

Land Management Plan Fargo-Moorhead (FM) Area Flood Risk Reduction Project Version 1

Prepared for

Fargo-Moorhead Area Flood Diversion

Board of Authority



July 12, 2012 REV 1

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- Appendix C Risk Letter and Access Agreement
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Acronyms and Abbreviations

Authority	FM Metro Flood Diversion Authority
CFR	Code of Federal Regulations
CR	County Road
Data Book	“Comparable Sales and Data Book” (Data Book
Diversion Authority	FM Metro Flood Diversion Authority
Division	USACE Real Estate Division
DSS	decent, safe, and sanitary
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Fargo-Moorhead
HTRW	hazardous, toxic, and radioactive waste
I-29	Interstate 29
LPP	Locally Preferred Plan
MVP RE	St. Paul District Real Estate Division
NFS	Non-Federal Sponsor
Plan	Land Management Plan
PMC	Program Management Consultant
PPA	Project Partnership Agreement
Project	Fargo-Moorhead (FM) Area Flood Risk Reduction Project
ROW	right-of-way
URA	Uniform Relocation Act
USACE	U.S. Army Corps of Engineers

1. Introduction

This Land Management Plan (Plan) presents an overview of the land management and acquisition requirements for the construction of the facilities needed for the Fargo-Moorhead (FM) Area Flood Risk Reduction Project (Project). The Plan includes the following sections and appendices:

- **Section 2. Scope of Land Acquisition Requirements.** Describes the magnitude in acreage, number of land parcels, number and location of residential units and farmsteads, and the feasibility study cost estimate for the real estate acquisition and relocation requirements.
- **Section 3. Federal Acquisition Process Summary.** Discusses the federal processes and regulations that will need to be followed during the land management phase of the Project.
- **Section 4. Potential Variations to the Federal Process.** Presents potential variations or amendments to the federal process that the FM Area Flood Diversion Board of Authority (Diversion Authority or Authority) can elect to undertake in its plan for land acquisition.
- **Section 5. Non- Acquisition-Related Impacts.** Identifies and discusses impacts to the local communities and landowners not directly related to the specific parcel acquisition.
- **Section 6. Land Management Communication Plan.** Strategy to effectively communicate the required real estate acquisition actions needed to deliver the FM Area Flood Risk Reduction Project.
- **Appendix A. Detailed Communication Analysis.** Presents the core themes developed to serve as a foundation for public outreach efforts, including land acquisition.
- **Appendix B. North Dakota and Minnesota Eminent Domain Information.** Presents the authorities and procedures to obtain right-of-entry and permanent right-of-way in North Dakota and Minnesota.
- **Appendix C. Risk Letter and Access Agreement.** Provides the Risk Letter and Access Agreement employed as part of the land acquisition process.
- **Appendix D. Flood Diversion Authority Draft Pre-PPA Hardship Policy.** Presents the Authority's policy for the early buyout of residential property in cases where it is determined a property owner suffers from a serious health condition giving rise to a hardship.

The Plan will be a living document updated periodically as decisions are made by the Diversion Authority and changes to the Project elements and schedule occur.

Desired Outcomes of Land Management Plan

The following are the specific results intended to be enabled or provided by this Plan:

- ◆ All Project-required real estate is acquired in a timely manner that does not impact the construction schedule of the Project.
 - ◆ Facilitate efficient and effective land management practices for properties and structures in the affected area.
 - ◆ Clear understanding by the public of the real estate acquisition process and timeline that will be followed for this Project.
 - ◆ Beneficial policy decisions are made involving variations in the federal process for special circumstances.
 - ◆ Processes are adopted to effectively implement the land management components of Project.
 - ◆ Increased confidence in the Diversion Authority's ability to successfully deliver this Project.
 - ◆ Increased public support and understanding of the regional benefits of the Project.
 - ◆ Improved and/or sustained positive working relationships among the Diversion Authority, local governance bodies, and U.S. Army Corps of Engineers (USACE).
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2. Scope of Land Acquisition Requirements

This section of the Plan describes the number of land parcels, number and location of residential units and farmsteads, acreage of real estate to be acquired, and the feasibility-phase cost estimate for the Project's real estate acquisition and relocation requirements. The Cities of Fargo and Moorhead are currently the Non-Federal Sponsor for this Project. It is anticipated that the Authority will become a Non-Federal sponsor, and will be responsible for the acquisition of real property and permanent or temporary relocation of residents, businesses, and others. This process demands fair and equitable treatment of property owners in acquiring private property for public purposes.

The USACE, St. Paul District Real Estate Division (MVP RE) is responsible for ensuring that all required real estate is available for each project constructed by the USACE prior to elements of the project being advertised for receipt of construction bids. Because of the interrelationship between Project design and real estate requirements, close coordination is necessary between the Diversion Authority and the MVP RE. Figure 2-1 presents the recommended federal plan for the FM Area Flood Risk Reduction Project. Key aspects of the Project include the diversion channel, diversion structures, tie-back levees, and the storage and staging areas. A detailed project description can be found in the USACE Feasibility Study for the Project, located at a link at FMDiversion.com. All affected real estate areas are based on the designated boundaries of the diversion channel alignment, structure locations, tie-back levee location, and storage and staging areas presented in the Feasibility Study's Locally Preferred Plan (LPP) (ND 20K Diversion with staging and storage), now known as the Federal Recommended Plan(FRP).

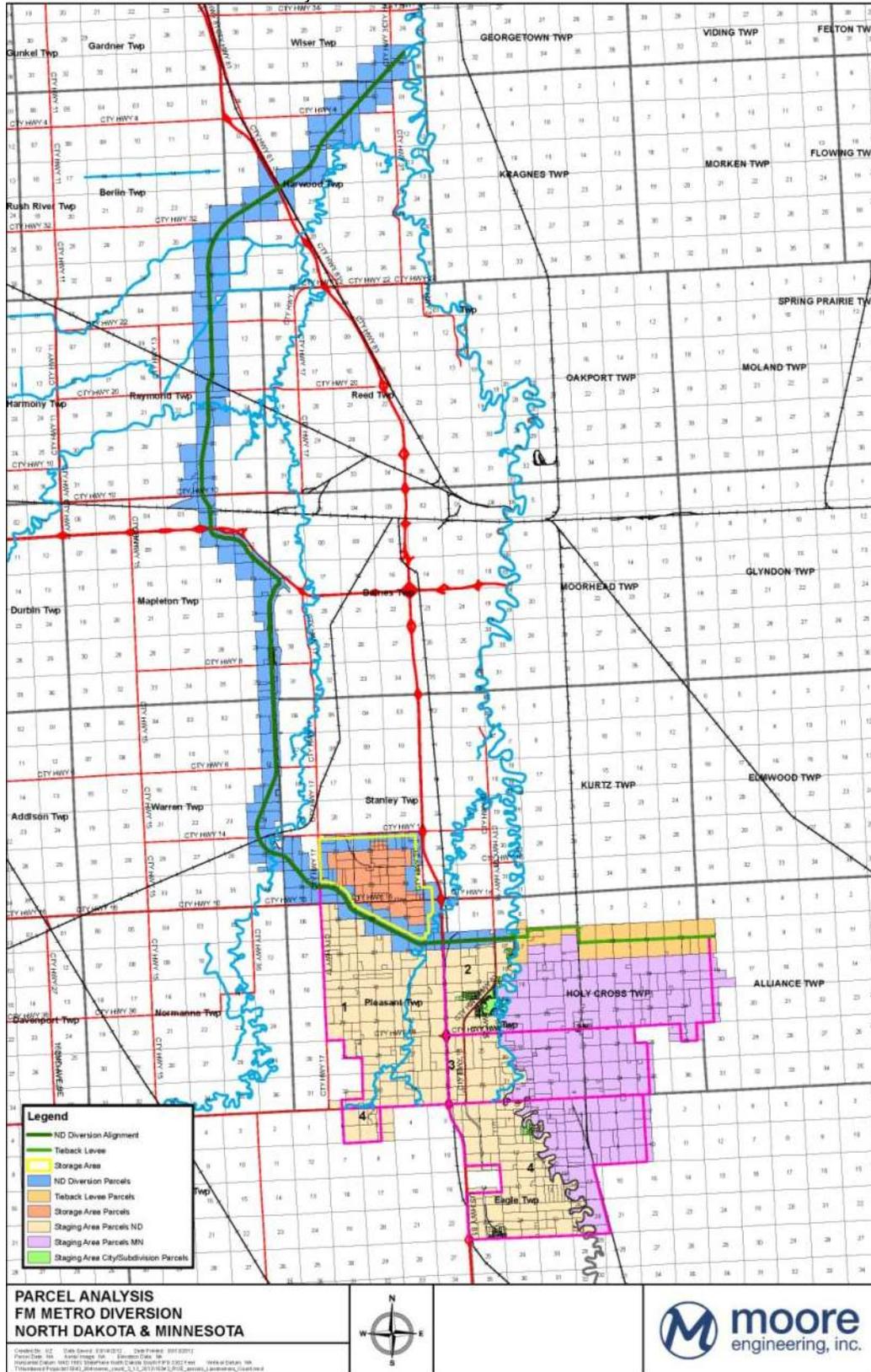
FIGURE 2-1
Federal Recommended Plan
FM Area Flood Risk Reduction Project



2.1 Land Parcels Required for the FM Area Flood Risk Reduction Project

Figure 2-2, prepared by Moore Engineering, Inc., and dated March 14, 2012, clearly identifies parcels required based on the initial alignment and planning assumptions for the Project. The affected area is subject to changes during the design phase. The parcels include land required for construction of the diversion channel, channel structures, tie-back levees, and staging and storage areas.

FIGURE 2-2
Required Land Parcels
FM Area Flood Risk Reduction Project



The number of properties impacted by this project totals 1,451, including 246 in the channel and structures, 64 in Storage Area 1, a total of 1,116 in the staging areas, and 25 in the Minnesota tie-back levee area.

Table 2-1, below, presents the details of the number of parcel owners, number of parcels for various Project elements, and total number of impacted parcels for the entire Project as prepared by Moore Engineering.

TABLE 2-1
FM Metro Diversion Parcel Summary as of March 13, 2012
FM Area Flood Risk Reduction Project

Estimated Individual Parcel Owners	Number of Owners
Individual Parcel Owners	831
Estimated Diversion Footprint Parcels	Number of Parcels
ND Diversion Channel Parcels	246
MN Tieback Levee Parcels	25
Estimated Inundation Area Parcels	Number of Parcels
Storage Area #1 Parcels	64
ND Staging Area Parcels	359
MN Staging Area Parcels	245
Staging Area City/Subdivision Parcels	512
Estimated Total Impacted Parcels	Number of Parcels
Total Impacted Parcels	1,451

Note: Includes parcels within the USACE Storage Area Boundary. Parcels may or may not have water impacting the parcel during a 100-year event with the proposed Project.

