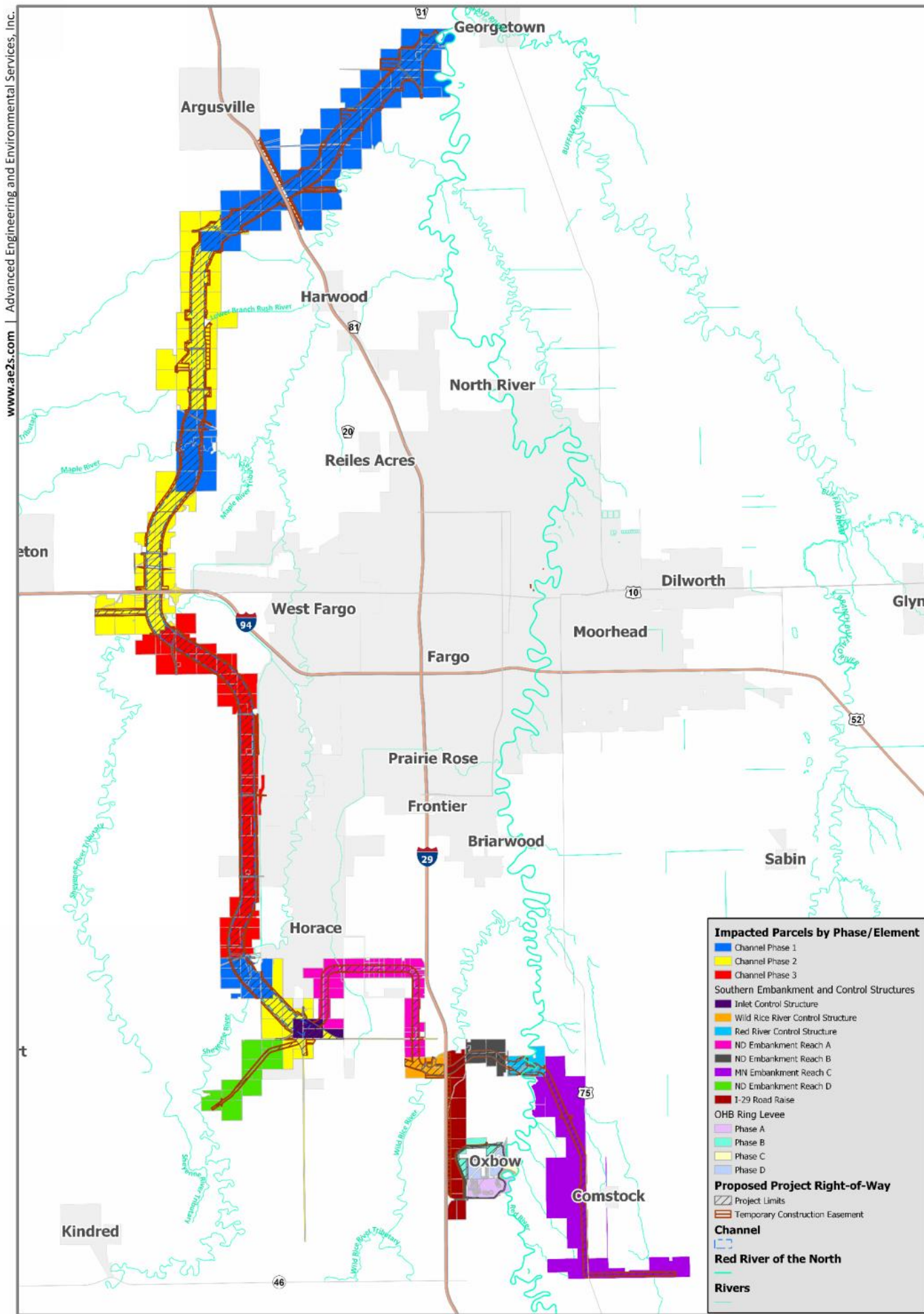
As noted in the Typical Property Acquisition Process, an initial offer will be presented to the property owner based on the appraised value, which will commence negotiations between the property owner and a Land Agent. It is essential that the Diversion Authority establish limits for the Land Agents to work within when negotiating with property owners. The Land Agents shall serve as the primary point of contact with property owners, and Diversion Authority representatives should make efforts to encourage property owners to work through the process and through the Land Agents. The limits are essential to enabling timely, efficient, and successful completion of the property acquisitions for the Project. As such, the following process will be used for presenting offers and negotiating with property owners.

1. Initial Contact
 - a. Initial Contact to the property owner will come from the acquiring entity (CCJWRD or MCCJPA). Initial Contact will introduce the Land Agent and direct all communication and negotiation to be conducted through the Land Agent.
2. Presentation of Appraisal
 - a. Upon review and approval of the Appraisal, the Land Agent shall present the Appraisal to the Property Owner for review.
 - b. Property Owner will have an opportunity to review the appraisal and point out any errors, omissions, or additional data for the lands team to consider in estimating value. Property Owner shall review and provide input within 14 days.
 - c. Upon review of Property Owner input, the Appraiser should make any adjustments to the appraisal, if necessary, and re-submit the appraisal for approval by the acquiring entity.
3. Presentation of Offer
 - a. Land Agent shall present the acquisition offer based on the appraisal.
 - b. Land Agent shall keep open lines of communication with Property Owner and shall commence negotiations.

4. Negotiations

- a. Land Agents have a goal of completing negotiations for acquisitions within 60 days. For acquisitions that involve relocation, the Land Agents have a goal of completing negotiations within 90 days.
- b. The PMC Land Management Team and Land Agents are directed to secure the most equitable deal for the buyer, which shall be no less than the approved amount of just compensation established by the appraisal.
- c. The PMC Land Management Team and Land Agents shall consider the following items when considering acquisitions and counteroffers:
 - i. Appraisal discrepancy
 - ii. Litigation avoidance
 - iii. Cost avoidance
 - iv. Precedence
 - v. Timeframe/schedule
 - vi. Good faith negotiations
- d. The PMC Land Management Team and Land Agents shall be authorized to reject counteroffers that are excessive, without basis, or otherwise outside the parameters presented above.
- e. Land Agents shall present their “most equitable” acquisition/counteroffers to the PMC Land Management Team for consideration. The PMC Land Management Team shall consider the acquisition/counteroffer and assist Land Agent in making a recommendation to CCJWRD or MCCJPA.
- f. In the event that acquisitions/counteroffers are extremely unique, the PMC Land Management Team shall coordinate a discussion on the acquisition with the acquiring entity chair, the Diversion Authority Executive Director, and designated leadership from the Diversion Authority.
- g. Acquisition offers and counteroffers shall be presented to the acquiring entity board one time.
- h. If negotiations fail to reach resolution within the timeframes noted above, acquiring entity board shall consider eminent domain action.
- i. Land Agents shall respond to all counteroffers presented Property Owners within 14 days.

Property Rights Map



Information depicted may include data unverified by AE2S. Any reliance upon such data is at the user's own risk. AE2S does not warrant this map or its features are either spatially or temporally accurate.
 Edited by: cwickenheiser | C:\Data\Projects\GIS Projects\FM Area Diversion\FM Diversion_PermitMap.aprx



FM AREA FLOOD DIVERSION PROJECT
 PARCELS IMPACTED BY PROJECT FOOTPRINT

Date: 7/30/2018



Property Acquisition Schedule 1

Major Project Feature ²	Location (State)	Work Limits Defined by Designer	Start Property Acquisition ³	Notification to Property Owners	Final Design Complete	Final Permit Application	Complete Property Acquisition ⁴	Permit Issuance (Goal) ⁵	Number of Parcels Impacted
Features Constructed by Diversion Authority using Public-Private-Partnership (P3)									
Diversion Channel Phase 1 ⁶	ND	June 2016	June 2016	July 2016	March 2020	April 2020	October 2019	July 2020	88
Diversion Channel Phase 2 ⁷	ND	June 2017	June 2017	July 2017	March 2020	April 2020	March 2020	July 2020	77
Diversion Channel Phase 3	ND	June 2017	December 2018	January 2019	November 2020	November 2020	October 2020	March 2021	53
Features Constructed by USACE									
Diversion Inlet Control Structure	ND							July 2016 (actual)	3
Wild Rice Control Structure	ND	July 2017	December 2018	January 2019	Dec 2018	Dec 2018	September 2019	December 2019	5
I-29 Bridge / Road Raise ⁸	ND	July 2019	July 2019	July 2019	April 2020	April 2020	March 2020	July 2020	11
Red River Control Structure	TBD	Nov 2019	Nov 2019	Nov 2019	April 2021	April 2021	July 2020	July 2021	24
ND Embankment Reach A	ND	July 2019	July 2019	July 2019	April 2020	April 2020	March 2020	July 2020	44
ND Embankment Reach B ⁹	ND	July 2022	July 2022	July 2022	April 2023	April 2023	March 2023	July 2023	6
MN Embankment Reach C	MN	July 2021	July 2021	July 2021	April 2022	April 2022	March 2022	July 2022	33
ND Embankment Reach D	ND	July 2020	July 2020	July 2020	April 2021	April 2021	March 2021	July 2021	17
ND Upstream Mitigation Area ¹⁰	ND	March 2019	April 2019	April 2019	-	-	March 2025	May 2023	730
MN Upstream Mitigation Area ¹⁰	MN	March 2019	April 2019	April 2019	-	-	March 2025	May 2023	146

¹ Based on proposed P3 and USACE schedules from June 2018.

² See associated map for location of main project features.

³ The work limits defining property acquisition needs are generally expected at the 65 percent design level.

⁴ Assume nine months duration to complete the property acquisition process.

⁵ Assume permit can be issued within three months (minimum) after final permit application.

⁶ Diversion Channel Phase 1 includes Maple River & Sheyenne River Aqueduct Structures.

⁷ Diversion Channel Phase 2 includes the parcels impacted by the Cass County Road 16 / 17 re-alignment project.

⁸ Some of the parcels impacted by the I-29 Road Raise are also impacted by the Wild Rice Control Structure.

⁹ ND Embankment Reach B includes parcels impacted by the CR 81 Road Raise.

¹⁰ The property rights in the Upstream Mitigation Area will be acquired prior to the Project being operational.

Early Property Acquisition Program

Introduction

The Project will require acquisition of various land rights to approximately 1,300 parcels. The Diversion Authority aims to acquire these properties following a timeline based on design and construction schedules. That being said, and with an executed Project Partnership Agreement with the Federal Government, the Diversion Authority will entertain requests for early acquisition from property owners. The intention of this program is to allow property owners to be acquired early, if they desire.

Early Acquisition Process

The following process will be used for early acquisition of impacted properties requiring acquisition or mitigation due to the Project.

- The Diversion Authority will approve an annual budget with a line item for 'early acquisitions'.
- The Diversion Authority will notify all impacted property owners and make them aware of an opportunity for early acquisition. The notification will be issued after the Conditional Letter Of Map Revision (CLOMR) is issued by FEMA.
- If impacted property owners are interested in an early acquisition, they will be instructed to contact the acquiring entity (CCJWRD or MCCJPA), or the Program Management Consultant (PMC).
- The PMC will confirm that the interested property is impacted by the Project and assess the budget availability.
- If the property is impacted, and if there is budget available, the PMC will recommend proceeding with acquisition of the property.
- The acquisition will then commence following the 'Typical Property Acquisition Process'.
- These early acquisitions may be considered voluntary because the acquiring entity may not be able to demonstrate necessity if negotiations are unsuccessful.

Organic Farmland Acquisition Plan

Introduction

For typical farmland in the upstream mitigation area, the Project will need to obtain a flowage easement on the property, but for organic farmland, there is a chance that flooding could result in loss of organic certification, which requires three to five years to establish. As such, the Diversion Authority has developed a mitigation solution that allows for early mitigation of future impacts that may be caused by the Project.

Organic Farmland Acquisition Plan

The Diversion Authority will offer early acquisition of organic farmlands in the upstream mitigation area so that the organic farmers have the opportunity to establish organic certification on new lands outside of the upstream mitigation area well in advance of Project operations. Upon acquisition of existing organic farmland, the Diversion Authority will enter into a rental agreement with the current organic farm operator to rent the existing organic farmland during the timeframe in which the organic certification is being established on new lands, which is typically three to five years.

According to analysis completed by MDNR as part of the Minnesota Environmental Impact Statement, it is understood that there are four organic farming operations within the vicinity of the upstream mitigation area of the Project. According to the MDNR EIS, the farmer-reported total organic acreage is approximately 3,625 acres. Based on the configuration of the new Project and new alignment of the Southern Embankment, it is estimated that approximately 300 acres of organic farmland are located within the upstream mitigation area. Find attached a map showing the project configuration and the organic farmland sites.

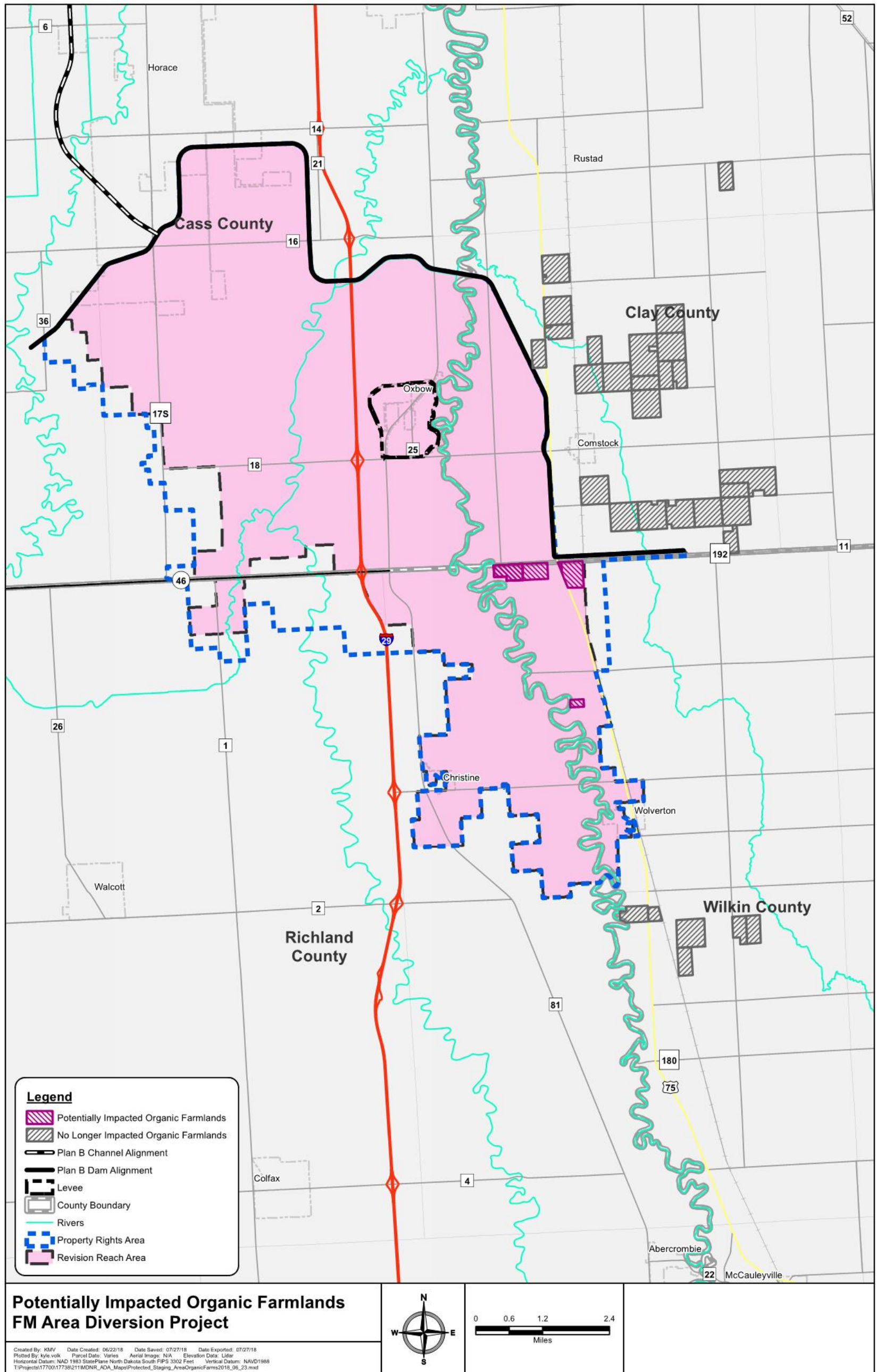
If desired by the organic farmland property owner, the Diversion Authority will initiate the process to acquire the organic farmland by ordering an appraisal of the property. The appraisal would be prepared following state and federal rules for valuing property rights, and the appraisal would establish the minimum value for acquiring the property in fee title. Representatives from the Diversion Authority will present the appraisal and initial purchase offer to the property owner for consideration and to begin negotiations. The purchase agreement will be structured to allow a 1031/1033 type tax exchange transaction.

The Diversion Authority will attach a flowage easement to the property upon acquisition.

The Diversion Authority will engage its farmland management firm to develop a farmland rental agreement with the organic producer.

Ultimately, after allowing sufficient time for the organic producer to establish new organic certified farmland, the Diversion Authority will conduct a public sale of the property.

If the organic farmland owner declines to participate in this program, the typical mitigation approach will be used for the organic farmlands.



Disposal of Excess Property

Introduction

From time to time, there may be a variety of reasons for the Project to acquire more property than the minimum amount of property needed to construct the Project. For example, the property owner may request that the Project acquire a full parcel rather than just a portion of the parcel. Under the philosophy of being flexible and working with property owners, the Project should consider acquiring these properties, but the Project also needs a method to dispose of excess property. The disposal method must be fair, straightforward, and easy to exercise.

Disposal Process

In the event that the Project acquires more property than is necessary to construct and own the Project, it will follow the following process for disposal of the excess property.

- Identify the potential excess property and confirm that the property will not be required for construction, operation, or ownership of the Project.
- Once confirmed that the property is truly excess and unnecessary, the owner of the property (Diversion Authority, CCJWRD, or MCCJPA) shall notify its farmland management firm to commence a public sale of the property.
- The farmland management firm will arrange a public sale of excess properties.
- Public sales will be conducted regularly, perhaps as frequent as every six months, depending on needs.
- Public sales will be well advertised so that any interested party has sufficient opportunity to purchase the excess property.
- Any proceeds from sale of excess property will be deposited in the Diversion Authority accounts.

Mitigation of Properties in the Upstream Mitigation Area

Introduction

The FM Area Diversion Project includes a diversion channel, levees through town, and temporary retention of flood waters immediately upstream of the metro area. The temporary retention of flood waters has the potential to impact properties, and the Diversion Authority will be responsible for mitigating those potential impacts. Properties within the upstream mitigation area will require various forms of mitigation, including acquisition and removal of structures, elevating, dry flood proofing of structures, and acquisition of flowage easements. The plan for mitigating impacts in the upstream mitigation area has been developed based on requirements established jointly by USACE and FEMA, as well as the North Dakota State Water Commission (NDSWC) and the Minnesota Department of Natural Resources (MDNR).

The upstream mitigation area is defined using two areas: (1) Revision Reach Area and (2) Property Rights Area. The boundaries for these areas are generally defined as follows:

- **Revision Reach Area:** The Revision Reach Area is defined as part of the Conditional Letter of Map Revision (CLOMR) that will be developed following the USACE / FEMA Coordination Plan described below. In general, the Revision Reach Area is where the 100-year floodplain will be revised as a result of the Project. The Revision Reach is developed in coordination with FEMA. Currently, the Revision Reach is defined using existing property boundaries. When obtaining the actual flowage easements, the actual easement would be defined by describing by survey the actual inundation on the parcel.
- **Property Rights Area:** The Property Rights Area is defined by using the maximum elevation of the spillway, which is expected to be no higher than 923.5 feet (NAV88). Currently, the boundary of the Property Rights Area is extended beyond the 923.5-foot contour to the existing parcel boundaries. In addition, the Property Rights Area boundary matches the Revision Reach Area boundary in locations where the Revision Reach extends beyond the 923.5-foot contour. The Property Rights Area will be finalized based on the final design of the Project, and the final boundary could be defined by describing by survey the actual contour on the parcel.

In addition, the USACE is required to perform a takings analysis on any properties with impacts resulting from the 100-year flood event, even if those impacts extend beyond the boundaries defined above. If the USACE takings analysis determines that mitigation is required, the Diversion Authority will be responsible for performing the mitigation in accordance with this Property Rights Acquisition and Mitigation Plan.

USACE / FEMA Coordination Plan

USACE and FEMA originally developed a Coordination Plan in April 2015, and recently updated the Coordination Plan in June 2018 (attached) that outlines floodplain management requirements for the Project, including Conditional Letter of Map Revision (CLOMR) requirements for floodplain map revisions and Project mitigation.

The Coordination Plan defines the revision reach for the CLOMR as follows:

“The extent of the revision is defined by an effective tie-in at the upstream and downstream limits for each flooding source. An effective tie-in is obtained when the revised base flood elevations from the post-project conditions model are within 0.5 feet of the pre-project conditions model at both the upstream and downstream limits.”

The Coordination Plan defines Staging Area (i.e., Upstream Mitigation Area) Regulatory Mapping as follows:

“The aerial extent of flood inundation required by the Project for operation in the Staging Area will be mapped as floodway in order to ensure that the required storage volume is available for the project during the one-percent annual chance flood event. Any additional flood inundation area beyond the extents of what is required by the project during the one-percent annual chance flood event will be mapped as floodplain in order to portray the elevated flood risk outside of the required staging area.”

The Coordination Plan defines Mitigation of Project Impacts as follows:

“The extent of mitigation of impacts caused by the Project is also defined by the revision reach.” “The impacts caused by the Project on all insurable structures within the revision reach will be mitigated through agreed methods consistent with those specified by the National Flood Insurance Program (NFIP). For residential structures, these include elevation, relocation, buy-outs, and ring levees. For non-residential structures these include dry flood proofing, elevation, relocation, buy-outs, and ring levees.”

Additionally, as part of the permitting process for the southern embankment, the NDSWC and MDNR have indicated the following requirements:

- NDSWC – Permit to Construct or Modify: “Evidence establishing a property right for all lands affected as a result of the final design elevation of the Limited Service Spillway”. It is expected that the Limited Service Spillway will be constructed at elevation no greater than 923.5 feet (NAVD88). As such, for the purposes of this Mitigation Plan, a maximum elevation of 923.5 feet is used to define the area where the NDSWC will require the Diversion Authority to obtain property rights in North Dakota.
- MDNR – Public Waters Work and Dam Safety: “Minnesota will require property rights up to the water surface elevation at the maximum capacity of the dam...” NOTE: Based on hydraulic

modeling and preliminary design for the new Project, the water surface elevation at the maximum capacity of the dam is expected to be 923.5 feet (NAVD88).

Structure Mitigation in the Upstream Mitigation Area

Potential impacts to structures in the upstream mitigation area will be mitigated following the criteria outlined below.

- NOTE: The references to “CLOMR approved hydraulic model” are for a future CLOMR that will be developed in coordination with FEMA.
- The CLOMR approved hydraulic model will be used to determine the flood water depth at the structure under a one-percent annual chance (100-year) flood event with project and under existing conditions. For the purposes of structure mitigation, potential impacts are based on the total depth of flood water (existing plus additional) during a 100-year flood event.
- The CLOMR approved hydraulic model will be used to determine the Operating Pool (Floodway, USACE Zone 1) in the upstream mitigation area. Note that USACE has defined the floodway as “Zone 1”, which essentially functions as a floodway from a floodplain management perspective.
- NOTE: Aerial photography of the upstream mitigation area will be taken before, during, and after flood events, and high-water marks will be surveyed to check and improve the hydraulic model for its use in the mitigation programs.
- The potentially impacted structures have been classified into five mitigation categories.
 1. Category 1: If the structure is located within the floodway, it will be acquired via the typical acquisition process (see the Typical ND/MN Property Acquisition Process sections of the Mitigation Plan), and then removed from the floodway.
 2. Category 2: If the flood water depth at the structure is greater than or equal to two-feet, the structure will be acquired via the typical acquisition process, and then removed from the mitigation area.
 3. Category 3: If the flood water depth at the structure is between 0.5 foot and two-feet, and if the structure is outside the floodway and within the Revision Reach, the Diversion Authority will consider, with the property owner, non-structural measures for the structure as well as offer to acquire the structure via the typical acquisition process following an appraisal. Non-structural measures for residential structures may include elevation, ring levees, relocation, or acquisition. Non-structural measures non-residential structures may include dry flood proofing, wet flood proofing, elevation, ring levees, relocation, and acquisition. Wells and septic systems serving residences that will remain will be modified to prevent impacts from flooding. Each of these structures will be considered on a case-by-case basis, in coordination with the property owner.
 4. Category 4: If the flood water depth at the structure is less than 0.5-feet, and if the structure is outside the floodway and within the Revision Reach, the Diversion Authority will field verify the structure elevation via a topographical survey to confirm the impacts. The field verification will result in the production of a FEMA Elevation

Certificate. If the field verification confirms that the structure is impacted (for the purposes of structure mitigation, an impact is defined as any total depth greater than 0.01-feet during a 100-year flood event), the Diversion Authority, with the property owner, will consider non-structural measures for the structure as well as offer to acquire the structure via the typical acquisition process following an appraisal. Non-structural measures for residential structures may include elevation, ring levees, relocation, or acquisition. Non-structural measures for non-residential structures may include dry flood proofing, wet flood proofing, elevation, ring levees, relocation, and acquisition. Wells and septic systems serving residences that will remain will be modified to prevent impacts from flooding. Each of these structures will be considered on a case-by-case basis, in coordination with the property owner.

