

**BURLEIGH COUNTY WATER RESOURCE DISTRICT AGENDA**

**Friday February 15, 2013 – 8:00 a.m.**

**Tom Baker Meeting Room**

1. 8:00 a.m. - Call to Order
2. Roll Call (Fleck, Royse, Backstrand, Weixel, Jones)
3. **Approval of Minutes of (1-8-13) ..... 1-11**
4. Financial Reports
  - End of January Financial Data ..... 12
5. **Approval of Bills totaling \$31,028.83 ..... 140**
6. Public Informational Meeting – Hogue Island Flood Control Project (FM #39) -
  - River Side Property Owners – Meeting Summary ..... 13-14
  - Alternative Levee/Roadway Alignments ..... 15-18
  - **Property Acquisition Status – Action on Purchase Agreements**
  - Continued Development of Alternatives – Opinions of Probable Cost
  - Next Public Informational Meeting – April?
7. McDowell Dam Recreation Area Updates
  - McDowell Dam Expenses ..... 19
8. Drainage Complaints
  - **Eldin Spier/UTTC – Memorandum..... 20-31**
  - Jaskowiak Order ..... 32
    - Certified Letter receipt ..... 33
  - Emery/Koppang – Board Order to Remove Obstruction
    - **Drainage Complaint – Emery v. Koppang – Memorandum and Recommendation..... 34-35**
    - **Emery Request for a Hearing – David Bliss ..... 36-37**
    - **Drainage Complaint filed by Emery’s v. Koppang/BCWRD..... 38-59**
9. Missouri River Flood Hazard Mitigation Studies
  - ND State Engineer Funding Assistance – Requested update and budget revision
  - Missouri River Correctional Center FHMP #23 – Legislative Discussion
  - Sibley Area FHMP #26, #27 & #30 – SWC funding under review
  - Sandy River Drive – Public Informational Meeting (include roadways) – March?
10. **Comments and Discussion from Public**
11. Break
12. Fox Island (FM #19 & #21)
  - Harbor Drive Flood Control Project – Response Letter on Petition (Project Closed)..... 60-62
  - **Fox Island Flood Control Project – Receive Updated Draft Report**
    - Alignment #1 and Township Roadway Grade Raise (Gallatin/Far West)
    - Meeting with Fox Island Homeowner’s Association
  - Project Development Cost Separation (Harbor Drive/Fox Island)
  - **Public Informational Meeting – March**
13. Hogue Island COE – Section 33 Bank Stabilization
  - Bank Stabilization – pending
  - Section 33 funding

14. Hogue Island Flood Control Project (FM 39)	
• Letter to Brad and Heather Magnus re: Acquisition .....	63
• Letter to Jerome Rodgers re: acquisition.....	64
• Letter from Coles Law Firm re: Boll Purchase Agreement & Title.....	65-76
• Emails from Dr. Bernard.....	77-83
• Letter to Carrington House Moving dated 1-14-13.....	84
• Letter from Carrington House Movers dated 2-4-13.....	84-88
15. Burnt Creek Flood Control Repair Project (FM #7) – Update	
16. Hay Creek Greenway and Sediment & Geomorphic Assessment Update	
• Request by the City of Bismarck to reopen Greenway and Hydrology Study Discussions – Budget	
• Sedimentation Study work ongoing – Spring field work	
17. Sunny View Flood Control Project	
• Restudy and OPC updated – Provided via Email	
• Letters to Mr. Patrick Geiger.....	89
• Letter to Wayne Jundt & Doug Hartman & Certified Receipt.....	90-94
• Meeting with Jundt’s – Call from _____ (Brother-in-law)	
• Meeting with Doug Hartman	
• Letter to John & Donna Richter .....	95-96
• <b>Richter Letter date 1-30-13– Additional Communication Required – Legal Counsel.....</b>	<b>97-100</b>
18. Apple Valley Cooperative Lagoon Project	
• Notice to Proceed to Wiesz and Sons.....	101-103
• Letter from ND Department of Health re: CW-SRF Request for Payment No. 1 .....	104-105
• Check for \$61,846.00 received.....	106
• Revised project completion budget	
• <b>Work Order #14 – Addendum #2 .....</b>	<b>107-109</b>
19. Other Old Business	
• Financial Accounts and Status – Ken Royse, Treasurer	
◦ Scope of Service.....	110-114
• FEMA Community Rating System – Request to County Commission (Pending)	
• Houston Engineering – EJCDC Contract (Pending)	
• Engineering Request for Qualifications and Statements of Interests .....	115-116
• Missouri River Snagging and Clearing – Messages to NDSWC not returned	
• Records Retention Policy update	
20. New Business	
• Board Policy Documents – March	
• <b>2013 Annual Disposal Reports .....</b>	<b>117-121</b>
21. Correspondence or Document Information	
• SOV No. S-1833 – City of Bismarck .....	122-133
• SOV No. S-1830 – US Army Corps of Engineers .....	134-139
• City Preliminary Plats - Emailed	
◦ JMAC Industrial Park Subdivision	
◦ Geloff estates	
◦ Eagle Crest 6 <sup>th</sup> Addition	
◦ University of Mary Subdivision	
◦ Country North Estates 4 <sup>th</sup> Subdivision	
◦ West Region Medical Addition	
• Minor Subdivision Final Plat - emailed	
◦ Pride Addition	
• City Recorded Final Plat – emailed	
◦ Hamburg Industrial Park 1 <sup>st</sup> Addition	
◦ Calgary Court Addition	

- City Final Plats – emailed
  - Century Centennial Addition
  - Sunrise Town Centre Addition
  - Edgewood Village 7<sup>th</sup> Addition
  - Meadow Village Addition
  - Kilber North 2<sup>nd</sup> Addition
  - Revolutionary Addition
- Annexations – emailed
  - Meadow Village Addition
  - Edgewood Village 7<sup>th</sup> Addition
  - Sunrise Town Centre Addition
  - Revolutionary Addition
- Storm Water Management Plans- Preliminary, Revised & Final– emailed
  - JMAC Industrial Park
  - England Acres
  - England Acres - Revised

22. List of Bills ..... 140
23. Next Meeting: March - To Be Determined -- bring your schedules along
24. Adjourn

**Note: Bold Items Require Board Action**



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**Tuesday, January 8, 2013 at 8:00 am**  
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**Present:** Terry Fleck, Cary Backstrand, Kathleen Jones, Ken Royse, Gordon Weixel, Michael Gunsch, Houston Engineering, Dave Bliss, Bliss & Stebbins Law Firm; Chairman Doug Schonert, Burleigh County Commissioner, and Mona Livdahl, Personalized Management Services, Inc.

Chairman Fleck called the meeting to order at 8 a.m. noting a quorum was present.

**Approval of Minutes 12-7-12:** Cary moved to approve the minutes as printed, Gordon seconded.  
**Motion carried.**

**Financial Reports:** Reviewed no action taken.

**Bills:** Cary moved to approve the bills as revised in the amount of \$35,957.43, Ken seconded. Motion Carried.

**Board Reorganization – Election of Officers:**

**Chairman:** Cary nominated Terry Fleck as Chairman, Gordon seconded. Cary moved to cease nominations, Ken Seconded. A roll call vote was taken:

**Ken: Yes**  
**Kathleen: Yes**  
**Cary: Yes**  
**Gordon: Yes**  
**Terry: Abstained**  
**Motion Carried.**

**Vice Chairman:** Ken nominated Cary as Vice Chair, Kathleen seconded. A roll call vote was taken:

**Ken: Yes**  
**Kathleen: Yes**  
**Cary: Abstained**  
**Gordon: Yes**  
**Terry: Yes**  
**Motion Carried.**

**Treasurer:** Cary nominated Ken as Treasurer, Gordon seconded. Ken stated that this will be his last year and asked if we should not possibly consider making a transition to a new person. A roll call vote was taken:



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**Cary: Yes**  
**Kathleen: Yes**  
**Gordon: Yes**  
**Ken: Abstained**  
**Terry: Yes**  
**Motion Carried.**

**Secretary: Cary moved to accept the proposal for secretary as written. Ken seconded. Motion Carried.**

**Legal Counsel Reappointment:** Dave reviewed the proposed contract noting that it asks for a 7.5% increase. Ken questioned how often this contract has been renewed, it was noted it is annually. Dave noted he would be ok with extending the contract for two years at the 7.5% rate. **Ken moved that if Dave is willing, we would do a 2 year contract at the 7.5% increase. Cary seconded. Motion Carried.**

**Engineer reappointment:** Michael noted that HEI has also been an annual renewal. Michael reviewed the proposed rate increase noting that based on the current rate this would be an 18.5% rate increase, however Houston Engineering, Inc. offers the Burleigh County Water Resource District an approximate 9% preferred rate discount on services compared to their standard rate since 2008. Ken handed out the ND Job Service rates showing average annual salaries for engineering disciplines noting it is a misconception on engineering services. Ken reviewed the various rates and compared to other professional services in the Bismarck Mandan area and Western North Dakota noting the higher rates paid in western North Dakota. Ken discussed the need to compete with these wages to keep talented workers in the Bismarck-Mandan area. **Ken moved that the Burleigh County Water Board renew a general service agreement with Houston Engineering using the most recent and relevant version of the Engineers Joint Contract Documents Committee (EJCDC). Cary seconded.** Cary asked if we have copy of the EJCDC document. **Ken noted his motion should be contingent on Michael and Dave modifying the document as the EJCDC document is a suggested format. Cary seconded the modification of the motion noting that we can take a look at the final document at the next meeting.** Michael noted that it was put together with national discussions and provides assurances and protection to both parties. **Motion Carried.**

Ken noted that he and Gordon met with Michael as they were asked to by the County Commission to reexamine how we engage engineering firms. Ken felt that we should request statement of qualifications from firms to accommodate the request by our County Commissioners. Ken felt that we could ask for a statement of interest or statement of qualifications and put them on file, with the intent to have a file of interested engineering firms that we could use. The intent is to not interrupt the work we currently have with Houston



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Engineering, but rather having a file of interested engineering firms in the event there is a need to spread the work around. Discussion was held on the process. Ken noted if we have a large project come up, the board could request a RFP for a specific project, which would be a qualification based proposal and typically don't have costs involved in the selection process. At this time the large projects for 2013 already have been accommodated, however we may have smaller projects come up where you don't have a project specific proposal but rather an on-call type proposal which is more of a statement of interest from firms. We could use a statement of interest for ongoing projects, which wouldn't preclude HEI from also expressing interest. The Chairman could then appoint a committee of one or two to prepare a letter for firms and notice it in the paper, asking for them to responded. We wouldn't need interviews as we don't have any projects at this time. It would be a written response to the chairman that we could keep on file. Ken noted that if we do this, we lose continuity as some of these projects overlap, so we need to be aware of this. If we establish a committee of two, it needs to be noticed as an open meeting. However, if we establish a committee of one – and someone shows up, we would not be violating open meeting laws. Chairman Fleck asked Ken if he would be willing to lead this, Gordon also volunteered to assist in this process. Dave noted that noticing the meeting is an easy process and we could do this. **Ken moved that the Burleigh County Water Board seek Statements of Interests from engineering and professional services firms for on-call services which may be needed by the Water Board; such Statement of Interests to be qualification based in structure and non-specific and non-binding on either party. Kathleen seconded. Motion carried.**

**McDowell Dam Updates:**

**Water Permit:** Cary noted that he spoke to the SWC and they are hoping that the legislature will provide additional staff to help out with their backlog.

**Expenses:** Not available at this meeting.

**Drainage Complaints:**

**Eldin Spier:** Michael noted that he and Cary had met with Mel Bullinger, City of Bismarck and they were suppose to get a letter out to the UTTC to look at the temporary system they now have out there. A memorandum was prepared outlining the issues of the Water Resource District. The City was to review and possibly add to it, but with the holidays, they did not get around to finalizing it. It should be taken care of and possibly February we will have a memorandum finalizing positions on this issue.

**Mees/Jaszkowiak:** Cary updated noting that Houston Engineering looked at the culvert that was installed noting it is 24 not 30 inch as ordered. Discussed leaving as is, but indicate in the letter that we reserve the right to require something larger if we have an issue on this at a later



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time. Discussed having proof of service on the letter so we know Mr. Jaskowiak received the letter. Dave noted that a letter is appropriate to make it a part of the record as well as if Mr. Mees has difficulties down the road with flooding, we have documentation. Discussed if it is worth it to have him take the culvert out and put in a larger culvert. Chairman Fleck felt that we were clear on our order and noted we need to make sure he is clear that we reserve the right for him to remove it if it does not satisfactory to remove the obstruction. Dave will work with Cary and Michael to get this letter sent out registered mail. Cary also noted a lot of fill was put in to build this roadway, but the fill is concrete rubble and questioned if we have the authority to tell him he can't use this material. Cary noted that in doing this, he had blocked the drainage and with the culvert, the drain is no longer blocked, but the fill is not good material. It was noted that there is a floodplain management permit required that we have no enforcement authority on. Ray Ziegler arrived and Michael summarized for Ray on the culvert size noting the Board will send a letter noting they reserve the right to require a larger culvert if there are problems down the road. Ray noted that the floodplain development permit would not be approved until this Board acted on the blocked drainage. Cary noted it is not a public thoroughfare but rather a private roadway. The flood plain management permit that Ray Ziegler is working on is a specific nonstructural floodplain permits as for the debris, Ray noted he could not recall anything specific in the ordinance about the type of fill material. It was the Board's consensus to move forward with the registered letter from BCWRD.

**Building Permit Process:** Cary asked about blockage of drainage on existing lots and responses from homeowners stating that they got the permit from the county to build there and asked for the procedure on issuing the permits. Ray Z. reviewed noting the process in the county is different than in the city. City easements are smaller and they are more specific as to where the house will be located. This same requirement isn't done in the county due to having a larger lot size. A question has come up with septic systems and where they can be located. Ray noted that they have approximately 800 lot permits per year and they are looking at regulations and requirements as to location of the houses in the counties. They do ask that they be aware of easements, and have surveyor's stake them, however reality is they get pushed out. Noted on the list of requirements is the SWMP. In 2012 they got a full time residential planner to monitor construction. Cary noted he would like to see on the county permits is wording noting they cannot block the natural drainage and if they do, they need to make arrangements to divert that in such a way that the natural drainage can continue and not be obstructed. Ray noted they do ask them to be aware of easements. Cary noted natural water courses in many cases do not have easements on them. Ray stated this is on the checklist for building permit applications. Chairman Schonert noted the natural water courses should be identified on the plats and stated that it is "unbuildable" on the water course and this should be on each individual lot. The responsibility of this lies with the engineer and developer. Chairman Fleck asked what we could do to assist in making sure this happens so we don't have these issues coming up. Ray noted that they try to check the plats and the more notes on it, the better. Michael noted we now have storm water ordinances to address these issues; however the older developments did not have storm water plans and therefore have more risks.



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In the future natural water courses need to be identified and clearly stated not to build on them. Ray noted they try to check the plat and the more wording the better.

**FEMA:** Ray Z updated the Board regarding the CRS (Community Rating System) program noting that the biggest problem right now is implementing this because of the staff time involved. These determinations are used to rate insurance premiums and provides discounts on flood plain insurance premiums up to about a 20% discount on the insurance policies in the Community. Grand Forks and Fargo have already gone through this and have about a 7 or 8 rating. Burleigh would likely come in at about an 8 rating, but with everything going on within the last two or three years, it is a program that could save constituents considerable funds as rates will be going up in the next few years. Chairman Fleck asked what we could do to assist and educate our constituents. Ray noted he is looking for the BCWRD Board to get this information out at public information meetings. Chairman Fleck felt we need to go on record as supporting the CRS program and ask for a meeting of the City and County commissioners to get the word out noting that Fargo and Grand forks have already done this. **Cary moved that we go on records as supporting the Community Rating System. Kathleen seconded.** Chairman Fleck asked Chairman Schonert how he would like to see this proceed. Chairman Schonert asked that we get the Burleigh County Commissioners involved and write a letter to them explaining this and have Ray Z attend the County Commissioners meeting to discuss and get this going. Chairman Schonert asked that we put this on their meeting agenda for the next meeting. **Motion Carried.**

**Comments and discussion from the Public:** None.

Chairman Fleck took the opportunity to welcome Kathleen Jones to the BCWRD board.

**Emery/Koppang:** Michael reviewed the complaint history on the natural water course and the final determination by the State Engineer at the State Water Commission reinforcing that there was blockage to the natural water course. The Board had directed Michael to contact Mr. Koppang to see if he was still ok with placing the diversion on his property. Michael had spoken to Mr. Koppang and he no longer will allow the diversion to be constructed on his property due to the maintenance requirements of the ditch. Michael reviewed the two possible scenarios for placement noting that if the Board orders this or constructs this alternate drainage channel, due to the location on Emery's property and them having a basement with access below the level of the drainage, there is a small risk that the Emery's would try to blame the Board if their basement is ever flooded. It was noted that we will still need to get permission from Mr. Koppang to get construction access to the site. The liability lies with the Emery's unless they don't comply at which time the BCWRD can construct the remedy and assess the costs against their property, including all costs incurred by the BCWRD related to investigating and resolving this complaint. It was noted that the Emery's were asked to come back with options for solutions and never did. Completion must be done by May 1<sup>st</sup> they have the right to request a hearing within 15 days from receipt of the Board's order. Ken asked if we should try to resurrect the discussion and possibly add an agreement as to who maintains the ditch. Michael felt that





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at this time, this is something that would need to be discussed if they request a hearing within that 15 day timeframe to see if we can get discussions going between the two parties. **Gordon moved to send the enforcement letter to the Emery's. Kathleen seconded.** Cary noted we should just have them correct the problem and not provide them with a set of plans so as not to dictate how to correct the problem. **Gordon amended to leave out the wording in the letter "as illustrated in the enclosed drawing", and leave it that they are do construct an alternate drainage route. Kathleen seconded. Motion carried.**

**Missouri River Food:** On hold.

**Fox Island:**

**Harbor Drive Flood Control Project:** Michael has discussed this issue with Marcus noting the Board does have petitions for a project. Michael reviewed the two options noting that the City of Bismarck will be using federal funds to construct the Mills Avenue project to a point west of West Harbor Drive as an extended road grade raise. Since we do have a petition for a project, the BCWRD can send a letter noting that they are not interested in pursuing a project, effectively rejectin their petition. Michael also noted that a dedicated right-of-way is located along West Harbor Drive, which can be used for public access, but this has been interpreted not to allow public roadway construction; therefore neither the Township nor County would consider raising West Harbor Drive which means any grade raise must be privately funded. In addition the existing private roadway is not entirely located within the dedicated right-of-way, but is also on private property in some locations.

Chad Wachter attended noting that he wants it on record that he is here on behalf of himself only, as landowner of two lots along this road, and not the association or other landowners in that area. Mr. Wachter also wanted it known that Harbor Drive is actually a private roadway and that there is an easement for ingress and egress to the area that the lots actually are suppose to hold to the center of the road. The roadway is not entirely within that easement area. The point being that a majority of the property owners in that area would have any legal right to petition this Board to ask that a special assessment in that area and it is a private roadway and it would take every individual that owns property to agree to this. The easement that is on that road is not for public purposes only for private. Mr. Wachter wanted to state for the record that he is not against flood protection, but does believe if something needs to be done it needs to be done properly and this is not the proper way to do this.

Michael discussed noting that the recommendation is that the Board provide a letter to the petitioners as well as the representatives of the Home Owners Association and Mr. Wachter to halt any further project development until reasonable assurances be provided which is the 100% agreement of all homeowners along the roadway. Michael asked for approval to prepare the letter with legal counsel for the chairman to sign. Dave felt that it depends on what the



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language of the easement says and that it makes more sense that all the people of Harbor Drive understand and get a consensus as to what these people want. **Cary moved to accept the recommendation, Ken seconded.** Cary also asked that it be noted that if the Water Resource District receives a petition and it is a viable project and a majority votes to proceed with the project, this Board does have the authority and right to condemn land to build the project noting it is not something we like or want to do but we do have that right. Mr. Wachter noted he just wanted people to understand that this is not a public roadway. **Motion carried.** Dave echoed the comment that we do not want to expend funds on a project that isn't going anywhere, but that we do have the legal authority to do so.

**Fox Island Flood Control Project:** Michael reviewed regarding the completion of the report noting they are 95% complete on this project. There are some issues with the cost distribution that remain to be reviewed and documented. Michael reviewed the preliminary consensus of direction from the residents and homeowners association. The next step is to have a meeting with the Home Owners Association (HOA) and then followed by another public information meeting. The BCWRD can go to the SWC for cost share, but paving costs are not eligible and will work with Marcus first regarding the cost to pave the roadway. Ken asked how we will structure this project. It was noted the WRD will be the lead on this. Marcus may want to take over for the paving portion after the grade is set. Michael noted he will try to set up a meeting with the HOA last week in January. The other issue is the cost share with the SWC going forward as they only meet quarterly, which would affect the timeline for design and construction if the project is approved.

### **Missouri River Flood Hazard Mitigation Studies:**

**ND State Engineering funding assistance:** Have not heard back from them yet.

**Missouri River Correctional Center:** Still on hold for legislative activity. Michael noted the landowners will probably be looking for an assessment district breakdown as the next step.

**Sibley Area:** Focusing on other things at this time. Have some preliminary layouts prepared and are looking at other areas as well as fielding phone calls. Will be setting up a meeting to visit the Bismarck Park District and COE related to issues in the park property.

**Sandy River Drive:** Kathleen noted more ground work needs to be done as about 60% of the residents are gone in February. Recommendation is to hold off until March or April for the public information meeting.

**Morton County and Lower Heart Resource letter:** Michael noted both WRD's have sent Burleigh County WRD a letter, with copies to City and County officials and the SWC requesting that they be kept informed regarding the recent project proposals. Michael noted that he is looking for concurrence to prepare a response letter from the Board as a matter of record noting we have received the letter. It was the Board's consensus to proceed.



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**Hogue Island COE – Section 33 Bank Stabilization:**

**Bank Stabilization Process:** Still looking at final documents

**Section 33 COE Funding:** Still haven't heard anything yet new regarding funding status. An email was sent to Bruce Engelhardt regarding the possible University of Mary snagging project and that discussion will include the Section 33.

**Hogue Island Flood Control Project:**

**Carrington House Movers:** Dave noted he asked Mr. Dave Lutman of Carrington House Movers to write a letter to the Board letting us know what he wants. A draft response letter has been written explaining that the cost for placement and maintenance of this beam is solely between Carrington House Movers and Dr. Bernard. Dr. Bernard has filed a claim for flood insurance and has been asked for a determination from FEMA. Dave noted that before this Board can act, we need this determination in hand. We are unable to make any side agreement with Dr. Bernard as it would complicate things. We need to get a firm action from FEMA. Mr. Jeff Klein felt he could get this information for us. **Cary moved that we send the letter to Mr. Lutman at Carrington House Movers. Kathleen seconded.** Ken asked about the 3<sup>rd</sup> paragraph regarding sending cost estimate to us or Dr. Bernard. It was noted the cost estimate should go to Dr. Bernard with a copy to BCWRD. **Motion carried with the change.**

**Property Acquisition Updates:** In the packets, Rodney and Laura Boll are ready to go, the Magnus' attorney had housekeeping issues which have been completed and they will be in on Monday to sign the Acquisition. Mr. Rodgers had requested a determination of a duplication of benefits. Dave noted he had sent out a letter to Mr. Rodgers, but he has not yet signed. We are basically moving forward on all four homeowners.

**Riverside Property landowner meeting:** Michael had been working with Dave Tschider to set this up, will try and set something up in mid January to let the river side landowners know the next step and what will transpire. The overall island landowner meeting will tentatively be held January 25<sup>th</sup> at Jerry Rodgers shop providing he is available.

**Auction/Demolition:** Discussed shutting off heat and utilities after purchase, it was noted only Mr. Rodger's has been left on as he is still living there. Dave will communicate this to Mr. Rodgers regarding action after purchase.

**Burnt Creek Flood Control Repair Project:** NRCS has been provided plan sets and costs but they do not have funding in place. Michael will check the agreement as they may be able to submit for the reimbursement of engineering costs to this point.

**Hay Creek Sediment & Geomorphic Assessment Update:** Ongoing



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**Sunnyview Flood Control Project:** An updated draft report and OPC was handed out. Michael noted they have drafted letters to the three residents who have expressed concern of the project to Mr. Jundt, Mr. Hartman and Mr. and Mrs. Richter who would be affected by the project. Michael noted the letters are ready to go and that if there are any changes or questions the Board members contact him prior to January 14<sup>th</sup>. Consensus was given by the Board to send them out.

**Apple Valley Cooperative:** We received a letter back from the ND State Health Department noting all the documentation is now in place for the notice to proceed. Michael noted that the ND Health Department asked that on the draw request we update the Work Order, which can be done at the February meeting. A schedule has been received from the contractor.

### Old Business:

**SWMP:** Michael discussed with Marcus and Cary and they will have further discussions on the protocol between the County Engineers office and the Board.

**Work Orders:** Michael noted the additional information was provided and asked that he be contacted if there are questions or concerns.

**Missouri River Snagging and Clearing:** Michael reviewed noting an email was sent to Bruce at the State Water Commission to open this door.

**Records Retention Policy:** Dave noted there was nothing new to report.

### New Business:

**Board Portfolio Appointments:** Portfolio assignments were reviewed and completed.

**Board Policy Documents:** On hold (record retention)

Ken noted that in an effort to strengthen our relations with the County Commissioners that we provide quarterly updates. **Ken moved that the Chairman of the Burleigh County Water Board coordinated with the Burleigh County Commission to arrange a quarterly appearance of the Water Board Chairman before the County Commission to update the Commission on Water Board activities. Cary seconded.** Chairman Fleck asked Chairman Schonert when the best time to do this. Chairman Schonert questioned if this would be an update to the projects we are doing. Chairman Fleck noted we could do this, but he would ask our engineer, Michael Gunsch to also be present to explain the projects. Chairman Schonert noted we could decide which dates we preferred and discuss and schedule with Kevin Glatt. **Motion carried.**

Ken also discussed our handling the financial management versus relying on our auditor. Ken suggested that we look for a third party financial manager to take care of the Board's accounts and management of funds. Ken noted that the statute is that if you do this you are subject to a



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state audit every year. Cary noted that Burleigh and Barnes County are the only two that they are aware of that don't do this on their own; all the other WRD's manage their own bookkeeping. **Ken moved that the Burleigh County Water Resource District board seek statements of interest and qualifications from accounting or professional firms for financial and account management of the district funds with the understanding that such services from such shall be consistent in scope as typically in place with the majority of water districts within the state. Cary seconded.** Cary suggested that Ken be the point person for this and work with Dave Bliss. A roll call vote was taken:

**Cary: Yes**

**Kathleen: Yes**

**Gordon: Yes**

**Ken: Yes**

**Terry: Yes**

**Motion carried**

**Correspondence and Document Information:**

**Board Orientation Process:** Reviewed – no action.

**Bismarck Levee Removal Information:** Michael noted the City constructed temporary levees which were left in place after the flood even should another flood occur in 2012. The issue is that if removed, the City would get reimbursed for the cost to construct them and remove them. If they leave them in place, the cost is not reimbursable by FEMA.

**SOV:** Request for dredging by Syd Stuart – no need to comment.

**Dam Operating Training:** Discussed if Forrest should attend this. Chairman Fleck noted that he would leave this up to Gordon to discuss with Forrest and/or attend.

**Plats:** No action taken.

**Next meeting:** Tuesday, February 12<sup>th</sup>, Cary noted he has a temporary email for the month of February: [cwbackstrand@gmail.com](mailto:cwbackstrand@gmail.com). Kathleen will not be able to attend this meeting – we may have the Board members conference call into the meeting, if possible.

With no further business, the meeting adjourned at 11:10 a.m.

*Mona Livdahl*

Mona Livdahl

# Burleigh County Water Resource District Meeting

Members of the Public in Attendance Date: January 8 - 2013

NAME - PLEASE PRINT	ADDRESS/COMPANY REPRESENTING
Lynn Strombeck	1918 HARBOR DRIVE BISMARCK
Scott Harris	9320 SHERIDAN DRIVE
Chad Wachter	

**Burleigh County**  
**Water Resource District**  
**Financial Data January 31, 2013**

02/05/13

**Balance Sheet**

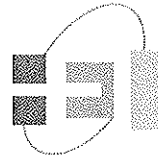
Cash & Investments	1,034,798
Taxes Receivable	280,436
Fund Balance	<u>1,315,234</u>

**Statement of Revenues and Expenditures**

	<u>ACCOUNT #</u>	<u>BUDGET</u>	<u>ACTIVITY</u>	<u>DECEMBER</u>
<b>REVENUE</b>				
Real Estate Tax	31110	583,100	321,312	321,312
In Lieu of Tax	31810	3,200	1,336	1,336
State Aid Distribution	33610	72,300		
Homestead Credit	33620	4,400		
Reimbursements	33810	5,604,073		
Operating Grants	34220	9,000		
Interest	36110	1,000		
Misc Revenue	36910	6,000		
<b>TOTAL</b>		<u>6,283,073</u>	-	<u>322,648</u>
			322,648	322,648
<b>EXPENDITURES</b>				
Salaries	111	30,000	4,050	4,050
Temporary Services	112	7,000		-
Fringe Benefits	211	2,000	462	462
Legal Fees	312	25,000		-
Engineering Administration	315	25,000		-
Insurance	328	900		-
Building Rent	335	1,500	133	133
Travel	341	1,500		-
Dues & Publications	376	3,600	1,550	1,550
County Services	398	7,402		-
Office Supplies	411	2,000		-
McDowell Dam	904	185,829		-
McDowell Dam-Additional	905	25,000		-
Shared Projects	910	195,000		-
Misc	911	2,000		-
Continuing Education	920	1,000		-
Master Planning	932	25,000		-
Design/Specail Assesment	937	5,854,879		-
Burnt Creek Rehab	940	175,000		-
Apple Creek Watershed	941	10,000		-
Hay Creek	953	22,900		-
<b>TOTAL</b>		<u>6,602,510</u>	-	<u>6,195</u>
			6,195	6,195
<b>EXCESS OF REVENUE OVER EXPENDITURES</b>			-	<b>316,453</b>
			316,453	316,453

12

# Hogue Island Riverside Landowners



HoustonEngineering Inc.

## Meeting Summary

To: Michael Gunsch, P.E.

From: Craig Odenbach, P.E.

Date: January 30, 2013

Subject: Hogue Island Riverside Residents Meeting

A meeting was held January 29, 2013 at 5:30 pm in the Houston Engineering Office with residents of Hogue Island. Specifically, invitations had been sent to the owners of the lots and residences located adjacent to the Missouri River north of and including Dr. Bernard's residence. The purpose of the meeting was to obtain feedback on the idea of constructing a flood control levee along the river in their back yards.

Michael provided a summary of the proposed flood control project, the Corps of Engineers Section 33 bank stabilization repair work, and the ongoing residential acquisition process. Michael then provided an explanation of the various alternative levee alignments that have been examined, including the choice between a levee along the river or a grade raise of Island Road. Michael explained that the purpose of the meeting was to obtain their feedback before expending additional public funds to develop a project that might not have the support of those property owners most directly impacted and benefited by construction of the project.

The levee project would reduce the water surface elevation approximately one to one and one half foot during a 2011 type flood for the residents located on the north end of the island. The area would still be subject to backwater flooding from the south end of the island, and residents on the south end of the island would not see a reduction in water surface elevation. In addition to the reduction in flood water elevation, the fact that the floodwaters would not have a velocity component through the island and across roadways would be another benefit, further improving accessibility during a flood. Ground water impacts would be reduced, but not eliminated.

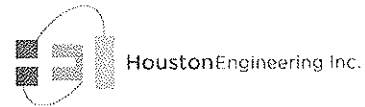
Michael explained the process associated with developing of a flood control project. If the residents along the river were to indicate that they are receptive to further examination of a levee along the river bank, then project development would continue, and a public informational meeting would be scheduled for all of the Hogue Island residents. Based on the feedback at that meeting, the Water Resource District would decide whether to complete a full preliminary engineering report. If they opted to complete that effort, the project would ultimately be put to a vote of the benefitted residents. A second public informational meeting might be held prior to the public hearing and election.

The meeting was then opened to questions and feedback from the residents. The questions generally involved aesthetic concerns and the anticipated cost to the residents. It was explained that the levee would average about three feet in height with a ten foot top width, 3:1 side slopes on the river side and 6:1 side slopes on the landward side. Every effort would be made to tie the levee into existing ground in an aesthetic fashion. Internal drainage would also be accounted for in the design. No trees would be allowed on the levee, and the installation of sprinkler systems would also need to be considered in the design. Nothing that might threaten the integrity of the levee could be allowed. Given the proposed side slopes, the residents should be able to install boat docks over the top of the levee.

No firm cost numbers have been developed at this time. It was noted that the cost of raising 97<sup>th</sup> Avenue has been estimated at \$2,200,000 in the County's Master Plan, and the levee alternative is likely to cost something less than that. No attempt has been made at this time to apportion benefits and costs. It was noted that there are some public benefits that would result from project including the benefit of not having to raise 97<sup>th</sup> Avenue, and benefits to South Central Rural Water District and to the Burnt Creek Floodway. The degree to which these public benefits or any participation by either party or Burleigh County would impact the anticipated cost to the residents is unknown at this time.



