



**BURLEIGH COUNTY WATER RESOURCE DISTRICT AGENDA**

**Tuesday, May 14, 2013 – 8:00 a.m.**

**Tom Baker Meeting Room**

8:00 a.m. - Call to Order

- 1. Roll Call (Fleck, Royse, Backstrand, Weixel, Jones)
- 2. **Approval of Minutes of (4-9-13)..... 1-8**
- 3. Financial Reports
  - End of March Financial Data (Ken) .....9
- 4. **Approval of Bills Totaling \$21,566.62 (detailed bills on page 94 ) ..... 10**
- 5. McDowell Dam Recreation Area Updates
  - McDowell Dam Expenses (Forrest/Greg) ..... 11
  - Update on Building Project (Forrest)
  - Water Permit Applications (Cary)
  - Land Lease Renewal – Advertisement .....12-14
  - Certificate of Liability Insurance – Aero Club ..... 15
- 6. Drainage Complaints
  - Eldin Spier/UTTC – City of Bismarck Letter (Update)
  - 4-9-13 Letter to Patrick Smith withdrawing complaint ..... 16
  - Emery/Koppang
    - Legal filing appealing Board determination (Dave).....17-20
    - Watercourse Relocation Proposal – H&H Landscaping (Cary) .....21-26
    - Letter regarding acceptability (Terry) .....27-32
  - Mark Swenson – U Mary (Cary) .....33-42
- 7. Missouri River Flood Hazard Mitigation Studies (Michael)
  - Missouri River Correctional Center FHMP #23 – Next Steps
  - Sibley Area FHMP #26, #27 & #30 – Status
  - Sandy River Drive – Public Informational Meeting (WRD/County)  
Dates - May 29<sup>th</sup> (Kathleen)
- 8. Comments and Discussion from Public
- 9. Break
- 10. Fox Island Flood Control Project (FM #19 & #21) (Michael)
  - Action of Bismarck City Commission to Table - Mills Avenue and Riverwood Drive Project
  - Letter to Mayor Warford on Riverwood Drive & Mills Avenue .....43
  - Riverside Residents Requests from Meeting (see meeting summary).....44-45
    - **Draft Easement Document.....46-48**
    - **Staking of floodway/levee alignment and preliminary survey**
  - Township Roadway Cost Share Option – Alternative Impacts and Costs (Marcus – June)
- 11. Hogue Island Flood Control Project (FM #39)
  - Property Acquisition Status – Purchase Agreements and Closing Dates (Dave)
  - Letter to Todd Sando 5-3-13 re: acquisitions .....49-50
  - **Scope of Work and Specific Authorization for Demolition Plans (Michael)**
  - Project Development (on hold)

12. Burnt Creek Flood Control Repair Project (FM #7) – Update	
• SWC Cost Share Request – Draft Letter (Michael).....	51
• Site meeting later in May or early June	
• Bismarck Park District Easements	
• Cattail Spraying (Craig)	
13. Hay Creek Greenway and Sediment & Geomorphic Assessment Update (Craig)	
• Phase I Report to be provided to the NDDH by May 31 <sup>st</sup> – email and handout	
14. Sunny View Flood Control Project (Michael)	
• Landowner Letters (Hartman, Geiger, Jundt and Richter).....	52-58
• Richter Meeting – May 16 <sup>th</sup>	
15. Apple Valley Cooperative Lagoon Project (Travis)	
• Cell No #2 is drained – Awaiting lifting of road restrictions	
• General Permit for Stormwater Discharges from Construction Activity.....	59
16. Missouri River Snagging and Clearing (Michael – Larry Kramka)	
• Meeting with North Dakota State Engineer – May 2 <sup>nd</sup> .....	60-63
• <b>Authorization – Scope of Services</b>	
17. Other Old Business	
• FEMA Community Rating System – Training Seminar (City/County/WRD)	
• County Commission Report – ¼ WRD Report – May 20 <sup>th</sup> (Cary) or June 3 (Terry)	
• Houston Engineering – EJCDC Contract	
• Letters to Engineering Firms .....	64-65
• Records Retention Policy update – (Pending - Records Review – schedule in summer time)	
• Financial Accounting - Status Update	
18. New Business	
• Apple Creek USGS Gage	
◦ Request for State Water Commission Funding - update	
◦ Request to County Commission	
• Authorization to Review - Storm Water Management Plan Review – Marcus Hall Request	
◦ The Ranch	
◦ Apple Creek Ridge	
• Apple Creek Industrial Park – Flood Control Levee (Memorandum) .....	66-82
• South 12 <sup>th</sup> Street Watershed – Stormwater Removal Alternatives (Rural and Urban Development)	
• Country Creek Addition – Runnel Road Drainage concern.....	83
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19. Correspondence or Document Information	
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• Permit No. ND2013-14692 Missouri River .....	86-87
• 2013 Annual Meeting and Executive Briefing .....	88-90
• North Washington Street Project .....	91-93
• City Revised Final Plats – emailed	
◦ Eagle Crest 6 <sup>th</sup> Addition	
• City Final Plats – emailed	
◦ Country Ridge First Subdivision	
◦ Country West Heights Addition	
• City Recorded Final Plats – emailed	
◦ Brei Estates First Addition	
◦ Trenton Addition	
◦ Pride Addition	
◦ Boulder Ridge 5 <sup>th</sup> Addition	

- Edgewood Village 7<sup>th</sup> Addition
- City Preliminary Plats – emailed
  - Hay Creek Commercial Addition
  - Sara’s Addition
  - Kamrose First Addition
- Annexations – emailed
  - Country West 31<sup>st</sup> Addition
- Street Name Change - emailed
  - Yorktown Drive to Greenboro Drive – Stonecrest Second Addition
- Storm Water Management Plans- Preliminary, Revised & Final– emailed
  - Country North Estates 4<sup>th</sup> Subdivision – Revised
  - Country Ridge 1<sup>st</sup> Subdivision
  - Country Hills 2<sup>nd</sup> Subdivision
  - The Ranch Subdivision

20. List of Bills.....94

21. Next Meeting: June 11, 2013

22. Adjourn

**Note: Bold Items Require Board Action**



**BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES**  
**Tuesday, April 9, 2013**  
**Tom Baker Meeting Room – City/County Building**

**Present:** Chairman Terry Fleck, Kathleen Jones, Gordon Weixel, Ken Royse, and Mona Livdahl, Personalized Management Services, Inc.

**Absent:** Cary Backstrand and Dave Bliss, Bliss & Stebbins Law Firm

Chairman Fleck called the meeting to order at 8:03 a.m. roll call was taken noting a quorum was present and one member absent.

**Minutes 3-19-13:** Kathleen moved to approve the minutes as presented, Ken seconded. Motion carried.

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

**Bills:** Kathleen moved to approve the bills in the amount of \$24,673.55. Gordon seconded. Motion carried.

**McDowell Dam Recreation Area updates:**

**McDowell Dam Expenses:** Reviewed, no action taken.

**Request for storage building:** Gordon noted he was out to McDowell Dam and had inspected the site for the 3-sided pole building. Forrest discussed the structure to be an area to put the equipment under as well as clean up the site. They are proposing a 3-sided building with a roof. Noted this was preferred versus a 4 sided building due to costs, i.e. doors, tracks, etc. It will have bays for equipment, noting down the line they elected to enclose a portion, it could be done. Bernie, the maintenance man at McDowell, was present and indicated he had taken the drawings to a few of the local building suppliers for a cost estimate on materials, noting the building will be constructed in house by Bismarck Parks and Rec staff. Materials will cost around \$8,000 which will exceed the budget for Capital Expenditures by about \$3,000. The City has approved the site as well as the building permit. Forrest noted they would like to have it completed by Memorial Day weekend. Noted cost should be under \$10,000. Flooring surface will be a gravel base. Discussed possibly doing a finished building, noting it would be prudent on our part to look at both angles - but continue with a gravel floor. Forrest indicated that this could be done in phases as the current drawings have the capabilities of being able to close off portions and/or expand. **Gordon moved that we proceed with the project, Kathleen seconded.**

**A roll call vote was taken:**

**Ken: Yes, Kathleen: Yes, Gordon: Yes, Chairman Fleck: Yes, Cary: Absent**  
**Motion Carried.**





## BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES

Tuesday, April 9, 2013

Tom Baker Meeting Room – City/County Building

### Drainage Complaints:

**Eldin Spier:** Noted Mel and Michael have reviewed the letter. Mel Bullinger was present and noted that as soon as he gets the signed copy of the letter he will send the City's letter out. Mel noted that at a past meeting, we had discussed a proposed hotel on the United Tribes site. It has been confirmed; however it will be built on the North side of campus - closer to the airport, which does not affect this process. Mel noted he will ask UTTC to reply to the letter and will try to report back by next meeting.