5. Category 5: As noted above, USACE is required to perform a takings analysis on any properties with impacts resulting from the 100-year flood event, even if those impacts extend beyond the boundaries defined above. If the USACE takings analysis determines that mitigation is required, the Diversion Authority will be responsible for performing the mitigation in accordance with this Property Rights Acquisition and Mitigation Plan.

Land Mitigation in the Upstream Mitigation Area

Impacts to land in the upstream mitigation area will be mitigated following the criteria outlined below.

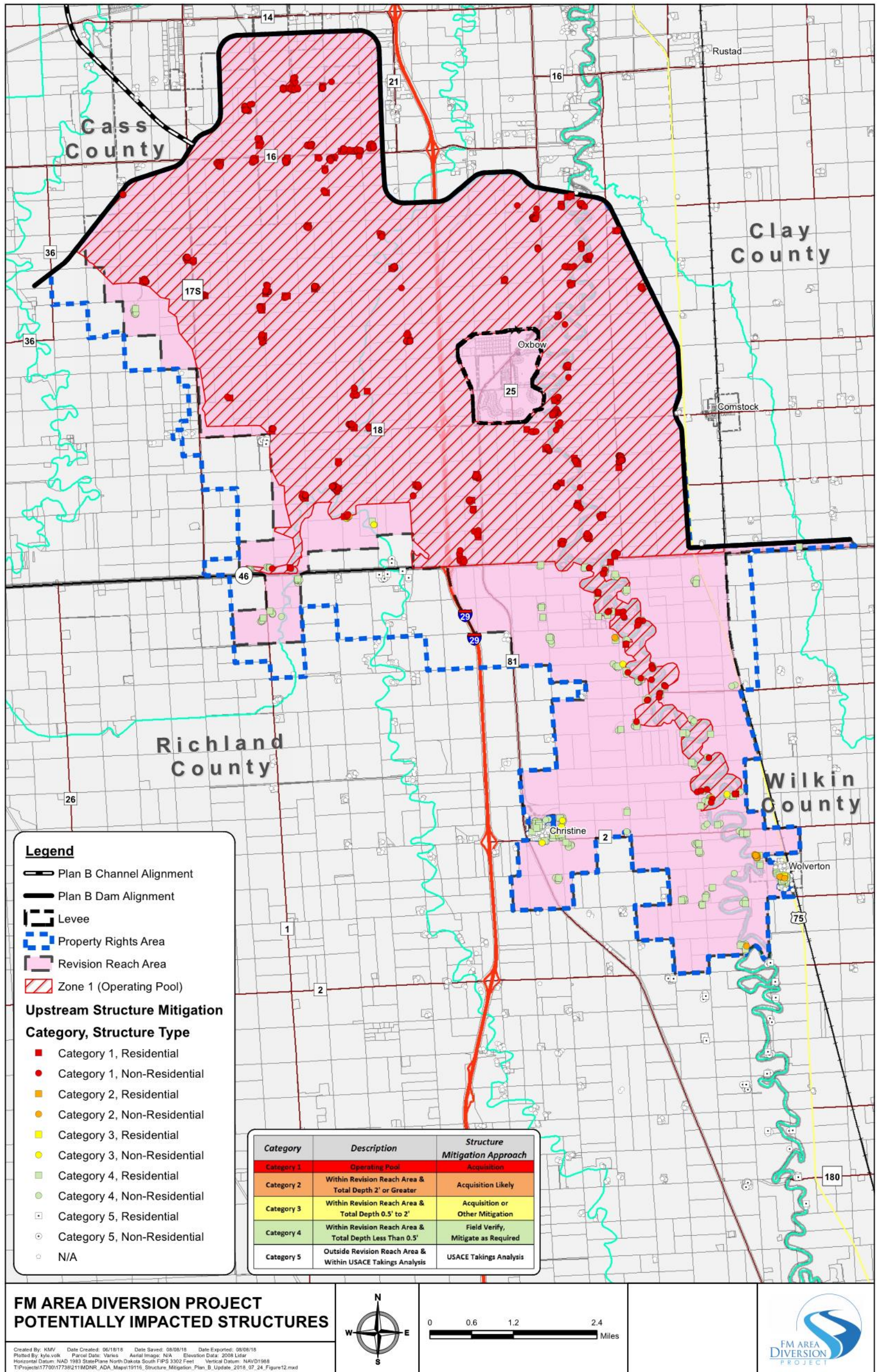
- The CLOMR approved hydraulic model will be used to define the ‘existing’ and ‘with-project’ flood water depths and durations within the upstream mitigation area.
- The CLOMR approved hydraulic model will be used to determine the Operating Pool (Floodway, USACE Zone 1) in the upstream mitigation area. Note that USACE has defined the floodway as “Zone 1”, which essentially functions as a floodway from a floodplain management perspective.
- The Diversion Authority (or its member entities) will obtain flowage easements on the following properties:
 - Properties within the Operating Pool (Floodway, USACE Zone 1). This is a Federal requirement, and the flowage easement in this area will restrict all development. The Operating Pool (Floodway, USACE Zone 1) is the area required for Project operation to mitigate downstream impacts. This area will be mapped as Floodway.
 - Properties within the Revision Reach Area, but outside of the Floodway (or outside USACE Zone 1). Note that USACE Zone 2 is within the Revision Reach Area. As noted above, the Revision Reach is defined through coordination with FEMA. Flowage easements in this area will require that structures be constructed at least 1-foot higher than the elevation of the maximum pool elevation controlled by the Limited Service Spillway, which is expected to be no greater than 923.5 feet (NAV88), or above the 500-year flood water surface elevation, whichever is higher.
 - Properties outside the Revision Reach, but within the Property Rights Area, which includes properties with an elevation less than the elevation of the maximum pool elevation controlled by the Limited Service Spillway, which is expected to be no greater

than 923.5 feet (NAV88). Flowage easements in this area will require that structures be constructed at least 1-foot higher than the elevation of the maximum pool elevation controlled by the Limited Service Spillway, which is expected to be no greater than 923.5 feet (NAV88), or above the 500-year flood water surface elevation, whichever is higher.

- The southern end of the flowage easement boundary along existing river channels will be limited to where the 923.5-foot elevation meets the existing 100-year flood elevation. This boundary will be used so the Diversion Authority is not obligated to obtain property rights within the existing river channels.
- The Dispute Resolution Board, defined elsewhere in the Mitigation Plan, provides a fair and independent process and mechanism for property owners who believe they were impacted by the Project to submit a claim of damages. The Dispute Resolution Board will be relied upon for property owners outside of the mitigation boundaries described in this section of the Mitigation Plan.

Attachments

- Upstream Mitigation Area – Structures
 - Potentially Impacted Structures Map
 - Structure Mitigation Summary Table 1
 - Structure Mitigation Summary Table 2
 - Structure Mitigation Tables (CLOMR Listed Properties) (5 pages)
- Upstream Mitigation Area Map (Flowage Easement Area Map)
- Existing and With-Project One-Percent Annual Chance (100-year) Floodplain Maps (2 pages)



Upstream Mitigation Area - Structure Mitigation Summary (Table 1)

18-Jul-2018

Location (County)	Acquisition	Acquisition Likely	Acquisition or Other Mitigation	Field Verify Elevation, Mitigate as Required	USACE Takings Analysis
	Category 1	Category 2	Category 3	Category 4	Category 5
Sites / Parcels	133	6	8	102	24
Cass County	96	0	1	3	3
Clay County	19	0	0	1	0
Richland County	11	2	3	39	12
Christine (City)	0	0	2	29	0
Wilkin County	7	1	1	13	9
Wolverton (City)	0	3	1	17	0
Residential Structures	89	0	1	93	21
Cass County	70	0	0	4	3
Clay County	14	0	0	1	0
Richland County	3	0	0	38	11
Christine (City)	0	0	0	24	0
Wilkin County	2	0	0	14	7
Wolverton (City)	0	0	1	12	0
Non-Residential Structures	580	15	15	263	152
Cass County	418	3	3	17	28
Clay County	119	0	0	1	0
Richland County	21	2	5	150	87
Christine (City)	0	0	2	35	0
Wilkin County	22	7	4	45	37
Wolverton (City)	0	3	1	15	0

Notes:

- The Upstream Mitigation Area analysis is bound by the limits of the Revision Reach Area, Takings Analysis area and Property Rights Area. The Upstream Mitigation Area also includes the Operating Pool.
- The Revision Reach Area is generally defined by those areas where the 100-year floodplain will be revised as a result of the Project. The Revision Reach Area is developed in coordination with FEMA.
- The USACE Takings Analysis will be performed to determine if a taking has occurred on a case-by-case-basis for any structure impacted by the Project that is located outside of the Revision Reach Area.
- The Property Rights Area is defined using the maximum elevation of the spillway, which is 923.5 feet (NAV88).
- The Operating Pool area is defined by USACE to provide sufficient volume to operate the Project as planned up to the 0.2% annual chance event without increasing pool levels above the maximum pool levels that occur during the PMF inflow design event. The Operating Pool Area will be mapped as floodway.
- The database includes all identified structures and sites upstream of the Southern Embankment.
- The impacts caused by the Project on all insurable structures within the Revision Reach Area will be mitigated through agreed methods consistent with those specified by the National Flood Insurance Program (NFIP). Additional structure-by-structure analysis is required to quantify impacts caused by the Project and define the mitigation plan for categories where additional analysis is noted below.
- Refer to Structure Mitigation Summary Table (Table 2) for more detail.
- "Category 1" is based on structures / sites in the Operating Pool. Sites have at least one structure within the Operating Pool Area. (Mitigation: Acquisition and removal)
- "Category 2" includes structures / sites outside the Operating Pool and within the Revision Reach Area. Sites have at least one structure with a total depth impact of 2' or greater. Additional analysis is needed to define the mitigation plan. (Mitigation: Acquisition and removal likely, with potential exceptions)
- "Category 3" includes structures / sites outside the Operating Pool and within the Revision Reach Area. Sites have at least one structure with a total depth impact of 0.5' to 2'. Additional analysis is needed to define the mitigation plan. (Mitigation: Acquisition or other mitigation)
- "Category 4" includes structures / sites outside the Operating Pool and within the Revision Reach Area. Sites have at least one structure with a total depth impact less than 0.5'. Additional analysis is needed to define the mitigation plan. (Mitigation: Field Verify Elevations, Mitigate as Required) NOTE: The vast majority of structures in Category 4 have no impact (Total Depth = 0).
- "Category 5" includes properties outside the Revision Reach Area and within the USACE Takings Analysis area. The USACE will conduct a Takings Analysis to determine if the impacts are compensable. (Mitigation: Takings Analysis) NOTE: The vast majority of structures in Category 5 have no additional impact (Total Depth Difference = 0).

Upstream Mitigation Area - Structure Mitigation Summary Tables (Table 2)

Tables for total summation of properties & structures within the mitigation categories

Mitigation Category				Category Description	Mitigation Sub-Category
Category 1				Operating Pool	Operating Pool
County/	Residential	Non-Residential	Sites/		
City	Structures ²	Structures ²	Parcels ³		
Cass	70	418	96		
Richland ¹	3	21	11		
Christine	0	0	0		
Clay	14	119	19		
Wilkin ¹	2	22	7		
Wolverton	0	0	0		
Total	89	580	133		

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Category 2				Total Depth 2' + w/in Revision Reach Area	Total Depth 2' or Greater
County/	Residential	Non-Residential	Sites/		
City	Structures ²	Structures ²	Parcels ³		
Cass	0	3	0		
Richland ¹	0	2	2		
Christine	0	0	0		
Clay	0	0	0		
Wilkin ¹	0	7	1		
Wolverton	0	3	3		
Total	0	15	6		

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Category 3				Within Revision Reach Area & Total Depth	Total Depth 0.5' to 2'
County/	Residential	Non-Residential	Sites/		
City	Structures ²	Structures ²	Parcels ³		
Cass	0	3	1		
Richland ¹	0	5	3		
Christine	0	2	2		
Clay	0	0	0		
Wilkin ¹	0	4	1		
Wolverton	1	1	1		
Total	1	15	8		

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Category 4				Within Revision Reach Area & Total Depth	Total Depth 0.1' to 0.5'	Total Depth 0.01' to 0.1'	Total Depth 0'
County/	Residential	Non-Residential	Sites/				
City	Structures ²	Structures ²	Parcels ³				
Cass	4	17	3				
Richland ¹	38	150	39				
Christine	24	35	29				
Clay	1	1	1				
Wilkin ¹	14	45	13				
Wolverton	12	15	17				
Total	93	263	102				

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Category 5				Outside Revision Reach Area & within USACE Takings Analysis	Outside RR & DD 0.1' to 0.5'	Outside RR & DD 0.01' to 0.1'	Outside RR & DD 0'
County/	Residential	Non-Residential	Sites/				
City	Structures ²	Structures ²	Parcels ³				
Cass	3	28	3				
Richland ¹	11	87	12				
Christine	0	0	0				
Clay	0	0	0				
Wilkin ¹	7	37	9				
Wolverton	0	0	0				
Total	21	152	24				

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	77	469	103
Richland ¹	52	265	67
Christine	24	37	31
Clay	15	120	20
Wilkin ¹	23	115	31
Wolverton	13	19	21
Total	204	1,025	273

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Tables for the breakdown of properties & structures within the mitigation category criteria

Operating Pool			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	70	418	96
Richland ¹	3	21	11
Christine	0	0	0
Clay	14	119	19
Wilkin ¹	2	22	7
Wolverton	0	0	0
Total	89	580	133

-Properties and structures within the Operating Pool.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total Depth 2' or Greater			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	3	0
Richland ¹	0	2	2
Christine	0	0	0
Clay	0	0	0
Wilkin ¹	0	7	1
Wolverton	0	3	3
Total	0	15	6

-Properties and structures with total depth of water 2' + within the Revision Reach Area.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total Depth 0.5' to 2'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	3	1
Richland ¹	0	5	3
Christine	0	2	2
Clay	0	0	0
Wilkin ¹	0	4	1
Wolverton	1	1	1
Total	1	15	8

-Properties and structures with total depth of water 0.5' - 2' WITHIN the Revision Reach Area & OUTSIDE the Operating Pool.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total Depth 0.1' to 0.5'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	1	0
Richland ¹	1	2	2
Christine	0	1	1
Clay	0	0	0
Wilkin ¹	0	1	0
Wolverton	1	2	3
Total	2	7	6

-Properties and structures with total depth of water 0.1' - 0.5' WITHIN the Revision Reach Area & OUTSIDE the Operating Pool.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Outside RR & DD 0.1' to 0.5'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	1	1
Richland ¹	1	11	4
Christine	0	0	0
Clay	0	0	0
Wilkin ¹	0	0	0
Wolverton	0	0	0
Total	1	12	5

-Properties and structures with additional inundation of 0.1' - 0.5' OUTSIDE the Revision Reach Area but WITHIN the USACE Takings Analysis.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total Depth 0.01' to 0.1'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	0	0
Richland ¹	0	0	0
Christine	0	0	0
Clay	0	0	0
Wilkin ¹	0	1	1
Wolverton	0	0	0
Total	0	1	1

-Properties and structures with total depth of water 0.01' - 0.1' WITHIN the Revision Reach Area & OUTSIDE the Operating Pool.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Outside RR & DD 0.01' to 0.1'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	0	0	0
Richland ¹	0	8	2
Christine	0	0	0
Clay	0	0	0
Wilkin ¹	0	0	0
Wolverton	0	0	0
Total	0	8	2

-Properties and structures with additional inundation of 0.01' - 0.1' OUTSIDE the Revision Reach Area but WITHIN the USACE Takings Analysis.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Total Depth 0'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	4	16	3
Richland ¹	37	148	37
Christine	24	34	28
Clay	1	1	1
Wilkin ¹	14	43	12
Wolverton	11	13	14
Total	91	255	95

-Structures with no inundation BUT WITHIN the Revision Reach Area & OUTSIDE the Operating Pool.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Outside RR & DD 0'			
County/	Residential	Non-Residential	Sites/
City	Structures ²	Structures ²	Parcels ³
Cass	3	27	2
Richland ¹	10	68	6
Christine	0	0	0
Clay	0	0	0
Wilkin ¹	7	37	9
Wolverton	0	0	0
Total	20	132	17

-Structures with no additional inundation (have same inundation as existing conditions) OUTSIDE the Revision Reach Area but WITHIN the USACE Takings Analysis.

¹ County sums do not include city numbers within the county
² Individual structure impact; Independent of site/parcel
³ Overall site impact, based on most impacted structure for each site

Upstream Mitigation Area - Site Structure Summary (Preliminary CLOMR Listed Properties)

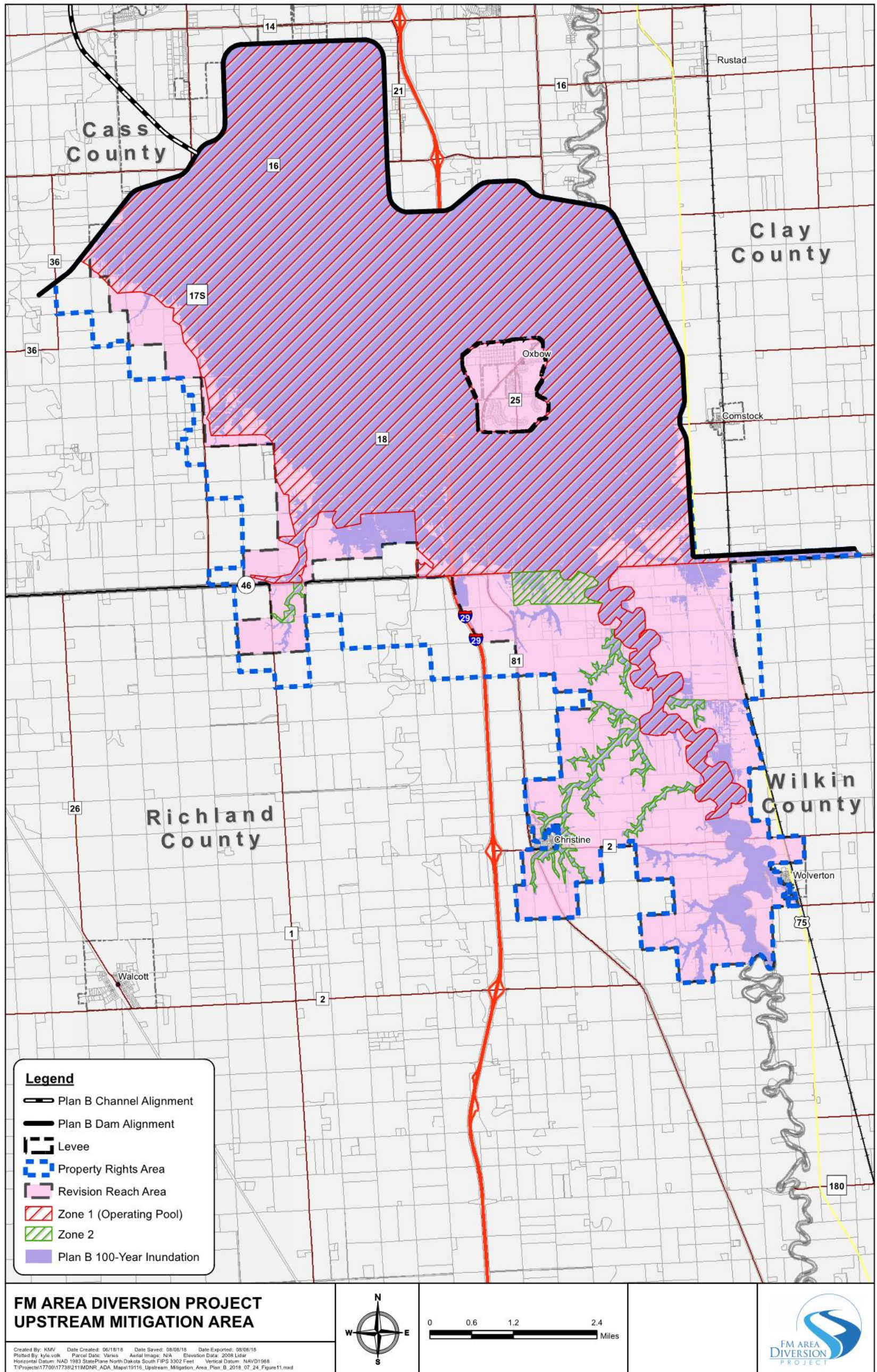
18-Jul-2018

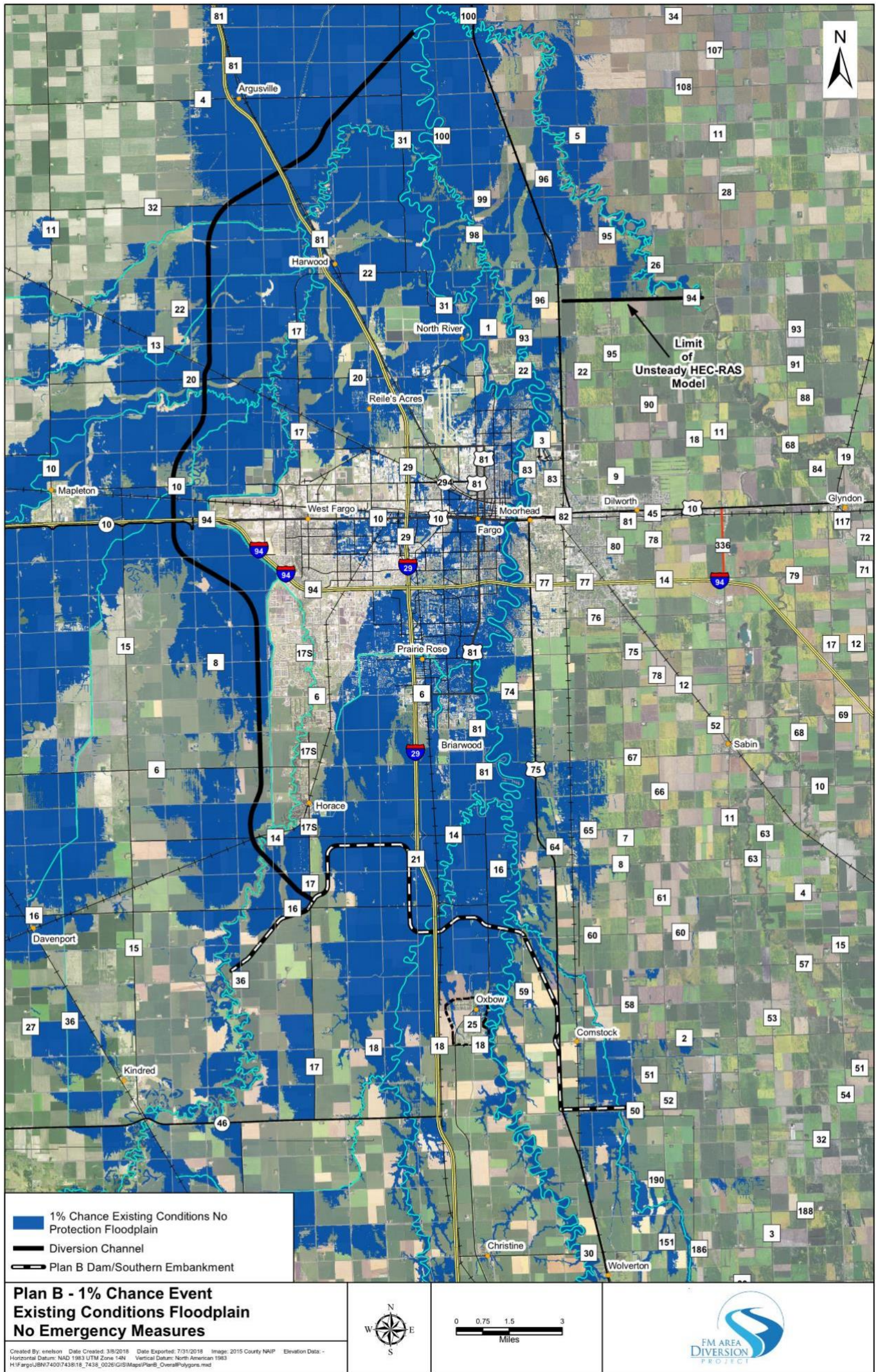
OID	Parcel_ID	Name	City/ County	State	Totals		1229		204		1025		89		580		0		15		1		15		93		263		21		152	
					Total Structures	Total Res.	Total Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	Res.	Non-Res.	
					Category 1		Category 2		Category 3		Category 4		Category 5																			
9994	57000010287020	ROBERT MITCHELL	Cass	ND	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
1556	49-1410-05022.000	RAEDER, ALDA G	Christine	ND	5	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0		
1566	49-0001-05003.000	CHRISTINE, CITY OF	Christine	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
1567	49-0001-05001.000	CHRISTINE, CITY OF	Christine	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
8683	49-1405-05008.002	MJONES, JOSHUA J & JENNIFER M	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8687	49-0001-04849.000	HEMPPEL, PAUL & LAURIE	Christine	ND	3	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0			
8688	49-0001-04846.000	MOREL, MARLO G	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8689	49-0001-04852.000	DES ROCHES, MICHAEL A	Christine	ND	3	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0			
8690	49-0001-04843.000	DES ROCHES, JAMES A&THERESA JO	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8691	49-0001-04842.000	RAEDER, ALDA G	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8692	49-0001-04840.000	LANEY, CARSON	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8693	49-0001-05004.000	RAEDER, ALDA G	Christine	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8694	49-0001-05004.010	LANEY, CARSON	Christine	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
8695	49-1410-05030.000	HILDEBRANT, JEANINE	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0			
8696	49-1410-05030.100	NOREN, JOEL C & CRYSTAL A	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8700	49-0001-04978.000	THORSELL, LEON P & DOROTHY A	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8701	49-0001-04977.000	THORSELL, LEON P & DOROTHY A	Christine	ND	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0			
8703	49-0001-04974.000	KIRSCH, JAMES D	Christine	ND	5	1	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	4	0	0	0	0			
8708	49-0001-04888.000	MONSON, RANDY HOWARD	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8709	49-0500-05032.030	MONSON, RANDY HOWARD	Christine	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
8713	49-0001-04991.000	SCHWAN, JANE L	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8714	49-0001-04992.000	ALBRECHT, DAVID E	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8715	49-0001-04993.000	JAMES, TOSHIKO ETAL	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8716	49-0001-04994.000	BRANDT, WARREN	Christine	ND	4	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0			
8717	49-0001-04996.000	WIRT, SPENCER &	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8718	49-1410-05026.000	WALLELVAND, JOSEPH H & LINDA	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8719	49-1410-05025.000	TRITTING, BEVERLY R &	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8720	49-1410-05028.000	KRAMLICH, DELORES GRACE	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8722	49-1410-05027.000	STEBLETON, KEITH	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8724	49-1410-05029.200	ERICKSON, MARK &	Christine	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
8726	49-1410-05029.000	ERICKSON, MARK &	Christine	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
8727	49-1410-05029.300	BRANDNER, DONALD W & JANICE M	Christine	ND	3	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0			
176	01-0000-00003.100	HIGH PLAINS PROPERTIES LLC	Richland	ND	4	1	3	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0			
1327	01-0000-00092.100	BERNHARDT, JEFFREY L	Richland	ND	11	1	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	10	0	0	0	0			
1328	01-0000-00014.100	RUFER, MICHAEL F & DARLA L	Richland	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
1329	01-0000-00017.101	GRANHOLT, JOSHUA C & SUZANNE	Richland	ND	4	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0	0	0	0			
1330	01-0000-00030.300	ANDERSON, PATRICK R &	Richland	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
1335	01-0000-00018.001	NELSON, CURTIS H & ELLEN D	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
1336	01-0000-00019.000	GRANHOLT, CRIAG & LAVONNE	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
1345	01-0000-00014.200	RUFER, MICHAEL F & DARLA L	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
1348	01-0000-00028.100	GRANHOLT, CRAIG E & LAVONNE R	Richland	ND	3	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0			
1349	01-0000-00032.000	KINNEBERG, JOSHUA J	Richland	ND	6	1	5	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0	0	0	0			
1356	01-0000-00028.000	GRANHOLT, CRAIG E & LAVONNE R	Richland	ND	13	1	12	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	9	0	0	0	0			
1367	01-0000-00097.101	RAEDER, RANDY D & DONNA J	Richland	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
1375	01-0000-00124.000	ISRAELSON LAND PRTSHP LLLP	Richland	ND	8	1	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	7	0	0	0	0			
1402	01-0000-00081.075	PATRICK, DENNIS E & WANDA I	Richland	ND	4	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0	0	0	0			
1405	01-0000-00001.130	ANDERSON, LORI J	Richland	ND	2	0	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
1411	01-0000-00068.100	HEESCH, RONALD G & MELISSA A	Richland	ND	6	1	5	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0	0	0	0			
1412	01-0000-00072.000	KOPP, ALAN P & JUNE L	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
1473	01-0000-00079.000	MATHISON, LOIS M	Richland	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
1478	01-0000-00081.155	PATRICK, CHAD E	Richland	ND	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
1485	01-0000-00074.000	KOPP, ALAN P & JUNE L	Richland	ND	3	1	2	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
1515	01-0000-00118.000	KLEIN, PAUL &	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0			
1517	01-0000-00123.000	FALK, JAMES P & KAREN J	Richland	ND	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0			
1541	02-0000-00324.200	TOMMERAUS, DUWAYNE & PEGGY	Richland	ND	9	1	8	0	0	0	0	0																				