# Hogue Island Riverside Landowners



A secondary discussion centered around the status of the acquisition process. There was concern noted by some residents, that they don't want to inadvertently influence Jerry Roger's decision regarding the proposed buyout through their indication of interest in the flood control project. Michael noted that all four parties offered buyouts have indicated their acceptance of the offers, and the original position of the Water Resource District has been that they will either purchase all four properties, or they will not purchase any of the four properties. It was also noted that if Mr. Rogers is no longer willing to accept the buyout offer, this needs to be communicated through legal counsel and that discussion was beyond the intended scope of this meeting. The option of purchasing fewer than all four residences was not discussed.

The final consensus from the group was that they would like to see more details regarding the proposed levee along the river. They indicated that more detailed information as to the aesthetics, the levee location relative to their residences, and the potential costs will be necessary for them to make a final decision. Michael indicated that additional information as to the levee location, elevation and distance from each home would be made available, and we will proceed with additional evaluation, with the goal of holding a broader public informational meeting in February.

However, it has since been determined, based on the schedule of the Water Resource District and potential uncertainty about the acquisition process, this second public meeting is likely to occur sometime in March.

# Hogue Island – River Front Properties Meeting

## Agenda - January 29, 2013

1. **Introductions**
2. **Bank Stabilization – History and Status (2011-2012)**
  - a. 2011 flood event – Cost to protect, damages to residents, bankline and facilities
  - b. Section 33 COE Stabilization Project – 100% Federal Funding
  - c. COE Project Completion Warranty Period – 1 year
  - d. Unrepaired Non-COE Stabilization Areas
3. **Project History (2011)**
  - a. Established by the BCWRD – Flood Control
  - b. Project Objectives/Benefits
    - i. Residential Flood Protection – (not prevention)
    - ii. 97<sup>th</sup> Avenue Roadway and Hogue Island Access Issues
    - iii. Burnt Creek Flood Control Project – 2011 Damages
    - iv. South Central Rural Water – Wellhead/Treatment Plant Protection
  - c. Levee Alignment Alternatives
    - i. River Side Levee – Purpose to protect all properties to the extent possible
    - ii. Roadway – Available right-of-way corridor
    - iii. Access Improvements – during flood and to the North
4. **Residential Acquisition Process – Properties on which flood project is to be constructed**
  - a. State Water Commission funding approval 75% SWC / 25% WRD
  - b. Purchase Agreements – Status
  - c. Site Ownership/Restoration (Spring 2013)
    - i. Auction of residences and structures
    - ii. Demolition and clean up – trees, septic, utilities, residence in water, etc...
    - iii. Restore site to green space – maintenance to be determined
5. **Preliminary Project Design (2014-2015)**
  - a. River Side Levee - Criteria
    - i. Floodway / Sovereign Lands / COE Authorization
    - ii. Riverward Slope 3:1– Fabric Reinforced Grass
    - iii. Landward Slope 6:1 – Grass shaped to residential yards (site restoration)
    - iv. 10 foot Top Width - Future flood fight and access easement
    - v. Internal Drainage – Discharge at common conveyance point to the river
  - b. Bank Stabilization - Areas not addressed by COE Section 33
6. **Next Steps**
  - a. Alternative Review - based on input from today's meeting
  - b. Public Informational Meeting (February 2013) – All Island Residents
  - c. Preliminary Design
  - d. Benefit Evaluation
    - i. Residential and Agricultural Property
    - ii. Burnt Creek Floodway
    - iii. 97<sup>th</sup> Avenue NW – (Grade Raise)
    - iv. South Central Rural Water Well System
  - e. Opinion of Probable Cost and Distribution
    - i. County, WRD, Residents (Assessment District)
    - ii. SWC Cost Share – Flood Control Project 60%/40% of Construction Only
  - f. Public Informational Meeting/Hearing and Vote
  - g. Project Construction (2014-2015)
  - h. Future County land ownership options



## Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

**TO:** Hogue Island Residents Adjacent to River  
**FROM:** Burleigh County Water Resource District  
**DATE:** January 22, 2013  
**SUBJECT:** Flood Control Project Discussion

The Burleigh County Water Resource District (BCWRD) requests your participation in an informal meeting with representatives of the BCWRD and Houston Engineering to discuss the proposed Hogue Island Flood Control Project. The willingness or lack thereof of the riverside residents to allow a levee to be constructed across their property will largely determine the direction taken in formulating a proposed project. Based on the feedback received during this discussion, we plan to subsequently hold a public informational meeting for all Hogue Island residents to further discuss project development. We will also provide an update regarding the acquisition process and the next steps relating to these properties.

We look forward to hearing your thoughts regarding a proposed flood control project on January 29, 2013 at 5:30 pm at the Houston Engineering Office at 3712 Lockport Street. If you have any questions, please direct them to Michael Gunsch, of Houston Engineering, at (701)323-0200.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry N. Fleck".

Terry Fleck, Chairman  
Burleigh County Water Resource District

C: Kathleen Jones, BCWRD  
Michael Gunsch, HEI

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Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royst, Treasurer, Bismarck 258-1110    Kathleen Jones, Manager, Bismarck 258-1477  
Gordon Weixel, Manager, Bismarck 258-5390

BERNARD, STEPHEN T  
9700 ISLAND RD  
BISMARCK, ND 58503-9213

WAVRA, GREGORY & LAURA  
9710 ISLAND RD  
BISMARCK, ND 58503-9213

JOHNSON, CRAIG A & HOFLAND, CONSTANCE  
3101 CHISOLM TRL  
BISMARCK, ND 58503

RODGERS, JEROME D  
9750 ISLAND RD  
BISMARCK, ND 58503-9213

MAGNUS, BRADFORD & HEATHER  
1343 PRAIRIE VIEW DR  
BISMARCK, ND 58501

BOLL, RODNEY J & LAURA M  
3131 WINNIPEG DR  
BISMARCK, ND 58503

MILLS, LYNN D & SHARALYNN L  
9912 ISLAND RD  
BISMARCK, ND 58503-9226

DICKSON, THOMAS A & SHERRI  
9922 ISLAND ROAD  
BISMARCK, ND 58503-9226

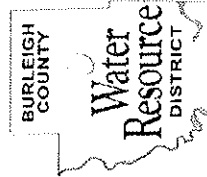
KUNZ, RUSSELL  
10020 ISLAND RD  
BISMARCK, ND 58503-9259

BRUNNER, MARK A & SHEILA F  
10028 ISLAND RD  
BISMARCK, ND 58503-9259

LIVESAY, RICHARD & VICKI  
1307 CANYON CIRCLE  
BISMARCK, ND 58503-0100

LENIHAN, THOMAS A & BONITA B  
408 BIRCHWOOD DR  
BISMARCK, ND 58504-6209

TSCHIDER, DAVID A & BERNIE A  
10062 ISLAND RD  
BISMARCK, ND 58503-9259



**SIGN - IN SHEET**  
**Hogue Island Riverfront Property Informational Meeting**  
**January 29, 2013**

NAME	PHONE	ADDRESS	E-MAIL
Mark & Sheila Branner	255-2283	10028 Island Rd	mbranner@b.s.mideo.net
Sherry Lynn Mills	258-7998	9912 Island Rd	smills@ndcourts.gov
Russell Kuntz	226-5398	10020 Island Rd	Rkuntz@wppa.gov
Greg Wavra	527-0299	9710 Island Road	gwavra@nd.gov
Heather & Brad Magnus	202-1468	1908 Telluride Ln	heather.l.magnus@hottmail.com
Lauri Wavra	391-0623	9710 Island Rd	gwavra@mideo.net
Kathleen Jones	401-7129	4380 Wildwood ST	KATHERINE@midland.net
Tom Leithen	258-8428	408 Birchwood Dr	TLEITHAN@SUNMUSIC.COM
Jerry Rodgers	226-9970	9750 Island Rd	rodgershardwood@b.s.mideo.net
Craig Johnson	226-0927	9730 Island Rd	cjohnson@mojhs.org
Connie Hotland	226-8102	9730 Island Rd	chotland@zkslaw.com
Laura Bell			

DRIO TSCHER  
 ERIC ODENBACH, HEI  
 MAREL GUNSOCH, HEI

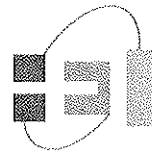
**Bismarck Parks Recreation  
2013 Expenses for  
McDowell Dam Recreation Park**

Month	Salaries & Wages	Employer Payroll Tax	Pension & Benefits	Operating Expenses	Total Expenses	Admin. Fee (25%)	Total Amount	Invoice Number
January	\$ 3,201.09	\$ 318.36	\$ 1,277.94	\$ 766.24	\$ 5,563.63	\$ 1,390.91	\$ 6,954.54	3203
February			\$ -	\$ -	\$ -	\$ -	\$ -	
March			\$ -	\$ -	\$ -	\$ -	\$ -	
April			\$ -	\$ -	\$ -	\$ -	\$ -	
May			\$ -	\$ -	\$ -	\$ -	\$ -	
June			\$ -	\$ -	\$ -	\$ -	\$ -	
July			\$ -	\$ -	\$ -	\$ -	\$ -	
August			\$ -	\$ -	\$ -	\$ -	\$ -	
September			\$ -	\$ -	\$ -	\$ -	\$ -	
October			\$ -	\$ -	\$ -	\$ -	\$ -	
November			\$ -	\$ -	\$ -	\$ -	\$ -	
December			\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total</b>	<b>\$ 3,201.09</b>	<b>\$ 318.36</b>	<b>\$ 1,277.94</b>	<b>\$ 766.24</b>	<b>\$ 5,563.63</b>	<b>\$ 1,390.91</b>	<b>\$ 6,954.54</b>	<b>To Date</b>

**Capital Improvements:**

2013 Budget: \$ 185,829.00  
**Over/Under Budget: \$ (178,874.46)**

# UTTC Retention Area



Houston Engineering Inc.

## Drainage Complaint Investigation

To: Terry Fleck, Chairman  
Burleigh County Water Resource District

From: Michael Gunsch, P.E.

Date: June 7, 2013

Subject: Elden Speirs Drainage Complaint

The BCWRD received a drainage complaint from Mr. Elden Speirs, the owner of property located in the E $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 22, T138N R80W west of the United Tribes Technical College (UTTC). Based on our investigation, the following is a brief history and summation of issues associated with the UTTC retention/infiltration area and its watershed:

- Prior to relocating Highway 1806, the area east of the current roadway was utilized for a gravel mining operation, therefore the original drainage and topography has been modified. Runoff west onto the Speirs property was significantly reduced during this period, which was a number of years, as runoff within the mining operations area was captured within the gravel pit and less area and runoff drained west onto the Speirs property.
- Following completion of the gravel mining operations, the site was reclaimed by the owner. Not long thereafter, the NDDOT relocated Highway #1804 to the west of the site to facilitate improved traffic operations through this area. As near as can be determined, based on the available historic topography (e.g., USGS Topography, 2005 and 2009, City of Bismarck Topography), the pre-mine drainage patterns were reestablished by site reclamation and preserved as part of the roadway relocation. The roadway contains a number of culverts that appear to convey runoff in a direction matching, to a reasonable extent, the original topographic drainage patterns.
- The UTTC constructed the existing retention/infiltration (retention) area, approved in 2005, to capture additional runoff generated from their college campus expansion. Information related to the general capability of this area to capture and infiltrate runoff into the groundwater was obtained by UTTC and provided to the City of Bismarck as part of their Storm Water Management Plan (SWMP) approval. A limited geotechnical report and evaluation of the capability to utilize this system is included as part of SWMP record.
- One concern with the SWMP records, however, is that there is no data that documents the retention area was adequately sized to accommodate additional runoff generated by new development. There is no assessment of the runoff volume that would be generated by the college expansion or the required storage capacity for the retention area to limit downstream impacts. While some topographic mapping was provided, there is no information in the record regarding the approach used to size the facility. It appears this is an interim and not a permanent facility. This is not to infer this issue was not considered in the design, only that the record does not contain this data. Thus, it is difficult if not impractical to know if the retention area is adequate based on its original intended level of control. This leads to the conclusion that, until this information is provided, the retention area should be deemed inadequate and in violation of the approved SWMP.

20

- The current retention area was noted as being a temporary measure for the first phase of the UTTC Campus expansion. Additional expansion would require further consideration of retention storage to accommodate any new development as it occurs. The record does not contain any long range information, lifecycle of the infiltration area or any timelines associated with maintenance of this system.
- During recent flood events the retention area's capacity was reduced by high groundwater. This site has subsequently experienced standing water for several years due to high groundwater, therefore the anticipated storage and infiltration capacity of this system has not existed as intended in the SWMP. This would explain in part the discharges that occurred downstream onto the Speirs property resulting in this complaint. There is nothing in the record that would indicate consideration was given to storage lost during periods of high groundwater. Subsequently, again the system is not in compliance with the approved SWMP. While recent high groundwater conditions were unforeseen, the compliance requirements and obligation to contain additional development runoff has not changed.
- Typically downstream impacts are measured through the mitigation peak flows or discharges. In this instance, since there is no outlet, with documented conveyance capacity, for the resulting additional runoff volume, therefore, accommodations are necessary to contain and maintain predevelopment runoff volumes discharged downstream. This is the reason for the utilization of a retention/infiltration area.
- We understand that additional UTTC expansion is underway that will result in more and ever increasing runoff into the existing retention area, which could then discharge additional excess waters onto the Speirs property, unless the system is brought into compliance. This is not to say that no discharges should occur onto the Speirs property, but information on compliance is not currently available. Since the existing retention area was intended as a temporary system, a comparison of pre- and post-conditions should be prepared for interim as well as master plan conditions for the UTTC campus expansion.
- Information obtained from the NDDOT relative to the culvert locations under the relocated Highway #1804 are attached to this memorandum. This provides data relative to culvert locations and inverts as well as general drainage patterns.

## **RECOMMENDATIONS:**

- The BCWRD should request the City of Bismarck to have UTTC update their existing storm water management plan considering existing and known conditions, as well as provide information relative to compliance of its retention area with its authorized SWMP and City ordinances.
- UTTC should be requested to provide documentation as to the capacity of the existing retention area as it relates to containment of additional runoff generated by the college expansion and future planned development, including consideration of the following:



# UTTC Retention Area

- Current (interim) and future development conditions
- Impacts from multiple runoff events, snow and rainfall combinations
- Impacts from high groundwater on the system, which effectively eliminates the consideration of retention storage below these levels
- Potential expansion or relocation of the retention/infiltration area
- The potential diversion of runoff onto other lands owned by UTTC
- Elimination of the risk for standing water that would increase potential waterfowl impacts within the airspace of the Bismarck Municipal Airport (FAA Standards). Given these regulations, use of a retention area and/or infiltration area that results in standing water for more than 48 hours may no longer be a viable alternative for storm water runoff control.

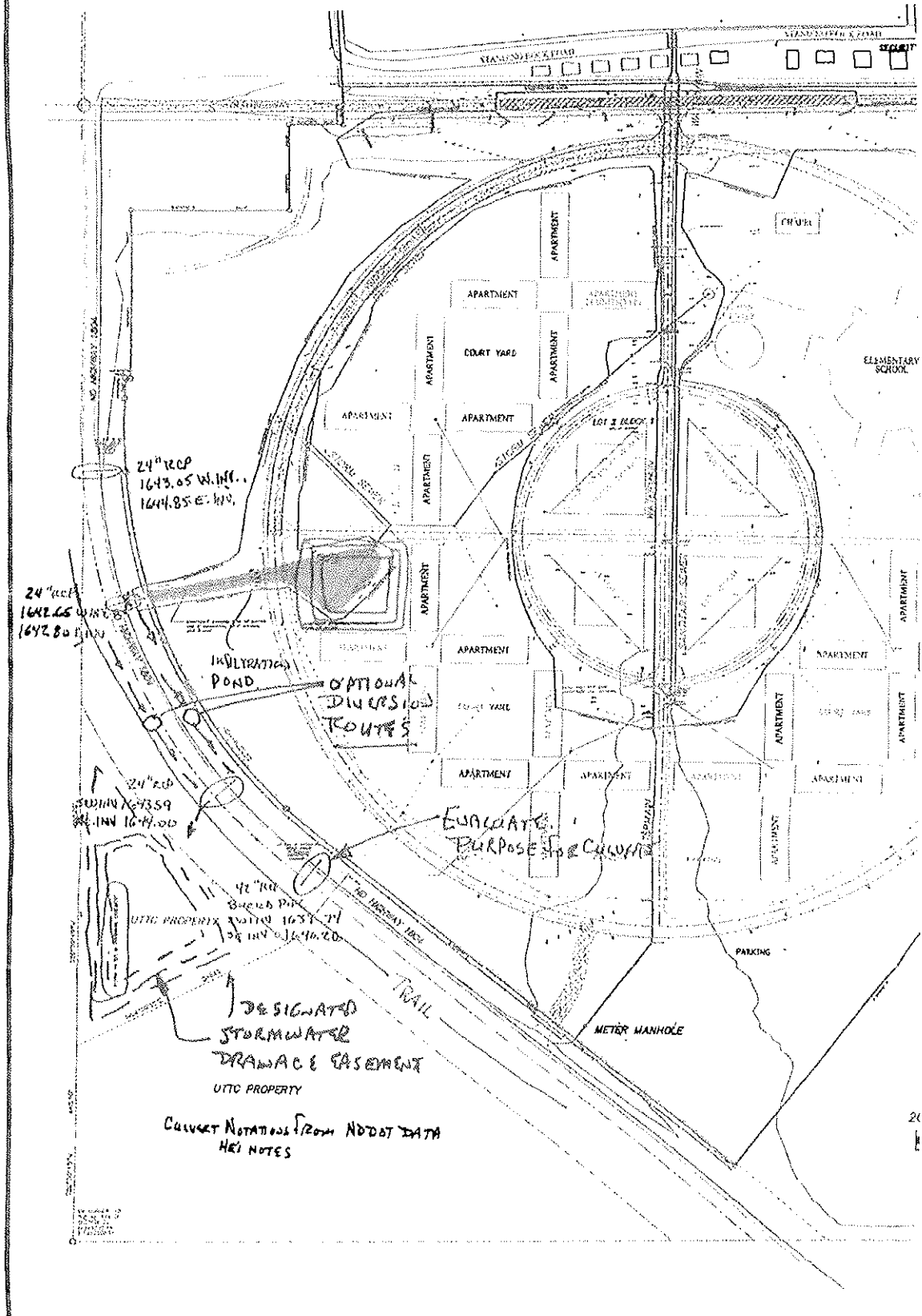
There are a number of alternatives for UTTC to consider in addressing the stormwater impacts from their expansion. To assist in the discussion, two alternatives, described below, are illustrated on the attached Figures:

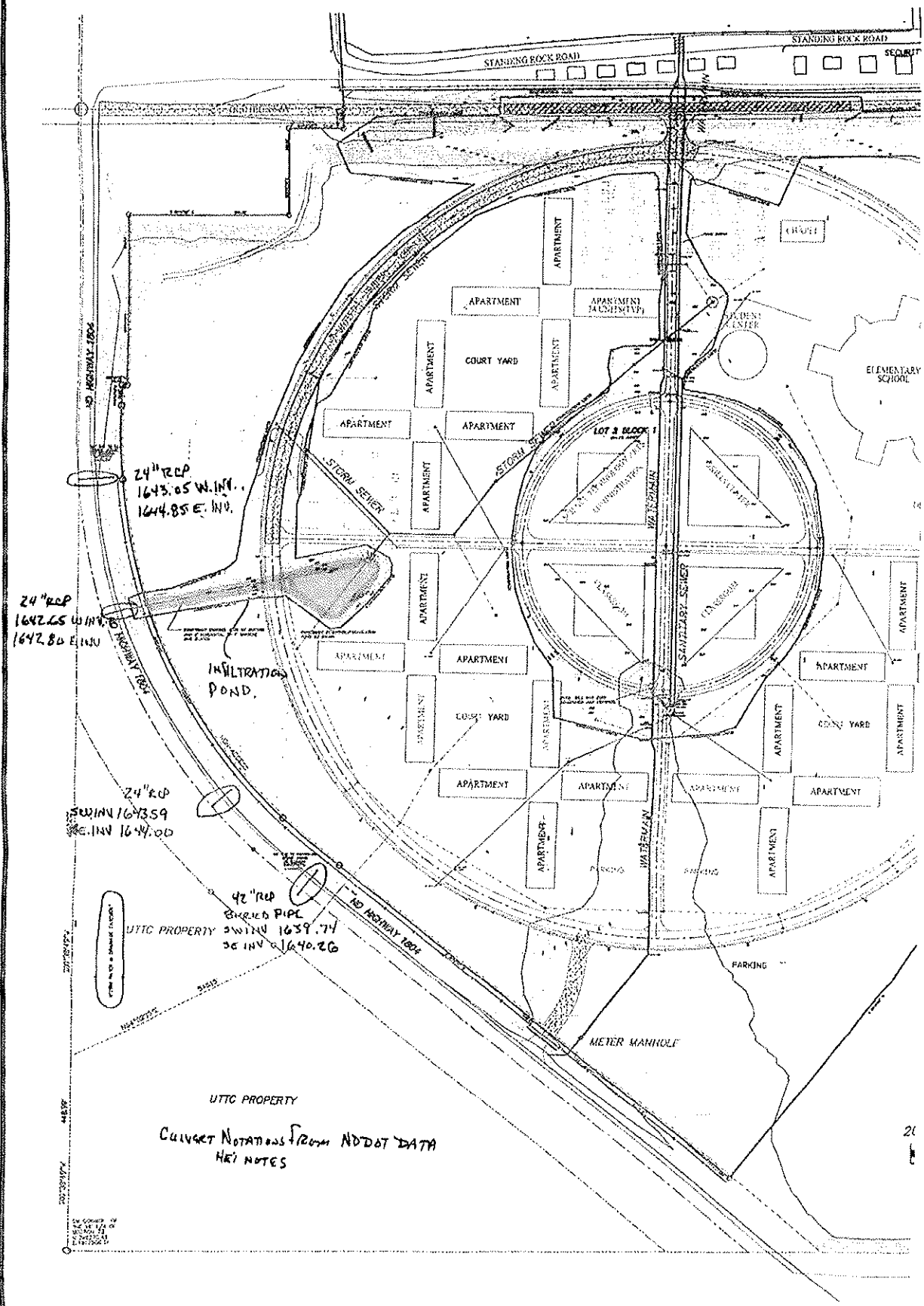
- Expand the existing retention area to accommodate for lost storage associated with groundwater and to facilitate future development. Also evaluate the ability to reduce its depth to avoid or limit the risks associated with standing waters. This expansion should consider short and long term runoff projections, though FAA regulations may limit the ability to consider this alternative.
- Relocate the retention area downstream on UTTC property east of Highway #1806 in the storm water easement area designated on the plat. This would allow for the expansion of the infiltration area and may limit the period or extent of standing water as well as reduce runoff onto the Speirs property. The storm water easement site located to the southwest of Highway #1806 appears to be an unclaimed gravel mining area, and was to the best of our knowledge considered at one time for a larger infiltration area to serve full development of the UTTC campus. NDDOT drawings indicate a buried 42" RCP under Highway #1804 is located in this area. The purpose for this installation or why is it noted as buried is unknown and should be investigated.

22

# ALTERNATIVES

- ① EXPANDED STORAGE
- ② RELOCATED STORAGE





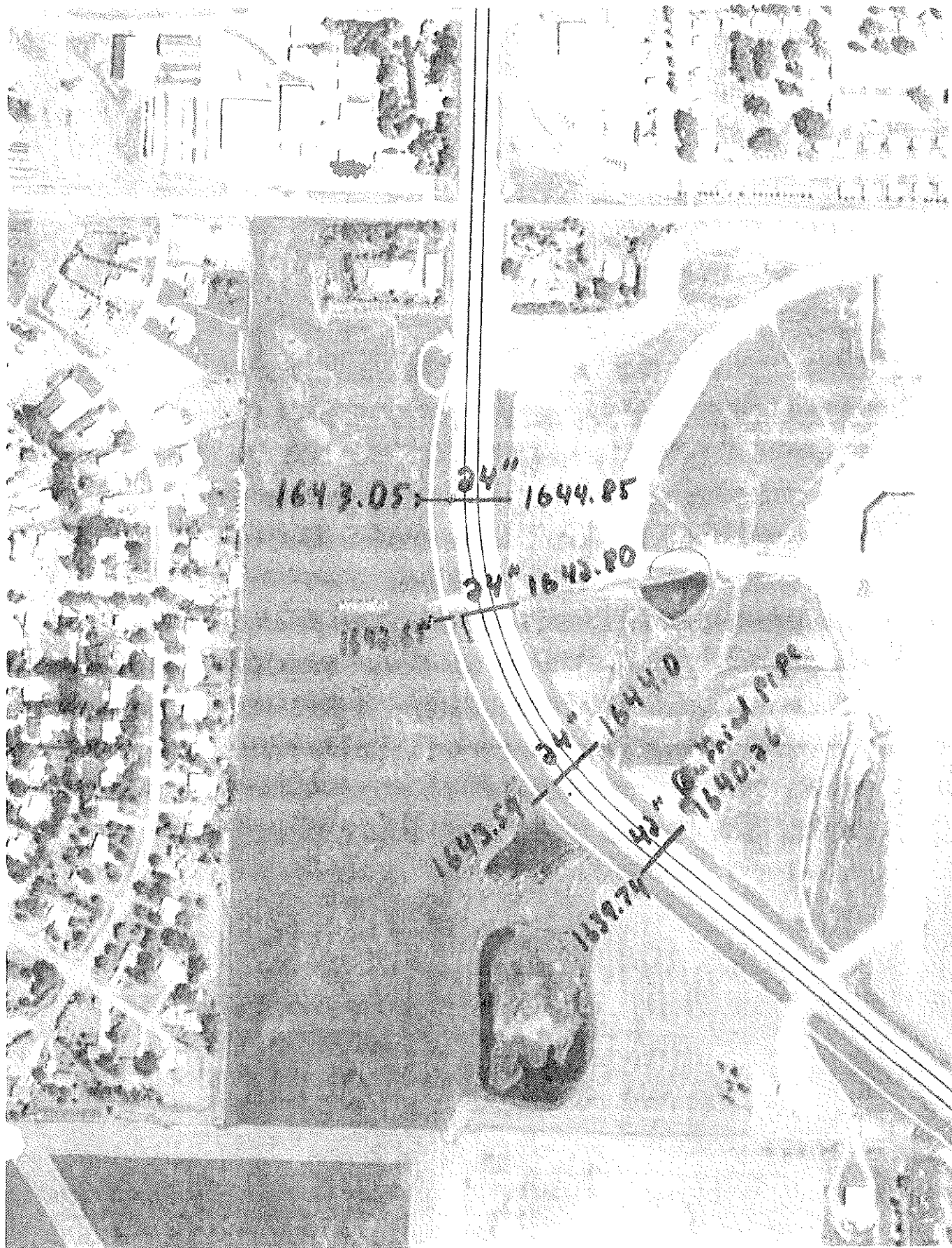
24" RCP  
 1643.05 W. INV.  
 1644.85 E. INV.

24" RCP  
 1642.65 W. INV.  
 1642.80 E. INV.

24" RCP  
 SW INV 1643.59  
 SE INV 1644.00

42" RCP  
 BURIED PIPE  
 SW INV 1639.74  
 SE INV 1640.26

UTTC PROPERTY  
 COLLECT NOTATIONS FROM NDDOT DATA  
 H&I NOTES



1643.05 — 24" — 1644.85

1643.57 — 24" — 1643.80

1643.54 — 24" — 1644.0

1639.74 — 42" — 1640.26

STATE ND PROJECT NO. NHU-SU-S-TNU-TES-1-804(024)074 63

NOT BITUMINOUS PRIME CL 33  
 393400 TO 3985+00 1745 TON  
 3984+00 LT 106 TON

SALVAGED BASE COURSE  
 3979+00 TO 3985+00 5432 TON  
 3981+00 LT 512 TON

PIPE CONC REINF 24IN CL111  
 3980+60-90' LT TO 3981+40-90' LT 86 LF  
 3981+80-64' RT TO 3981+80-142' LT 206 LF

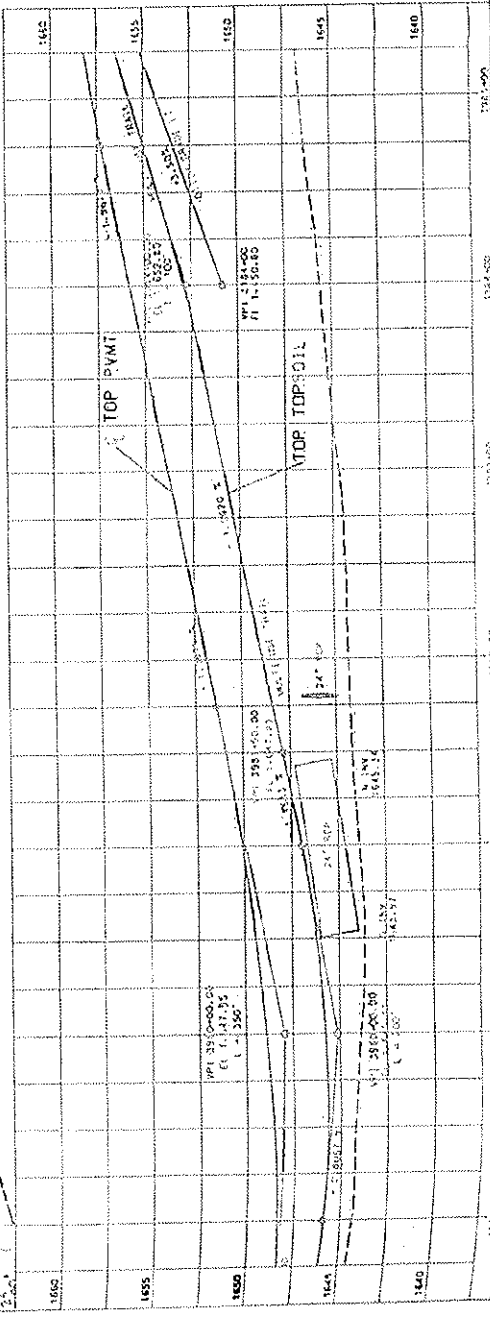
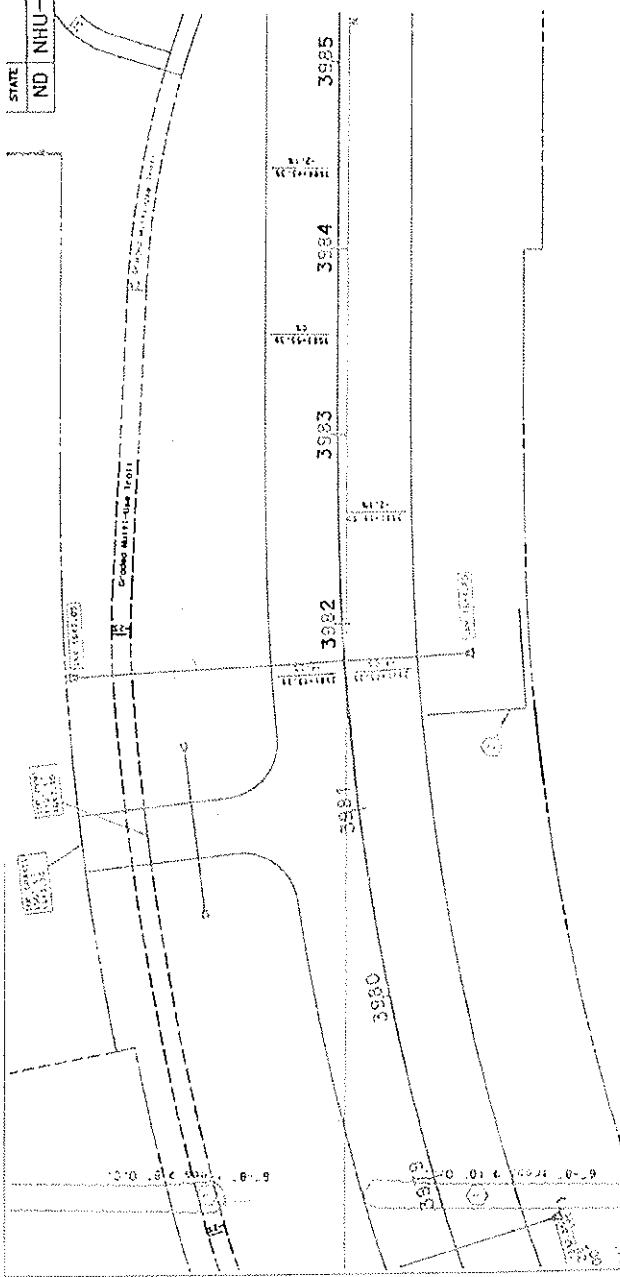
END SECT-CONE REINF 24IN  
 3980+64-90' LT 1 EA  
 3981+46-90' LT 1 EA  
 3981+80-70' RT 1 EA  
 3981+80-148' LT 1 EA

CONSTRUCTION NOTES

- 1) CLEAR AND GRUB TREES AND SHRUBS WITHIN RIGHT OF WAY.
- 2) CONSTRUCT "L" SHAPE DITCH BLOCK WITHIN RIGHT OF WAY WITH A TOP ELEVATION OF 1646.00. ALL COSTS SHALL BE INCLUDED IN THE PRICE BID FOR "COMMON EXCAVATION."

