



Agricultural Policy Subcommittee
Cass County Highway Department
April 4, 2017
7:00 p.m.

1. Introductions
2. Minutes – September 29, 2015
3. Approval of Agenda
4. Metro Flood Diversion Project Overview
5. Draft Mitigation Plan
 - a. Summary
 - b. Property Acquisition and Relocation
 - c. Flowage Easements
 - d. Summer Flood Crop Insurance
 - e. Debris Clean-up
 - f. Organic Farmland
6. Comment and Feedback on Draft Mitigation Plan
7. Adjourn

People with disabilities who plan to attend the meeting and need special arrangements should contact the Water Resource District office at 298-2381.

CONSTRUCTION

- The U.S. Army Corps of Engineers selected Ames Construction, Inc. in December of 2016 to start the Diversion Inlet Control Structure. The contract includes construction of a concrete control structure with gates that will regulate flows into the diversion channel southeast of Horace, ND.
- The Request for Proposals (RFP) for the Public-Private Partnership portion of the project has been released. Four firms were short-listed in October for the final bidding portion of the selection process. Their responses to the RFP are expected in the Fall of 2017.

FINANCIAL

- The federal government has committed \$450 Million to the Project. North Dakota has committed \$570 Million to the Project as well.
- Voters in Fargo and Cass County approved extending existing flood-protection-related sales tax for the project. This extension does not increase the tax rate, but extends them at the current rate until the Project is paid for.

SCHEDULE

- Construction to begin in Spring 2017
- Goal for completion of construction is 2024.

PERMITTING

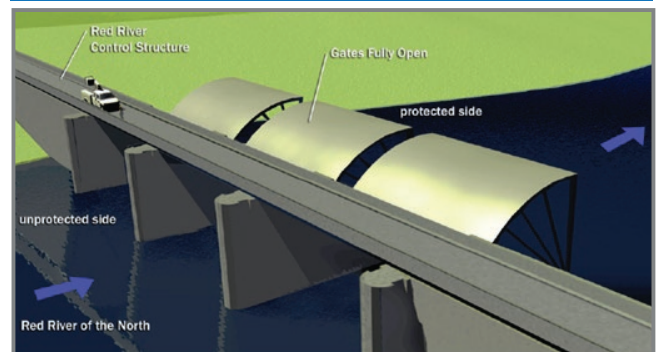
- The permit for construction of the inlet has been received from the North Dakota State Water Commission. A permit from Minnesota was applied for in February 2016; construction in Minnesota is not expected until 2019. Additional permits are expected as the next phase of construction begins.
- The Minnesota DNR has released the Final Environmental Impact Statement (EIS) and determination of adequacy. No additional reasonable alternatives were identified. The DNR announced on Oct. 3, 2016 they denied the permit application to build a control structure on the Red River. Project team members and leaders are continuing to work together to resolve these issues.
- The Diversion Authority continues to work with permitting agencies to further develop the Mitigation Plan.

LAND

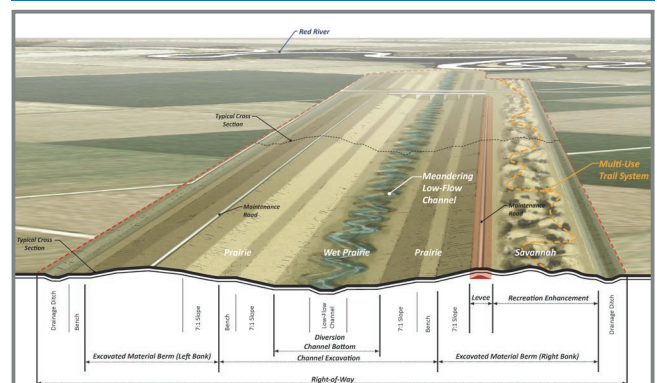
- The property acquisition process for areas along the Project footprint and impacted areas has begun. An estimated 600 parcels are impacted by the footprint of the project and another 840 parcels will require flowage easements.



DIVERSION INLET AND CONTROL STRUCTURE



RED RIVER CONTROL STRUCTURE



DIVERSION CHANNEL

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PROJECT MAP

DIVERSION OUTLET

RUSH RIVER INLET

LOWER RUSH RIVER INLET

MAPLE RIVER AQUEDUCT AND SPILLWAY

SHEYENNE RIVER AQUEDUCT AND SPILLWAY

DIVERSION INLET AND CONTROL STRUCTURE

WILD RICE RIVER CONTROL STRUCTURE



Diversion Outlet
Water exiting the channel and flowing back into the Red River.



Diversion Channel
An earthen channel that carries flood waters around the FM area.



River or Drain Inlet
Water from surrounding drainage areas that enters the Diversion Channel.



Aqueduct
A structure that allows normal river flows to cross over the Diversion Channel. Flood flows are passed over the Diversion Channel.



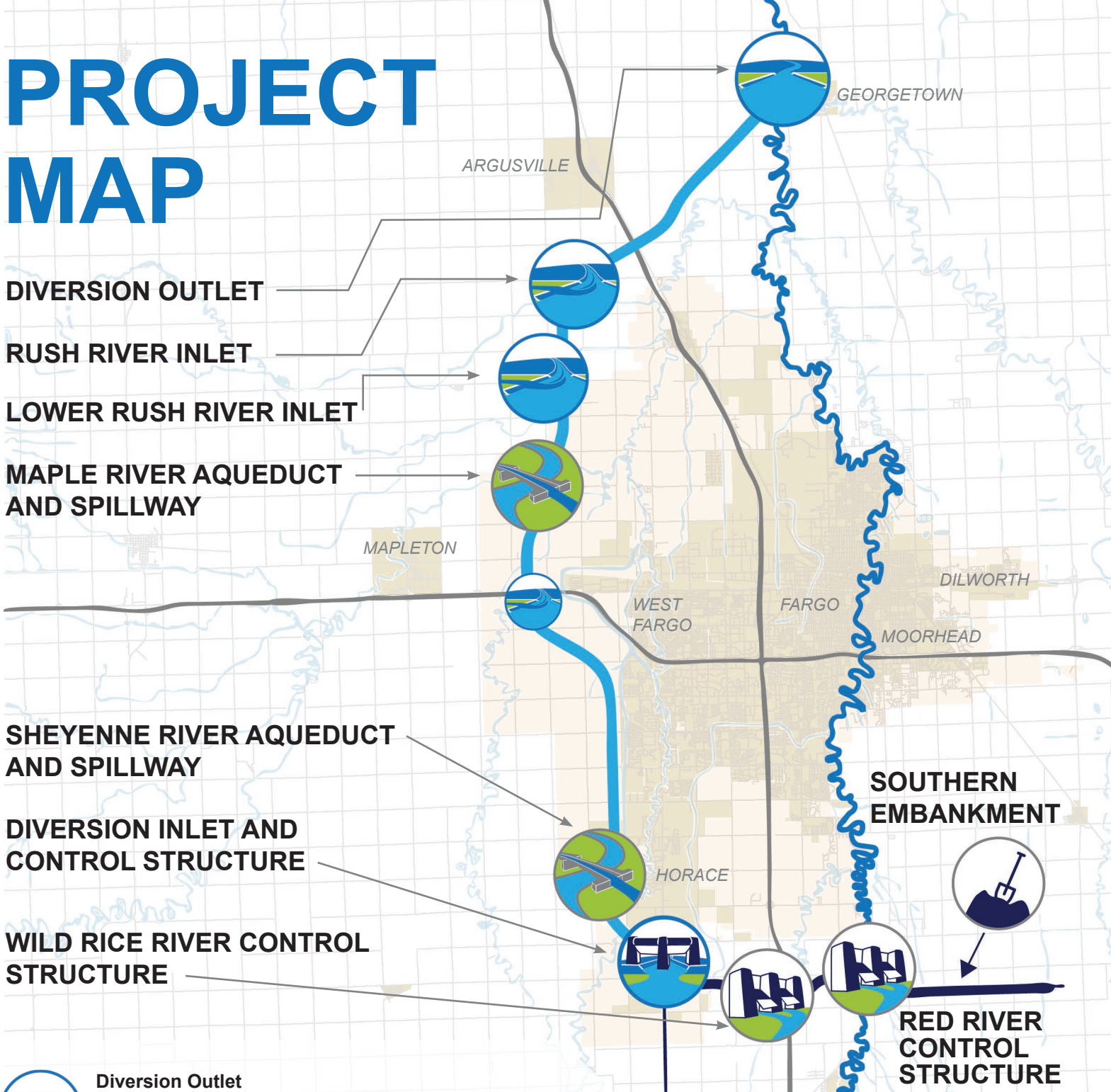
Southern Embankment
The southern embankment is an earthen structure that protects the FM area. The embankment temporarily holds water during extreme flooding events and allows water to be diverted into the Diversion Channel around the metro area.



Diversion Inlet and Control Structure
During times of extreme flooding, water behind the Southern Embankment will enter the Diversion Channel through the inlet.



River Control Structures
Control structures allow the river flow at a set height through the metro area.



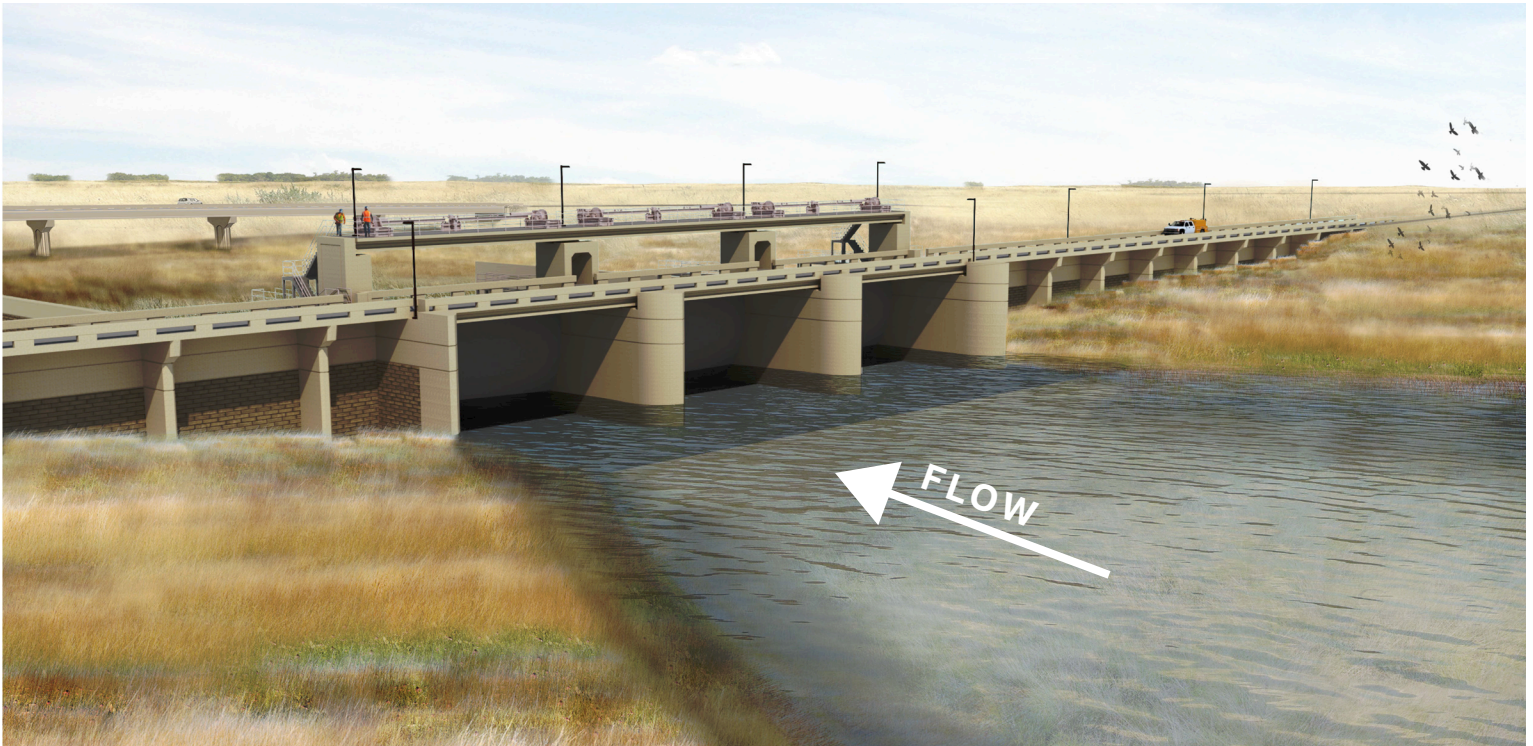
SOUTHERN EMBANKMENT

RED RIVER CONTROL STRUCTURE



FM AREA DIVERSION PROJECT DIVERSION INLET STRUCTURE

November 2016



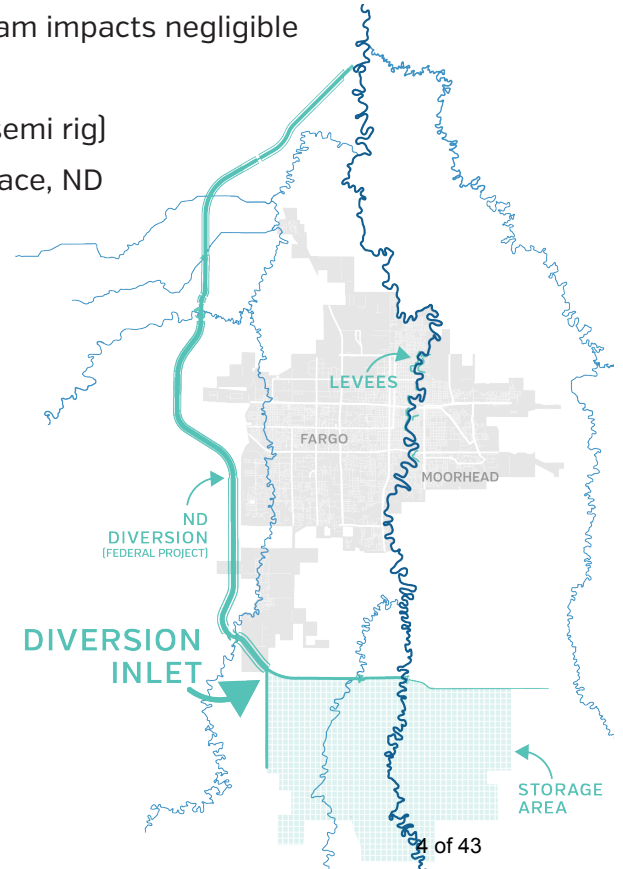
View of Inlet Structure (Looking Downstream from the Embankment Area) - GATES DOWN

Diversion Inlet Structure is a gated control structure that will control the amount of water that enters the diversion channel from the upstream staging area. Features include three 50-foot wide tainter gates, a vehicle service bridge across the structure, mechanical platform and control building.