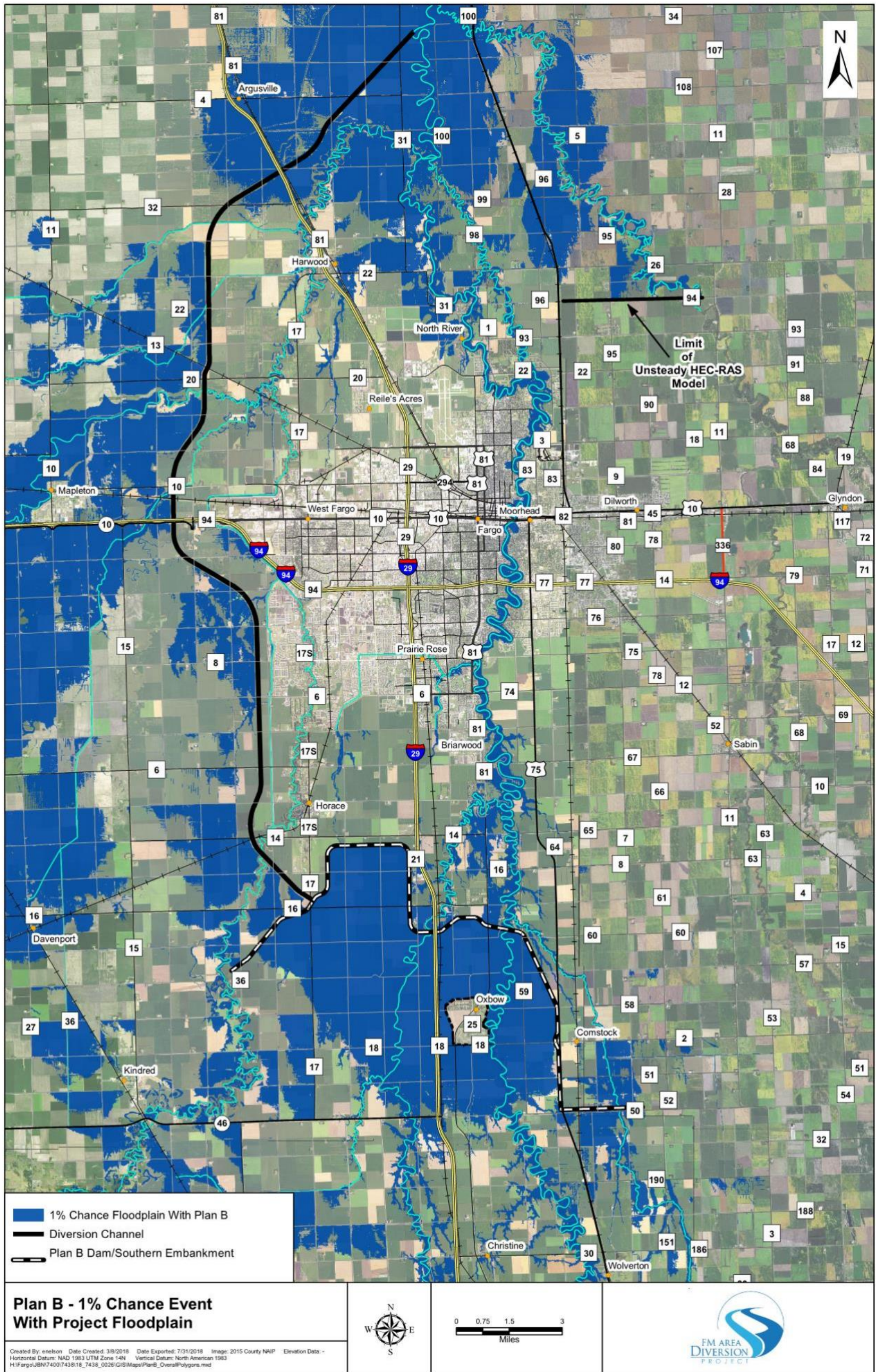
Upstream Mitigation Area - Site Structure Summary (Preliminary CLOMR Listed Properties)

18-Jul-2018

OID	Parcel_ID	Name	City/County	State	Totals	1229	204	1025	89		580		0		15		1		15		93		263		21		152	
									Total Structures	Total Res.	Total Non-Res.	Category 1 Res.	Category 1 Non-Res.	Category 2 Res.	Category 2 Non-Res.	Category 3 Res.	Category 3 Non-Res.	Category 4 Res.	Category 4 Non-Res.	Category 5 Res.	Category 5 Non-Res.							
1545	01-0000-00016.000	JOHNSON, MICHELE K	Richland	ND	6	2	4	0	1	0	0	0	0	0	2	3	0	0										
1548	01-0000-00008.000	SWENSON, ALLAN P & MARY H M	Richland	ND	6	1	5	0	2	0	0	0	0	1	3	0	0											
1550	02-0000-00322.000	BERGH, KENNETH D & LOIS M	Richland	ND	7	1	6	0	0	0	0	0	1	6	0	0												
1551	02-0000-00329.000	ROGNE, P. TRANA	Richland	ND	7	1	6	0	0	0	0	0	1	6	0	0												
1569	01-0000-00113.000	MILLER, JON E LTD FAMILY PRT	Richland	ND	2	0	2	0	0	0	0	0	0	2	0	0												
1583	01-0000-00094.000	THORESON, JAMES C & CAROLINE P	Richland	ND	5	1	4	0	0	0	0	0	1	4	0	0												
1597	01-0000-00030.100	MARSCHNER, BRANDON	Richland	ND	1	0	1	0	0	0	0	0	0	1	0	0												
1598	01-0000-00030.250	EAGLE VALLEY EVANGELICAL	Richland	ND	2	0	2	0	0	0	0	0	2	0	0													
1600	01-0000-00004.201	KNUDSEN, KENNETH C & MELANIE M	Richland	ND	11	0	11	0	1	0	0	0	0	10	0	0												
1604	01-0000-00001.180	ANDERSON, LORI J	Richland	ND	1	0	1	0	1	0	0	0	0	0	0	0												
8577	01-0000-00176.000	JEMTRUD, SANDRA	Richland	ND	1	0	1	0	0	0	0	0	0	0	0	1												
8578	01-0000-00169.100	MORKEN, DAVID & ROXANNE	Richland	ND	20	1	19	0	0	0	0	0	0	1	19													
8579	01-0000-00169.000	BEAUDIN, PAULINE C	Richland	ND	1	0	1	0	0	0	0	0	0	0	1													
8728	01-0000-00121.100	RUTTEN, ROBERT & SALLY	Richland	ND	3	1	2	0	0	0	0	0	1	1	0													
8729	01-0000-00114.000	DUFNER, TERRY J & DONNA C	Richland	ND	5	2	3	0	0	0	0	0	2	2	0													
8763	02-0000-00321.000	TOPPEN, TODD & LEANN	Richland	ND	15	2	13	0	0	0	0	0	0	2	13													
8764	02-0000-00321.100	DOCKTER, NEIL	Richland	ND	1	1	0	0	0	0	0	0	0	1	0													
8765	02-0000-00314.000	MILLER, TIMOTHY J & STACEY M	Richland	ND	3	1	2	0	0	0	0	0	0	1	2													
8775	01-0000-00130.100	HOHERTZ, JAMES B & LINDA G	Richland	ND	6	1	5	0	0	0	0	0	1	5	0													
8782	01-0000-00063.001	ALM, MELVIN JOHN ETAL	Richland	ND	12	0	12	0	0	0	1	0	0	11	0													
8785	01-0000-00053.000	ELLINGSON, DARYL & KAREN &	Richland	ND	5	1	4	0	0	0	0	0	1	4	0													
8786	01-0000-00037.100	SCHIOTZ, SEAN K	Richland	ND	4	1	3	0	0	0	0	0	1	3	0													
8787	01-0000-00037.050	KALINOWSKI, MATTHEW	Richland	ND	2	1	1	0	0	0	0	0	1	1	0													
8788	01-0000-00038.100	SKOOG, RYAN	Richland	ND	1	0	1	0	0	0	0	0	1	0	0													
9235	01-0000-00077.100	SPETEN, KENNETH J & KAREN	Richland	ND	5	1	4	0	2	0	0	0	1	2	0													
9237	01-0200-00077.110	AMBUHEHL, CHARLES D	Richland	ND	1	1	0	0	0	0	0	0	1	0	0													
9251	01-0000-00001.210	ANDERSON, LORI J	Richland	ND	1	0	1	0	0	0	0	0	0	1	0													
9253	01-0000-00001.190	ANDERSON, LORI J	Richland	ND	1	1	0	1	0	0	0	0	0	0	0													
9258	01-0000-00088.100	CIRKS, PENNY	Richland	ND	4	1	3	0	0	0	1	0	1	1	0													
11110	01-0000-00041.000	KLEIN, PAUL &	Richland	ND	1	0	1	0	0	0	0	0	0	1	0													
11111	01-0000-00041.100	NELSON, JEFF & CHAR	Richland	ND	6	1	5	0	0	0	0	0	1	5	0													
11112	01-0000-00042.000	DOSS, JEREMY & CLAYTON	Richland	ND	5	1	4	0	0	0	0	0	1	4	0													
11113	01-0000-00063.075	ALM, RICKY & LAURIE	Richland	ND	5	1	4	0	0	0	0	0	1	4	0													
11114	01-0000-00063.100	ALM, MELVIN J & SANDRA M	Richland	ND	2	1	1	0	0	0	0	0	1	1	0													
11115	01-0000-00152.000	KNAPP, SUSAN ETAL	Richland	ND	12	1	11	0	0	0	0	0	0	1	11													
11116	01-0000-00155.200	PELTIER, DONALD J & TERESA J	Richland	ND	4	2	2	0	0	0	0	0	0	2	2													
11117	01-0000-00166.100	SYRING, PAUL J & MICHELLE M	Richland	ND	2	1	1	0	0	0	0	0	0	1	1													
11118	01-0000-00177.100		Richland	ND	3	1	2	0	0	0	0	0	0	1	2													
99970	01-0000-00198.001	BOLME, JEFFREY S & KATHLEEN M	Richland	ND	24	0	24	0	0	0	0	0	0	0	24													
99971	01-0000-00048.150	SCHULZ, TIMOTHY M & SHARON D	Richland	ND	7	1	6	0	0	0	0	0	1	6	0													
99984	01-0000-00156.050	SKOOG, ROBERT D & KAY M	Richland	ND	12	1	11	0	0	0	0	0	0	1	11													







USACE / FEMA Coordination Plan

FINAL
14 April 2015
Updated 26 June 2018

FEMA/USACE Coordination Plan

- Project:** Fargo-Moorhead Metropolitan Feasibility Study
- ND Diversion Channel with upstream staging – Federal Plan (Authorized WRRDA 2014)
- Project Design:** U.S. Army Corps of Engineers, St. Paul District
- Project Reach:** Diversion begins along the Red River of the North approximately 4 miles south of the confluences of the Red and Wild Rice Rivers and eventually re-enters the Red River north of the confluence of the Red and Sheyenne Rivers near the city of Georgetown, MN. Along the 36 mile path, it would cross the Wild Rice, Sheyenne, Maple, Lower Rush and Rush Rivers.

Floodplain Management Requirements – 44 CFR Sections 60.3, 65.3, 65.6, 65.8, and 65.12:

Section 60.3, Floodplain Management Criteria – requires that communities:

- Notify adjacent communities and the state coordinating office prior to any alterations and submit copies to the Associate Administrator, Federal Insurance and Mitigation Administration (FIMA),
- Ensure the flood carrying capacity is maintained within any altered or relocated watercourse,
- Prohibit encroachments in the Special Flood Hazard Areas (SFHAs), the area subject to inundation during the base (1-percent-annual-chance) flood, with no mapped floodways that will cause increases in the base flood elevations (BFEs) of more than the allowable surcharge (1.0 in North Dakota and 0.5 in Minnesota),
- Prohibit encroachments in mapped floodways which would result in any increase in BFEs, and
- Notwithstanding any other provisions, if encroachments are allowed and will cause a rise in BFEs exceeding these limits, submit a Conditional Letter of Map Revision (CLOMR) for FEMA comment.

Section 63.5, Requirement to Submit New Technical Data – requires that communities submit new data when base flood elevations increase or decrease from physical changes that affect flooding conditions. This information must be submitted no later than 6 months after it becomes available.

FINAL
14 April 2015
Updated 26 June 2018

Section 65.6, Revision of Base Flood Elevation Determinations – identifies data that communities must submit, under the map revision process, to support a request to revise the FIS report and FIRM including, but not necessarily limited to:

- new or revised hydrologic analysis,
- new or revised hydraulic analyses,
- new or revised delineation of floodplain boundaries, and
- new or revised floodways.

Section 65.8, Review of Proposed Projects – requests by communities for FEMA to provide:

- Written comments on proposed projects in the form of a Conditional Letter of Map Revision (CLOMR), and
- Comments on whether the proposed project will justify a revision to the FIRM, if the project is built as proposed.

Data required to support such requests are similar to data discussed above for a map revision.

Section 65.12, Revisions to Reflect BFEs Caused by Encroachments – requires that communities apply to FEMA for conditional approval (see 44 CFR Part 72 of the NFIP regulations) of actions which will cause increases in BFEs in excess of the limits discussed above prior to permitting the encroachments to occur, and must:

- complete a request using the MT-2 application forms,
- provide an evaluation of alternatives,
- document individual legal notice to impacted property owners,
- obtain concurrence of CEOs of communities impacted by the proposed actions, and
- provide a certification that no structures are impacted by increased BFEs or a description of the proposed mitigation measures for all impacted structures, within the Revision Reach as defined below.

FINAL
14 April 2015
Updated 26 June 2018

FEMA Flood Insurance Study (FIS) Reports and Flood Insurance Rate Maps (FIRM):

Effective FIS Reports and FIRMs - The Cass County, ND partial countywide FIS Report and FIRMs went effective on January 16, 2015. Effective FIS Reports and FIRMs for all communities impacted by the proposed project are available at the FEMA Map Service Center site at: <http://www.msc.fema.gov/>.

Preliminary FIS Report and FIRMs – Preliminary FIS Reports and FIRMs have been issued for Wilkin County, MN. Local project sponsors have access to the FIS and FIRMs effective and issued preliminary for their jurisdictions.

FINAL
14 April 2015
Updated 26 June 2018

Red River of the North Modeling:

Effective FIRM Models – The Eastern Cass Partial Countywide study went effective on January 16, 2015. The hydraulic analysis for the revised portion of the Red River of the North (South of 29th Street Southeast) was developed by Houston Engineering, Inc., and was finalized in February 2009. This analysis uses the USACE HEC-RAS steady flow model. Hydraulic analysis for the unrevised portion of the Red River of the North (North of 29th Street Southeast) was completed by the USACE in 1985. This analysis uses the USACE HEC-2 computer program.

Preliminary FIRM Models – Preliminary FIS Reports and FIRMs have been issued for Wilkin County, MN. The hydraulic analyses for the Red River of the North from the Clay County boundary to approximately 90 feet downstream from State Highway 210 were performed by USACE, St. Paul District and FEMA. The work was completed in January 2003. The models used for the preliminary FIS Report and FIRMs along the Red River of the North utilize the USACE HEC-RAS steady flow models.

USACE Fargo-Moorhead Metropolitan Feasibility Study Models – The HEC-RAS models used for this study along the Red River of the North were developed by the USACE by converting the 2003 steady flow models to unsteady flow models and also included updating overbank data with LiDAR information, updating channel bathymetry with recent surveys, and adding many storage areas and connections. The models prepared by USACE included:

- **Existing or Pre-Project Conditions Model (ECM)** – The USACE’s updated HEC-RAS unsteady flow model which incorporates the updated floodplain and channel information will be used as the pre-project conditions model.
- **Revised or Post-Project Conditions (RCM) Model** – The USACE’s updated HEC-RAS unsteady flow model for existing conditions was updated to include the effects of the proposed Fargo-Moorhead Metropolitan Feasibility Study project, and represents the post-project conditions model.

These models were based on the hydrologic analysis for the full period of record (1902-2009), which provides a peak discharge of 33,000 cubic feet per second (cfs), compared to the 29,300 cfs peak discharge used in the effective models for the 1-percent-chance-annual flood. FEMA has reviewed the hydrology for both the wet period (1942-2009) 1-percent-chance-annual flood peak discharge of 34,700 cfs and the period of record (1902-2009) peak discharge (33,000 cfs) and found that either discharge would be reasonable for FEMA mapping.

FINAL
14 April 2015
Updated 26 June 2018

Impacts on Other Streams

The other major streams potentially impacted by this project are:

- Wild Rice River
- Sheyenne River
- Maple River
- Lower Branch of the Rush River
- Rush River
- other minor streams shown on effected FIRMs along the proposed diversion route

Information Required for CLOMR Application:

The following information would be needed for the submission of the CLOMR application:

- **MT-2 Application Forms and Instructions for Conditional Letters of Map Revision and Letters of Map Revision including:**
 - **Form 1 - Overview & Concurrence Form** provides the basic information regarding the revision request and requires the signatures of the requester, community official(s), and engineer,
 - **Form 2 -Riverine Hydrology & Hydraulics Form** provides the basic information on the scope and methodology of hydrologic and/or hydraulic analyses that are prepared in support of the revision request,
 - **Form 3 -Riverine Structures Form** provides the basic information regarding hydraulic structures constructed in the stream channel or floodplain. This form should be used for revision requests that involve new or proposed channelization, bridges/culverts, dams/basins, and/or levees/floodwalls,
 - **Payment Information Form** -Provides the basic information regarding any fees paid for a CLOMR, if required (note: federally sponsored flood-control-projects where 50 percent or more of the project's costs are federally funded are exempt from fees), and
 - **ESA Compliance Documentation** – must be submitted for CLOMRs only. Appropriate documentation includes a copy of an Incidental Take Permit, an Incidental Take Statement, a “not likely to adversely affect” determination from NMFS or USFWS, or an official letter from NMFS or USFWS concurring that the project has “No Effect” on proposed or listed species or designated critical habitat.

FINAL
14 April 2015
Updated 26 June 2018

- **Additional supporting information which would accompany the forms listed above includes:**
 - **Revision Reach** - The extent of the revision is defined by an effective tie-in at the upstream and downstream limits for each flooding source. An effective tie-in is obtained when the revised base flood elevations from the *post-project* conditions model are within 0.5 feet of the *pre-project* conditions model at both the upstream and downstream limits. The downstream end of the revision reach is at the outlet of the diversion channel, and the upstream end of the reach will be near Red River model station 2673969 as shown in the attached map. The upstream end of the reach on the Red River is approximately 2 miles east and 1.5 miles south of Christine, ND. A portion of Christine, ND is within the revision area. The upstream end of the reach on the Wild Rice River coincides with model station 103632 and is located approximately 0.5 miles north of the northern boundary of Richland County, ND.
 - **Staging Area Regulatory Mapping** - The areal extent of flood inundation required by the Project for operation in the Staging Area will be mapped as floodway in order to ensure that the required storage volume is available for the project during the 1-percent-annual-chance event. Any additional flood inundation area beyond the extents of what is required by the project during the 1-percent-annual-chance event will be mapped as floodplain in order to portray the elevated flood risk outside of the required staging area.
 - **Mitigation of Project Impacts** - The extent of mitigation of impacts caused by the Project is also defined by the revision reach. The impacts within the designated project Staging Area will be mitigated in accordance with the Project's Feasibility Study/EIS (FEIS) dated July 2011, and authorized for construction in WRRDA 2014. Impacts caused by the Project to structures located within the revision reach that are not identified for mitigation in the FEIS will generally follow the same mitigation strategy as identified in the FEIS. The impacts caused by the Project on all insurable structures within the revision reach will be mitigated through agreed methods consistent with those specified by the National Flood Insurance Program (NFIP). For residential structures, these include elevation, relocation, buy-outs, and ring levees. For non-residential structures, these include dry flood proofing, elevation, relocation, buy-outs, and

FINAL
14 April 2015
Updated 26 June 2018

ring levees. The CLOMR will include a general plan as to how structures will be mitigated. A site-by-site analysis will not be necessary for the CLOMR.

- **Models accompanying Form 2 including:**
 - **Corrected Effective Model (CEM)** – The USACE 2003 steady flow HEC-RAS model is utilized to best represent the current effective and preliminary modeling on the Red River of the North. It uses the current effective peak discharge for the 1-percent-chance-annual flood (29,300 cfs). Therefore, this model will be the base condition model used for comparison purposes in the CLOMR submittal.
 - **Existing or Pre-Project Conditions Model (ECM)** – The USACE’s updated HEC-RAS unsteady flow model which incorporates the updated floodplain and channel information will be used as the pre-project conditions model.
 - **Revised or Post-Project Conditions (RCM) Model** – The USACE’s updated HEC-RAS unsteady flow model for existing conditions was updated to include the effects of the proposed Fargo-Moorhead Metropolitan Feasibility Study project, and represents the post-project conditions model.
- **Public Notices and Property Owner Notifications** - The primary purpose for notifications, whether they are public notices or property owner notifications, is to make certain that all affected parties (property owners and communities) are aware of any proposed changes to the map prior to those changes being permitted and shown on a revised FIRM.
 - **For Section 65.12 Revisions Based on Proposed Encroachments** - This requirement is met by providing individual legal notice to all impacted property owners explaining the impact of the proposed map revision on their property. The community must notify property owners of the impact to their property prior to the community issuing building and/or construction permits for the proposed project.