2.1.1 Diversion Channel and Structures

The following excerpt, generally abstracted from the Feasibility Study, describes the diversion channel configuration:

The typical depth for the diversion is approximately 20 feet, with a maximum depth of 35 feet near the inlet weir. The channel bottom width between the Red and the Wild Rice rivers is 250 feet. Between the Wild Rice River and the diversion inlet weir, the bottom width is 100 feet, while downstream of the diversion inlet weir, the width is 250 feet. Generally, all side slopes are 1V on 7H and some slopes include benching of varying widths. A low-flow pilot channel would run along the bottom of this reach, and erosion protection at the toe of the main channel side slopes would be provided. Soil excavated to construct the channel would be piled adjacent to the channel to a maximum height of 15 feet. The soil disposal piles would be as wide as necessary to contain the excavated material. The spoil slopes are 1V on 7H and 1V on 10H for the diversion side and outside slopes, respectively. Portions of the soil disposal piles would be constructed to serve as the footprint of the LPP diversion channel. The channel has a maximum width of 2,200 feet, including areas for disposal piles. The affected acreage is 8,054 acres. It is anticipated that farming could continue on certain portions of the disposal area, which could be accomplished by placing topsoil on the spoil piles.

A typical cross-section of the diversion channel with affected areas is presented below in Figure 2-3. Appendix K of the Feasibility Study provides cross-sections proposed for each reach of the diversion channel.

As the diversion project continues through the design phase, it is anticipated that modifications to the diversion channel cross-section, project structures, land acquisition policies, and other project components will occur.

2.1.2 Storage Area

The storage area for the Project (Storage Area 1) is located north of the diversion channel between the Wild Rice and Sheyenne rivers, and requires approximately 64 land parcels. The boundaries of this area are generally Interstate 29 (I-29) on the east, County Road (CR) 14 on the north, and CR 17 on the west. Storage Area 1 contains 3,955 acres and is formed by 12 miles of embankments. Approximately 50,000 acre-feet of water will be stored in Storage Area 1 during operation of the diversion system.

Figure 2-4, below, shows the upstream storage and staging area locations for the Federal Recommended Plan, including the water depths for the 100-year flood.

FIGURE 2-3
Typical Diversion Channel Cross Section with Affected Areas
 FM Area Flood Risk Reduction Project

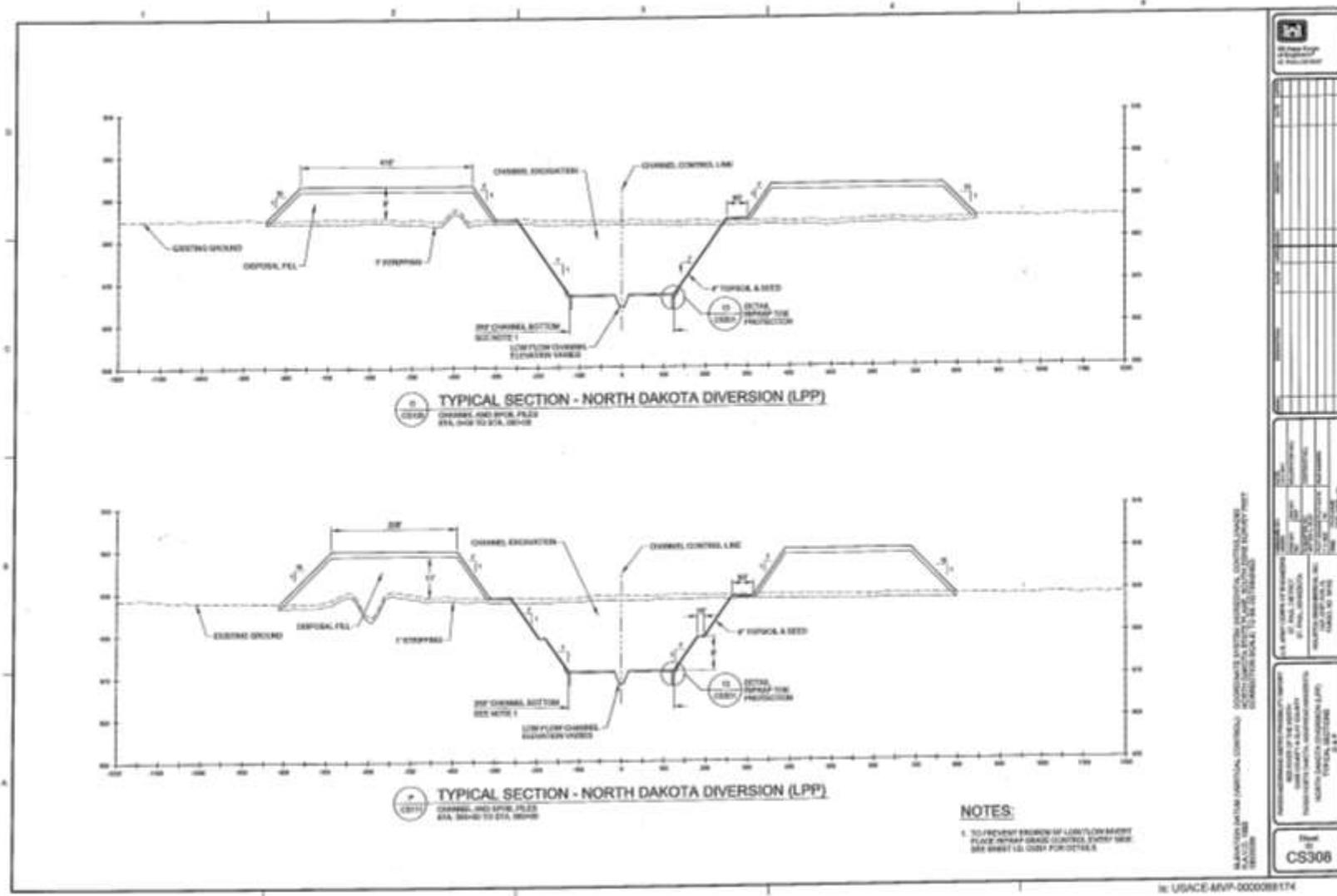
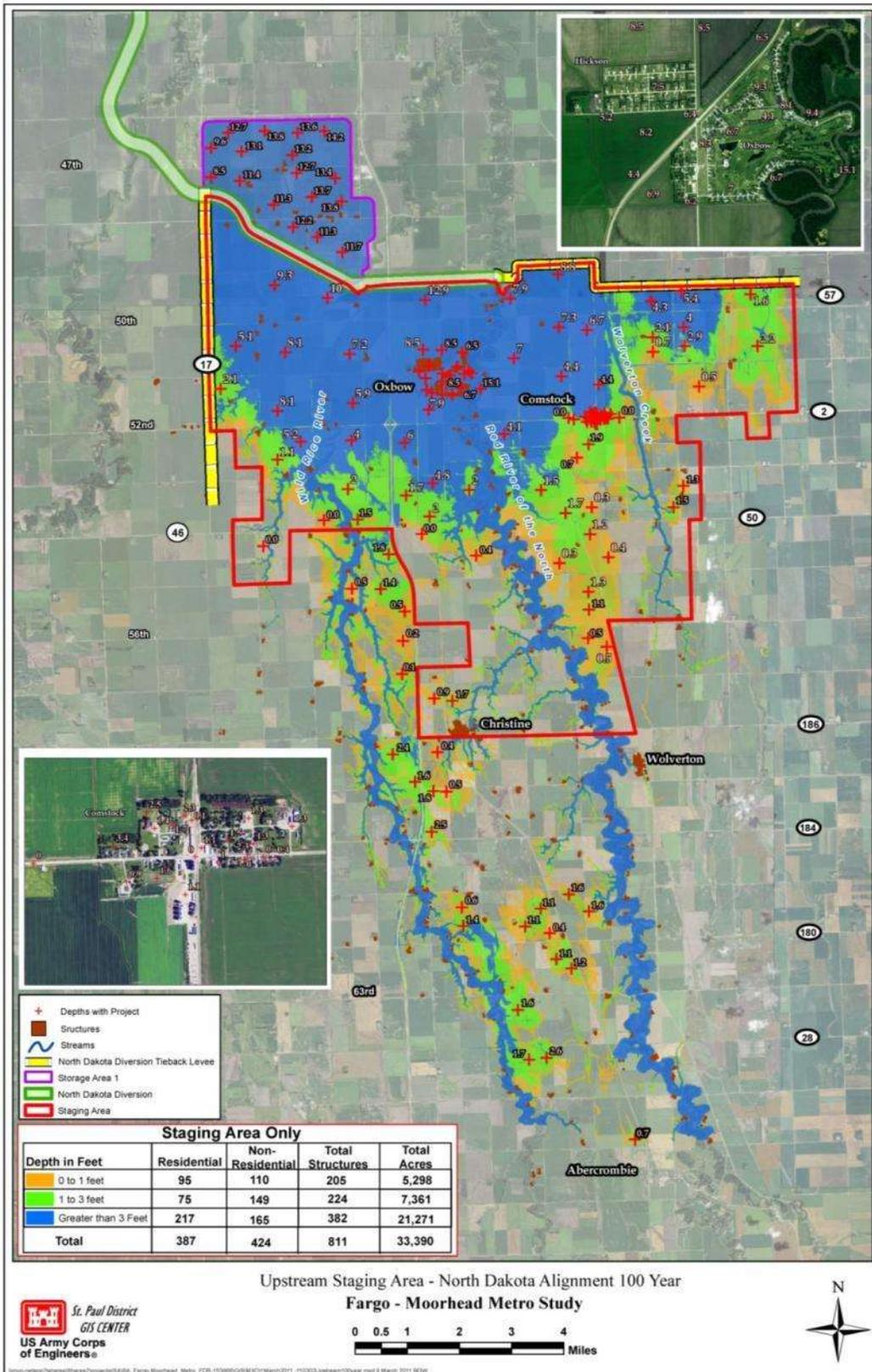


FIGURE 2-4
Federal Recommended Plan Upstream Storage and Staging Area Locations
FM Area Flood Risk Reduction Project



2.1.3 Staging Area

The staging area for the Project encompasses approximately 1,116 land parcels and residential sites containing a total of 33,475 acres of land within the benefitted area of the Project that will be affected during the 100-year flood.

The following excerpt, generally abstracted from the Feasibility Study, describes the proposed non-structural measures for the storage and staging areas. The clarification from the language in the Feasibility Study in the paragraph below is in regard to impacted homes, structures, and businesses which have less than 1 foot of flooding.

The recommended non-structural mitigation measures consist of fee acquisitions, construction of ring levees, and the acquisition of flowage easements. As shown in Figure 2-4, the staging area is defined by the red boundary, while the purple boundary delineates the limits of the storage area. This area is needed for operation of the Project and a number of mitigation features are being recommended. The proposed mitigation for the area is divided into two parts: one for homes, structures, and businesses and the other for agricultural lands. Impacted homes, structures, and businesses that have greater than 3 feet of flooding for the 1 percent chance event with the Project in place would be purchased; and those with 1 to 3 feet of flooding would be considered for ring levees or purchase (a risk and safety analysis will be conducted to determine the viability of a ring levee). Farmsteads in the staging or storage area will be given additional consideration based on the depth of flooding, duration of flooding, and access. Acquisition of farmsteads will generally follow the mitigation plan listed above; however, under some circumstances, it may be feasible to construct a ring levee or raise the farmstead. In any event, where farmsteads would have greater than 3 feet of flooding, a buyout would be offered to the landowner prior to consideration of other options. Impacts to agricultural lands in the staging area would be mitigated through the acquisition of flowage easements. A property-by-property analysis will be conducted to ensure that the specifics of each parcel are considered when determining the appropriate mitigation. Alternative mitigation options will be taken into consideration when application of the general rule does not result in adequate mitigation for a particular parcel.