- ▶ A gated structure allows greater control in keeping downstream impacts negligible
- ▶ 100-year flood = 20,000 cubic feet per second [cfs]
- ▶ Each gate will weigh 87,000 pounds [Equal to a fully-loaded semi rig]
- ▶ Located in NE corner of County Roads 17 and 16, south of Horace, ND

SCHEDULE

- | | |
|---|--------------------|
| ▶ Issued solicitation | ▶ 11 July 2016 |
| ▶ Opened proposals | ▶ 1 Sept 2016 |
| ▶ Award contract | ▶ Dec 2016 |
| ▶ Notice to proceed (14 days) | ▶ Dec 2016 |
| ▶ Contractor submittals and review | ▶ Jan - March 2017 |
| ▶ Contractor mobilizes and begins preload construction to stabilize soils | ▶ April 2017 |
| ▶ End of 275 day preload of site/ start construction of structure | ▶ Feb 2018 |
| ▶ Complete construction of Inlet | ▶ 2020 |





Mitigation Plan Summary

Oct. 12, 2016

Table of Contents

The full Mitigation Plan is 177 pages and includes the following items.

- Property Acquisition Philosophies
- Typical Property Acquisition Process
- Appraisal Review Plan
- Offer Presentation AND Negotiation Process
- Property Rights Map
- Property Acquisition Schedule
- Early Residential Property Acquisition
- Organic Farmland Acquisition Plan
- Acquisition/Mitigation of Properties in Upstream Retention Area
- USACE / FEMA Coordination Plan
- Flowage Easement Plan
- Sample Flowage Easement
- Disposal of Excess Property
- Cemetery Mitigation Plan
- Mitigation of Historic Places
- Post-Operation Debris Clean-Up Plan
- Summer Operation Supplemental Farm Revenue Program
- Financial Assurance Plan for On-going Mitigation
- Mitigation Communications Plan
- OHB Mitigation Project
- Comstock Mitigation Plan
- In-Town Levee Mitigation Projects
- Environmental Mitigation

The Diversion Authority has developed a detailed Mitigation Plan outlining mitigation requirements that will be followed for the Fargo-Moorhead Area Diversion Project (Project) to address mitigation needs previously identified during studies by the US Army Corps of Engineers and the Minnesota Department of Natural Resources (MDNR). The plan was submitted to the MDNR and the North Dakota State Water Commission (NDSWC).

The plan outlines the steps the Diversion Authority will take to ensure the fair treatment of people, property and the environment impacted by the project. The Mitigation Plan consists of comprehensive property mitigation and environmental mitigation components. The Mitigation Plan is also a compilation of a series of plans for a variety of topics.

The Diversion Authority is following all federal and state laws related to acquisition of property rights. In addition, the Diversion Authority has established additional protections beyond federal and state requirements for impacted properties in its Mitigation Plan.

The Project has been studied extensively by the Diversion Authority, Corps, MDNR and others. The Project has received a Federal Record of Decision (ROD), Federal authorization by Congress through the Water Resources Reform and Development Act (WRRDA) of 2014. The Project received a new start and its first Federal construction appropriation in 2016. In addition, the Diversion Authority entered into a Project Partnership Agreement (PPA) with USACE on July 11, 2016. The MDNR issued a Determination of Adequacy regarding its environmental study of the project in June 2016.

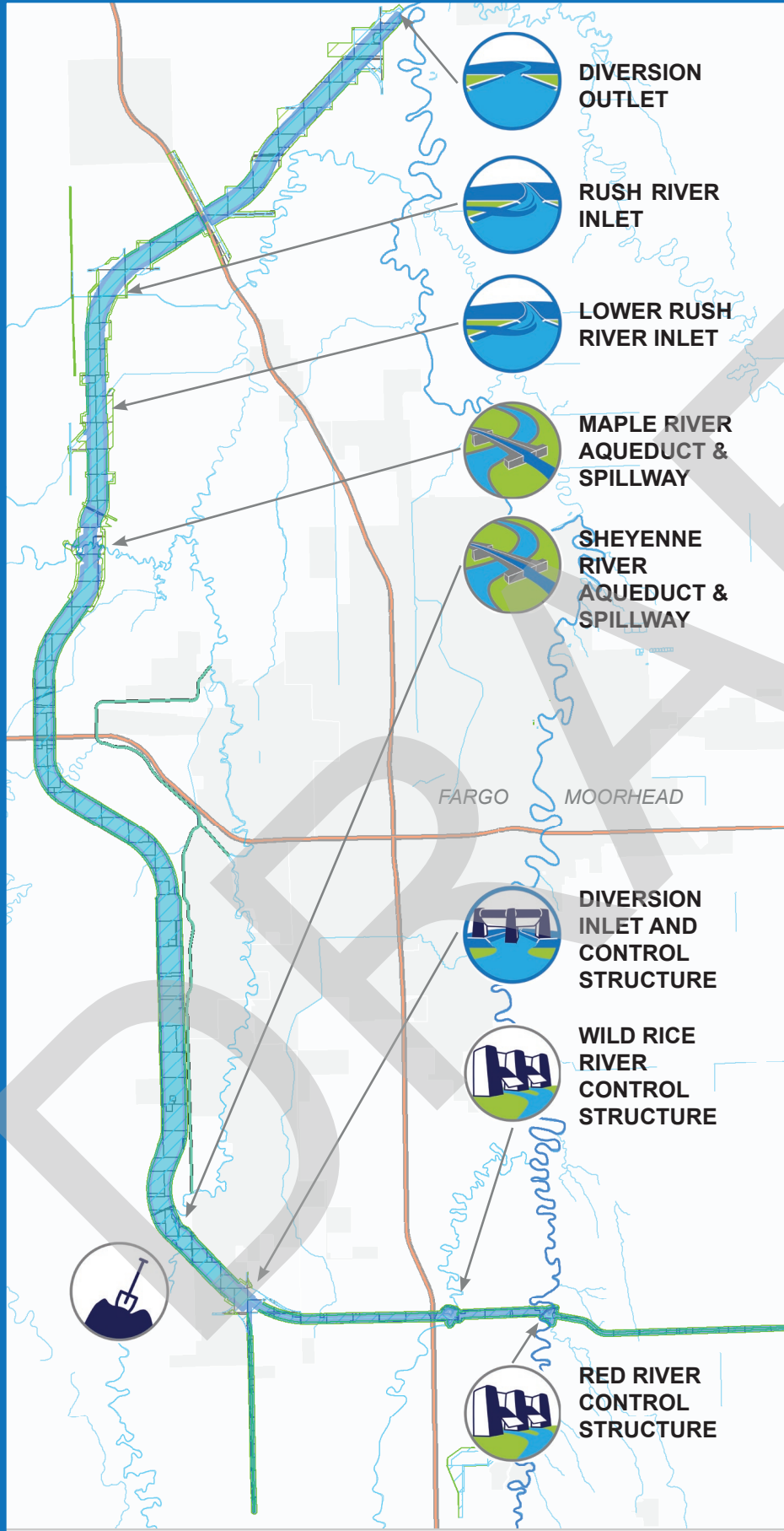
The Mitigation Plan is intended to be a living document that will be reviewed and amended periodically as additional information and operations prompt updates.

Full Mitigation Plan Document Available

www.fmdiversion.com/studies-technical-documents/



Project Footprint Properties Impacted



Process and Procedure

The Diversion Authority has adopted a thorough process for acquiring property. The mission of the Authority is to acquire necessary property in compliance with State and Federal guidelines and in accordance with the philosophy of being friendly, fair, and flexible to those whose property is required for the project.

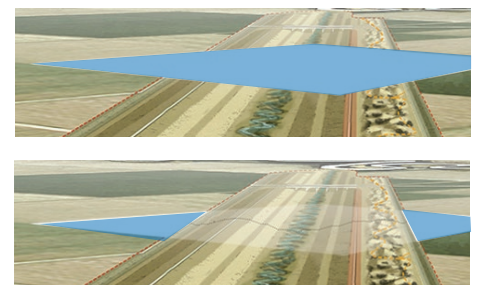
The Diversion Authority aims to acquire properties following a time line based on design and construction schedules. That being said, and now that the Project Partnership Agreement (PPA) has been executed with the Federal Government, the Diversion Authority will entertain requests for early acquisition from impacted residences. The intention of this program is to allow residents to be acquired early if they desire.

By the Numbers

- Approximately 1,500 total impacted parcels
- Flowage easements on approximately 840 parcels
- Approximately 660 parcels to acquire in fee title
- 1,125 North Dakota parcels
- 375 Minnesota parcels
- 100 total residential structures in the Project Area
- 75 residential structures in the upstream mitigation area

Excess Property

If requested by the property owner, the Diversion Authority may purchase full parcels of land rather than simply the bare minimum property needed to implement the Project. If, as a result, the Diversion Authority owns excess property, the remnants will be sold via public sale in a timely fashion.



Overview Of Some Key Elements

CLEAN UP PLANS

Operation of the Project will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention area will impact a different amount of acres for each flood event depending on the magnitude of the flood. 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. However, in recognition that operation of the upstream retention area may cause debris (logs, straw, trash, etc.) to accumulate within and along the edges of the upstream retention area, the Diversion Authority has developed post-operation debris clean-up plans for both private and public properties. The private-lands debris clean-up plan is patterned after the “clean-up week” approached used in the metro area where items to be disposed of are piled up at the curb. The public-lands repair and debris clean-up plan is patterned after the approach FEMA uses for post-disaster damage assessment and reimbursement where local government units are reimbursed for cleanup costs.

FLOWAGE EASEMENTS

The FM Area Diversion Project includes a retention area upstream of the Project. The retention area is a necessary component of the Project, and it will occasionally and temporarily store flood waters. Flowage Easements will be purchased and applied to the properties in the upstream retention area. The value of each flowage easement will be determined through an appraisal that will consider the depth, duration, and frequency of additional flooding, and the highest and best use of the property to determine the market value of the property. For properties on the fringe of the impacted area, the Diversion Authority will offer to pay actual, physical damages after the Project operations as an alternative to encumbering those lands with a flowage easement.

SUPPLEMENTAL FARM REVENUE PROGRAM

Summer operation of the Project would likely damage growing crops. Even though summer operation is extremely unlikely, the Diversion Authority will adopt a Summer Operation Supplemental Farm Revenue program to provide additional assurance to producers in the upstream retention area. The Program would provide producers with coverage for the risk associated with Project induced flooding on growing crops if the Project operates during summer. The Diversion Authority understands and acknowledges that this program is important to the agricultural community because under these events, it is anticipated that producers will not be able to utilize the federal crop insurance program(s) for damages caused by operation of the Project.

CEMETERIES

There are 11 cemeteries upstream of the Diversion Project that may potentially be impacted by varying levels (ranging from 0.1 feet to 8.3 feet) of additional water during major floods due to operation of the Project in a 100-year (one-percent annual chance) flood. Analysis was also completed on these cemeteries for the 500-year event and those impacts are detailed on individual cemetery maps. Additionally, there are 19 cemeteries that currently would flood within the protected area that will now have permanent flood protection due to construction of the Project.

Some of the recommended mitigation steps for cemeteries include protective berms, access changes, debris fencing, anchoring headstones, and/or raising the site. The previously completed cemetery studies can be found at www.fmdiversion.com/studies-technical-documents/.