FINAL
14 April 2015
Updated 26 June 2018

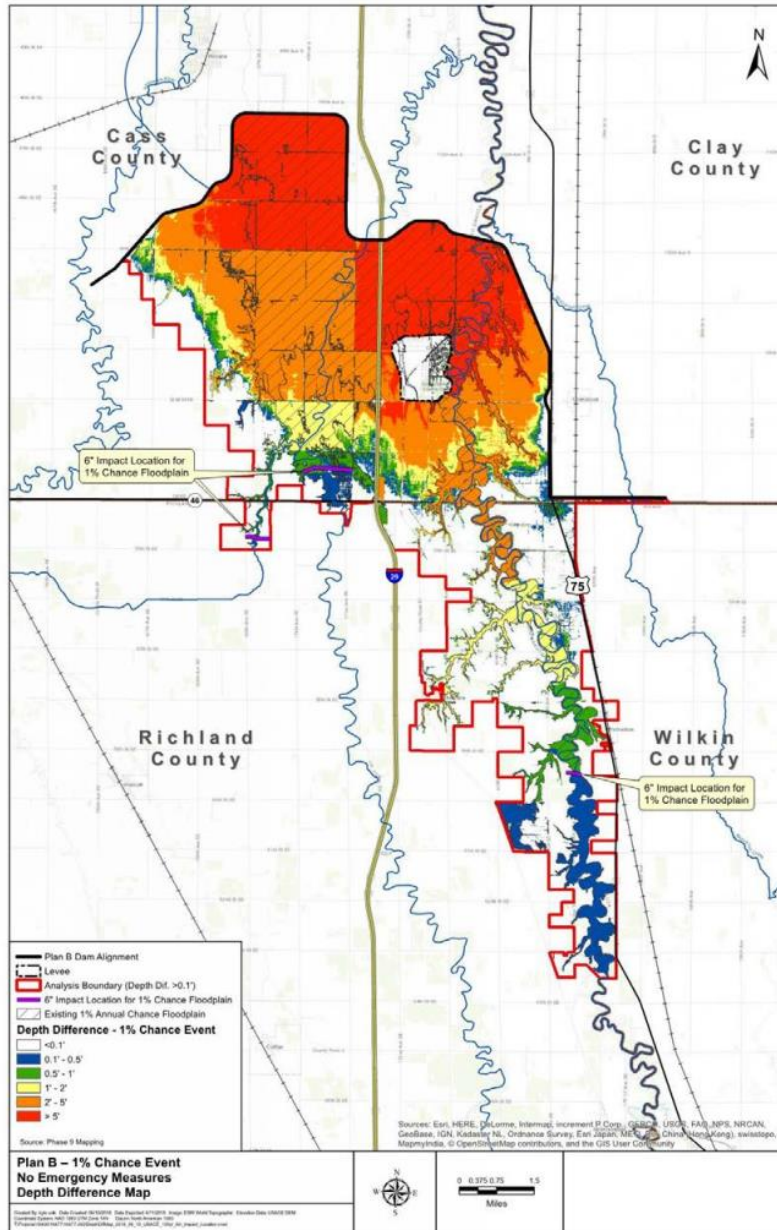
all other flooding sources shown on the effective FIRMs, where applicable, will be necessary.

- The RCM to CEM, which represents the comparison of the post-project conditions to the base conditions model and identifies the area impacted by this revision request.

Information Required for Map Revision Application:

It is anticipated that a request for a map revision will be submitted upon completion the project. The ECM and the RCM will be updated to reflect post-project conditions and used in the submittal for the map revision for the project. Information will need to follow the requirements of 44 CFR Part Section 65.6 and the MT-2 Application Forms and Instructions for Conditional Letters of Map Revision and Letters of Map Revision. Remapping will be initiated upon request by the local communities, following project completion.

FINAL
 14 April 2015
 Updated 26 June 2018



Flowage Easement Plan

Why is a Flowage Easement needed?

- The FM Area Diversion Project (Project) includes temporary retention of floodwaters upstream of the Project. The upstream retention is a necessary component of the Project, and it will periodically and temporarily store flood waters.
- The Diversion Authority must obtain flowage easements to provide the legal right to inundate properties impacted by the upstream mitigation area.
- There are various federal and state agencies that dictate the areas upon which flowage easements will be necessary. For example, the North Dakota State Water Commission has indicated that the Diversion Authority will need to obtain land rights (presumably a flowage easement) for all lands that are below the top of spillway elevation of the southern embankment structures. This area is approximately 38,000 acres.
- A floodway and a floodplain will be defined within the upstream mitigation area in accordance with FEMA standards. The exact size of the floodway outline is undetermined at this time, but it is estimated that the floodway will cover approximately 25,000 acres that are required for operation of the Project. No development will be allowed within the floodway. Development in the floodplain may be allowed in accordance with local floodplain development ordinances, rules, regulations, and the terms and conditions of the flowage easement.

What is a Flowage Easement?

- The easement provides the legal right to temporarily inundate property as part of the operation of the Project.
- USACE policy defines the compensation for a flowage easement as a one-time payment made at the time that the easement is acquired.
- The flowage easement will compensate for all impacts caused by the Project, such as potential loss of development rights, agricultural production impacts, and periodic and temporary flooding impacts (debris).
- Flowage easements will allow for farming to continue on properties, however development will be limited.

How will the value of the Flowage Easement be determined?

- Factors that will be considered include the depth, duration, and frequency of additional flooding; and the highest and best use of the property.
- It is expected that an appraiser will conduct a “before and after” valuation in which the market value of the property before the flowage easement is determined, and the market value after the flowage easement conditions is determined. The market value of the flowage easement will be a determined using the difference of before and after valuations.
- The appraiser of the property may consider future impacts including delayed planting, yield loss, debris, and limitations to future land use, resulting from operation of the Project.

- Values of flowage easements will vary depending on the location and type of the property, magnitude of impacts, and future risks to the property.
- The flowage easement payment is expected to be a one-time payment to the property owner. The payment will be made when the easement is acquired.
- The valuations will be compliant with USPAP and applicable state and federal guidelines

What are the terms and conditions of the Flowage Easement?

- The easement will describe the “Easement Property” upon which the easement applies.
- The easement will provide the right to occasionally overflow, flood and submerge the Easement Property in connection with the operation, maintenance, repair, replacement and rehabilitation of the Project.
- The easement will restrict or prohibit development potential within the Easement Property in compliance with FEMA and local floodplain development rules.
- The easement will provide access rights related to the Project for conducting observations, surveys, reviews, and data collection for environmental assessments; conducting topographic field and parcel surveys, soil analysis, soil borings, and other investigations; conducting water level, erosion, water quality, habitat, environmental, and other relevant monitoring; performing any other testing, surveys, and analysis; and necessary and reasonable rights of ingress and egress to and from an “Access Area” of the Easement Property. The easement will authorize payment for crop damages caused by the exercise of the above described access rights.
- The easement will require removal of all structures in the floodway, and insurable structures not meeting floodplain management rules.
- The easement will define acceptable use of the property by Grantor (property owner) and Grantee (Diversion Authority).
- The easement will allow property owners to mortgage the property as long as the mortgage is subordinate to the flowage easement.
- The easement will also contain other legal terms including governing law, severability, etc.

When will the Flowage Easements be obtained?

- Flowage easements need to be acquired prior to operation of the Project. The current schedule and estimate indicates that flowage easements will need to be acquired by 2025.
- It is anticipated that several years will be required to acquire all of the flowage easements necessary for the Project.
- The Diversion Authority may start early in approaching property owners in the upstream mitigation area with flowage easement needs.

Who will obtain the Flowage Easements?

- The Diversion Authority has assigned the property acquisition role in North Dakota to the CCJWRD.
- The Diversion Authority will assign the property acquisition role in Minnesota to the MCCJPA entity that is expected to be formed in 2018.

Sample Flowage Easement

FLOWAGE EASEMENT

THIS EASEMENT is made this ____ day of _____, 201X, by **[Insert Name(s)]**, **[Insert Marital Status]**, whose post office address is **[Insert Address]** (“Grantor”); and the **[Insert Acquiring Entity Name]**, a **[pick one: Minnesota / North Dakota]** political subdivision, whose post office address is **[Insert Address]**, and its successors and assigns (“Grantee”).

RECITALS

A. The Grantee is a member of the METRO FLOOD DIVERSION BOARD OF AUTHORITY, a joint powers entity consisting of Clay County, Minnesota; City of Moorhead, Minnesota; Cass County, North Dakota; City of Fargo, North Dakota; and the Cass County Joint Water Resource District (the “Diversion Authority”).

B. The Fargo-Moorhead Metro Flood Risk Management Project is a flood risk management project, sponsored by the United States Army Corps of Engineers (the “Corps”) and the Diversion Authority, which includes a diversion channel and appurtenant staging and storage areas to reduce flood damages and risks in the region; the parties refer to the project as the FARGO-MOORHEAD METROPOLITAN AREA FLOOD RISK MANAGEMENT PROJECT, which is a federally authorized project pursuant to Section 7002(2) of the Water Resources Reform and Development Act of 2014 (the “Project”).

C. Grantor owns certain real property in the vicinity of the Project, more specifically described below, in an area that may be subject to temporary and periodic flooding as a result of the Project.

D. Grantor has agreed to convey to Grantee a permanent easement, as more specifically described below, to permit Grantee to periodically flood portions of Grantor’s property as well as granting certain access, survey, and exploration rights to Grantee.

E. Grantor agrees to grant and convey to Grantee an easement over the property described below, subject to the terms and conditions contained in this Easement.

In consideration of \$XXX.XX, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Easement Property.** Grantor grants and conveys to Grantee a permanent easement in, on, over, through, and across the following real property in [**Insert County and State**]:

[Insert Description]

The above described tract contains _____ acres, more or less.

(Collectively, the "Easement Property.")

A. Under this Easement, Grantor grants to Grantee, its officers, employees, agents, representatives, contractors, and subcontractors the following perpetual right, power, privilege and easement to occasionally overflow, flood, and submerge the Easement Property in connection with the operation, maintenance, repair, replacement, and rehabilitation of the Project as authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, approved June 10, 2014, together with all right, title and interest in and to the structures and improvements now situated on the Easement Property, excepting fencing, and excepting any existing structures outside the Federal Emergency Management Agency (FEMA) floodway (based on the conditional letter of map revision (CLOMR)) that are in compliance, or Grantor may improve to be in compliance with floodplain development ordinances enforced by the local government agency and in compliance with FEMA floodplain development rules, and also excepting any newly constructed structures outside the established FEMA floodway on the Easement Property in accordance with floodplain development ordinances enforced by the local government agency and in accordance with FEMA floodplain development rules and also at least 1-foot higher than the elevation of the maximum pool elevation controlled by the portion of the Project commonly referred to as the Limited Service Spillway or higher than the 500-year flood water surface elevation, whichever is higher; and that no excavation shall be conducted and no fill placed on land within the established FEMA floodway without such approval as to the location and method of excavation and/or placement of fill and verification that the fill will not impact Project operation. The above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the property owners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the Project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

B. Additionally under this Easement, Grantor grants to Grantee, its officers, employees, agents, representatives, contractors, and subcontractors, and the United States, the following access rights related to the Project regarding the Easement Property: ingress and egress in, on, over, across, and through the Access Area of the Easement Property as defined in the attached Exhibit X; removing structures, obstructions, and any other obstacles from the Access

Area of the Easement Property; conducting observations, surveys, reviews, and data collection for environmental assessments; conducting topographic field and parcel surveys, soil analysis, soil borings, and other investigations; conducting water level, erosion, water quality, habitat, environmental, and other relevant monitoring; performing any other testing, surveys, and analysis; and necessary and reasonable rights of ingress and egress to and from the Access Area of the Easement Property subject to the provisions regard crop damages below. Grantee shall notify Grantor prior to exercising the access provisions associated with this Agreement.

2. **Easement Runs With the Easement Property.** This Easement, and all covenants, terms, conditions, provisions, and undertakings created under this Easement, are perpetual and will run with the Easement Property, and will be binding upon Grantor's heirs, successors, and assigns.

3. **Removal of Unapproved Structures.** Grantor must remove all unapproved structures on the Easement Property on or before [Insert Date]. Any unapproved structures remaining on the Easement Property after [Insert Date], will automatically become Grantee's property, without the need for any bill of sale or any other written instrument or agreement; Grantee may then remove any unapproved structures from the Easement Property, at its sole discretion and at its sole cost.

4. **Grantor Covenants.** Grantor warrants that Grantor is the fee simple owner of the Easement Property; that Grantor has the right to execute this Easement and to make the promises, covenants, and representations contained in this Easement; that this Easement does not violate any mortgage or other interest held by any third party regarding the Easement Property, or any portion of the Easement Property; that there are no outstanding unpaid bills incurred for labor, materials, or services regarding the Easement Property, or any portion of the Easement Property; and that there are no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the Easement Property, or any portion of the Easement Property. Grantor will release, hold harmless, defend, and indemnify Grantee and its officers, agents, representatives, employees, and contractors from and against any and all claims, damages, injuries, or costs arising out of or in any way related to any title defects regarding the Easement Property.

5. **Taxes.** Grantor is solely responsible for all taxes and special assessments or assessments for special improvements due, levied, or assessed regarding the Easement Property for all past, present, and future years. Grantee will not be responsible for payment of any real estate taxes or special assessments regarding the Easement Property.

6. **Use of the Easement Property.**

A. Grantor's Use. Subject to the provisions of Sections 1 and 3, Grantor has the right and privilege to use the Easement Property at any time, in any manner, and for production of crops, pasture, and other farm-related activities and hunting, including the right to post the Easement Property at Grantor's sole discretion to restrict public hunting rights. Grantor will promptly cease any activities and remove any structures or obstructions that interfere with Grantee's use of the Easement Property, Grantee's rights and privileges under this Easement, or with the Project, when directed by Grantee.

Grantor understands and recognizes any use of the Easement Property is at Grantor's sole risk, and that Grantee is not responsible for any damages to crops or for interference with any other of Grantor's uses of the Easement Property as a result of any inundation or any of Grantee's other rights and privileges regarding the Easement Property.

B. Grantee's Entry. If Grantee enters upon the Easement Property for purposes of conducting any of the surveys or testing permitted under this Agreement, following the conclusion of any surveys or testing, Grantee will return the Easement Property as nearly as practicable to its previous condition, taking into consideration the nature of the work being performed; for example, Grantee will remove any dirt piles or equipment from the Easement Property that might unreasonably interfere with Grantor's permitted uses of the Easement Property. Grantee's ingress and egress rights to the Easement Property will be by the least intrusive means reasonable. Additionally, Grantee will reimburse Grantor for reasonable crop damages resulting from the Grantee's physical entrance upon the Easement Property for purposes of conducting such surveys or testing. Such reasonable crop damages shall be calculated based on the area disturbed, actual production history, Grantor's yields the year of the damages, and current crop prices at the time of the crop damages.

7. **Encumbrances.** Subject to the provisions below regarding the leasing or mortgaging of the Easement Property, Grantor will not encumber the Easement Property or any portion of the Easement Property or enroll the Easement Property or any portion of the Easement Property in any farm or other federal program that would be contrary to, or would in any way disrupt or interfere with, Grantee's use of the Easement Property, Grantee's rights and privileges under this Easement, or with the Project without first obtaining Grantee's consent. However, Grantor may rent or lease the Easement Property, at Grantor's sole discretion without first obtaining Grantee's consent. If Grantor rents or leases the Easement Property, any lessee's rights and uses are subject to this Easement, including the use restrictions described above; Grantor will be fully responsible to Grantee for Grantor's obligations under this Easement, including for any violations by any lessee. Additionally, Grantor may mortgage the Easement Property, at Grantor's sole discretion without first obtaining Grantee's consent so long as any mortgage is subordinate to this Easement.

8. **Waiver of Warranties.** The parties specifically agree neither Grantee nor any of its agents or representatives have made any representations or warranties in any way regarding the Project; Grantor's ability to use the Easement Property following construction of Project; the potential frequency of inundation of the Easement Property; Grantor's ability to enroll the Easement Property in any federal program; or Grantor's ability to obtain any farm insurance regarding the Easement Property.

9. **Maintenance.** Grantee's easement rights include the right, at its discretion and if necessary for purposes of proper operation and maintenance of the Project, to remove trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Easement Property. However, Grantor is solely responsible, at Grantor's sole expense and discretion, for maintaining the Easement Property, including grass cutting and weed control, and debris removal following any inundation. Neither Grantor nor Grantee will store, cause, or permit any spillage, leakage, or discharge of fertilizers, herbicides, fungicides, and pesticides on the Easement Property (in excess of normal applications for

farming purposes). Further, in no event will either party cause or permit any spillage, leakage, or discharge of any hazardous substance onto the Easement Property including, but not limited to, spillage of petroleum products or vehicle fuels, gasoline, kerosene, or other products used for the purpose of generating power, lubrication, illumination, heating, or cleaning. If either party causes or permits any spillage, leakage, or discharge of any such hazardous substance onto the Easement Property, that party shall be solely responsible for any damages arising out of such spillage, leakage, or discharge of any such hazardous substance onto the Easement Property to the extent required by law.

10. **Forbearance or Waiver.** The failure or delay of Grantee to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

11. **Governing Law.** This Agreement will be construed and enforced in accordance with [Insert STATE] law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in [Insert County, State], and the parties waive any objection to venue or personal jurisdiction.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable.

13. **Entire Agreement.** This Easement constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by Grantor and Grantee and must be recorded with the [INSERT] County Recorder's office.

15. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Easement, and agree they have not been influenced by any representations or statements made by any other parties.

16. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

Dispute Resolution Board

Introduction

In addition to acquiring the necessary property rights from property owners, the Diversion Authority will provide an informal, administrative forum for property owners to file claims for damages. The Diversion Authority will establish the Dispute Resolution Board for such purposes. It should be noted that the Dispute Resolution Board is modeled after a similar process created by the North Dakota State Water Commission (NDSWC) for the Devils Lake outlet project.

Intent

The Diversion Authority will create an Dispute Resolution Board as an administrative board to hear claims by property owners and parties claiming that their real property was damaged by floods alleged to have been caused by the Project. The Diversion Authority intends that all claims for damages will be heard by the Dispute Resolution Board prior to a party filing suit in a district court.

Jurisdiction

The Dispute Resolution Board is not intended to address claims relating to alleged negligence of the Diversion Authority, its contractors, agents, officers, employees or designees. Rather, it is intended to address claims based upon alleged flooding caused by the Project.

Purpose

The purpose of the Dispute Resolution Board is to provide a mechanism, other than resorting to filing an action with the North Dakota and/or Minnesota courts, for consideration of physical water damage resulting from operation of the Project. The Dispute Resolution Board will review each claim, utilize all available data, and make a determination if actual, physical damage was caused by the Project's operation.

Creation

The Diversion Authority will create the Dispute Resolution Board comprised of three (3) independent review officers. The resolution creating the Dispute Resolution Board shall address further details regarding membership qualifications, rules of practice and procedure, along with decision making requirements. A copy of the resolution will be provided to the NDSWC and MDNR, and included in a future version of this Mitigation Plan.

Composition

The Diversion Authority will adopt a list of qualifications to serve as independent review officers of the Dispute Resolution Board and will periodically approve a list of individuals to serve as independent review officers. The Diversion Authority intends that it will also solicit input from the county commissioners of counties in both North Dakota and Minnesota, which may be affected by the Project, prior to formally creating the Dispute Resolution Board, to select an independent review officer from each of the counties.

The Diversion Authority recognizes that some of the counties may choose not to participate and/or recommend independent review officers. Nonetheless, the Diversion Authority will make efforts to solicit input from and obtain a list of potential independent hearing officers from each of the counties affected by the Project.

It should be noted that the independent review officers of the Dispute Resolution Board will not be employees of the Diversion Authority, or its member entities.

Procedure

- Actions before the Dispute Resolution Board will commence upon the filing of a claim by a property owner with the Secretary of the Diversion Authority. A sample claim form is attached. Claims may not be filed until after the effective date of the resolution creating the Dispute Resolution Board.
- Once a claim is filed, the Secretary will select three (3) independent review officers in accordance with the resolution creating the Dispute Resolution Board.
- Following the assignment of independent review officers to preside over a claim, the Secretary will set a review date for the claim, not less than thirty (30) calendar days following the filing of the claim, and mail notice to the claimant of the date set for the review and the identity of the independent review officers.
- A claimant will have the right to request not less than ten (10) calendar days before the date of the review that an assigned independent review officer be removed from consideration of the claim. The request will be directed to the assigned independent review officer who will decide whether he or she cannot fairly or objectively review the claim. If an assigned independent review officer believes he or she cannot fairly or objectively review a claim, then he or she will recuse himself or herself and notify the Secretary. The Secretary will then assign another independent review officer to the claim. The Authority may also remove an assigned independent review officer from a claim by finding that the assigned independent review officer cannot fairly or objectively review the claim. If such a finding is made, then the Secretary will assign another independent review officer.
- At the review, the claimant will have the opportunity to present testimony, exhibits, and question any witnesses. Strict rules of evidence will not apply. The Secretary must tape record the review and keep copies of all exhibits.
- The independent review officers must receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The vote of independent review officers must be by a majority.

Compensation for Damages

The Diversion Authority will compensate for damages through an operations and maintenance (O&M) funding program that will also be used for other O&M expenses. The O&M funding program will utilize either sales tax revenues or a maintenance district.

Release of All Claims

Prior to the payment of a compensation award as determined by the independent review officers, the Dispute Resolution Board will require that the property owner execute a release of all claims relating to the actual, physical damage.

Judicial Review

A claimant's use of the Dispute Resolution Board process will not preclude a claimant from filing an action seeking compensation for damages. A claimant may appeal the decision of the Dispute Resolution Board pursuant to appropriate state laws. If a claimant files an action, the Diversion Authority may, within its discretion, utilize the record of the Dispute Resolution Board how it sees fit.

Sample Claim Form

ALTERNATIVE DISPUTE RESOLUTION BOARD CLAIM AFFIDAVIT

Case No. _____

<u>Full Name of Person(s) Filing Claim (PLAINTIFFS)</u>			
<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
<u>Telephone Number</u>	<u>Email Address</u>		

<u>Full Name of Person(s) From Whom You Are Seeking Damages (DEFENDANT)</u>			
METRO FLOOD DIVERSION AUTHORITY			
<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
P.O. BOX 2806	FARGO	ND	58108-2806

PLAINTIFF/PLAINTIFFS claim the following damages from DEFENDANT: (Give a SHORT statement of the claim and reasons for the claim.)

(Attach additional sheet if necessary.)

Cemetery Mitigation Plan

Introduction

There are five cemeteries upstream of the Diversion Project that may potentially be impacted by varying levels (ranging from 0.3 feet to 6.3 feet) of additional water due to operation of the Project in a 100-year (one-percent annual chance) flood.

Additionally, there are 21 cemeteries that currently would flood within the protected area that will now have improved flood protection due to construction of the Project.

During an information gathering stage, 54 cemeteries were visited to gain information and identify impacts that flooding has had on these sites, and what efforts have been utilized in the past to prevent and/or mitigate any such impacts. Following this effort, USACE released a "Cemetery Study" in 2014 that identifies the potential impacts of each site and several potential mitigation options.

Following the release of this initial USACE Cemetery Study, individual site visits and meetings with representatives from 11 of the upstream cemeteries were conducted. Cultural surveys were performed on eight of these 11 sites, three of which qualified for the National Register of Historic Places.

It should be noted that previous Project configuration potentially impacted 11 upstream cemeteries, but the current Project configuration potentially impacts five upstream cemeteries. Maps of the potentially impacted cemeteries are provided on the following pages.

Local Cemetery Mitigation Plan

The Diversion Authority has formed a Local Cemetery Mitigation Team with representatives from entities in North Dakota and Minnesota. The Local Cemetery Mitigation Team will be re-established when the Project is confirmed, and the Diversion Authority will invite representatives from the impacted cemeteries to meet with the team. With completion of the Federal Cemetery Mitigation Plan, and an understanding of the minimum federal requirements, the team will be responsible for building upon USACE's efforts and the creation of a local Cemetery Mitigation Plan.

Minimum Federal Mitigation Plan and Requirements

In 2015, a Federal Cemetery Mitigation Plan was released by USACE. This plan identifies specific mitigation options for each of the potentially impacted cemetery locations; including, protective berms, access changes, debris fencing, anchoring headstones, and/or raising the site. The previously completed cemetery studies can be found on the Project website in the [Studies, Technical and Organizational Documents \(www.fmdiversion.com/studies-technical-documents/\)](http://www.fmdiversion.com/studies-technical-documents/) page. This analysis will be amended with data from the current Project configuration.

The Federal requirements are that flowage easements be obtained on the impacted cemeteries within the USACE Zones 1 and 2 (Staging Area), as is required for operation of the Project. There are no federal mitigation requirements for the other potentially-impacted cemeteries located outside the Staging Area.