NO.	DESCRIPTION	COORDINATE	ELEV.

FILE: PPT-020  
 MAIN: NE  
 STA: 3919+00 TO 3985+00



QTY	UNIT
174	TON
543	TON

136	LF
30	LF
128	LF
30	LF

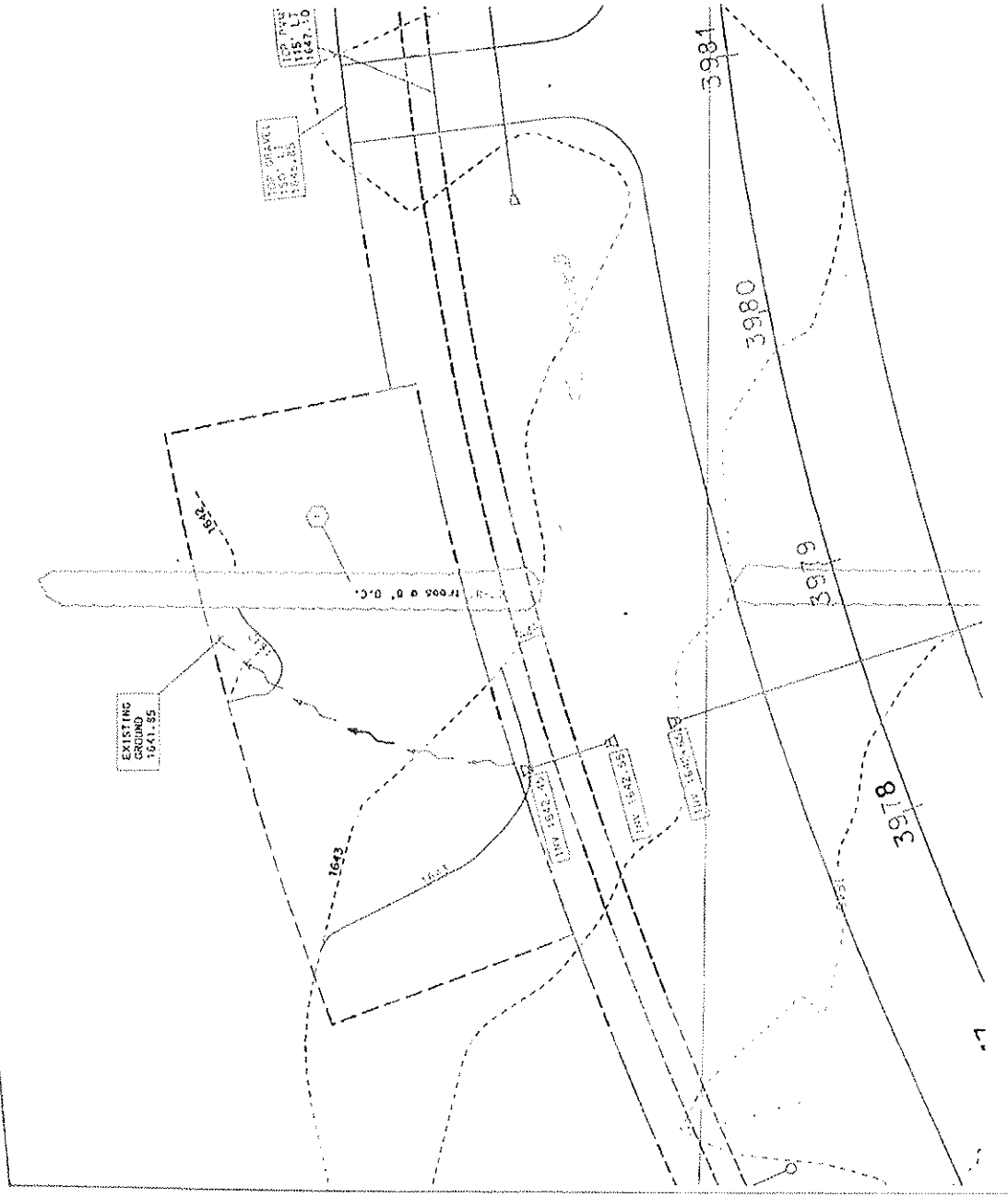
JBS

NO.	DESCRIPTION	COORDINATE	ELEV.

STATE	PROJECT NO.	SHEET NO.
MD	MM-50-5-TM-TES-1-804(024)074	39

**CONSTRUCTION NOTES**

- 1 CLEAR AND GRUB TREES AS NEEDED WITHIN THE TEMPORARY EASEMENT TO COMPLETE GRADING OPERATIONS.



**3978+60 OUTFALL GRADING PLAN**

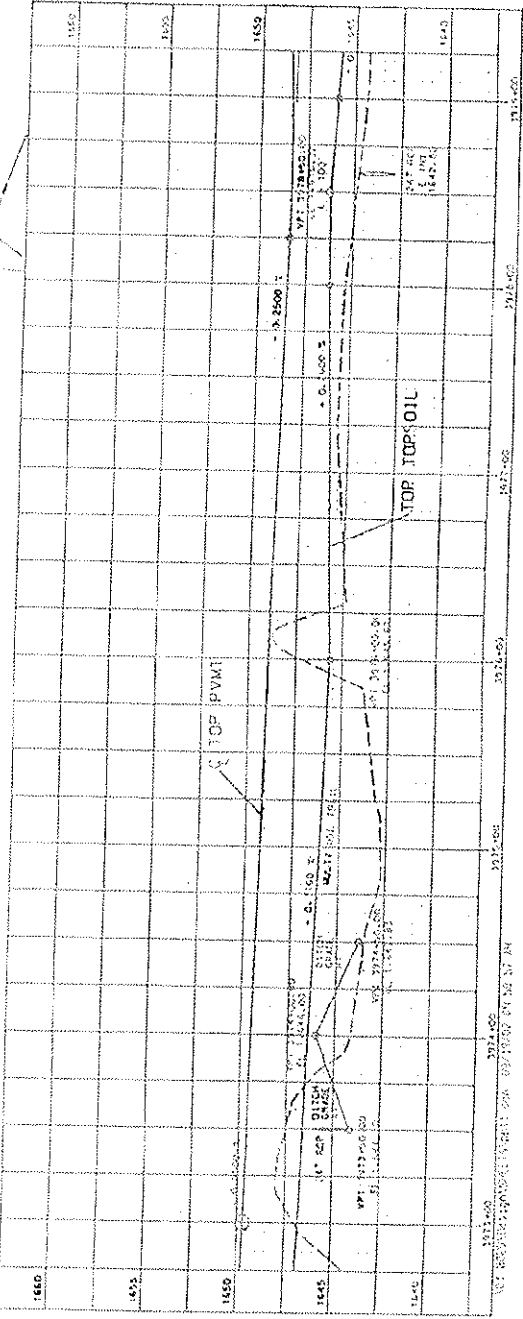
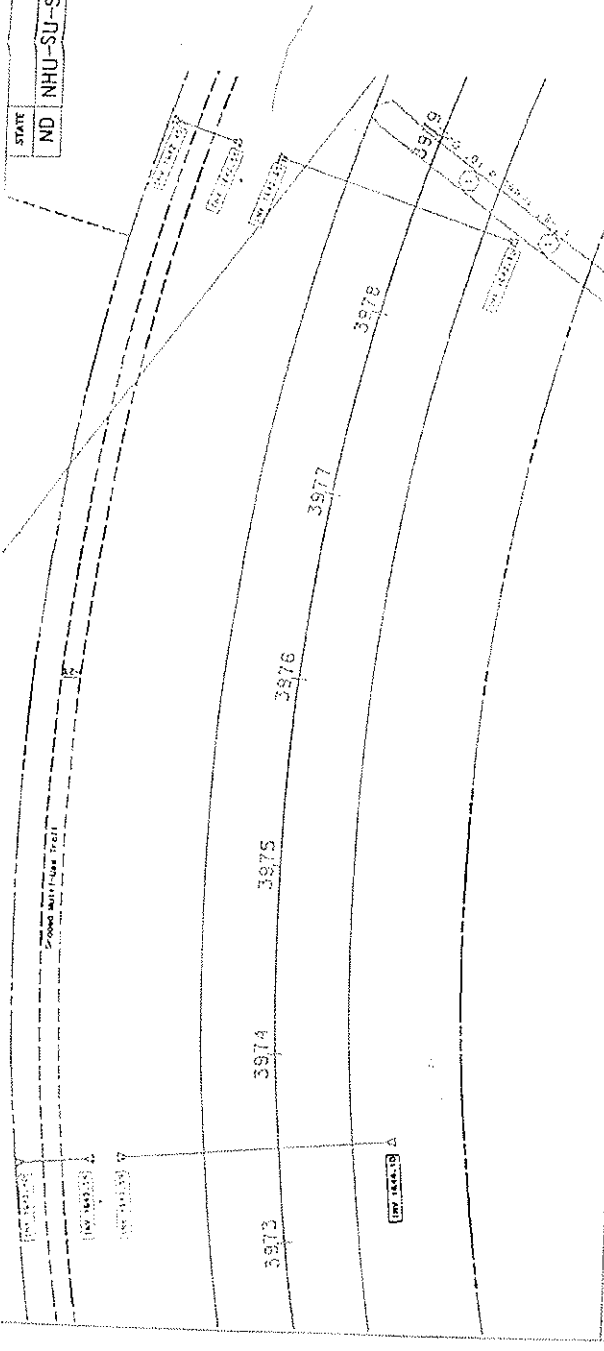
SHEET NO.	DATE
39	8/28

Y/ ASS YOUT

STATE ND PROJECT NO. NHU-SU-S-TNU-TES-T-804(024)074 02

NO. 3973-400 TO 3973+60 1745 72  
 SALVAGED BRASS COURSE 2973+00 TO 2973+00 \$432 70  
 PIPE CONC. REIN. 24IN. CL. 111  
 3973+60-57' RT TO 3973+50-59' LT 150  
 3973+50-104' LT TO 3973+50-124' LT 200  
 3978+50-54' RT TO 3978+60-124' LT 1280  
 3978+60-104' LT TO 3978+60-124' LT 200  
 2ND. SECT. CONC. REIN. 24IN.  
 3973+60-57' RT 150  
 3973+60-55' LT 150  
 3973+60-56' LT 150  
 3973+60-58' LT 150  
 3973+60-59' LT 150  
 3978+60-50' RT 150  
 3978+60-50' LT 150  
 3978+60-56' LT 150  
 3978+60-56' LT 150

CONSTRUCTION NOTES  
 1 CLEAR AND GRUB TREES AND SHRUBS WITHIN RIGHT OF WAY.



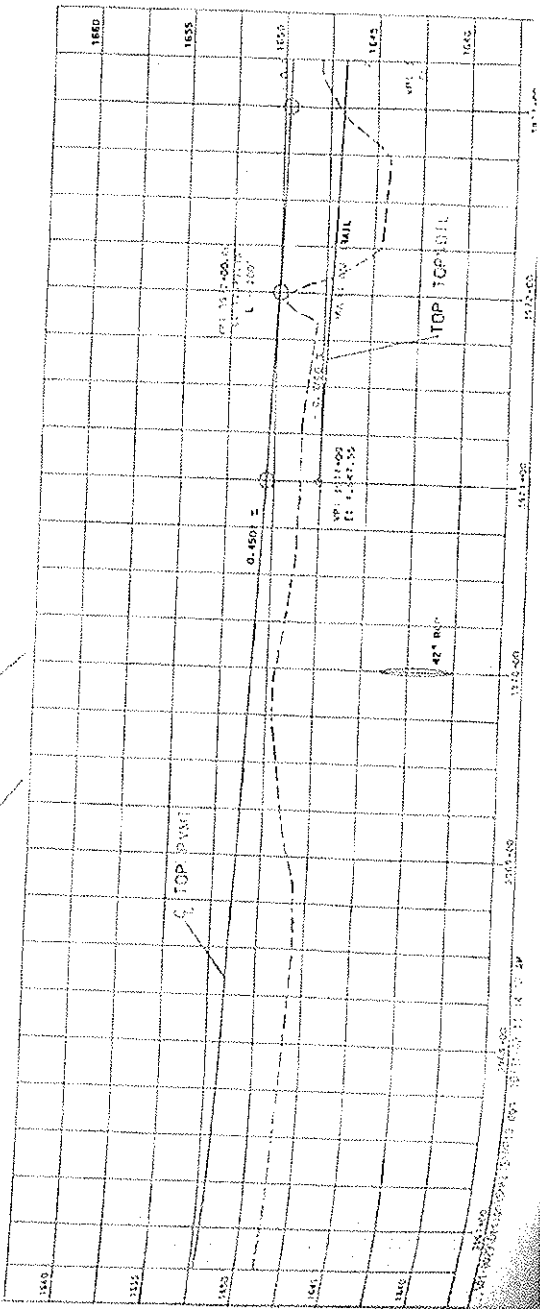
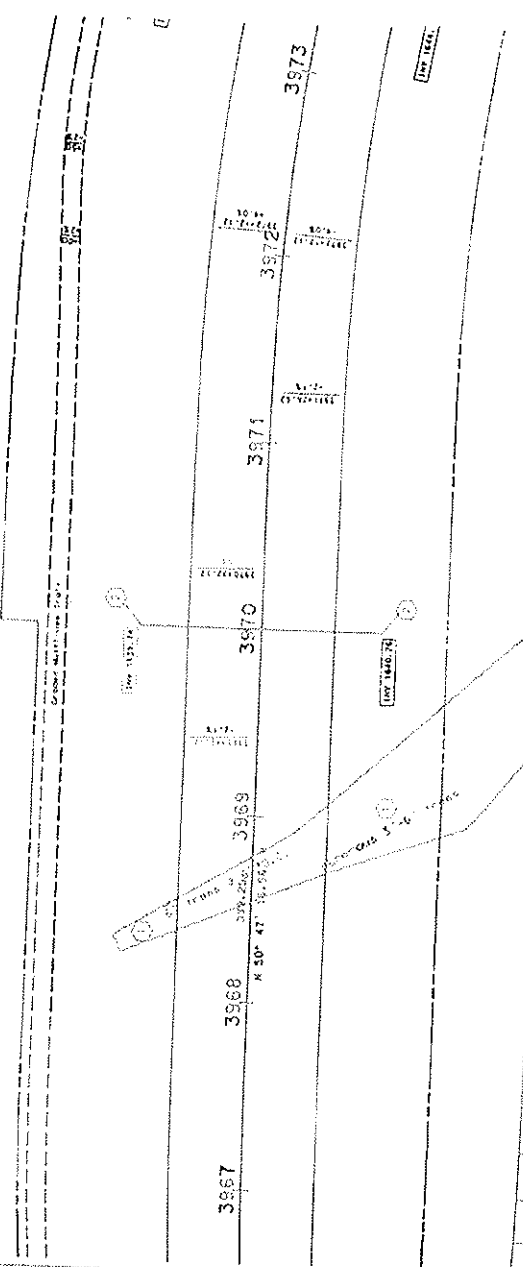
NO.	DESCRIPTION	LOCATION	DATE

FILE: PPH11-000  
 MAIN: 145  
 STA. 3973+00 TO 3978+00  
 DATE: 11/15/00

STATE ND PROJECT NO. 410741  
 NHU-SU-S-TNU-TES-1-804(024) 6

001 BIRMINGHAM PUMP #1 33  
 3367+00 TO 3373+00 174  
 BALANCED BASE COURSE  
 3367+00 TO 3373+00 \$432 FL  
 \* PIPE CONC REINF - 42 IN CL III  
 3373+00 TO 3375+00 135 LF

CONSTRUCTION NOTES  
 ① CLEAR AND GRUB TREES AND SHRUBS WITHIN RIGHT OF WAY.  
 ② END OF PIPE SHALL BE CAPPED WITH A STEEL PLATE. ALL COSTS SHALL BE INCLUDED IN THE PRICE BID FOR "PIPE CONC REINF - 42 IN CL III."



\*REVISED 11/04/02 ADDENDUM

NO.	DESCRIPTION	LOCATION	ELEV.
	REIN. MARK		

DATE: 11/04/02  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

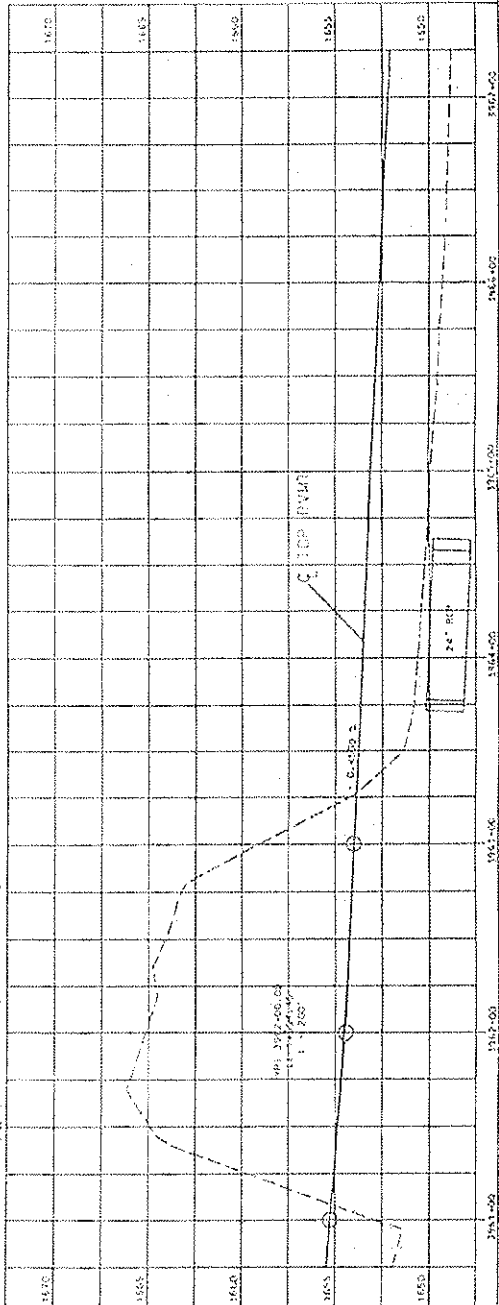
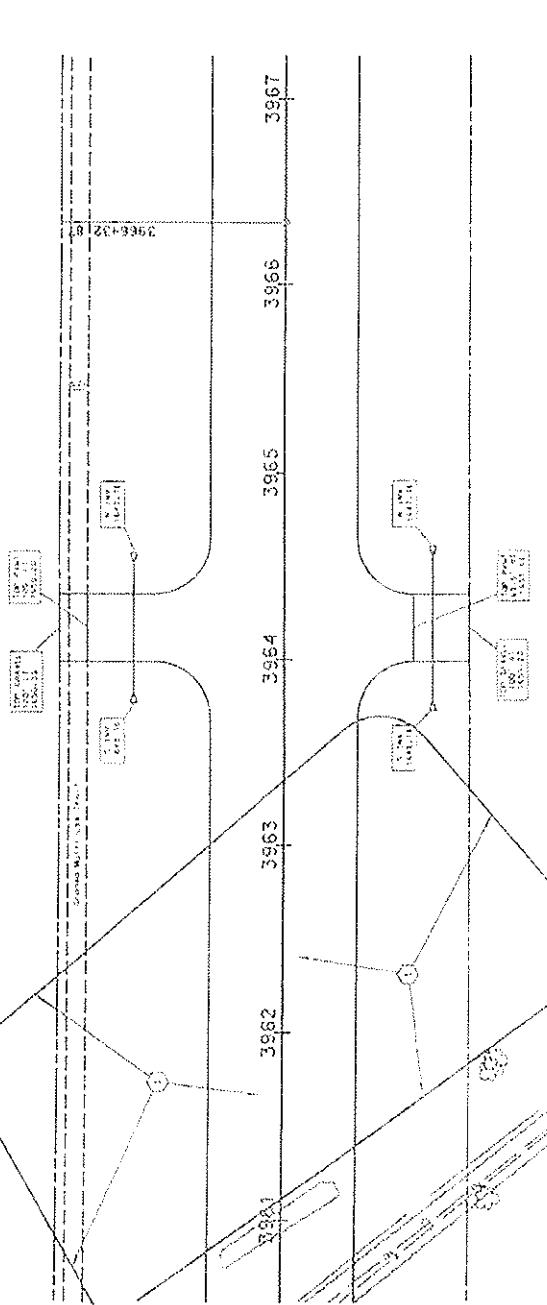
SHEET NO.	74
TOTAL SHEETS	60

- 5 TON
- 5 TON
- 7 TON
- 2 TON
- 9 TON
- 8 TON
- 12 LF
- 80 LF
- 1 EA
- 1 EA
- 1 EA



021 B' DOMINION ROAD S. 34  
 2061+00 TO 2067+00  
 2064+11 LT  
 2064+21 RT  
 56.14630 BASE ELEV.  
 228+47.0 LT  
 228+57.4 RT  
 228+47.0 LT  
 228+57.4 RT  
 (ELEV. CURVE BEING REFINED TO 1111)  
 2064+11 LT  
 2064+21 RT  
 2064+11 LT  
 2064+21 RT  
 2064+11 LT  
 2064+21 RT  
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 2064+21 RT

CONSTRUCTION NOTES:  
 TOPSOIL STOCKPILE WILL BE MOVED  
 BY OTHERS.

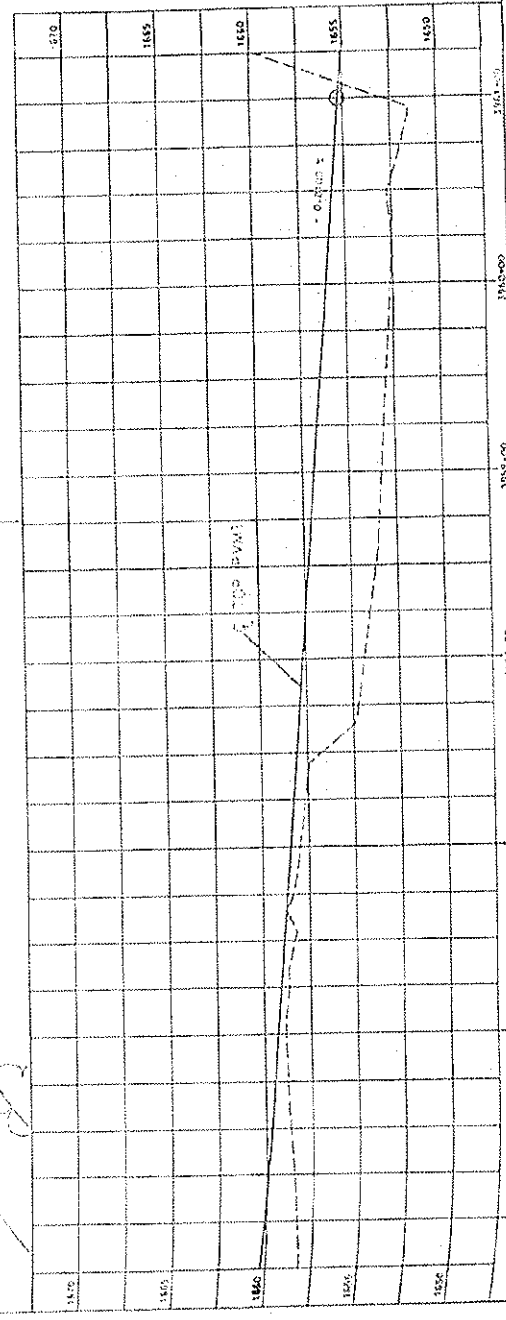
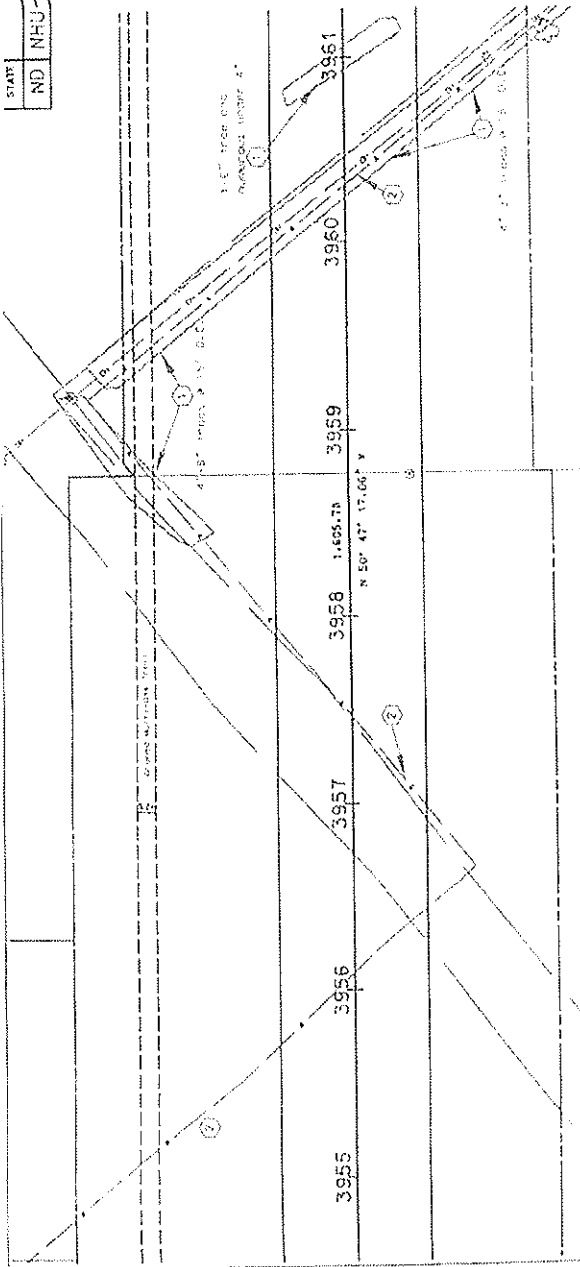


ID	DESCRIPTION	LOCATION	ELEV.
1	TOP SOIL STOCKPILE	Station 3964.11	1660
2	CONSTRUCTION NOTES	Station 3964.11	1660

STATE ND PROJECT NO. NHU-SU-S-TNU-TES-1-804(024)074

NOT TO SCALE  
 1950-00 TO 1981-00 1:45 TH  
 1981-00 TO 1982-00 1:45 TH  
 1982-00 TO 1983-00 1:45 TH  
 1983-00 TO 1984-00 1:45 TH

- CONSTRUCTION NOTES
- 1 CLEAR AND GRUB TREES AND SHOES WITHIN RIGHT OF WAY.
  - 2 REMOVE METAL IRRIGATION PIPES WITHIN RIGHT OF WAY. PIPES IS LAYING ON TOP OF GROUND. ALL CUTS FOR REMOVAL AND GASTING SHALL BE INCLUDED IN PRICE. BID FOR REMOVAL OF DISTRIBUTORS.



NO.	DESCRIPTION	LEGATION	ELEV.
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100			

SHEET NO. 50

DATE: 10/15/00  
 DRAWN BY: JMS/KAC  
 CHECKED BY: JMS/KAC  
 SCALE: AS SHOWN



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

REGISTERED MAIL

January 16, 2013

Mr. Edward Jaskowiak  
PO Box 1001  
Bismarck ND 58502-1001

**RE: NOTICE AND ORDER TO REMOVE AN OBSTRUCTION TO A WATERCOURSE**

Dear Mr. Jaskowiak:

In an order dated September 25, 2012, the Burleigh County Water Resource District ordered you to remedy an obstruction to a watercourse you had created in the NE ¼ Section 35, Township 139 North, Range 79 West. The Order required the installation of a culvert of not less than 30" in diameter with its inverts placed at the natural stream gradient.

A recent site inspection revealed that you did install a 24" RCP culvert at the location in question. While we assume this work was completed with the intent of complying with this Board's September 25, 2012 Order, it does not in fact fully comply because the Order stipulated the installation of a culvert not less than 30" in diameter, and the culvert that was installed is only 24" in diameter.

At this point in time the Burleigh County Water Resource District will not require a replacement of the 24" culvert with a 30" culvert as originally ordered. However, if the 24" culvert is shown to be inadequately sized for the purpose of eliminating adverse impacts to other landowners, we will at that time order the installation of a larger culvert.

Therefore, while the current installation does not fully comply with the September 25, 2012 Order, we hereby temporarily suspend that order pending additional observation and evaluation.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry A. Fleck".

Terry Fleck, Chairman  
Burleigh County Water Resource District

C: Sanford Mees  
Ray Zeigler, Burleigh County Buildings and Inspections  
Michael Gunsch, Houston Engineering

---

**Current Board Members:**

Terry Fleck, Vice Chair, Bismarck 223-9708    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ron Royse, Treasurer, Bismarck 268-1110    Kathleen Jones, Manager, Bismarck 256-1477  
Gordon Weikel, Manager, Bismarck 256-5390

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BISMARCK ND 585

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edward Jazzkowiak  
 PO Box 1001  
 Bismarck, ND 58502



**COMPLETE THIS SECTION ON DELIVERY**

A. Signatures JAN 2013 PM11  
 Agent  Address  
 *Edward Jazzkowiak*

B. Received by (Printed Name)  
EDWARD JAZZKOWIAK

C. Date of Delivery  
1/13

D. Is delivery address different from item 1?  
 If YES, enter delivery address below:  Yes  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number

(Transfer from service label)

RE 913 989 384 US

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

## REGISTERED MAIL

January 10, 2013

Mr. Dan Emery  
7245 Russell Road  
Bismarck, ND 58501

**RE: NOTICE OF DECISION AND ORDER**  
**Complaint of Obstruction of Natural Watercourse**  
**Lot 7B, Block 2, T-J Ranch Estates, Gibbs Township, Burleigh County**

Dear Mr. Emery:

The Burleigh County Water Resource District (BCWRD) has investigated a complaint filed against you regarding an obstruction of a natural watercourse filed by Mr. Chris Koppang. Based on our site inspection and review of aerial topography, it was determined that your residence was constructed directly within a natural watercourse as defined in ND Century Code Section 61-01-06. The Office of the ND State Engineer has subsequently confirmed the determination that a natural watercourse exists and has been obstructed.

North Dakota Century Code Section 61-16.1-51 states that, if a water resource district determines that a watercourse has been obstructed, the board shall notify the landowner by registered mail as to the nature of the obstruction and order its removal. In this instance your home actually constitutes the obstruction, and removal of the home would seem to constitute an impractical solution at this point. Therefore, we are willing, in this instance, to allow a relocation of the watercourse rather than removal of the home.

**YOU ARE HEREBY ORDERED** to remedy the obstruction of the watercourse in question by constructing an alternate drainage route. This remedy must be completed by May 1, 2013. You shall notify the Burleigh County Water Resource District upon completion, so that the construction can be inspected for compliance.

---

**Current Board Members:**

Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royse, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134

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# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

If you fail to comply with this order and fail to construct the alternate drainage and notify this office of its completion by May 1, 2013, the Burleigh County Water Resource

District shall procure the services necessary to construct the remedy and assess the cost against your property, including all costs incurred by the BCWRD in investigating and resolving this complaint.

In accordance with NDCC 61-16.1-51, you may demand in writing a hearing on this matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in NDCC Section 28-34-01.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry A. Fleck".

Terry Fleck Chairman  
Burleigh County Water Resource District

C: David Bliss. Bliss & Stebbins  
Chris Koppang

January 24, 2013

Burleigh County Water Resource District  
221 North 5<sup>th</sup> St.  
Bismarck, ND 58501-4028

RE: NOTICE OF DECISION AND ORDER  
Complaint of Obstruction of Natural Watercourse  
Lot 7B, Block 2, T-J Ranch Estates, Gibbs Township, Burleigh County

To whom it may concern:

This is our written request for a hearing pursuant to North Dakota Century Code 61-16.1-51. We also request that the Burleigh County Water Board and any employees, consultants, or anyone related to, or anyone having person interests in listed case be dismissed from any further decision making in the matter. We request that the hearing be held in front of an unbiased Burleigh County District Court judge per North Dakota Century Code Section 28-34-01.

Sincerely,

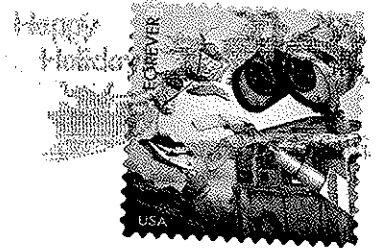


Dan & Trish Emery  
7245 Russell Rd  
Bismarck, ND 58503

C: Debra Simenson, Clerk of Burleigh County District Court

BISMARCK ND 585

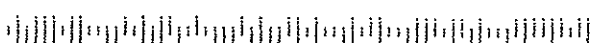
26 JAN 2013 PM 1 L



1 & Trish Emery  
15 Russell Rd  
marck, ND-58503

Burleigh County Water Resource District  
221 North 5<sup>th</sup> St.  
Bismarck, ND 58501-4028

585014028



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**DRAINAGE COMPLAINT**  
(Pursuant to Section 61-32-07 NDCC)

1. Burleigh County Water Resource District

2. Drain Location: 1/4, NW 1/4, Section 8, Twp. 139 N., Rge 79 W.  
*Note: Include an aerial or topographical map that shows the exact location of the drainage activity.*

3. Acreage drained: ≈ 4 Original drain construction date: Unknown

Drain revision date: \_\_\_\_\_ (if any)

Drain was constructed by: Homeowner @ 7241 Russell Rd (Chris Koppang)

Method of drainage: (circle one) Ditching Pumping Filling

Receiving water course, if known: \_\_\_\_\_

4. This drain is resulting in:

a) Flooding of land owned by Complainant: N/A

b) Other adverse effects: Discrimination of Burleigh County Water Board against homeowner @ 7245 Russell Rd. Board States that 7245 Russell Rd built in the "natural waterway", although no documentation exists to support this. House at 7245 does not obstruct, disrupt or otherwise block the flow of "natural" water from either property.

