DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, May 11, 2016
4:00 p.m.

1. Agenda review
2. Approve April 13, 2016 minutes
3. Property Acquisitions
4. CCJWRD Land Management Report
5. Flowage Easements
6. Local Cemetery Mitigation Team
7. Other business
8. Next meeting June 9, 2016

DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, April 13, 2016
4:00 p.m.

Land Management Committee Members Present: Fargo Mayor Tim Mahoney, Oxbow Mayor Jim Nyhof, Cass County Commission Representative Mary Scherling, Clay County Commission Representative Jenny Mongeau, Cass County Joint Water Resource District Representative Mark Brodshaug (alternate for Rodger Olson), Cass County Administrator Keith Berndt, Clay County Administrator Brian Berg, Fargo Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman.

Others present: Eric Dodds - AE2S, Rocky Schneider - AE2S, Scott Stenger - ProSource, April Walker - Fargo City Engineer, Bruce Grubb - Fargo City Administrator, Terry Williams - US Army Corps of Engineers.

The Land Management Committee meeting was called to order by Mary Scherling.

Agenda review
Eric Dodds said the members of the Land Management Committee are meeting in conjunction with the Finance Committee on property acquisitions and relocations in Oxbow.

Chair Tim Mahoney present.

Approve March 9, 2016 minutes
Mary Scherling moved the minutes from the March 9, 2016 meeting be approved. Mark Brodshaug seconded the motion. All the members present voted aye and the motion was declared carried.

Property Acquisition and Relocations
Eric Dodds said the nine properties being presented, eight homes and a vacant lot, will conclude the residential home acquisitions in Oxbow. A few vacant lots remain and will be brought forward in time, he said; however, most are unbuildable. He said these acquisitions are being considered by both the Finance Committee and the Land Management Committee today and are consistent with the MOU and other agreements in place. New project cost estimates were released last week, he said, and these costs are included in the $2.1 billion estimate. He said the properties for discussion today include three unique high end homes, three that are more typical that are relocating within Oxbow, two that the property owners are electing to move out of Oxbow and one vacant lot.

Jenny Mongeau said she has a hard time with a government entity paying for things like interior designer fees and custom paint.

Scott Stenger of ProSource said under the MOU agreement between the Authority and the City of Oxbow, sufficient funds are provided to replace what was expended previously

in order to rebuild the house fairly close to what it is today. It is not required the exact same house be built, he said; however, property owners are being provided sufficient money to rebuild close to what it is today, including allowances for those individual items they have expended previously. He said the line items shown are specific to construction costs and due to the unique features of some higher end or custom homes, some features may have been separated out.

Jim Nyhof said he is aware of cases where the homeowners had to provide documentation that they had interior design expenses in the current home in order to get that same amount for the new home.

Brian Berg said this is the first he has heard of some of these allowances. He said expenses like wider driveways for wider streets in new cul-de-sacs and expenses related to covenants seem to be making Oxbow a much nicer community than before.

Jim Nyhof said part of the MOU amendment addressed how to deal with the properties and the lots. There was no requirement that the City of Oxbow give those dollars back to the Authority, he said, and Oxbow is not in it to get rich, it is that the houses need to be replaced. He said he is confident that the lots, valued at $11 million, can be sold for more than appraised value. The replacement lot value for relocating Oxbow residents was about $6 million, he said, and the balance is about $5 million in value. The lots are actively being marketed in order to rebuild the community, he said, and the agreement states that 80% of that would be paid back to the project.

In response to a question from Mary Scherling about whether some of the expenses related to meeting Oxbow's covenant requirements could be shared, Eric Dodds said that was contemplated last year in an MOU amendment and the decision was made then to include a provision that the Diversion Authority would get full reimbursement of the lot sales, about $8 million.

In response to a question from Mary Scherling about why depreciation is not considered in replacement cost, Scott Stenger said the appraisal does consider depreciation; however, the replacement cost does not, due to the replacement being an existing home in today's market.