Note that the Diversion Authority has committed to obtaining flowage easements on properties within the Property Rights Area, which is beyond the federal requirement.

The plan found:

- None of the Project induced flooding would be more frequent than once every 20 years, on average.
- Past flooding has caused minimal damage to cemeteries in the area, and the Project induced flooding is also anticipated to only cause minor damage.
- For less-frequent events (50-yr, 100-yr), impacts are of limited duration, infrequent, and are anticipated to cause minimal physical damage.

Clean-Up Assistance

In addition to obtaining a flowage easement on cemeteries within the Property Rights Area, the Diversion Authority will adopt a post-operation repair and debris clean-up program and ensure the cemeteries within the Property Rights Area are eligible to take part in the repair and clean-up assistance program. The program will accommodate collection of debris that may accumulate on the cemetery sites, and also provide for reimbursement of repair costs that may be necessary to correct physical damage to the cemetery caused by operation of the Project. Please see the public lands repair and debris clean-up plans detail elsewhere in the Property Rights Acquisition and Mitigation Plan.

National Register of Historic Places

For the cemeteries that are eligible to be listed on the National Register of Historic Places (NRHP) (Clara Cemetery), and any additional cemetery that may be identified on the NRHP, USACE and the Diversion Authority will work with each respective State Historic Preservation Office (SHPO) to assure compliance with Section 106 and 36 C.F.R. 800 prior to operation of the Project.

Cemetery Mitigation Alternatives

In addition to the federally-required flowage easements, the Federal Cemetery Mitigation Plan that was completed in 2015 included a table of mitigation alternatives for each of the impacted sites. The mitigation alternatives includes estimated costs for a variety of options, including: berms, offsite access, debris fencing, anchoring of headstones, and raising the elevation of the land itself.

In addition to the estimated costs, it should be noted that the federal study identified a number of technical aspects and the potential for adverse effects on historic integrity that may make one or more of the mitigation alternatives infeasible to be utilized on some sites. It is also recognized that some of the alternative mitigation measures could adversely impact properties adjacent to the cemeteries.

In conjunction with the Local Cemetery Mitigation Team, the Diversion Authority will work to meet with each cemetery representative to discuss the technically feasible options for each specific location. The Diversion Authority understands that there will not be a one-size-fits-all approach to cemetery mitigation as each site location provides a unique situation that varies across the area. In addition, the information and feasible options for each site may also vary, and the Diversion Authority will respect each when formulating what works best for each cemetery. Consideration for larger-than the 100-year

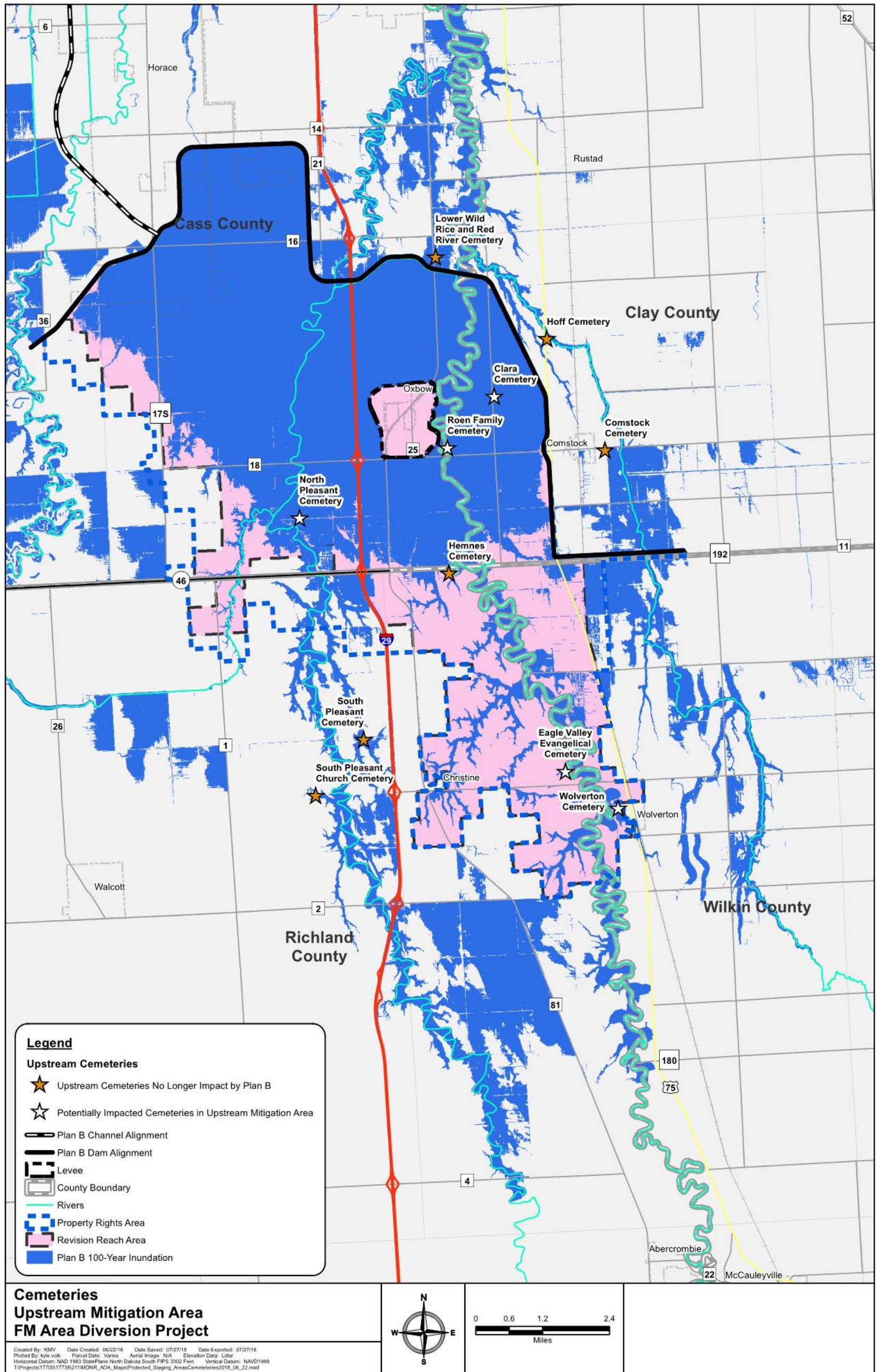
flood event will be made when developing final mitigation decisions. Those considerations should include adequate design, technical feasibility, and cost.

Attachments

- Potentially Impacted Cemetery Summary Table
- Potentially Impacted Cemetery Overview Map
- Potentially Impacted Cemetery Maps (5 pages)

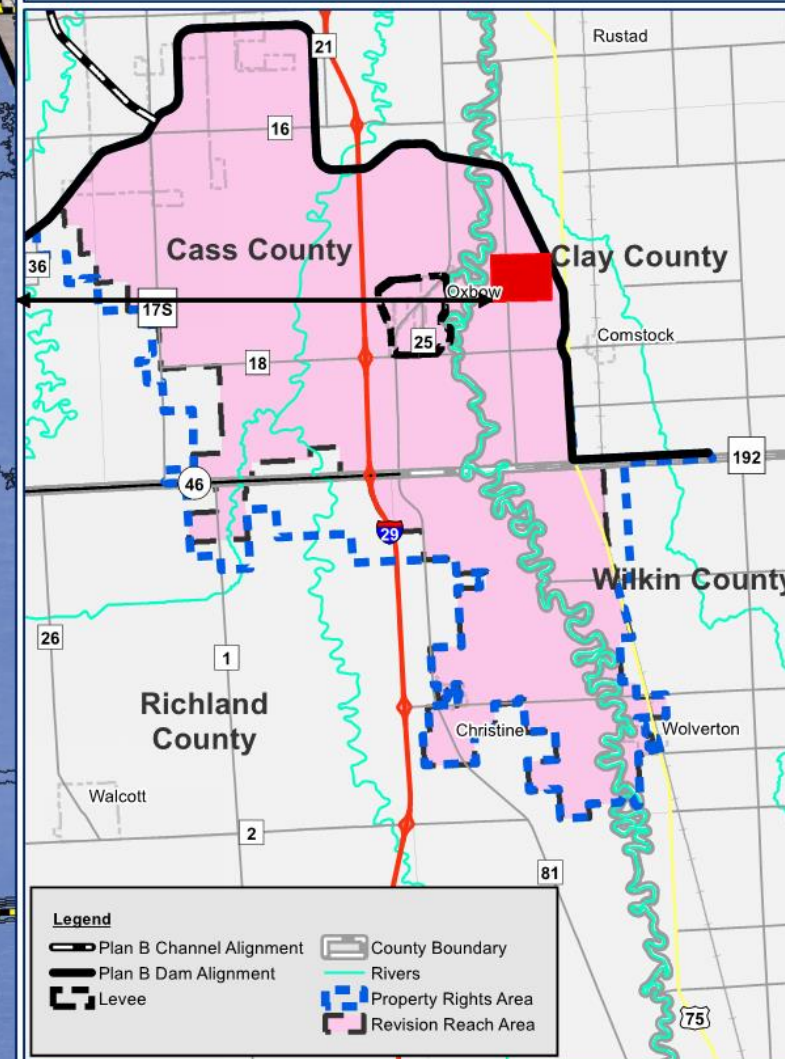
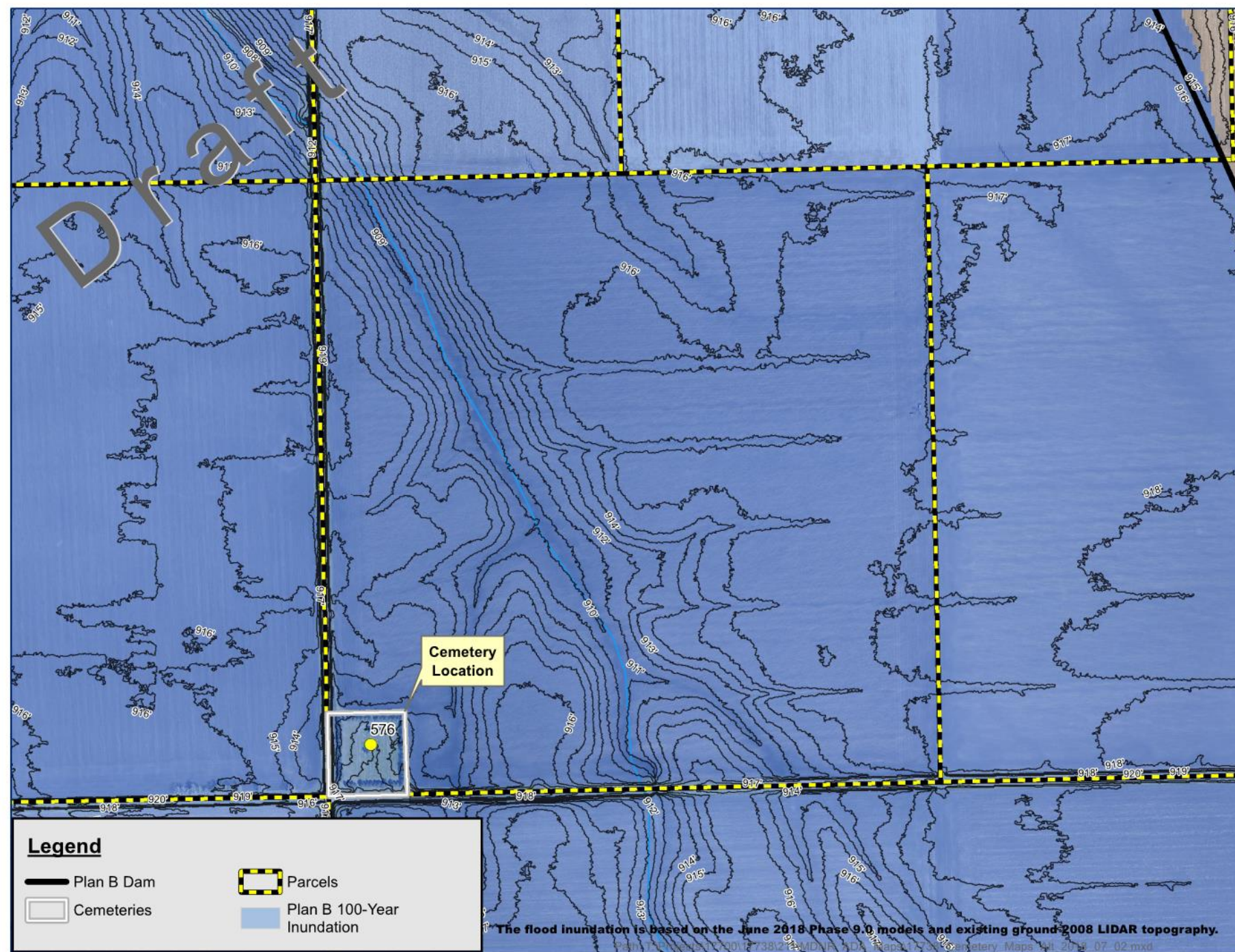
Plan B - Cemetery Impacts from Phase 9.0 June 2018 USACE Supplemental EA Models

Cemetery	Approx. Lowest Site Elevation	50-year Flood Event					100-year Flood Event				
		Existing Peak WSEL	Existing Total Depth (ft)	With Project Peak WSEL	With Project Total Depth (ft)	Add'l Depth (ft)	Existing Peak WSEL	Existing Total Depth (ft)	With Project Peak WSEL	With Project Total Depth (ft)	Add'l Depth (ft)
Clara	915.0	913.2	0.0	919.8	4.8	4.8	914.5	0.0	921.2	6.2	6.2
Comstock	922.0	920.9	0.0	920.9	0.0	0.0	921.0	0.0	920.9	0.0	0.0
Eagle Valley	924.0	921.5	0.0	922.8	0.0	0.0	924.2	0.2	925.2	1.2	1.0
Hemnes	922.0	916.2	0.0	920.5	0.0	0.0	918.3	0.0	921.9	0.0	0.0
Hoff	908.0	913.4	5.4	911.6	3.6	-1.8	913.8	5.8	911.9	3.9	-1.9
Lower Wild Rice and Red River	908.0	912.0	4.0	910.9	2.9	-1.1	913.0	5.0	910.9	2.9	-2.1
North Pleasant	921.0	919.9	0.0	920.3	0.0	0.0	920.2	0.0	921.3	0.3	0.3
Roan Family	917.0	914.8	0.0	920.1	3.1	3.1	916.4	0.0	921.5	4.5	4.5
South Pleasant	923.0	924.0	1.0	924.0	1.0	0.0	924.4	1.4	924.4	1.4	0.0
South Pleasant Church	927.0	926.6	0.0	926.6	0.0	0.0	927.3	0.3	927.3	0.3	0.0
Wolverton	923.0	922.9	0.0	923.8	0.8	0.8	925.6	2.6	926.2	3.2	0.6



Cemetery Map

Clara Cemetery



Legend

- Plan B Channel Alignment
- Plan B Dam Alignment
- Levee
- County Boundary
- Rivers
- Property Rights Area
- Revision Reach Area

Legend

- Plan B Dam
- Cemeteries
- Parcels
- Plan B 100-Year Inundation

The flood inundation is based on the June 2018 Phase 9.0 models and existing ground 2008 LIDAR topography.

Return Frequency	Existing Conditions Peak Water Elevation	With Project Peak Water Elevation
50-Year	913.2	919.8
100-Year	914.5	921.2

Cemetery: Clara Cemetery
Approximate Lowest Site Elevation: 915

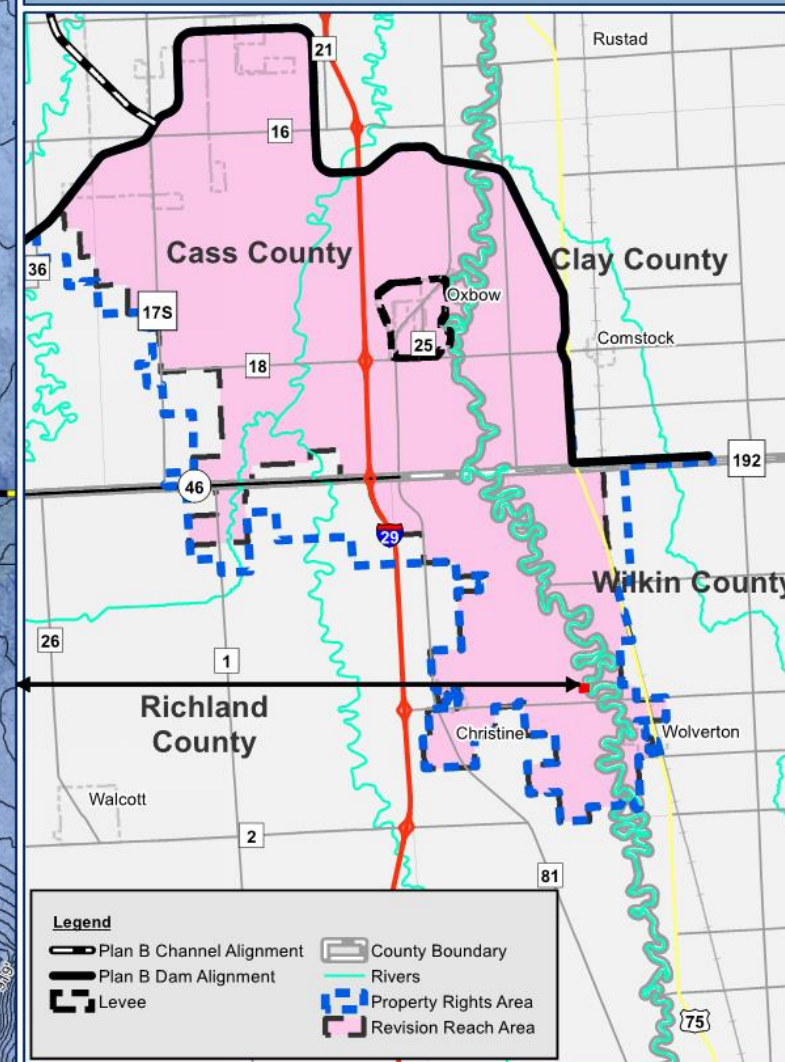
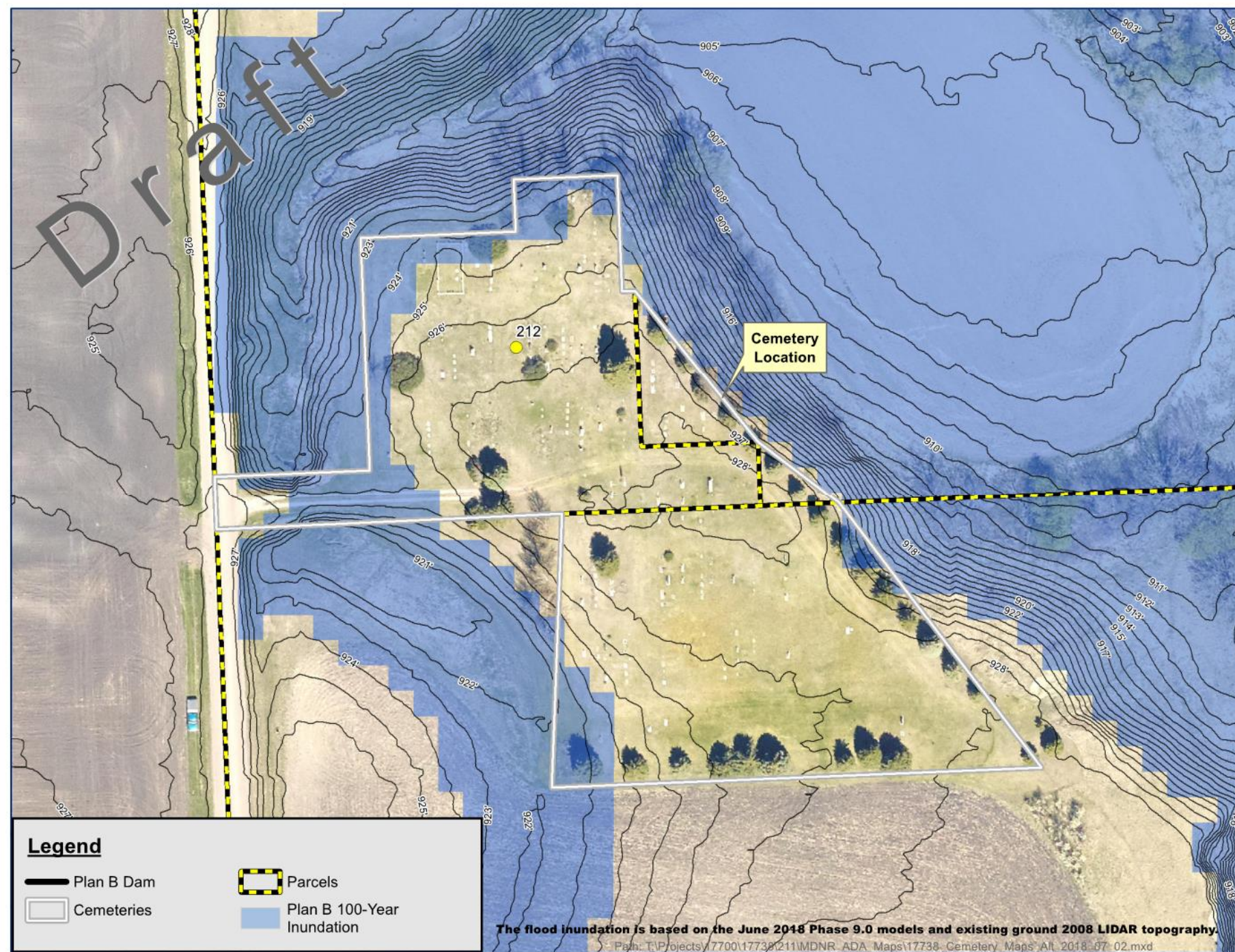
Note:
The main map shows the individual cemetery along with one foot contours and 100-year inundation area. The inset map shows the Plan B alignment with Property Rights and Revision Reach Areas, along with the cemetery location.