Areas where fee acquisitions would occur include the communities of Oxbow, Hickson, and Bakke, North Dakota. Comstock, Minnesota, would be impacted by the Project and would generally have 1 to 3 feet of flooding with the LPP in place. Therefore, a ring levee would be pursued for Comstock.

Summary of Proposed Non-Structural Measures for Storage and Staging Areas

- ◆ Homes, structures, and businesses within the typical 2,200-foot diversion channel affected width will be purchased or relocated.
- ◆ Agricultural land adjacent to the diversion channel can be farmed and will be offered flowage easement payments.
- ◆ Homes, structures, and businesses within Storage Area 1 will be purchased or relocated.
- ◆ Agricultural land within Storage Area 1 will be offered flowage easement payments. All agricultural land within the storage area that is not in the footprint of the elements can be farmed.
- ◆ Homes, structures, and businesses within the staging area having water depths greater than 3 feet during the 100-year flood will be purchased or relocated.

- ◆ Homes, structures, and businesses within the staging area having water depths between 1 and 3 feet during the 100-year flood will be evaluated for ring levees, elevation, purchase, or relocation.
 - ◆ Homes, structures, and businesses within the staging area having water depths less than 1 foot will be evaluated individually and considered for purchase of a flowage easement.
 - ◆ Agricultural land within the staging area will be offered flowage easement payments. All agricultural land within the staging area that is not in the footprint of the elements can continue to be farmed.
 - ◆ Farmsteads within the staging and storage area will be evaluated on a case-by-case basis. In some instances, a ring levee or elevation will be considered. Farmsteads with greater than 3 feet of flooding will first be offered a buyout.
 - ◆ Variations to these Feasibility Study options will be evaluated by the Diversion Authority, as discussed in Section 4.
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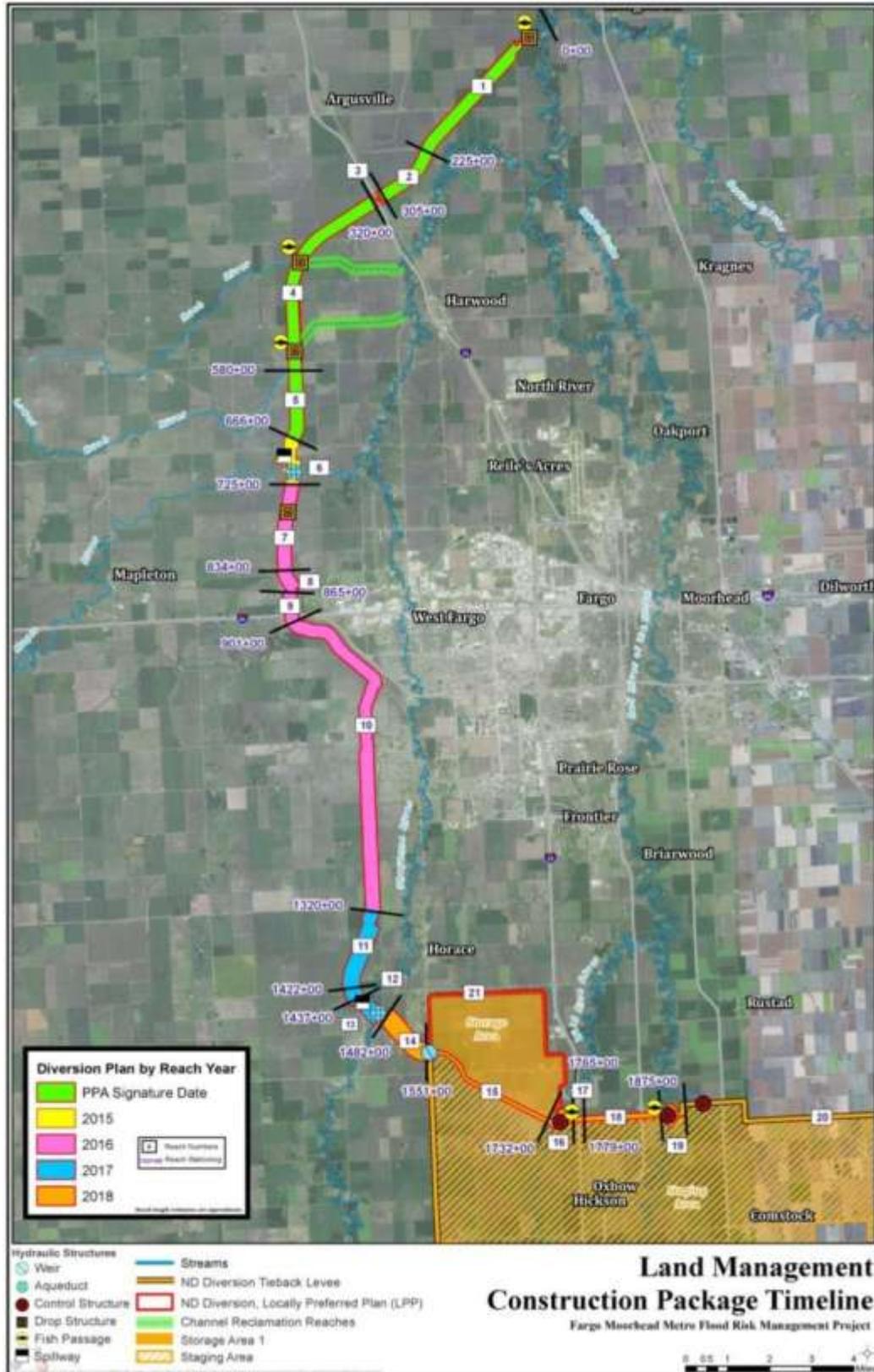
2.2 Cost Estimate for Real Estate Acquisition

The Real Estate Baseline cost estimate from the Feasibility Study, including administrative costs and contingencies, is \$254,712,748. Land acquisition cost estimates will be updated periodically during project design and implementation.

2.3 Current Acquisition Schedule

Figure 2-5, below, shows the land acquisition timeline based on the Project schedule presented in the Feasibility Study. Some specific points of the timeline include showing acquisition dates for bid packages prior to fall 2013 as following Project Partnership Agreement (PPA) signature date and Authorization, and the acquisition of all storage and staging areas in 2018 such that acquisition can be completed prior to Project operation.

FIGURE 2-5
Land Acquisition Timeline
 FM Area Flood Risk Reduction Project



3. Federal Acquisition Process Summary

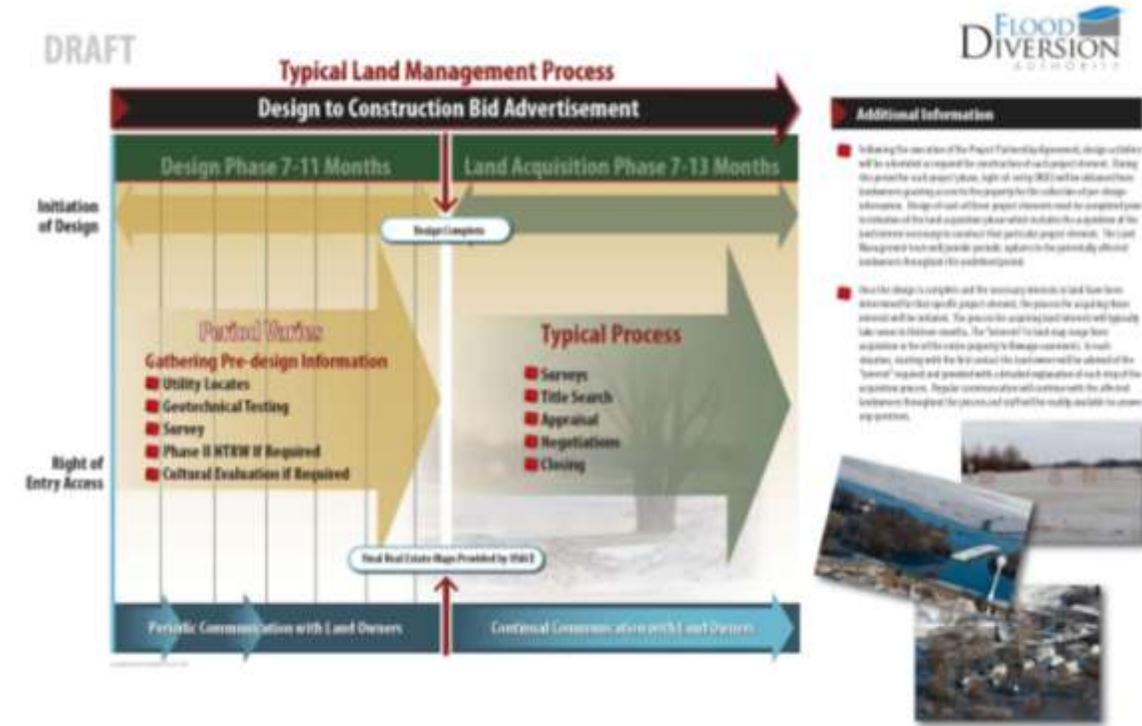
3.1 Responsibility and Governing Regulations

The PPA sets forth the responsibilities and cost-sharing agreement between the participating agencies. Signature of the PPA is an important milestone date in the Project implementation. For this Project, the PPA is not expected to be signed until 2013 (anticipated) or later. While certain activities, such as study and design, can be performed prior to execution of the PPA, land acquisition activities performed prior to PPA execution are done so entirely at the local sponsor's risk and may not be considered an eligible project cost in the cost-sharing formula. In fact, such costs may only be considered for eligibility if incurred within 5 years of the actual signing of the PPA. (The USACE Risk Letter is presented in Appendix C of this Plan.) The PPA for this Project will be in effect during the majority of the time that the land acquisition activities for the various design and construction packages occur.

Some land management activities required for obtaining design information for the Project's initial design packages are currently being performed, prior to execution of the PPA. These activities include right-of-entry for parcels requiring Phase 2 cultural and hazardous, toxic, and radioactive waste (HTRW) review. In addition, right-of-entry for gathering design information, including utility locate information and geotechnical exploration, is already under way.