Todd Debates, 8484 Riverbend Road, Oxbow

Mark Bittner moved to recommend the CCJWRD execute a purchase agreement with Todd Debates in the amount of $785,000.00 as just compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $1,357,898.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $160,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Bob Zimmerman seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Michael and Brenda Podolak, 843 Riverbend Road, Oxbow

Mark Bittner moved to recommend the CCJWRD execute a purchase agreement with Michael and Brenda Podolak in the amount of $985,000.00 as just

compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $1,153,780.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $160,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Bob Zimmerman seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Sheri Champ, 829 Riverbend Road, Oxbow

Mark Brodshaug moved to recommend the CCJWRD execute a purchase agreement with Sheri Champ in the amount of $1,060,000.00 as just compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $1,103,373.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $205,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Bob Zimmerman seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Chad and Heidi McQuillan, 313 Schnell Drive, Oxbow

Mark Bittner moved to recommend the CCJWRD execute a purchase agreement with Chad and Heidi McQuillan, in the amount of $390,000.00 as just compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $201,738.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $133,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Keith Berndt seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Michael and Donnie Strei, 808 Riverbend Road, Oxbow

Mark Bittner moved to recommend the CCJWRD execute a purchase agreement with Michael and Donnie Strei in the amount of $714,400.00 as just compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $415,729.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $150,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Keith Berndt seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Casey Johnson and Heather Westlund, 817 Riverbend Road, Oxbow

Mark Bittner moved to recommend the CCJWRD execute a purchase agreement with Casey Johnson and Heather Westlund in the amount of $448,300.00 as just compensation for real property; execution of a Replacement Housing Agreement with estimated payment of $369,833.00 for decent, safe, sanitary and comparable replacement housing; and payment for the replacement lot in the amount of $117,000.00 which will be fully reimbursed per the Oxbow MOU Amendment. Keith Berndt seconded the motion. Scherling, Berg, Zimmerman, Nyhof, Berndt,

Brodshaug, Bittner and Mahoney voted aye. Mongeau voted nay. The motion was declared carried.

Daniel and Ester Leake, 844 Riverbend Road, Oxbow

Mark Brodshaug moved to recommend the CCJWRD execute a purchase agreement with Daniel and Ester Leake in the amount of $720,000.00 as just compensation for real property. Brian Berg seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Mongeau, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. The motion was declared carried.

Jon and Joan Rustvang, 839 Riverbend Road, Oxbow

Scott Senger said the homeowner of this property felt it was valued higher, so the acquisition involved two appraisals and several months of negotiations. He said at this point the homeowner indicates they will likely move outside of Oxbow, so there will be moving and incidental costs, but not replacement housing costs.

Brian Berg moved to recommend the CCJWRD execute a purchase agreement with Jon and Joan Rustvang in the amount of $1,779,000.00 as just compensation for real property. Jim Nyhof seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Mongeau, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. The motion was declared carried.

Russ Newman, 809 Riverbend Drive, Oxbow (vacant lot)

Mark Brodshaug moved to recommend the CCJWRD execute a purchase agreement with Russ Newman in the amount of $112,500.00 as just compensation for real property. Brian Berg seconded the motion. On call of the roll Scherling, Berg, Zimmerman, Mongeau, Nyhof, Berndt, Brodshaug, Bittner and Mahoney voted aye. The motion was declared carried.

Eric Dodds said a couple in-town properties may be ready for consideration soon, specifically MidAmerica Steel and Case Plaza, in which case there may be a second meeting called in April.

The Finance Committee adjourned at 5:15 p.m.

Lot Sales Reimbursement from Oxbow

Jim Nyhof said a reimbursement of about $2.9 million has been issued for the sale of lots in Oxbow.

CCJWRD Land Management Report

Mark Brodshaug said most of the efforts in the last month have been aimed toward getting the Oxbow buyouts and rebuilds.

Local Cemetery Mitigation Update

Rocky Schneider said the first meeting of the Local Cemetery Mitigation Team is planned for May 12, 2016 at 10:00 a.m. There will be an informational meeting scheduled for the six entity appointees on Thursday, April 21 when the Corps is in town, he said.