Name: KLEIN ROBERT H
Pin: 150173000
County: Clay County, MN
PDF Date: 7/26/2018

Cemetery Map

Eagle Valley Evangelical Cemetery



Legend

- Plan B Channel Alignment
- Plan B Dam Alignment
- Levee
- County Boundary
- Rivers
- Property Rights Area
- Revision Reach Area

Legend

- Plan B Dam
- Cemeteries
- Parcels
- Plan B 100-Year Inundation

The flood inundation is based on the June 2018 Phase 9.0 models and existing ground 2008 LIDAR topography.
 Path: T:\Projects\17700\17738\211\MDNR_ADA_Maps\17738_Cemetery_Maps_Alt_2018_07_02.mxd

Return Frequency	Existing Conditions Peak Water Elevation	With Project Peak Water Elevation
50-Year	921.5	922.8
100-Year	924.2	925.2

Cemetery: Eagle Valley Evangelical Cemetery
 Approximate Lowest Site Elevation: 924

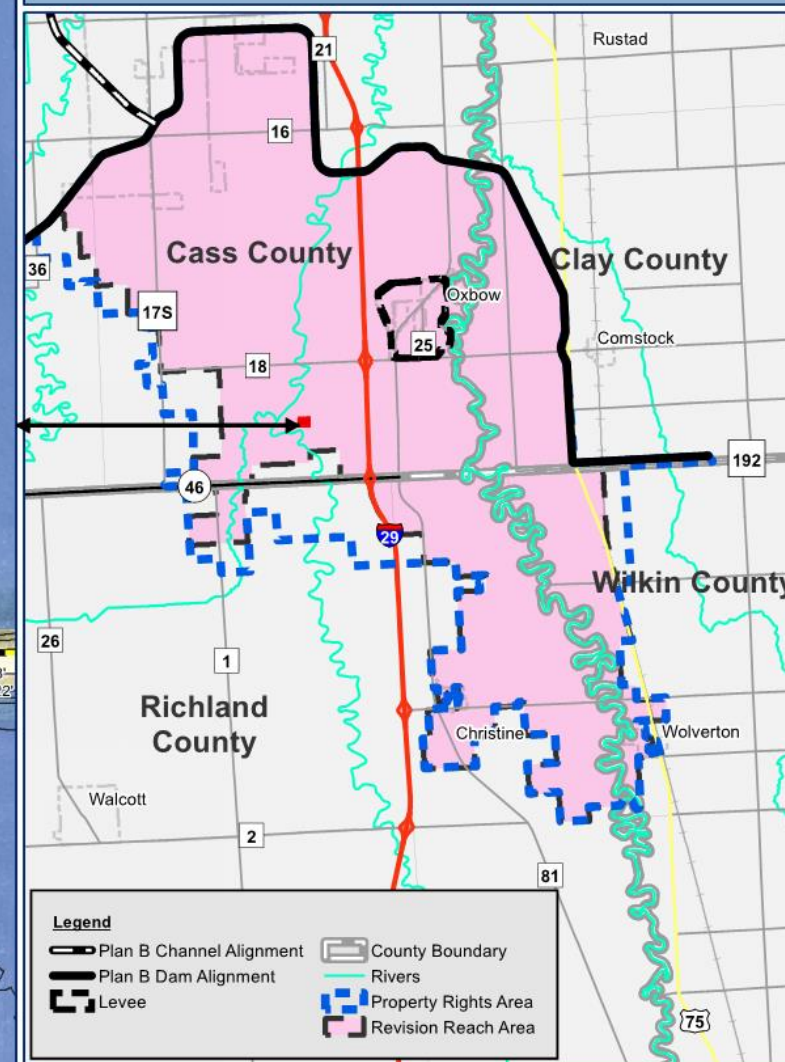
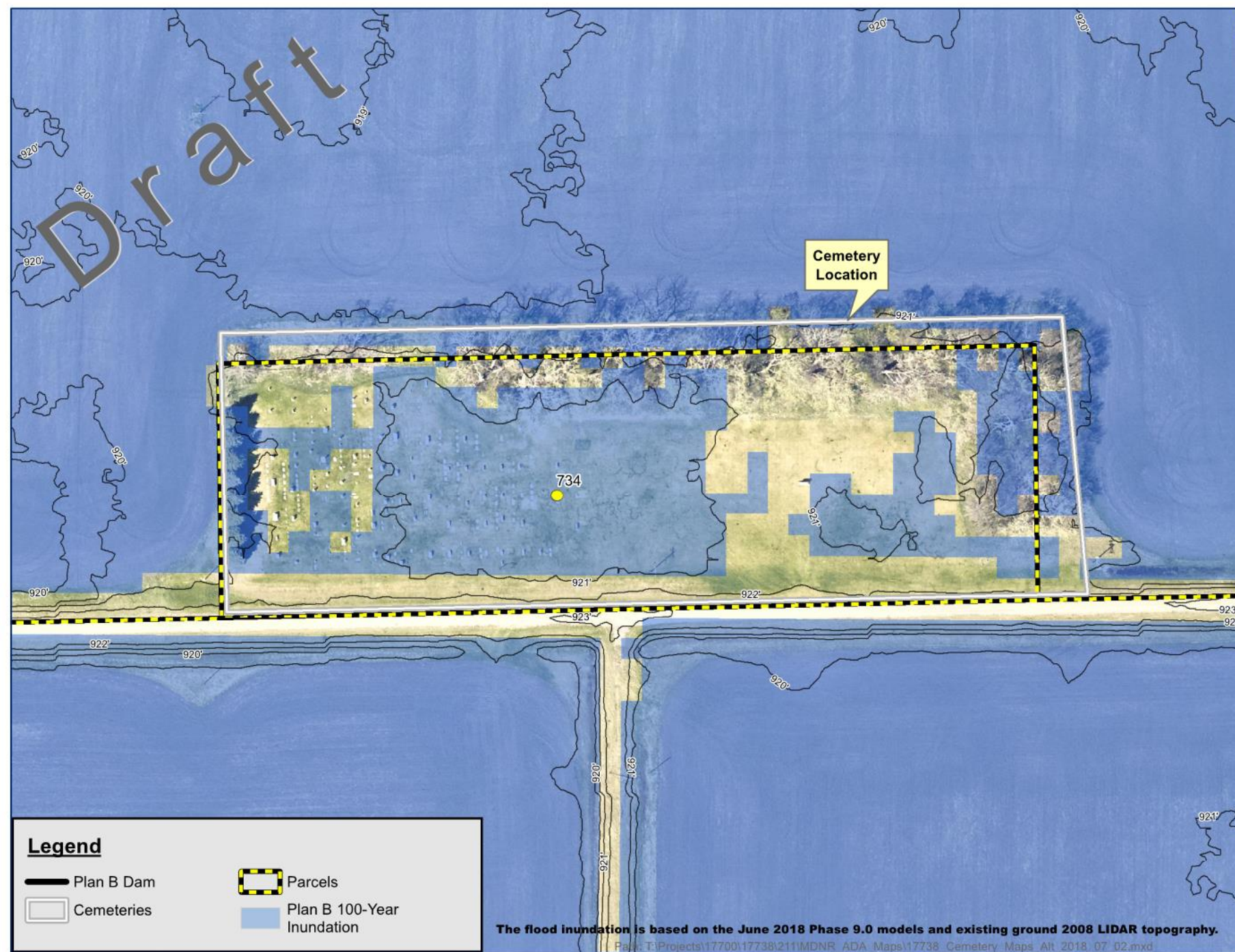
Note:
 The main map shows the individual cemetery along with one foot contours and 100-year inundation area. The inset map shows the Plan B alignment with Property Rights and Revision Reach Areas, along with the cemetery location.



Name: EAGLE VALLEY EVANGELICAL
Pin: 1000000030200
 1000000029000
County: Richland County, ND
PDF Date: 7/26/2018

Cemetery Map

North Pleasant Cemetery

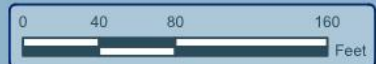


Return Frequency	Existing Conditions Peak Water Elevation	With Project Peak Water Elevation
50-Year	919.9	920.3
100-Year	920.2	921.3
Cemetery: North Pleasant Cemetery		
Approximate Lowest Site Elevation: 921		

Note:
The main map shows the individual cemetery along with one foot contours and 100-year inundation area. The inset map shows the Plan B alignment with Property Rights and Revision Reach Areas, along with the cemetery location.

Legend

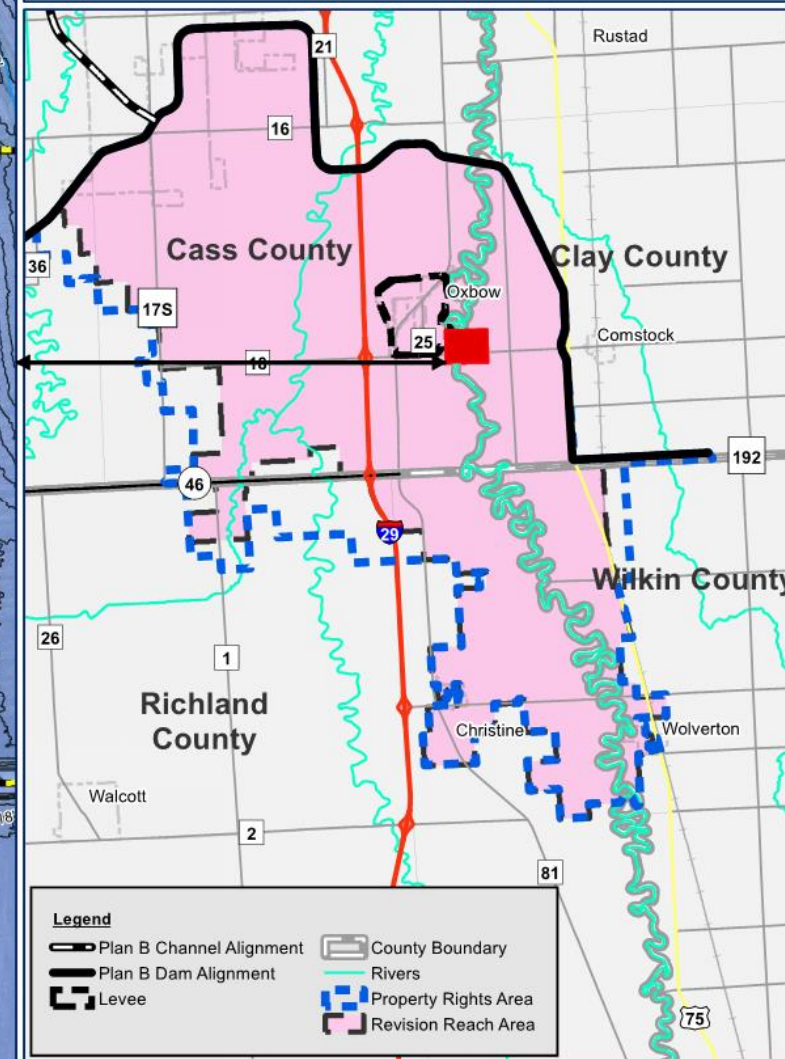
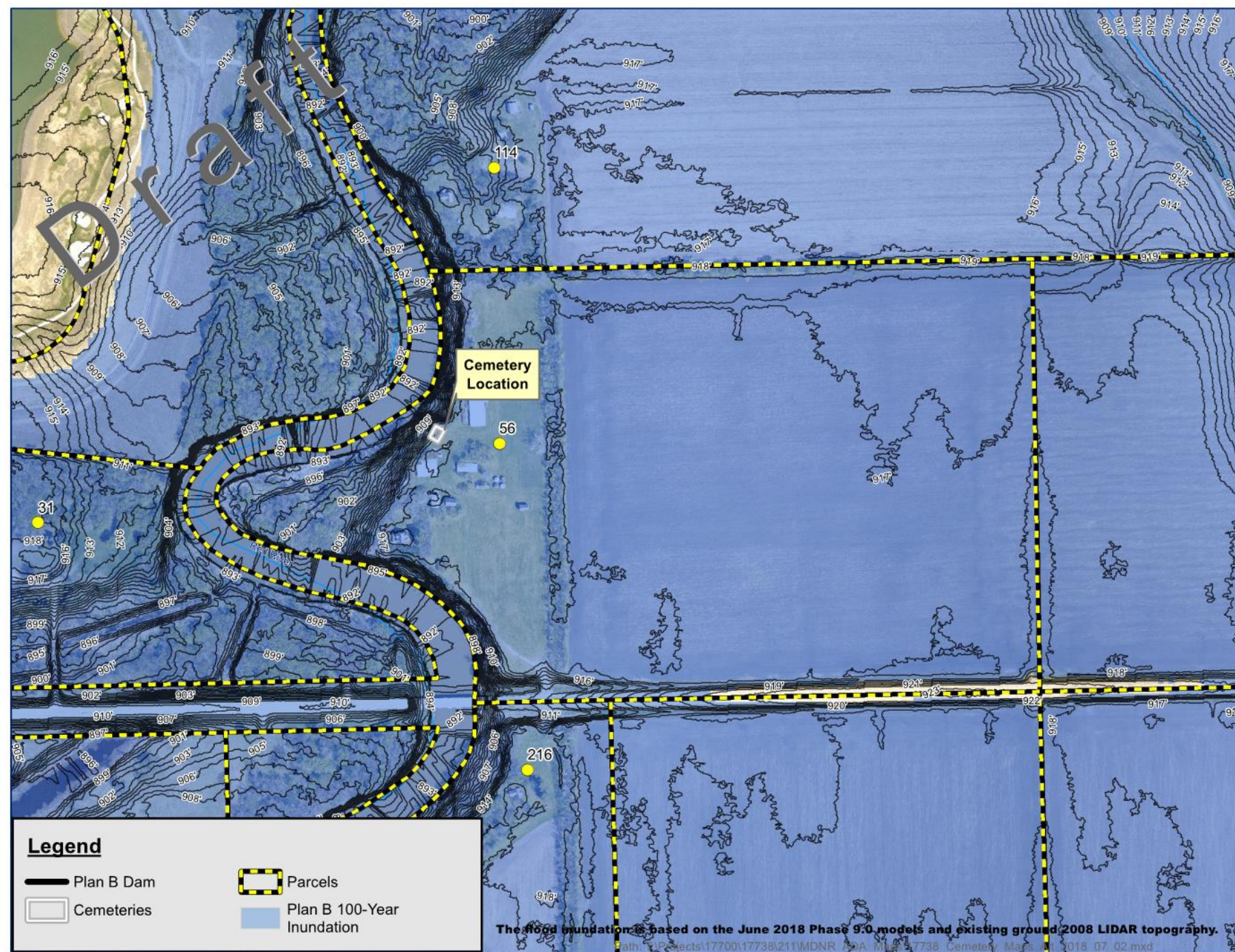
- Plan B Dam
- Cemeteries
- Parcels
- Plan B 100-Year Inundation



Name: NORTH PLEASANT CEMETERY ASSOCIATION
Pin: 57000010375020
County: Cass County, ND
PDF Date: 7/26/2018

Cemetery Map

Roen Family Cemetery



Return Frequency	Existing Conditions Peak Water Elevation	With Project Peak Water Elevation
50-Year	914.8	920.1
100-Year	916.4	921.5

Cemetery: Roen Family Cemetery
Approximate Lowest Site Elevation: 917

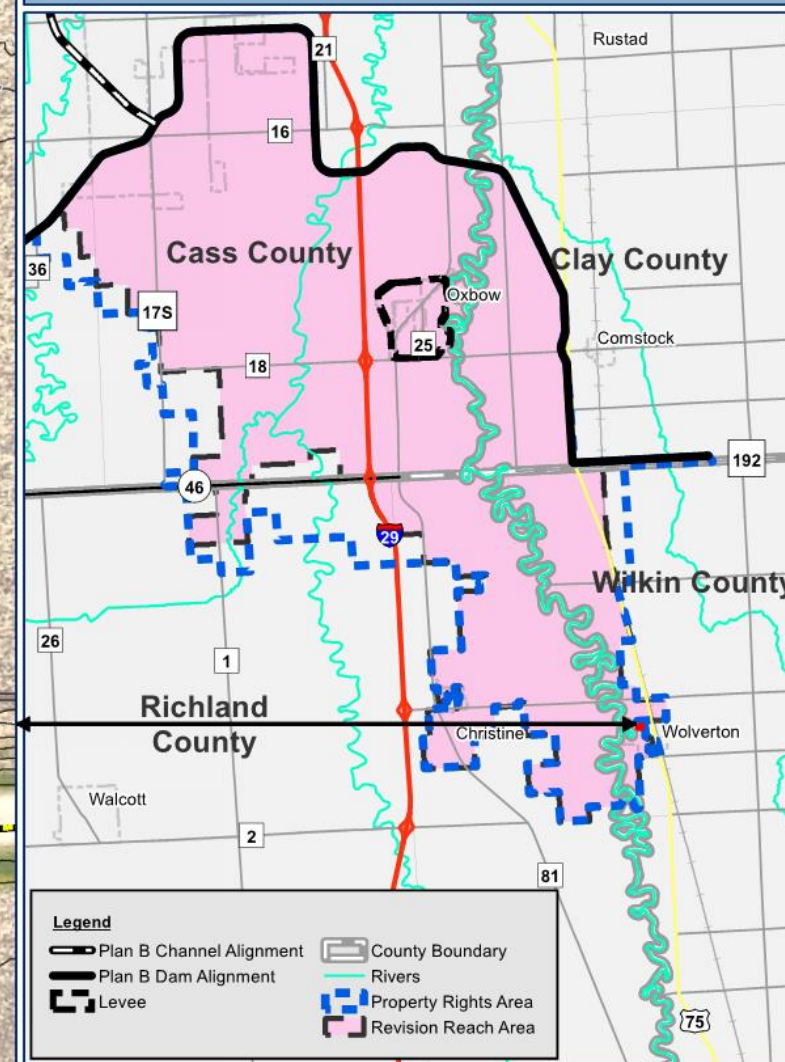
Note:
The main map shows the individual cemetery along with one foot contours and 100-year inundation area. The inset map shows the Plan B alignment with Property Rights and Revision Reach Areas, along with the cemetery location.



Name: UELAND RHODA K
Pin: 150193400
County: Clay County, MN
PDF Date: 7/26/2018

Cemetery Map

Wolverton Cemetery



Legend

- Plan B Channel Alignment
- Plan B Dam Alignment
- Levee
- County Boundary
- Rivers
- Property Rights Area
- Revision Reach Area

Return Frequency	Existing Conditions Peak Water Elevation	With Project Peak Water Elevation
50-Year	922.9	923.8
100-Year	925.6	926.2

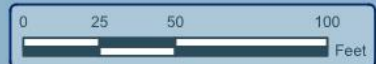
Cemetery: Wolverton Cemetery
Approximate Lowest Site Elevation: 923

Note:
The main map shows the individual cemetery along with one foot contours and 100-year inundation area. The inset map shows the Plan B alignment with Property Rights and Revision Reach Areas, along with the cemetery location.

Legend

- Plan B Dam
- Cemeteries
- Parcels
- Plan B 100-Year Inundation

The flood inundation is based on the June 2018 Phase 9.0 models and existing ground 2008 LIDAR topography.
Path: T:\Projects\17700\17738\211\MDNR ADA Maps\17738 Cemetery Maps_Alt_2018_07_02.mxd



Name: SWEDISH EVANGELICAL LUTHERAN FAITH LUTHERAN CHURCH
Pin: 31-028-0050
 31-028-0040
County: Wilkin County, ND
PDF Date: 7/26/2018

Mitigation of Historic Properties

The Diversion Authority, USACE, and State Historical Preservation Offices from North Dakota and Minnesota have entered into a Programmatic Agreement to address preservation and mitigation of historical properties. The Programmatic Agreement and Amendment No. 1 are attached.

Attachments

- Programmatic Agreement (11 pages)
- Amendment No. 1 (3 pages)

Programmatic Agreement
Fargo-Moorhead Metro Flood Risk Management Project
Page 1

**PROGRAMMATIC AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER, AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE FARGO-MOORHEAD METRO FLOOD RISK MANAGEMENT PROJECT,
CASS COUNTY, NORTH DAKOTA AND CLAY COUNTY, MINNESOTA**

Final – 2011

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (Corps) is conducting a feasibility study of flood risk management measures for the cities of Fargo, Cass County, North Dakota and Moorhead, Clay County, Minnesota; and

WHEREAS, the Corps is considering the following flood risk management measures for the Fargo Moorhead metropolitan area and adjacent county areas (Figures 1 and 2): (1) a diversion channel capable of passing 20,000 cfs on the west (North Dakota) side of the Red River of the North along with upstream storage and staging areas, (Locally Preferred Plan [LPP] alternative) and (2) a diversion channel capable of passing 35,000 cfs on the east (Minnesota) side of the Red River of the North (Federally Comparable Plan [FCP] alternative).

WHEREAS, the necessary cultural resources investigations, evaluations, and coordination for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, cannot be completed by the Corps or its agent prior to starting the design stage of the Fargo-Moorhead Metropolitan Flood Risk Management Project (Project); and

WHEREAS, the Corps has established the Project's Area of Potential Effects (APE), as required by 36 CFR § 800.4(a)(1) and defined in section 800.16(d), as consisting of the footprint of the selected diversion plan including the diversion channel alignment, its associated tieback levee(s), associated construction work areas, construction staging areas, borrow areas, and disposal areas, as well as associated upstream water storage and water staging areas, project-related floodproofing locations, and the viewshed to one-half mile from the diversion channel's centerline, to one-eighth mile from the tieback levee's centerline, and to one-eighth mile outside the storage area boundary levee's centerline; and

WHEREAS, the Corps has determined that the Project may have effects on historic properties within the APE and has consulted with the Advisory Council on Historic Preservation (Advisory Council) pursuant to section 800.2(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), and the Advisory Council has declined to participate in the Programmatic Agreement for this Project; and

WHEREAS, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota (Cities), as the non-Federal sponsors for the Project, have participated in consultation on the Project's flood risk management measures and have been invited to concur in this Programmatic Agreement as consulting parties; and

WHEREAS, Cass County in North Dakota and Clay County in Minnesota are also interested parties and have been invited to participate in consultation on the Project's flood risk management measures and to concur in this Programmatic Agreement as consulting parties; and

WHEREAS, the Corps' St. Paul District Engineer initially contacted the chairman or chairwoman of the Sisseton-Wahpeton Oyate, the White Earth Band of Minnesota Chippewa, the Leech Lake Band of Ojibwe, the Turtle Mountain Band of Chippewa, the Upper Sioux Community of Minnesota, the Lower Sioux Indian Community, the Spirit Lake Tribe, and the Red Lake Band of Chippewa Indians, by letter dated April 8, 2009; initially contacted the chairman or chairwoman of the Bois Forte Band of Chippewa Indians, the Three Affiliated Tribes (Mandan, Hidatsa and Arikara Nation), the Northern Cheyenne Tribe, the Standing Rock Sioux Tribe, the Yankton Sioux Tribe, and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, by letter dated October 7, 2010; and initially contacted the chairman of the Crow Creek Sioux Tribe and the Flandreau Santee Sioux Tribe, by letter dated May 2011, to determine these tribes' interest in the Project, particularly regarding potential Project effects on properties important to their history, culture, or religion, including traditional cultural properties, and the Corps will consult with any of these tribes interested in this Project; and

WHEREAS, opinions and comments on the Project and its alternative alignments have been and will be solicited through comment periods on the Environmental Impact Statement and public meetings, including those held to comply with the National Environmental Policy Act (NEPA);

NOW THEREFORE, the Corps, the North Dakota State Historic Preservation Officer (SHPO), and the Minnesota State Historic Preservation Officer agree that upon filing this Programmatic Agreement (PA) with the Advisory Council on Historic Preservation, the Corps will implement the following stipulations in order to comply with Section 106 of the National Historic Preservation Act, as amended, with respect to the Project.

STIPULATIONS

The Corps will ensure that the following measures are carried out prior to the start of construction on Project flood risk management features at the cities of Fargo, Cass County, North Dakota, and Moorhead, Clay County, Minnesota:

A. The Corps will ensure that archeologists, historians, and architectural historians meeting the professional qualification standards given in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* will conduct or directly supervise all cultural resources identification, evaluation, and mitigation related to this Project, to include archeological surveys and testing, historic structure inventories and evaluation, and data recovery and documentation mitigation, and be permitted in North Dakota pursuant to North Dakota Century Code Section 55-03-01 and in Minnesota pursuant to Minnesota Statutes Sections 138.31 to 138.42.

Programmatic Agreement
 Fargo-Moorhead Metro Flood Risk Management Project
 Page 3

B. Literature and Records Search – Prior to conducting any cultural resources fieldwork, the Corps or its contractors or the Cities’ contractors shall at a minimum consult the site files, previous survey reports, and other documents at the Historic Preservation Division of the State Historical Society of North Dakota at Bismarck and at the State Historic Preservation Office at the Minnesota Historical Society in St. Paul, for information on previously recorded cultural resources sites, site leads, and previously surveyed areas in the Project’s APE.

C. Phase I Cultural Resources Investigation – The Corps or its contractors or the Cities’ contractors will conduct a Phase I survey of all previously uninventoried project areas in order to locate any cultural resources (prehistoric, historic, and architectural) within the Project’s APE. The cultural resources investigation will be an intensive, on-the-ground study of the area sufficient to determine the number and extent of the resources present and their relationships to Project features. The archeological investigations will take into account the unique geomorphology of the Red River Valley, and the potential for deeply buried soils. The survey also will consider and address visual effect impacts of proposed above-ground components (e.g., tieback levees) to cultural resources and landscapes within the project APE.

D. Phase II Testing and Evaluation – The Corps or its contractors or the Cities’ contractors will evaluate the National Register of Historic Places eligibility of all cultural resources sites or structures over 50 years old located within the APE. Evaluation shall include subsurface testing using one-meter by one-meter excavation units to determine the information potential of prehistoric and historic archeological sites and archival research for historic archeological and architectural sites. The Corps will request the concurrence of the North Dakota SHPO or Minnesota SHPO, whichever is applicable, in determining each such site or structure’s eligibility or non-eligibility to the National Register.

E. Phase III Mitigation – The Corps will avoid or minimize Project-related adverse effects to historic properties (National Register of Historic Places-listed or eligible sites, structures, buildings, districts, or objects) to the extent practicable. Where adverse effects due to the Project are not avoidable, the Corps will coordinate and implement a Memorandum of Agreement (MOA) with the North Dakota and/or Minnesota SHPO and the other consulting parties, any affected Indian tribes, and other interested parties, as applicable, to mitigate the adverse effects.

F. Burials – If any human burials are encountered during the cultural resources field work or Project construction, the Corps and its contractors and the Cities’ contractors will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) for federal or tribal lands, or with North Dakota Century Code Section 23-06-27, “Protection of Human Burial Sites, Human Remains, and Burial Goods,” and North Dakota Administrative Code Chapter 40-02-03, “Protection of Prehistoric and Historic Human Burial Sites, Human Remains, and Burial Goods,” for all other lands in North Dakota, or with Minnesota Statutes Section 307.08, Minnesota Private Cemeteries Act, for all other lands in Minnesota, whichever is applicable.

G. Traditional Cultural Properties – The Corps or its contractor will consult and coordinate with the tribes listed in the 8th WHEREAS clause above to identify sites of traditional religious or cultural importance to the tribe or their members within the Project area. Such sites shall be

avoided or adverse effects to them minimized to the extent practicable and the remaining effects mitigated per a MOA developed between the Corps, the applicable SHPO, and the affected tribe(s). Specific cultural and locational information on Traditional Cultural Properties (TCPs) is considered sensitive information by the tribes. Only general descriptions and general locational information will be released to the general public, unless otherwise required by law.

H. Curation – The Corps or its contractors or the Cities’ contractors shall ensure that all materials and records resulting from the survey, evaluation, and data recovery or mitigation conducted for the Project, or recovered during Project construction, will be curated in accordance with 36 CFR Part 79, “Curation of Federally-Owned and Administered Archeological Collections” at a facility within the state of North Dakota or the state of Minnesota, depending upon the location of the cultural resources fieldwork or site(s) being investigated, unless the private landowner wishes to retain ownership of artifacts recovered from his/her land.

I. Construction Monitoring – In order to minimize or avoid construction delays, monitoring of construction earthwork by a qualified professional archeologist is recommended at certain Project locations, such as river terraces, oxbows, and floodplains, which have a high potential for deeply buried archeological resources that cannot be reached by normal archeological subsurface testing methods. Any monitoring at a TCP location will also have a knowledgeable tribal representative present or available. The Corps will determine which specific locations should have construction monitoring based upon the results of the Phase I cultural resources investigation and the TCP study (Stipulations C and G above) and available soils and geomorphology information.