### Emery Koppang:

**Letter to Emery's:** The letter putting the Emery's on notice for the upcoming May 1<sup>st</sup> deadline will be going out this week.

**Complaint Dismissal Letter:** The dismissal letter on the complaint against Koppang's by the Emery's has gone out.

**Smith – Withdrawal Letter:** This letter has been mailed which notifies Mr. Smith that the complaint had been investigated and a mutually acceptable resolution was provided therefore the BCWRD is considering his complaint withdrawn or effectively dismissed.

### Missouri River Flood Hazard:

**MRCC:** Michael noted that the MRCC budget has now gone through the legislative process and funding for their portion of the levee is in the budget which has been passed. Michael noted, they likely budgeted their portion of costs subject to SWC cost share. Discussed getting a waiver to deviate from the State Water Commission's policy and try to get cost share now.

**Sibley Island:** Michael noted that they have met with two Bismarck Parks & Recreation District representatives Greg Smith, Randy Bina and two COE representatives. Michael noted they did not have a problem moving forward with planning to build the levee within the park. The only regulatory issue is crossing the old oxbow (coulee), and will need a nationwide permit. Michael noted they will proceed with continued planning. The Park District staff noted that it is a Federal park, owned by the COE, even though it is leased by the Bismarck Park and Recreation District. The existing roadway needs to be widened - as well as going possibly installing a trail and walking path. Michael noted those items would not be covered under the cost share, but the BPRD would look for grants to pursue this.



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**Sandy River Drive:** Michael met with Kathleen and Dave Pierce and discussed what they are looking for in protection measures. Consensus is that they are more looking more at an Emergency Response Plan as to what we have and what is out there and not a constructed project. Michael noted they will show preliminary options at the Public Hearing. The mailing list is over 400 residents, so we are looking at segmenting this meeting - North and South groups at separate times. Michael noted that he will work with Marcus on this and is hoping to schedule the Public Informational meeting this month.

**Discussion from the Public:** No members present.

### **Fox Island Flood Control Project:**

**Joint letter of support:** Letter is ready, need to have Chairman Jerry Woodcox to sign in support of this project. It will go out this week.

**Riverside Residents and Homeowners Association:** A meeting has been scheduled for April 10<sup>th</sup> at the Houston Engineering Inc. office. Michael will try to call Mr. Lee Tavis to have him at the meeting via conference call.

### **Hogue Island Property Acquisition:**

**Property Acquisition Status:** Bolls are ready to close; Magnus: Title company still working on documents; Rodgers: Purchase agreement is signed and Bernard: Waiting on FEMA. Trying now to get the title company to look at the Bernard' property, without a fixed amount in the agreement so they will proceed with title work. Michael noted that we may not need all 4 properties to close at the same time, need to work with the State Water Commission to find out.

**Securing realtor for property auction:** Michael discussed the process on selection. Noted we will need to auction 4 structures: Bolls, Rodgers home and shop and Bernard's.

**Approval to prepare scope of work for demolition plans:** Michael noted that if authorized, they will prepare a scope of work for demolition plans. Noted we will likely need 60 days to move the structure after purchase from auction. Questioned if we could begin clean up on Magnus' as there is nothing to auction, Michael noted we could possibly segment the process. Discussed the statutes on this: complete a sale of the property, via sealed bids, realtor or auctioneer. The Board would need to make that decision on the best way to go about this. Ken asked that we appoint a committee to work with Dave Bliss to keep this process moving. **Ken moved that Kathleen and he will assist Dave Bliss in the process and will report back at the next meeting. Kathleen seconded. Motion carried.**



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Ken noted on the issue of demolition, we will need to separate out and asked if we have a magnitude of cost to clean up the residences. Michael noted that in the acquisition plan, we had set aside \$40,000/residence to clean up. On the septic tanks Michael noted that they will check with the Health Department, however there are two options, one is to remove them; and the second is to pump them out and fill with sand. Discussed bidding these as individual line items. **Ken moved that we ask HEI to start the process of bidding these 4 structures as well as the clean-up of the lot. Kathleen seconded. Motion Carried.**

**Project Development:** On hold

### **Burnt Creek Flood Control Repair:**

**NRCS reimbursement:** The reimbursement in the amount of \$8,505 has been received for engineering costs.

**Project status:** Michael felt that it was prudent to take the Board members out to see the project and also to see if they would like to proceed with completion of the project.

**SWC Cost Share Request:** Michael noted we have an initial inquiry for the bank stabilization for cost share noting that in the event that the project is approved, funds may be available.

**Hay Creek:** No update.

**Sunnyview:** No updates at this time.

### **Apple Valley Cooperative Lagoon Project:**

**Change Order No. 1:** The order was signed and approval has been received from ND Department of Health.

**Preconstruction Conference:** Conference has been held just holding off on the weather and load restrictions.

### **Old Business:**

**FEMA Community Rating System:** Michael provided a handout of the Flood Insurance Reform Act of 2012. Michael noted he spoke to Ray Ziegler and he has not heard anything back from the City or County as of yet regarding supporting staff attending the training.



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**EMI Training:** Discussed the EMI training seminar which is fully paid for by FEMA and two representatives from each community can attend. Discussed having Mary Senger, Ray Ziegler and Craig Odenbach from HEI attend this training. It was noted if the Board is interested in doing this and the parties agree, Chairman Fleck will present this to the County Commissioners as part of the quarterly report. Michael will contact EMI on possibly reserving space and get background information for presentation to the County Commissioners. Consensus to proceed.

**County Commission Quarterly Report:** Chairman Fleck discussed getting on the April agenda to do his quarterly report, if not on April, the May meeting. It was noted that the next County Commission meeting is April 15<sup>th</sup> with the next being May 6<sup>th</sup>. The deadline for getting on the agenda for April 15<sup>th</sup> is noon tomorrow.

**EJCDC:** No report.

**Engineering Qualifications:** Ken noted Kathleen, Gordon, Cary and he reviewed the 3 proposals submitted by Houston Engineering Inc. (HEI), Ulteig and Apex. The recommendation was to continue with HEI as our primary firm and place the other two in a holding tank so if there are time constraints, and or a conflict of interest we could go to Ulteig and Apex for the work. Ken noted that we should inform the Burleigh County Commissioners as the quarterly meeting that this process was completed. Terry asked that we send letters to the companies who submitted qualifications letting them know the status. Ken will work with Mona to get the letters sent out to the other two engineering firms.

**Records Retention:** Noted this will be scheduled in the summer when things have slowed down a bit.

**Letter to Todd Sando:** Letter was sent out to Mr. Sando re: snagging and clearing on March 22nd. Have not heard back from Mr. Sando as of yet.

**Financial Accounting:** It was noted that May 10<sup>th</sup> will be the cut over date to exchange funds. Business cards need to be available to provide the City/County staff to hand out to the general public in the event they need to contact Mona.

**Construction Permit Application #2388:** Michael indicated that there is a desire to authorize Cary to approve letters for SOV's and permits that the BCWRD has received for timely responses.



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**Ken moved to allow Cary and Michael to prepare and send out letters related to permits, SOVs, etc received by the Board. Gordon seconded.** Michael noted that if it is a general comment letter it is not an issue however if it is a controversial item, they will bring it back to the board. Chairman Fleck noted the important part of the process is to keep everyone informed. **Motion carried.**

### **New Business:**

**Apple Creek USGS:** Michael updated noting he received a call from Steve Robinson, USGS and they are cutting stream gage funding, as part of the federal sequestration process, they will continue to operated until after the spring run off then shut it off. It was noted that when funding is reinstated, they will reinstate the gage. They are asking if the Board will fund the remaining year of the gage operation - noted the SWC has a program that funds such gages. The Board should let Steve Robinson know of our interest to maintain the gage and also go to the State Water Commission for funding. Motion to request funding to move this forward and have SWC include this gage in their funding. **Ken moved to accept the recommendation to notify Steve Robinson that we will continue to financially maintain this gage the balance of this year and apply for funding through the State Water Commission for the Apple Creek USGS.**

**Kathleen seconded.** Gordon asked that if the SWC does not fund, will the BCWRD pay. Ken noted he understands that if the SWC does not accept funding, then it will come back to the BCWRD to see if we approve the costs. **Motion carried.**

Marcus was present and asked that if we do not receive funding, to ask the county commissioners to cost share as this gage is critical to the county and its roadway system.

**Missouri River Residential Water Access:** Michael reviewed noting residents around Hogue Island do not have access to the water due to the sandbars and are asking for assistance. It was noted that since this is sovereign land, we should send them directly to the State Water Commission for assistance. Consensus was to refer these residents to the SWC when we get these requests.