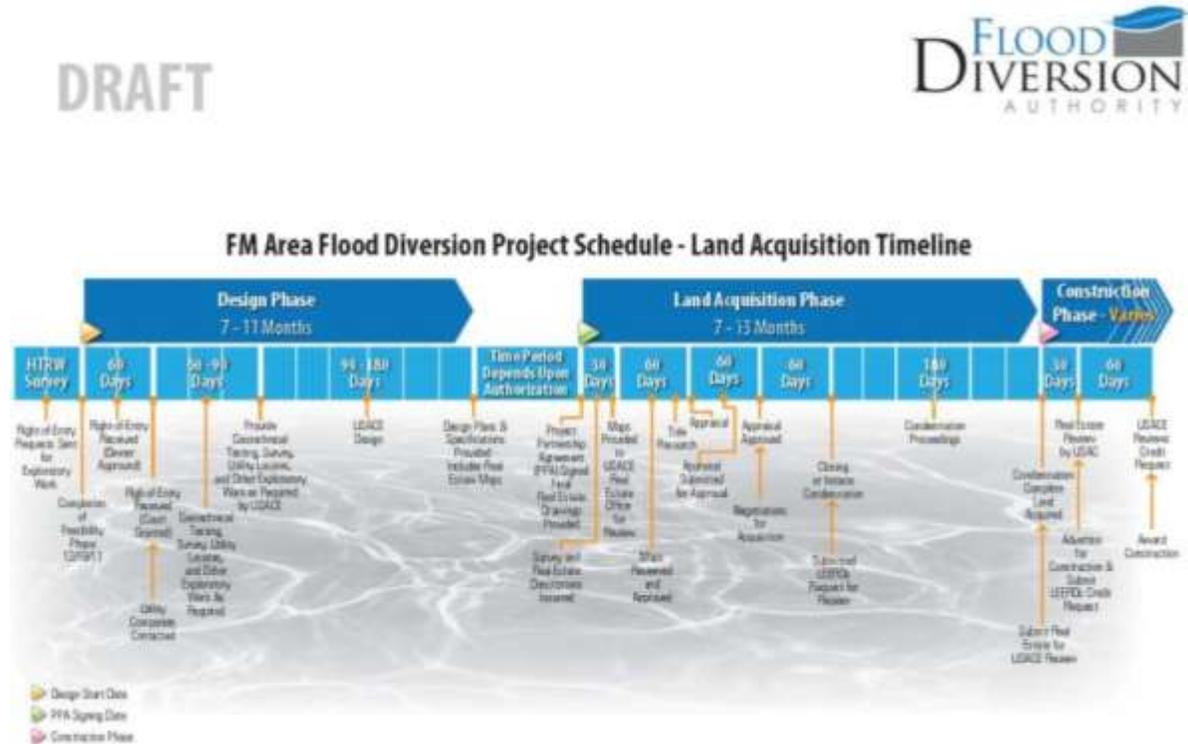
A restricted timeframe will likely be imposed for the land acquisition steps required for the first design and construction package, currently planned as Reaches 1 through 3 and the outlet structure. Land acquisition activities for initial construction must be timed to commence with the execution of the PPA. Figure 3-1, below, presents the anticipated timeline for the initial Project work leading up to land acquisition associated with construction contracts.

FIGURE 3-1
Typical Land Management Process
FM Area Flood Risk Reduction Project



The key land acquisition steps are shown below in Figure 3-2. The step titled “Time Period Depends Upon Authorization” is only relevant for the period prior to PPA execution.

FIGURE 3-2
Key Land Acquisition Steps
FM Area Flood Risk Reduction Project



In projects of this kind, the NFS has the responsibility for providing all land, easements, and rights-of-way (ROWs) necessary for the construction, operation, and maintenance of the Project. Close coordination is required to ensure the local sponsor (Diversion Authority) completes all real estate acquisitions to meet the milestones established in the Project schedule. The Diversion Authority must also perform all relocations of structures, utilities, and roads necessary for the Project.

Because of the federal funding involved in portions of the Project, all real estate activities must comply with the appropriate federal regulations. Under this Project, the applicable regulations include the “Uniform Act,” specifically consisting of the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,” referred to as Public Law 91-646, and Title IV, “Uniform Relocations Act Amendments of 1987,” referred to as Public Law 100-17. State regulations will also apply to real estate acquisitions in some instances.

3.1.1 Design Phase

During the study and design phase, information will need to be obtained that requires permission to enter a property. Obtaining the appropriate permission for entry depends on the nature of the activities to be conducted, as discussed in the following two types of entry processes applicable to this Project.

1. **Right-of-Entry Process** – Outreach activities in the form of media information, community meetings, and small group meetings will present general information about the potential

Project. However, the property owner's first official contact with Project personnel will likely occur with the right-of-entry process. A right-of-entry agreement serves as written permission to enter the owner's property to gather preliminary information for the study and design phase. The type of information to be gathered during this stage may include surveys, cultural resources, geotechnical (soil borings), utility locations, and environmental data. Contact will be made with the property owner prior to entering the land and an explanation regarding the time and type of information to be gathered will be provided. Property owners will have the right to review all information obtained relative to their properties. (A sample access agreement is presented in Appendix C of this Plan.) Generally, no direct compensation is provided for granting right-of-entry as it is intended that all activities will be conducted in a manner that will not damage or otherwise impact the property. However, compensation will be provided in the event the activity results in any property impacts or damage.

An attempt will be made to acquire right-of-entry agreements by personal contact, including providing an appropriate explanation and assurance of respect for the property owner's rights. In instances where right-of-entry cannot be obtained through such efforts, Project legal staff will seek to acquire right-of-entry by court action, while striving to maintain a positive relationship with the property owner.

- 2. Temporary Easement Process** – A temporary easement will be acquired for those activities that require more than a brief entry upon the property for the purpose of gathering preliminary information. An example of the type of survey requiring a temporary easement is the "Phase II Surveys at Cultural Resources Sites." To conduct this type of survey, a cultural resources crew excavates, by hand, small areas for the purpose of searching for historic and/or cultural artifacts. The process of obtaining the temporary easement is similar to the process for obtaining a right-of-entry. Compensation of \$1,000 will be paid for each easement. The duration of the easement will include a reasonable time necessary to gather information. Care will be taken to restore the land to its pre-survey condition. The property owner will be compensated for crop damages or any other damage that may occur as result of the temporary easement. The property owner will be contacted before entering the property and reports of the study results will be furnished to the property owner. All cultural artifacts found on the property will be returned to the property owner. If a temporary easement cannot be acquired by voluntary agreement of the property owner, the Diversion Authority will use eminent domain action to obtain the necessary easement.

3.1.2 Land Acquisition Phase

The following subsection describes the activities to be undertaken by the Diversion Authority as the local sponsor and the Authority's role during the land acquisition phase.

- 1. Commencement** – The Diversion Authority must budget for and prioritize land acquisition activities to meet the schedule for Project construction agreed to by the partnering agencies. USACE will prepare designs and furnish real estate maps outlining the lands, easements, and ROWs necessary for Project construction, operation, and maintenance. The Authority is then approved to begin land acquisition activities.
- 2. Land Surveys** – The Diversion Authority will undertake surveys and preparation of maps and legal descriptions to describe the property designated for acquisition. The Authority will contract for surveys to be performed by professional land surveyors familiar with the local area. Maps and survey results will be provided to landowners for their information, to USACE Real Estate staff for its review, and to the Project's legal staff for land title research.

3. **Land Title Information** – The local sponsor will retain legal staff and/or a licensed abstracting company to review title information for all properties to be acquired. Research will be based on the current deed of record and legal description of the property. Title agents will review county tax maps, grantor/grantee indices, and other appropriate information in the County Register of Deeds office. The title research will determine land ownership, the presence of easements, mortgages, or other encumbrances, and identify any title defects that require curative work.
4. **Appraisal** – Upon completion of survey maps, legal descriptions, and preliminary land title research, an independent appraiser will be assigned to determine the value of each property to be acquired. The appraisal firm will be retained by the local sponsor and must possess the following qualifications:
 - Certified General License in the state in which the appraisal is performed
 - Familiar with federal acquisition procedures and be approved by the MVP RE
 - Familiar with the locality and specific type of property interest to be appraised

Multiple appraisal firms will be needed to meet the Project schedule given the complex nature of many of the Project appraisals. To ensure uniformity between multiple appraisal firms, a “Comparable Sales and Data Book” (Data Book) will be developed for use by all appraisers. This Data Book will be produced by local appraisers and will contain real estate sales information and other relevant information to aid in determining fair market value. The Data Book will ensure all appraisers have access to the same information, and will be updated as additional information becomes available.

Once a parcel has been identified and the ownership rights have been determined, the assigned appraiser will proceed as follows:

- The appraiser will contact the property owner and arrange a schedule to inspect the property. The property owner will have the opportunity to meet with the appraiser and furnish any information he/she considers to be important.
- In the case of partial acquisition, the appraiser will request a surveyor provide stakes to accurately define the areas to be acquired.
- Information will be gathered from the inspection and other sources.
- Comparable property information will be collected from the Data Book.
- All comparable properties will be inspected to determine similarity factors.
- Comparative analysis will be used to determine the value of the property “before” acquisition. It is important to note the appraisal will be performed as if the Project was not going to occur, thereby negating the Project’s influence on property value.
- If the land interests acquired involve a partial taking, a comparative analysis will be used to determine the value of property “after” acquisition.
- Damages for temporary acquisition, such as for temporary construction easements, will be calculated, as applicable.
- In the case of partial acquisitions, additional damages and/or benefits to the remainder (severance damages) will be determined, as applicable.
- Conclusions and reconciliations will be determined and all work will be checked by a second appraiser. An appraisal report will then be prepared.

During the appraisal process, appraisers will consider three approaches to value: cost approach, market approach, and income approach. Not every appraisal will use all three approaches; the appraiser will determine the applicability of the approaches and weigh and reconcile the value indicators to arrive at a single estimated value of the property.

5. **Review Appraisal** – The completed appraisal report will be submitted to the MVP RE for review and approval. The review appraiser will analyze the report for content and comment on the conclusions. If needed, adjustments will be made and the Final Appraisal Report will be submitted to the Diversion Authority.
6. **Land Acquisition Negotiations** – The Final Appraisal Report will set a value to be offered for the property interests to be acquired. This value must be reviewed and approved by the MVP RE office. Supplemental relocation assistance benefits for which the property owner may be eligible are not included in the fair market value. Relocation assistance eligibility and benefits are described in Subsection 3.1.2.13 of this Plan. As part of the negotiation process, the property owner will be offered the first right to retain ownership of any house, commercial building, or other structure on the property, with the condition the structure be removed by a specific date.

The Diversion Authority will then prepare an offer and issue a letter to the property owner, including a written “Offer to Buy Real Estate Agreement.” A land negotiation agent will be assigned as the primary contact person with the individual property owner. The agent will be respectful of and empathetic to the owner’s concerns and will arrange one-on-one meetings with the owner to explain the offer and answer the property owner’s questions. Appropriate time will be provided for the property owner to consider the offer. The negotiation period will typically be in the range of 60 to 120 days, depending upon the type and complexity of the acquisition. During this time, the property owner may present supplemental information to support an opinion of property value. The cost for an independent appraisal requested by the property owner may be reimbursed by the Authority. The land negotiation agent will be available to meet on multiple occasions with the property owner to answer questions and discuss Project and acquisition issues as needed. The land negotiation agent will document meetings with a written Contact Report.

In addition to appraised property values, any party displaced by the Project may be eligible for relocation assistance as described in Subsection 3.1.2.13 of this Plan. The process of identifying applicable relocation assistance will be conducted concurrently with the negotiation process, and the property owner will be aware of all potentially available compensation and assistance.

It is the intent of the Diversion Authority to acquire land by means of fair and equitable negotiation and according to procedures dictated by the Federal Acquisition Regulations. If negotiations are unsuccessful, the Authority may employ the eminent domain process.

7. Eminent Domain Process – North Dakota

Refer to Appendix B for information regarding North Dakota’s eminent domain procedures.

8. Eminent Domain Process – Minnesota

Refer to Appendix B for a detailed explanation of Minnesota’s eminent domain authorities and procedures.

9. **Legal Services** – The Diversion Authority will retain a legal professional to perform final title review, correct any title deficiencies, and prepare appropriate purchase agreements, deeds, and closing documents. Depending upon the type of acquisition, documents will be prepared

addressing total fee title purchases, partial fee title purchases, permanent easements, or temporary easements. Legal professionals will also lead all activities related to acquiring court-ordered rights-of-entry and acquisition of property by eminent domain. Eminent domain proceedings will be conducted in accordance with statutes of the state in which the property to be acquired is located.