Other business

Keith Berndt said a response is being written to a March 17th letter from the North Dakota State Engineer sent to the Diversion Authority Chairman about the permit application. He said the State Water Commission has been reassured that the Diversion Authority intends to apply and cooperate with them on securing the permit. One requirement, he said, is that there be the final design for the inlet structure before the permit is issued. A 95% design has been provided, he said, and it is expected the Corps will have the final design on May 17th. There have been communications with Water Commission staff, and he believes the requirements to secure property rights properly are understood, he said, and the legal team has researched and drafted a response according to statute. The Cass County Joint Water Resource District does have the ability to secure those easements outside of Cass County, he said, including condemnation authority in Richland County, should it come to that. There has been criticism that the permit has not been acquired, he said; however, since a permit cannot be issued until the design is finished, this is all part of the normal permit process.

In response to a question from Jenny Mongeau about how things can move forward with no definitive number or dollar amount for easements, Keith Berndt said the ability to obtain easements must be shown in order to get the permit; however, easements do not have to be in place until the project is operational.

Mark Brodshaug said easements will not be bought until perhaps a year or two from now, and continue over a six-year period as people are ready to deal with easements. He said the permit only requires that a plan and the legal authority to acquire property, if needed, be shown. The first step is to have a definition of what is being purchased and those discussions continue, he said, and then appraisals are needed to determine the value of a property prior to an easement being placed on it and afterwards to determine an offer. He said some property in the staging area will be valued higher than others due to more impacts. Eminent domain is a last resort, he said; however, it is something the legal team says can be done.

Jenny Mongeau said not having definitive dollar amounts for easements and now with indications of having things in place by August, talk of eminent domain power may add fuel to the fire if there is already a fragile relationship with Richland County landowners. She has been getting questions on the unknowns related to flowage easements, she said, and it seems critical for the Agricultural Subcommittee to meet soon to discuss the unknowns.

Mark Brodshaug said it has been difficult to get members to come to Ag Subcommittee meetings as of late, and there is a need for more involvement on that subcommittee.

In response to a question from Mary Scherling about whether this could be formula driven, and whether landowners could be given an expectation ahead of time on a range of values, Terry Williams said it really is not possible to say right now. She said she understands people want answers; however, it is best for valuations and appraisals to be done right ahead of purchases so the value is current on acquisition. Land does not need to be in place until the project operates, she said, and easement payments are determined on a case-by-case basis.

In response to a question from Jenny Mongeau about how easement dollar figure amounts were estimated when costs were projected, Eric Dodds said the new estimate was based on several things. He said an estimate came from what the Corps did previously for flowage easements, along with the initial indications from the NDSU study, and an approach using different tiers of the staging area based on the frequency and duration of flooding. Initially, he said, estimates used something like a quarter of the land value for some of the areas near the embankment and a lesser percentage for land further out that floods less deep and less frequently. He said appraisal work will need to be done at the time when easements will be acquired.

In response to a question from Tim Mahoney about whether an easement example could be prepared for the committee, Mark Brodshaug said it may be too early for that. He said values will vary greatly within the staging area; some areas near the levee could be on 10-year frequency and other areas could be on 100-year frequency with a completely different value. He said it would not be helpful until appraisals actually begin.

Tim Mahoney requested an example of the logistics showing how easements would work, as well as time expectations, and not necessarily dollar amounts. He said it would be helpful to know how this will move forward. He also asked that Eric Dodds make arrangements to set a meeting of the Agricultural Subcommittee soon.

Jim Nyhof said Oxbow is working closely with the CCJWRD board to move ten of the homes back onto foundations with the intent to sell. This means those houses will not be demolished and will be sold to the public and the dollars are coming back to the project. Also, he said, he knows there has been heartburn over the assessed property values in Oxbow and he has had a discussion with the council that it would be in the best interest of the community to accept a 50 percent assessment increase, which he expects will be approved at their next Tax Equalization meeting. Also, he said, Vanguard Appraisals will be hired to appraise and value the entire community so values can be set going forward that are consistent with Cass County.

Tim Mahoney thanked Jim Nyhof for all his work in this process and stated that as difficult as some of it has been, there has been success in maintaining Oxbow as a community and keeping the Kindred School District whole.

Mark Brodshaug moved the meeting be adjourned. Brian Berg seconded the motion. All the members present voted aye and the motion was declared carried.

The meeting adjourned at 5:25 p.m.

The next meeting will be Wednesday, May 11, 2016.