Complaint Filed Against: Name: Chris Koppang / Burleigh Co. Water Board  
Address: 7241 Russell Rd Bismarck (Chris)  
221 N 5th St. Bismarck (B&W RD)

Complaint Filed By: Name: Dan + Trish Emery  
Address: 7245 Russell Rd  
Bismarck, ND 58503  
Phone: 701-250-7033 (H) 701-720-6663  
701-240-0558 (Dan cell) (Trish cell)

Complainant's Signature:  Date: 1-8-13

Mail to: Water Resource District in which the drain is located.

**FOR BOARD USE ONLY**

The Board must act pursuant to Section 61-32-07 NDCC (closing a noncomplying drain) and make a decision within a reasonable time, but not to exceed 120 days. The Board shall notify all parties of its decision by certified mail. If the drainage was constructed before 1987, the Board's decision may be appealed to District Court. An appeal of the Board's decision for a drain constructed after 1987 may be to District Court or the State Engineer.

1. Date complaint received: \_\_\_\_\_

2. Does the complainant have standing to file a complaint: \_\_\_\_\_

If not, why not? \_\_\_\_\_

\_\_\_\_\_

3. Date of investigation: \_\_\_\_\_

4. Is the drainage area 80 acres or more? \_\_\_\_\_

5. Is there a permit? \_\_\_\_\_

6. Does the drain meet an exemption (which one)? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. The year the drain was constructed: \_\_\_\_\_

8. Has the drain been improved since initial construction? \_\_\_\_\_

9. Board action: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Date drain must be closed: \_\_\_\_\_

11. Response of drainer:

a) Date of Compliance: \_\_\_\_\_

b) Date of appeal: \_\_\_\_\_

12. Subsequent actions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Google earth



## **CHAPTER 61-21 DRAINAGE PROJECTS**

### **61-21-01. Definitions.**

In this chapter, unless the subject matter otherwise requires:

1. "Affected landowners" means landowners whose land is subject to assessment or condemnation.
2. "Board" means the board of managers of a water resource district.
3. "Cleaning out and repairing of drain" means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
4. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.
5. "Lateral drain" means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain; provided, that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.

### **61-21-02. Watercourses, ditches, and drains may be constructed, maintained, repaired, improved, or extended.**

Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other lowlands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare. The powers conferred by this chapter and this section shall extend to and include:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed.
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage.
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains.
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain.
5. The establishment and construction of lateral drains with outlets in drains already constructed.
6. The installation of artificial subsurface drainage systems.

#### **61-21-02.1. Assessment drain culverts.**

As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the state engineer.

**61-21-03. Board of drainage commissioners - Appointment - Term - Removal - Compensation.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-04. State and county officers not eligible as drain commissioners - Matters of personal interest to drain commissioners.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-05. Powers of board.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-06. Board's report to board of county commissioners - Contents - Inspection - Liability of drain commissioner on bond.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-07. Oath and bond filed by drain commissioners - Organization of board - Quorum.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-08. Office, records, clerk, and employment of personnel.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-09. Levy for administrative expense - Payment of commissioners' salaries and overhead expense.**

Repealed by S.L. 1981, ch. 632, § 12.

**61-21-10. Petition for construction of drain - Purposes of drain - Signers to petition.**

A written petition for the construction of a drain may be made to the board. Such petition shall designate the starting point, terminus, and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the people of any city, the petition shall be signed by a sufficient number of the property owners of such city to satisfy the board that there is a public demand for such drain. The petition shall be signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain.

**61-21-11. Bond required from petitioners.**

The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the board should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resource board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

**61-21-12. Examination of line for drain - Designation of surveyor - Specifications - Cost estimates.**

Upon presentation of a petition as provided in section 61-21-10, the board shall examine the line of the proposed drain, and if in its opinion further proceedings are warranted, it shall adopt a resolution to that effect and designate a competent surveyor or engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees may enter upon any land traversed by any proposed drain or any other lands necessary to gain access thereto. The surveyor or engineer shall prepare profiles, plans, and specifications of the proposed drain, estimates of the total cost thereof, and a map or plan of the lands to be drained showing the regular subdivisions thereof, which map or plan shall be filed in the office of the county auditor for inspection by the public. In determining the best location for the proposed drain, the board may in its discretion set the location on lines differing from the lines described in the petition. When the length of line described in the petition does not give sufficient fall to drain the land

sought to be drained, the board may extend the drain below the outlet named in the petition. The estimate of costs prepared by the surveyor or engineer shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed drainage district.

**61-21-13. Hearing on petition to establish drain and surveyor's report - Notice - Contents.**

Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain or whose property shall be subject to condemnation for the proposed drain. At least ten days before such hearing, the board shall file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing on the petition. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain and each landowner whose property shall be subject to condemnation for the proposed drain as shown by the record in the office of the recorder shall be mailed a notice of such hearing at the owner's post-office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. The notice of hearing shall specify the point or place of beginning of the proposed drain and where it terminates, and shall describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing shall also specify when and where votes for and against such proposed drain shall be filed. The final date when votes must be filed shall not be less than ten days after the date of the hearing on the petition. A form of ballot shall be mailed with the notice of hearing for use by the affected landowners in voting for or against the proposed drain. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain or whose property shall be subject to condemnation for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

**61-21-14. Conduct of hearing on petition to establish drain.**

Prior to the hearing provided for in section 61-21-13, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain or whose property shall be subject to condemnation for such drain, and shall limit voting rights to such landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such cost and the amount of their property to be condemned for such project. The board shall fix a time, which shall not be less than ten days after the hearing on the petition, within which the votes for and against the establishment of the proposed drain shall be filed with the board. Objections to or approvals of the drain in writing may be filed with the board and shall be considered as votes for or against the proposed drain, as the case may be. A telegram shall be deemed writing, and any form of written approval or objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing votes for or against the proposed drain has been reached, no more votes for or against such drain shall be filed and no person shall withdraw that person's name from the list of those voting for or against the proposed drain after the deadline for filing votes has been reached. Any withdrawals of objections to or approvals of the proposed drain before that time shall be in writing only. When the votes of affected landowners have been filed and the deadline for filing votes for and against such drain has been reached, the board shall immediately proceed to determine whether or not more than fifty percent of the votes filed, as determined by section 61-21-16, are in favor of the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter

except to determine whether more than fifty percent of the votes filed are in favor of the drain and to adopt a resolution for discontinuance, if not more than fifty percent of the votes filed favor construction of the drain.

**61-21-15. Denying or making order establishing drain - Costs when petition denied.**

If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. The board may bring an action against the petitioners or upon their bond for all costs and expenses incurred in the proceedings, in which case the petitioners shall be jointly and severally liable, or the board may pay the costs and expenses out of any moneys available. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

**61-21-16. Voting right or power of landowners.**

In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

The landowner or landowners of tracts of land affected by the drain shall have one vote for each dollar of assessment that the owner's land is subject to or one vote for each dollar of the assessed valuation of land condemned for the drain, as estimated by the board under the provisions of section 61-21-12. It is the intent of this section to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's interest.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

**61-21-17. Notice of order establishing drain and period for appeal.**

Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in the county. The notice must include a copy of the order and must advise the affected landowners of their right to appeal under section 61-21-18.

**61-21-18. Appeal to district court - Time - Undertaking - Hearing.**

Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. The appeal must be taken in accordance with the procedure provided in section 28-34-01. The appellant must give an undertaking to be approved by the clerk of district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. The undertaking must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear the appeal not less than ten days nor more than thirty days after the filing of the appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case must be tried in all respects as a court case without a jury. Where the

appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

**61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants.**

Subject to chapter 32-15, the right of way for the construction, operation, and maintenance of a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain. If lands assessed for drainage benefits are not contiguous to the drain, access right of way thereto over the land of others may be acquired in the same manner. The right of way, when acquired, is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer that have been collected for the construction of the drain for which the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

**61-21-20. Assessing cost of constructing and maintaining drain.**

After the making of the order establishing the drain, the board shall assess the percentage of the cost of acquiring right of way and constructing and maintaining such drain in accordance with benefits received, against:

1. Any county, township, or city which is benefited thereby; and
2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by such drain or by such drain in connection with other existing or proposed drains.

No land already included in and being assessed by an existing drainage district shall be included and assessed in any newly formed drainage district unless it can be shown that such land will be benefited by the construction of the new drain. The board in considering the benefit and assessing the percentage of costs to each affected tract, parcel, or piece of land may, among other things, take into consideration the present drainage facilities under any existing drainage district, potential use of the proposed drain by such land, whether any such lands will be benefited or harmed by any change in the existing flow and course of drainage water by reason of the construction of the drain, and such other matters as may be pertinent to the question of benefits.

**61-21-21. Assessment subject to review - Notice of time and place.**

The percentage assessments provided for in section 61-21-20 shall be subject to review, and ten days' notice of the time and place where such percentage assessments will be reviewed by the board shall be given by publication in a newspaper having general circulation in the county. In addition, each owner of land affected by the proposed drain as shown by the record in the office of the recorder or county treasurer shall be mailed a notice of such hearing at the owner's post-office address as shown by such records, and an affidavit of mailing shall be filed with the proceedings of such drain.

**61-21-22. Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer.**

At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by



section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition within ten days after the hearing on assessments, to make a review of such percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition, the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to the state engineer that such assessments have not been made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessments shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed drain. For the state engineer's services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time the state engineer is engaged upon such work. All moneys received by the state engineer shall be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who may claim that the landowner will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineer upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter. The state engineer shall not determine the specific amount of benefits upon an appeal by an individual landowner, but shall only determine if there is any benefit to the landowner, and the determination of the state engineer upon such question shall be final.

**61-21-23. Recording assessment.**

After the percentage assessment of benefits has been made, as provided in section 61-21-20 and confirmed upon hearing as provided in section 61-21-22, the board shall record such percentage assessments in the permanent records of the drain and such percentage assessment shall further be permanently recorded by the county auditor in a book of drainage assessments.

**61-21-24. Notice of letting of contracts.**

After the recording of percentage assessments as provided in section 61-21-23, the board shall then give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published at least once in a newspaper having general circulation in the county.

**61-21-25. Letting of contracts for drains.**

The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof, in accordance with chapter 48-01.2.

**61-21-26. Extension of time to contractors - Reletting unfinished part of contract.**

The board may grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board in its discretion at any time thereafter may relet such unfinished portion or any part thereof to the lowest responsible bidder, and shall take security as before. The cost of completing such unfinished portions over and above the contract price, and the expense of notices and reletting shall be collected by the board from the parties first contracting. In no case shall the board forfeit and annul a contract without giving five days' notice to the contractor, if the contractor can be found or has a known place of residence in the county. Such notice may be given to such contractor personally or may be left at the contractor's place of residence.

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**61-21-27. Apportionment and taxation of costs.**

After the letting of contracts or a portion thereof, the board shall compute the cost of the drain, including estimated costs of any unfinished portions. The board shall determine the sum to be levied to pay such cost, which sum shall be prorated and assessed against lands in accordance with the percentage determined under section 61-21-20. A copy of the list of assessments shall be served on the clerk or auditor of each municipality against which taxes are to be assessed and shall also be filed in the office of the county auditor of the county or counties in which municipalities and lands benefited by the drain are situated. The provisions of section 61-21-52 shall apply to the levies and assessments provided for in this section.

**61-21-28. Collection of drain taxes.**

The county treasurer shall collect the drain taxes and shall credit all moneys so collected to the drain fund to which they belong. The county treasurer shall act as the custodian of the drain funds unless the board of the water resource district having jurisdiction over the drain requests otherwise in writing. Upon receiving a written request from the water resource district board, the county treasurer shall pay all moneys collected, and the earnings thereon, to the treasurer of the water resource district, who shall then act as the custodian of the drain funds. A direction by a board is effective for all moneys then in the custody of the county treasurer and all moneys subsequently collected thereafter unless and until the board directs in writing that the county treasurer act as the custodian of the moneys.

**61-21-29. Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued.**

Payment of all expenses and costs of locating and constructing a drain must be made upon order of the board and warrants therefor must be signed by the chairman and one other member of the board. All warrants drawn by the board in payment of items of expense of a drain are payable from the proper drain fund and must be accepted by the treasurer in payment of taxes levied in regard to the drain. All warrants, after presentation to the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer for payment, if not paid for want of funds, must be registered by the county treasurer or water resource district treasurer and thereafter bear interest at a rate not to exceed eight percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances when the warrants will be funded by a bond issue within six months from the date of purchase.

**61-21-30. Additional assessment to meet deficit or additional expense.**

In case the amount realized from the assessment made for the acquisition of right of way or for the construction, improvement, repair, and maintenance of any drain is not sufficient to pay all necessary expenses in regard thereto, or to pay and retire any bonds issued in connection with such operations, a further assessment shall be made to meet such deficit and such additional amount shall be levied and collected in the manner provided in sections 61-21-27, 61-21-28, and 61-21-52.

**61-21-31. Drains along and across public roads and railroads.**

Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. Where it is necessary to run a drain across such highway, the department of transportation, board of county commissioners, or the board of township supervisors, as the case may be, when notified by the board to do so, shall make necessary openings through such road or highway and shall build and keep in repair all suitable culverts or bridges at its own expense, as provided under the applicable provisions of section 61-21-32. Where drains are laid along or within the limits of roads or highways, such drains shall be maintained and kept open by the board at the expense of the drainage district concerned. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad, the railroad company, when notified

by the board to do so, shall make the necessary opening through said road and shall build suitable bridges and culverts and keep them in repair.

**61-21-32. Construction of bridges and culverts - Cost.**

The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: The state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of forty percent by the county and sixty percent by the water resource district or the drainage district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, forty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and sixty percent shall be charged as cost of the drain to the drainage district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road, the cost of such bridge or culvert shall be charged on the basis of sixty percent to the water resource district or the drainage district and forty percent shall be borne by the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction when there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water resource district, drainage district, county, or township, according to the foregoing provisions of this section, as the case may be.

**61-21-32.1. Culvert and pipe arch bids and acceptance.**

A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

**61-21-33. Boards of two or more counties may construct drains through counties.**

Whenever it shall be deemed necessary by the boards of two or more counties in this state to construct or extend a drain through or into two or more counties in this state, the several boards in the counties into or through which such proposed drain may extend when completed may establish, construct, and maintain such drain through or into two or more counties in the manner provided in section 61-21-34.

**61-21-34. Procedure to construct or extend a drain through or into two or more counties.**

In order to construct or extend a drain through or into two or more counties in this state, a petition shall be presented to the several boards for the establishment of such drain in their several counties as provided in this chapter. The boards of such several counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of such drain. The several boards of all counties through or into which such proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course of said drain through all said counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, they shall submit the points in controversy to the state engineer of the state water commission, and the state engineer's decision thereon shall be final. They may apportion the

cost of establishing and constructing such entire drain ratably and equitably upon the lands in each such county in proportion to the benefits to accrue to such lands. When they have so apportioned the same, they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by taxes upon the lands in each of such counties and such reports shall be signed by the boards of all counties affected. Upon the filing of such reports, the several boards shall meet and assess against the lands in each of such counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of such drain in each of such counties so fixed by all said boards. The provisions of this chapter relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of such drains.

**61-21-35. Settlement of unpaid warrants.**

In the event that drain warrants which have been issued pursuant to the establishment of a drain in two or more counties remain unpaid and the amounts realized from the original assessments made are not sufficient to pay said warrants and an additional assessment would be necessary to meet such deficit, the board of county commissioners of any county affected, if such board finds that such county has received benefits from such drain by reasons of public health, convenience, or welfare, as provided by law, and might therefore be liable for assessment or reassessment and that the credit of the county is or might be affected by the existence of such outstanding and unpaid warrants, may negotiate and execute a settlement with the owners of such warrants and pay the amount of such settlement from the general fund of the county.

**61-21-36. Cooperating with drainage boards or officials of other states in drainage matters.**

Any board established under the laws of this state, either severally or jointly with other boards, may cooperate with any similar drainage districts or drainage boards in any adjoining state in the establishment of any drainage area or drainage basin for the control of boundary waters between such states.

**61-21-37. Drainage boards or commissioners of different states may meet in joint conference to effectuate cooperation.**

In order to effectuate the cooperation provided for in section 61-21-36, any board may:

1. Meet in joint conference to agree upon joint plans of procedure.
2. Employ jointly with other similar boards a competent engineer.
3. Carry into effect the plans and suggestions adopted at any such joint conference in accordance with the laws of this state with reference to the construction of drains and drain improvements.
4. Assess the costs thereof upon the drainage district or area affected in accordance with the benefits received.

**61-21-38. Proceedings in drainage matters other than establishment and construction of drains - Establishment of lateral drains.**

Unless otherwise specified, all proceedings under the provisions of this chapter affecting the rights of persons and property shall be taken in accordance with the procedure governing the establishment and construction of drains in the first instance, except that a petition for the establishment and construction of a lateral drain shall be sufficient if signed by one or more freeholders whose property will be affected by the lateral drain.

**61-21-39. Petition for a lateral drain - Bond of petitioners - Penalty.**

1. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. Whenever improvements

of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event that the board shall determine that such improvements to the original drain are also beneficial to property served by the original drain, the board may assess such portion of the cost of the improvements as it shall determine to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except the petitioners as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioners. The petitioners shall pay into the county treasury the amount so determined, and they shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

2. When one or more of the property owners to be benefited by the construction of a lateral drain or ditch petition the board for the construction of a lateral drain or ditch, the board shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.
3. Repealed by S.L. 1975, ch. 569, § 4.
4. Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

**61-21-40. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions.**

The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established; or
3. Of a lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any drain has been located or established, or to enjoin the tax levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary. The court, on a final hearing, shall make such order in the premises as shall be just and equitable, and may order such tax or any part thereof to remain on the tax lists for collection, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

**61-21-41. Establishing new drains in location of invalid or abandoned drain.**

If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended, and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board

shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

**61-21-42. Drain kept open and in repair by board.**

All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or recorder's office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 61-21-16.

**61-21-43. Assessment of costs of cleaning and repairing drains.**

The cost of cleaning out and repairing a drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances in which there has been a reassessment of benefits under the provisions of section 61-21-44. If no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

**61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction.**

If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must

be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

**61-21-44. Reassessment of benefits.**

The board may hold at any time and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

**61-21-45. Contracts for work of cleaning and repairing drains.**

If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, a contract must be let in accordance with chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**61-21-46. Maximum levy - Accumulation of fund.**

The levy in any year for cleaning out and repairing a drain may not exceed two dollars per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of two dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full two dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

**61-21-47. Expenditures in excess of maximum levy.**

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of two dollars per acre [.40 hectare] in any year, with the amount

accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

**61-21-48. Reconveyance of land no longer required for drainage purposes.**

Whenever land has been acquired for drainage purposes and is no longer required for such use, the board of county commissioners may reconvey such land to the present owner of the adjacent property if such party in payment thereof surrenders all warrants issued in payment of the land or repays the amount of cash paid therefor.

**61-21-49. County may pay share of drainage taxes on tax deed lands.**

If lands acquired by the county by tax deed are assessed drainage taxes, the county commissioners shall pay such taxes from general funds if it appears after a due appraisal that the value of the land exceeds the total of the delinquent taxes for which foreclosure proceedings were instituted plus the total drainage tax assessment. If the total of taxes assessed at foreclosure plus drainage taxes exceeds the value of the land, the county shall not pay the drainage assessments but upon sale of such land any excess of the sales price over and above the amount of taxes for which the foreclosure proceedings were instituted shall be paid to the drainage district to the full extent of drainage taxes due. Any income from the property shall be first credited to the general taxes and any surplus income shall be paid to the drainage district to the extent of drainage taxes due.

**61-21-50. Drain warrants - Terms and amounts.**

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection therewith, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-21-27, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

**61-21-51. Payment of drain assessments - Interest.**

Drain assessments may be paid in full or in part at any time after the same have been filed in the office of the county auditor, provided that all such assessments shall bear interest at a rate to be set by the board, which rate shall be not less than the rate payable on warrants or bonds issued for the drain financed by such warrants or bonds. Interest shall be computed from the date of filing the assessment list in the office of the county auditor, or, if bonds are issued for



right of way or for construction, extension, or renovation, from the date of first publication of the preliminary bond issue resolution, whichever date is the earlier.

**61-21-52. Lien for and enforcement of drain assessments.**

Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor, the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced and in the same manner as is provided in title 57. If no satisfaction of tax lien is made, the affected property shall pass absolutely to the board on foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.

**61-21-53. Drain bonds.**

The board may issue bonds to finance acquiring drain right of way, locating and constructing drains, and funding unpaid drain warrants heretofore issued, or issued hereafter under this chapter. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until after the drain work has been completed. Proceedings for the issuance of bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued.
2. The maximum interest rate such bonds shall bear.
3. Designation of the calendar years in which such bonds shall mature.
4. The complete name of the drain for which such bonds are to be issued.
5. The purpose or purposes for which the proceeds of the bonds will be used, including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain

warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. The board shall prepare and file with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be filed prior to the date of the first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution, the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. The bonds shall bear interest at a rate or rates resulting in an average net interest cost not to exceed twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The bonds shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable, and shall be offered for sale and sold as provided in chapter 21-03, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, the bonds in the appropriate amount may be exchanged for the warrants, but the basis of exchange shall be such that the average net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which the warrants are payable. The fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

**61-21-54. Sinking funds and bonds.**

The board shall establish a sinking fund for each issue of bonds, which fund shall consist of all drain assessments made for the bonds, all warrants funded and all assessments for such warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys which may be appropriated to the sinking fund. Separate sinking funds shall be provided for each separate drain for which bonds shall have been issued. Until the purpose of the sinking fund has been fulfilled, no moneys in any such sinking fund shall be applied to any purpose other than payment of the bonds for which such fund was created.

**61-21-55. Liability for deficiencies - Maintenance of sinking fund.**

During the month of June of each year, the board shall prepare a complete statement of the condition of the finances of each drain and shall cause the same to be filed with the county auditor on or before July first next following. At its July meeting next following the filing of each statement of financial condition of any drain, the county board shall examine such statement and determine whether or not any drain has defaulted or will default on its financial obligations. If it appears to the county board that any drain does not have moneys and drain assessments receivable equal to one hundred percent of its obligations coming due within thirteen months next following, the county board shall pay from the county general fund into the sinking fund for drain warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with drain moneys on hand and the probable prior yield of drain assessments will amount to one hundred ten percent of the obligations of the drain becoming due during the thirteen months next following. Such tax or payments shall be appropriated to the sinking fund

for the drain warrants or bonds, and certificates of indebtedness may be issued against the same as levied. On redemption of all warrants or bonds against any sinking fund, or upon accumulation of moneys in such fund sufficient to redeem all outstanding warrants or bonds, all surplus moneys in such fund shall be payable to the general fund of the county or counties levying general property taxes or making such payments, up to the amounts of such levies or payments.

**61-21-56. Dissolution of drainage district - Return of unexpended assessments.**

The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 61-21-16 may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if the board finds the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 61-21-16, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county, and shall return all unexpended assessments collected for the maintenance of the drain to the owners of the assessed property on a pro rata basis in proportion with the amount originally assessed. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be reestablished in whole or in part only in the same way as a new drain is established.

**61-21-57. Penalty for violation of rules and regulations.**

If any person shall violate any valid rule or regulation promulgated by the board, that person shall be guilty of an infraction. The board may bring a civil action to recover damages resulting from violations, plus costs of suit, and all sums recovered shall be deposited with the county treasurer to the credit of the proper drain fund.

**61-21-58. Existing obligations and regulations.**

The passage of this chapter shall not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts and all sinking funds created for the payment of such obligations shall continue in force until the liquidation of such obligations. All valid rules and regulations promulgated by any board of county commissioners or board of drainage commissioners shall remain in full force and effect until altered or repealed by the board in the county concerned.

**61-21-59. City application for joint drain.**

Repealed by omission from this code.

**61-21-60. Hearing on city joint drain.**

Repealed by omission from this code.

**61-21-61. Payments for city joint drain.**

Repealed by omission from this code.

**61-21-62. Board may apportion assessments for benefits of an established drain against a county or city or any tract of land benefited by an established drain.**

Whenever a board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by an established drain and that the county or such township, municipality, tract, piece, or parcel of land was not included in the drainage area assessed for the cost of construction and maintenance of the drain when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such drain and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such drain, and the

expense of maintenance thereof, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the drain to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the drain was established and by mailing such notice to the governing board of the county, township, and municipality and to the owner of each tract, piece, or parcel of land found to be benefited since the establishment of the drain, as determined by the records in the office of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

**61-21-63. Drains having a common outlet may be consolidated.**

Whenever one or more drains which have from time to time been constructed empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

**61-21-64. Outlets.**

Subject to chapter 32-15, a board may, if found necessary, by process of eminent domain acquire land needed for a sufficient outlet for any established drain.

**61-21-65. Consolidation of drainage district or districts into water resource districts.**

Upon resolution of the board of county commissioners or the water resource board, or upon the filing with the board of county commissioners of a petition containing the signatures of landowners possessing at least fifteen percent of the voting rights in one or more drainage districts, computed in accordance with section 61-21-16, the board of county commissioners shall set a date for hearing upon the establishment or expansion of a water resource district to include the property contained within the drainage district or districts. The board of county commissioners shall publish notice of the time, place, and purpose of the hearing once each week for two consecutive weeks in a newspaper of general circulation in the county, the second publication to be not less than ten nor more than twenty days before the date set for hearing. In the event special assessments remain outstanding upon any property within a drainage district to be affected by a hearing as provided in this section, the board of county commissioners shall notify by ordinary mail at least ten days before the date set for the hearing all landowners of record subject to the special assessments in accordance with the provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected landowners computed in accordance with section 61-21-16 shall file written objections, further proceedings shall be discontinued. If such majority does not object, the board of county commissioners shall file with the state water commission a petition signed by a majority of the board and all further proceedings shall thereafter be governed by chapters 61-16 and 61-16.1. Upon the establishment or expansion of a water resource district to include one or more drainage districts, the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water resource district.

**61-21-66. Dissolution prohibited when liabilities outstanding - Disposition of assets.**

Notwithstanding the provisions of section 61-21-65, no drainage district shall be dissolved if such district has any outstanding warrants, bonds, or other obligations unless the order of the board of county commissioners dissolving such district shall provide for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations, or an assumption of such obligations by the newly created district and the spreading of such assessments over properties within the newly created district. All sinking funds created for the payment of such obligations shall be continued in force by the new district until the

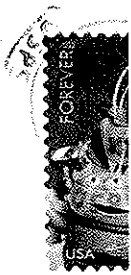
liquidation of such obligations. Any funds in the treasury of the drainage district shall, upon dissolution under the provisions of section 61-21-65, be transferred to the treasury of the water resource district. Such funds may be expended separately or jointly with other funds on projects or activities of the water resource district which are of specific benefit to property in the dissolved drainage district from whence the funds were transferred or, in the discretion of the board of county commissioners, such funds may be prorated among the properties in the dissolved drainage district and credited to such property in proportion with the amount originally assessed as a credit against subsequent assessments by the water resource district.

**61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

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EMERY  
7245 Russell Rd  
Bismarck, ND 58503



POSTAGE DUE 40

Burleigh County Water Resource District  
c/o City County Office Building  
221 N. 5th St.  
Bismarck, ND 58504

NOTIFIED JAN 15 2013  
1ST NOTICE 1-20  
2ND NOTICE 1-30  
RETURN

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# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

January 14, 2013

TO: Harbor Drive Flood Control Project Petitioners

FROM: Terry Fleck, Chairman  
Burleigh County Water Resource District.

RE: Harbor Drive Flood Control Project Petition

Several residents of the Harbor Drive area recently submitted a petition to the Burleigh County Water Resource District (BCWRD) requesting development of a flood control project to protect residential structures north of Mills Avenue. You were among the residents who signed the petition.

As part of our initial consideration of your request, we have met with representatives of the Riverwood West Homeowners Association (RWHA), the Burleigh County Highway Department, as well as the City of Bismarck and their consultant for the Mills Avenue project, Apex Engineering Group. Based on these meetings, we have learned that the City of Bismarck intends to use federal funding to complete a grade raise on Mills Avenue to a point west of West Harbor Drive. Local costs will be borne by the City of Bismarck and any resulting assessment district they establish; no costs will be assessed to the rural residential properties north of Mills Avenue, which are located in the county. This grade raise will include a raise of approximately 150 feet onto West Harbor Drive for transitional purposes.

Given the work to be completed by the City of Bismarck, protection to a level of an 18 foot river stage could be provided by raising another 150 feet of West Harbor Drive. It would not be prudent for the Burleigh County Water Resource District to go through the statutorily mandated steps of establishing such a small project. To do so would only add significant cost to the residents. It makes more sense for the RWHA to work directly with a contractor to complete that work. Ideally, the RWHA could negotiate with the contractor ultimately selected by the City of Bismarck to complete the Mills Avenue Grade Raise. This would hopefully result in cost savings as the contractor would already be mobilized to the site. We understand that the City is willing to allow their contractor to complete such work.

The approach discussed above would be the most practical means of providing protection for the interior West Harbor Drive residents up to a level of 18 feet. If there is still a desire to provide protection up to a level of 20 feet, that would involve a much more extensive project which could be considered as a BCWRD sponsored project. However, we are aware that there are issues with the right of way easement for these privately owned roadways. Before the BCWRD would consider developing a project to provide protection to a 20 foot stage, the right of way issues would need to be resolved so that we do not expend a significant amount of



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

public monies attempting to resolve these potentially complicated legal issues, only to end up with no project and no way to recoup those public funds.

In summary, the BCWRD will not develop a project to provide protection to a level of 18 feet. It is recommended that the RWHA work directly with a contractor to raise the required 150 feet of roadway. We would consider developing a project to provide protection to a level of 20 feet, but only if the issues surrounding the easements for the roadway are resolved first. We would also need a clear indication that there is wide spread support for such a project.

This is not an indication that we fail in any way to take your need for flood protection seriously. We fully support and commend your efforts to protect yourselves from the next flood event. It will simply be much more cost effective for you to proceed in a more direct manner than forming a new assessment district to simply raise 150 feet of roadway.

We would also like to take this opportunity to impress upon you the importance of purchasing flood insurance, whether or not your residence is technically located in the Special Flood Hazard Area as defined by FEMA. We are aware that FEMA has been directed within the recent reauthorization of the National Flood Insurance Program to be actuarially sound. Thus it is likely that flood insurance rates will soon rise. Purchasing that insurance now and maintaining that policy may reduce the degree to which you are impacted by the anticipated rate hikes.

If you have any questions, please direct them to Michael Gunsch, of Houston Engineer, at (701) 323-0200.

Sincerely,

Terry Fleck, Chairman  
Burleigh County Water Resource District

C: Marcus Hall, Burleigh County Engineer  
Michael Gunsch, HEI  
David Tschider  
Chad Wachter





# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

## Directly Mailed To:

Steven & Sallie Storslee	2024 Harbor Drive
Shanda Traiser	2000 Harbor Drive
Tim & Deanna Reiten	2200 Harbor Drive
Melvin & Karen Mueller	2209 Harbor Drive
Nicholas & Lynn Mahr	2134 Harbor Drive
Andrew Steichen & Karin Willis	2210 Harbor Drive
Shane Freitag	2160 Harbor Drive
Steven & Becky Lingle	2231 Harbor Drive
Kurt & Bobbi Leier	2115 West Harbor Drive
Sean & Coleen Russell	2250 Traynor Lane
Lance & Laurie Boyer	2201 Harbor Drive

Handwritten initials, possibly "GJ", in the bottom right corner of the page.

David R. Bliss  
Attorney at Law

Jackie M. Stebbins  
Attorney at Law

Micheal A. Mulloy  
Attorney at Law



Catherine A. Bliss, CLA  
Certified Legal Assistant

Erica L. Pullen  
Legal Assistant

January 28, 2013

Brad and Heather Magnus  
1343 Prairieview Drive  
Bismarck, North Dakota

**Re: Water District Acquisition/Hogue Island  
Our File No.: BCH20/Hogue Island  
Reminder Notice**

Dear Mr. and Mrs. Magnus:

As you know, in December, 2012, the Burleigh County Water Resource District finalized a proposed purchase agreement and supporting documents for the purchase of your Hogue Island property. Your counsel, John Olson, requested one modification of language to the proposed purchase agreement, and Mr. Olson's request was incorporated into an amended agreement, which was then approved by Mr. Olson and confirmed by me as the District's counsel on January 3, 2013.