10. **Closing and Recording of Documents** – A settlement agent retained by the Diversion Authority will confirm that all title work/title opinions are complete and prepare a draft settlement statement for review by the purchaser and seller. The MVP RE will also review the settlement statement for eligibility of closing costs according to Uniform Act guidelines. Following approval of documentation by all parties, a closing will be scheduled for the transaction. Upon closing, all documents will be signed and payments will be disbursed. The settlement agent will forward payment to any prior lenders or lien holders and secure release documents, pay all other parties who performed services in relation to the closing, and pay out all net funds to the property owner. Documents appropriate to the type of acquisition will be filed with the Register of Deeds in the county in which the property is located.

11. **Real Estate Acquisition within Staging and Storage Areas** – Policies in the current Project plan anticipate the following criteria will be applied to land acquisition and mitigation in the staging and storage areas:

- **Residential and Commercial Structures**

With the Project in place, those areas that would have greater than 3 feet of inundation for the 1 percent event would be acquired or relocated.

Areas having 1 to 3 feet of inundation would be evaluated for non-structural measures, such as ring levees, relocation, or elevating structures. Acquisition may also be considered in these areas should a risk and safety analysis indicate these measures to be inappropriate.

- **Farmsteads**

Generally, the same criteria outlined above would apply to farmsteads. However, farmsteads will be given additional consideration based on depth of flooding, duration of the flood event, and access. In some circumstances, it may be viable to provide a ring levee, or to elevate the farmstead structures.

Options will be considered on a case-by-case basis. However, where flooding would exceed 3 feet, the landowner would first be offered the acquisition option.

- **Agricultural Lands**

It is anticipated that flowage easements will be acquired over most land within the staging area. If the property owner prefers, purchase of staging area land will also be considered. Within the storage area, some land will be purchased, and for other land flowage easements may be considered. A property-by-property analysis will be conducted to ensure that the specifics of each parcel are taken into consideration when determining the appropriate mitigation. All agricultural land not within the footprint of flood protection elements can continue to be farmed. An Agriculture Subcommittee of the Land Management Committee has been formed to develop policies and procedures for acquisition of agricultural land and flowage easements

12. Real Estate Outside Staging/Storage Areas For those landowners residing outside the staging/storage areas, an individual impacts analysis (termed a “takings analysis”) will be conducted to determine the level of mitigation to which the property owner may be entitled.

13. Relocation Assistance Program

Most individuals, families, businesses, or farms displaced as a result of the Fargo-Moorhead Diversion Project that meet the constructive occupancy (or length of occupancy) requirements shall be provided with relocation assistance services for the purpose of locating comparable replacement property to the displaced property owner(s). It is the goal and desire of the Diversion Authority to provide quality service and assistance in providing a successful relocation for any displaced property owner(s). To accomplish these goals, the Diversion Authority will employ qualified personnel who are not only experienced and knowledgeable of the law and rules governing Relocations Assistance, but who are also familiar with the project area.

The relocations assistance program and supplemental payments discussed in this section are separate and in addition to the determination of fair-market-value for which a property owner is justly compensated and should not be confused as being a part of that “just compensation.”

All relocation assistance activities will be done in accordance with the Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970 (P.L. 91-646). The purpose of the Uniform Relocation Act (URA) is to establish a uniform policy for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Supplementing the URA is the government-wide single rule for all agencies to follow, set forth in Title 49 of Code of Federal Regulations (CFR) Part 24, is “displaced individuals, families, businesses, farms, and nonprofit organizations may be eligible for relocation advisory services and payments, and will be provided in accordance with the regulation.”

A qualified displaced person(s) may be entitled to certain relocation assistance benefits, which include reimbursement of moving costs and a replacement housing benefit. Moving expense can be reimbursed either based on actual costs or a fixed moving cost schedule. The replacement housing payment is separated into three basic types – *purchase supplement, rental assistance, and down payment*. All replacement housing must be decent, safe, and sanitary (DSS) before a replacement housing payment can be made.

Federal regulations (49 CFR 24) contain the policy and procedures for implementing the Last Resort Housing Program on federally aided projects. Last Resort Housing benefits are (except for the amounts of payments and the methods in making them) the same as those benefits for standard residential relocation as explained in the preceding paragraph.

Last Resort Housing is designed primarily to cover situations where a displaced individual(s) cannot be relocated because of lack of available comparable DSS replacement housing, or when the anticipated replacement payments exceed the statutory limits of \$22,500 and \$5,250 under the standard relocation procedures because the displaced person lacks the financial ability or has other valid circumstances. Housing will be considered for situations where comparable DSS housing cannot be identified for a displaced property owner or tenant. Additional situations that may be considered for Last Resort Housing is where the costs to relocate the displaced owner or tenant to an identified DDS replacement structure exceeds the statutory limits of \$22,500 and \$5,250 or the availability of such DDS housing is beyond the financial means of the displaced owner or tenant.

Any payment made under the Last Resort Housing Program is in addition to the “just compensation” payment made to the displaced property owner which was based on fair-market-value.

The above section provided a general summary of the Relocation Assistance Program and does not attempt to cover every facet and benefit of the program. The following laws, regulations, documents, and sites provide additional detailed information on the federal land acquisition process.

Federal Highway Administration (FHWA) Realty
 Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970,
 P.L. 91-646
 Title 49 of the Code of Federal Regulations (CFR) Part 24
Acquiring Real Property for Federal and Federal-Aid Programs and Projects,
 FHWA-HEP-05-030
*Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance
 Program*, FHWA-HEP-05-031
Non-Federal Sponsor Guide to Land Acquisition, by USACE Mobile District
Non-Federal Sponsor Land Acquisition, John Albrecht, USACE, St. Paul District

14. **Relocation Assistance, Farm Specific** – An owner-occupant or tenant displaced from a farm may be eligible for benefits similar to those for a person displaced from a dwelling or business. Business benefits may be administered if the farming operation is forced to move to another location. To determine eligibility, the farm operation will be evaluated by relocation specialists familiar with farming operations in accordance with the following determinations:

- If the farm operation would be discontinued as a result of the acquisition.
- In the case of a partial acquisition, if the remaining portion would no longer be an economic unit.
- If the taking caused the farm operator to be displaced from the farm operation on the remaining land.
- If the taking caused such a substantial change in the principal operation or nature of the existing farm operation that it constitutes a displacement.

15. **Reference Documents** – The following documents provide additional detailed information on the federal land acquisition process:

- *Acquiring Real Property for Federal and Federal-Aid Programs and Projects* (handout used at public meeting by USACE, St. Paul District)
- Appendix G – *Real Estate, Fargo-Moorhead Metropolitan Area Flood Risk Management, Final Feasibility Report and Environmental Impact Statement (EIS)*, dated August 2011, by USACE, St. Paul District.
- *Non-Federal Sponsor Guide to Land Acquisition*, by USACE, Mobile District
- *Non-Federal Sponsor Land Acquisition* (three-page document furnished by USACE, St. Paul District)
- *Section 1: Post-PPA To-Do List and Real Estate Milestones*

- *Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*
- *Real Estate Acquisition Guide for Local Public Agencies, 2009*

4. Potential Variations to the Federal Process

The federal land acquisition process is well defined and establishes the required procedures and minimum requirements for the Project's Land Acquisition Program. There are potential variations to the federal process that the Diversion Authority can elect to undertake in its plan for land acquisition. This section of the Plan defines a process for establishing variation policies, discusses early acquisition options, including the hardship policy, and outlines the establishment of subcommittees. This section references two subcommittees formed by the Land Acquisition Committee: 1) Early Acquisition Subcommittee, and 2) Agricultural Advisory Subcommittee. Both of these subcommittees will be relied upon for development of land acquisition variations.

4.1 Process for Establishing Variation Policies

This subsection establishes the process that the Diversion Authority will follow for developing and implementing a variation to the federal land acquisition process. The Authority has established these rules to ensure that any variations are fully evaluated and vetted before implementation.

- A variation to the land acquisition process is identified and presented to the Program Management Consultant's (PMC's) Lands Management Team.
- The PMC conducts an initial evaluation of the potential variation. The initial evaluation will be coordinated with Diversion Authority staff to understand the technical, legal, procedural, and financial implications to the Authority given that early acquisitions could result in significant early expenditures, set precedence, or have other unintended consequences.
- The PMC will present its initial evaluation and recommendation to the Diversion Authority's Lands Management Committee at its monthly meeting.
- The Lands Management Committee will consider the initial evaluation report and provide direction to the PMC and Diversion Authority staff. Direction could include further evaluation, adoption of the recommendations, or rejection of the potential variation.
- If the potential variation is adopted by the Lands Management Committee, a policy for the variation will be prepared by the PMC and submitted to the full Diversion Board of Authority for consideration.
- If adopted by the full Board, the policy will be finalized and implemented.

4.2 Early Acquisition

As noted in Section 3, the Diversion Authority can be credited for land acquisition activities after execution of the PPA and up to 5 years prior to the PPA being signed. If the Authority acquires property before the PPA is signed, it assumes the risk of not receiving credit for the costs associated with the early acquisition. The USACE will issue a risk letter to the Authority under these circumstances. (A Risk Letter is presented in Appendix C of this Plan.)

For the FM Area Flood Risk Reduction Project, the Diversion Authority is expected to exceed the minimum credit requirements. As such, the risk associated with early acquisition for this Project may not include achieving credit for early acquisitions. However, it should be noted that conducting land

acquisition activities before a federal project is fully authorized and a PPA is executed presents some risk to the Authority in the event the Project is not authorized.

There are several specific early acquisition drivers that could be considered. These drivers and a decision analysis for considering when to implement the activity are presented in the following subsections.

4.2.1 Early Acquisition Subcommittee

The Diversion Authority's Lands Management Committee has established an Early Acquisitions Subcommittee to assist in early acquisition policy development and implementation of early acquisition policies. The subcommittee will include members of the Administrative Advisory staff, PMC staff, and subject matter experts as recommended by the Administrative Advisory staff. Any policy and procedural recommendations from the subcommittee will be evaluated by the Land Management Committee and brought to the Diversion Authority Board for approval.

4.2.2 Early Acquisitions Prior to Project Partnership Agreement (PPA)

The Diversion Authority has adopted a pre-PPA hardship policy with a focus initially on serious medical conditions. A copy of the policy is presented in Appendix D of this plan. The hardship policy will enable early acquisition of properties from landowners who experience a serious medical condition and hardship. Residents can submit applications for the hardship policy to the Cass County Auditors office. Acquisitions will be subject to funding available from the Diversion Authority. Additional details regarding the policy and process are presented in the attached draft policy. A hardship review committee has also been established to evaluate requests submitted under the hardship policy.

4.2.3 Early Acquisitions Following Project Partnership Agreement (PPA)

The Diversion Authority will work through the Early Acquisition Subcommittee to identify and develop additional early acquisition policies that could be implemented following the PPA. Some of the potential additional early acquisition policies include:

- **Early Acquisition of Existing Flood Risk Properties:** The Project area likely contains properties that should be considered for early acquisition due to a high flood risk. The Diversion Authority could consider acquiring these properties early to remove them from flood risk.
- **Extreme Financial Hardship:** After signing of the PPA, the Diversion Authority could expand the hardship policy to include extreme financial hardships, such as employment changes outside of the project area that forces the property owner to relocate.
- **Early Acquisition of Active Military Personnel:** The Diversion Authority could consider early acquisition of property within the project footprint owned by military personnel serving on active duty who get orders to a location outside the normal commuting radius.
- **Others defined by the Early Acquisitions Subcommittee**

4.2.4 Rules for Early Acquisitions

Any early acquisitions will be accomplished by following 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". Essentially, this means that the Diversion Authority will follow the process outlined in Section 3 of this plan for any early acquisitions.