**Authorization/Review SWMP:** Marcus requested the BCWRD review this particular plat – The Ranch. Marcus noted it is outside the 4 mile and he is the only one looking at it at this time and since the water dumps in the Burnt Creek Watershed, he would prefer that the BCWRD take a look at this one and provide comment. It was the consensus of the Board to have Michael review.



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**Correspondence:** Reviewed, no action taken.

**Next Meeting:** May 14<sup>th</sup>

With no further business, the meeting adjourned at 9:20 p.m.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Mona Livdahl".

Mona Livdahl

BCWRD Secretary

# Burleigh County Water Resource District Meeting

Members of the Public in Attendance Date: April 9 - 2013

NAME - PLEASE PRINT	ADDRESS/COMPANY REPRESENTING
Forrest Ecklund	1951 93rd St, NE Bismarck Parks + Rec
Durrell A Berg	4930 Woodhaven Dr, Bismarck
Greg Smith	Bismarck Parks
Red Knutson	Bismarck Parks

## BCWRD Invoices

5-14-13

Name	Project	Invoice	Amount	Code
Bismarck Parks and Rec	April	3268	\$6,117.80	904
Bliss & Stebbins Law Firm	Legal	13330	\$2,722.89	312
Houston Engineering	Hay Creek Greenway	15038	\$2,405.28	953
Houston Engineering	General	15161	\$5,557.50	315
Houston Engineering	Apple Valley Cooperative	15163	\$413.00	937
Houston Engineering	Sunny View Flood Control	15162	\$1,191.50	937
Houston Engineering	Sandy River Drive	15164	\$135.00	933
Houston Engineering	Sandy River Drive	15165	\$626.50	933
Houston Engineering	Sibley Area	15168	\$67.50	933
Houston Engineering	Sibley Area	15170	\$943.25	933
Houston Engineering	Hogue Island	15218	\$692.50	910
Personalized Management Svs.	April Secretarial services	5163	\$537.50	112
Personalized Management Svs.	suplies	5163	\$156.40	411
		<b>TOTAL:</b>	<b>\$21,566.62</b>	



**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	\$ 2,600.90	\$ 1,065.60	\$ 1,277.94	\$ 1,830.53	\$ 6,774.97	\$ 1,693.74	\$ 8,468.71	3220
March	\$ 2,943.90	\$ 296.68	\$ 1,277.94	\$ 838.20	\$ 5,356.72	\$ 1,339.18	\$ 6,695.90	3239
April	\$ 2,600.90	\$ 262.69	\$ 1,277.94	\$ 752.71	\$ 4,894.24	\$ 1,223.56	\$ 6,117.80	3268
May				\$ -	\$ -	\$ -	\$ -	
June				\$ -	\$ -	\$ -	\$ -	
July				\$ -	\$ -	\$ -	\$ -	
August				\$ -	\$ -	\$ -	\$ -	
September				\$ -	\$ -	\$ -	\$ -	
October				\$ -	\$ -	\$ -	\$ -	
November				\$ -	\$ -	\$ -	\$ -	
December				\$ -	\$ -	\$ -	\$ -	
<b>Total</b>	<b>\$ 11,346.79</b>	<b>\$ 1,943.33</b>	<b>\$ 5,111.76</b>	<b>\$ 4,187.68</b>	<b>\$ 22,589.56</b>	<b>\$ 5,647.39</b>	<b>\$ 28,236.95</b>	<b>To Date</b>

**Capital Improvements:**

2013 Budget: \$ 185,829.00  
**Over/Under Budget: \$ (157,592.05)**



## McDowell Dam Agricultural Lands Second Amendment to Lease Agreement

This second amendment to lease is entered into this 26<sup>th</sup> day of August, 2010, between the Burleigh County Water Resource District, landlord, 221 North 5<sup>th</sup> Street, Bismarck, North Dakota, hereafter known as "the landlord" and Rudolph M. Wolf, 13701 10<sup>th</sup> Ave. SE, Bismarck, North Dakota 58504, tenant, hereafter known as "the tenant", hereby amending the parties' May, 2007 lease entered into for a term of three years beginning the 1<sup>st</sup> day of November, 2010, to November 1, 2013.

### **I. Property Description**

The landlord hereby leases to the tenant, to occupy and use for cultivation and cropping, the following described Burleigh County property:

Approximately 76 acres at McDowell Dam in Section 27 T139N R79W

### **II. General Terms of Amended Lease**

A. Terms. The term of this lease shall be for one (3) seasonal years, and shall commence on the 1<sup>st</sup> day of November, 2010, and terminate on November 1, 2013. The total amount due and owing shall be \$2,584.00 per year, for a total of \$7,752 for the three year period, the times for payment of which shall be governed by the parties' original lease agreement.

#### **B. Rental Calculation and Payment Schedule**

The tenant agrees to pay a total rent of \$7,752.00 as follows:

\$2,584.00 on or before 1<sup>st</sup> day of June, 2011

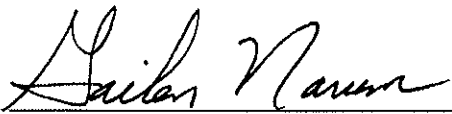
\$2,584.00 on or before 1<sup>st</sup> day of June, 2012

\$2,584.00 on or before 1<sup>st</sup> day of June, 2013

- C. The landlord reserves the right to enter the above premises in the fall of the year 2013, subject to the tenant's right to first take off his crop for the 2013 season, for purposes of spraying any appropriate chemical applications upon the above premises in order that the new tenant may have such work done during the 2013 season.
- C. All other provisions of the parties' original lease agreement remain valid and in effect.

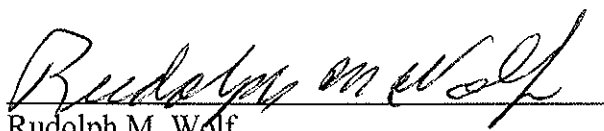
Executed in duplicate:

Dated this 26<sup>th</sup> day of August, 2010



\_\_\_\_\_  
Gailen Narum, Chairman  
Burleigh County Water Resource District  
Landlord

Dated this \_\_\_ day of August, 2010



\_\_\_\_\_  
Rudolph M. Wolf  
Tenant

**WRITTEN BIDS** will be accepted by the Burleigh County Water Resource District (District) for the cultivation and cropping of approximately 76 acres at McDowell Dam in Section 27-T139-R79 until 5 pm, April 30, 2007. The lease will be for three years and will expire on October 15, 2010. Bidders shall visit the site to determine the suitability of the land and any need for site preparation prior to seeding. The successful bidder shall use the land for cropping purposes and shall not be subleased without approval of the District. The successful bidder will receive any Freedom to Farm Act payments and will be expected to practice farming methods that control weeds and maintain field smoothness. The bid submitted should be for a total of three years, taking into consideration the cost of possible breaking up the ground prior to seeding. One-third of the total bid price will be due no later than June 1<sup>st</sup> of each year the lease is in effect. The water resource board reserves the right to reject any and all bids. Bids should be submitted to the Burleigh County Water Resource District, 221 N 5<sup>th</sup> Street, Bismarck, ND 58501. Phone: 701-202-5459.

Please print the above ad in the Finder September 20 and September 27<sup>th</sup> in the agricultural section. The bill can be sent to the above address.





# Burleigh County Water Resource District

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

April 9, 2013

Mr. Patrick Smith  
8005 Apple Creek Road  
Bismarck, ND 58504

RE: Obstruction to Drain Complaint

Dear Mr. Smith:

On October 15, 2012 we provided a letter in response to a complaint you had filed alleging that Mr. Dave Barbere's driveway and the associated culvert installation constituted an obstruction to a watercourse and were negatively impacting your property. The letter noted that we had investigated your complaint and found that the backwater channel does in fact constitute a watercourse. However, we found that there were many instances of the channel having been blocked or obstructed, including the fish hatchery pond dikes, the 80<sup>th</sup> Street embankment, as well as the fill you placed there for your drain field. We explained that we would not be able to arbitrarily order the removal of only one of the noted obstructions. We recommended that you work with Mr. Barbere to resolve this matter.

Because we have not heard anything more from you since our October 15, 2012 letter, we will hereby consider your complaint withdrawn. It is our hope that you have been successful in finding a mutually acceptable resolution in this regard.