FM Area Diversion Project
Property Acquisition Summary

May 11, 2016

Property

Owner	Terrie Romine
Previous address	4989 Klitzke Dr, Pleasant Twp, ND
Property Type	Single family residential, Medical hardship acquisition
Identification Number	9436, 9440

Property Need

Acquisition of this property is required as part of the future project staging area. See attached map. The property owner has applied for and been granted approval from the hardship committee of a purchase in advance of the project timeline in order to accommodate the owners medical hardship and need to sell the property.

Description of Acquired Property

The buyout property is a split entry, 3 bedroom, 2 bath home with 1,814 SF of Gross Living Area, built in 1975, situated on 1.67 acres in a rural setting. The property also includes an 8 x 12 workshop and an attached double garage.

Compensation & Negotiations Summary

Compensation amounts proposed are based on an appraisal of the subject property provided by a qualified appraiser following the Yellow Book standards. The appraisal has been reviewed and approved by USACE. The property appraisal identified a market value of $246,700.00 for the subject property, which the owner has agreed to accept as the Just Compensation for the property.

Relocation Compensation Summary

The Replacement Housing Study and Payment for the above listed property is attached. The recommended maximum eligible replacement housing differential payment is $89,642.44 based on the replacement housing study conducted by Evergreen Land Services of comparable properties. There will be other relocation benefits provided to the Romine's under URA. These may include a move payment, closing costs associated with the replacement property, as well as an interest differential payment.

Requested Action/Recommendation

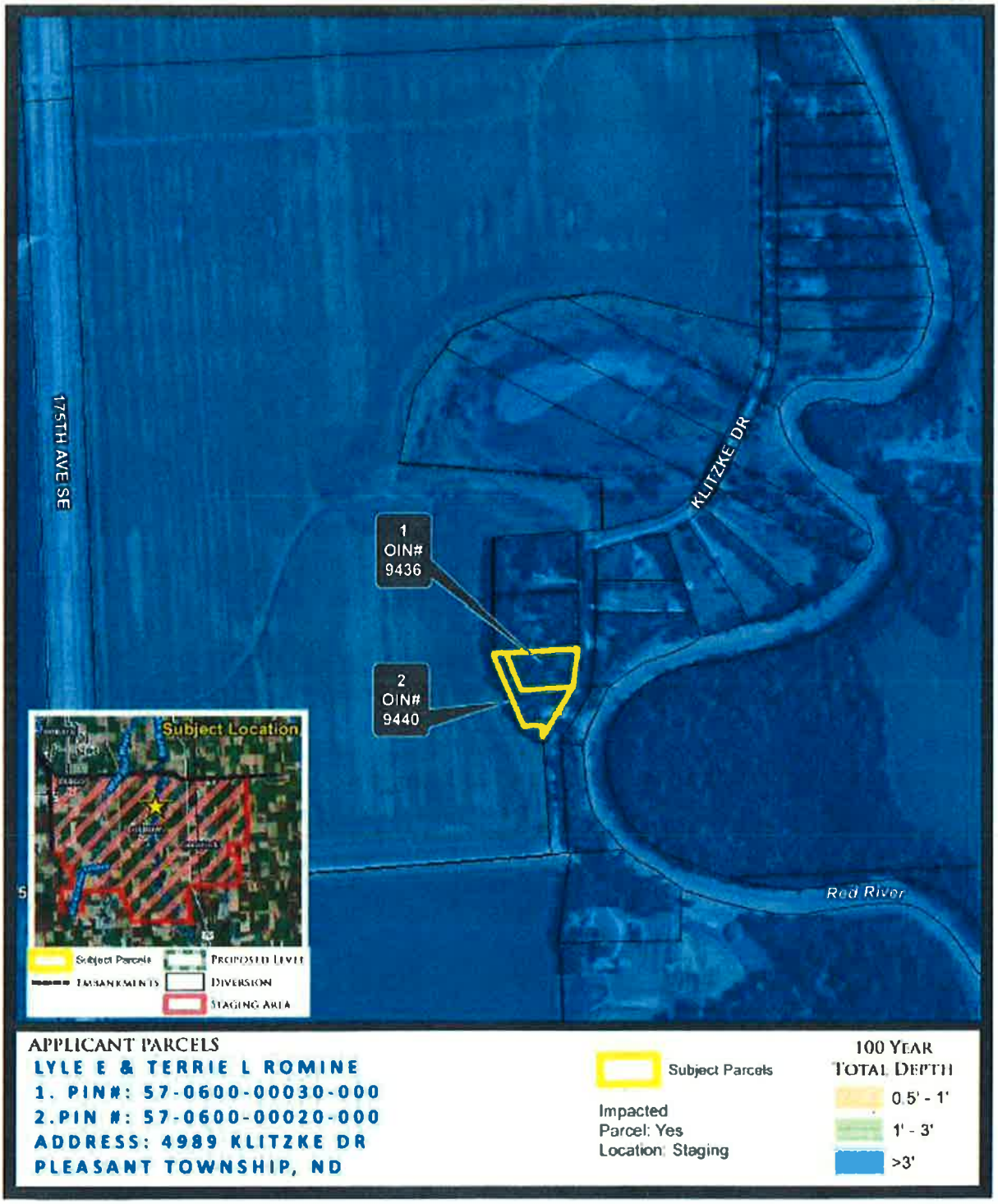
Recommend to CCJWRD to enter into a Purchase Agreement with Terry Romine in the amount of $246,700.00.