FINANCIAL CONSIDERATIONS

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 program. 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.

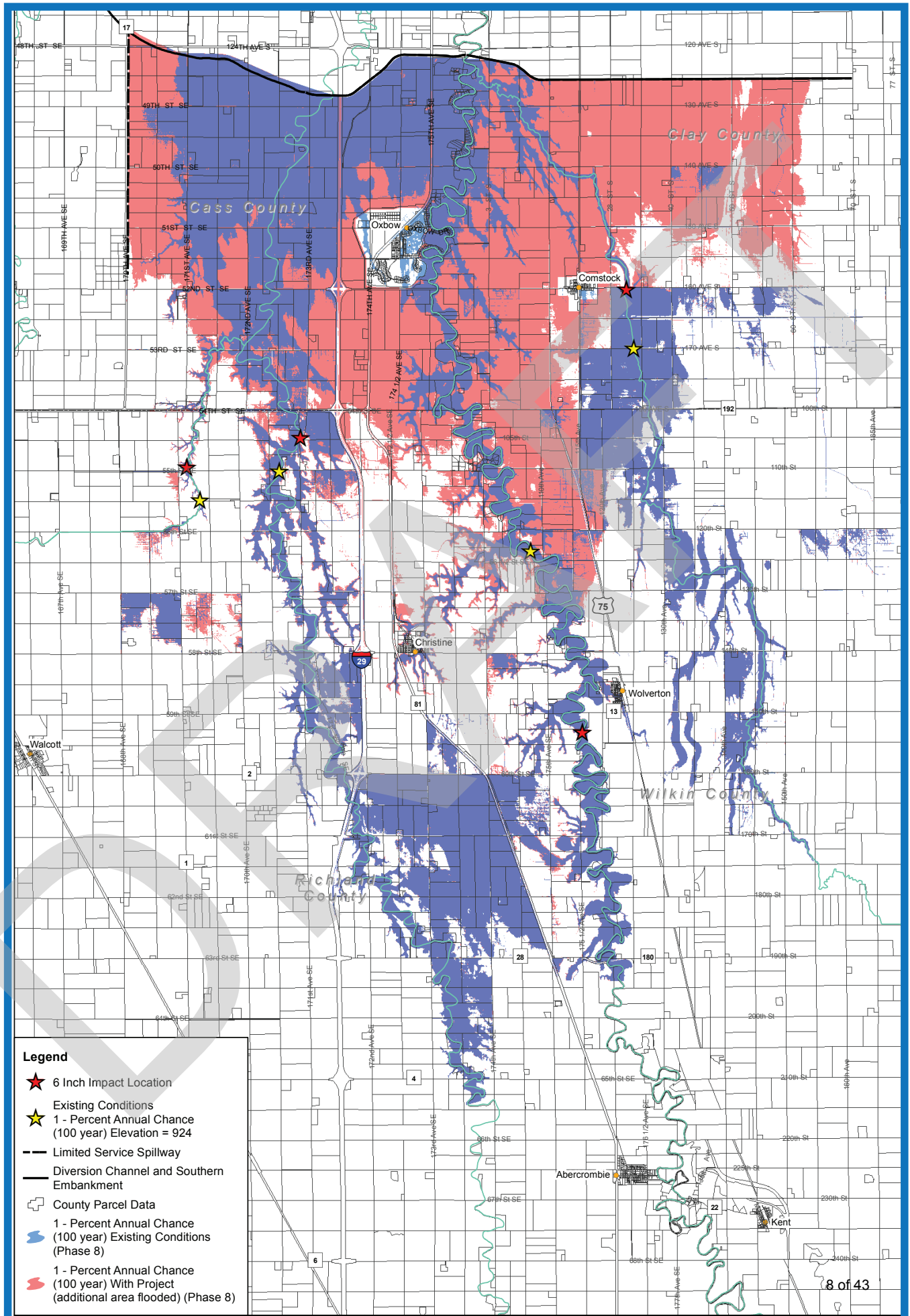
INDEPENDENT MITIGATION PROJECTS

The Diversion Authority has the following independent mitigation projects.

- In-town Levees
- Oxbow-Hickson-Bakkee Ring Levee
- Comstock Ring Levee
- Drayton Dam Improvements



Upstream impacts with and without the project during a 100-year flood event





November 2016

Informational Sheet

Farm Impacts & Mitigation

UPSTREAM RETENTION AREA

The FM Area Diversion Project includes upstream retention of flood waters during times of extreme flooding. This is an essential component to safely control the flood waters upstream and downstream of the metro area and is the most effective and efficient storage. In the past 100 years, the Project would have operated 11 times for a total of 69 days.

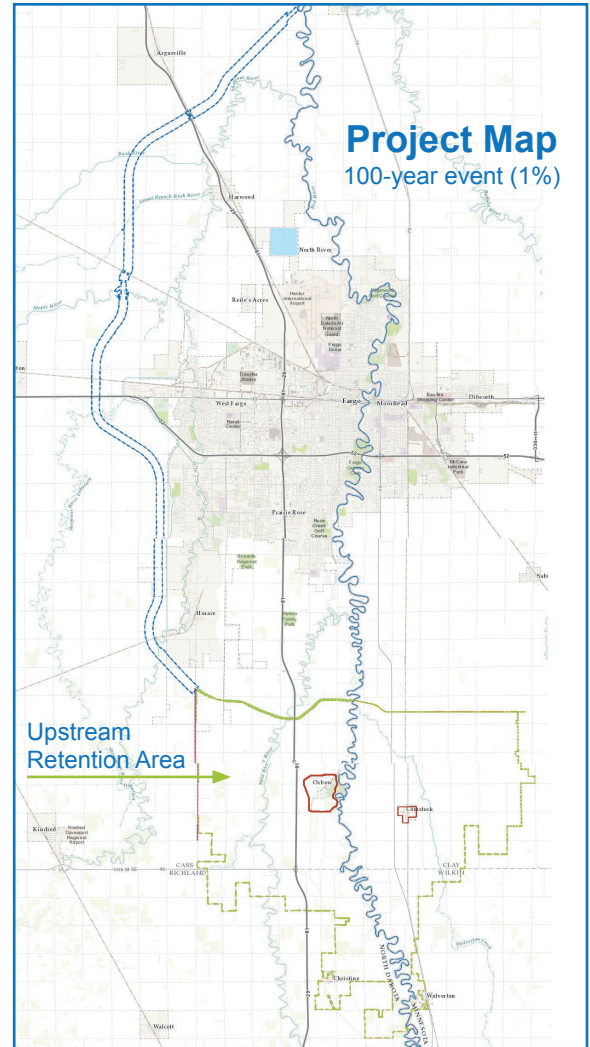
During operation of the Project, the upstream retention area will temporarily store various amounts of flood waters, depending on the magnitude of the flood event. The retention area will not be used every year and will not be used until a flood event exceeds 35-foot flood stage through Fargo-Moorhead. An NDSU study concluded there is an 85% chance every year that no water will be stored upstream. Under an extreme flood event, such as the 100-year flood, the upstream retention area will impact about 39,000 acres, and approximately half of those acres would be impacted today under the same flood event without the project.

AGRICULTURAL RISK STUDY OF IMPACTS

NDSU Agribusiness and Applied Economics department studied the risks and impacts of the Project on farm revenue in the upstream retention area. The study identified the following:

- The study indicated that “the key is to determine when producers can begin planting and if planting is delayed due to the diversion what, if any, planting delays cost the producer in lost revenue.”
- Accordingly, the NDSU research team studied two particular dates:
 - When flood water leaves the land, and
 - When spring planting begins in the retention area.
- Historical data indicates that spring planting starts most frequently about the same time as the effects of man-made flooding are over.
- Between 10,800 and 18,500 acres (depending on flood event size) will flood due to diversion that would not flood otherwise.
- Cumulative revenue losses across the entire study area ranged from \$0 in the best-case (no flood) situations to slightly over \$3 million per event over the entire area of 39,000 acres in the worst-case (extreme flood) situations.
- Conclusions from the study indicated that “there is a high-probability of incurring planting delays associated with man-made water storage. But, planting delays created by the proposed FM Diversion, at this time, do not appear to be extensive – at least not several weeks in length. Large delays are possible, but those situations are not as likely as shorter delays.”

“The study considered numerous factors and concluded that the revenue losses to agricultural producers would not be substantial.”

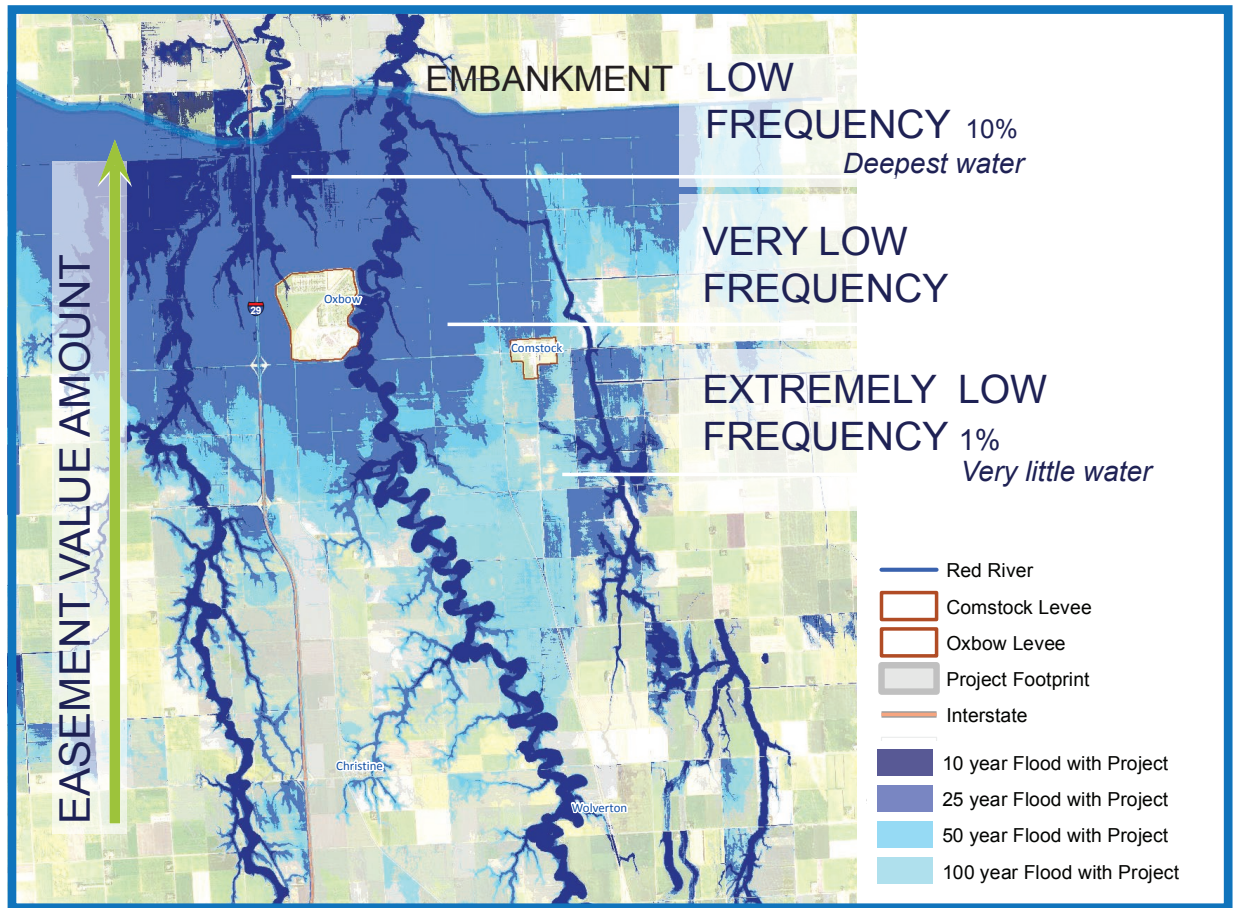


AT A GLANCE

- The retention area will not be used every year. The area will only be used when a flood event exceeds 35-feet.
- There is an 85% chance every year that no water will be stored upstream.
- Smaller storage areas distributed upstream do not provide the level of protection necessary and would have greater impacts.
- Upstream retention in planned location is most effective and efficient because it's close to the area being protected.

MITIGATION: FLOWAGE EASEMENTS

- Upfront payment to property owners impacted by the retention of flood waters.
- Easement provides legal ability to temporarily and occasionally retain flood waters.
- Easement will allow farming to continue, however, development may be regulated depending on extent of impacts.
- Easement value is determined by a market-based appraisal, considering depth, duration, and frequency of flooding, highest and best use of the property, and property impacts.
- Easement values will vary by parcel with the general trend of higher easement values closer to the embankment and lower easement values farther from the embankment.



- Easements are required by Federal law for the Project.
- The purchase of flowage easements is included in the Project cost estimate and financial plan.