As we have discussed, the purchase of your property by the District cannot proceed, nor can title work be initiated, until there is a signed purchase agreement. You have informed me and the District of your intent to follow through with the sale of your property to the District. However, the next step of executing the purchase agreement has to take place before the sale process can proceed. If you wish to proceed with the sale, please contact my office to make arrangements to execute the purchase agreement and supporting documents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David R. Bliss", is written over a circular stamp or seal.

DAVID R. BLISS

cc: Chairman Terry Fleck and Board members (by electronic mail only)  
Chairman Doug Schonert, Burleigh County Commission (by electronic mail only)  
Michael Gunsch, District Engineer (by electronic mail only)  
Erin Schmitz, ND Guaranty & Title Company (by electronic mail only)  
John Olson, Esq. (by electronic mail only)

C:\Users\Dave\Google Drive\Bliss Files\Burleigh County Water Resource\Hogue Island Project\Magnus Ltr. DRB 1-28-13.docx

David R. Bliss  
Attorney at Law

Jackie M. Stebbins  
Attorney at Law

Micheal A. Mulloy  
Attorney at Law



Catherine A. Bliss, CLA  
Certified Legal Assistant

Erica L. Pullen  
Legal Assistant

January 28, 2013

Jerome Rodgers  
9750 Island Road  
Bismarck, North Dakota 58503

**Re: Water District Acquisition/Hogue Island**  
**Our File No.: BCH20/Hogue Island**  
**Reminder Notice**

Dear Mr. Rodgers:

As you know, on January 3, 2013, I emailed to you electronic copies of a proposed purchase agreement and supporting documents for the purchase of your home by the Burleigh County Water Resource District. I also called you on that date to inform you that upon your approval and signature of the purchase agreement, the North Dakota Title & Guaranty Company can begin title work on your property. I understood from our conversation that you wanted to review these documents and would get back to me.

To date the District has not received a response from you with regard to your approval and execution of these documents. The District and the title company cannot proceed on this sale process until a purchase agreement is executed. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to be "David R. Bliss", written over a circular scribble.

DAVID R. BLISS\

cc: Board members (by electronic mail only)  
Doug Schonert, Burleigh County Commission (by electronic mail only)  
Mike Gunsch, Houston Engineering (by electronic mail only)

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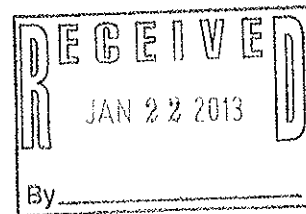


**JAMES J. COLES, J.D.**

400 E. Broadway Suite #301  
Post Office Box 2162  
Bismarck, ND 58502  
FAX: 701-222-8112  
coleslaw@btinet.net  
701-222-8131

January 22, 2013

David Bliss  
Attorney at Law  
400 E. Broadway Ave., Ste. 302  
P.O. Box 4126  
Bismarck, ND 58502-4126



Re: Hogue Island/ Boll Purchase Agreement

Dear David:

As requested I reviewed the purchase agreement for this sale and the proposed title insurance binder. The following are my observations and comments.

**Purchase Agreement**

For the most part, the purchase agreement appeared to be in standard form for a North Dakota real estate transaction. I did note that the agreement provides for a “gross purchase price” and a “net purchase price”, which are described. However, there appear to be other price adjustments or deductions later in the agreement with no indication of whether the adjustments are to the gross or net price. I am not able to tell whether the later described price adjustments are part of the difference between gross and net, or strictly in addition to that initial price adjustment.

**Title Insurance Binder**

Conditions. I note that the policy offered only provides coverage to the named insured, which is normal. Burleigh County Water Resource District is the named insured. I also note that binding arbitration is the exclusive remedy for any disputes, at the election of the insurer or the insured.

Ownership Issues. The insurance binder does not reflect any direct issues of ownership by the Bolls of the property described on Schedule A. Therefore, I conclude they have marketable title to the property.

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Mortgages. It appears there is an existing mortgage to be satisfied at closing.

Requirements. I find nothing in the list of requirements beyond the normal and customary closing requirements for any real estate sale.

Minerals. The insurance basically disclaims any opinion as to the mineral estate. From the information provided, it would appear the Bolls own little or none of the minerals. This does raise the issue of access by other mineral owners as the mineral estate is the dominant estate, and the surface estate is the servient estate.

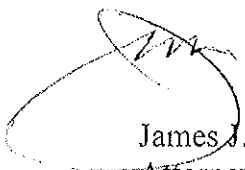
Easements. The access and utility easements appear to be usual and customary. Worthy of note would be the easements for bank protection and bank stabilization.

Impact of Navigable Waterway as Boundary. As noted at Exception 22, the western boundary of the property is the Missouri River. The policy disclaims all issues regarding boundary changes by accretion and reliction, and issues of sovereignty of navigable waterways.


Disclaimer of Coverage at Exception 24. The disclaimer of coverage at Exception 24 does cause me some concern. I am not surprised to see an exception for lands lying in the bed of Missouri River. As we discussed, some of the properties involved in the water district buyout lost surface land to the flood. However, the exception also disclaims coverage for land "formerly lying in the bed" of the Missouri River. Perhaps this is some term of art I am not familiar with, but in view of the fact that Hogue Island arguably used to be part of the river bed, does this disclaim coverage for the entire property. I would recommend that a clarification be requested.

Please let me know if you have any questions on the points raised in this letter.

COLES LAW FIRM, P.C.



James J. Coles  
Attorney at Law

	Commitment for Title Insurance
	ISSUED BY <b>First American Title Insurance Company</b>
<b>Commitment</b>	

**FIRST AMERICAN TITLE INSURANCE COMPANY**, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

---

IN WITNESS WHEREOF, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

***First American Title Insurance Company***



*Dennis J. Gilmore*

Dennis J. Gilmore  
President

*Timothy Kemp*

Timothy Kemp  
Secretary

(This Commitment is valid only when Schedules A and B are attached)

This jacket was created electronically and constitutes an original document

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## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*

First American Title Insurance Company  
7001 East Fish Lake Road  
Maple Grove, MN 55311

**SCHEDULE A**

Title Officer: Andrew Engelman  
Escrow Officer:

File No.: B108611

1. Effective Date: January 4, 2013 at 07:59AM

2. Policy or Policies to be issued:

a. Owner's Policy ALTA Owners Policy (06/17/06)

Policy Amount:  
\$393,000.00

Proposed Insured:  
Burleigh County Water Resource District

3. The estate or interest in the land described or referred to in this Commitment is:

Fee Simple

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

Rodney J. Boll and Laura M. Boll

5. The land referred to in the Commitment is described as follows:

That portion of Lot Eight (8), Block One (1), Riverside Subdivision, Located in Sections Twenty-seven (27) and Twenty-eight (28), Township One Hundred Forty (140) North, Range Eighty-one (81) West of the Fifth Principal Meridian, Burleigh County, North Dakota, Lying Northeast of the following described "Boundary Line": Beginning at the most Southeasterly Corner of said Lot Eight (8); thence Northeasterly along the Southeasterly Boundary of Lot Eight (8), for a distance of 60 feet to the True Point of Beginning; thence Northwesterly along a line which is parallel to and 60 feet from the Lot Line common to Lots Seven (7) and Eight (8), for a distance of 325.0 feet, more or less, to the bank of the Missouri River

and

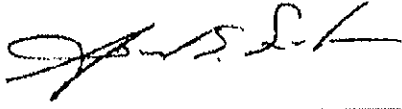
Lot Nine (9), Block One (1), Riverside Subdivision, Located in Sections Twenty-seven (27) and Twenty-eight (28), Township One Hundred Forty (140) North, Range Eighty-one (81) West of the Fifth Principal Meridian, Burleigh County, North Dakota

and

That portion of Lot Ten (10), Block One (1), Riverside Subdivision, Located in Sections Twenty-seven (27) and Twenty-eight (28), Township One Hundred Forty (140) North, Range Eighty-one (81) West of the Fifth Principal Meridian, Burleigh County, North Dakota, lying Southwest of the following described "Boundary Line": 50% of the distance between the Southwesterly Lot Ten (10) Boundary Line that lies directly adjacent to the Lot Line Common to Lots Nine (9) and Ten (10) and the Northeasterly Lot Ten (10) Boundary Line that lies directly adjacent to Lot Line Common to Lots Ten (10) and Eleven (11).



North Dakota Guaranty and Title Company

A handwritten signature in black ink, appearing to be 'J. S. L. K.', written over a horizontal line.

By \_\_\_\_\_  
North Dakota Guaranty and Title Company

**SCHEDULE B - SECTION I  
REQUIREMENTS**

The following requirements must be met:

1. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.  
  
Warranty Deed to be executed by Rodney J. Boll and Laura M. Boll, husband and wife, to the end buyer.
2. Obtain a release or satisfaction: Mortgage, dated April 16, 2009 and filed for record April 22, 2009 at 10:39 AM, recorded as Document No. 706797, executed by Rodney J. Boll and Laura M. Boll, husband and wife, to Gate City Bank to secure the original sum of \$264,000.00.
3. Payment of all taxes through and including those for the year 2012.
4. IF THE BORROWERS ARE HUSBAND AND WIFE, THE WORDS "HUSBAND AND WIFE" MUST APPEAR IN THE MORTGAGOR NAME OR IN THE NOTARY SECTION IF BORROWERS ARE SINGLE, THE WORDS "A SINGLE PERSON" MUST APPEAR IN THE MORTGAGOR NAME.
5. Effective July 1, 2001 every document to be recorded must contain a 1 inch top, bottom or side margin on each page of the document. If the margin requirement for each page is not met, an additional charge of \$10.00 will be assessed for the total cost of recording the document.

NOTE: For information purposes only, we submit the following tax figures: We assume no liability for the correctness of same.

Property Street Address: 9828 Island Road, Bismarck, ND 58503

Taxes for the Year 2011 were \$607.30

Special Assessments for the Year 2011 were \$ \$0.00

Tax Assessment Number: 23-140-81-65-01-090

Taxes for the year 2012 are due and payable on January 1, 2013 and become delinquent on March 1, 2013. There is a 5% discount if paid before February 15, 2013.

The following is the most recent deed or transfer affecting said land:

Warranty Deed, dated April 16, 2009 and filed for record April 22, 2009 at 10:39 AM, recorded as Document No. 706796, executed by Rodney J. Boll and Laura M. Boll, husband and wife, grantor(s) to Rodney J. Boll and Laura M. Boll, grantee(s).

**END OF SCHEDULE B - SECTION I**

## SCHEDULE B - SECTION II EXCEPTIONS

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. No coverage is provided for unpaid utility, water, or sewer services or fees for tree, weeds, grass and snow or garbage removal.
7. Real estate taxes for 2012 are UNPAID.
8. Real estate taxes for 2011 and prior years are PAID.
9. Special assessments, if any. Note: There are no special assessments
10. Unpatented mining claims; reservations or exceptions in patents, or any act authorizing the issuance thereof; water rights, claims or title to water, including but not limited to a Right of Way for ditches or canals constructed by the authority of the United States over Lot 1 of Section 28, Township 140, Range 81, as reserved in the Patent Deed dated November 8, 1935, executed by the United States of America to Karla Van Horn, filed for record on December 3, 1935 at 3:45 P.M. in Book 113, page 466. See instrument for full particulars.
11. Oil, gas and mineral reservations as provided by Chapter 165, 1941 Session Laws as contained in the Quit Claim Deed executed by The State of North Dakota and The Board of University and School Lands of The State of North Dakota to Raymond Hogue, Edward Hogue, Roy Small, Thore Naaden, A. R. Tavis, Paul Wachter and Eugene Wachter, dated January 10, 1957, filed for record February 21, 1957 at 3:15 PM in Book 319, page 281, and all rights and easements thereunder. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.
12. Reservation of 50% of all minerals in and under said premises as contained in Warranty Deed executed by Wendelin Schmaltz and Mavis Schmaltz to Glen A. Sherwood and JoAnn Janice Sherwood, dated August 10, 1959, filed for record September 23, 1959 at 9:25 AM in Book 333, page 417, and all rights and easements thereunder. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.
13. Reservation of 50% of all the minerals in and under the premises as contained in Warranty Deed executed by Glen A. Sherwood and JoAnn Janice Sherwood to Fraternal Order of Eagles #2237 dated August 24, 1960, filed for record August 31, 1960 at 11:50 AM in Book 331, page 422, and all rights and easements thereunder. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.

14. Perpetual Easement to Burleigh County Water Management District, dated September 17, 1976, filed for record September 22, 1976 at 9:45 AM as Document No. 272823 for bank protection a tract of land lying within a strip of land East of the left bank of the Missouri River and located on the Westerly side of and measured at right angles to the following centerline: Beginning at a point N 53°09'43" W 528.37 Feet from the common corner of Sections 21, 22, 27 and 28, Township 140, Range 81, thence S 0°57'28" E 56.93 Feet to the true point of beginning, thence running S 36°16'55" E 639.22 Feet to a point, thence running S 17°37'10" E 609.16 Feet to a point, thence running S 04°27'09" E 687.28 Feet to a point, thence running S 16°26'33" W until said line crosses the West line of said W½, also including all right of access, including ingress and egress from the remaining property. Note: This easement appears to directly affect only Lots 19 and 20, Block 1, Riverside Subdivision, Burleigh County, North Dakota. See Instrument for full particulars. Note: The company makes no representation as to the present ownership of this interest.
15. Perpetual Easement to Burleigh County Water Management District, dated September 21, 1976, filed for record on September 22, 1976 at 9:45 A.M. as Document No. 272827 for bank protection, covering a tract of land in Lot 1, of Section 28-140-81, lying within a strip of land east of the left bank of the Missouri River and located on the westerly side of and measured at right angles to the following described centerline: Beginning at a point N53°09'43"W 628.37 feet from the common corner of Sections 21-22 and 27-28 of said Township and Range; Thence S00°57'28"E 56.93 feet to the true point of beginning; Thence running S36°16'55"E until said line crosses the south line of Eagles property. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.
16. Declaration of Public Access Easement Public Road, filed for record May 28, 1985 at 9:35 AM as Document No. 359826, for use as a public road the following described property: All that part of Sections 27 and 28, Township 140, Range 81, Burleigh County, ND, that lies within 40.00 Feet adjoining and to each side of the following described centerline: Beginning at a point that lies at the intersection of the centerline of Island Road and the South line of Riverside Subdivision; thence Southwesterly and to the left on a 800.00 Foot radius curve, the radius of which bears South 72°19'39" East from said point, along an extension of said centerline of Island Road, an arc distance of 120.04 Feet; thence South 9°04'30" West a distance of 527.77 Feet; thence North 81°34'30" East a distance of 2169.87 Feet; thence South 27°16'46" East a distance of 1300 Feet, more or less to the North line of Section 34, on the centerline of the Burnt Creek access easement 3086 Feet West of the East section line. Easement given to the public use forever. Note: This easement connects to Island Road as shown on Riverside Subdivision, Burleigh County, North Dakota and provides public access to Riverside Subdivision. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.
17. Utility Easement as shown on the Plat of Riverside Subdivision, filed for record June 7, 1985 at 10:30 AM as Document No. 360261 and appearing to be Ten Feet (10') along the front boundary of the captioned property and through the rear portion of the lot.
18. Terms and conditions of Declaration of Restrictions dated May 28, 1985, filed for record June 7, 1985 at 10:30 AM as Document No. 360265; and Declaration of Restrictions filed for record August 30, 1994 at 12:35 PM as Document No. 465644. See instrument for full particulars. Note: Restrictions do not contain a reversionary clause.  
 Thereafter, Declaration of Restrictions, filed for record August 30, 1994 at 12:35 PM, recorded as Document No. 465644.

19. Perpetual Easement to Burleigh County Water Resource District, dated August 22, 1985, filed for record September 3, 1985 at 9:15 AM as Document No. 362794 for bank stabilization upon that part of Sections 27 and 28 in Township 140 North, Range 81 West, that lies within the Plat of Bourgois Island and that lies within 100 Feet of the left bank of the Missouri River, as the same is now or may hereafter be situated, as needed by the District, the North Dakota State Water Commission, and the U.S. Army Corps of Engineers in connection with the construction, maintenance and operation of a bank stabilization and protection project along the Missouri River. Access to the aforementioned property is also granted. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest.
20. Right of Way Easement to Capital Electric Cooperative, Inc., dated July 1, 1985, filed for record January 6, 1986 at 1:50 PM as Document No. 365868 upon Riverside Subdivision in Sections 27 & 28, Township 140N, Range 81W, for an electric transmission or distribution line or systems, whether underground or overhead. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest. FYI: This is a blanket easement over all of Riverside Subdivision. Capital Electric Cooperative, Inc., indicates that they currently maintain an overhead line which is located in the Island Road right of way, which is adjacent to the captioned property.
21. Right of Way Easement to Capital Electric Cooperative, Inc., for an electrical transmission or distribution line or system, and all appurtenances thereto, over, under and across Sections 27 and 28, Township 140, Range 81, to feed lots with D.H. on west side of Rd. Ord to be installed unless lots fill in, dated May 10, 1990 and filed for record on December 20, 1990 at 1:40 P.M. as Document No. 415631. See instrument for full particulars. Note: The Company makes no representation as to the present ownership of this interest. Note: The exact location of said line cannot be determined from the record.
22. Navigation servitudes and all other statutory and regulatory rights and powers of the United States, the State of North Dakota, the City of Bismarck, and the public, over the Missouri River and its shore lands extending to the ordinary high-water line thereof and which may be exercised without obligation for compensation to the riparian owners.
23. The consequences of any change in the location of the Missouri River which forms the West boundary of the subject land.
24. No title will be insured to any land now or formerly lying in the bed of the Missouri River, its arms, branches, or tributaries by whatever name called.
25. Mortgage, dated April 16, 2009 and filed for record April 22, 2009 at 10:39 AM, recorded as Document No. 706797, executed by Rodney J. Boll and Laura M. Boll, husband and wife, to Gate City Bank to secure the original sum of \$264,000.00.

**END OF SCHEDULE B - SECTION II**



*First American Title*

## Privacy Information

### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

### Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

### Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

### Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

### Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

[FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

### Fair Information Values

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

## PRIVACY POLICY NOTICE

The North Dakota Guaranty and Title Co., also doing business as:  
The Mandan Guaranty and Title Company, The Dickinson Guaranty and Title Company  
The Minot Guaranty and Escrow Company, The Renville County Guaranty and Title Company  
and The Dunn County Guaranty and Title Company

### PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing non-public information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with GLBA we are providing you with this document, which notifies you of the privacy policies and practices of **The North Dakota Guaranty and Title Co., also doing business as: The Mandan Guaranty and Title Company, The Dickinson Guaranty and Title Company, The Minot Guaranty and Escrow Company, The Renville County Guaranty and Title Company and The Dunn County Guaranty and Title Company.**

We may collect non-public personal information about you from the following sources:

- Information we receive from you such as on applications or other forms;
- Information about your transactions we secure from our files, or from The North Dakota Guaranty and Title Co., also doing business as: The Mandan Guaranty and Title Company, The Dickinson Guaranty and Title Company, The Minot Guaranty and Escrow Company, The Renville Guaranty and Title Company, The Dunn County Guaranty and Title Company, or others;
- Information we received from a consumer reporting agency;
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional non-public personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to non-affiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of non-affiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance;
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

**WE DO NO DISCLOSE ANY NON-PUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.**

We restrict access to non-public personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your non-public personal information.

---

The North Dakota Guaranty and Title Co. - 400 East Broadway Ave - Suite 102, Bismarck, ND 58501  
Ph: 701-223-6835 Fax: 701-224-1571  
The Mandan Guaranty and Title Company - 201 4th Avenue NW, Mandan, ND 58554 Ph: 701-663-5362 Fax: 701-663-2855  
The Dickinson Guaranty and Title Company - 235 Sims, Dickinson, ND 58601 Ph: 701-483-2271 Fax: 701-483-4416  
The Minot Guaranty and Escrow Company - 1829 South Broadway - Suite 1, Minot, ND 58701  
Ph: 701-838-1907 Fax: 701-838-6167  
The Renville County Guaranty and Title Company - 1829 South Broadway - Suite 1, Minot, ND 58701  
Ph: 701-838-1907 Fax: 701-838-6167  
The Dunn County Guaranty and Title Company - 150 Central Ave N, Killdeer, ND 58640 Ph: 701-764-6660 Fax: 701-663-2855

ACT 113-1

## Mona Livdahl

---

**From:** David Bliss [dbliss@blisslaw.com]  
**Sent:** Wednesday, January 09, 2013 2:00 PM  
**To:** mona@midco.net  
**Subject:** FW: Flood Policy

Mona,

Insert this email exchange in our next briefing book.

Thanks.

Dave



DAVID R. BLISS  
Bliss & Stebbins Law Firm, LLC  
400 E. Broadway Ave., Suite 308  
PO Box 4126  
Bismarck, ND 58502-4126  
(701) 223-5769 (office)  
(701) 471-3972 (cell)  
(701) 751-1242 (fax)  
[dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)

[www.blisslaw.com](http://www.blisslaw.com)

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**From:** Steve [mailto:drstb2@aol.com]  
**Sent:** Wednesday, January 09, 2013 1:55 PM  
**To:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)  
**Subject:** Re: Flood Policy

Dave, Have contacted several lawyers including Malcolm Brown. They are either too busy or this is more than what they want to get involved with. Also I continue to try to contact Joseph Myett at the flood processing center asking for an answer and there is no response even when Joe from Dakota Community tries to contact Mr. Myett.

Thanks, Steve

-----Original Message-----

From: David Bliss <[dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)>  
To: Steve <[drstb2@aol.com](mailto:drstb2@aol.com)>



Sent: Tue, Jan 8, 2013 4:02 pm

Subject: RE: Flood Policy

Steve,

Attached please find my January 3, 2013 letter to Jeff Klein, the flood management coordinator for the State Water Commission. I talked with Jeff about your case, and he will try to find out what the particulars are with your claim. Mr. Klein should be a position to find out whether the NFP is going to honor your claim. As I have said repeatedly, the Water District needs a definitive answer from FEMA before the Board will proceed on your house purchase. Again, I suggest you get an attorney who can cut through any red tape for you. I am the Water District's attorney and I can't give you legal advice.

Dave



DAVID R. BLISS

Bliss & Stebbins Law Firm, LLC

400 E. Broadway Ave., Suite 308

PO Box 4126

Bismarck, ND 58502-4126

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[www.blisslaw.com](http://www.blisslaw.com)

**IMPORTANT NOTICE:** This communication and any documents or files transmitted with it are confidential, contain information from Bliss & Stebbins Law Firm, LLC and are intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing or copying of this communication is strictly prohibited. If you have received this in error, please immediately notify the sender at [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com).

**From:** Steve [mailto:drstb2@aol.com]  
**Sent:** Tuesday, January 08, 2013 11:11 AM  
**To:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)  
**Subject:** Re: Flood Policy

Dave, Will the water commission reimburse me for the beam that was placed under the house to keep it from falling in the water. That is if I were to purchase it from Carrington House Movers since this beam is essentially an improvement for the house. They ie. Carrington House Movers want their beam back and are now threatening to take me to court regarding this beam. In addition my home owners insurance at 9700 island rd is being cancelled by Heartland Mutual. Joe Myett at the flood processing center won't return my call with regard to my flood claim. Where do we go from here??

Thanks, Steve Bernard

-----Original Message-----

From: David Bliss <[dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)>  
To: Joseph Belo <[jbelo@dakotacommunitybank.com](mailto:jbelo@dakotacommunitybank.com)>; Steve <[drstb2@aol.com](mailto:drstb2@aol.com)>  
Sent: Thu, Jan 3, 2013 11:36 am  
Subject: RE: Flood Policy

Joe,

Received. Thank you.

Dave



DAVID R. BLISS

400 E. Broadway Ave., Suite 308

PO Box 4126

Bismarck, ND 58502-4126

(701) 223-5769 (office)

(701) 471-3972 (cell)

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[dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)

[www.blisslaw.com](http://www.blisslaw.com)

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**From:** Joseph Belo [<mailto:jbelo@dakotacommunitybank.com>]  
**Sent:** Thursday, January 03, 2013 11:11 AM  
**To:** 'Steve'; '[dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)'  
**Cc:** Joseph Belo  
**Subject:** Flood Policy  
**Importance:** High

Hi Dave and Steve:

Here's the policy plus some other info you may need for the Burleigh County Water Commission.

Thanks

Joe

**Joseph H. Belo Jr. - Insurance Agent**  
**Dakota Community Insurance**  
**919 S. 7th St., Suite 101**  
**Bismarck, ND 58504**  
**Direct line (701) 223-0200**  
**Cell (701) 471-5961**  
**Fax (701) 530-9100**

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**From:** Steve [mailto:drstb2@aol.com]  
**Sent:** Thursday, January 03, 2013 10:30 AM  
**To:** Joseph Belo  
**Subject:** Fwd: Steve Bernard - 87048125532011 -

Steve :)

-----Original Message-----

**From:** David Bliss <>  
**To:** Steve <drstb2@aol.com>  
**Sent:** Thu, Jan 3, 2013 10:25 am  
**Subject:** RE: Steve Bernard - 87048125532011 -

Steve,

You sent me only the declarations page. I need the whole policy. In the policy itself there may be language which controls assignment and transfer.

Dave



DAVID R. BLISS

400 E. Broadway Ave., Suite 308

PO Box 4126

Bismarck, ND 58502-4126

(701) 223-5769 (office)

(701) 471-3972 (cell)

(701) 751-1242 (fax)

[dbliss@blisslaw.com](mailto:d bliss@blisslaw.com)

[www.blisslaw.com](http://www.blisslaw.com)

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**From:** Steve [<mailto:drstb2@aol.com>]  
**Sent:** Thursday, January 03, 2013 10:23 AM  
**To:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)  
**Subject:** Fwd: Steve Bernard - 87048125532011 -

Dave, here's the policy and I talked to Joe Belo who will be happy to talk to you. His contact info is in this email

Steve

-----Original Message-----

**From:** Joseph Belo <[jbelo@dakotacommunitybank.com](mailto:jbelo@dakotacommunitybank.com)>  
**To:** 'drstb2@aol.com' <[drstb2@aol.com](mailto:drstb2@aol.com)>  
**Sent:** Thu, Jan 3, 2013 10:19 am  
**Subject:** Steve Bernard - 87048125532011 -

Hi Steve:

Here's up your flood policy you needed.

Thanks

Joe

Joseph H. Belo Jr. - Insurance Agent  
Dakota Community Insurance  
919 S. 7th St., Suite 101  
Bismarck, ND 58504  
Direct line (701) 223-0200  
Cell (701) 471-5961  
Fax (701) 530-9100

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contained is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete the original message from your system.

## Mona Livdahl

---

**From:** David Bliss [dbliss@blisslaw.com]  
**Sent:** Friday, January 18, 2013 3:24 PM  
**To:** mona@midco.net  
**Cc:** Michael Gunsch  
**Subject:** FW:

Mona,

Please put Dr. Bernard's email to me in the briefing book. Thanks.

Dave



DAVID R. BLISS  
Bliss & Stebbins Law Firm, LLC  
400 E. Broadway Ave., Suite 308  
PO Box 4126  
Bismarck, ND 58502-4126  
(701) 223-5769 (office)  
(701) 471-3972 (cell)  
(701) 751-1242 (fax)  
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[www.blisslaw.com](http://www.blisslaw.com)

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**From:** Steve [mailto:[drstb2@aol.com](mailto:drstb2@aol.com)]  
**Sent:** Friday, January 18, 2013 8:13 AM  
**To:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)  
**Subject:**

Dear Mr. Bliss and Burleigh County Water Resource District, I, Stephen Bernard, have exhausted all my options/resources to find a solution to what happened to my property at 9700 Island Rd, Bismarck, ND as a result of the 2011 Missouri River Flood. My situation is what it is. My flood insurance is denied, my home owners insurance is being cancelled, leaving me liable if anyone gets injured on my damaged property, and Dav at Carrington House Movers wants the beam back that is keeping the house from falling into the river. My only logical choice is to proceed with the buy out that you have already offered me and that I have already accepted. I can't afford to have this buy out delayed any further. I would like to sit down with you in your office as soon as possible and sign the purchase agreement for my house at 9700 Island Rd so that this buy out can finally happen.

Thank you, Stephen Bernard



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

January 14, 2013

Mr. Dave Lutman  
Carrington House Moving  
1324 3<sup>rd</sup> Street South  
Carrington, ND 58421

Re: 9700 Island Road – Dr. Steven Bernard

Dear Mr. Lutman:

The Burleigh County Water Resource District (BCWRD) is in receipt of your December 27, 2012 letter regarding the steel beam and blocking that you placed under the residence located at 9700 Island Road. We understand this beam was placed to protect the residence during the 2011 flood and has remained there ever since. The presence and cost for placement and maintenance of this beam is solely between you and Dr. Bernard.

Since the BCWRD is in the process of purchasing this residence it is in the best interests of all parties to protect the integrity of the residence. We understand and acknowledge your property claim, therefore should you elect to remove the beam the structure must be properly bracing and protected. If you elect to proceed with its removal in the interest of all parties we request that you provide Dr. Bernard a cost estimate for this work and a proposed timeline, and that also provide us a copy of this proposal. If this work is completed and the invoice is not paid prior to the time of closing the BCWRD will deduct these costs from the purchase price paid to Dr. Bernard. Then upon completing the acquisition process you will be reimbursed for your costs. There remain a number of items to be resolved prior to closing so at this time we cannot provide you with a timeline on the process.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Terry A. Fleck".

Terry Fleck, Chairman

C: Dr. Steven Bernard  
David Bliss, Bliss and Stebbins

---

Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768

Cary Backstrand, Vice Chairman, Bismarck 471-9134

Ken Roysse, Treasurer, Bismarck 258-1110

Kathleen Jones, Manager, Bismarck 258-1477

Gordon Weikel, Manager, Bismarck 258-5390

201

# Carrington House Moving, Inc.

David Lutman, President



1495 7th St. S.  
Carrington, ND 58421-2407  
Phone: 701-652-2378

February 4, 2013

Burleigh County Water Resource District:

In response to your letter and my situation with Steve Bernard, I have enclosed a statement of the cost of what I need to recover my property. At no time was Steve Bernard left without a fair option on securing his property and the removal of my equipment was never going to be just that. He was informed of different and very accommodating options to ensure that no further damage to the structure would occur and therefore not have a negative impact on the buyout.

Sincerely,

A handwritten signature in cursive script that reads "David Lutman".

David Lutman



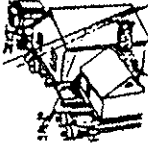
Date: 2-4 2013

Name: Steve Bernard

Address: \_\_\_\_\_

In account with

**Structural Mover**



# Carrington House Moving, Inc.

1495 7th Street South  
Carrington, ND 58421-2407

Phone: 701-652-2378  
Fax: 701-652-1863

	<p>Cost to remove beam &amp; blocking from under house belonging to Steve Bernard</p>	<p>\$ 3,000.<sup>00</sup></p>			
	<p>This is the amount of what I am taking Steve to court. This amount does not include material &amp; labor to stand in posting.</p>				
	<p>If I am asked to do so then plan for an extra \$500 for 5 posts @ 16' long to be cut &amp; used for base posting, &amp; headers and labor included in the extra \$500.</p>				

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT

David James Lutman, et al  
Plaintiff(s),

Case #: 08-2013-SC-00001

vs.

Notice of Small Claims Hearing

Steve Bernard,  
Defendant(s).

A request for hearing having been received from the above named defendant(s) in this action;

The Plaintiff(s) and Defendant(s) are hereby notified that a small claims hearing has been scheduled in the above entitled case at the Burleigh County Courthouse,

Burleigh Courtroom 204 on February 04, 2013 at 3:00 pm.

Dated on this the 16<sup>th</sup> day of January, 2013.

  
Court Personnel

cc: David James Lutman; Steve Bernard

*I sent this copy & the next copy just to show I had a court date set for 2-4 & Steve postponed to 3-4 for reasons unknown to me. But my assumption to this change is to buy more time and try to get out of paying me to get my equip.*

RECEIVED & FILED

JAN 16 2013

Clk. of Crt. Burleigh Co.

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT

David James Lutman,  
Plaintiff(s),

Case #: 08-2013-SC-00001

Amended

vs.

Notice of Small Claims Hearing

Steve Bernard,  
Defendant(s).

A request for hearing having been received from the above named defendant(s) in this action;

The Plaintiff(s) and Defendant(s) are hereby notified that a small claims hearing has been scheduled in the above entitled case at the Burleigh County Courthouse,

Burleigh Courtroom 204 on March 04, 2013 at 2:30 pm.

Dated on this the 28<sup>th</sup> day of January, 2013.

  
Court Personnel

cc: David James Lutman; Steve Bernard

RECEIVED & FILED

JAN 28 2013

Clk. of Crt. Burleigh Co.

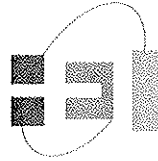
88

Bismarck Office

701.323.0200

701.323.0300

3712 Lockport Street Bismarck ND 58503



HoustonEngineering Inc.

January 22, 2013

Patrick Geiger  
1587 Central Hall Road  
Cloquet, MN 55720

Re: Sunny View Flood Control Project

Thank you for calling regarding information on the Sunny View Flood Control Project. We understand you are the owner of the W¼ S½ Section 35 in Burnt Creek Township, located northeast of the intersection of 26<sup>th</sup> Street NE and 48<sup>th</sup> Avenue NE. Your concerns relate to the potential for increased backwater flooding onto your property in this corner of the intersection.