Sincerely,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

C: Michael Gunsch, HEI  
Cary Backstrand  
David Barbere

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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

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Daniel Owen Emery, )  
Trisha Ann Emery )

Plaintiffs, )

vs. )

Burleigh County Water Resource )  
District, )

Defendant. )

NOTICE OF ASSIGNMENT OF JUDGE

CASE NO. 08-2013-CV-00604

INTERESTED PARTIES:

Defendant

Burleigh County Water Resource  
District

Plaintiff

Daniel Owen Emery  
Trisha Ann Emery

Defendant Attorney:

Plaintiff Attorney:


RE: **Administrative Appeal**

This case has been assigned to the Hon. **Gail Hagerty** on March 21, 2013. All future proceedings will be before this judge.

Pursuant to Rule 3.1 of the North Dakota Rules of Court, it is incumbent upon you to place the assigned file number on the front or title page in the upper right-hand corner of the instrument to be filed.

Dated this 23rd day of April, 2013

CC: Emery, Emery  
Burleigh County Water Resource District

By:  \_\_\_\_\_

Deputy Clerk of District Court  
P.O. Box 1055  
Bismarck ND 58502  
(701) 222-6690

RECEIVED & FILED

APR 23 2013

Clt. of Cr. Burleigh Co.

David R. Bliss  
Attorney at Law

Jackie M. Stebbins  
Attorney at Law

Micheal A. Mulloy  
Attorney at Law



Catherine A. Bliss, CIA  
Certified Legal Assistant

Erica L. Pullen  
Legal Assistant

**REGISTERED MAIL – RETURN RECEIPT REQUIRED**

April 18, 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) is in receipt of your request for a hearing “pursuant to North Dakota Century Code 61-16.1-51” and your February 13, 2013 email requesting the issue be removed from the March 12, 2013 agenda, which included your statement of unwillingness to discuss the matter with the Board. You further stated that “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.”

NDCC 61-16.1-51 states, in pertinent part, that “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 in section 28-34-10*. Emphasis added.

NDCC 28-34-01(1) states, in pertinent part, that “each appeal is governed by the following procedure:

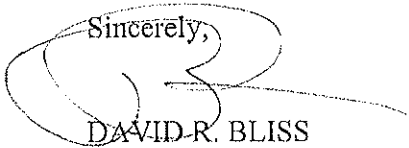
1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body. A copy of the notice of appeal must be served on the local governing body in the manner provided by Rule 4 of the North Dakota Rules of Civil Procedure. “



You failed to file a notice of appeal with the clerk of district court, which had to be filed within thirty days of the Board's January 10, 2013 decision. You also failed to serve a copy of the notice of appeal on the Board in the manner provided by the North Dakota Rules of Civil Procedure.

As a result, the Board's May 1, 2013 deadline, noted in the Board's January 10, 2013 Notice and Order for the resolution of this matter, remains in force. If by that time you have not commenced corrective action or obtained Board approval of a corrective plan and timeline, the Board will procure the services necessary to construct the remedy. This will result in all costs incurred by the Board to resolve this complaint being assessed against your property.

Sincerely,



DAVID R. BLISS

DRB:

BCWRD Legal Counsel

cc: Terry Fleck, Chairman BCWRD  
Chris Koppang  
Marcus Hall, PE, County Engineer  
Houston Engineering, Inc.

C:\Users\Dave\Google Drive\Bliss Files\Burleigh County Water Resource 22-229\Emery Ltr. DRB 4-17-13.docx

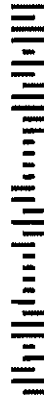
19

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Dan Emery  
7245 Russell Road  
Bismarck, ND 58501



2. Article Number  
*(Transfer from service label)*

7011 2970 0003 3833 3237

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature   Agent  
 Addressee

B. Received by (*Printed Name*) Dan Emery C. Date of Delivery 5-1-13

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

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

4. Restricted Delivery? (*Extra Fee*)  Yes

April 25<sup>th</sup>, 2013

H and H Landscaping and Irrigation  
201 8<sup>th</sup> Ave SE  
Minot, ND 58701  
701-202-4798/701-509-1302

Dear Mr. Fleck,

We are writing you in regards to the drainage/landscaping project, that we were contacted by the Emery's at 7245 Russell Road in Bismarck, to complete. We are writing to inform you that we are planning on coming down as soon as the ground moisture has time to dry up. The Emery's informed us that you gave them a deadline of May 1<sup>st</sup>, but with the snow and water that deadline is unreachable. The Emery's informed us that they would like to go ahead and fix the problem at their house as soon as the conditions improve so we can take our machinery on the land.

We looked at the plan that was provided by Houston Engineering, and we would like to propose an easier solution. The Emery's currently have no ditch or culvert on the west side of their property. We discussed with them that we could put a 30" culvert in their driveway and excavate the ditch, with proper grade, so the water flows from the misplaced culvert in the road to the easement on the south side of the Emery's house. This would also get rid of the standing water on the Emery's neighbors to the north land.

If for some reason this is not feasible, then we would regrettably follow the guidelines provided by Houston Engineering. Their plan involves a lot more excavating, grading, and overall unnecessary work.

Thanks for your time Mr. Fleck.

Sincerely,  
Dale and Casey Hoff

AT

## Michael Gunsch

---

**From:** Dan Emery <silver\_sho@hotmail.com>  
**Sent:** Saturday, April 27, 2013 9:20 AM  
**To:** tfleck@attitudedr.com  
**Cc:** Michael Gunsch  
**Subject:** RE: Drainage

Dear Terry,

Mike had emailed me this back, which makes no sense to me. The plan was not something that was to be discussed, we were just being courteous in letting you know what we are going to be doing once the water has dried up. This situation has been drawn out long enough by the Consultant engineer and the board was notified of what we are going to do. But to make everyone happy, I will explain in English what we are going to do.

1. Proposed channel and culvert installation is self explanatory. Anyone with a set of eyes can see where the ditch will be and where the culvert will be installed in our driveway. We will also make sure to use a transit and make sure the water flows downhill, not uphill like some people think it can do. And since according to the Consultant Engineer, there is no permit needed for digging in the ditch since it's under 80 acre/feet of water.
2. The county already advised me that a 30" culvert would be need, as was indicated when I got my "APPROACH PERMIT" from Burleigh County.
3. There is no disposal of materials. Any excavated material will be used to landscape the area and construct the ditch.
4. See #4.

It's time common sense prevails on this issue so we can get it fixed. Maybe the Water Board should consider a different consultant engineer to alleviate issues in the future.

*Dan & Trish Emery*

7245 Russell Rd  
Bismarck, ND 58503  
(701)240-0558  
[silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)

---

**From:** [mgunsch@houstoneng.com](mailto:mgunsch@houstoneng.com)  
**To:** [silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com); [tfleck@attitudedr.com](mailto:tfleck@attitudedr.com)  
**CC:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com); [cback@bis.midco.net](mailto:cback@bis.midco.net); [mahall@nd.gov](mailto:mahall@nd.gov); [dschriock@nd.gov](mailto:dschriock@nd.gov); [codenbach@houstoneng.com](mailto:codenbach@houstoneng.com)  
**Subject:** RE: Drainage  
**Date:** Sat, 27 Apr 2013 13:37:38 +0000

Dan:

This plan does not provide sufficient information to make a fully informed determination as to the adequacy of the H&H Landscaping proposal. The following issues need to be addressed:

1. Proposed invert elevations on the channel and culvert installation, including its length, indicating the level to which the relocated watercourse would be established and its full length and extent. While stating "proper grade" is appropriate, the Board requires verification as to design prior to accepting any proposal for construction.
2. An analysis indicating the 30" culvert's capacity to convey the projected flows, and its compliance with NDDOT/ND State Engineer design standards. There are other factors to be considered related to capacity including the depth, width and side slopes of excavation within the township roadway right-of-way, how this proposal would prevent flows that normally occurred within the watercourse from flowing onto or through the properties to the north, backwater concerns, and the potential need for an easement on the relocated watercourse, etc...
3. The H&H proposal suggests the original plan would result in more excavation and grading. It is requested the quantity of materials to be removed under the H&H proposal be determined so the Board can adequately consider the validity of this statement in their decision process. It is also required that you identify the proposed location for the disposal of all materials excavated from the channel and township right-of-way.
4. Approval from the Burleigh County Engineer is required related to the approach culvert installation and use of the Township roadway right-of-way for the relocated watercourse. This approval will include compliance with design standards for the approach installation.

Agree given site conditions the May 1<sup>st</sup> deadline is problematic. I believe the Board will fully consider extending the timeline based on the receipt of this proposal.

Cary Backstrand and I will meet this next week to discuss this proposal.

Thank you for the submittal, it is appreciated.