Any early acquisition program will be considered voluntary. An offer to purchase property will be made based upon a good faith estimate of the fair market value; 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. The early acquisition program is a voluntary buyout process.

4.3 Farmland Acquisition

The Diversion Authority's Lands Management Committee has established an Agricultural Advisory Subcommittee to assist in the development of policies and procedures to mitigate project-related impacts to agriculture. The subcommittee will include approximately 10 members with representation from the agricultural community, the Land Management Committee, and members of the PMC. Any policy and procedural recommendations from the subcommittee will be evaluated by the Land Management Committee and brought to the Diversion Authority Board for approval.

The Agricultural Advisory Subcommittee will propose options for acquiring agricultural land within the storage and staging areas with the intent to mitigate impacts to the agriculture community to the extent possible.

4.4 Funding/Financial Considerations

The Land Acquisition Plan presents a significant funding obligation for the Diversion Authority. Any variations to the required federal process must take into account the funding and financial considerations. The Diversion Authority will rely upon a financial model to develop scenarios for land acquisition variations.

5. Non-Acquisition-Related Impacts

During the initial development of this Plan and during early engagements with community leaders and impacted landowners, numerous non-acquisition-related impacts to the communities and landowners in the Project footprint were identified. The Diversion Authority has expressed interest in researching and defining those impacts, and in developing a process that will allow it to determine what can and should be done to mitigate significant impacts. Research remains to be done to quantify these impacts and develop the Authority's policy. This early version of the Plan will not be able to address the specific mitigation measures but will identify some of the initial non-acquisition impacts and propose the process the Authority will use to establish its impact mitigation policy.

5.1 Examples of Non-Acquisition-Related Impacts

A non-acquisition-related impact is any impact that is not directly related to the purchase of property or the relocation of landowners as a result of construction or operation of this Project. The following is a list of some of the non-acquisition-related impacts. This list is not all-inclusive and will continue to be expanded as additional feedback is received from communities and the public. Specific impacts identified to date include:

- The availability of prevent plant crop insurance for those farmers remaining in the staging and storage areas.
- The impact of the loss of tax base and revenue on township and school district operations within the impacted area.
- The effect that pending Project construction has on property sales or refinancing within the impacted area.
- The effect of pending Project construction on the property owner's ability to obtain accurate appraisals prior to the start of the federal acquisition process.
- The impact on the ability of the remaining property owners and emergency services personnel to access the road network in the staging area during high-water conditions. Lateral movement and emergency services access needs to be maintained within the staging area.
- The effect and additional cost associated with the maintenance and repair of roads in the staging area that are under water during high-water conditions.
- The effect that operation of the diversion would have on the Federal Emergency Management Agency's (FEMA's) willingness to pay for recovery efforts/costs in the staging area.
- Potential for sedimentation and deposition of other debris in the staging and storage area following staging of water during project operation.

The specific impacts listed above comprise the initial group of non-acquisition-related impacts that the Diversion Authority has been made aware of to date.

5.2 Diversion Authority Process

Most of these non-acquisition-related impacts are not required to be mitigated under the federal civil works project guidelines, and it is the decision of the Diversion Authority whether to mitigate impacts beyond the required federal level. Although the Authority is committed to attempting to mitigate some significant Project impacts within its available resources and legal authority, the consequence is there may be some impacts that the Authority decides not to mitigate.

The following process will be used by the Authority to collect, research, and determine how all non-acquisition-related impacts will be mitigated:

- The impact is identified either through general review of Project impacts or as a result of local community leader or public inquiry.
- The PMC will conduct initial background investigations and research to establish the scope of the impact, the available, mitigation options available and a recommended Diversion Authority implementation policy for the impact.
- The background and recommended mitigation will be presented to and vetted by the Land Management Committee.
- The Land Management Committee will make a recommendation to the full board of the Authority on the appropriate policy to either mitigate or not mitigate the impact.
- The Diversion Board of Authority will vet and either approve or deny the Land Management Committee's recommendation.
- The PMC will document the Diversion Authority's decision in the next version of the Authority's Impact Mitigation Policy.

6. Land Management Communication Plan

6.1 Purpose of the Land Management Communication Plan

A communication and outreach plan will be developed to assist the Diversion Authority effectively communicate the required land management actions needed to deliver the FM Area Flood Risk Reduction Project. This plan is built from the Authority's perspective and addresses actions the Authority must take to ensure Project success.

6.2 Linkage to Overall Communication Plan

This plan will support the following overall strategic communication objectives for the Project:

- Provide a sufficient and accurate flow of information to the public.
- Develop and maintain support, trust, and credibility for the Diversion Authority and the Project.
- Outline the Project's long-term benefits.

6.3 Key Messages

- a. Construction of this Project is the most effective, currently identified method to reduce the collective personal and economic risk of major flood damage to the Greater Fargo-Moorhead Metropolitan area and the region.
- b. Any permanent solution to provide flood risk reduction measures for the majority of families and businesses in our communities will have adverse impacts on some.
- c. The Diversion Authority is committed to minimizing these impacts and pledges to treat those who are affected – especially those who must be relocated – fairly, respectfully, and with just compensation.
- d. The Authority will move forward with more public communication and consider public input.
- e. The Authority will treat fairly all those affected by the FM Area Flood Risk Reduction Project.

6.4 Tenants of Communication Plan

To ensure success, this plan must incorporate the following tenants into all products and actions.

- **Proactive.** We must conduct a detailed analysis to identify and anticipate potential issues and obstacles for project success. We must then proactively build campaigns and actions to address those issues before they begin to have major impacts to the project.
- **Open.** Success is based on open, fact-based communications with all partners and the public.
- **Targeted.** This plan must identify the different audiences we are attempting to reach and shape messaging to their issues and the means through which they typically communicate.
- **Consistent.** Messages and actions must be consistent to help facilitate public understanding and confidence in the Project.

- **Continuous/Redundant.** This is a long-term project, and its messaging must continually seek new, more effective ways to reinforce overall communication and maintain continued Project support.
- **Flexible.** The issues and perceptions will change over time. This plan must continually look to identify current issues and adjust to effectively address those changes.

6.5 Critical Land Management Plan Phases

Because land acquisition issues are one of the primary drivers of public support for this Project, the real estate outreach plan must begin immediately and remain active until all land is procured. Several distinct phases will impact real estate activities during the Project life:

- **Pre-Federal Authorization/PPA Signing.** During this immediate phase, expenditure for real estate procurement will be at the Diversion Authority's risk because there is no guarantee that the Project will be authorized and funded. Clearly, public outreach and communication must begin during this phase in order to set the conditions for efficient procurement once the PPA is executed. Specific activities during this phase include:
 - a. Design refinements that will necessitate initial access to some property to gather required information.
 - b. Local leader engagements tied to the need and benefits of the program.
 - c. Informal workshops in affected areas that provide property owners with the opportunity to voice their views and concerns.
- **Post-Authorization.** In this phase, the Project will move to active construction. The outreach plan initiated during the pre-authorization phase will need to continue with specific emphasis on ensuring that real estate acquisition issues do not impact construction timelines. Other activities include:
 - a. Formal landowner meeting in all affected areas.
 - b. Development of ongoing public and partner update sessions utilizing all available media to facilitate open communication on all real estate-related issues.

6.6 Measures of Success

This outreach plan will be successful if real estate acquisition issues do not adversely impact completion of this Project. Measures of success include public support/acceptance for the Project, lack of construction delays associated with real estate activities, maintaining overall real estate costs within Project estimates, minimal legal actions initiated to block construction, and continued support of this Project by state and national elected officials. All of these measures need to be tracked throughout the Project to ensure outreach methods are effective.

6.7 Q&A List

A current and updated list of commonly asked questions will be posted on the FMDiversion.com website.

APPENDIX A

Detailed Communication Analysis

Appendix A: Detailed Communication Analysis

A.1 Linkage to Key Project Themes

The following set of core themes has been developed to serve as a foundation for public outreach efforts, including land acquisition:

- a. We are building a diversion project that will permanently reduce the risk of flood damage to the Fargo-Moorhead Metropolitan area due to a 100-year flood event and that enables the area to win a 500-year flood fight.
- b. Flooding in the Red River Valley has become increasingly severe, and frequent, threatening the viability and quality of life for the entire region.
- c. A 500-year event would cause major flood damages to large portions of Fargo, Moorhead and West Fargo, and several surrounding communities.
- d. The cost of ignoring these increasingly frequent floods could be devastating to the economy and way of life for approximately 200,000 people. Potential damages to the Fargo-Moorhead area alone are estimated at more than \$194 million annually.
- e. Extreme flood events, such as those experienced in Bismarck and Minot earlier this year, could lead to more than \$10 billion in damages to our area.

A.2 Stakeholders/Partners and their Interests

a. Internal

The internal stakeholders of Project are the Flood Diversion Board of Authority and the entities represented therein, comprising Cass and Clay counties, the City of Fargo, the City of Moorhead, the City of West Fargo, the Cass County Joint Water Resource District, and the Buffalo-Red River Watershed District. The PMC Team and all its subconsultants are also considered internal partners.

b. External

The three principal groups of external partners are the USACE; state and national elected officials; and the public – i.e., all people, businesses, and organizations that reside and/or operate in Cass and Clay counties, the City of Fargo, the City of Moorhead, and the City of West Fargo. External stakeholders also include Richland and Wilkin counties, and the States of North Dakota and Minnesota. Other specific external stakeholders include the City of Oxbow, the City of Hickson, residents and landowners in the staging and storage areas, and residents and landowners along the path of the diversion channel. Other interested stakeholders include environmental organizations, other regulatory and oversight organizations, and concerned groups outside the immediately impacted areas.

c. Interests (relative to the Real Estate Acquisition Plan)

1) Diversion Authority

a. Interest/desired outcomes:

- (1) All real estate acquired in a timely way that does not interfere with Project construction.

- (2) Real estate acquired in most cost effective manner in order to minimize overall Project cost.
 - (3) Public support (from advocates) and acceptance (from opponents) of the Project.
 - (4) Validation of the public's trust and confidence in the Diversion Authority's ability to oversee this Project.
- b. Key points:
- (1) The Diversion Authority is committed to minimizing the affects on those adversely affected by the real estate acquisition needed for this Project. It pledges to treat those who are affected – especially those who must be relocated – fairly, respectfully, and with just compensation.
 - (2) Upstream retention, in concert with the diversion channel, is required for the greatest protection of Fargo-Moorhead Metropolitan area and reduction of downstream impacts.
 - (3) The Project will achieve reliable flood risk reduction that will reduce flood damages to the communities and improve the economy and quality of life for 200,000 people.
- c. Methods to accomplish outcomes:
- (1) Formalize, with Diversion Authority validation, the acquisition process, anticipated timelines, and dispute resolution process.
 - (2) Information campaign that educates the public on the acquisition process, anticipated timelines, and dispute resolution process.
 - (a) Public meetings/workshops
 - (b) Multi-media (radio, print, etc.)
 - (c) Internet and social media
 - (d) Other
- 2) USACE
- a. Interest/desired outcomes:
- (1) All real estate acquired in a timely way that does not interfere with Project construction.
 - (2) Continued local and congressional support for federal authorization and funding of the Project.
 - (3) Clear understanding by the Diversion Authority and the public of the USACE real estate acquisition process.
- b. Key points:
- (1) Real estate acquisition is an NFS responsibility for this Project.
 - (2) In order to remain a federal project, all real estate acquisitions must follow established USACE acquisition guidelines.