Enclosed is a copy of the Preliminary Engineering Report completed for this area, which evaluated the flooding associated with various roadways. The project calls for removing the existing 24" CMP on the north side of the 26<sup>th</sup> Street NE and 48<sup>th</sup> Avenue NE intersection and replacing it with two 30" CMP's at a lower elevation. The results will be to lower the projected backwater elevations from those currently projected (see **Table 2** in the report). These reductions range from 0.94 feet on a 2-year, 6-hour rainfall to 0.21 feet on the 100-year, 6-hour rainfall event. In addition the peak overflows to the south over 84<sup>th</sup> Avenue along the east side of 26<sup>th</sup> Street at this location are also reduced. These results benefit your property as well as those located east of 26<sup>th</sup> Street and south of 84<sup>th</sup> Avenue. While the majority of the channel reconstruction work will occur within the roadway right-of-way, there is a potential need for access or the placement of spoil materials on your property, should this project proceed. The extent of this work remains to be determined as the project is not in the final design stages.

The residents who petitioned the Burleigh County Water Resource District to create the project have yet to approve its construction. This requires a formal public hearing and vote to determine if the residents are willing to pay for its implementation. We are currently working with a number of landowner issues before proceeding to the public hearing.

If you would like to discuss this further please let me know.

Sincerely,

Michael H. Gunsch, PE  
Senior Project Manager

c: Terry Fleck, Chairman BCWRD  
David Bliss, Bliss and Stebbins  
Marcus Hall, PE, Burleigh County Engineer  
Randy Miller, Sunny View Landowners

Fargo

701.237.5065

701.237.5101

Minot

701.852.7931

701.858.5655

Maple Grove

763.493.4322

763.493.5573

Tribal River Falls

218.681.2951

218.681.2987

39



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

## CERTIFIED MAIL

January 15, 2013

Mr. Wayne Jundt  
3202 84<sup>th</sup> Avenue NE  
Bismarck, ND 58501

Dear Mr. Jundt:

As you may be aware, Houston Engineering has been working on behalf of the Burleigh County Water Resource District to develop a revised flood control project for Sunnyview Subdivision. In response to the original petition, a project that included a diversion of external runoff around the subdivision as well as improvements to the conveyance corridor through the subdivision was developed. This project was rejected by the voters with an indication that they wanted to divert the external runoff around the subdivision without making the internal improvements. A second petition was submitted accordingly, and a Draft Preliminary Engineering Report has been developed. A copy of that draft report is enclosed for your information.

The concerns of potentially impacted landowners became apparent during the hearing for the original project. The potential of adversely impacting your property was one of the concerns raised. The current project will result in the closing of the 30" CMP culvert under 84<sup>th</sup> Avenue that currently allows some of the water draining from the northwest to flow south through the Sunnyview subdivisions. The proposed project will remove that culvert forcing all of the runoff to flow westerly within the north ditch of 84<sup>th</sup> Avenue. As a result, more water will need to flow past your approach, flowing either through the culverts or overtopping the approach. In order to mitigate any potential impacts to your property, the project will include the replacement of the current 12" and 18" culverts with two 30" culverts. The grade line of the ditch and the culvert inverts will be lowered. This increased capacity will lower the water surface elevation upstream of the approach for all events, from a 2-year up to and including a 100-year event. The following **Table 1** from the enclosed report summarizes the results of our modeling of this approach.

We wanted to provide you with this information in advance of the formal public hearing and in advance of the draft report being finalized. We are interested in your feedback regarding both our efforts to eliminate any adverse impact to your property. Please contact Michael Gunsch of Houston Engineering at (701) 323-0200 with any questions, comments or to set up a meeting to discuss the project.

If you have not provided comments or requested a meeting prior to February 15, 2013, we will assume that you are satisfied with the proposed changes related to your concerns.

---

#### Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royce, Treasurer., Bismarck 258-1110    Kathleen Jones, Manager, Bismarck 258-1477  
Gordon Weixel, Manager, Bismarck 258-5390



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
 Bismarck, North Dakota 58501-4028

Table 1								
84 <sup>th</sup> Avenue Diversion – Private Driveway Approach								
Top of Approach Existing = 1892.50 (Overflow to west), Design Elevation = 1892								
Design Invert East: 1888.97 Design Invert West: 1888.87								
6-Hr Rainfall Events								
Frequency	Existing Conditions 12" CMP and 18" CMP in approach and 30" CMP under 84 <sup>th</sup> Avenue		Flows to South [1] (cfs)	Proposed Conditions 2-30" CMP's in approach with 30" CMP under 84 <sup>th</sup> Avenue removed		Change in flows to the West		Flows to South (cfs)
	Peak Flow (cfs)	Elevation (msl) [2]		Peak Flow (cfs)	Elevation (msl) [3]	(cfs)	(feet)	
2-year	14.2	<b>1892.5</b>	2.6	18.9	1890.7	+4.7	-1.8	0
5-year	44.2	<b>1893.1</b>	2.6	45.6	1891.9	+1.4	-1.2	0
10-year	62.7	<b>1893.2</b>	5.7	63.9	<b>1892.2</b>	+1.2	-1.0	0
25-year	96.9	<b>1893.4</b>	9.3	98.1	<b>1892.4</b>	+1.2	-1.0	0
50-year	126.6	<b>1893.6</b>	10.8	127.7	<b>1892.6</b>	+1.1	-1.0	0
100-year	158.4	<b>1893.7</b>	12.3	159.2	<b>1892.8</b>	+0.8	-0.9	0

[1] Flows to South are those flowing into the Sunny-View Subdivision  
 [2] Township roadway overflows at elevation ~ 1893.0 travel east along the south side of 84<sup>th</sup> Avenue (**Bold**)  
 [3] Approach overflows occur above at 5 year event (**Bold**)

Thank you for your participation in this process.

Sincerely,

Terry Fleck, Chairman  
 Burleigh County Water Resource District

Encl.

c: Ryan Miller  
 Michael Gunsch, HEI  
 David Bliss, BCWRD  
 Marcus Hall, Burleigh County

**Current Board Members:**

Terry Fleck, Vice Chair, Bismarck 223-9768    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royse, Treasurer., Bismarck 258-1110    Kathleen Jones, Manager, Bismarck 258-1477  
 Gordon Weikel, Manager, Bismarck 258-5390

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# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
 Bismarck, North Dakota 58501-4028

**CERTIFIED MAIL**

January 15, 2013

Mr. Douglas Hartman  
 5804 Desperado Place  
 Bismarck, ND 58503

Dear Mr. Hartman:

As you may be aware, Houston Engineering has been working on behalf of the Burleigh County Water Resource District to develop a revised flood control project for Sunnyview Subdivision. In response to the original petition, a project was developed that included a diversion of external runoff around the subdivision as well as improvements to the conveyance corridor through the subdivision. This project was rejected by the voters with an indication that they wanted to divert the external runoff around the subdivision without making the internal improvements. A second petition was submitted accordingly, and a Draft Preliminary Engineering Report has been developed. A copy of that draft report is enclosed for your information.

The concerns of potentially impacted landowners became apparent during the hearing for the original project. The inundation of your trees was one of the concerns raised. In recognition of your concerns, changes were made to the design to improve the hydraulic conditions at your location. The two 24" culverts under 84<sup>th</sup> Avenue have been upsized to two 30" culverts. We have also lowered the channel grade and culvert inverts. With these modifications, the hydraulic model shows that the water surface elevation does not increase at your location, even though a greater total volume of water will pass through this area. The following **Table 3** from the enclosed report summarizes the results of our modeling south of your residence.

<b>Table 3</b> <b>84<sup>th</sup> Avenue West of 26<sup>th</sup> Street</b> <b>Top of Roadway Elevation = 1854.95 (Trail Section)</b> <b>Design Invert North: 1850.23 Design Invert South: 1849.5</b> <b>6-Hr Rainfall Events</b>						
Frequency	Existing Conditions 24" CMP		Proposed Conditions Remove 24" - Add 2-30" CMP		Changes	
	Peak Flow (cfs)	Elevation (msl)	Peak Flow (cfs)	Elevation (msl)	(cfs)	(feet)
2-year	10.5	1853.4	19.1	1852.0	+8.6	-1.4
5-year	17.5	1854.5	44.4	1853.1	+26.9	-1.4
10-year	18.4	1854.6	55.4	1853.7	+37.0	-0.9
25-year	19.2	1854.7	66.6	1854.3	+47.4	-0.4
50-year	19.6	1854.8	69.3	1854.5	+49.7	-0.3
100-year	19.9	1854.8	71.3	1854.6	+51.4	-0.2

Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royse, Treasurer, Bismarck 258-1110    Kalhleen Jones, Manager, Bismarck 258-1477  
 Gordon Weixel, Manager, Bismarck 258-5390



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

We wanted to provide you with this information in advance of the formal public hearing and in advance of the draft report being finalized. We are interested in your feedback regarding the design changes made to eliminate any adverse impact at your location. Please call Michael Gunsch of Houston Engineering at (701) 323-0200 with any questions, comments or to schedule a meeting to discuss the project.

If you do not provide comments or request a meeting by February 15, 2013, we will assume you are satisfied with the proposed changes related to your concerns.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in black ink that reads "Terry A. Fleck".

Terry Fleck, Chairman  
Burleigh County Water Resource District

Encl.

C: Michael Gunsch, HEI  
Ryan Miller  
David Bliss, BCWRD  
Marcus Hall, Burleigh County

---

**Current Board Members:**

Terry Fleck, Vice Chair, Bismarck 223-9766    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royle, Treasurer., Bismarck 258-1110    Kathleen Jones, Manager, Bismarck 258-1477  
Gordon Weikel, Manager, Bismarck 258-6390





**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Wayne Jundt  
 3202 84th Ave NE  
 Bismarck, ND 58501

2. Article Number  
 (Transfer from serv) 7011 2970 0003 3833 3091

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15/

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery 1-27-13

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

*Wayne Jundt*

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Douglas Hartman  
 5804 Desperado Place  
 Bismarck, ND 58503

*Not cert on envelope*

2. Article Number  
 (Transfer from serv) 7011 2970 0003 3833 3084

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15/40

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) Douglas Hartman C. Date of Delivery \_\_\_\_\_

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

8504 Desperado Place  
Bismarck, ND 58503

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes



# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

## CERTIFIED MAIL

January 15, 2010

John and Donna Richter  
4701 Granite Drive  
Bismarck, ND 58503

### RE: SUNNY-VIEW SUBDIVISIONS FLOOD CONTROL

Dear John and Donna:

In a letter dated July 10, 2010 Michael Gunsch of Houston Engineering provided you with a copy of the then recently completed *Preliminary Engineering Report, Sunny-View Subdivisions Flood Control, July 2010*. That report included an evaluation of the diversion of additional flows through your property and their potential impacts. The report also included findings relative to the potential impact to future development opportunities on your properties. Our findings at that time concluded that the preferred alternative would not adversely impact your properties. Three potential development layouts were included in the report. The preferred alternative at that time was to continue to use the natural watercourse to convey the additional runoff across your property.

As you may be aware, that original project was rejected by the voters who indicated they did not want to complete the internal storm water improvements. Landowners subsequently filed a second petition with the Burleigh County Water Resource District (BCWRD) requesting a project that involved only the diversion of the externally accruing runoff around the subdivision. As a result, Houston Engineering has been working on behalf of the BCWRD to revise the preliminary engineering report. As part of this effort and in recognition of your concerns, channel improvements are recommended to the existing watercourse across your property. By lowering the channel and creating a shaped, grassed waterway, the width of the inundation in the channel will be decreased with project construction. The attached tables provide more detailed results.

We have also attached a copy of **Table 5** from the current draft preliminary engineering report. This table illustrates that the project will impact water surface elevations at the CP Railroad Crossing. The water surface elevations upstream of this crossing would increase by 0.5 feet on a 2-year event and by only 0.1 foot during a 25-, 50-, and 100-year events.

We understand you are concerned with the potential for this project to limit development opportunities for your property. With the channel modifications currently proposed, the attached table shows that the project will actually decrease the extent of inundation along the channel. While there would be small increases in water surface elevation at the CP Rail crossing, these impacts may be outweighed by other benefits, including the decreased channel inundation noted above, basically having a storm water management plan already developed, and defining the floodplain upstream from the CP Rail crossing.

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**Current Board Members:**

Terry Fleck, Vice Chair, Bismarck 223-9768

Cary Backstrand, Vice Chairman, Bismarck 471-9134

Ken Roysse, Treasurer, Bismarck 258-1110

Kathleen Jones, Manager, Bismarck 258-1477

Gordon Weizel, Manager, Bismarck 258-5390

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# Burleigh County Water Resource District

City/County Office Building - 221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

If you are amenable to allowing the proposed improvements to the channel crossing your property, you could authorize the work either through a permanent easement or a temporary construction easement. A permanent easement could include a clause allowing for channel relocation, if your ultimate development plans result in a need to do so. While a temporary construction easement would terminate once construction had been completed, there would still be a need to maintain the functionality of the conveyance across the property.

We would like to hear your thoughts regarding the current proposal. The petitioners are waiting for us to bring them a project they can vote on, and resolving your concerns will be key to moving forward with a feasible project. If you have not provided comments or requested a meeting prior to February 15, 2013 we will assume that you are satisfied with the proposed changes related to your concerns.

Please contact Michael Gunsch with Houston Engineering at (701)323-0200 to discuss the project, our efforts to minimize impacts, and the possibility of obtaining an easement. We would also be happy to discuss this matter with you privately or during a meeting of the BCWRD. A copy of this letter and report are being provided to your legal counsel so that he may advise you in these matters.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in black ink that reads "Terry N. Fleck".

Terry Fleck, Chairman  
Burleigh County Water Resource District

Encl.

C: Michael Gunsch, HEI  
Casey Chapman  
Ryan Miller  
David Bliss, BCWRD  
Marcus Hall, Burleigh County

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Current Board Members:

Terry Fleck, Vice Chair, Bismarck 223-9768    Cary Backstrand, Vice Chairman, Bismarck 471-9134    Ken Royse, Treasurer., Bismarck 258-1110    Kathleen Jones, Manager, Bismarck 258-1477  
Gordon Weixel, Manager, Bismarck 258-5390

alo

January 30, 2013

Terry Fleck, Chairman  
Burleigh County Water Resource District  
221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

**RE: Sunny-View Subdivisions Flood Control**

Dear Mr. Fleck:

This letter is in response to a Revised Project Evaluation by Michael Gunsch, PE, of Houston Engineering Inc. of January 7, 2013, for Sunny-View Flood Control. This was a re-evaluation of the project originally stated in a letter, dated January 15, 2010, from your department.

After careful examination, we find that the new plan will divert a much larger amount of water to directly flow down the middle of our property and inundate it even more severely. The plan is worse than the original that called for two 24-inch culverts to now be replaced by two 30-inch culverts. The new plan would allow three times the amount of water to cross our land compared to the single 24-inch culvert that is now being used.

From information I got from Mr. Gunsch, I believe that the change from 24-inch culverts to 30-inch culverts was made because the larger culverts cost and installation would be absorbed by the county as directed by law.

Therefore, no easement or permission to trespass on our property will be allowed in reference to the 2013 revised route for drainage. That plan for drainage discriminates against us and will reduce the future plans for our own development of said property. The route for drainage that we would favor would be a route that parallels the railroad right of way and lies as close to it as possible. If that route were chosen, we would be open to discussion on the matter.

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Page 2

At present we are in contact with our attorney and plan to take any legal action necessary including seeking an injunction if Houston Engineering pursues the latest water diversion plan. Thank you for your consideration.

Sincerely,

*John J. Richter Donna M. Richter*

John J. Richter

Donna M. Richter

CC: Michael Gunsch, PE, Houston Engineering  
Charles (Casey) L. Chapman, Attorney

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John and Donna Richter  
 4701 Granite Drive  
 Bismarck, ND 58503

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature [Signature]  Agent  
 Addressee

B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery 1/25/04

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label)

7012 2210 0000 9663 9248

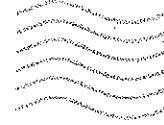
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

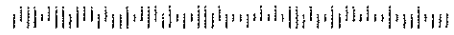
John & Donna Richter  
4701 Granite Drive  
Bismarck, ND 58503

BISMARCK ND 585  
30 JAN 2013 PM 1 L



Terry Fleck, Chairman  
Burleigh County Water Resource District  
221 North 5<sup>th</sup> Street  
Bismarck, North Dakota 58501-4028

585014028



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January 4, 2013

Terry Fleck, Chairman  
Burleigh County Water Resource District  
City/County Office Building  
211 N. 5<sup>th</sup> Street  
Bismarck, ND 58501

RE: Apple Valley Cooperative  
CWSRF Project No. 380945-01  
Apple Valley Cooperative Sanitary Lagoon Improvements

Dear Chairman Fleck:

This will acknowledge receipt, on 12/14/2012, of the bid tabulation and supporting documents for the above-referenced project.

This letter will confirm the recommendation letter from your consulting engineer authorizing you to award the construction contract to Weisz & Sons, Inc., the low responsive, responsible bidder. The total amount of the contract is \$223,295.00, of which all is eligible for SRF participation following execution of the loan.

Construction may now begin at your convenience. Please furnish us with one copy of the following documents, if you have not already done so:

1. Notice of award.
2. Notice to proceed.
3. Executed construction contract including performance and payment bonds.
4. Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) subcontracts and purchase orders. It is your responsibility to ensure that these documents are submitted through you to us within 10 working days of their award.
5. Worker's compensation and insurance certificates as well as a signed statement of nonsegregated facilities for all contractors and subcontractors. Contractors shall maintain worker's compensation insurance certificates, and should maintain adequate fire and extended coverage (where appropriate), public liability and property, and "all risk" builders insurance (including blasting where appropriate) during the construction phase of the project.



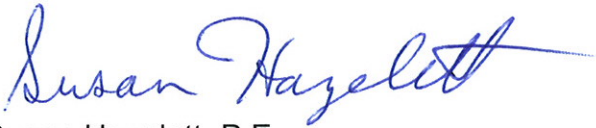
6. Contact information required by the U.S. Department of Labor (USDOL). This is an appropriate time to remind you that the instructions for carrying out the President's Executive Order No. 11246 require that award of contract information required by 41 CFR Part 60-4.2 be submitted to the Department of Labor. It is your responsibility to ensure that this form is completed and submitted through you to the USDOL and us within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work competed under each contract. The Department of Labor's address is:

Assistant Regional Administrator  
U.S. Department of Labor/ESA/OFCCP  
Denver District Office  
1999 Broadway, Suite 2205  
Denver, CO 80201

Please contact our office to coordinate the scheduling of the Preconstruction Conference.

Should you have any questions, please contact me at 701-328-5220.

Sincerely,



Susan Hazelett, P.E.  
Environmental Engineer  
Division of Municipal Facilities

SH:dgg

Enc.

xc: Travis Johnson, P.E., Houston Engineering, Inc.

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Contractor's Name, Address, & Telephone Number

Return to:

USDOL/ESA/OECCP  
Denver District Office  
1999 Broadway, Suite 1177  
Denver, CO 80202

EMPLOYER ID NUMBER OF CONTRACTOR: \_\_\_\_\_

**CONTRACT INFORMATION:**

**PROJECT AND LOCATION:**

Dollar Amount of Contract	Estimated Start Date	Estimated Completion Date	Contract No.	Geographical Area

**NOTIFICATION OF SUBCONTRACTS AWARDED (>10,000)**

Subcontractor's Name, Address, & Phone Number	Employer ID Number of Subcontractor	Estimated \$ Amount of Subcontract	Estimated Start Date	Estimated Completion Date



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



January 16, 2013

Terry Fleck, Chairman  
Burleigh County Water Resource District  
City/County Office Building  
221 North 5<sup>th</sup> Street  
Bismarck, ND 58501

RE: Burleigh County Water Resource District  
CWSRF Project No. 380945-01

Dear Mr. Fleck:

Enclosed is a copy of CWSRF Request for Payment No. 1 for the above-referenced project for your files. This request for payment was submitted to the Bank of North Dakota for payment, and the amount indicated on the request should have been received. We have been notified that a cashier's check was sent to you on January 14, 2013.

Please note that on future draw requests a representative of your engineering firm needs to sign and date in box 9b.

If you have any questions, please contact me at 328-5238.

Sincerely,

Sharmaine Stoppler  
SRF Administrative Officer  
Division of Municipal Facilities

Enc.  
xc/enc: Houston Engineering (Bismarck)

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# SRF REQUEST FOR PAYMENT

North Dakota Department of Health  
Municipal Facilities  
SFN 7804(7-12)

Clean Water SRF  
 Drinking Water SRF

Instructions on back

1. Type of Request <input type="radio"/> FINAL <input checked="" type="radio"/> PARTIAL	2. SRF Project No. 380945-01	3. Payment Request No. 1	4. Employer ID No.	5. Recipient Account No.
6. Name of Recipient Organization Burleigh County Water Resource District			7. Address C/O City/County Office Building, 221 North 5th Street	
City Bismarck	State ND	Zip Code 58501	Period Covered by Request From: April 26, 2010 To: October 21, 2012	

### 8. STATUS OF FUNDS:

CLASSIFICATION	(a)	(b)	TOTAL
a. Administrative expenses	\$	\$	\$ 3,057.49 55
b. Preliminary expenses			
c. Land, structures, right-of-way			58,787.78 55
d. Engineering basic fees	<del>61,845.27</del>		<del>61,845.27</del> 55
e. Other engineering fees			
f. Project inspection fees			
g. Land development			
h. Relocation expenses			
i. Relocation payments to individuals/businesses			
j. Demolition and removal			
k. Construction and project improvement cost			
l. Equipment			
m. Miscellaneous cost			
n. Total cumulative to date (sum of lines a thru m)			61,845.27 55
o.			
p. SRF payments previously received			-0- 55
q. Amount requested for payment			61,846.00 55
r. Percentage of physical completion of project	0	%	0 %

### 9. CERTIFICATION:

I certify that, to the best of my knowledge and belief, the billed costs or disbursements are in accordance with the terms of the loan agreement, the payment represents an amount which has not been previously requested, and all work is in accordance with the terms of the loan agreement.

a. Recipient	Signature of Authorized Certifying Official (PLEASE USE BLUE INK) <i>Terry Fleck</i>	Date Request Submitted 12/20/2012
	Typed or Printed Name and Title Terry Fleck, Chairman, Burleigh County Water Resource District	Telephone (area code, number & ext.) 701-222-3499
b. Representative certifying to Line 8r	Signature of Authorized Certifying Official (PLEASE USE BLUE INK) <i>Terry Fleck</i>	Date Signed 12/20/2012
	Typed or Printed Name and Title Terry Fleck, Chairman, Burleigh County Water Resource District	Telephone (area code, number & ext.) 701-222-3499

### FOR DEPARTMENT USE ONLY

10a. Date of Health Dept Approval 1/7/13	10b. Date of Public Finance Authority Approval 1/11/13	10c. Date of SRF Payment Disbursal 1/14/13
Authorized By: <i>Sharmaine Stoppler</i>	Authorized By: <i>Kyler Munkul</i>	Authorized Trustee: <i>Ladonna Kingang</i>

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CHECK IS VOID IF ANY OF THE FOLLOWING SECURITY FEATURES ARE ABSENT: ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER



Bank of North Dakota

1200 Memorial Hwy  
PO Box 5509  
Bismarck, ND 58506-5509

# CASHIER CHECK

CHECK NO.: 11883

REMITTER: TRUST LL

DATE: 01/14/2013

\*\*\*\*\*\$61,846.00

Sixty one thousand eight hundred forty six dollars and 00/100

DOLLARS

PAY TO THE ORDER OF

BURLEIGH COUNTY WATER RESOURCE DISTRICT  
221 N 5TH ST  
BISMARCK ND 58501



*Joe H. ...* CBO  
*Tim C. ...* CFO

AUTHORIZED SIGNATURES

RUBBER IMAGE - DISAPPEARS WITH HEAT



SECURITY FEATURES INCLUDED, DETAILS ON BACK.



SEE BACK FOR WATERMARK

⑈00011883⑈ ⑈091300285⑈ 2114509000⑈ 500



Bank of North Dakota

1200 Memorial Hwy  
PO Box 5509  
Bismarck, ND 58506-5509

# CASHIER CHECK

CHECK NO.: 11883

CHECK DATE: 01/14/2013

CHECK AMOUNT: \*\*\*\*\*\$61,846.00

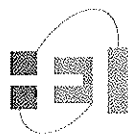
ID NUMBER:

REMITTER: TRUST LL

BURLEIGH COUNTY WATER RESOURCE DISTRICT  
221 N 5TH ST  
BISMARCK ND 58501

BURLEIGH COUNTY WATER RESOURCE DISTRICT  
221 N 5TH ST  
BISMARCK ND 58501

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**Work Order No. 14B  
Amendment #2**

**BCWRD - WORK ORDER**

Houston Engineering, Inc. (HEI) agrees to perform for the **Burleigh County Water Resource District (CLIENT)** on this Project, the Services described below, attached or referenced. These Services shall be performed subject to and upon the terms and conditions as set forth in the **Engineering Services Agreement** dated March 2002 by and between HEI and the BCWRD, included in Work Order #14 or as stated herein, which Agreements are hereby amended to incorporate **Work Order #14 – Amendment #2**.

**WORK ORDER NAME: Apple Valley Cooperative Wastewater Treatment System**

**SERVICES:** Provide engineering, environmental, scientific, technical, surveying and administrative services for the **final design, advertisement and bidding, construction surveys, construction observation and contract administration on the Apple Valley Cooperative Sanitary Lagoon Improvements project.**

The amount budgeted for the completion of these services in Amendment 2 is \$34,000 for a total contract amount of \$78,000 for Work Order No. 14 including all Amendments, which is subject to revision by the BCWRD during project construction or upon the utilization of these funds for authorized purposes. All services will be provided on a time and materials basis.

**CLIENT'S RESPONSIBILITY:** Establish primary point of contact for directing activities. (Bismarck Office)

**SPECIAL PROVISIONS:** Updates to be provided during each regular BCWRD Board meeting. Work Order #14B may be modified at the discretion of the BCWRD, in consultation with the Apple Valley Cooperative to complete the project within the provisions of the approved assessment district.

**STANDARD RATE SCHEDULE:** Yes                      **EFFECTIVE DATE:** Upon Board Approval

**SPECIAL TERMS AND CONDITIONS:** As described by the **Engineering Services Agreement**. HEI's General Conditions and 2012 Preferred Rate Schedule, **Attachment C** applies to this work order.

**AUTHORIZATION**

This Work Order and the scope of services (the "Services") defined herein are approved and HEI is hereby directed and authorized to proceed with the Services for the designated Project in accordance with the terms and conditions of the above-referenced Agreement.

Requested By:

Accepted By:

**Burleigh County Water Resource District (CLIENT)**

**Houston Engineering, Inc. (ENGINEER)**

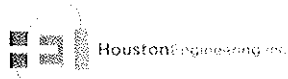
By: \_\_\_\_\_  
Terry Fleck, Chairman

By: \_\_\_\_\_  
Michael H. Gunsch, P.E.  
Senior Project Manager/Principal

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 2012 PREFERRED CLIENT FEE SCHEDULE



The following is a schedule of hourly rates and charges for engineering and surveying services offered by Houston Engineering, Inc. Note that the rates shown represent a discount from our standard hourly labor rates rounded to the nearest dollar.

Senior Project Manager	135.00 per hour
Project Manager	124.00 per hour
Project Engineer	112.00 per hour
Professional Engineer	100.00 per hour
Design Engineer	90.00 per hour
Graduate Engineer	80.00 per hour
Legislative/Grant Specialist	115.00 per hour
Expert Witness	149.00 per hour
Senior Environmental Project Manager	136.00 per hour
Senior Environmental Scientist	118.00 per hour
Environmental Scientist	102.00 per hour
Scientist	89.00 per hour
Graduate Scientist	80.00 per hour
Senior Designer	99.00 per hour
Designer	84.00 per hour
Senior Land Surveyor	110.00 per hour
Land Surveyor	93.00 per hour
Graduate Land Surveyor	80.00 per hour
Senior Construction Engineer	110.00 per hour
Construction Engineer	93.00 per hour
Graduate Construction Engineer	80.00 per hour
Senior Technician	80.00 per hour
Technician	72.00 per hour
Graduate Technician	63.00 per hour
Technician Intern	55.00 per hour
Senior GIS Project Manager	117.00 per hour
GIS Project Manager	104.00 per hour
GIS Developer	95.00 per hour
GIS Specialist	80.00 per hour
GIS Technician/Developer II	70.00 per hour
GIS Technician I	61.00 per hour

Surveyors:	One-person crew	96.00 per hour
	Two-person crew	119.00 per hour
	Three-person crew	148.00 per hour
	Four-person crew	169.00 per hour
CADD Manager		80.00 per hour
CADD Supervisor		72.00 per hour
Senior CADD Operator		63.00 per hour
CADD Operator		55.00 per hour
Computer Technician		98.00 per hour
Senior Administrative Assistant		55.00 per hour
Administrative Assistant		50.00 per hour

Chargeable Expenses

Subsistence	Actual Cost
Travel Vehicles - 2-wheel drive	IRS Standard Mileage Rate
4-wheel drive	IRS Standard Mileage Rate + \$0.20 per mile
GPS Equipment	\$25.00 per hour per unit
Robotic Total Station	\$20.00 per hour
All Terrain Vehicle / Snowmobile / Boat	\$15.00 per hour
Long distance telephone, facsimile, overnight mail and postage	Actual Cost
Cost of surveying materials, printing, special equipment, and other materials required for the job	Actual Cost
Sub-Consultants	Actual Cost + 10%

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## PROPOSAL FOR SERVICES

**Amended: 1/8/13**

This contract for services is entered into by the Burleigh County Water Resource District (BCWRD), and Personalized Management Services, Inc. (PMS), pursuant to which PMS, as an independent contractor, will provide the administrative and management services to BCWRD for a fee of \$20.00 per hour from February 12, 2007 until 60 (sixty) day written notice of termination is given by either party.

### ***Terms***

The term of this contract shall commence on February 12, 2007 and will be reviewed in three months.

### ***Prior Contracts***

The term of this contract shall commence on February 12, 2007. Any and all prior contracts for secretarial services for BCWRD are no longer valid.

PMS or any of its staff cannot be held responsible for any business and/or organization decisions made on behalf of BCWRD.

### ***Miscellaneous***

This Agreement and the attached Scope of Services represent the entire understanding of BCWRD and PMS and supersede any prior or contemporaneous agreements or representations. This Agreement may be amended only by further written agreement signed by the authorized representatives of the BCWRD and PMS.

This Agreement is governed by the laws of the State of North Dakota. Any legal proceeding brought to enforce the terms of this Agreement or to seek a remedy for breach of this Agreement shall be brought in State or federal court in the State of North Dakota.

### ***Confidentiality***

PMS agrees that with respect to any and all materials, reports, correspondence, or other documents which have been stamped or otherwise identified as confidential matters by the BCWRD'S Executive Committee ("the Confidential Materials"), PMS shall not disclose, distribute or publish such Confidential Materials to any third party, unless otherwise requested by a duly authorized member of the BCWRD.

### ***Other Costs***

Postage, telephone, printing, copying, fax copies, supplies, travel (at state rates), bulk mailing costs, and other incidental costs for items that are for exclusive use by BCWRD will be in addition to the contract fee and will be paid directly by the provider from BCWRD funds.

### ***Evaluation***

The BCWRD may evaluate the management and administrative services provided by PMS.

### ***Termination***

This contract/arrangement can be terminated by either party upon a sixty (60) day written notice of the intent to terminate to the other party.

**Information & Property**

All computer data and paper records prepared by PMS specifically for the BCWRD or prepared or provided by BCWRD, its officers, directors, members, or agents, along with supplies purchased by BCWRD are the property of BCWRD. Other data and records, including and regarding the operations of PMS, along with all other supplies and property, shall remain the property of PMS.

Upon termination of this contract, all BCWRD property will be returned to the BCWRD and all outstanding PMS bills will be paid by BCWRD.

Computer data will be placed on disks compatible with an IBM format in an ASCII file - data fields will be documented on paper - a hard copy will be provided of all data.

PMS may retain a copy of BCWRD'S data and records for archival purposes. Any additional expenses incurred during the transfer process from PMS will be billed according to the contract.

**Indemnification**

The BCWRD shall indemnify and hold harmless PMS, its officers, directors, employees, and agents for and against all liabilities related to any and all claims and causes of action by third parties, including but not limited to judgments, verdicts, settlements, and fines resulting from any act or omission of the BCWRD, its officers, directors, members or agents.

Signed this 12th day of February, 2007.