Recommend to CCJWRD to provide the RHDP allowance of $89,642.44 and eligibility for eligible relocation benefits in accordance with the Uniform Relocation Act

Note: In consideration of the medical hardship condition as well as the MnEIS, the Purchase Agreement will not include acquisition of the property until the MnEIS is complete. The Purchase Agreement will provide the Romine's with funds that will enable them to secure a replacement property in accordance with URA.

DIVERSION METRO DIVERSION PROJECT

HARDSHIP APPLICANT



APPLICANT PARCELS

LYLE E & TERRIE L ROMINE

1. PIN#: 57-0600-00030-000

2.PIN #: 57-0600-00020-000

ADDRESS: 4989 KLITZKE DR

PLEASANT TOWNSHIP, ND

LAST UPDATED: 2/20/2015 AE2S

PRICE DIFFERENTIAL PAYMENT

ANALYSIS OF COMPARABLE PROPERTIES

Project: FM Area Diversion-Medical Hardship_ County: Cass Parcel: 9440

Owner: Terry Romine Address: 4989 Klitzke Drive City: Horace, ND

	Subject	Comparable Properties		
		No. 1	No. 2	No. 3
Appraised Value	$246,700.00			
List Price		$299,900.00	$315,000.00	$292,000.00
Carve Out		$36,442.44	$70,164.36	$67,982.76
Address	4989 Klitzke Drive	7315 Elm Court	57 Fremont Drive (13 miles)	2717 38th Avenue (13 miles)
City	Horace	Horace	Fargo	Fargo
Date of Inspection	07-1-2015			
Style	Split-Level	Rambler	Two Story	Split level
Construction	Wood	Wood	Wood	Wood
Actual Age/Eff.Age	1975	1974	1986	1991
Condition AEB	Average	Average	Average	Average
No. of Units	Single Family	Single Family	One	One
No. of Rooms	Six	Seven	Six	Seven
No. of Bedrooms	Three	Four	Three	Four
Bedrooms Required	Two	Two	Two	Two
No. of Baths	2 Full	2 Full	1 ¾ Baths	1, ¾ and ½ Baths
Total Area (Sq. Ft. Fin.)	1,814	2,736	2,725	2,222
Basement	578 sq. ft.	Full	Full	Full
Bsmt- Types of Fin. Rms.	Unfinished	Unknown.	Unknown	Unknown
Heat/Cooling	GFA/ Cen	G.F.A / Cen	G.F.A. / Cen	G.F.A./ Cen
Fireplaces	One	One	One	One
Other Finished Space	N/A	N/A	N/A	N/A
Garage	Two attached	Two attached Three detached	Two detached	Three attached
Lot Size	72,947 sf /1.67 A +/-	39,204 sf/.90 A +/-	7,980 sf / .18 A+/-	10,000 sf / .23A+/-
Neighborhood A/ E/B	A	A	A	A
Schools	Available	Available	Available	Available
Public Transportation	Available	Available	Available	Available
Church	Available	Available	Available	Available
Place of Employment	Available	Available	Available	Available
Water 1. Type 2. Adequate	1. Well 2.Yes	1. Well 2. Yes	1. Well 2. Yes	1. City 2. Yes
Sewer 1. Type 2. Adequate	1. Septic 2. Yes	1. Septic 2. Yes	1. Septic 2. Yes	1. City 2. Yes
Other Comments	8 x 12 workshop building	Adjustment of 33,743 sq.ft. x $1.08 or $36,442.44,	Adjustment of 64,967 sq. ft. x $1.08 or $70,164.36	Adjustment of 62,947 sq. ft. x $1.08 or $67,982.76