MITIGATION: SUMMER FLOOD CROP INSURANCE

- On-going payment to producers for the crop loss caused by summer operation of the Project.
- Summer operation of the Project is extremely unlikely, but summer operation could cause devastating damage to growing crops.
- Diversion Authority has committed to provide greater mitigation than required by Federal or State laws, and greater than what has historically been provided.
- Diversion Authority will purchase an insurance product and provide coverage free of charge to producers.
- Ongoing O&M costs incurred after initial Project construction will be paid by sales taxes or a maintenance assessment to the properties benefited by the Project.

PROPERTY ACQUISITION PROCESS

INFORMATION SHEET

DECEMBER 2016



PROCESS

DESIGN SHOWS PROPERTY IS NEEDED

Design team including the U.S. Army Corps of Engineers, HMG or the P3 firm let the Program Management Consultant know the property is needed.

APPROVAL TO BEGIN

The Diversion Authority Finance Committee reviews the need and if approved, submits it to the Cass County Joint Water Resource District (CCJWRD). A land agent is brought on board to work with the property.

RIGHT OF ENTRY REQUESTED TO SURVEY PROPERTY SENT

Right of Entry requested so property can be surveyed.

LAND AGENT CONTACTS

Land agent is in contact with property owner. A land agent will be assigned to assist with every affected parcel.

STEPS TO DETERMINE FAIR MARKET VALUE BEGIN

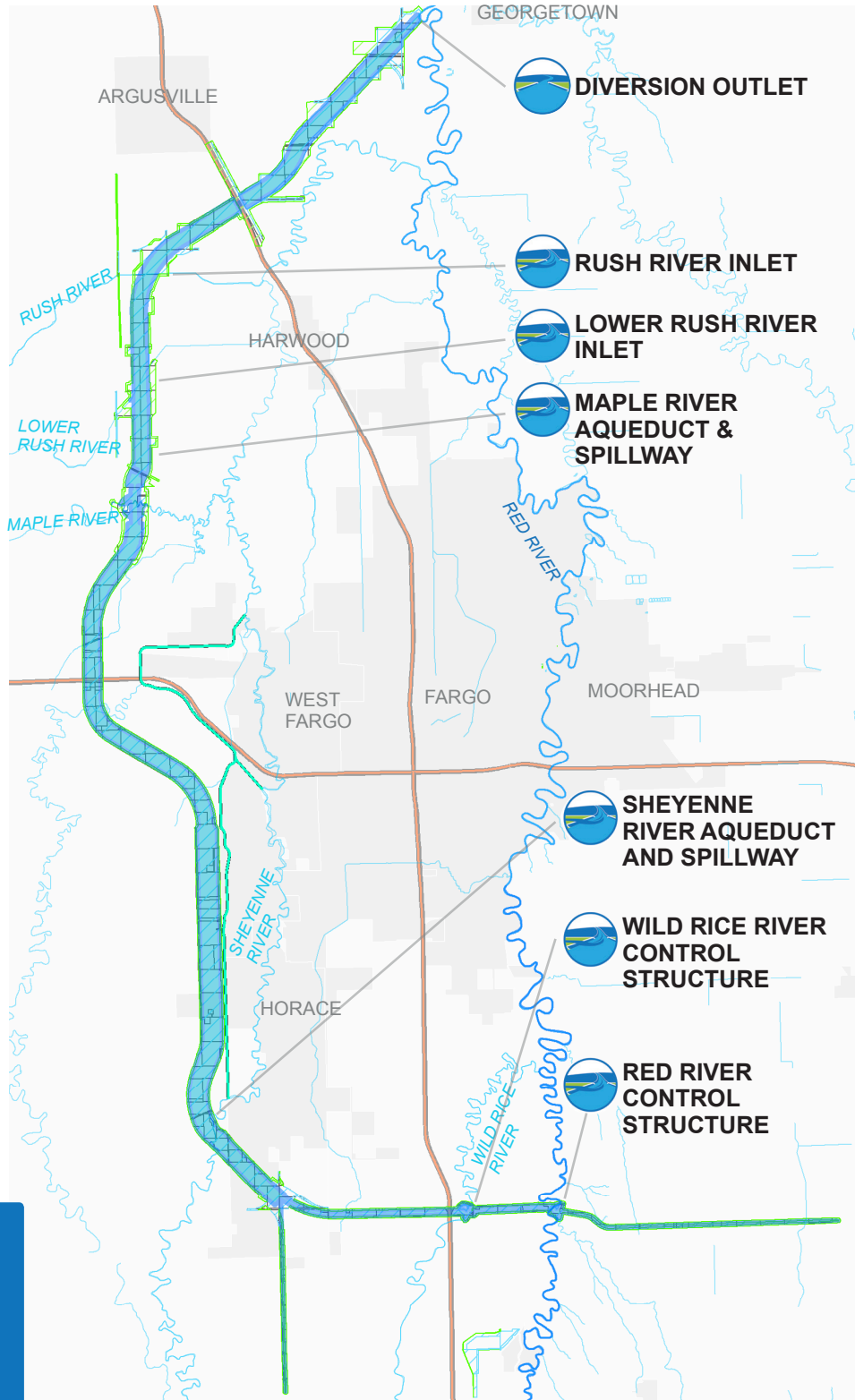
The property is appraised. The appraisal must follow federal standards. Draft appraisal report submitted for review and the Just Compensation value is approved by the CCJWRD in accordance with state and federal law. If the acquisition requires relocation, the cost of relocation to a similar home that is "decent, safe and sanitary," is also presented to the property owner.

LETTER OF INTENT TO ACQUIRE SENT

The land agent sends the property owner a certified letter with a Notice of Intent (NOI) to Acquire. Land agent in contact with the property owner.

OFFER OF JUST COMPENSATION MADE

If the owner accepts the offer, the purchase agreement is signed and a closing date is set. If the owner does not agree with the opinion of value, the owner works with the land agent to arrive at a mutually agreeable price.



For more information visit
www.FMDiversion.com

Property Acquisition Philosophies

Mission

To acquire the property necessary for the FM Area Diversion Project, in compliance with State and Federal guidelines and in accordance with the philosophy of being friendly, fair, and flexible to those whose property is required for the Project.

Over-Arching 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 facilitating the acquisition and relocation process.
- Use Eminent Domain as a last resort measure to acquire the necessary property.
- Acquisition costs will stay within the program's annual budget.
- Program will comply with State 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 County Joint Powers Agreement (MCCJPA).
- Program will acquire land impacted by the project as opportunities arise with willing sellers.
- 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. Land 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, etc.).
- 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.

Property Acquisition Statistics

- Property Types:
 - In-Town Residential
 - Commercial Businesses
 - Oxbow Residential
 - Farms
 - Upstream Retention Area & Rural Residential
 - Flowage Easements
- Project Property Needs:
 - ≈1,650 parcels
 - ≈7,000 acres (footprint)
 - ≈\$400M value

Typical ND Property Acquisition Process

The Fargo-Moorhead Metro Flood Diversion Authority (DA) and Cass County Joint Water Resources District (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

- 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.
- d. Land acquisition firm 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 prepares ROE request for access to conduct boundary survey.
- c. CCJWRD manages ROE request and receipt forms, conducts initial follow-up calls, and notifies PMC and Land Agent when additional follow-up is required.
- d. Land Agent conducts any necessary additional follow-ups to establish singular point of contact.

4. Survey Parcel

- a. PMC 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 standards.
- b. Appraiser submits draft appraisal report for review (see Appraisal Review Plan for additional details).
- c. 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 45 days (goal) to negotiate fair market value for acquisition. Land Agent has 90 days (goal) to negotiate 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 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 landowner and CCJWRD, legal team prepares deed and additional documents required for closing.
- h. Exhaust all reasonable negotiation opportunities via personal meetings and phone contacts.

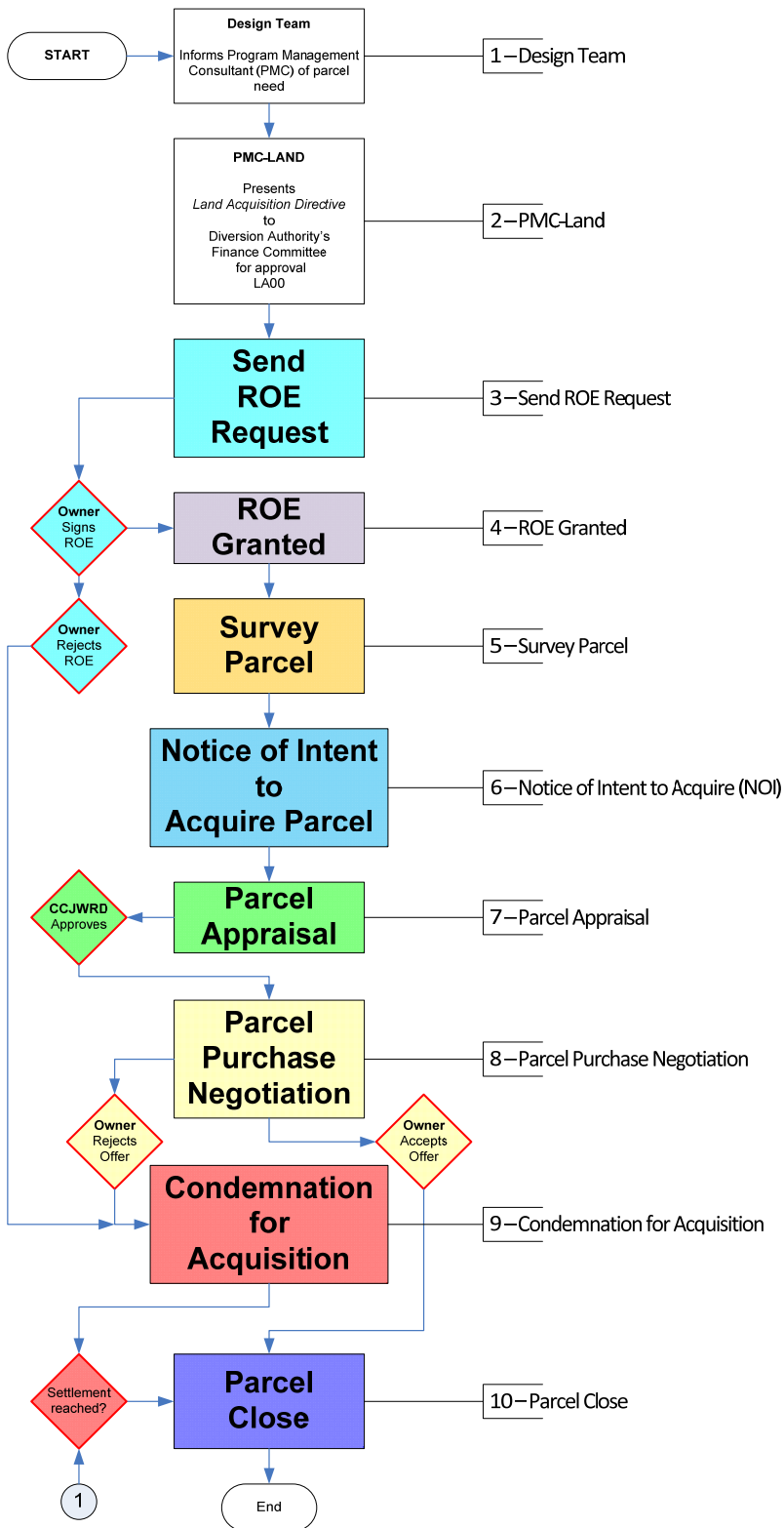
8. Parcel Close

- 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, designer, 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, legal team, in coordination with designer, Land Agent, and PMC, presents RESOLUTION OF NECESSITY and RESOLUTION OF OFFER TO PURCHASE for CCJWRD's consideration and approval. CCJWRD makes a decision based on timing and type of property being acquired as to which eminent domain process will be used to acquire the necessary property.
- c. Upon approval of RESOLUTIONS by CCJWRD, Land Agent presents RESOLUTIONS, along with final offer to property owner and notifies owner of one-week deadline for acceptance.
- d. If no acceptance, legal team starts an eminent domain action to acquire the necessary property.
- e. Legal team continues negotiations with landowner or landowner's counsel throughout judicial process. Legal team engages landowner's counsel in discovery and pre-trial motions and otherwise prepares for trial.
- f. Following acquisition of the property through the judicial process, Diversion Authority, USACE, etc., may proceed with construction on parcel.

Workflow diagram summary presented below. Detailed workflow diagram attached.