**Michael Gunsch**

Principal / Project Manager  
Houston Engineering, Inc.  
3712 Lockport St, Bismarck, ND 58102  
O 701.323.0200 | F 701.323.0300  
[www.houstoneng.com](http://www.houstoneng.com)

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**From:** Dan Emery [[mailto:silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)]  
**Sent:** Friday, April 26, 2013 10:41 AM  
**To:** [tfleck@attitudedr.com](mailto:tfleck@attitudedr.com)  
**Cc:** Michael Gunsch  
**Subject:** Drainage

Terry, here is the letter we received from H and H Landscaping out of Minot. You can consider this our electronically signed proposal for what we will do once the ground dries up.

Thanks again, hope we can FINALLY resolve this issue.

*Dan and Trish Emery*

7245 Russell Rd  
Bismarck, ND 58503  
(701)240-0558  
[silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)

23

## Michael Gunsch

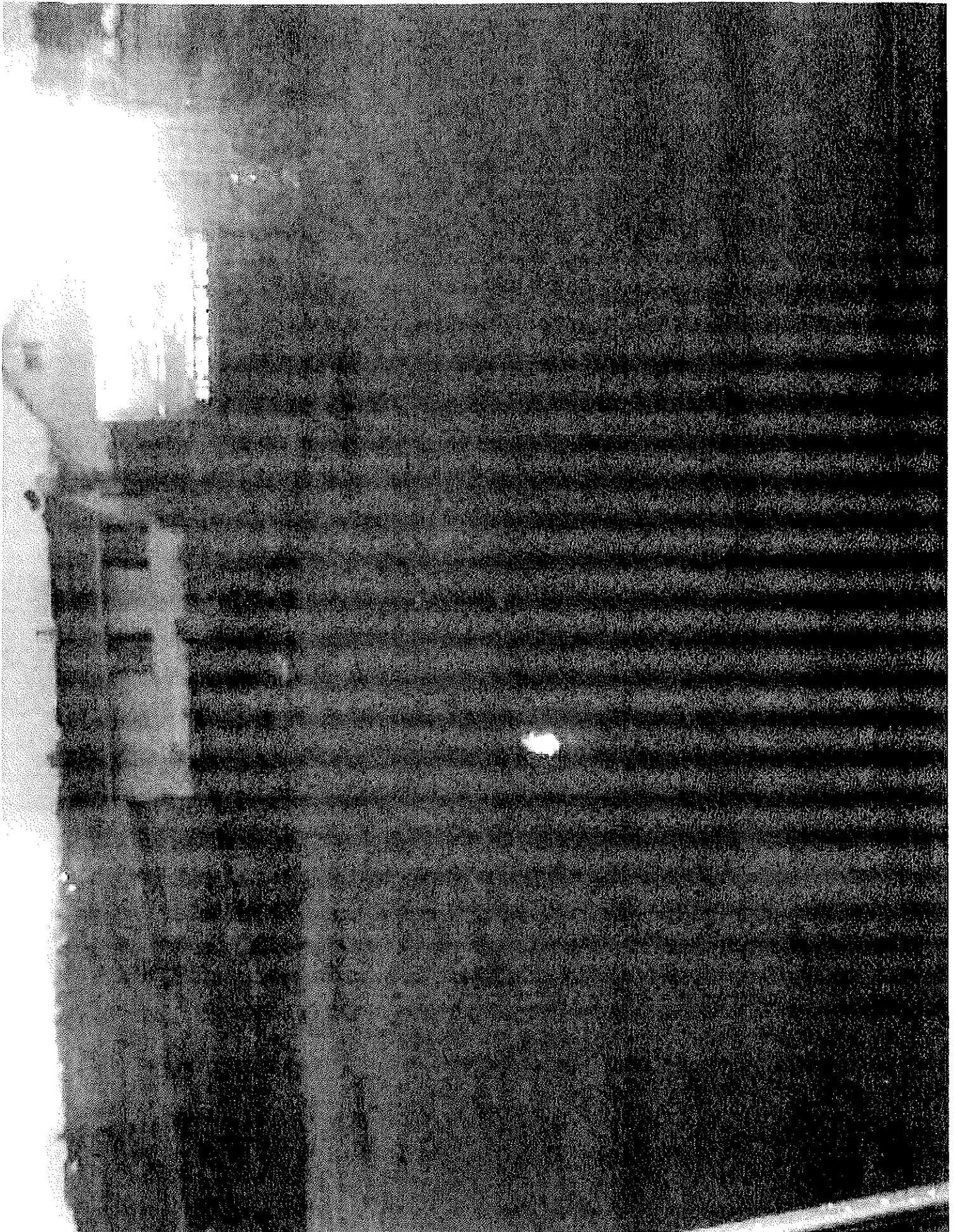
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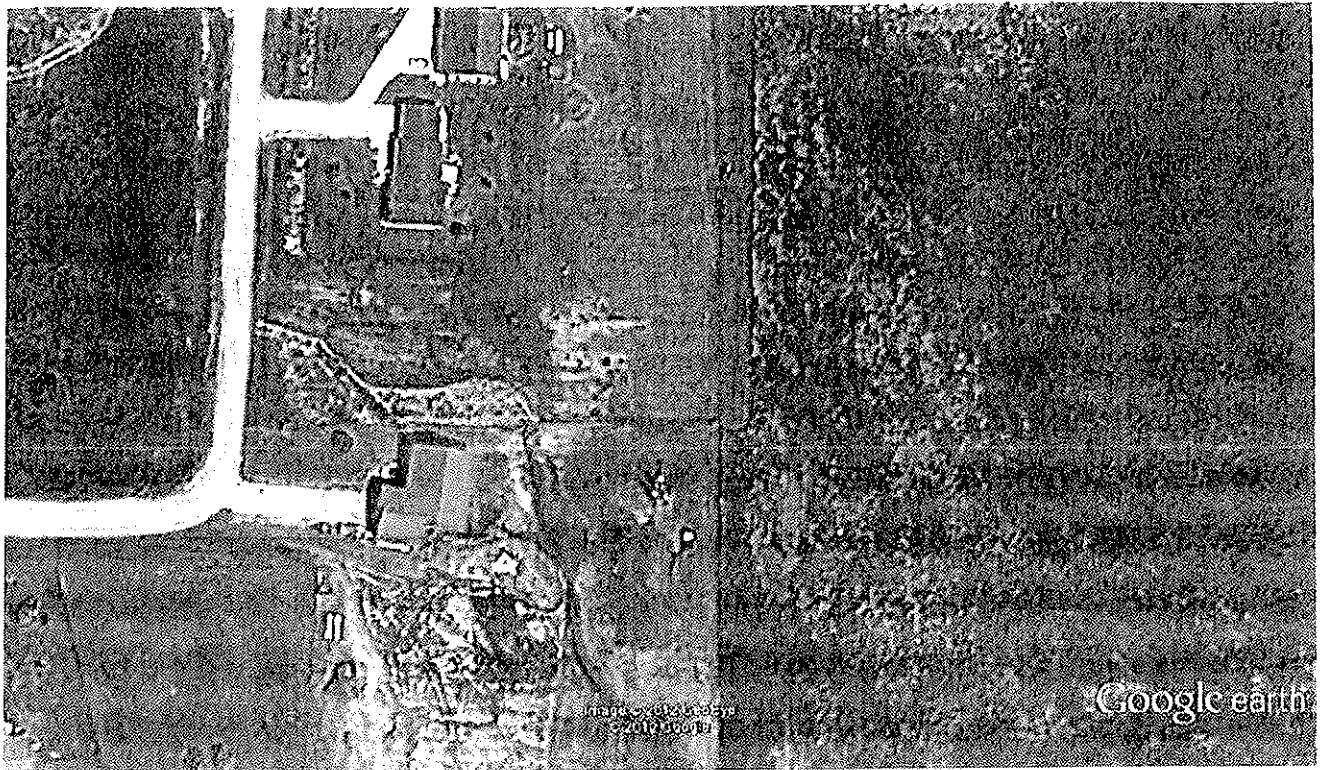
**From:** Terry Fleck <tffleck@attitudedr.com>  
**Sent:** Tuesday, April 30, 2013 2:59 PM  
**To:** Michael Gunsch  
**Subject:** FW: "Natural Waterway"  
**Attachments:** water in yard.jpg

**From:** Dan Emery [[mailto:silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)]  
**Sent:** Tuesday, April 30, 2013 2:33 PM  
**To:** [tffleck@attitudedr.com](mailto:tffleck@attitudedr.com)  
**Subject:** "Natural Waterway"

Here's a picture from June 2009 after a heavy rain. Just wondering how Mr. Gunsch's plan is going to alleviate any water issues? You can also notice the water flowing on the east side of Mr. Koppang's house that was moved by Mr. Koppang and Mr. Haas in 2012. The definition of "natural waterway" has been so distorted, it's ridiculous. All that we are asking for is to be able to alleviate this water issue and not have so much cost. Since no one has contacted with a price of the County doing it, we are very leary about agreeing to anything the Water Board comes up with. If we could meet with the Board in a private meeting we could possibly come up with a resolution that is cost effective and will prevent water from sitting on Mr. Koppang's property at the same time.