\_\_\_\_\_  
BCWRD Representative

\_\_\_\_\_  
PMS, Inc. Representative

Amendment to contract:  
Dated this \_\_\_\_ day, of \_\_\_\_\_, 2009, Personalized Management Services, Inc. respectfully requests an increase in the fee of this contract to \$22.50 per hour effective January 1, 2010

\_\_\_\_\_  
BCWRD Representative

\_\_\_\_\_  
PMS, Inc. Representative

Amendment to contract:  
Dated this 13<sup>th</sup> day, of January, 2013, Personalized Management Services, Inc. respectfully requests an increase in the fee of this contract to \$25.00 per hour effective January 1, 2013

\_\_\_\_\_  
BCWRD Representative

\_\_\_\_\_  
PMS, Inc. Representative

**PERSONALIZED MANAGEMENT SERVICES, INC.**  
**SCOPE OF SERVICES**

1. Schedule, organize and attend Board of Directors meetings. Assist in the preparation of the agenda for the meetings, send out notices, make all necessary arrangements for the meeting, along with recording minutes of these meetings and distributing the minutes to all parties required (i.e. auditor's office).
2. Type and distribute all correspondence, minutes, reports, etc. as directed by the BCWRD Board.
3. Maintain communications with the Board of Directors, Auditor, general public and other professionals in order to ensure a smooth and efficient operation.
4. Check the mail at the City/County office and ensure that it is routed to the correct parties.
5. Provide copier, fax, email services as necessary.
6. Update information on websites including meetings, projects, board member status, and other information as directed by the board.
7. File all copies of correspondence both received and sent and retain as instructed by the BCWRD Board data records policy.
8. Ensure that questions sent to the BCWRD website are forwarded to the correct parties.
9. Ensure information is sent out in accordance with the ND Open records law.

The below Scope Services are attached as an amendment to the current contract dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by board action approval.

PMS Scope of Services:

1. Cash Receipts:

- Timely deposit any funds received directly by us on behalf of the BCWRD.
- Input deposits weekly into Quickbooks based upon information received from Burleigh County and the financial institution.

2. Accounts Payable:

- We will receive, code and input into Quickbooks all invoices received on behalf of the BCWRD for payment.
- We will initiate payment by generating accounts payable semi-monthly on or about the 10<sup>th</sup> and 25<sup>th</sup> of each month based on the due dates on the invoices.
- We will present to the designated representative of the BCWRD the checks and supporting invoices/documentation for their review, approval and signature.
- We will mail the signed checks and file and maintain the supporting invoices/documentation for all disbursements.

3. Payroll:

- We will prepare the monthly payroll checks based upon information provided by the BCWRD.
- We will present to the designated representative of the BCWRD the payroll checks and supporting documentation for their review, approval and signature.
- We will timely prepare and make all federal and state payroll tax deposits using the EFTPS system.
- At quarter end prepare the following governmental reports:
  - Form 941 (for signature and mailing)
  - Form 940 required deposit—will be deposited via EFTPS
  - State withholding report
  - State unemployment report
- Annually prepare the following governmental reports:
  - Forms W-2 and W-3
  - Form 940
  - North Dakota Workforce Safety and Insurance Report
  - Forms 1099 and 1096

4. Fixed Assets:

–We will maintain a listing of the fixed assets (land, improvements, infrastructure, buildings, furniture and equipment) and accumulated depreciation based upon the BCWRD's capitalization policy.

5. General Ledger:

–We will maintain the general ledger of the BCWRD on QuickBooks and record all deposits, disbursements and adjustments.

– We will maintain the checking and investment accounts of the BCWRD and reconcile them on a monthly basis.

6. Board Reports:

–We will provide to the Board of Directors or their designated representative the following reports on a monthly basis (or other time period if requested):

–Balance Sheet

–Revenue and Expenses

–Budget to Actual Comparison

–Checking and investment accounts reconciliations

–Check listing

7. Budget:

–We will assist BCWRD in the preparation of their annual budget

8. Audit

–We will work with the BCWRD auditor's and provide the requested information and documentation needed for the annual audit.

**REQUEST FOR QUALIFICATIONS and STATEMENTS OF INTERESTS**  
**For**  
**Engineering and Technical Assistance for Water Resource**  
**And Water Management Projects**

Burleigh County Water Resource District  
(Insert address)  
Burleigh County, ND

The Burleigh County Water Resource District (District) seeks Request For Qualifications and Statements of Interest from professional services providers (engineering firms or others) ~~who have~~ having the required ability, background, and interest in providing general services for unspecified water resources and water management projects within the county.

The District is a governmental entity operating under the authority of NDCC Section 61. The duties of the District include, but are not limited to, general and specific duties relating to water management, planning, design, and construction and related activities for flood control, water supply, irrigation, water conservation, drainage control, recreational facilities (water related), and similar activities.

To accomplish such duties the District routinely uses professional engineering and related services. This notice is ~~for~~ a "Request for Qualifications and Statement of Interests" from qualified professional firms to assist and provide services relating to such duties. Such services may include, but are not be limited to, general planning activity, ground water and surface water hydrology and hydraulic analysis, surveying, mapping and data management, facility design activities, preparation of plans and specifications for selected projects, contract administration, contract observation services, and agency and funding coordination and funding request assistance.

This solicitation may result in the award of either project specific work to one or more responders, or with a general services agreement with one or more responders.

~~If you would like~~ To submit a Qualification and Interest Statement for such work the following applies:

1. Submission shall be made by \_\_\_\_\_, 2013 to Mr. Terry Fleck, Chairman, Burleigh County Water Resource District (insert address).
2. Please submit 8 original sets of documents. Such documents will be non-returnable.
3. Please limit the length of the submittal to no more than 10 pages generally as follows:
  - a. Cover letter stating clearly ~~your~~ interest and intent to seek such work
  - b. A page or pages as needed to demonstrate ~~your~~ background with a variety of water management related projects similar to as a typical water district may encounter
  - c. A page or pages as needed with identification of ~~you're~~ the proposed project manager(s) for general coordination of any work awarded and of those other personnel with any special technical skills for special projects as envisioned.
  - d. A page or pages as needed with a listing of other water management or water resource related projects ~~you're~~ the firm has been involved in within the area and the State; state clearly your involvement.

- e. A page or pages as needed with at least three (3) references, including their role, their relationship to your firm, and their current phone number, e-mail address, and street address.

Based on responses received, the District may or may not elect to interview one or more responder or request additional information from any such responder.

Any clarifications or questions relating to this solicitation can be addressed to Terry Fleck through his e-mail address of [tfleck@btinet.net](mailto:tfleck@btinet.net). This solicitation does not create any obligation upon the District to award any work to any one firm or to any firms in total. This District reserves the right to award multiply contracts as may best serve the needs of District.

## Mona Livdahl

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**From:** Kevin Glatt [kglatt@nd.gov]  
**Sent:** Friday, February 01, 2013 1:08 PM  
**To:** Terry Fleck; Mona Livdahl; Clyde Thompson  
**Subject:** FW: 2013 Annual Disposal Reports - Water Resource District  
**Attachments:** County Gen Schedule Disposal Report.pdf; 899-015 Cert Water Resource.pdf; 899-015 Disposal Rpt Water Resource.pdf

**From:** Freeman, Sharon M. [mailto:sfreeman@nd.gov]  
**Sent:** Friday, February 01, 2013 9:21 AM  
**To:** Auditors@ndaco.org  
**Subject:** 2013 Annual Disposal Reports - Water Resource District

This is the last one.

The Association of Counties did not provide me with a distribution list for the Water Resource District. Please forward to your county Water Resource Office. Thank you.

Attached you will find the annual records disposal packet for your office. Upon receiving the packet, please review, complete disposal actions, print and return the Certificate of Records Disposal (SFN7694), the agency records disposal report (RM1071-AA), and any Records Series Description (SFN2042) form(s), if applicable.

According to North Dakota Century Code 54-46-05, agencies must dispose of records that have met their retention requirements. 54-46-12 applies specifically to county records management. If sections or divisions of the agency maintain copies of a record series, they may dispose of the copies any time before the primary or official record of the agency, but must not maintain the copies any longer than the specified retention period. Upon completion of the disposal process, please return all documentation (as stated above) by **December 31, 2013** in order to comply with records management requirements.

Also attached is a copy of the records disposal report for the County General Retention Schedule (GRS). Please follow the retention periods listed on the general schedule for these types of records retained by your office. If there are duplicate record series on the agency-specific retention schedule, please delete and follow the ND GRS.

Here is the link to the retention acronyms that are used on the records disposal reports: <http://www.nd.gov/itd/service-info/abbreviations-used-record-retention-schedules>.

At this time, the agency records disposal report, as well as the Record Retention Schedule with Descriptions on the web: <http://www.nd.gov/itd/files/retention/retention.pdf>, should be reviewed to verify accuracy.

- Are all the records of the agency included on the report?
- Have new programs or files been added to the records system that should be added to the retention schedule?
- Are there any records series that should be deleted?
- Are there any changes to the title, description, or the retention values?

The retention schedule should identify records currently retained by the office. If the records are not accurately reflected, complete a Records Series Description (SFN 2042) to indicate any additions, changes, or deletions and return them to ITD Records Management. See our website to obtain the latest copy of the SFN 2042: <http://www.nd.gov/eforms/Doc/sfn02042.pdf>

If you have any records which must be transferred to the State Archives, please contact Larissa Harrison 328-2663 or Shane Molander 328-3570 to make arrangements for the transfer. Please forward documentation (certification form and disposal report) with the records to be transferred. The certification will be signed and all paperwork forwarded to Records Management. A transfer of records to the State Archives will require extra time. Please be sure to schedule the



transfer of records well in advance of **December 31, 2013**. This will ensure that you complete your records disposal on time and that the State Archives has time to process the records.

If you have any questions/comments, or need assistance with the disposal process please let me know. You can also refer to the new ITD Records Management website for further instructions: <http://www.nd.gov/itd/services/records-management> (See Records Management Program, Subtopic: [Records Management Program Maintenance](#).)

*Sharon Freeman*

Information Management Analyst  
State of North Dakota  
ITD/Records Management  
701-328-3579

[www.nd.gov](http://www.nd.gov)

RECORDS CONTROL NUMBER	RECORD SERIES TITLE	TOTAL RETENTION YEARS	TRANSFER THIS YEAR TO INACT. STORAGE	MICROFILM THIS YEAR	** THIS MONTH/AND BEFORE	** DISPOSE OF THIS MONTH/AND BEFORE	** * * * * * USE THIS METHOD
010201	AUDIT REPORTS, COUNTY	3	CFY		DEC 2009	CFY	TO ARCHIVES
010301	AUTHORIZATIONS, TRAVEL	3	CFY		DEC 2009	CFY	LAND FILL
010401	BUDGET REPORTS (EXCEPT AUDITOR)	4	CFY		DEC 2008	CFY	LAND FILL
010501	CASH BOOKS/JOURNALS	3	CFY		DEC 2009	CFY	LAND FILL
010601	WARRANTS	6	CFY		DEC 2006	CFY	LAND FILL
010602	BANK RECORDS	6	CFY		DEC 2006	CFY	LAND FILL
010605	REGISTER, WARRANT	10	CFY		DEC 2002	CFY	LAND FILL
010617	CHECK REGISTER	3	CFY		DEC 2009	CFY	LAND FILL
010701	REGISTER, CLAIMS	10	CFY		DEC 2002	CFY	LAND FILL
010801	EXPENSE ACCOUNT REPORTS	3	CFY		DEC 2009	CFY	LAND FILL
010902	PURCHASE ORDERS/REQUISITIONS	3	CFY		DEC 2009	CFY	LAND FILL
011201	INVENTORY, COUNTY EQUIPMENT	3	LOE+		DEC 2009	CFY	LAND FILL
011301	LEDGERS	5	CFY		DEC 2007	CFY	LAND FILL
011601	EMPLOYEE PAYROLL RECORDS	6	ALA		2006	ALA	LAND FILL
011801	RECEIPTS/RECEIPT BOOKS	10	CFY		2002	CFY	LAND FILL
011802	REGISTER, ACCOUNTS RECEIVABLE	6	CFY		DEC 2006	CFY	LAND FILL
011803	FEE BOOKS	3	CFY		DEC 2009	CFY	LAND FILL
011812	COLLECTION REGISTER	3	CFY		DEC 2009	CFY	LAND FILL
012001	BILLS	3	CFY		DEC 2009	CFY	LAND FILL
012102	VOUCHERS	3	CFY		DEC 2009	CFY	LAND FILL
100101	MEMORANDA	3	CFY		DEC 2009	CFY	LAND FILL
220301	MINUTES	25			1987		TO ARCHIVES
350301	TRAINING MATERIALS/SEMINAR NOTES	3	LOE		2009	LOE	LAND FILL
430101	EQUIPMENT MANUALS	3	AE+		2009	AE+	LAND FILL
450101	CORRESPONDENCE	3	AE+		2009	AE+	LAND FILL
470203	INSURANCE POLICIES	3	AE+		2009	AE+	LAND FILL
470203	VEHICLE INSURANCE POLICIES	3	CFY		DEC 2009	CFY	LAND FILL
500415	BANKRUPTCY RECORDS	3	CFY		DEC 2009	CFY	LAND FILL
600202	EMPLOYEE APPLICATIONS--APPLICANTS NOT HIRED	3	ALA		2009	ALA	LAND FILL
600601	PERSONNEL	6	ALA		2006	ALA	LAND FILL
600606	MEDICAL RECORDS	6	ALA		2006	ALA	SHREDDER
600703	LEAVE RECORDS	3	CFY		DEC 2009	CFY	LAND FILL
720101	REFERENCE MATERIALS	UD	UD			UD	LAND FILL
800336	RURAL PROPERTY DESCRIPTIONS	UD	UD			UD	LAND FILL
800389	MARRIAGE LICENSES	2	PERM		2010	PERM	TO ARCHIVES
800390	MARRIAGE LICENSE DOCUMENTATION	2	PERM		2010	PERM	LAND FILL
800703	COURTHOUSE RECORDS	UD	UD			UD	TO ARCHIVES
850101	MAILING LISTS	1	UD		2011	UD	LAND FILL
850201	TELEPHONE LOGS	1	UD		2011	UD	LAND FILL
850601	DAILY LOG	1	UD		2011	UD	LAND FILL
900236	UNCLAIMED PROPERTY DOCUMENTATION	3	ACFY		JUNE 2009	ACFY	LAND FILL
970101	VENDOR INFORMATION	1	UD		2011	UD	LAND FILL

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ITD/RECORDS MANAGEMENT DIVISION  
RECORDS DISPOSAL REPORT FOR DEPT- 8990 - COUNTY OFFICES  
DIVISION - 15 - WATER RESOURCE DISTRICT

RECORDS CONTROL NUMBER	RECORD SERIES TITLE	TOTAL RETENTION YEARS	TRANSFER THIS YEAR TO INACT. STORAGE	MICROFILM THIS YEAR	* * * * * DISPOSE OF THIS MONTH/YR AND BEFORE	* * * * * USE THIS METHOD
220313	MINUTES, DRAIN BOARD/WATER MANAGEMENT					PERM TO ARCHIVES

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**CERTIFICATION OF RECORDS DISPOSAL**  
 INFORMATION TECHNOLOGY DEPARTMENT  
 RECORDS MANAGEMENT  
 SFN 7694 (8-2011)

Certification Number
2013253
Complete and Return By:
<b>December 31, 2013</b>

Agency	Division
County Name:	Resource District (899-015)

**INSTRUCTIONS**

- Review your Records Retention Schedule and Disposal report to identify any changes to existing record series or additions and deletions to the Records Retention Schedule. This includes any changes to the retention periods assigned to the record series. Mark the appropriate Schedule Review box below.
- Verify that the records approved for disposal or transfer to the State Archives have been handled as specified in the attached Records Disposal Report. Make a note on the Records Disposal Report if you are not transferring or disposing of any records that are listed on the report. Mark the appropriate Records Disposal box below.
- Enter the total inches of records disposed under the appropriate size. Measure from the front of the drawer or box to the back OR the height of the records stacked on the floor or desk. For electronic records deleted, track the volume of Megabytes (MB) and enter under the Electronic column below.  
  
Sign and date the Agency Certificate of Schedule Review and Records Disposal below.
- Contact the State Archives to transfer records designated as historical. When records are transferred, **include the Disposal Report (RM 1071-AA) and this signed Certification of Records Disposal** with the records being transferred. The State Archivist or designated representative will sign the Certificate of Transfer.
- If no records are designated for transfer to the State Archives, **send the Disposal Report (RM 1071-AA) and this signed Certification of Records Disposal** to ITD, Records Management, 600 East Boulevard Avenue, Bismarck, ND 58505- 0100.

**AGENCY CERTIFICATE OF SCHEDULE REVIEW AND RECORDS DISPOSAL**

- Schedule Review** (Check One)
  - I certify that I have reviewed the Records Retention Schedule and it is correct.
  - I certify that I have reviewed the Records Retention Schedule and corrections are required. The Record Series Description(s) (SFN 2042) necessary to make the corrections will be sent to ITD Records Management or are attached.
- Disposal Review** (Check One)
  - I certify that only those records approved on the attached Records Disposal Report (RM 1071-AA) have been transferred or disposed of by the methods specified in that report.
  - I certify that records have not been disposed as specified in the Records Disposal Report and that this office is not in compliance with the records management program as specified in NDCC Chapter 54-46.
- Disposal Volume** - Estimate the total inches disposed or electronic storage space (MB) recovered and enter below.

Size of Records	Letter Size 8 1/2 X 11	Legal Size 8 1/2 X 14	Size X	Size X	Size X	Electronic (MB)	Microfiche 5 3/4 X 4	Roll Microfilm 4 1/2 X 4 1/2
Inches or MB								
Signature of Employee Certifying Disposal					Telephone Number		Date	

<b>4. CERTIFICATE OF TRANSFER TO STATE ARCHIVES</b>	
I certify that the following records (title/control number) were transferred to the State Historical Society/ Designated Repository:	Date of Transfer
State Archivist/Designated Representative	Date

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# State of North Dakota

## Office of the State Engineer

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850  
701-328-2750 • FAX 701-328-3696 • <http://swc.nd.gov>

February 1, 2013

### SOLICITATION OF VIEWS

**RE: APPLICATION TO THE STATE ENGINEER FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS OR WATERS OF THE STATE OF NORTH DAKOTA.**

City of Bismarck, ND Applicant, Application No. **S-1833**

The City of Bismarck, North Dakota through Apex Engineering Group, Bismarck, North Dakota has filed an application with the State Engineer to modify the Mills Avenue Causeway located on a side channel of the Missouri River in Burleigh County. The proposed project is in response to the 2011 Missouri River flood event. This project is part of a larger project to repair damages to and raise portions of Riverwood Drive and Mills Avenue to protect the City of Bismarck and provide access to the area during any future flood events.

Specifically, the project will involve installation of a new 36-inch culvert and control structure, widening of the road bed to account for the grade raise and inslope flattening required to meet roadway safety requirements with the placement of approximately 310 cubic yards of fill material (earth), and the placement of approximately 55 cubic yards of rock riprap on the upstream road embankment and culvert outflow point.

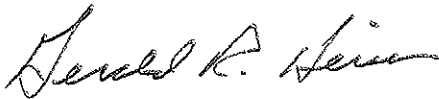
Construction will occur in the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 18, Township 138 North, Range 80 West, Burleigh County.

Projects which lie either partially or wholly below the ordinary high watermark of navigable streams or waters may require authorization from the State Engineer prior to construction or operation. At the discretion of the State Engineer, a public meeting may be held on the project for the purpose of gathering information. The State Engineer will consider riparian owner's rights, recreation, navigation, aesthetics, erosion, wildlife, water quality, maintenance of existing water flows, alternative uses, and the environment in determining whether to grant the authorization.

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To ensure that all environmental, economic and social factors are considered in the evaluation of this application, your views and comments are solicited. It is requested that any comments or information be forwarded within 30 days of the date of this mailing to the State Engineer, at 900 East Boulevard Avenue, Bismarck, North Dakota. If no reply is received within the 30 days, it will be assumed that your agency has no comment on this project.

Sincerely,



Gerald R. Heiser  
Sovereign Lands Manager

GH:ph/1625

Enclosures: Sovereign Lands Application  
Drawings  
Map

Copies to: Mike Brand, North Dakota State Land Department  
Jesse Hanson, North Dakota Parks and Recreation Department  
Terry Steinwand, Director, North Dakota Game and Fish Department  
Peter Wax, North Dakota Department of Health  
Dave Koland, Garrison Diversion Conservancy District  
U.S. Fish and Wildlife Service, Bismarck  
State Historical Society of North Dakota  
Burleigh County Water Resource District  
U.S. Army Corps Engineers, Bismarck

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January 25, 2013

Jerry Heiser  
ND State Water Commission  
900 East Boulevard Avenue, Dept 770  
Bismarck, ND 58505-0850

**RE: CER-1-981(099)109, PCN 19992, Riverwood Drive and Mills Avenue  
Sovereign Lands Permit Application**

Dear Mr. Heiser:

Please find attached the Sovereign Lands Permit Application for the above referenced project. This project is in response to the 2011 Missouri River flood event. The purpose of the proposed project is to repair damages to the roadways and to raise portions of the roadways to protect the City of Bismarck and provide access during future flood events. The area of the project involving Sovereign Lands is the existing Mills Avenue Causeway. The modified causeway will include a new 36-inch culvert, control structure and widening to account for the grade raise and inslope flattening required to meet roadway safety requirements.

If you have any questions, please feel free to contact me at 701.323.3958.

Sincerely,

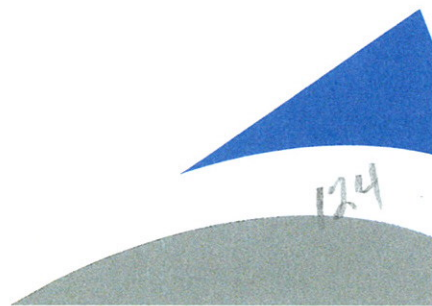
Apex Engineering Group, Inc.



Scott M. Schneider, PE, CFM

Cc: Mel Bullinger, PE – City of Bismarck Engineer

Encl.

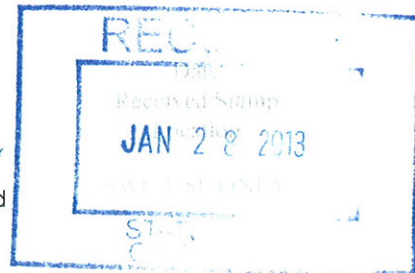




# APPLICATION FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS AND WATERS

Office of the State Engineer  
900 East Boulevard  
Bismarck, ND 58505-0850

Permit No. 51833  
Project No. 1625



I, the undersigned, do hereby submit the following information to the Office of the State Engineer as an application to construct a project that may impact islands and beds of navigable streams and waters of North Dakota under NDCC Chapter 61-33.

## GENERAL INFORMATION:

This Application must include a map from an actual survey, aerial photo or topographic map and plot map (if a development). The size of the map shall be 8½ by 11 inches. The map shall have a north arrow and approximate scale. Indicate the existing or proposed work on the drawing. Plans and specifications must be submitted if project includes construction work.

- (1) Project will be located in the: Burleigh County Water Resource District
- (2) Legal description to the nearest 40 acre tract: NE ¼ NE ¼ Section 18 Township 138N Range 80W
- (3) Is this application for modification of an existing project  Yes  No If so, what year was project constructed: unknown  
By whom: unknown
- (4) Proposed project involves  water crossing, type causeway  boat dock,  boat ramp,  water intake,  dredge, volume \_\_\_\_\_ cu. yds.  filling, volume 310 cu. yds., type earth,  other (explain) \_\_\_\_\_
- (5) Water body on which project will be located: Missouri River
- (6) Purpose: Mills Avenue grade raise
- (7) Project Description: The project includes modification of the existing causeway including a new 36-inch pipe, control structure, and widening to account for the grade raise and inslope flattening required to meet roadway safety requirement.
- (8) Contractor, if known: \_\_\_\_\_
- (9) Anticipated construction start date: June 1, 2013 Completion date: October 1, 2013

The filing of this application and its approval in no way relieves the applicant or riparian landowner from any responsibility or liability resulting from the construction, operation or failure of the project.

Riparian Land Owner or Organization Sponsor: (Print) City of Bismarck

Applicant: (Print) Mel Bullinger

Address: PO Box 5503

Bismarck, ND 58506

Phone: (H) n/a

(W) 701-355-1505

Signature: Mel Bullinger Date Submitted: 1-24-2013  
(Riparian landowner or Organization Sponsoring the project)

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**JOB # \_\_\_\_\_**  
**CITY OF BISMARCK**

**MILLS AVENUE & RIVERWOOD DRIVE**

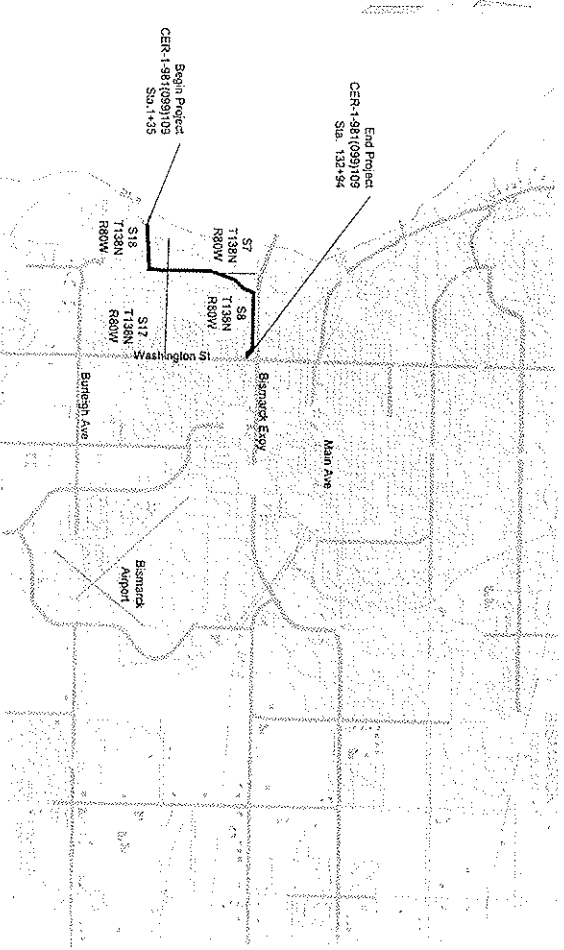
CER-1-981(099)109  
 DDJR No. 981-1  
 Event No. 11-2A  
 Burleigh County, North Dakota

Grading, Sawtooth Base Course, Hot Bituminous Pavement, Curb & Gutter, Storm Sewer, Outlet Structures, Lighting, Signing, Marking & Internals

**GOVERNING SPECIFICATIONS:**  
 Standard Specifications adopted by the North Dakota Department of Transportation October 2008. Standard Drawings currently in effect, and other Contract Provisions submitted hereto.  
**PROJECT NUMBER, DESCRIPTION** NET MILES 2.49 Miles  
 CER-1-981(099)109 2.49 Miles  
 GROSS MILES 2.49 Miles

NAME		
Clear Zone Distance: 14'	Design Speed: 35	
Minimum Sight Dist. for Stopping: 250'	Bridges: N/A	
Minimum Sight Dist. for Safe Passing: N/A		
Sight Dist. for No Passing Zone: N/A		
Payment Design Life (20 years)		
DESIGN DATA (ADT)		
Traffic	Mills Ave	Riverwood Dr (N/S portion)
Current: 2009	Total: 1465	Total: 2995
Forecast: 2029	Total: 1975	Total: 3800
		Total: 5120

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	CER-1-981(099)109	19992	1	1



All coordinates are Burleigh County ground coordinates. They are derived from the "North Dakota Coordinate System of 1983", NAD83(CORS) North Zone Combination Factor (f) = 0.9999529 NAD-88

**DESIGNERS**  
 Jason P. Gullicks, PE  
 Scott Schneider, PE, CFM  
 Jennifer Malloy, PE, LSIT  
 Sarah Mohl

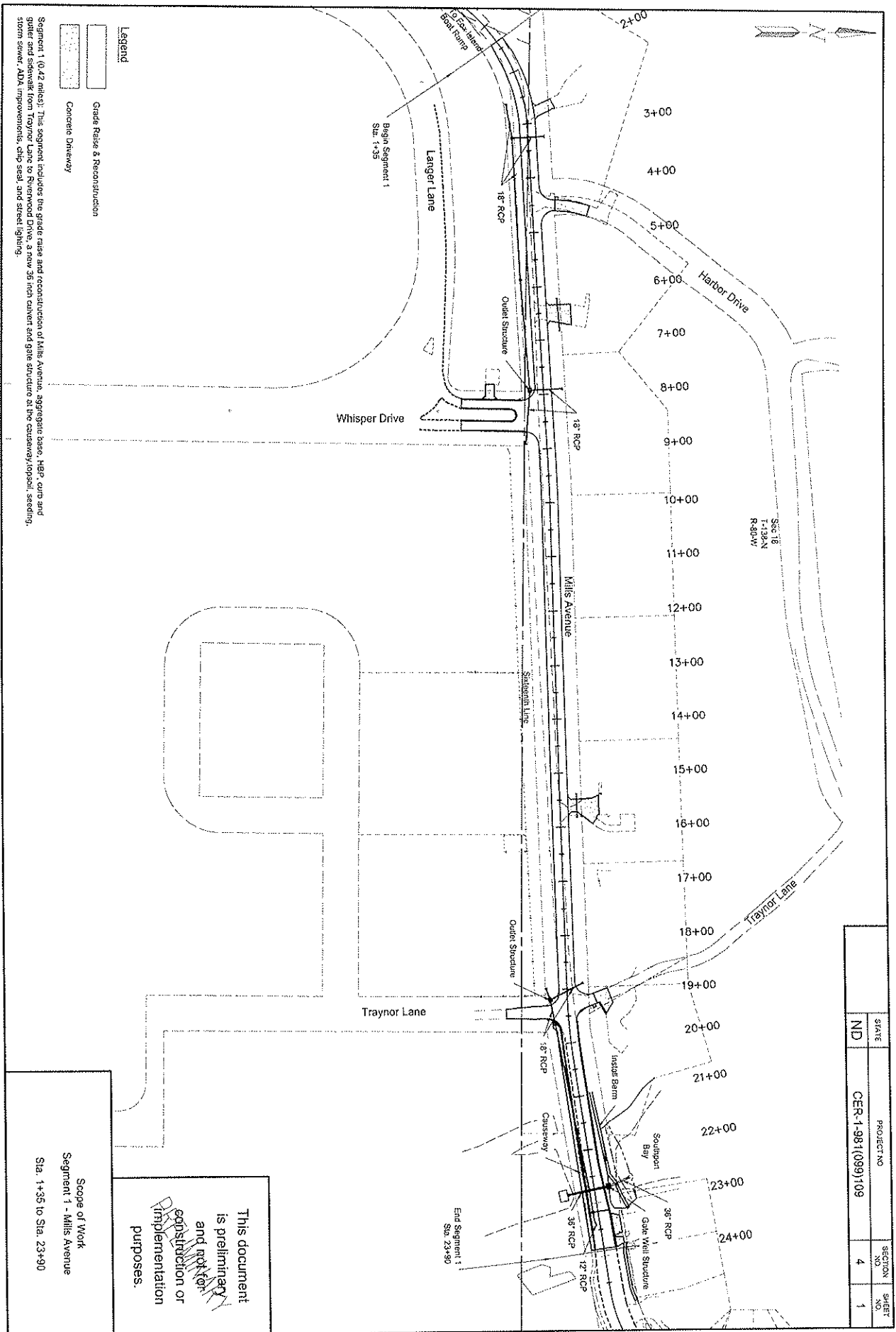


**APPROVAL OF CITY ENGINEER**  
 I,         , Mayor, City Engineer, for the City of Bismarck, North Dakota, hereby approve these plans for Mills Avenue & Riverwood Drive. Project Number CER-1-981(099)109 as shown on the accompanying plans.  
 APPROVED DATE:           
 Melvin J. Bullinger, PE  
 City Engineer  
 Bismarck, North Dakota

This document is preliminary and not for construction or implementation purposes.

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.  
 APPROVED DATE:           
 Jason P. Gullicks, PE  
 Apex Engineering Group

This document is preliminary and not for construction or implementation purposes.



Segment 1 (0.42 miles): This segment includes the grade raise and reconstruction of Mills Avenue, aggregate base, HRP, curbs and gutters and sidewalks. This segment includes a new 36 inch concrete end gate structure at the causeway, (opistol, seeding, storm sewer, ADA improvements, chip seal, and street lighting).

- Legend**
- Grade Raise & Reconstruction
  - Concrete Driveway

This document  
is preliminary  
and not for  
construction or  
implementation  
purposes.