Early Residential Property Acquisition Program

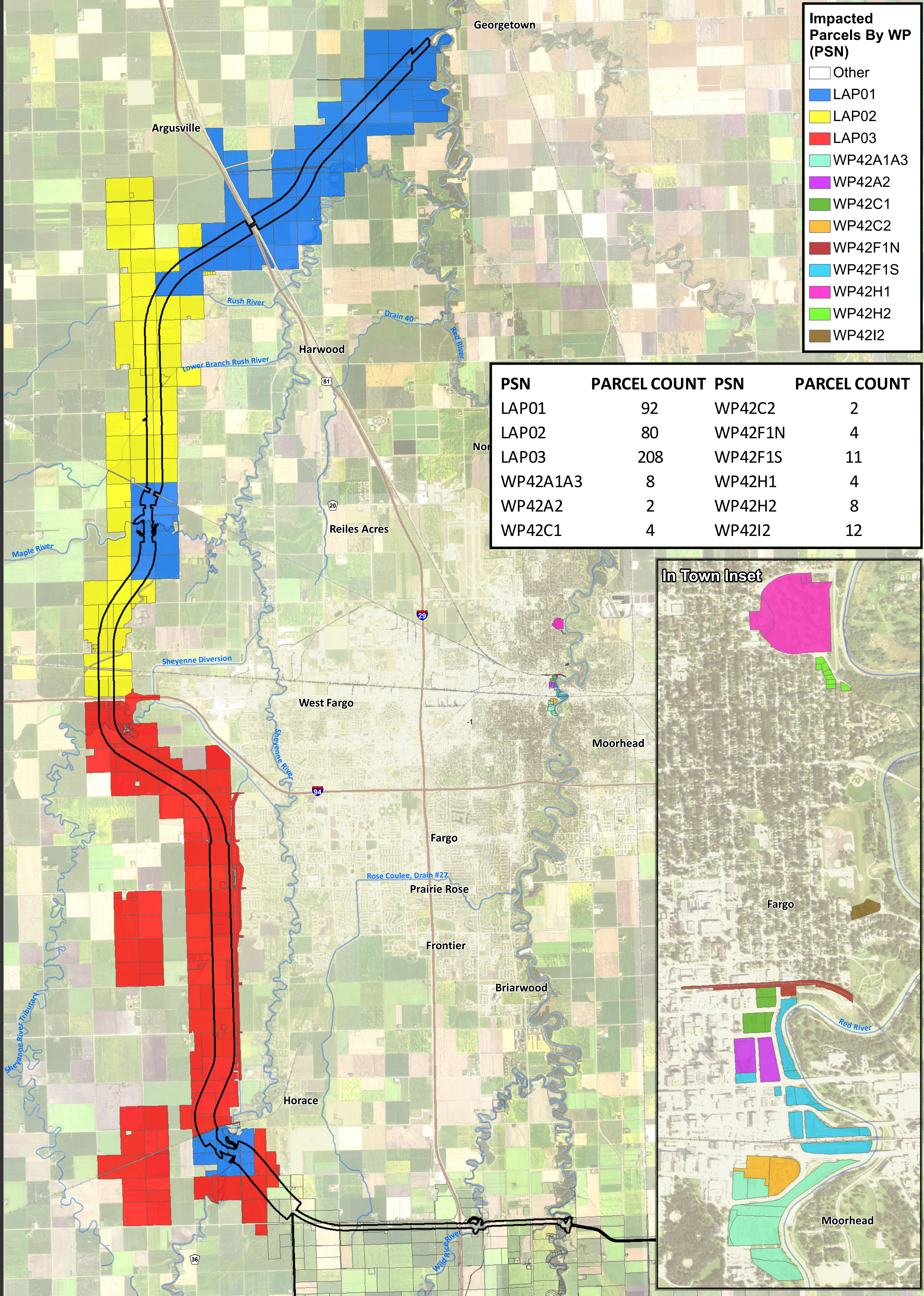
Introduction

The FM Area Diversion Project (Project) requires acquisition of approximately 100 residential properties. The Diversion Authority aims to acquire these properties following a timeline based on design and construction schedules. That being said, and now that the Project Partnership Agreement (PPA) has been executed with the Federal Government, the Diversion Authority will entertain requests for early acquisition from impacted residences. The intention of this program is to allow residents to be acquired early if they desire.

Early Acquisition Process

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

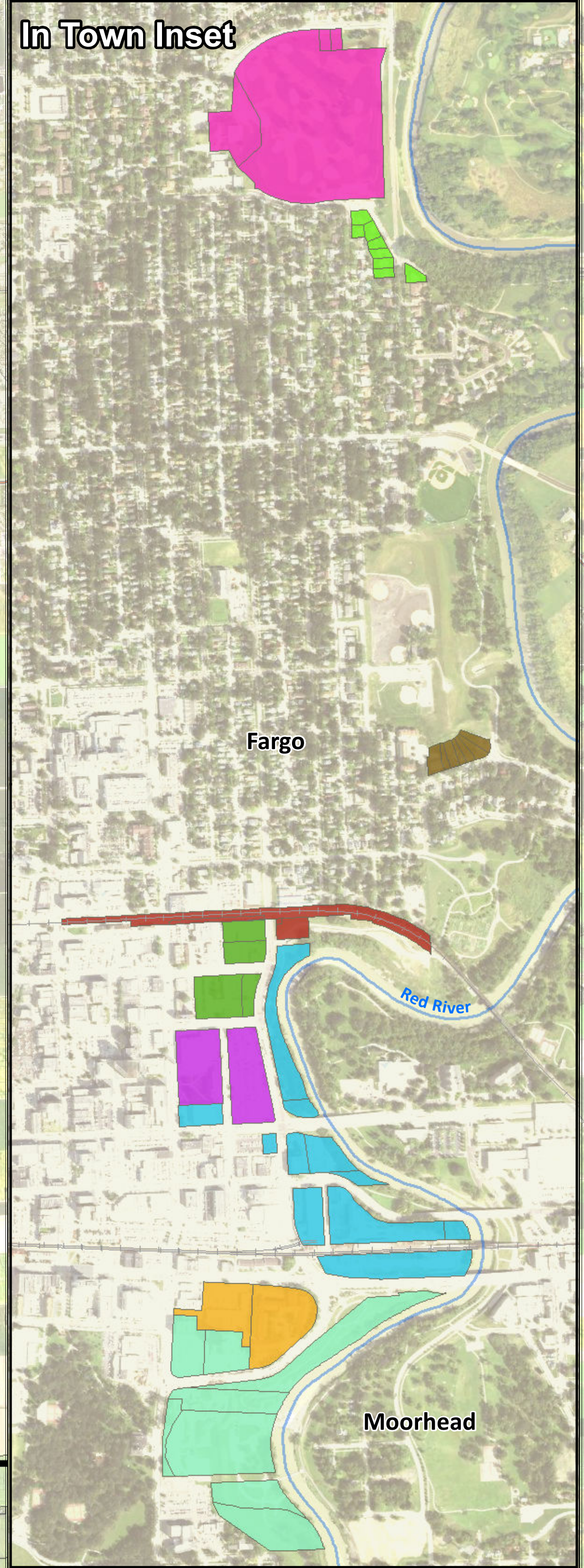
- The Diversion Authority will approve an annual budget with a line item for 'early acquisitions'.
- The Diversion Authority will notify all impacted residences and make them aware of an opportunity for early acquisition.
- If impacted residents are interested in an early acquisition, they will be instructed to contact the acquiring entity (Cass County Joint Water Resource District (CCJWRD) or Moorhead-Clay County Joint Powers Agreement (MCCJPA)), or the Program Management Consultant (PMC).
- The PMC will confirm that the interested residence 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 residence.
- 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.



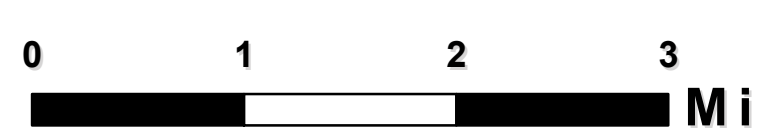
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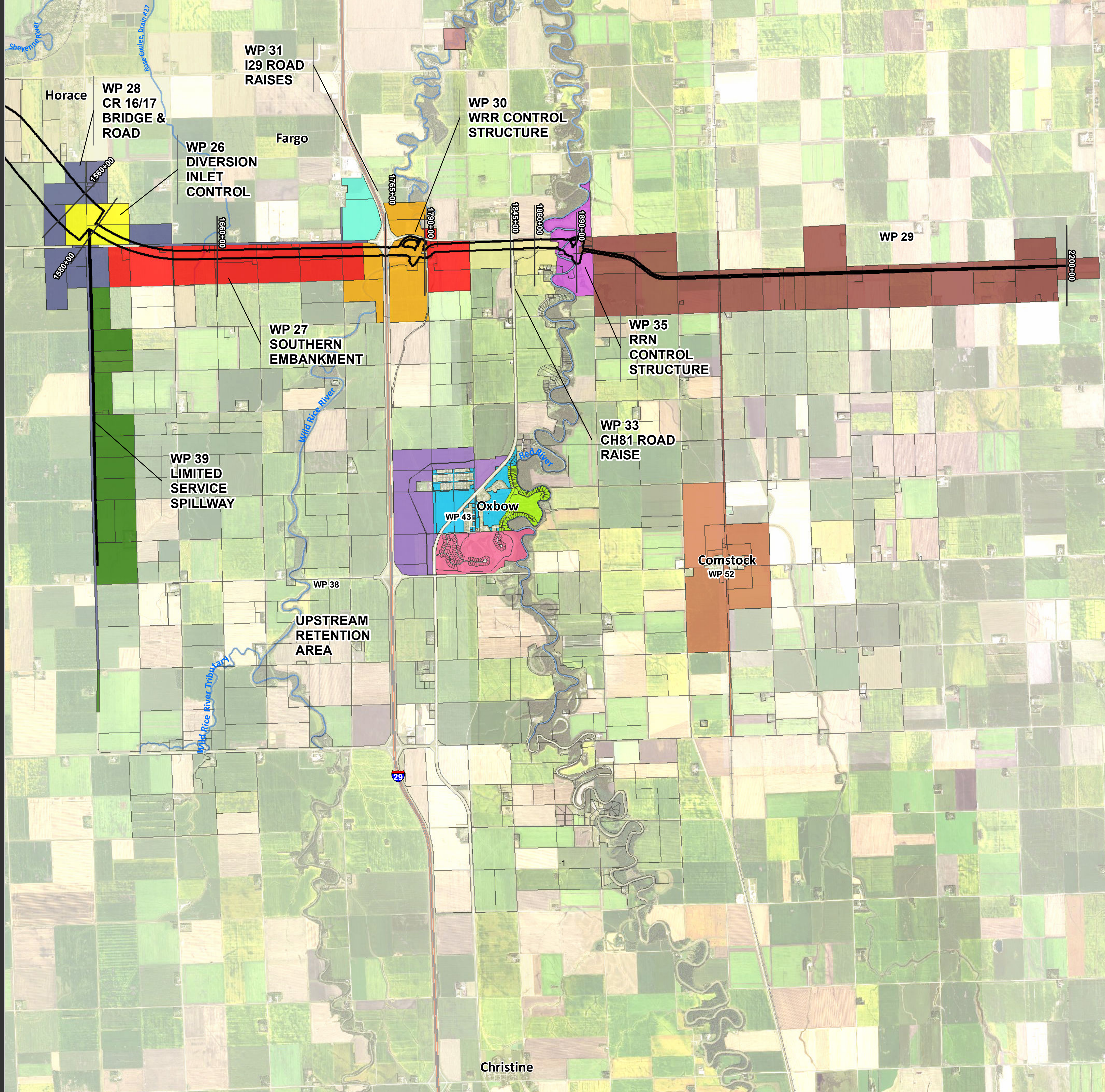
- Other
- LAP01
- LAP02
- LAP03
- WP42A1A3
- WP42A2
- WP42C1
- WP42C2
- WP42F1N
- WP42F1S
- WP42H1
- WP42H2
- WP42I2

PSN	PARCEL COUNT	PSN	PARCEL COUNT
LAP01	92	WP42C2	2
LAP02	80	WP42F1N	4
LAP03	208	WP42F1S	11
WP42A1A3	8	WP42H1	4
WP42A2	2	WP42H2	8
WP42C1	4	WP42I2	12