J. Discoveries During Project Implementation – Should an unidentified site or property that may be eligible for inclusion in the National Register be discovered during Project construction, the Corps will cease all work in the vicinity of the discovered property until it can be evaluated pursuant to guidelines in Stipulation D of this Programmatic Agreement. If the property is determined to be eligible, the Corps shall comply with the provisions of Stipulation E above. Project actions which are not in the area of the discovery may proceed while the consultation and any necessary evaluation and mitigation work is conducted.

K. Reports – The Corps shall ensure that draft and final reports resulting from actions pursuant to the Stipulations of this Programmatic Agreement will be provided to the appropriate SHPOs, the non-Federal sponsors, and upon request, to other parties to this agreement. All parties will have 30 days to review and comment on any draft reports furnished to them.

ADMINISTRATIVE PROCEDURES

L. Dispute Resolution – Should the North Dakota SHPO, the Minnesota SHPO, or a concurring party to the PA object to any plans, documents, or reports prepared under the terms of this PA within 30 days after receipt, the Corps shall consult with the party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Advisory Council. Any recommendation or comment provided by the Advisory Council will be understood to pertain only to the subject of

Programmatic Agreement
 Fargo-Moorhead Metro Flood Risk Management Project
 Page 5

the dispute. The Corps' responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

M. Amendments – Any party to this PA may request that it be amended, whereupon the parties will consult to consider such amendment. The PA may only be amended with the written concurrence of all parties who have signed the PA.

N. Anti-Deficiency Provision – All obligations on the part of the Corps under this PA shall be subject to the appropriation, availability and allocation of sufficient funds to the St. Paul District for such purposes.

O. Termination

1. Proof of compliance with the Stipulations to the satisfaction of the Corps, the North Dakota SHPO and the Minnesota SHPO will constitute termination of this Programmatic Agreement.

2. If the terms of this PA have not been implemented fifteen years after execution, this agreement will be null and void. In such an event, the Corps shall notify the North Dakota SHPO and the Minnesota SHPO of its expiration, and if appropriate, shall re-initiate review of the undertaking in accordance with 36 CFR part 800.

3. Any signatory party to this PA may withdraw from it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to withdrawal to seek agreement on amendments or other actions that would avoid withdrawal. In the event of termination, or withdrawal, the Corps will comply with federal regulation 36 CFR part 800, Protection of Historic Properties.

Execution of this Programmatic Agreement, its subsequent filing with the Advisory Council, and implementation of its Stipulations evidences that the Corps has taken into account the effects of the Project on National Register listed or eligible historic properties, and has satisfied its Section 106 responsibilities for all aspects of this undertaking.

ST. PAUL DISTRICT, U.S. ARMY CORPS OF ENGINEERS

BY:  Date: 29 June 2011
 LTC. Kendall A. Bergmann, Acting District Engineer
 3rd Lt. U.S. Army District Engineer

NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER

BY:  Date: July 13, 2011
 Merlan E. Paaverud, Jr., State Historic Preservation Officer

Programmatic Agreement
Fargo-Moorhead Metro Flood Risk Management Project
Page 6

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

BY: *Britta Bloomberg* Date: 6/29/11
Britta Bloomberg, Deputy State Historic Preservation Officer

Concur:

CITY OF FARGO

BY: *Dennis Walaker* Date: 7-11-11
Dennis Walaker, Mayor

CITY OF MOORHEAD

BY: *Mark Voxland* Date: 7-6-2001
Mark Voxland, Mayor

BY: *Michael J. Redlinger* Date: 7-6-11
Michael J. Redlinger, City Manager

CASS COUNTY BOARD OF COMMISSIONERS

BY: *Darrell Vanyo* Date: 7-6-11
Darrell Vanyo, Chairman

CLAY COUNTY BOARD OF COMMISSIONERS

BY: *Jon Evert* Date: 7/6/11
Jon Evert, Chairman

Programmatic Agreement
Fargo-Moorhead Metro Flood Risk Management Project
Page 7

Concur:

SISSETON WAHPETON OYATE

BY: _____ Date: _____
Robert Shepherd, Chairman

WHITE EARTH BAND OF MINNESOTA CHIPPEWA

BY: _____ Date: _____
Erma Vizenor, Chairwoman

LEECH LAKE BAND OF OJIBWE

BY: _____ Date: July 26, 2011

Arthur "Archie" LaRose, Chairman
GINA LEMON, LLTHPO

TURTLE MOUNTAIN BAND OF CHIPPEWA

BY: _____ Date: _____
Merle St. Claire, Chairman

UPPER SIOUX COMMUNITY OF MINNESOTA

BY: _____ Date: _____
Kevin Jensvold, Chairman

LOWER SIOUX INDIAN COMMUNITY

BY: _____ Date: _____
Gabe Prescott, President

Programmatic Agreement
 Fargo-Moorhead Metro Flood Risk Management Project
 Page 8

Concur:

SPIRIT LAKE TRIBE

BY: _____ Date: _____
 Roger Yankton, Sr., Chairman

BOIS FORTE BAND OF CHIPPEWA INDIANS

BY: _____ Date: _____
 Kevin Leecy, Chairman

THREE AFFILIATED TRIBES (MANDAN, HIDATSA AND ARIKARA NATION)

BY: _____ Date: _____
 Tex G. Hall, Chairman

NORTHERN CHEYENNE TRIBE

BY: _____ Date: _____
 Leroy Spang, President

STANDING ROCK SIOUX TRIBE

BY: _____ Date: _____
 Charles W. Murphy, Chairman

ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION

BY: _____ Date: _____
 A.T. "Rusty" Stafne, Chairman

Programmatic Agreement
Fargo-Moorhead Metro Flood Risk Management Project
Page 9

Concur:

YANKTON SIOUX TRIBE

BY: _____ Date: _____
Robert Cournoyer, Chairman

CROW CREEK SIOUX TRIBE

BY: _____ Date: _____
Duane Big Eagle, Sr., Chairman

FLANDREAU SANTEE SIOUX TRIBE

BY: _____ Date: _____
Anthony Reider, President

Programmatic Agreement
Fargo-Moorhead Metro Flood Risk Management Project
Page 10

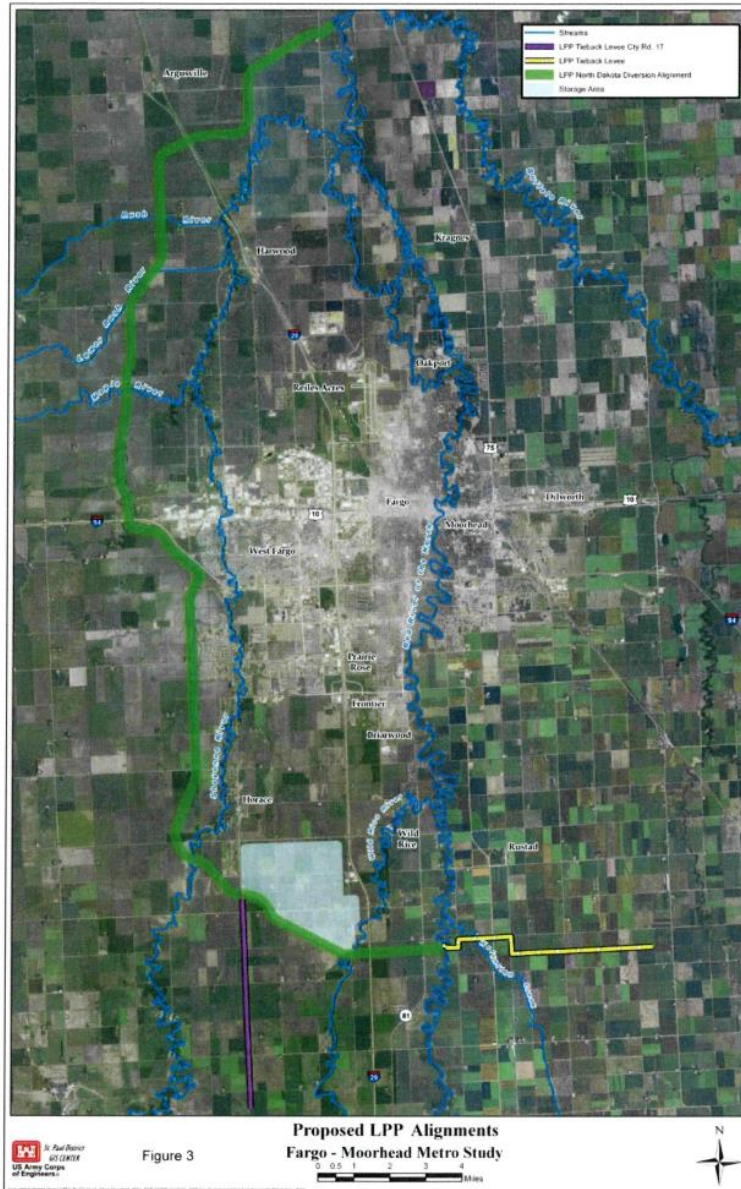


Figure 1. Proposed North Dakota Diversion alignments (Locally-Preferred Plan).

Programmatic Agreement
 Fargo-Moorhead Metro Flood Risk Management Project
 Page 11

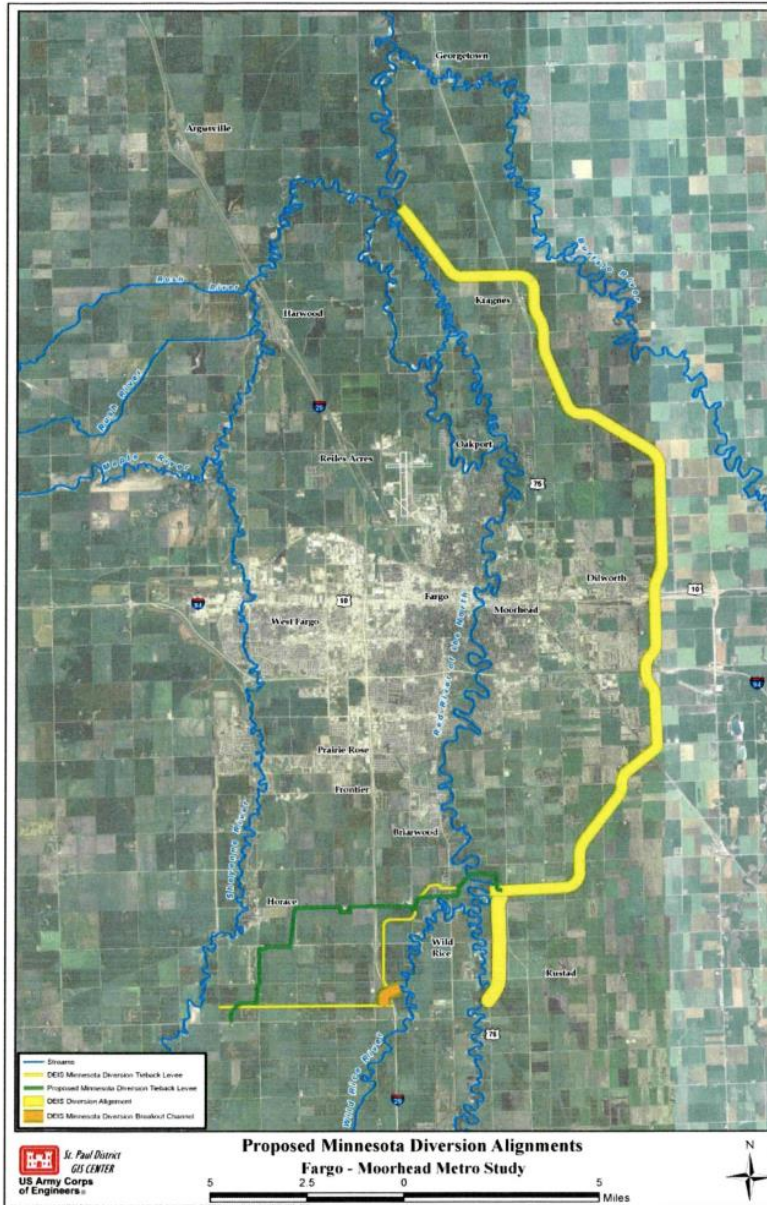


Figure 2. Proposed Minnesota Diversion alignments (Federally Comparable Plan).

Programmatic Agreement Amendment No. 1
Fargo-Moorhead Metro Flood Risk Management Project
Page 1 of 3

**PROGRAMMATIC AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER, AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE FARGO-MOORHEAD METRO FLOOD RISK MANAGEMENT PROJECT,
CASS COUNTY, NORTH DAKOTA AND CLAY COUNTY, MINNESOTA**

AMENDMENT NO. 1

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (Corps) is continuing to evaluate and design flood risk management measures for the cities of Fargo, Cass County, North Dakota and Moorhead, Clay County, Minnesota; and

WHEREAS, a Programmatic Agreement between the Corps, the North Dakota State Historic Preservation Officer, and the Minnesota State Historic Preservation Officer, was executed on June and July 2011; and

WHEREAS, project features may include environmental mitigation areas and in-town (Fargo and Moorhead) levees, in addition to those previously addressed in the original Programmatic Agreement;

NOW THEREFORE, the parties agree to amend the Programmatic Agreement as follows:

Revise the 4th WHEREAS clause from:

WHEREAS, the Corps has established the Project's Area of Potential Effects (APE), as required by 36 CFR § 800.4(a)(1) and defined in section 800.16(d), as consisting of the footprint of the selected diversion plan including the diversion channel alignment, its associated tieback levee(s), associated construction work areas, construction staging areas, borrow areas, and disposal areas, as well as associated upstream water storage and water staging areas, project-related floodproofing locations, and the viewshed to one-half mile from the diversion channel's centerline, to one-eighth mile from the tieback levee's centerline, and to one-eighth mile outside the storage area boundary levee's centerline; and

To the following:

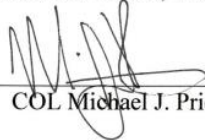
WHEREAS, the Corps has established the Project's Area of Potential Effects (APE), as required by 36 CFR § 800.4(a)(1) and defined in section 800.16(d), as consisting of the footprint of the selected diversion plan including the diversion channel alignment, its associated tieback levee(s), associated construction work areas, construction staging areas, borrow areas, and disposal areas, as well as associated upstream water storage and water staging areas, project-related floodproofing locations, project-related environmental mitigation areas, project-related in-town

Programmatic Agreement Amendment No. 1
Fargo-Moorhead Metro Flood Risk Management Project
Page 2 of 3

(Fargo and Moorhead) levees, and the viewshed to one-half mile from the diversion channel's centerline and all other above-ground project features; and

Signature below indicates concurrence with the above proposed amendment to the original Programmatic Agreement.

ST. PAUL DISTRICT, U.S. ARMY CORPS OF ENGINEERS

BY:  DATE: 15 NOV 2012
COL Michael J. Price, District Engineer

NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 11-20-12
Merlan E. Paaverud, Jr., State Historic Preservation Officer

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 12-04-2012
Barbara M. Howard, MN Deputy State Historic Preservation Officer

Concur:

CITY OF FARGO

BY:  DATE: 12-19-12
Dennis Walaker, Mayor

CITY OF MOORHEAD

BY:  DATE: 2-14-2013
Mark Voxland, Mayor

BY:  DATE: 2/13/13
Michael J. Redinger, City Manager

Programmatic Agreement Amendment No. 1
 Fargo-Moorhead Metro Flood Risk Management Project
 Page 3 of 3

Concur:

CASS COUNTY BOARD OF COMMISSIONERS

BY: *Vern Bennett* DATE: 1-7-2013
~~Ken Pawluk, Chairman~~
Vern Bennett

CLAY COUNTY BOARD OF COMMISSIONERS

BY: *Wayne Ingersoll* DATE: 2-15-13
~~Grant Weyland, Chairman~~
Wayne Ingersoll

LEECH LAKE BAND OF OJIBWE

BY: *Gina Lemon* DATE: 5-15-13
Gina Lemon, Leech Lake Tribal Historic Preservation Officer

Post-Operation Debris Clean-Up Plan: Private Lands

Introduction

Operation of the Project will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention of floodwaters has the potential to impact a different amount of acres for each flood event depending on the magnitude of the flood and a variety of other factors. The Diversion Authority will obtain flowage easements on the properties that are within a defined mitigation area. The flowage easement will compensate property owners for the impacts associated with the Project, including the potential impact of debris caused by flooding, but it places the responsibility for post-operation clean-up on the property owner. In recognition that operation of the upstream mitigation area may cause debris (logs, straw, trash, etc.) to accumulate within and along the edges of the upstream mitigation area, the Diversion Authority has developed the following post-operation debris clean-up plan.

Post-Operation Debris Clean-Up Plan

If the Project operates, the Diversion Authority will enact the following post-operation debris clean-up plan. The plan is specific to clean-up of debris in the upstream mitigation area from operation of the Project.

- The plan will pattern the “clean-up week” approach used throughout the metro area.
- The Diversion Authority will declare the Project operated.
- The Diversion Authority will define the boundary of the upstream mitigation cleanup area based on the actual flood event.
- The Diversion Authority will notify affected property owners in the area eligible via posting of a map on the Project website ([FM Area Diversion Project Website \(www.fmdiversion.com\)](http://www.fmdiversion.com)) for clean-up assistance and provide direction on clean-up procedures.
- The Diversion Authority will solicit quotes from contractors for clean-up of flood debris in the upstream mitigation area.
- Upon receipt of quotes, the Diversion Authority will retain one or more contractors to conduct the flood debris clean-up operations in the upstream mitigation area.
- Property owners will be responsible for moving debris to established field entrances or access points that the contractors can access without impacting farm operations.
- Contractors will only enter upon established field entrances or access points to pick up the debris.
- After each occurrence, property owners could voluntarily sign a “right of entry” to allow the contractors to enter and access other portions of their private property.
- Eligible debris for pick-up will be limited to debris caused by the flood event.
- The contractors will be responsible for ultimate disposal of the debris.

Post-Operation Repair and Clean-Up Plan: Public Lands

Introduction

Operation of the Project will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention of flood waters will impact a different amount of acres for each flood event depending on the magnitude of the flood and a variety of other factors. There are a variety of “public lands” in the upstream mitigation area such as township and county roads, drainage ditches, cemeteries, and parks. In recognition that operation of the upstream retention area may cause some damage to these public lands as well as the accumulation of debris (logs, straw, trash, etc.), the Diversion Authority has developed the following post-operation public lands repair and clean-up plan.

Post-Operation Public Lands Repair and Clean-Up Plan

If the Project operates, the Diversion Authority will enact the following post-operation public lands repair and clean-up plan. The plan is specific to repair and clean-up of public lands in the upstream mitigation area from operation of the Project. Public lands include township and county roads, drainage ditches, cemeteries, and parks. This plan will allow local government entities (townships, water boards, etc.) to contract for the repair and clean-up work on the public lands, and then submit for reimbursement to the Diversion Authority. This plan allows the local government entities the ability to contract for the work as they prefer.

- The plan will pattern the approach that FEMA uses for post-disaster damage assessment and reimbursements.
- The Diversion Authority will declare the Project operated.
- The Diversion Authority will define the boundary of the upstream mitigation cleanup area based on the actual flood event.
- The Diversion Authority will notify public entities of eligible areas and request that the public entity identify any damage that may have been caused by the Project operation, including debris removal.
- The Diversion Authority will send a representative to meet with the public entities to verify damage on a site by site basis.
- The public entities shall solicit quotes (in conformance with procurement, legal, and regulatory requirements) for the repairs or clean-up work at each site, and submit the quotes for each site to the Diversion Authority for review.
- The Diversion Authority shall review the quotes for reasonableness, and either approve, request additional details, or deny the quote.
- The Diversion Authority will confirm the work was completed in accordance with the quote, and then reimburse the public entity.
- The Diversion Authority will also consider reimbursement of emergency repairs that may be needed in advance of following this process.

Summer Operation Supplemental Crop Loss Program

Introduction

The Project requires the temporary and occasional retention of flood waters immediately upstream of the southern embankment of the Project. The Diversion Authority will provide mitigation for properties in the upstream mitigation area, and the mitigation has generally been considered to be the acquisition of a permanent flowage easement and associated payment to the property owners, which is required by USACE. Generally, the permanent easement would restrict construction of structures/buildings, but it would allow the land to continue to be used for agriculture production including growing crops, livestock, and hay production.

The flowage easement is intended to provide compensation for impacts associated with the Project and is expected to be a one-time payment at the time the easement is purchased. Under this plan, the one-time payment for the flowage easement would compensate the land-owner for the potential impacts associated with delayed planting, prevented planting, debris, loss of development rights, etc.

The Diversion Authority recognizes the potential impact to the agricultural community on both the North Dakota and Minnesota side of the Red River, and has studied and considered supplemental mitigation solutions, which are greater than what has historically been provided to property owners. In recognition of: (a) the importance of the farm economy to the region; (b) that summer operation would damage growing crops; (c) and that summer operation of the Project is extremely unlikely, the Diversion Authority will adopt a Summer Operation Supplemental Crop Loss Program to provide additional assurance to producers in the upstream mitigation area. The Program would provide producers coverage for the risk associated with Project induced flooding on growing crops during the unlikely summer operation of the Project. The Diversion Authority understands and acknowledges that this program is important to the agricultural community because under these events, it is believed that producers may not be able to utilize the federal crop insurance program(s) for crop damages directly caused by operation of the Project. This program will be available for producers in the upstream mitigation area, which is defined as the area below the elevation of the spillway, which is expected to be 923.5 feet (NAV88). This is the same area where the Diversion Authority will obtain flowage easements.

Proposed Summer Operation Supplemental Crop Loss Program

The Diversion Authority, with the assistance of its insurance advisory, AON, has studied the cost of purchasing a private insurance product, and found that the premiums for the summer flood events may be cost prohibitive. As such, the Diversion Authority will create a self-funded insurance reserve fund for the Summer Operation Supplemental Crop Loss Program. The Program will compensate producers in the upstream mitigation area for crop losses directly caused by operation of the Project during the normal crop growing season.

Given the complexity associated with reviewing and administering crop loss claims, the Diversion Authority will seek the assistance from a neutral and independent third party to administer damage

claims associated with summer operation of the Project and to determine whether payments should be made from the Program. The Diversion Authority intends to coordinate with existing state agencies to determine if the state(s) could assist as the neutral and independent third party in administering any damage claims. The Diversion Authority will be developing additional information regarding the Program within the next 12 to 24 months. The Diversion Authority would be responsible to make timely payment claims based on the adjustment decisions of the third party agent.

Though there has never been a summer flood event in recorded history that would have triggered the operation of the Project, it is possible that an event could happen. If such a major rain event occurs during the normal growing season, and if the rain is significant enough to cause the Project to operate, flooding will occur on farmlands due to the rain event. It is envisioned that a producer could then submit a damage claim and then the claims adjuster would evaluate the claim to determine liability, if any for the damages. If the claims administrator and adjuster find the Project is liable, then the Diversion Authority would make the payment to the producer from its self-funded reserve fund.

To be eligible for the program, a producer must participate in a federal crop insurance program, have growing crops within the upstream mitigation area, and have notified the Diversion Authority of his/her intent to participate in the Summer Operation Supplemental Crop Loss Program. It is the Diversion Authority's understanding that agricultural producers obtain various rates of coverage through federal crop insurance program. Some are insured for 65 percent, others insure for upwards of 80 percent based upon the year and type of crop grown. The Diversion Authority's Program would provide 90 percent coverage for all crop damages directly caused by summer operation of the Project, regardless of year or crop grown.

Additional Background:

- The FM Diversion Project includes an upstream mitigation area for staging of flood waters as a necessary feature of the Project.
- USACE has defined a portion of the upstream mitigation area as an "operating pool". This area is necessary to offset the potential downstream impacts that would exist without upstream mitigation, and the operating pool is based on areas with potential impacts greater than 1-foot (generally).
- The upstream mitigation area extends beyond the "operating pool" for a total area of approximately 38,000 acres.
- The NDSWC and MDNR have suggested using the top elevation of the Limited Service Spillway, or the maximum pool elevation, which are both expected to be 923.5-feet, to define the area of mitigation.
- Mitigation is generally considered acquisition of a flowage easement and associated payment to the property owner, as USACE has mandated that the Diversion Authority obtain a flowage easement for areas within the Staging Area.
- The flowage easement will cover impacts associated with the Project, and is expected to be a one-time payment at the time the easement is secured. Under this plan, the flowage easement would cover impacts associated with delayed planting, loss of development rights, etc.

- The Diversion Authority has considered additional mitigation solutions such as Summer Operation Supplemental Crop Loss Program. One of the primary considerations of additional farm mitigation is to help ensure producers are covered for the risk of Project induced summer flooding on growing crops. Under these events, producers may not be able to tap into federal crop insurance.
- Based on insured values and crop types in 2014, along with the size of the upstream mitigation area, the total estimated maximum loss for all crops in the operating pool is approx. \$20-25M. (Note that the value of agricultural commodities has decline significantly from 2014 levels. In some cases, the price of commodities have declined by up to forty percent (40%).)
- The Diversion Authority will self-fund the program. The Diversion Authority has the financial strength to sustain a self-funded insurance reserve fund in order to assume the risk of this type of event, given that the probability of events that would cause summer operation are extremely low, and given the O&M Funding Program that will be established.
- If this Program is utilized, the Diversion Authority would utilize an O&M Funding Program to fund/finance the costs associated the Summer Operation Supplemental Crop Loss Program payments.