*Dan & Trish Emery*  
7245 Russell Rd  
Bismarck, ND 58503  
(701)240-0558  
[silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)





Google earth



(11-2011)





## Burleigh County Water Resource District

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

April 29, 2013

Sent Certified Mail – Response Required  
Copy via e-mail April 29, 2013

Mr. Dan Emery  
7245 Russell Road  
Bismarck, ND 58501

**RE: 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) is in receipt of your proposal, submitted to me via email on April 26, 2013, which was presumably intended to provide a plan that would resolve this complaint. The proposal prepared by H and H Landscaping and Irrigation, dated April 25, 2013, is insufficient because it does not adequately address the issues related to the complaint.

Based on your insufficient proposed reroute of the natural watercourse we strongly recommend and encourage you to engage the services of a professional engineer to prepare the necessary design. Your consultant should provide a detailed plan regarding how waters would be conveyed to resolve the complaint and compliance with the township roadway design standards.

Please take notice that our May 1, 2013 deadline remains unchanged. Our next meeting is May 14<sup>th</sup>, at which time we will consider taking any additional action deemed necessary regarding compliance. If you have questions or plan to attend, please let me know.

Sincerely,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

cc: Chris Koppang  
Marcus Hall, PE, County Engineer  
Houston Engineering, Inc.

---

**Current Board Members:**

Galen Narum, Chair, Bismarck 323-0167 Terry Fleck, Vice Chair, Bismarck 223-9768 Ken Royce, Treas., Bismarck 258-1110 Cary Backstrand, Bismarck 471-9134 Reinold Kellar, Bismarck 425-6158

27

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dan Emery  
7245 Russell Road  
Bismarck, ND 58501



**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery  
Dan Emery 5-1-13

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  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 7011 2970 0003 3833 3237  
(Transfer from service label)

28

# BURLEIGH COUNTY, NORTH DAKOTA PERMIT FOR ROAD APPROACH

Permit Fee - \$25.00  
 Paid  
 Not Paid

Apply to: County Engineer  
 2000 N. 52nd Street  
 Bismarck, ND 58501  
 Phone: 221-6870

**IMPORTANT**  
 This document must be delivered  
 to the home/lot owner, retained  
 in his files, and run with the land

Record # 488016

Builder Dan Emery  
 Owner \_\_\_\_\_  
 Home Phone # \_\_\_\_\_ Work Phone # 240-0558  
 Subdivision T5 North Estates - Regent Lot 7B Block 2  
 Section 7 Location in Section \_\_\_\_\_  
 Township Name Gibbs Township # 139N Range # 79W  
 Address 7245 Russell Rd.

Culvert Size 15" x 30" (Length for 20' wide approach) **END SECTIONS NEEDED ON ALL CULVERTS**

**MINIMUM CONSTRUCTION STANDARDS:**  
 20' MINIMUM TOP WIDTH AND 32' MAXIMUM  
**4:1 INSLOPE SLOPE RATE**  
 25' TURNING RADIUS, BOTH CORNERS  
 4" GRAVEL SURFACING

**PROPER INITIAL INSTALLATION AND  
 ALL FUTURE MAINTENANCE TO ASSURE  
 PROPER FUNCTION IS THE RESPONSIBILITY  
 OF THE LANDOWNERS.  
 ANY DECORATIVE CULVERT END TREATMENTS  
 MUST RECEIVE PRIOR APPROVAL FROM  
 BURLEIGH CO. HWY DEPT**

Remarks Graveling to be done immediately. Builder/owner will assure that mud, concrete,  
or other foreign debris is not deposited on adjacent roadways  
Builder/owner will obtain a MS4 Permit from building inspection  
See attached MS4 permit  
See attached MS4 permit  
See attached MS4 permit

Approved: [Signature] Date: 3-2-18  
 (Burleigh County)

*I, the owner of the before mentioned property, agree to construct the road approach to the property as required by current minimum standards and any additional conditions noted above. I, THE BUILDER UPON SIGNING AGREES TO TURN PERMIT OVER TO OWNER AND EXPLAIN ALL NECESSARY CONDITIONS NOTED ABOVE.*

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Owner or Agent)

## Michael Gunsch

---

**From:** Terry Fleck <tffleck@attitudedr.com>  
**Sent:** Tuesday, April 30, 2013 2:48 PM  
**To:** Michael Gunsch  
**Subject:** FW: [BULK] RE: Koppang Complaint

**From:** Dan Emery [[mailto:silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)]  
**Sent:** Tuesday, April 30, 2013 12:13 PM  
**To:** [tffleck@attitudedr.com](mailto:tffleck@attitudedr.com)  
**Subject:** [BULK] RE: Koppang Complaint

Dear Terry,

I am very disappointed in the fact that I have received a letter from Mr. Bliss that was obviously written by Mr. Gunsch and is signed by you. The way this board has conducted itself has been an absolute joke. A board or committee is supposed to help people resolve situations, not railroad involved individuals to gain some sort of personal interest. After speaking with my wife, it is very obvious that the Burleigh County Water Resource District has no interest in helping anyone and we feel that the fact that we got fucked over numerous times in this matter is very disappointing. Since the abuse isn't going to end until Mr. Gunsch can help his friend, we will try and show up to the joke of a meeting that you guys hold every month to get our ass handed to us again. Thanks for nothing.

Mr. Gunsch should be aware that there was a ruling back in 2006 involving the Minot Park District and a homeowner that built in the "natural waterway", and the Ward County Water Board advised the Minot Park District that the "natural waterway" can be moved and the homeowner did not have to pay for anything. I'm assuming the homeowner must have been of friend of Mr. Gunsch also. I don't blame you for not wanting to be a part of the shady board after your term is up, Terry.

Have a nice day.

*Dan Emery*  
7245 Russell Rd  
Bismarck, ND 58503  
(701)240-0558  
[silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)

---

**From:** [dbliss@blisslaw.com](mailto:dbliss@blisslaw.com)  
**Date:** Tue, 30 Apr 2013 10:00:37 -0500  
**Subject:** Koppang Complaint  
**To:** [silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)  
**CC:** [tffleck@attitudedr.com](mailto:tffleck@attitudedr.com)

Mr. Emery,

Attached please find an April 9, 2013 letter to you from Water District Chairman Terry Fleck. This letter has also been sent hard copy.

Dave Bliss



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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## Michael Gunsch

---

**From:** Terry Fleck <tffleck@attitudedr.com>  
**Sent:** Friday, May 03, 2013 4:40 PM  
**To:** Michael Gunsch  
**Subject:** FW: BCWRD Plan

**From:** Dan Emery [[mailto:silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)]  
**Sent:** Friday, May 03, 2013 11:15 AM  
**To:** [tffleck@attitudedr.com](mailto:tffleck@attitudedr.com)  
**Subject:** BCWRD Plan

Terry,

I need a plan and an estimate of cost for construction for your guys' plan for the drainage. A response is greatly appreciated.

*Dan Emery*  
7245 Russell Rd  
Bismarck, ND 58503  
(701)240-0558  
[silver\\_sho@hotmail.com](mailto:silver_sho@hotmail.com)

## Mona Livdahl

---

**From:** Michael Gunsch [mgunsch@houstoneng.com]  
**Sent:** Friday, May 03, 2013 2:56 PM  
**To:** Cary Backstrand  
**Cc:** Fleck Terry (tfleck@attitudedr.com); Mel Bullinger <mbullinger@nd.gov>; Nancy Huether; 'Mona Livdahl'  
**Subject:** U-Mary Subdivision Drainage Concern  
**Attachments:** U Mary Subdivision.pdf

Cary:

Attached is the information provided by Community Development related to the proposed U-Mary Subdivision final plat. I was wrong thinking this was county as obviously it is on the City Planning Commission agenda.

I am not specifically understanding the possible complaint you discussed with Mark Swenson, though he lives to the NW of the site and any additional flows down the hill and through the his lot would be a concern.

I am including Mel Bullinger and Nancy Huether from the City on this email as they may know more about this issue than we do at this point. If there are questions prior to the meeting please let me know. I have not seen any formal complaint or information provided by Mr. Swenson regarding his concern.