METRO DIVERSION PROPERTY ACQUISITION
**PARCELS ASSIGNED TO
 WORK PACKAGES**
 CHANNEL AND
 IN TOWN AREA

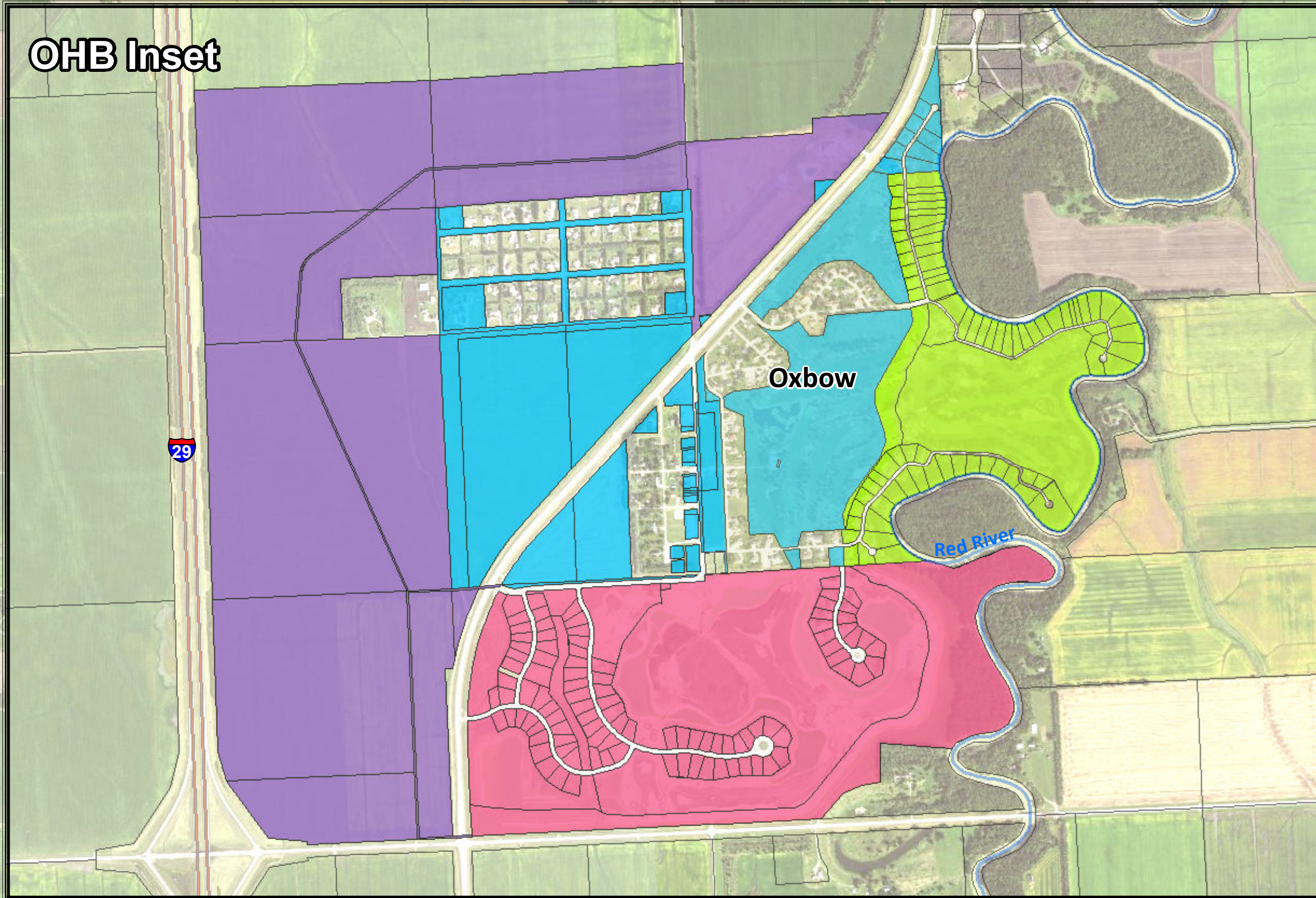




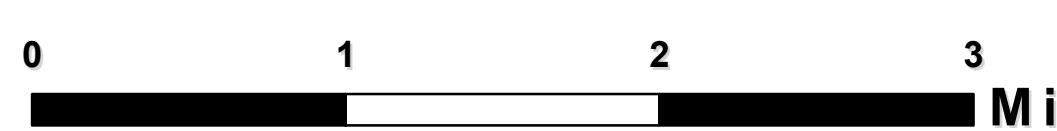
Impacted Parcels By WP (PSN)

WP27	WP33	WP43A
WP28	WP35	WP43B
WP29	WP36	WP43C
WP30	WP39	WP43D
WP31	WP43	WP52
WP26		
Other		

PSN	PARCEL COUNT	PSN	PARCEL COUNT
WP26	3	WP38	538
WP27	20	WP39	17
WP28	13	WP43	1
WP29	29	WP43A	107
WP30	7	WP43B	18
WP31	2	WP43C	82
WP33	4	WP43D	52
WP35	8	WP52	18
WP36	1		



METRO DIVERSION PROPERTY ACQUISITION
**PARCELS ASSIGNED TO
 WORK PACKAGES**
 SOUTHERN STAGING AREA
 AND EMBANKMENTS



Property Acquisition Schedule 1

Major Project Element	Work Package ²	State	Work Limits Defined by Designer	Start Property Acquisition ³	Notification to Property Owners ⁴	Final Design Complete	Final Permit Application	Complete Property Acquisition	Permit Issuance (Goal)	Number of Parcels Impacted	Land Firm
Features Constructed by Diversion Authority using Public-Private-Partnership (P3)											
Diversion Channel Phase 1 ⁵	DC1A	ND	June 2016	June 2016	July 2016	Nov 2017	Nov 2017	Nov 2017	Dec 2017	41	HMG
	DC1B	ND	June 2016	June 2016	July 2016	Nov 2017	Nov 2017	Nov 2017	Dec 2017	49	Ulteig
Diversion Channel Phase 2	DC2	ND	June 2017	June 2017	July 2017	Nov 2018	Nov 2018	Nov 2018	Dec 2018	80	
Diversion Channel Phase 3	DC3	ND	June 2017	August 2017	Aug 2017	Nov 2019	Nov 2019	Nov 2019	Dec 2019	210	
Features Constructed by Diversion Authority											
CR16/17 Bridge & Road	WP28	ND	Feb 2016	Feb 2016	Jan 2016	Aug 2016	Aug 2016	April 2017	April 2017	13	HMG
Features Constructed by USACE											
Diversion Inlet Control Structure	WP26	ND	Feb 2016	Jan 2016	Jan 2016	June 2016	May 2016	June 2016	June 2016	3	HMG
Wild Rice Control Structure	WP30	ND	Jan 2017	Jan 2017	Feb 2017	April 2018	April 2018	April 2018	May 2018	9	
I-29 Road Raise	WP31	ND	Jan 2017	Jan 2017	Feb 2017	April 2018	April 2018	April 2018	May 2018	- ⁶	
Red River Control Structure	WP35	MIN	Jan 2018	Jan 2018	Feb 2018	April 2019	April 2019	April 2019	May 2019	8	
Southern Embankment (ND) ⁷	WP27	ND	Jan 2020	Jan 2020	Feb 2018	April 2021	April 2021	April 2021	May 2021	20	
CR 81 Road Raise	WP33	ND	Jan 2018	Jan 2018	Feb 2018	April 2021	April 2021	April 2019	May 2021	4	
Southern Embankment (MN) ⁸	WP29	MIN	Jan 2019	Jan 2019	Feb 2019	April 2019	April 2019	April 2020	May 2019	29 ⁹	
BNSF Moorhead Line Raise	WP29	MIN	Jan 2019	Jan 2019	Feb 2019	April 2019	April 2019	April 2020	May 2019	-	
HWY 75 Bridge/Raise	WP29	MIN	Jan 2019	Jan 2019	Feb 2019	April 2019	April 2019	April 2020	May 2019	-	
Limited Service Spillway	WP39	ND	Jan 2020	Jan 2020	Feb 2020	April 2022	April 2022	April 2021	May 2022	17	
Comstock Ring Levee	WP52	MIN	Jan 2020	Jan 2020	Feb 2020	April 2020	April 2020	April 2021	May 2020	18	
Upstream Retention Area	WP38	ND	Jan 2018	Jan 2018	Feb 2018	-	-	April 2022	May 2022	513 ¹⁰	
	WP38	MIN	Jan 2018	Jan 2018	Feb 2018	-	-	April 2022	May 2022	324	

NOTE: The property rights in the Upstream Retention Area will be acquired prior to the Project being operational, which is after the final segment of the embankment is constructed.

¹ Based on proposed P3 and USACE schedules from February 2016.

² See associated maps for location of work packages and impacted parcels.

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

⁴ Initial notification shall be a letter from the acquiring entity, introducing the Land Agent, who will follow-up with separate correspondence indicating an intent to acquire, the process for acquisition, and an offer to meet.

⁵ Diversion Channel Phase 1 includes Maple River & Sheyenne River Aqueduct Structures.

⁶ Parcels for the I-29 Road Raise are the same as those for the Wild Rice Control Structure.

⁷ The southern embankment in ND will likely be designed and constructed in three (3) phases.

⁸ The southern embankment in MN will likely be designed and constructed in two (2) phases.

⁹ Parcels for the southern embankment in MN include the properties needed for the BNSF and HWY 75 projects.

¹⁰ Upstream retention area property rights will affect approximately 838 parcels in ND and MN.

Acquisition / Mitigation of Properties in the Upstream Retention Area

Introduction

The FM Area Diversion Project includes a diversion channel, levees through town, and retention of flood waters immediately upstream of the metro area. The retention of flood waters forms an upstream retention area (also referred to as Staging Area) that will require mitigation of its impacts. Mitigation for the upstream retention area includes acquisition or mitigation of structures and acquisition of flowage easements 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).

This plan was developed with the intention to minimize to the extent possible the areas that will be encumbered by a restrictive flowage easement. This plan gives property owners in the “fringe” areas of the upstream retention area the option to consider a ‘pay for physical damages’ approach, or the flowage easement approach. The intent is to offer property owners in the “fringe” areas of the upstream retention area more certainty by proposing to pay actual, physical damages vs offering a one-time payment associated with a flowage easement, which would likely be a rather small payment, especially in the “fringe” areas where impacts are so infrequent.

This plan was prepared using an alternate southern embankment alignment between the Diversion Inlet Structure and the Wild Rice Control structure; the alignment used is located further south to avoid the I-29 intersection, to avoid a rural water well field, and preserve additional residences in this area.

USACE / FEMA Coordination Plan

USACE and FEMA developed a Coordination Plan (April 2015, 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 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/dam, 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”. **The Limited Service Spillway will be constructed at elevation 924 (NAVD88).**
- 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, which *currently* is 925 feet NAVD at the dam according to Appendix C of the Diversion Inlet Structure design.” (emphasis added)
NOTE: Based on the most current design, the water surface elevation at the maximum capacity of the dam is actually now 924 feet (NAVD88), which reduced the areas impacted.

Structure Mitigation in the Upstream Retention Area

Impacts to structures in the upstream retention area will be mitigated following the criteria outlined below.

- The Phase 8 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.
- The Phase 8 hydraulic model will be used to determine the Operating Pool (Floodway) in the upstream retention area.
- NOTE: Aerial photography of the upstream retention 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.
- **If the flood water depth is greater than or equal to two-feet at the structure, the structure will be acquired via the typical acquisition process following an appraisal.**
- **If the structure is located within the floodway, it will be acquired via the typical acquisition process following an appraisal.**
- **If the flood water depth is less than two-feet at the structure, and if the structure is outside the floodway and within the FEMA 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, relocation, fee acquisition, and ring levees. Non-structural measures for or non-residential structures may include dry flood proofing, elevation,**

relocation, fee acquisition, and ring levees. 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.

- If the structure is located outside the FEMA revision reach, a takings analysis will be performed to determine appropriate remedial action.
- The owner and occupants of the acquired structures may be eligible for relocation benefits following the Uniform Act (URA).

Land Mitigation in the Upstream Retention Area

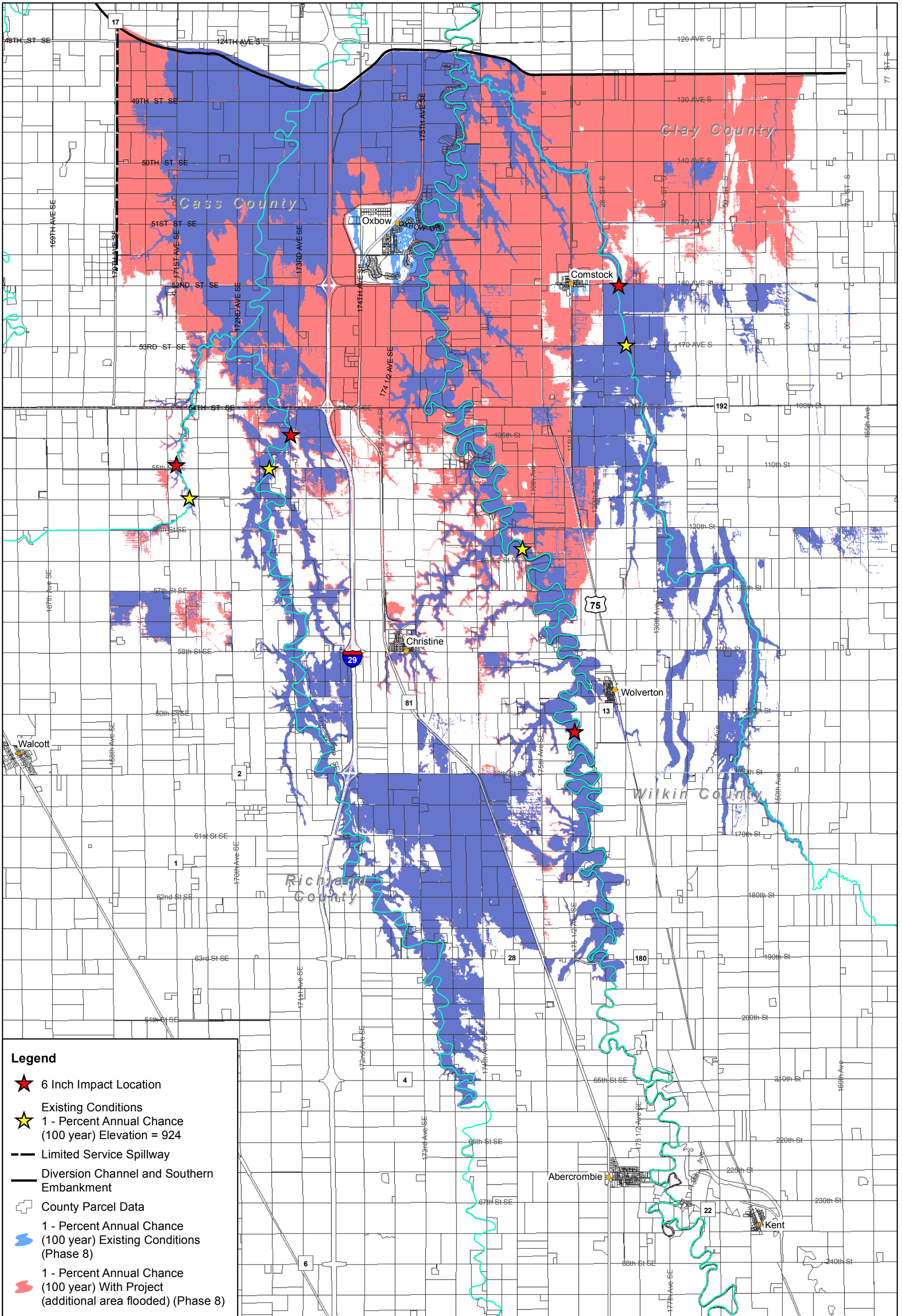
Impacts to land in the upstream retention area will be mitigated following the criteria outlined below.