- c. Methods to accomplish outcomes:
 - (1) The Diversion Authority's real estate acquisition plan will be closely reviewed and coordinated with the USACE St. Paul District's Real Estate Office to ensure consistency.
 - (2) Whenever possible, USACE St Paul District Real Estate personnel will participate in all major public outreach and education activities.
- 3) State/National Elected Officials
- a. Interest/desired outcomes:
 - (1) All real estate acquired in a timely and cost-effective manner that does not interfere with Project construction.
 - (2) Public support maintained in order to justify continued state and federal investment in the Project.
 - b. Key points:
 - (1) Real estate acquisition is one of the most influential aspects of public support for this Project. All efforts must be made to communicate the Project benefits to help build and maintain public support as well as congressional endorsement of this Project.
 - (2) This Project is the most effective method to reduce the economic and loss of life risks to the people in the Fargo-Moorhead Metropolitan area.
 - c. Methods to accomplish outcomes:
 - (1) Continued regular contact and communication from Authority members to elected officials related to the acquisition process, public issues, and remedies being pursued.
 - (2) Effective public engagement that increases the public's knowledge and support of the Project.

4) Public

The Project encompasses at least three clear camps among the general public: those whose land will be affected by the diversion; those whose land is not affected but is within the benefitted area; and those outside the benefitted area. There are also stakeholder groups and other interested parties that are addressed in other parts of this plan.

- a. Interest/desired outcomes:
 - (1) MnDak Upstream Coalition, Stop the Dam group, affected property owners along diversion alignment, and people in other rural areas: These parties seek a compromise that does not flood their property but still provides basin-wide flood protection.
 - (2) Protected, but not affected, public and businesses. Real estate procured in as quick and cost-effective way as possible to ensure the Project is complete and risk is reduced to the region.

- b. Key points (primarily from the impacted groups):
 - (1) The Project, as currently designed, has unacceptable affects to significant areas.
 - (2) Property owners are being asked to relinquish land with long family histories.
 - (3) Basin-wide protection should be pursued, but property owners do not understand why they have to pay such a high cost in terms of land and livelihood for this Project.
 - (4) Those excluded from the benefitted area believe there is inadequate funding for the diversion project and that the scope should be expanded to include them in the benefitted or non-affected area..
 - (5) Others: to be developed and monitored as we proceed with the Project.
- c. Diversion Authority actions to address expressed concerns:
 - (1) Information campaign identified in the Authority sections
 - (2) Where practicable, reevaluate the real estate alignment to ensure the final alignment provides the greatest possible benefits while minimizing the impact on affected landowners.
 - (3) Others: TBD
- 5) Others
 - a. Environmental groups, including the Minnesota Department of Natural Resources.
 - (1) Interest/desired outcomes: Real estate alignment adjusted to reduce impact on larger environment of the region.
 - (2) Key points: TBD
 - (3) Methods to accomplish outcomes: TBD

A.3 Audience Analysis

Table A-1 presents the delivery messages to some of the major groups with interest in this Project:

TABLE A-1
Targeted Audience Analysis (From FM Flood Diversion Communications Plan 091511)

Audience	Desired Outcome	Audience Interests	Key Messages	Deliver Methods
FM Metro Area Residents/ Taxpayers	<ul style="list-style-type: none"> • Clear understanding of issues • Support • Approval 	<ul style="list-style-type: none"> • Keeping homes and properties • Livelihood • Flood protection • Safety • Financial security • Relief from stress of flood fighting 	<p>Diversion is most effective: USACE study found that the concept of diversion and retention can significantly reduce flood risk in FM area from flood events of 100-year frequency or larger.</p> <p>Diversion will relieve stress of flood fighting: History of building emergency levees has demanded significant human resources and taxed the social fabric of communities.</p>	<ul style="list-style-type: none"> • Information workshops • Fact sheet and supporting materials • Website • FAQs • Facebook • Twitter • Press releases and articles

TABLE A-1
Targeted Audience Analysis (From FM Flood Diversion Communications Plan 091511)

Audience	Desired Outcome	Audience Interests	Key Messages	Deliver Methods
			<p>Diversion will protect property: Structure and content value exceeds \$23 billion within Project boundary to be protected.</p>	<ul style="list-style-type: none"> • Media interviews
Property Owners in Impacted Areas of Water Retention	<ul style="list-style-type: none"> • Clear understanding of issues • Acceptance of results • Support • Approval 	<ul style="list-style-type: none"> • Keeping homes and properties • Livelihood • Flood protection • Safety • Financial Security 	<p>Diversion is crucial to protecting the region's economy: The FM Metro area generates 103,658 regional jobs, which generate more than \$4.35 billion in annual non-farming wages.</p> <p>Diversion is crucial to saving lives. Although emergency levees have been successful in the past, there is a high risk of catastrophic failure that would result in loss of life.</p>	<ul style="list-style-type: none"> • Information workshops in impacted areas • Fact sheet and supporting materials • Website • FAQs • Responding to newspaper editorials • Press releases and articles • Facebook • Twitter • Media interviews
FM Metro Area Business Community	<ul style="list-style-type: none"> • Clear understanding of issues • Support • Approval 	<ul style="list-style-type: none"> • Livelihood • Economic growth • Profitability • Flood protection • Financial security 	<p>Diversion is crucial to protecting sales: The FM Metro area generates more than \$2.77 billion in annual taxable sales.</p> <p>Diversion is crucial to protecting region's economy: The FM Metro area accounts for 103,658 regional jobs, which generate more than \$4.35 billion in annual non-farming wages.</p> <p>Diversion will protect property: Structure and content value exceeds \$23 billion within Project boundary to be protected.</p>	<ul style="list-style-type: none"> • Participate in "Business After Hours" events • Engage civic support organizations • Fact sheet and supporting materials • Website • FAQs • Facebook • Twitter • Press releases and articles

To get the message out to various types of audiences and messages:

TABLE A-2
Communication Channels

Channel	Best for
Information workshop	Educating public on the real estate acquisition process and anticipated timelines. Providing more compartmentalized engagements as compared to a large public briefing and Q&A session.
Fact sheet and supporting materials	Distributing key messages and appropriate content in printed form.
Website	Distributing key messages and appropriate content in dynamic, electronic form.
FAQs	Answering frequently asked questions. Posting on website. Inclusion on fact sheet and supporting materials.
Educational materials (articles, flyers, videos)	Conveying basic information about Project.
Facebook	Community engagement. Offering Project updates and links. Monitoring, and participating in, conversations about Project.
Twitter	Offering “breaking news feed,” Project updates, and links to new information/articles. Succinct, pointed communication. Highlighting key milestones.
Press releases and articles	Maintaining consistent updates and messages with members of the news media. Highlighting key milestones.
Print and electronic media interviews or news conferences	Answering specific questions/comments posed by the public, in a personable approach, in widely consumed print and/or electronic media platforms. Highlighting key milestones.
Responding to newspaper editorials	Answering specific questions/comments posed by individuals, in a widely read, printed medium.
Participate in “Business After Hours”-type events	Engaging business community and civic support organizations to garner support.

APPENDIX B

North Dakota/Minnesota Eminent Domain Information

MEMORANDUM

TO: Land Management Committee
FROM: John T. Shockley
DATE: April 9, 2012
RE: Right of Way Acquisition Process - Permanent Right of Way



I. BACKGROUND

Following the United States Supreme Court decision in Kelo v. New London, Conn., 545 U.S. 469 (U.S. 2006), the Minnesota Legislature made significant amendments to the Minnesota Statutes governing eminent domain procedure and practice in Minnesota. Generally, these amendments can be summarized as adding additional layers of procedure (mandatory negotiation procedures, waiting periods and notice requirements) and cost (reimbursement of landowners' appraisal costs, minimum compensation and attorney fee awards for landowners) to the eminent domain process. I will first set forth the process that the City of Moorhead (hereinafter the "City") will be required to utilize to exercise its eminent domain power. I will then discuss the unique issues of Minnesota law that may require exceptions to the United States Army Corps of Engineers' standard practice and procedure.

II. GENERAL AUTHORITY TO OBTAIN RIGHT OF ENTRY AND PERMANENT RIGHT OF WAY.

A. Right of Entry

The City's authority to obtain access to parcels for surveying and testing is derived from Minn. Stat. § 117.041. In the event that a landowner refuses to allow voluntary entry upon his/her property, Section 117.041 sets for a specific procedure for obtaining court ordered entry upon property for surveying and testing. This section has been successfully used to obtain court authorized entry for testing, surveying work, cultural testing up to the date of this memo.

However, if Phase II environmental testing is required of specific properties and the individual landowners refuse entry, this statute imposes a heavy burden upon the City to obtain court permission. Specifically, subd. 2 of Minn. Stat. § 117.041 mandates, *inter alia*, that the City must

have reason to believe that a hazardous substance, pollutant, or contaminant is present on the property or the release of a hazardous substance, or contaminant may have occurred or is likely to occur on the property.

Minn. Stat. § 117.041, subd. 2 (emphasis added) See also Port Authority of the City of St. Paul v. RLR, Inc., 758 N.W.2d 604 (Minn. App. 2008) (holding that to gain court ordered access to

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property for environmental testing the entity must demonstrate that it will likely need to acquire the property by eminent domain). Thus, the standard for gaining court ordered access to property for environmental testing places a significant burden upon the City to have a sufficient factual basis regarding evidence of possible contamination. Quite simply, a court will not grant access merely because the Diversion Authority's agents would like to know what is or is not on the property.

B. Permanent Right of Way.

The City of Moorhead's authority to acquire property outside of the City for a flood control project derives from several sources. The Moorhead City Charter provides that the City can acquire property outside of the City for any public purpose through the use of eminent domain. Mhd. Cty. Charter § 9.01. The Minnesota Supreme Court has held that a Minnesota city may condemn property outside city limits pursuant to its home rule charter. City of White Bear Lake v. Leuthold, 214 N.W.930 (Minn. 1927) (City condemned a private lake for use in connection with its sewage system.). Minnesota State Statute also provides that a Minnesota city may exercise its power of eminent domain outside of its corporate limits for any purpose, including acquisition of drainage rights of way outside of the city. Minn. Stat. § 465.01. Minnesota cities also have authority to condemn property outside of their city limits for storm sewer systems, holding areas and ponds and related appurtenances. Minn. Stat. § 444.075

III. PROCEDURES TO EXERCISE EMINENT DOMAIN IN MINNESOTA.

The procedural requirements for exercising eminent domain in Minnesota are as follows:

1. Prior to commencing an eminent domain proceeding, the City must obtain at least one appraisal for the property. Minn. Stat § 117.036 subd. 2(a).¹
2. The City's appraisal must be presented to the landowner a minimum of sixty (60) days prior to presenting a petition to the district court to exercise eminent domain authority.
3. The legislature has given landowners the right to obtain their own appraisal and to be compensated for this expense by the City. The landowner is entitled to receive up to one thousand five hundred dollars (\$1,500.00) for single and two family homes. Minn. Stat. § 117.036, subd 2(b). Landowner can be compensated up to one thousand five hundred dollars (\$1,500.00) for any taking valued less than

¹Please note, the 2006 amendments mandate that any appraisal commissioned by the City has to be disclosed to the landowner. Minn. Stat. § 117.036. Further, if the City is considering both a partial take or a full take, it must have two appraisal commissioned. Id. (One for each type of taking).