Comparable Comments & Conclusions:

The Cass County Joint Water Resource District has determined that the #1 Comparable listed above meets the definition of a comparable replacement property as defined in 49CFR Section 24.2(6). In order for this property owner to purchase a comparable property as defined in 40CFR, the maximum Replacement Housing Differential Payment (RHDP) would be $89,642.44

$299,900.00
List Price of Prime Comparable.

$299,900.00 minus $210,257.56 = $89,642.44
Comparable Acquisition Cost minus carve out Maximum RHDP

Approval (CCJWRD)

FM Area Diversion Project
Property Acquisition Summary

May 11, 2016

Owner	Case Plaza
Address	One North Second Street, Fargo
Property Type	Commercial
Identification Number	9770

Property Need

A portion of the Case Plaza parking lot north is required to accommodate construction of the In-Town Levee and Floodwall project, Work Package WP42.F1.S. See attached map.

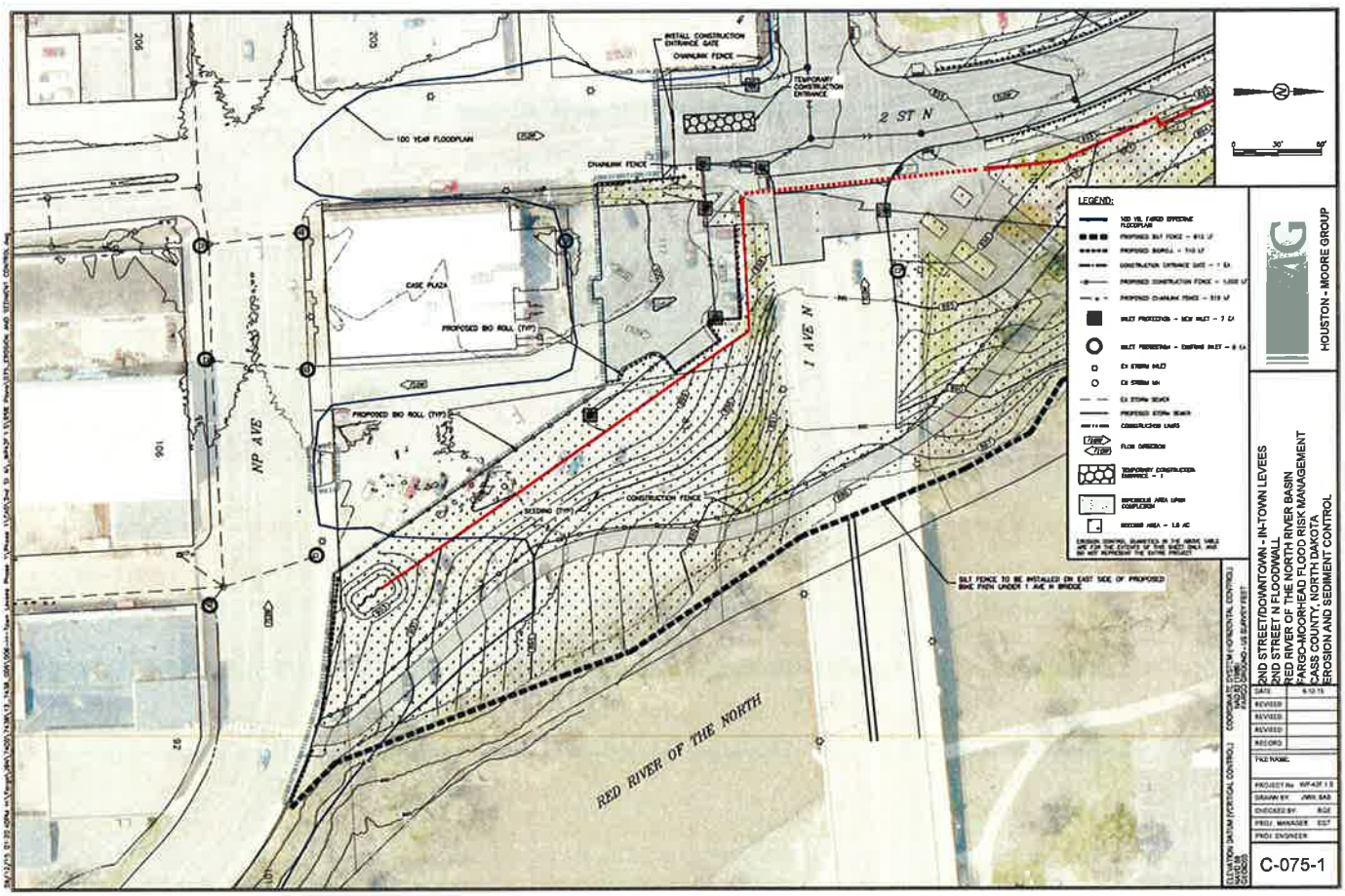
Summary of Impacts:

The impacts to the parking lot require:

1. Acquisition of a small portion of land from Case Plaza. The Project will require acquisition of 1,411 square feet of property from the north edge of the existing Case Plaza parking lot. An appraisal was conducted on the property and concluded the value of this fee acquisition at $1.00 per square foot, resulting in a payment from CCJWRD to Case Plaza for $1,411.
2. Mitigation for temporary parking losses during construction of the flood wall. The construction of the floodwall project will impact the surface parking lot used by Case Plaza (tenants and customers), which currently provides 62 parking stalls. A portion of the existing parking lot will be available during construction that will provide for approximately 25 parking stalls. In addition, the City of Fargo has committed to allowing another approximately 35 stalls in the adjacent City Hall parking lot for Case Plaza to utilize during the construction period in 2016. These parking arrangements will mitigate the temporary parking losses incurred by Case Plaza during the floodwall construction.
3. Mitigation for permanent loss of parking caused by the project. Upon completion of the floodwall construction, the existing Case Plaza parking lot will be returned to use for parking, as will the adjacent Mid-America Steel parking lot, but due to the floodwall, Case Plaza will lose upto 37 parking stalls. The appraisal concluded that the loss of parking will impact the net operating income, and therefore the market value for Case Plaza. Based on the loss of 37 parking stalls, along with a credit for the parking stalls that are currently rented by Case, a capitalization rate of 8.5 percent, which was established by the appraiser, the resulting market value loss is $238,589.
4. The total compensation due to Case Plaza is $240,000.

Requested Action/Recommendation

1. Recommend to CCJWRD, execution of an 'Entry and Construction Agreement' to allow for immediate access to the Case Plaza property for construction of the floodwall project
2. Recommend to CCJWRD, execution of a Purchase Agreement in the amount of $240,000 as just compensation to Case Plaza for acquisition of land and severance damages.
3. Recommend to CCJWRD, execution of an Option Agreement to allow Case Plaza the option to purchase of the remnant triangular parking lot after relocation of Mid-America Steel from downtown Fargo.