- The Phase 8 hydraulic model will be used to define the ‘existing’ and ‘with-project’ flood water depths and durations within the upstream retention area.
- The Phase 8 hydraulic model will be used to determine the Operating Pool (Floodway) in the upstream retention area.
- The Diversion Authority (or its member entities) will obtain flowage easements on the following properties:
 - Properties within the Operating Pool (Floodway). This is a Federal requirement, and the flowage easement in this area will restrict all development. The Operating Pool (Floodway) is the area required for Project operation to mitigate downstream impacts. This area will be mapped as Floodway.
 - Properties with greater than or equal to six-inches of impact (defined as depth difference from the ‘with-project’ to the ‘existing’ flooding from the one-percent annual chance flood event) that are outside the Floodway, except along the Red River where the six-inch impact boundary extends upstream of where the existing one-percent annual chance flood elevation meets the 924-foot elevation. Flowage easements in this area will require developments to be above the one-percent annual chance flood elevation or the base flood elevation (BFE).
 - Flowage easements will not be obtained beyond where the existing one-percent annual chance flood elevation meets the 924-foot elevation because areas beyond these limits are located within the river channels.
- The Diversion Authority understands that the likely valuation of a flowage easement will be minimal relative to the concerns of the property owner. Therefore, the Diversion Authority proposes that for those properties with less than six inches of impact, if a flooding event occurs that damages a property, the Diversion Authority will pay actual, physical damages after Project operation on the following properties:
 - Areas outside of the flowage easement area (as defined above), but within the 924-foot elevation contour, extended to the next closest (upstream) property line, and limited along river channels to areas that have equal to or greater than six-inches of impact (defined as depth difference from the ‘with-project’ to the ‘existing’ flooding from the one-percent annual chance flood event).
 - Alternatively, if desired by the property owner, the Diversion Authority will offer a flat-rate flowage easement to property owners within this boundary.

- The Diversion Authority will establish an Independent Damage Review Team to which property owners will be able to submit damage claims to. The formation of an Independent Damage Review Team is intended to provide a mechanism, other than legal action, for consideration of physical damage. However, this process is not intended to usurp any legal rights and related courses of action that property owners have with regards to damage claims. The Independent Damage Review Team will review each claim, utilize all available data, and make a determination if actual, physical damage was caused by the Project operation. The Diversion Authority will solicit members for the Independent Damage Review Team from the Diversion Authority, State of North Dakota, State of Minnesota, Richland County, and Wilkin County.
- The Diversion Authority will compensate for damages through an operating 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 on benefiting properties.

Attachments

- Existing and With-Project One-Percent Annual Chance (100-year) Floodplain Map
- Six-Inch Impact and Flowage Easement Boundary Map
- 924-foot Elevation Contour and Pay for Damages Boundary Map
- Upstream Retention Area Mitigation Areas Map

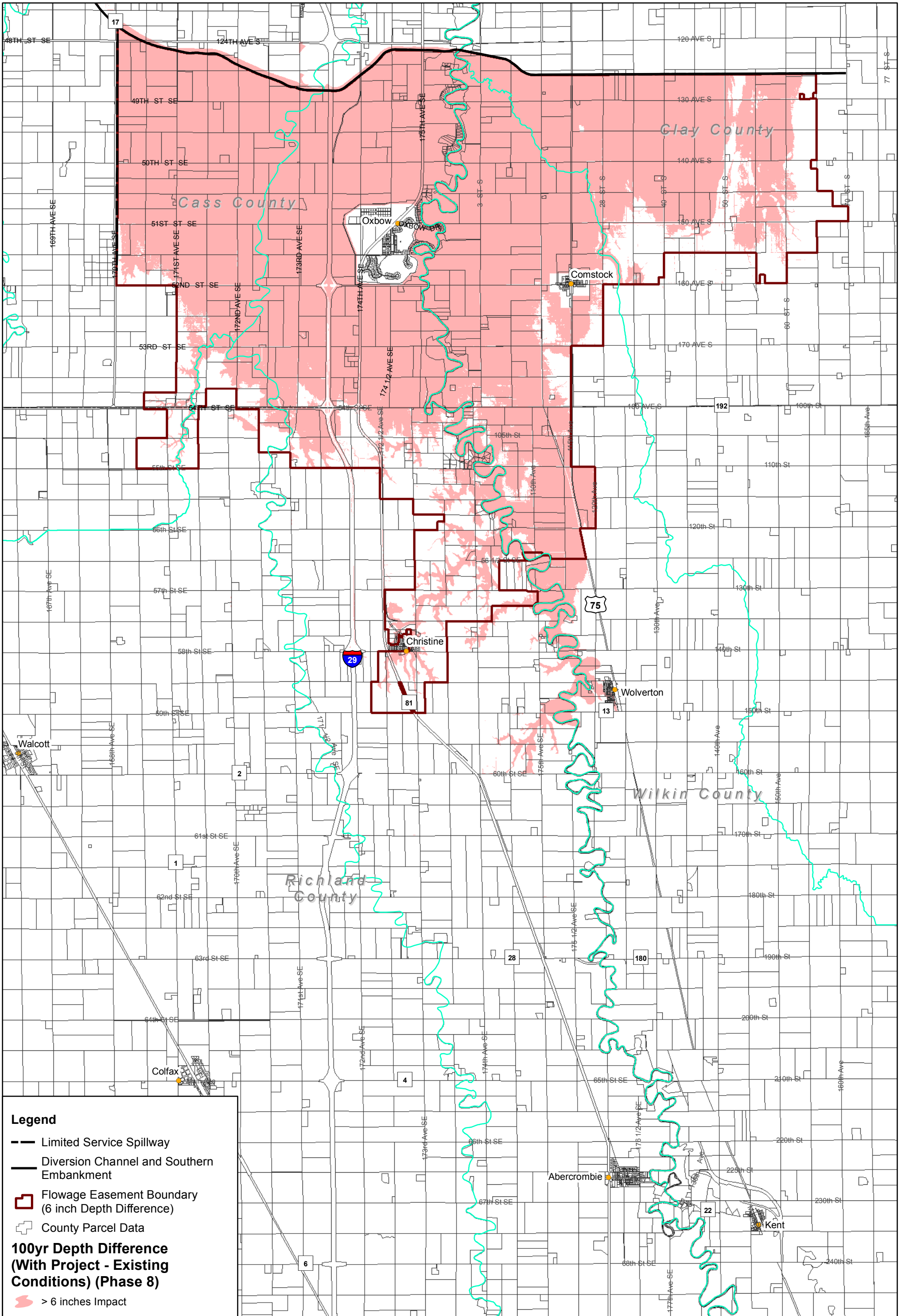


Legend

- ★ 6 Inch Impact Location
- ★ Existing Conditions
1 - Percent Annual Chance
(100 year) Elevation = 924
- Limited Service Spillway
- Diversion Channel and Southern Embankment
- County Parcel Data
- 1 - Percent Annual Chance
(100 year) Existing Conditions
(Phase 8)
- 1 - Percent Annual Chance
(100 year) With Project
(additional area flooded) (Phase 8)

**Map 1: Upstream Retention Area Mitigation Plan
1 - Percent Annual Chance (100 year) Floodplain**

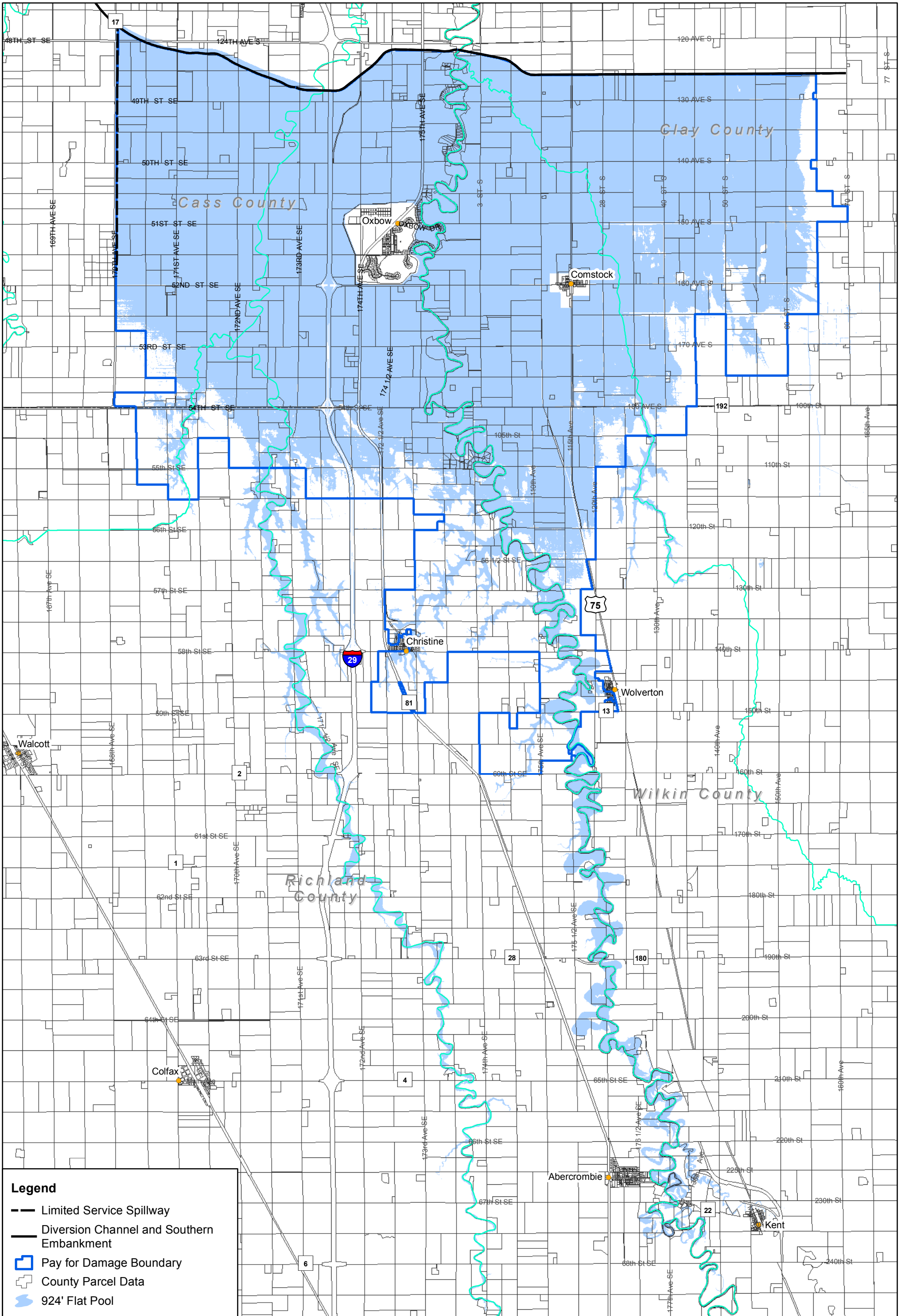




- Legend**
- Limited Service Spillway
 - Diversion Channel and Southern Embankment
 - Flowage Easement Boundary (6 inch Depth Difference)
 - County Parcel Data
 - 100yr Depth Difference (With Project - Existing Conditions) (Phase 8)**
 - > 6 inches Impact