Financial Assurance Plan for O&M and On-Going Mitigation

Introduction

The Project will require the Diversion Authority to providing funding for long term operation and maintenance (O&M) costs. In addition to defining the financial plan for construction of the Project, it is important to develop a financial plan for on-going O&M of the Project, including funding for the various mitigation efforts that may be required well into the future. The Diversion Authority will establish an on-going O&M Funding Program and utilize either sales taxes or a maintenance district, or a combination of both to fund the costs. In addition, the Diversion Authority will make sure that all of the mitigation costs outlined in the Mitigation Plan will be eligible for funding through the O&M Funding Program. The O&M Funding Program will also provide a mechanism for funding unforeseen mitigation needs that may arise due to Project operation. The Project will follow an Adaptive Management and Monitoring Plan (AMMP) to monitor performance of environmental mitigation projects along with environmental changes after Project operation events, and the O&M Funding Program will fund additional required mitigation as determined through the AMMP.

O&M Funding Program

Pursuant to the Joint Powers Agreement (the "JPA"), which created the Diversion Authority, the O&M of the Project, including the O&M of transportation elements of the Project, will be financed from a variety of revenue sources. The first source of revenue for O&M costs will be excess sales and use taxes. If any excess revenues of the County 2010-2 Sales Tax¹, the City Flood Control Tax, the City Infrastructure Tax², or any Additional Sales and Use Tax remain after the payment of debt obligations issued for the capital costs of the project, these revenues may be used for operations and maintenance of the Project.

The second source of revenue will be maintenance levy from FM Flood Risk Management District No. 1. It is anticipated that O&M for the Diversion Channel and Associated Infrastructure (DCAI) will be performed by the successful P3 contract/proposer; O&M of the Southern Embankment and Associated Infrastructure (SEAI) will be performed by the Diversion Authority and/or its Member Entities. When the Cass County Joint Water Resource District (CCJWRD) a member entity of the Diversion Authority created the FM Flood Risk Management District No. 1 under North Dakota law, the CCJWRD also created a maintenance district. The maintenance district includes the same properties and benefits as are included in the FM Flood Risk Management District No. 1, and the CCJWRD can levy special assessments within the district for maintenance costs (the "Maintenance Levy"). Under North Dakota law, the determination of how much property may be assessed for a Maintenance Levy is based upon the value of the property deemed to be benefitted by the project. Specifically, the Maintenance Levy assessment may not exceed four dollars (\$4.00) per acre annually for agricultural lands and two dollars (\$2.00) annually for each five hundred dollars (\$500) of taxable valuation³ of non-agricultural property.⁴ Currently, within FM Flood Risk Management District No. 1 the total taxable valuation of non-agricultural property is fourteen billion one hundred ninety-two million seven hundred twelve thousand thirty dollars (\$14,192,712,030). With respect to the FM Flood Risk Management District No. 1, the property benefitted will include developed property within the cities of Fargo, West Fargo, Reile's Acres, Harwood, Horace, and Frontier, North Dakota. As a result, FM Flood Risk Management District No. 1 has sufficient capacity to provide funds for O&M of the Project.⁵

The third source of revenue will be a Storm Water Maintenance Fee⁶ levied and collected monthly by the City of Moorhead, Minnesota. Pursuant to the JPA, the City of Moorhead has agreed to levy and collect and remit a portion of its storm water maintenance fee for the O&M of the Project.

Notes:

¹ Pursuant to Ordinance No. 2010-2, Cass County imposed a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all sales at retail, including leasing or rental of tangible personal property, within the corporate limits of Cass County (“County 2010-2 Sales Tax”). The proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the planning, engineering, land purchase, construction, and maintenance of a Red River diversion channel and other flood control measures or the payment of special assessments, or debt incurred for a Red River diversion and other flood control measures as authorized by the Board of Cass County Commissioners. Cass County has determined that it will legally pledge not less than ninety-one percent (91%) of the County 2010-2 Sales Tax to sales and use tax revenue bonds issued by Cass County (the “County Sales Tax Bonds”) and will dedicate (but not legally pledge) sales and use tax revenues not required for annual debt service or to replenish reasonably required debt service reserve funds on the County Sales Tax Bonds to the payment of debt service for improvement bonds issued by CCJWRD, and Milestone, Availability, and P3 Payments for the Project. The County 2010-2 Sales Tax was anticipated to expire on March 31, 2031. The Cass County Commission, however, desired to extend the expiration date for the County 2010-2 Sales Tax until 2084, and voted unanimously to place such extension upon the November 8, 2016, ballot. (The County 2010-2 Sales Tax was previously approved by sixty-four percent (64%) of the voters.) On November 8, 2016, the extension of the County 2010-2 Sales Tax was approved by sixty-three percent (63%) of the voters (in both elections, a simple majority of voters was needed in order to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the Cass County 2010-2 Sales Tax may be used for Debt Obligations, Milestone Payments, Availability Payments, and any other costs or charges associated with the DCAI and Comprehensive Project.

² The City of Fargo has adopted a sales and use tax (“City Flood Control Tax”) by enacting Article 3-21 of the City of Fargo Municipal Code. The City Flood Control Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Flood Control Tax are dedicated for acquiring property; making, installing, designing, financing, and constructing improvements; engaging in projects that are necessary for the goal of achieving risk reduction and the ability to defend the community against a five hundred (500) year flood event; and servicing bonds or other debt instruments. The City of Fargo has determined that it will dedicate one-hundred percent (100%) of its City Flood Control Tax to sales and use tax revenue bonds issued by City of Fargo (the “City Sales Tax Bonds”) and will dedicate (but not legally pledge) sales and use tax revenues not required for annual debt service or to replenish reasonably required debt service reserve funds on the City Sales Tax Bonds to the payment of debt service and Milestone, Availability, and P3 Payments for the Project.

In 2012, the City of Fargo adopted a second sales and use tax (“City Infrastructure Tax”) by enacting Article 3-22 of the City of Fargo Municipal Code. The City Infrastructure Tax imposes a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the City of Fargo. The proceeds of the City Infrastructure Tax are dedicated for such infrastructure capital improvements as the governing body of the City of Fargo selects, including streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities; and flood protection or flood risk mitigation projects, and related improvements and activities. The City of Fargo has determined that it will legally dedicate (but not legally pledge) one-hundred percent (100%) of its City Infrastructure Tax not being utilized for present infrastructure projects toward payment of Debt Obligations and Milestone, Availability, and P3 Payments for the Project.

³ By way of example, a non-agricultural property having a taxable value of \$200,000 would receive an annual maintenance assessment of \$800 each year. ($\$200,000 \div \$500 = 400 \times \$2.00 = \$800.$)

⁴ Another method for determining the assessment amount for urban parcels is a weighted method based on benefit, in proportion to agricultural land benefit.

⁵ Pursuant to Ordinance No. 2010-2, Cass County imposed a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all sales at retail, including leasing or rental of tangible personal property, within the corporate limits of Cass County ("County 2010-2 Sales Tax"). The proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the planning, engineering, land purchase, construction, and maintenance of a Red River diversion channel and other flood control measures or the payment of special assessments, or debt incurred for a Red River diversion and other flood control measures as authorized by the Board of Cass County Commissioners. Cass County has determined that it will legally pledge not less than ninety-one percent (91%) of the County 2010-2 Sales Tax to sales and use tax revenue bonds issued by Cass County (the "County Sales Tax Bonds") and will dedicate (but not legally pledge) sales and use tax revenues not required for annual debt service or to replenish reasonably required debt service reserve funds on the County Sales Tax Bonds to the payment of debt service for improvement bonds issued by CCJWRD, and Milestone, Availability, and P3 Payments for the Project. The County 2010-2 Sales Tax was anticipated to expire on March 31, 2031. The Cass County Commission, however, desired to extend the expiration date for the County 2010-2 Sales Tax until 2084, and voted unanimously to place such extension upon the November 8, 2016, ballot. (The County 2010-2 Sales Tax was previously approved by sixty-four percent (64%) of the voters.) On November 8, 2016, the extension of the County 2010-2 Sales Tax was approved by sixty-three percent (63%) of the voters (in both elections, a simple majority of voters was needed in order to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the Cass County 2010-2 Sales Tax may be used for Debt Obligations, Milestone Payments, Availability Payments, and any other costs or charges associated with the DCAI and Comprehensive Project.

⁶ Pursuant to Ordinance No. 2010-2, Cass County imposed a one-half of one percent (0.5%) sales and use tax upon the gross receipts of retailers from all sales at retail, including leasing or rental of tangible personal property, within the corporate limits of Cass County ("County 2010-2 Sales Tax"). The proceeds of the County 2010-2 Sales Tax are dedicated for payment of expenses incurred for the planning, engineering, land purchase, construction, and maintenance of a Red River diversion channel and other flood control measures or the payment of special assessments, or debt incurred for a Red River diversion and other flood control measures as authorized by the Board of Cass County Commissioners. Cass County has determined that it will legally pledge not less than ninety-one percent (91%) of the County 2010-2 Sales Tax to sales and use tax revenue bonds issued by Cass County (the "County Sales Tax Bonds") and will dedicate (but not legally pledge) sales and use tax revenues not required for annual debt service or to replenish reasonably required debt service reserve funds on the County Sales Tax Bonds to the payment of debt service for improvement bonds issued by CCJWRD, and Milestone, Availability, and P3 Payments for the Project. The County 2010-2 Sales Tax was anticipated to expire on March 31, 2031. The Cass County Commission, however, desired to extend the expiration date for the County 2010-2 Sales Tax until 2084, and voted unanimously to place such extension upon the November 8, 2016, ballot. (The County 2010-2 Sales Tax was previously approved by sixty-four percent (64%) of the voters.) On November 8, 2016, the extension of the County 2010-2 Sales Tax was approved by sixty-three percent (63%) of the voters (in both elections, a simple majority of voters was needed in order to pass). Pursuant to the ballot question presented to the voters, sales and use tax revenue generated by the Cass County 2010-2 Sales Tax may be used for Debt Obligations, Milestone Payments, Availability Payments, and any other costs or charges associated with the DCAI and Comprehensive Project.

Mitigation Communication Plan

Introduction

The Project is a massive civil works project that has a tremendous amount of public interest. This has been the case since federal studies began in 2008. Public interest is expected to continue through construction and beyond as the Project is operational – both for protection of the metro area, and for proper planning and notification of potential impacts to the upstream mitigation area. Communications during construction and operation will remain an important long-term goal of the Diversion Authority, and any other entity responsible for operation and maintenance of the Project.

Existing Communication Structures

To date, the primary means of communication with the general public has been through regular contact with staff at the government entities that make up the Diversion Authority and through the Project website [FM Area Diversion Project Website \(www.fmdiversion.com\)](http://www.fmdiversion.com). In addition, traditional local media has covered the Project during various Project milestones. Tools including fact sheets, newsletters, social media, news conferences, and videos have also been used.

It is likely that the governmental entities that make up the Diversion Authority will remain the key front-line communicators of the Project during maintenance and recreation, and during times of flooding and operations.

The Diversion Authority is also committed to the long-term existence of [FM Area Diversion Project Website \(www.fmdiversion.com\)](http://www.fmdiversion.com) as a primary communication method with the general public. The website allows for universal access regardless of location or time. From time to time, the Diversion Authority may review the use of the Project website to determine if communication needs to expand beyond the technology in use. For example, currently the Diversion Authority utilizes a Twitter account and newsletter to keep the public abreast of the latest news and progress. These continue to be useful tools but may be augmented in the future if new technology presents more useful tools that better achieve communication goals.

Working with traditional media sources will continue, but it will likely evolve with technological advancements as well. During times of flood, traditional communication channels in which the public is comfortable are critical in getting timely information disseminated.

Future Project-Specific Communication Methods

With the completion of the Project, there will be significant ongoing maintenance and operational specifics every year. In times of extreme flooding, communication efforts become especially important for safety, agricultural planning, timely burials, and other land management concerns of those in the upstream mitigation area.

Property owners within the upstream mitigation area will be given timely notification of impending operation of the Project to ensure proper management of their properties. This notification will occur before the Project operates with as much notice as the emergency level of the situation allows.

In addition to communications regarding operation of the Project, there will be a recurring need to notify and remind property owners with flowage easements attached to their property. The Diversion Authority will utilize the Project website to host an interactive web-based GIS map tool, as well as maps indicating the upstream mitigation area in which flowage easements are in place. The maps on the Project website will serve as a reminder for property owners to make sure they remain aware of existing flowage easements and the obligations of the property owner and the Diversion Authority under the terms of the flowage easement. In addition, it should be noted that the Diversion Authority will also record those flowage easements with the County Recorder's office to ensure they are available for legal purposes at all times.

Oxbow Hickson Bakke Mitigation Project

Summary

The Project includes an upstream mitigation area for temporarily and occasionally storing flood waters. The upstream mitigation area would require acquisition and relocation of the City of Oxbow, Hickson, and Bakke if a ring levee was not constructed to protect those communities and mitigate the impacts from the Project. The Oxbow, Hickson, Bakke (OHB) Ring Levee Project was developed as a mitigation solution in 2013 as a means to mitigate existing, natural, and induced flooding. The OHB Ring Levee Project was incorporated into the Supplemental Environmental Assessment prepared by USACE in September 2013.

The OHB Ring Levee Project includes:

- Construction of a ring levee around the three communities.
- Internal drainage improvements.
- Acquisition and relocation of 40 residences, the golf course clubhouse, several golf holes, and farmland to make way for the levee.
- Construction of new residential lots for a relocation option for displaced Oxbow residents, and relocation of displaced upstream mitigation area residents.

Upon completion, the Cass County Joint Water Resource District (CCJWRD) will own and maintain the OHB Ring Levee, in coordination with the City of Oxbow and the Diversion Authority.

Supplemental EA Appendix C

A summary and background, identification of alternatives, and description of the selected OHB ring levee alternative can be found in [Appendix C of the 2013 Supplemental Environmental Assessment](#).

Additional Details

Additional details regarding the OHB Ring Levee can be found in a [Technical Memorandum](#) dated March 12, 2013.

In-Town Levee Mitigation Projects

Summary

The Project includes construction of levees and other flood protection infrastructure along the river and drainage ways through the Fargo-Moorhead metro area. The levees and related flood protection infrastructure are necessary to safely pass flood waters through town as part of the operation of the Project. Several studies and analysis have been conducted to determine the appropriate amount of flood water, and commensurate river stage to allow through town. Allowing higher flows and higher river stages through town reduces the frequency of operation of the Project, and reduces the extent and duration of the upstream mitigation area. As such, the in-town levee works provide further mitigation for the Project impacts.

The most recent studies, conducted as part of the Governors' Task Force have concluded to allow a river stage of 37-feet through town, which equates to an approximately 20-year return frequency event. The cities of Fargo and Moorhead have completed several miles of in-town flood protection over the past years. The decision to allow 37-feet through town will require both Cities to design and construct additional levees and related flood protection improvements so that appropriate freeboard levels are in place for the higher flows through town.

Pre-PPA Medical Hardship Acquisition Program

NOTE: This Program was put into effect in 2011, and has been used successfully prior to the PPA being signed on July 11, 2016. Now that the PPA is signed, several parts of this program are outdated. However, the Diversion Authority will continue to accept requests for early acquisitions.

The Flood Diversion Authority hereby approves and establishes the following policy for the early buyout of residential property where it is determined that a property owner suffers from a Serious Health Condition giving rise to a hardship. Applications are encouraged from property owners who feel circumstances warrant considerations hereunder.

At the time of adoption of this policy, the United States Congress has not yet authorized the Diversion Project (“Project”), nor has Congress appropriated funds for the construction of the Project. Nevertheless, property owners living in areas potentially impacted by the Project assert the Project is already impacting their ability to sell their properties at fair market values and to finance such sales. The Diversion Authority recognizes that while it is difficult to quantify the impacts resulting from the impending Project on property values, or discern between Project-related impacts and general economic conditions or other market forces, the Diversion Authority wishes to establish a policy that will allow property owners who establish a serious health condition hardship to have their homes determined eligible for early buyout by the Diversion Authority or one of its member entities. It is recognized that, ultimately, the Project may require acquisition of a greater number of residential, and other, properties at a later date.

This policy is intended to be in effect prior to a Project Partnership Agreement (PPA) between the U.S. Army Corps of Engineers and the non-federal sponsors of the Project. This hardship policy may be amended to include additional considerations after the PPA is signed.

SECTION 1. DEFINITIONS. For purposes of this policy, the following definitions shall apply:

- 1.1 Affected Property** means a parcel which the Hardship Review Committee determines is within the anticipated buy-out area associated with the Diversion Project, as proposed, that is used as a residence. To the extent a single parcel is used for multiple principal uses, such as residential and agricultural uses, the Hardship Review Committee may identify a portion of said parcel that shall, for purposes of this program, be deemed to be the “Affected Property” and any purchase offer for said Affected Property may be limited to such residential portion of said parcel. The Diversion Authority may designate, by map or boundary line, an area within which this program shall only apply. The area shall generally include the diversion and

levee footprint, the storage area, and areas in the staging area with water depths greater than three feet.

- 1.2 Affected Property Owner** means the owner or co-owners in fee of an Affected Property, whether one or more persons, firms or entities.
- 1.3 Early Buyout List** means the list of Affected Properties for which applications for early buyout under this program have been approved by the Hardship Review Committee, as described in Section 3, herein.
- 1.4 Hardship Review Committee** shall mean the decision-making body, consisting of three to five members, the membership of which shall be established by motion or resolution of the Diversion Board of Authority. The Diversion Board of Authority may authorize an existing committee or subcommittee to serve in the capacity of the Hardship Review Committee and to exercise the powers described herein.
- 1.5 Program Administrator** shall mean a person who is authorized by the Diversion Board of Authority to administer the early buyout program described herein, as the same may be amended from time to time. Reference to the Program Administrator shall include any deputies or delegates that have been authorized by the Program Administrator to assist in the administration of this program.
- 1.6 Serious Health Condition** shall mean a health condition suffered by a resident of an Affected Property that is:
- a. a physical or mental health condition that requires assisted living care or significantly impairs a major life function, including but not limited to breathing, mobility or vision; or
 - b. physical or mental health condition that is life-threatening;

which condition shall be certified, in writing using the attached Certificate of Serious Medical Condition form, by a medical professional, including a medical doctor, doctor of osteopathy or licensed psychologist. The death of a resident of an Affected Property shall also be deemed a Serious Health Condition for purposes of this program.

SECTION 2. PROCEDURE FOR HARDSHIP DETERMINATION. The Hardship Review Committee is authorized to determine whether a property owner is eligible for an early buyout of residential property as a result of a Serious Health Condition in accordance with the following:

- 2.1 Applications.** An Affected Property Owner may submit an application for determination of hardship to the Program Administrator. The Program Administrator

may issue such form or forms necessary to facilitate the application process and to gather the information needed for review of the hardship application. An application must be accompanied by a qualified medical professional's certification that the Affected Property Owner, or other individual residing within an Affected Property, suffers from a Serious Health Condition. The application must also include an explanation as to the circumstances which, in combination with the Serious Health Condition, require that the occupants of the Affected Property relocate and require that the Affected Property be immediately sold. The applicant must state the reason or reasons why the Serious Health Condition will not allow the Affected Property Owner sufficient time to sell the residence in question in the customary marketplace, but, instead, requires said residence to be sold immediately and purchased by the Diversion Authority (or one of its member entities).

2.2 Complete Applications. The Program Administrator is authorized to accept an application and to review the application for completeness. Applications that do not include required information may be returned to the applicant as incomplete and no further processing of the application will occur until the deficiencies are corrected. Once a complete application is accepted by the Program Administrator, the Program Administrator will schedule the matter for review by the Hardship Review Committee at a public meeting. The applicant will be provided with written notice of the time, date and location of the meeting at which the matter will be considered by the Hardship Review Committee. The notice to the applicant shall be deposited in the U.S. mail at least 10 days before the meeting.

2.3 Public Meeting—Review Criteria. The Hardship Review Committee shall consider the application at a public meeting along with any other relevant testimony or materials. The Hardship Review Committee shall consider the following criteria in its review of the application:

- a. The extent to which the Serious Health Condition combines with the surrounding circumstances require the Affected Property Owner to move away from the Affected Property and require immediate sale of the Affected Property.
- b. The extent to which the Serious Health Condition combines with the surrounding circumstances to make it difficult for the person with the Serious Health Condition and all other occupants of the Affected Property to continue residing at, and care for, the Affected Property.
- c. The Committee may consider the financial hardship that may or will result from the continued occupancy and/or ownership of the Affected Property by either the person with the Serious Health Condition or the spouse or other

occupant of the Affected Property. In other words, if the Serious Health Condition requires that person to be admitted to an assisted living facility, long-term health facility or other place for people requiring such special needs, and such relocation will cause a significant financial hardship that requires immediate sale of the Affected Property, the Committee may consider such financial impacts. It is intended; however, that the Committee will not consider financial hardships other than those that are related to, or resulting from, a Serious Health Condition.

As stated above, although the existence of, or extent of, the negative impact of the Project upon the ability of any given Affected Property Owner to sell an Affected Property or upon the market value of an Affected Property, if any, is not known. For purposes of the administration of this program, the Committee may assume that an Affected Property Owner will not be able to immediately or promptly sell their Affected Property because of the pendency of the Project and, therefore, the Committee need only determine if the Serious Health Condition in combination with the other relevant circumstances warrants prompt or immediate sale and, if so, the Committee may approve an application and place the property on the Early Buyout List.

If an application for determination of hardship is denied by the Hardship Review Committee, the property owner may later reapply if circumstances have changed which the Affected Property Owner feels warrant such reapplication. An Affected Property Owner may not reapply for at least three months from the date of the Hardship Review Committee determination denying a prior application.

SECTION 3. EARLY BUYOUT LIST – PROCEDURE FOR DETERMINING

PURCHASE OFFER. If the Hardship Review Committee determines that a hardship exists and the Affected Property is therefore eligible for early buyout; the Affected Property shall be placed on an early buyout list established and maintained by the Program Administrator [the “Early Buyout List”]. To the extent funds have been made available for the purchase of eligible Affected Properties under this program, the Program Administrator is authorized to extend an offer to purchase the Affected Property. The offer shall be based upon a good faith estimate as to the fair market value of the Affected Property as determined by the rules governing property acquisition associated with federal projects, defined fully in the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970”, and Title IV, “Uniform Relocations Act Amendments of 1987”.

- 3.1 Purchase Timeframe.** Although the affected residential property for which a hardship has been determined will be placed upon the Early Buyout List immediately upon the hardship determination having been made by the Hardship Review Committee, actual purchases will occur as funds are authorized and made available by the Diversion Authority. Once the affected property owner and the governmental entity who will actually enter into the Purchase Agreement have arrived upon an

agreeable price and other terms, parties will enter into a Purchase Agreement for the Affected Property.

- 3.2 Buyouts in Chronological Order.** It is the intent of the Diversion Authority that actual purchase of Early Buyout List properties shall be acquired by the applicable governmental entity (Diversion Authority, County or City) based upon the order in which a complete application for early buyout was received; the Diversion Authority reserves the right to purchase a property out of chronological order where hardship circumstances warrant the same.
- 3.3 Voluntary Sale and Purchase.** This program is intended to provide a method for identifying those properties that are eligible to be placed on the Early Buyout List. It is further intended that an offer to purchase the property is to be made based upon a good faith estimate of the fair market value, as described herein; however, the Affected Property Owner receiving the offer is not compelled in any way to accept such offer and the Affected Property Owner may reject such offer or any counteroffers without prejudice, this program being a voluntary buyout process and this is not a program based upon any power of eminent domain.

Hardship Application Form

Name: _____

Address: _____

Phone: _____ E-mail (if applicable): _____

1. Explain the circumstances which, in combination with the Serious Health Condition, require the occupants of the Affected Property to relocate and the Affected Property be immediately sold (use additional paper if necessary):

2. Explain how the Serious Health Condition does not allow the Affected Property Owner sufficient time to sell the residence in question in the customary marketplace, but instead requires said residence to be sold immediately and purchased by the Flood Diversion Board of Authority (or one of its member entities) (use additional paper if necessary):

This Hardship Application Form **must** be completed and submitted with the Physician's Certificate to:

Cass County Auditor's Office
P.O. Box 2806
Fargo, ND 58108-2806

INFORMATION IN THIS FORM IS PUBLIC INFORMATION UNDER NORTH DAKOTA OPEN RECORDS PROVISIONS

Physician's Certificate of Serious Health Condition

I hereby certify that _____ of

(Applicant)

(Address)

Has a serious medical condition that impacts a significant life function, such as breathing, walking, and engaging in other everyday life activities.

Physician Comments:

Effective Date of Disability: _____

Physician

Date: _____

Physician's Address

This Physician's Certificate **must** be completed and submitted with the Hardship Application. A doctor of medicine or licensed psychologist shall sign this statement indicating a serious health condition exists, and that as a result of such condition the homeowner will experience a long term or permanent period of incapacity.

Send Physician's Certificate and Hardship Application to:

Cass County Auditor's Office
P.O. Box 2806
Fargo, ND 58108-2806

INFORMATION IN THIS FORM IS PUBLIC INFORMATION UNDER NORTH DAKOTA OPEN RECORDS PROVISIONS