

Flood Diversion Authority – Pre-PPA Hardship Policy

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 buyout area associated with the Diversion Project, as proposed, that is used as a residence. To the extent a single parcel is used for multiple principal uses, such as residential and agricultural uses, the Hardship Review Committee may identify a portion of said parcel that shall, for purposes of this program, be deemed to be the “Affected Property” and any purchase offer for said Affected Property may be limited to such residential portion of said parcel. The Diversion Authority may designate, by map or boundary line, an area within which this program shall only apply. The area shall generally include the diversion and levee footprint, the storage area, and areas in the staging area with water depths greater than three feet.
- 1.2 Affected Property Owner** means the owner or co-owners in fee of an Affected Property, whether one or more persons, firms or entities.

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

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

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

- 2.1 Applications.** An Affected Property Owner may submit an application for determination of hardship to the Program Administrator. The Program Administrator may issue such form or forms necessary to facilitate the application process and to gather the information needed for review of the hardship application. An application must be accompanied by a qualified medical professional's certification that the Affected Property Owner, or other individual residing within an Affected Property, suffers from a Serious Health Condition. The application must also include an explanation as to the circumstances which, in combination with the Serious Health

Condition, require that the occupants of the Affected Property relocate and require that the Affected Property be immediately sold. The applicant must state the reason or reasons why the Serious Health Condition will not allow the Affected Property Owner sufficient time to sell the residence in question in the customary marketplace, but, instead, requires said residence to be sold immediately and purchased by the Diversion Authority (or one of its member entities).

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

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

- a. The extent to which the Serious Health Condition combines with the surrounding circumstances require the Affected Property Owner to move away from the Affected Property and require immediate sale of the Affected Property.
- b. The extent to which the Serious Health Condition combines with the surrounding circumstances to make it difficult for the person with the Serious Health Condition and all other occupants of the Affected Property to continue residing at, and care for, the Affected Property.
- c. The Committee may consider the financial hardship that may or will result from the continued occupancy and/or ownership of the Affected Property by either the person with the Serious Health Condition or the spouse or other occupant of the Affected Property. In other words, if the Serious Health Condition requires that person to be admitted to an assisted living facility, long-term health facility or other place for people requiring such special needs, and such relocation will cause a significant financial hardship that requires immediate sale of the Affected Property, the Committee may consider such financial impacts. It is intended; however, that the Committee

will not consider financial hardships other than those that are related to, or resulting from, a Serious Health Condition.

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

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

SECTION 3. EARLY BUYOUT LIST – PROCEDURE FOR DETERMINING

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

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

3.2 Buyouts in Chronological Order. It is the intent of the Diversion Authority that actual purchase of Early Buyout List properties shall be acquired by the applicable governmental entity (Diversion Authority, County or City) based upon the order in

which a complete application for early buyout was received; the Diversion Authority reserves the right to purchase a property out of chronological order where hardship circumstances warrant the same.

3.3 Voluntary Sale and Purchase. This program is intended to provide a method for identifying those properties that are eligible to be placed on the Early Buyout List. It is further intended that an offer to purchase the property is to be made based upon a good faith estimate of the fair market value, as described herein; however, the Affected Property Owner receiving the offer is not compelled in any way to accept such offer and the Affected Property Owner may reject such offer or any counteroffers without prejudice, this program being a voluntary buyout process and this is not a program based upon any power of eminent domain.

Hardship Application Form

Name: _____

Address: _____

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

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

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

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

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

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

Physician's Certificate of Serious Health Condition

I hereby certify that _____ of

(Applicant)

(Address)

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

Physician Comments:

Effective Date of Disability: _____

Physician

Date: _____

Physician's Address

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

Send Physician's Certificate and Hardship Application to:

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

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