Thanks,

### **Michael H. Gunsch, PE**

Principal / Senior Project Manager

O 701.323.0200 | F 701.323.0300 | C 701.527.2134

3712 Lockport St. • Bismarck, ND • 58503

[mgunsch@houstoneng.com](mailto:mgunsch@houstoneng.com)

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# Bismarck

## MEMORANDUM

**TO:** W.C. Wocken, City Administrator  
 Carl D. Hokenstad, Community Development  
 Ray Ziegler, Building Inspections  
 Brady Blaskowski, Building Inspections  
 Steve Saunders, MPO  
 Mel Bullinger, City Engineer  
 Dale Heinert, Design & Construction Engineer  
 Linda Oster, Design and Construction Engineer  
 Ron Kunda, Fire  
 Fred Wooten, Police  
 Keith Demke, Utility Operations  
 Colleen Peterson, Storm Water Program Coordinator  
 Deb Goodsell, City Assessing  
 Mike Dannenfelzer, Emergency Communications  
 Gary Stockert, Emergency Manager  
 Kevin Glatt, County Auditor  
 Corrine Jochim, Real Estate Technician  
 Randy Bina, Parks & Recreation  
 Al Klein, Rural Fire  
 Daniel Cimarosti, USACE  
 Brad Krogstad & JD Nash, KLJ  
 Aaron Hummert, Hummert Land Surveying

Keith Hunke, Assistant Administrator  
 Jason Tomanek, Planning  
 Jenny Wollmuth, Planning  
 Rick Wohl, Building Inspections  
 Ben Ehreth, MPO  
 Mark Berg, Traffic Engineer  
 Nancy Huether, Project Engineer  
 Joel Boespflug, Fire  
 Anton Sattler, Environmental Health  
 Steven Kilde, Police  
 Jeff Heintz, Service Operations  
 Greg Haug, Airport  
 Kathy Feist, Finance  
 Mary Senger, Co. Emergency Manager  
 Marcus Hall, County Engineer  
 Al Vietmeier, County Tax Director  
 Michael Gunsch, BCWRD  
 Darin Scherr, Bismarck School District  
 Kevin Levi, NDDOT  
 Dave Patience, Swenson Hagen & Co.  
 Ken Nysether, Bartlett & West

**FROM:** Kim Lee, Planning

**DATE:** April 29, 2013

**SUBJECT: Plat Review Meeting – Monday, May 6, 2013**

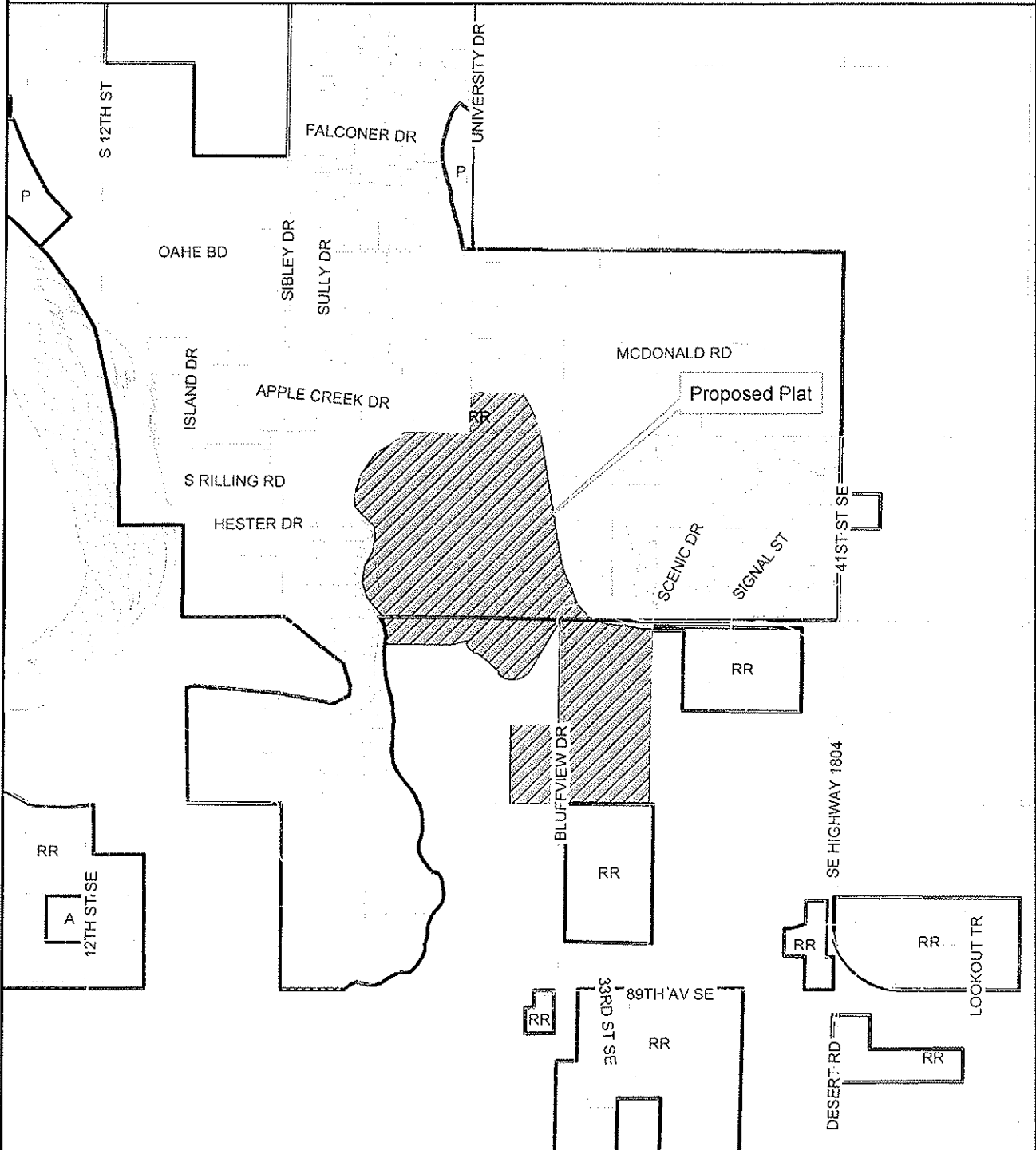
A Plat Review Meeting has been scheduled for Monday, May 6, 2013, at 1:15 p.m. in the David J. Blackstead Meeting Room (formerly known as the Community Development conference room) at the City-County Office Building, 221 North 5<sup>th</sup> Street. The purpose of this meeting is to review plats and development applications that will be considered at the meeting of the Bismarck Planning & Zoning Commission on Wednesday, May 22, 2013.

Applications:	Eng.	Staff	Type of Request(s)							
			Prelim Plat	Final Plat	Minor Plat	FARMP or LUP Amend	ZO Map	ZO Text	Annex	SUP
1. JMAC Industrial Park Addition	B&W	JT		X			X		X	
2. Sara's Addition	Hummert	JW	X				X		X	
3. Hay Creek Commercial Addition	KLJ	JT	X				X			
4. Country West Heights Addition	KLJ	Klee		X			X		X	
5. Kamrose Addition	SH	JT	X							
6. River Road Heights	SH	JW			X		X		X	
7. Boulder Ridge 6 <sup>th</sup> Addition	SH	Klee		X			X		X	
8. Country Ridge 1 <sup>st</sup> Subdivision	SH	JW		X			X			
9. University of Mary Subdivision	SH	Klee		X			X			
10. Blotske Subdivision (RR lot split)		JW								
11. Pt L2, B1, Menard's 2 <sup>nd</sup> Addition		JT					X			
12. Li-8, B73, McKenzie&Coffins (daycare)	SH	JW								X

An overall location map and information for each request is attached.