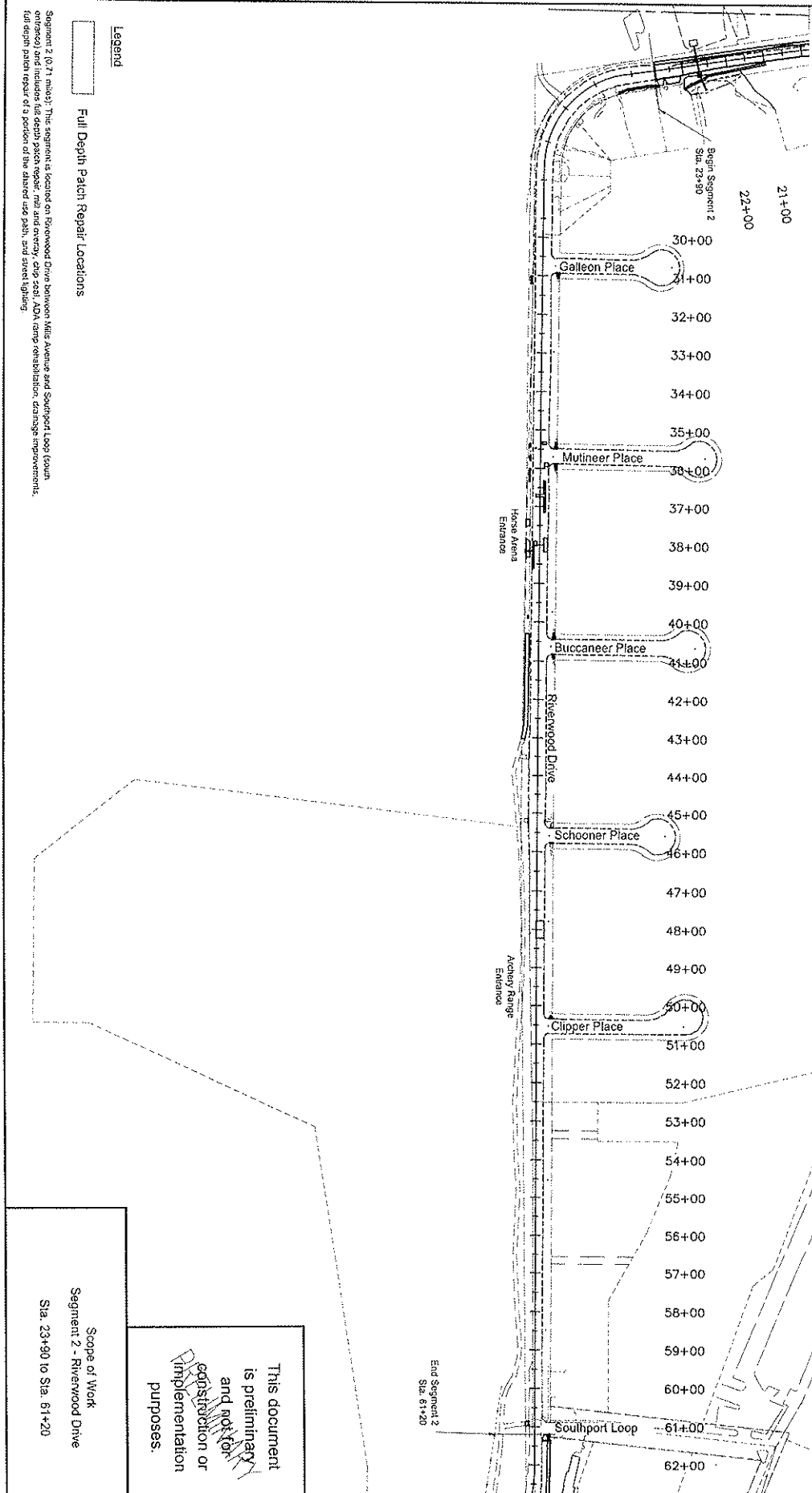
Scope of Work  
Segment 1 - Mills Avenue  
Sta. 1+35 to Sta. 23+90

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-981(099)109	4	1

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Sac 18  
1-138-N  
R-300-W



Segment 2 (to 71 miles). This segment is located on Riverwood Drive between Mills Avenue and Southport Loop (from entrance) and includes full depth patch repair, mill and overlay, chip seal, ADA, ramp rehabilitation, drainage improvements, full depth patch repair of a portion of the shared use path, and street lighting.

**Legend**

Full Depth Patch Repair Locations

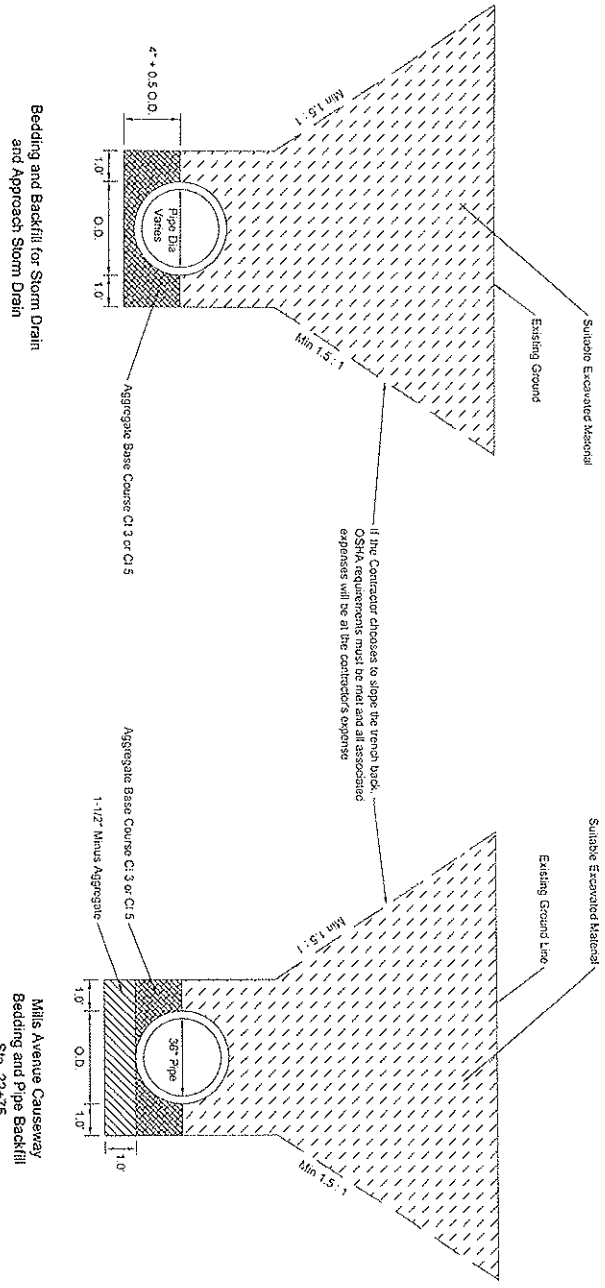
Scope of Work  
Segment 2 - Riverwood Drive  
Sta. 23+90 to Sta. 61+20

This document is preliminary and not for construction or implementation purposes.

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-981(099)109	4	2

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STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-981(099)109	20	11



If the Contractor chooses to slope the trench back, OSHA requirements must be met and all associated expenses will be at the contractor's expense.

Bedding and Backfill for Storm Drain and Approach Storm Drain

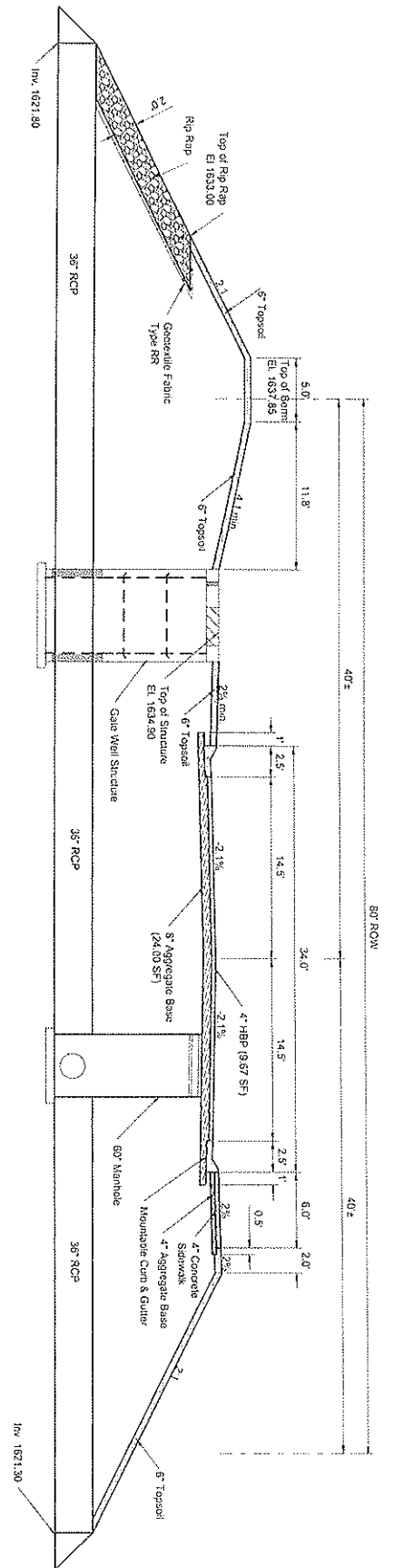
Mills Avenue Causeway Bedding and Pipe Backfill Sta. 22+75

This document is preliminary and not for construction or implementation purposes.

- Included in Pipe Pay Item
- 1) Pipe
  - 2) Trench excavation
  - 3) Deposit of suitable excavated material
  - 4) Backfill of suitable material
  - 5) 1-1/2" Minus and Aggregate Base Course C 3 or C 5
- Pay Items
- 1) Pipe
- NOTES
1. Compaction requirements for all materials associated with the trench shall meet 90% of AASHTO T-99 Maximum thickness of any one lift shall not exceed 6 inches.

Pipe Bedding and Backfill General Details

STATE	PROJECT NO	SECTION NO	SHEET NO
ND	CER-1-981(099)109	30	6

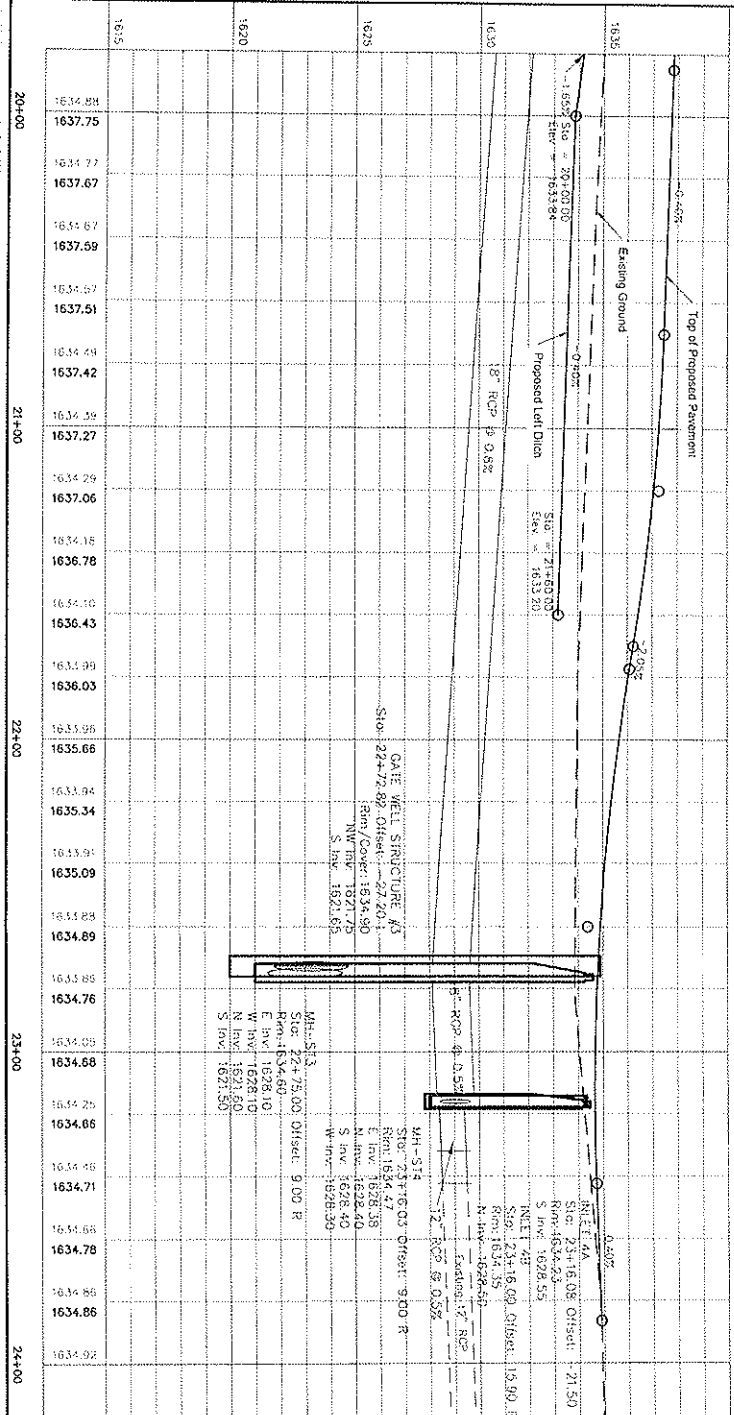
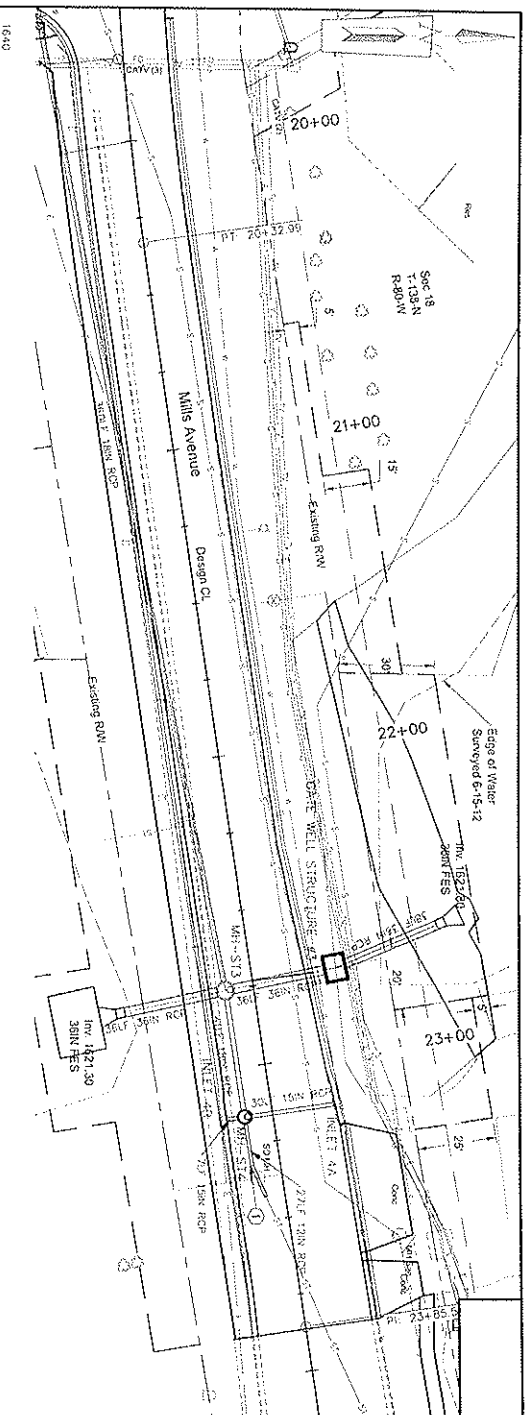


Proposed Typical Section  
Station 22+70 to 22+80

This document is preliminary and not for construction or implementation purposes.

Proposed Typical Sections  
Segment 1 - Mills Avenue  
Grade Raise

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-987(099)109	55	6



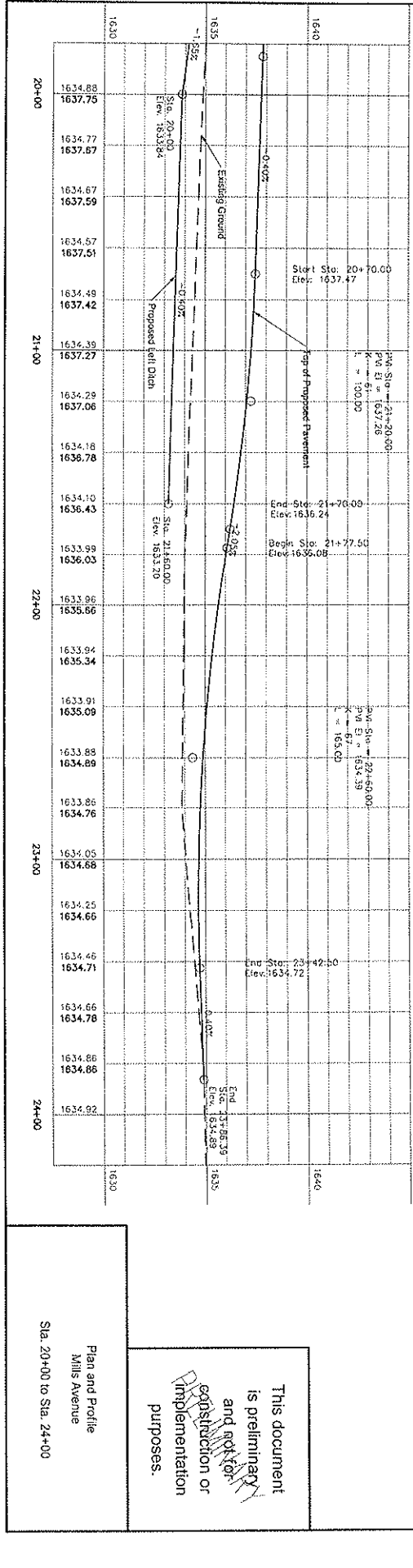
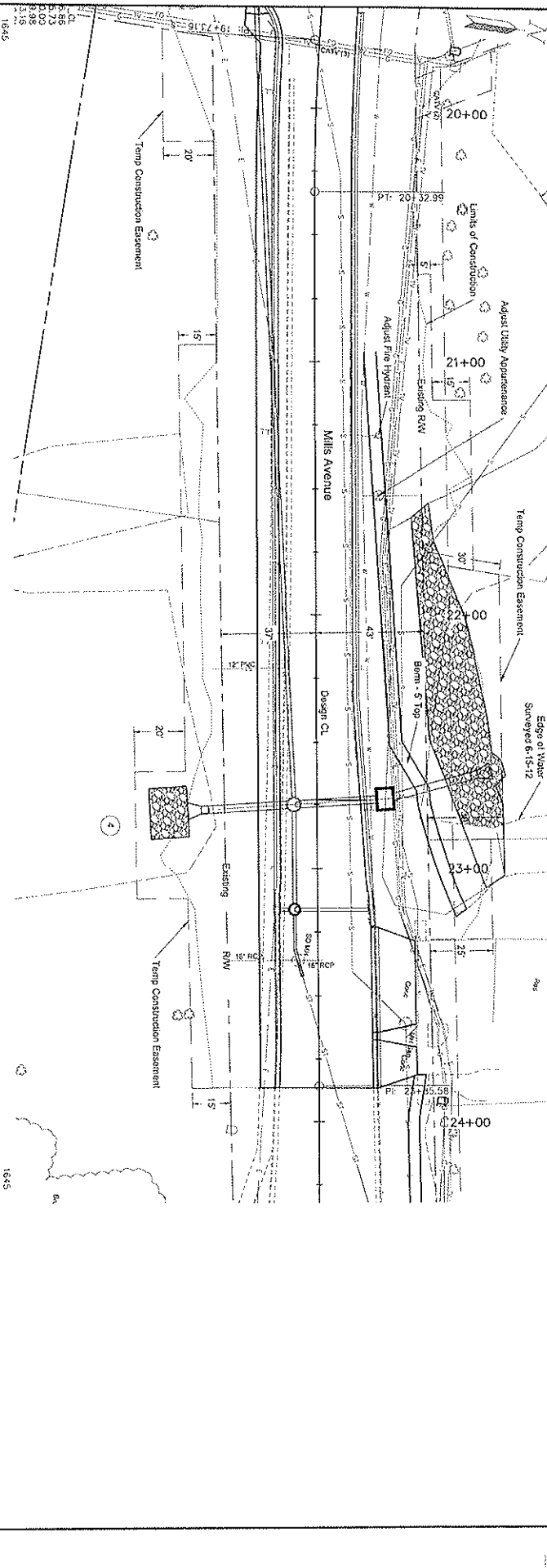
- 1 27 LF Pipe Conduit, 12IN Storm Drain MH-514 to Sta. 22+42.6' RI
- 1 30 LF Pipe Conduit, 15IN Storm Drain Inlet 4A to MH-514
- 1 7 LF Inlet 4B to MH-514
- 1 27 LF Pipe Conduit, 18IN Storm Drain 28+00 to MH-513
- 1 36 LF Pipe Conduit, 18IN Storm Drain Inlet 4A to MH-513
- 1 36 LF Pipe Conduit, 18IN Storm Drain Inlet 4B to Sta. 22+77.45' RI
- 1 1 EA Manhole 48IN MH-512
- 1 1 EA Manhole 60IN MH-513
- 1 4.83 LF Manhole Riser 48IN MH-514
- 1 11.77 LF Manhole Riser 60IN MH-513
- 1 1 EA Inlet 4A
- 1 1 EA Inlet 4B
- 1 1 LSUM Gate Well Structure #3

NOTE: 1 Contractor shall fabricate bend with 12IN RCP. Bend shall be certified by manufacturer. All costs shall be included in price bid for "Pipe Conduit, 12IN Storm Drain".

This document is preliminary and not for construction or implementation purposes.

Drainage Layout  
Mills Avenue  
Sta. 20+00 to Sta. 24+00

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-98(1039)109	60	6

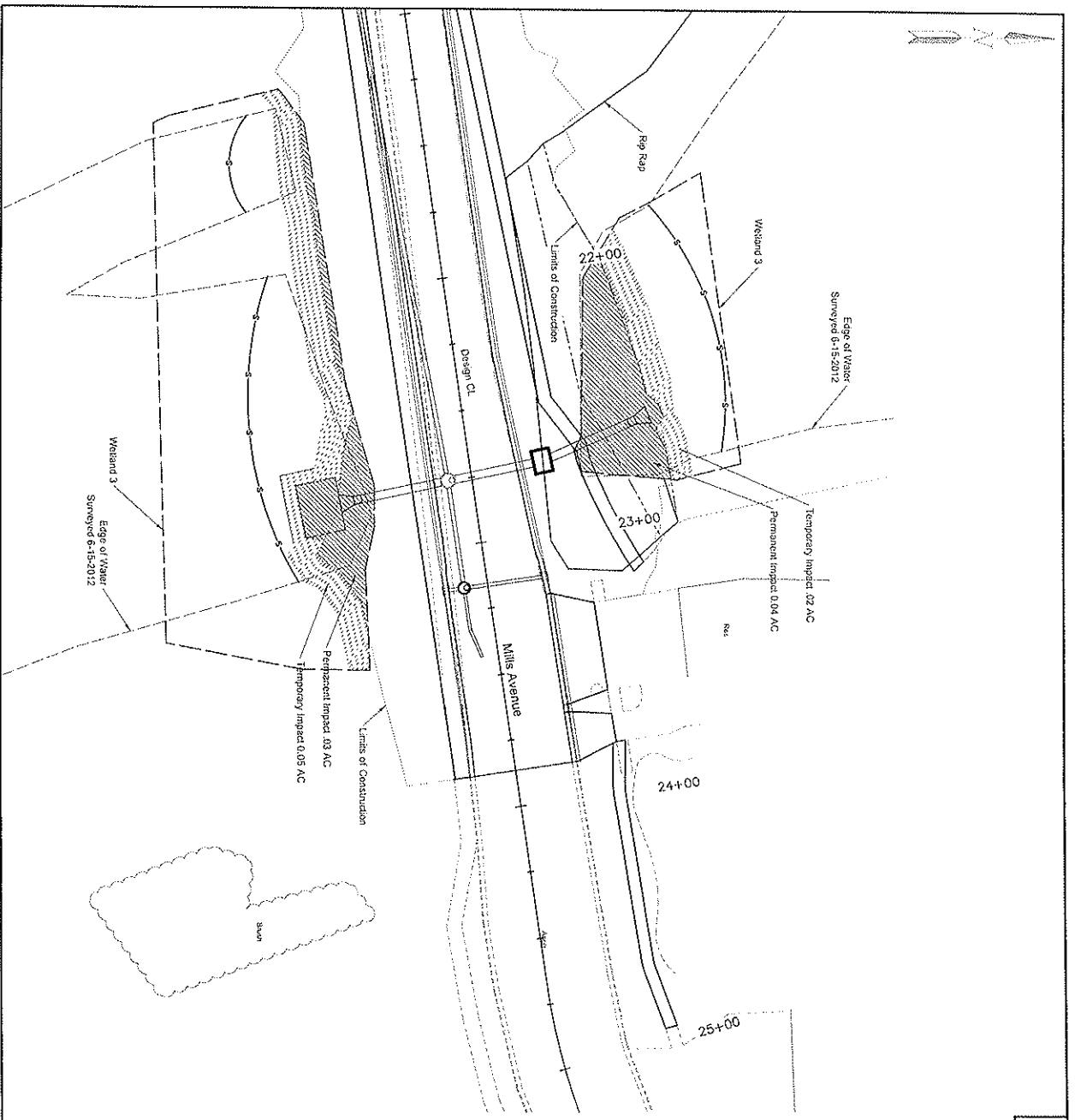


10/27/2013 10:27:51 AM Sarah Mear K:\Projects\001312 118 607 816 Renewed Drive\Design\Drawings\Plan Section\00\_Plan\_Profile.dwg

This document is preliminary and not for construction or implementation purposes.

Plan and Profile  
Mills Avenue  
Sta. 20+00 to Sta. 24+00

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	CER-1-981(099)109	75	2



Legend

	Existing Delineated Wetlands
	Permanent Wetland Impacts
	Temporary Wetland Impacts

Wetland #	Wetland Impacts	Sta. 22+00 to Sta. 25+00
Wetland 3	Permanent Wetland Impacts	0.07 Ac.
Wetland 3	Temporary Wetland Impacts	0.07 Ac.

This document is preliminary and not for construction or implementation purposes.

Wetland Impacts  
Wetland 3  
Sta. 22+00 to Sta. 25+00

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# State of North Dakota

## Office of the State Engineer

900 EAST BOULEVARD AVE. • BISMARCK, ND 58505-0850  
701-328-2750 • FAX 701-328-3696 • <http://swc.nd.gov>

January 28, 2013

### SOLICITATION OF VIEWS

**RE: APPLICATIONS TO THE STATE ENGINEER FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS OR WATERS OF THE STATE OF NORTH DAKOTA.**

U.S. Army Corps of Engineers, Yankton, SD Applicant, Application No. **S-1830**

The U.S. Army Corps of Engineers (Corps) has filed an application with the State Engineer to place the Corps "Area Closed" and the State Engineer's "No Trespassing" signs on piping plover and least tern nesting areas (islands/sandbars) on the Missouri River between river-mile 1283.0 south of Bismarck and river-mile 1381.0 south of the Garrison Dam for the 2013 nesting season. There are potentially more than 20 sites (islands/sandbars) on the Missouri River that could be signed in Burleigh, Morton, Oliver, Mercer, McLean, and Emmons Counties. Only islands with active nests will be signed. The Corps may sign the entire island/sandbar or only a portion of any given island being used for nesting by piping plovers or least terns. The Corps will not place the State Engineer's "No Trespassing" signs on any islands in the Bismarck-Mandan corridor of the Missouri River between river-mile 1310.0 and 1320.0. All signs will be removed by the Corps once any hatched chicks have fledged.

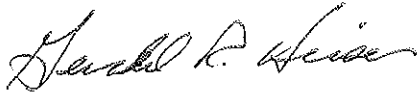
Projects which lie either partially or wholly below the ordinary high watermark of navigable streams or waters may require authorization from the State Engineer prior to construction or operation. At the discretion of the State Engineer, a public meeting may be held on the project for the purpose of gathering information. The State Engineer will consider riparian owner's rights, recreation, navigation, aesthetics, erosion, wildlife, water quality, maintenance of existing water flows, alternative uses, and the environment in determining whether to grant the authorization.

To ensure that all environmental, economic and social factors are considered in the evaluation of this application, your views and comments are solicited. It is requested that any comments or information be forwarded within **30** days of the date of this mailing to the State Engineer, at

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900 East Boulevard Avenue, Bismarck, ND. If no reply is received within the **30** days, it will be assumed that your agency has no comment on this project.

Sincerely,



Gerald R. Heiser  
Sovereign Lands Manager

GH:ph/1625

Enclosures: Sovereign Lands Application  
Drawings  
Map

Copies to: Mike Brand, North Dakota State Land Department  
Jesse Hanson, North Dakota Parks and Recreation Department  
Terry Steinwand, Director, North Dakota Game and Fish Department  
Peter Wax, North Dakota Department of Health  
Dave Koland, Garrison Diversion Conservancy District  
U.S. Fish and Wildlife Service, Bismarck  
State Historical Society of North Dakota  
Burleigh County Water Resource District  
Morton County Water Resource District  
McLean County Water Resource District  
Mercer County Water Resource District  
Oliver County Water Resource District  
Emmons County Water Resource District  
U.S. Army Corps Engineers, Bismarck

JAN 1 2013

January 3, 2013

Office of the State Engineer  
State of North Dakota  
900 East Boulevard Avenue  
Bismarck ND 58505-0850

Dear Sir or Madam,

Enclosed is an application for authorization to construct a project within islands and beds of navigable streams and waters of North Dakota. Section 1 of the permit application asks which water resources district the project will be located in. The project, the placement of restriction signs delineating endangered species nesting sites on the Missouri River, will encompass several North Dakota counties, including McLean, Mercer, Oliver, Burleigh, Morton and Emmons.

For Section 2, the enclosed maps shows the locations of the proposed placement of restriction signs informing the public of endangered species nesting sites on the Missouri River. The maps show satellite imagery of the Missouri River taken in June 2012. Highlighted in white are the river mile designations of sandbars that might be used by least terns and piping plovers as nesting sites in 2013 where restriction signs may be placed.

If additional information is required, please feel free to contact me at 402-667-2887. Thank you for your assistance.

Sincerely,



Micheal Delvaux  
Terrestrial Science Coordinator  
U.S. Army Corps of Engineers

Encl



APPLICATION FOR AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN ISLANDS AND BEDS OF NAVIGABLE STREAMS AND WATERS

Office of the State Engineer
900 East Boulevard
Bismarck, ND 58505-0850

Permit No. 51830
Project No. 1625



I, the undersigned, do hereby submit the following information to the Office of the State Engineer as an application to construct a project that may impact islands and beds of navigable streams and waters of North Dakota under NDCC Chapter 61-33.

GENERAL INFORMATION:

This Application must include a map from an actual survey, aerial photo or topographic map and plot map (if a development). The size of the map shall be 8 1/2 by 11 inches. The map shall have a north arrow and approximate scale. Indicate the existing or proposed work on the drawing. Plans and specifications must be submitted if project includes construction work.

- (1) Project will be located in the: Missouri River Water Resource District
(2) Legal description to the nearest 40 acre tract: 1/4 1/4 Section Township Range
(3) Is this application for modification of an existing project Yes No If so, what year was project constructed:
By whom:
(4) Proposed project involves water crossing, type boat dock, boat ramp, water intake, dredge, volume cu. yds. filling, volume cu. yds., type other (explain) Placement of restriction signs to protect endangered species nesting and brooding sites.
(5) Water body on which project will be located: Missouri River
(6) Purpose: Placement of restriction signs to protect endangered species nesting and brooding sites.
(7) Project Description: Endangered species restriction signs will be placed around the perimeter of Missouri River sandbars to protect least tern and piping plover nesting and brooding sites. The signs will be removed at the conclusion of the 2013 breeding season.
(8) Contractor, if known: not applicable
(9) Anticipated construction start date: May 1, 2013 Completion date: August 31, 2013

The filing of this application and its approval in no way relieves the applicant or riparian landowner from any responsibility or liability resulting from the construction, operation or failure of the project.

Riparian Land Owner or Organization Sponsor: (Print)

Applicant: (Print) Micheal Delvaux

Address: Gavins Point Project PO Box 710
Yankton SD 57078

Phone: (H) 308-227-2806

(W) 402-667-2887

Signature: [Handwritten Signature] Date Submitted: 1-3-2013
(Riparian landowner or Organization Sponsoring the project)

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**US Army Corps of Engineers**  
**Mercer, McLean, Oliver, Burleigh, Morton & Emmons Co**  
**Permit No. S1830**



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City of Bismarck  
NE1/4 NE1/4 Section 18, T138N,R80W

Burleigh County  
Permit S-1833



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BCWRD Invoices Revised

2-15-13

Name	Project	Invoice	Amount	Code
Bismarck Parks and Rec	January bill	3203	\$6,954.54	904
Bliss & Stebbins Law Firm	Legal	12976	\$4,289.50	312
Houston Engineering	General	14377	\$2,071.25	315
Houston Engineering	General	14378	\$4,340.00	315
Houston Engineering	Fox Island Flood control	14380	\$233.75	937
Houston Engineering	Fox Island Flood control	14381	\$4,597.50	937
Houston Engineering	Sunny View	14379	\$4,463.75	937
ND Water Resource Districts	2013 dues	2013	\$475.00	376
Dakota Prairie RC&D	2013 dues	2013	\$100.00	376
US Department of Interior	Missouri River geomorphic survey	90148884	\$2,500.00	910
Bank of North Dakota Trust	Administrative fees		\$242.23	937
Friends of Lake Sakakawea	Membership dues	2013	\$100.00	376
Personalized Management Svs.	Jan. Secretarial services	5114	\$493.75	112
Personalized Management Svs.	suplies	5114	\$167.56	411
		<b>TOTAL:</b>	<b>\$31,028.83</b>	

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