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- \$10,000. Id. Any landowner whose property has a value greater than \$10,000 and is not a single or two family home gets up to five thousand (\$5,000.00) dollars in reimbursement for an appraisal. Id.
4. Prior to commencing eminent domain, the City must make a good faith attempt to personally meet with the landowner and negotiate a purchase price for a direct purchase. Minn. Stat § 117.036, subd. 4
 5. The City prepares a petition and notice to utilize eminent domain. Minn. Stat § 117.055. The petition is served upon the landowner and filed with the court. Id. The City deposits the amount of its final offer with the district court. Id. A map of the right of way proposed to be taken must be attached to the petition. Id.
 6. The landowner has 20 days to respond to the petition and 60 days to bring a motion to challenge the public purpose of the proposed taking. Id.
 7. Assuming that the public purpose of the taking is not contested, the District Court appoints a group of commissioners to make a determination of value. Minn. Stat § 117.075²
 8. The commissioners hold a hearing, take evidence and testimony, and make a determination as to value. Minn. Stat § 117.085.
 9. The commissioners file a report with the district court regarding their determination as to value. Minn. Stat. § 117.115.
 10. The landowner or the City may appeal the determination of value to the district court within 40 days of the filing of the commissioners' report. Minn. Stat § 117.145. If no appeal is taken, the determination of value becomes final.
 11. If an appeal from the award of the commissioners is made, a trial before a judge or jury is held. Minn. Stat § 117.175. The issue of damages is tried *de novo*, which means it's a brand new trial with no deference given to the report of the commissioners. Id. However, the award of the commissioners is considered evidence of value at the trial.
 12. After the trial is complete, the landowner can accept the award or appeal to the Minnesota Court of Appeals and then to the Minnesota Supreme Court.

²The commissioners are appointed from a group of individuals who are generally real estate attorneys, appraisers, participants in the financial industry, real estate agents and college professors.

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13. Upon completion of all proceedings, the attorney for the City must file a final certificate with the court administrator and County Recorder.

IV. SPECIAL COMPENSATION ISSUES***A. Minimum Compensation***

In 2006, the Minnesota legislature added several provisions to Minnesota's eminent domain law regarding compensation. These provisions are currently being tested in Minnesota appeals courts. I have attached a prior memo that I developed regarding Minimum Compensation as Exhibit "A." Recently (March 26, 2012), the Minnesota Court of Appeals ruled on the Minimum Compensation statute and held that the statute requires the condemning authority to provide the landowner with compensation sufficient to purchase a property of similar age and within the generally identified community. County of Dakota v. Cameron, 2012 WL 987299 (Minn. App. 2012). This case is expected to be appealed to the Minnesota Supreme Court.

Minimum Compensation will present difficult problems for the purchase of farmsteads given that there will not be many comparable farmsteads and farmland. It will allow landowners to argue that their property is unique in character and they are entitled to additional compensation.

B. Attorneys Fee Awards

In 2006, the Minnesota Legislature added Minn. Stat. § 117.031 which requires that if the final award of damages in an eminent domain proceeding exceeds 40 percent of the last written offer of the City given prior to filing a petition with the court, the court must award the landowner his attorney's fees. Thus, the last written offer of the city must be carefully crafted to avoid triggering a mandatory award of attorney's fees.

C. Minnesota Uniform Relocation Assistance Act

Minnesota has adopted a Uniform Relocation Assistance Act that follows federal law in this area. Thus, relocation costs must be accounted for in any taking. See, Minn. Stat. §§ 117.50-117.56.

JTS/cs

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APPENDIX C

Risk Letter and Access Agreement



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MN 55101-1678

Real Estate Division
Planning and Acquisition Branch

April 26, 2012

Fargo-Moorhead Area Flood Diversion
Board of Authority
c/o Jon Diebel CH2MHILL

Sirs:

The purpose of this letter is to address the potential risks associated with acquiring real estate interests, as identified for the project, in advance of the Project Partnership Agreement (PPA) being fully executed and before the final design specifications have been prepared.

Although we do not encourage advance acquisition, it is entirely your decision. However, we are required by regulation to notify you of the risks associated with this decision. These risks include the following:

1. A PPA mutually agreeable to the Government and the Sponsors may not be executed and implemented;
2. Sponsors may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, arising out of local, state or federal laws or regulations;
3. Sponsors may incur responsibility and expense by virtue of its ownership of lands, or interests therein, arising out of the National Historic Preservation Act of 1966, or other laws regulating historic and archeological resources;
4. Sponsors may acquire interests or estates that are not appropriate for or approved as necessary to support the proposed project;
5. Sponsors may initially acquire insufficient or excess real property acreage which may result in additional negotiations as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PPA execution and the Government's notice to commence acquisition;
6. The costs incurred by Sponsors under items four and five above and other costs or expenses incurred in connection with its decision to acquire real estate in advance of PPA execution and the Government's notice to proceed may not be reimbursable or creditable;

7. Sponsors assume full and sole responsibility for such risks and all costs and expenses related to this decision.

Although you have already received several briefings and information describing the acquisition procedures and the documentation and reviews required by the Government, we are available at any time to answer your questions or provide additional assistance. Acquisition of all project lands must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended (P.L. 91-646).

You may contact Mr. Brett Coleman, Project Manager, at 651-290-5452 for any general project information. Your real estate questions should be directed to myself at 651-290-5399 or Mr. Rodney Peterson at 651-290-5397. Thank you for your consideration of these issues. We look forward to continuing to work with you to successfully complete the real estate acquisition program.

Sincerely,



John P. Albrecht
Chief, Real Estate Division

ACCESS AGREEMENT

THIS AGREEMENT, is made this ____ day of _____, 2012, by and between the Cass County Joint Water Resource District, a North Dakota political subdivision (the "District"); and the undersigned owner of certain real property in Cass County, North Dakota ("Grantor").

RECITALS

A. The United States Army Corps of Engineers (the "Corps") is currently conducting the design for the FARGO-MOORHEAD FLOOD RISK MANAGEMENT PROJECT (the "Design Stage"), in accordance with an agreement with the City of Fargo ("Fargo") and the City of Moorhead ("Moorhead") dated September 12, 2011 (the "Corps Agreement"). The objective of the Design Stage is to develop plans for viable permanent flood control and protection options for a diversion channel to reduce flood damages and risks for the region.

B. Before the Corps and local government entities can make final decisions regarding project alignments or the location of certain project components for any diversion project, and before determining what specific real property interests will be necessary for a project, consultants, including engineering and environmental consultants, must have opportunities to enter upon certain parcels of real property to determine which parcels are suited for the construction of various project features and components.

C. The District is a member of the DiverSion Authority, a joint powers entity comprised of North Dakota and Minnesota entities in the Red River Basin created to serve as the local authority regarding the Design Stage, and ultimately regarding a diversion project to the extent the Corps and the local entities proceed with construction of a project; the members of the Diversion Authority are the City of Fargo, the City of Moorhead, Clay County, Cass County, the Cass County Joint Water Resource District, and the Buffalo-Red River Watershed District.

D. The District is the North Dakota entity-member of the Diversion Authority responsible for seeking and obtaining access to parcels in North Dakota to determine what parcels might be suited for the construction of various project features and components.

E. Grantor agrees to grant the District, its officers, employees, contractors, consultants, representatives, and agents, including, but not limited to, employees of the Corps, access to and entry upon certain real property owned by Grantor, subject to the terms of this Agreement.

In consideration of the parties' 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. **Access.** In accordance with the terms of this Agreement, Grantor grants to the District, and its, officers, employees, consultants, contractors, agents, and representatives, including employees of the Corp, access and right-of-way in, on, over, through, and across real property in North Dakota, Cass County Parcel Number 44000000700000, and as more fully described and depicted in the attached **Exhibit A** (the "Property"). The District's temporary-rights under this

Cass County Joint Water Resource District
Access Agreement
Object ID# 2362

*Cass County Joint Water Resource District
Access Agreement*

Page 2

Agreement include the right of ingress and egress to the Property; the right to enter upon and occupy the Property; the right to conduct parcel review and field design, including parcel survey, parcel staking, visual observation, and data collection for purposes of an environmental assessment and cultural resources survey; and the right to conduct soil borings.

2. **Ownership.** Grantor warrants that Grantor is the fee simple owner of the Property; that Grantor has the authority and right to execute this Agreement; and that this Agreement does not violate any mortgage or other interest held by any third party regarding the Property, or any portion of the Property. Grantor will release, hold harmless, defend, and indemnify the District and any of its officers, employees, consultants, contractors, agents, or representatives from and against any and all claims, damages, injuries, or costs arising out of or in any way related to any title issues regarding the Property or as a result of Grantor's lack of authority to enter into this Agreement.

3. **Term.** The rights and privileges granted under this Agreement will begin immediately and will continue until the District completes its objectives identified in Section 1 above, but no later than December 31, 2013.

4. **Condition of the Property.** The District will return the Property as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.

5. **Indemnity.** The District agrees to indemnify and hold Grantor harmless from any and all claims, damages, or losses to the Property that arise out of the District's negligence on the Property.

6. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in state District Court within the State of North Dakota, and the parties waive any objection to personal jurisdiction.

7. **Survival of Agreement.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

8. **Time is of the Essence.** Time is of the essence of the parties' obligations under this Agreement. As a result, this Agreement may be specifically enforced by a court of competent jurisdiction.

9. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties. This agreement may be signed in counterpart, so long as all owners have executed the Agreement.

Cass County Joint Water Resource District
Access Agreement
Object ID# 2362

*Cass County Joint Water Resource District
Access Agreement*

10. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

11. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors, heirs, representatives, and assigns, including successors in title.

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

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

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

By: _____
Secretary-Treasurer

Cass County Joint Water Resource District
Access Agreement
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*Cass County Joint Water Resource District
Access Agreement*

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OWNER

NAME

NAME

Phone Number

E-mail address

Cass County Joint Water Resource District
Access Agreement
Object ID# 2362

APPENDIX D

**Flood Diversion Authority
Draft Pre-PPA Hardship Policy**

Appendix D

Flood Diversion Authority – Pre-PPA Hardship Policy --DRAFT--

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 by-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.

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Flood Diversion Authority – Pre-PPA Hardship Policy
April 12, 2012

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- 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

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*Flood Diversion Authority – Pre-PPA Hardship Policy
April 12, 2012*

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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

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*Flood Diversion Authority – Pre-PPA Hardship Policy
April 12, 2012*

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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

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*Flood Diversion Authority – Pre-PPA Hardship Policy
April 12, 2012*

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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.

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: _____

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.

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

Appendix D

*Flood Diversion Authority – Pre-PPA Hardship Policy
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