INSTALL CONSTRUCTION ENTRANCE GATE
CHAINLINK FENCE
TEMPORARY CONSTRUCTION ENTRANCE
2 ST N
100 YEAR FLOODPLAIN
CHAINLINK FENCE
CASE PLAZA
PROPOSED BIO ROLL (TYP)
PROPOSED BIO ROLL (TYP)
NP AVE
1 AVE N
CONSTRUCTION FENCE
SEEDING (TYP)
RED RIVER OF THE NORTH
LEGEND:
CONSTRUCTION LIMITS
FLOW DIRECTION
TEMPORARY CONSTRUCTION ENTRANCE - 1
SILT FENCE TO BE INSTALLED ON EAST SIDE OF PROPOSED BIKE PATH UNDER 1 AVE N BRIDGE
HOUSTON - MOORE GROUP
2ND STREET/DOWNTOWN - IN-TOWN LEVEES
2ND STREET N FLOODWALL
RED RIVER OF THE NORTH RIVER BASIN
FARGO-MOORHEAD FLOOD RISK MANAGEMENT
CASS COUNTY, NORTH DAKOTA
EROSION AND SEDIMENT CONTROL
DATE
REVISED
REVISED
REVISED
RECORD
FILE NAME:
PROJECT No.
DRAWN BY
CHECKED BY
PROJ. MANAGER
PROJ. ENGINEER
C-075-1

Flowage Easement Plan

For presentation to Diversion Authority Land Management Committee

May 2016

Why is a Flowage Easement needed?

- The FM Area Diversion Project includes a retention area upstream of the Project. The retention area is a necessary component of the Project, and it will periodically and temporarily store flood waters.
- The Diversion Authority must obtain flowage easements to provide the legal right to inundate properties impacted by the upstream retention area.
- There are various federal and state agencies that dictate the areas upon which flowage easements will be necessary. The North Dakota State Water Commission has indicated that the Diversion Authority will need to obtain land rights (presumably a flowage easement) for all lands that are below the top of spillway elevation of the southern embankment structures. This area is approximately 50,000 acres.
- A floodway and a floodplain will be defined within the upstream retention area in accordance with FEMA standards. The floodway outline will cover approximately 32,000 acres that are required for operation of the Project. No development will be allowed in the floodway. Development in the floodplain may be allowed in accordance with floodplain development ordinances, rules, regulations, and the terms and conditions of the flowage easement.

What is a Flowage Easement?

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

How will the value of the Flowage Easement be determined?

- The value of a flowage easement on an individual property will follow Federal/USACE process.
- Factors that will be considered are depth, duration, and frequency of additional flooding, and the highest and best use of the property.
- It is expected that an appraiser will conduct a "before and after" appraisal in which the market value of the property before the flowage easement are applied, and the market value after the flowage easement conditions are applied. The market value of the flowage easement will be a result of those two valuations.

- The appraiser of the property may consider future impacts including delayed planting, yield loss, debris, and limitations to future land use, resulting from operation of the Project.
- Values of flowage easements will vary depending on the location of the property, magnitude of impacts, and future risks to the property.
- The flowage easement payment will be a one-time payment to the property owner. The payment will be made when the easement is acquired.

What are the terms and conditions of the Flowage Easement?

- Description of the "Easement Property" upon which the easement applies.
- Right to occasionally overflow, flood and submerge the Easement Property in connection with the operation, maintenance, repair, replacement and rehabilitation of the Project.
- Definition of development potential in compliance with FEMA and local floodplain development rules.
- Access rights related to the Project for conducting observations, surveys, reviews, and data collection for environmental assessments; conducting topographic field and parcel surveys, soil analysis, soil borings, and other investigations; conducting water level, erosion, water quality, habitat, environmental, and other relevant monitoring; performing any other testing, surveys, and analysis; and necessary and reasonable rights of ingress and egress to and from an "Access Area" of the Easement Property.
- Removal of all structures in the floodway, and those not allowed in the floodplain.
- Use of the property by Grantor (property owner) and Grantee (Diversion Authority).
- Payment for crop damages caused by the exercise of the above described access rights.
- Landowners are allowed to mortgage the property as long as the mortgage is subordinate to the flowage easement.
- Other legal terms including governing law, severability, etc.

When will the Flowage Easements be obtained?

- Flowage easements need to be acquired prior to operation of the Project. The current schedule and estimate indicates that flowage easements will need to be acquired by 2024.
- It is anticipated that several years will be required to acquire all of the flowage easements necessary for the Project.
- The Diversion Authority may start early in approaching property owners in the staging area with flowage easement needs.

Who will obtain the Flowage Easements?

- The Diversion Authority has assigned the property acquisition role in North Dakota to the Cass County Joint Water Resource District (CCJWRD).
- The Diversion Authority has not yet assigned the property acquisition role in Minnesota.