**Map 2: Upstream Retention Area Mitigation Plan
Flowage Easement Boundary**

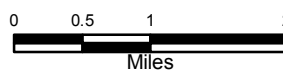


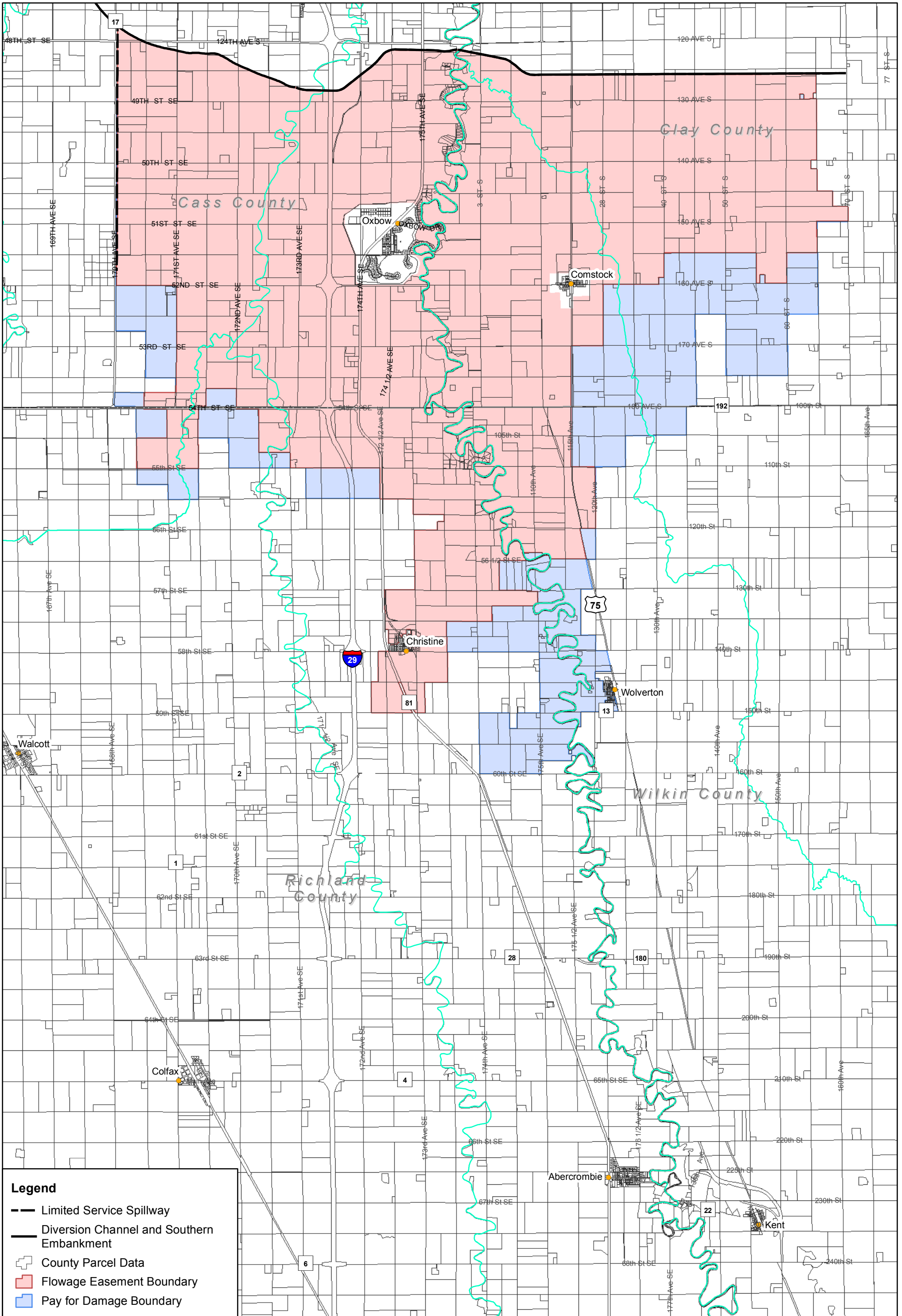


Legend

- Limited Service Spillway
- Diversion Channel and Southern Embankment
- Pay for Damage Boundary
- County Parcel Data
- 924' Flat Pool

**Map 3: Upstream Retention Area Mitigation Plan
Pay for Damage Boundary**





Legend

- Limited Service Spillway
- Diversion Channel and Southern Embankment
- County Parcel Data
- Flowage Easement Boundary
- Pay for Damage Boundary

**Map 4: Upstream Retention Area Mitigation Plan
Flowage Easement & Pay for Damages**

Miles

28 of 43

Created By: enelson Date Created: 8/22/2016 Date Exported: 9/8/2016 Image: 2015 County NAIP
Elevation Data: IWI LIDAR Horizontal Datum: NAD 1983 BLM Zone 14N RUS Vertical Datum: North American 1983
H:\Fargo\JBN\7400\7438\12_7438_008\Phase 18 - Phase 8 HEC-RAS Modeling\GIS\Ph8_Mapping_EasementBoundaries_10_1.mxd

Flowage Easement Plan

Why is a Flowage Easement needed?

- The FM Area Diversion Project includes a retention area upstream of the Project. The retention area is a necessary component of the Project, and it will periodically and temporarily store flood waters.
- The Diversion Authority needs to obtain flowage easements to provide the legal right to inundate properties in the upstream retention area.
- The North Dakota State Water Commission and the Minnesota Department of Natural Resources have indicated that the Project will need to obtain property rights for lands below the top of Limited Service Spillway elevation of the southern embankment, and within the maximum pool elevation. The elevation of the Limited Service Spillway and maximum pool elevation area both expected to be 924 feet (NAVD88). This area is approximately 53,000 acres.
- A floodway and a floodplain will be defined within the upstream retention area in accordance with the FEMA/USACE Coordination Plan. The floodway, or operating pool are required for operation of the Project to offset downstream impacts that would exist without the upstream retention. No development will be allowed in the floodway. Development in the floodplain may be allowed in accordance with 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 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 regulated.

How will the value of the Flowage Easement be determined?

- The value of a flowage easement on an individual property will follow Federal/USACE process.
- Factors that will be considered are 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” appraisal in which the market value of the property before the flowage easement are applied, and the market value after the flowage easement conditions are applied. The market value of the flowage easement will be a result of those two 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. The appraiser may also consider the summer operation supplemental farm income program.

- Values of flowage easements will vary depending on the location of the property, magnitude of impacts, and future risks to the property.
- The flowage easement payment will be a one-time payment to the property owner. The payment will be made when the easement is acquired.

What are the terms and conditions of the Flowage Easement?

- Description of the “Easement Property” upon which the easement applies.
- Right to occasionally overflow, flood and submerge the Easement Property in connection with the operation, maintenance, repair, replacement and rehabilitation of the Project.
- Definition of development potential in compliance with FEMA and local floodplain development rules.
- 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.
- Removal of all structures in the floodway, and those not allowed in the floodplain.
- Use of the property by Grantor (property owner) and Grantee (Diversion Authority).
- Payment for damages caused by the exercise of the above described access rights.
- Landowners are allowed to mortgage the property as long as the mortgage is subordinate to the flowage easement.
- 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 2024.
- 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 retention 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 Cass County Joint Water Resource District (CCJWRD).
- The Diversion Authority intends to assign the property acquisition role in Minnesota to a newly formed organization referred to as the Moorhead-Clay County Joint Powers Agreement (MCCJPA). That entity is not fully established yet.

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 occasionally to 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 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 landowners, 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.)

IN WITNESS WHEREOF, Grantor executed this Easement on the date written above.

GRANTOR:

 [Insert Name of Grantor]

 [Insert Name of Grantor]

STATE OF [INSERT])
) ss.
 COUNTY OF [INSERT])

On this ____ day of _____, 201X, before me, a Notary Public, in and for said County and State, personally appeared [Insert Name of Grantor], [Insert Marital Status], known to me to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same.

 Notary Public, State of [Insert]
 My Commission Expires:

(SEAL)

GRANTEE:

[Acquiring Entity Name]

By: _____
[Name, Title]

ATTEST:

[Name]
[Title]

STATE OF [INSERT])
) ss.
COUNTY OF [INSERT])

On this ____ day of _____, 2015, before me, a Notary Public, in and for said County and State, personally appeared [NAME] and [NAME], known to me to be the Chairman and Secretary-Treasurer, respectively, of the [Insert Acquiring Entity Name] and who executed the within and foregoing instrument, and acknowledged to me that they executed the same on behalf of the [Insert Acquiring Entity Name]

Notary Public, [County, State]
My Commission Expires:

(SEAL)

The legal description contained in this document was prepared by:

[Insert Info of Surveyor]

Summer Operation Supplemental Farm Revenue Program

Introduction

The Project includes the temporary and occasional retention of flood waters immediately upstream of the Fargo-Moorhead metro area. The Diversion Authority will need to provide mitigation for properties in the upstream retention area, and the mitigation has generally been considered to be the acquisition of a flowage easement, which is required by USACE.

The flowage easement will cover impacts associated with the Project and will 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 impacts associated with delayed planting, prevented planting, debris, loss of development rights, etc.

The Diversion Authority recognizes the 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 the importance of the farm economy to the region, that summer operation would damage growing crops, and that summer operation of the Project is extremely unlikely, the Diversion Authority will adopt a Summer Operation Supplemental Farm Revenue program to provide additional assurance to producers in the upstream retention area. The Program would provide producers coverage for the risk associated with Project induced flooding on growing crops during 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 will not be able to utilize the federal crop insurance program(s) for damages caused by operation of the Project.

Proposed Summer Operation Supplemental Farm Revenue Program

The Diversion Authority will either purchase an insurance product or create a self-funded insurance reserve fund for the Summer Operation Supplemental Farm Revenue Program. The program will compensate producers for crop losses caused by operation of the Project during the normal crop growing season.

The Diversion Authority will seek an independent, third party agent to administer damage claims associated with summer operation of the Project and determining whether payments should be made from the Program. 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 Diversion Project, it is possible that an event could happen. If this major rain event occurs during the normal crop growing season, and if the rain is significant enough to cause project to operate, flooding will occur on farmlands due to the rain event. A producer could submit a damage claim and then the claims adjuster would evaluate a universe of data to determine liability, and shares

of liability, etc. If the claims administrator and adjuster find the Project is liable, then the Diversion Authority would make the payment to the producer.

To be eligible for the program, the producer must participate in federal crop insurance program. Producers obtain various rates of coverage through federal crop insurance. Some are insured for 65 percent, others insure for upwards of 80 percent. The Diversion Authority's Program would provide 90 percent coverage for damages caused by summer operation of the Project.

Additional Background:

- The FM Diversion Project includes an upstream retention area for staging of flood waters as a necessary feature of the Project.
- USACE has defined a portion of the upstream staging as an "operating pool". This area is necessary to offset the downstream impacts that would exist without upstream retention, and the operating pool is based on areas with impacts greater than 1-foot (generally).
- The upstream impacts extend beyond the "operating pool" for a total area of approximately 53,000 acres.
- The NDSWC and MDNR have suggested using the top elevation of the Limited Service Spillway, or the maximum pool elevation, which are both 924-feet, to define the area of mitigation.
- Mitigation is generally considered a flowage easement, as USACE has mandated that the Diversion Authority obtain a flowage easement for areas within the operating pool.
- The flowage easement will cover impacts associated with the Project, and will 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 a farm revenue replacement program. One of the primary considerations of additional farm mitigation is to help ensure producers are covered for the risk of Project induced flooding on growing crops. Under these events, producers will 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 retention area, the total liability of a complete loss is approx. \$20-25M.
- The Diversion Authority will either purchase an insurance product or self-fund the program. The Diversion Authority is exploring insurance products for this purpose. 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 farm revenue payments.

Post-Operation **Private Lands** Debris Clean-Up Plan

Introduction

Operation of the FM Area Diversion Project (“Project”) will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention area will 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, but it places the responsibility for post-operation clean-up on the property owner. In recognition that operation of the upstream retention area may cause debris (logs, straw, trash, etc.) to accumulate within and along the edges of the upstream retention 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 retention 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 retention 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 (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 retention 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 retention 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.
- 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 **Public Lands** Repair and Clean-Up Plan

Introduction

Operation of the FM Area Diversion Project (“Project”) will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention area 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 retention 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 retention 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 the 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 retention 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.

Organic Farmland Acquisition Plan

Introduction

For typical farmland in the upstream retention 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 retention area so that the organic farmers have the opportunity to establish organic certification on new lands outside of the upstream retention 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.

It is understood that there are four organic farming operations within the vicinity of the upstream retention area of the Project. According to the MDNR EIS, the farmer-reported total organic acreage is approximately 3,625 acres, with approximately 2,900 acres within the upstream retention area.

The Diversion Authority will pay to conduct an appraisal of the organic farmland, and allow the property owner to conduct its own appraisal. 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 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 conduct a public sale of the property via its farmland management firm.

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



Comment Form Mitigation Plan

We would like to hear your comments and feedback on the Draft Mitigation Plan. Please complete and email this form to info@fmdiversion.com by April 30, 2017.

Page/Location of area you would like to reference	What would you like to see done?	Why?	Any additional details
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