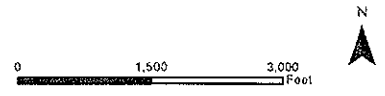


# Proposed Plat & Zoning Change (A & RR to P) University of Mary Subdivision



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.  
Map was Updated/Created January 30, 2013 (hnb)

Source: City of Bismarck

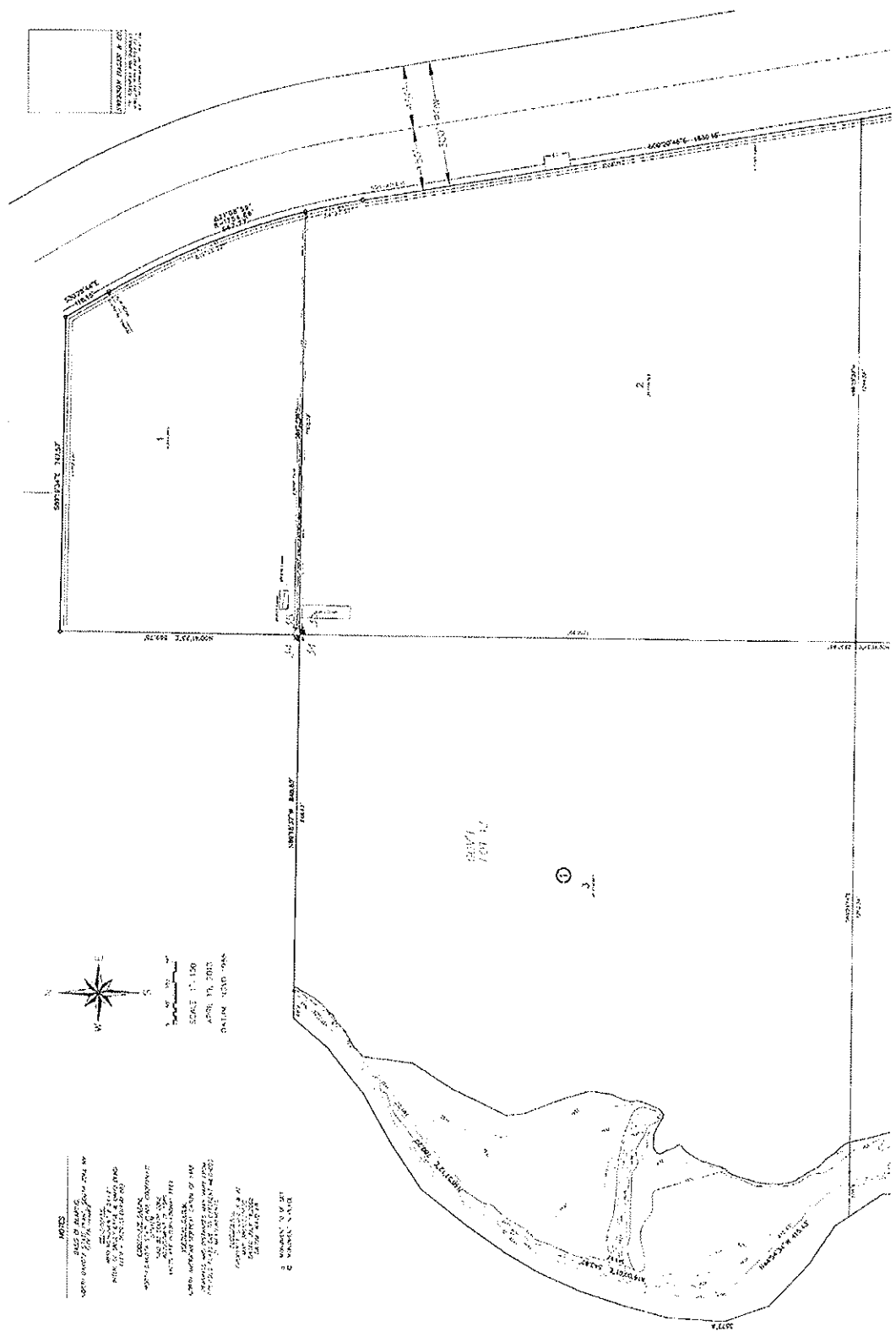




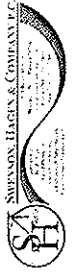
# UNIVERSITY OF MARY SUBDIVISION

LOTS 13 AND 14 OF THE SE 1/4 OF SECTION 34 AND PART OF LOTS 4, 5, 6 AND 7 OF ROCKSTAD SUBDIVISION OF THE NW 1/4 OF SECTION 35, T. 138 N., R. 80 W. AND PART OF LOT 1 OF THE NE 1/4 OF SECTION 3 AND LOT 3 AND PART OF 4 AND THE S 1/2 OF THE NW 1/4 OF SECTION 2, T. 137 N., R. 80 W.

BISMARCK, BURLEIGH COUNTY  
NORTH DAKOTA



NOTES:  
 1. THIS SURVEY WAS CONDUCTED BY THE SURVEYORS' OFFICE OF THE STATE OF NORTH DAKOTA.  
 2. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE NORTH DAKOTA SURVEYING ACT.  
 3. THE SURVEY WAS CONDUCTED ON APRIL 19, 2003.  
 4. THE SURVEY WAS CONDUCTED BY THE SURVEYORS' OFFICE OF THE STATE OF NORTH DAKOTA.  
 5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE NORTH DAKOTA SURVEYING ACT.  
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 8. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE NORTH DAKOTA SURVEYING ACT.





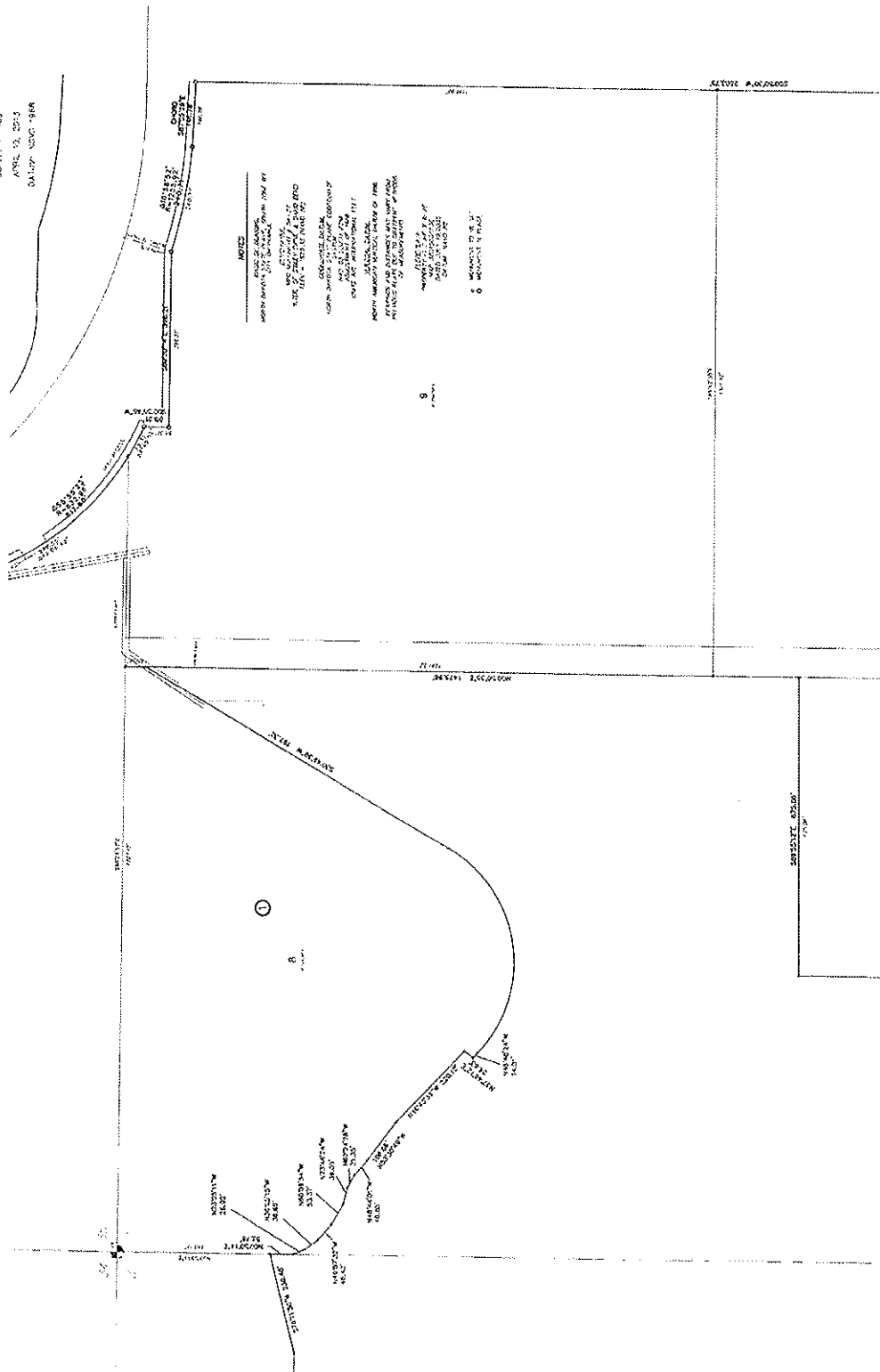
# UNIVERSITY OF MARY SUBDIVISION

LOTS 13 AND 14 OF THE SE 1/4 OF SECTION 34 AND PART OF LOTS 4, 5, 6 AND 7 OF ROCKSTAD SUBDIVISION OF THE NW 1/4 OF SECTION 35, T. 138 N., R. 80 W. AND PART OF LOT 1 OF THE NE 1/4 OF SECTION 3 AND LOT 3 AND PART OF 4 AND THE S 1/2 OF THE NW 1/4 OF SECTION 2, T. 137 N., R. 80 W.

BISMARCK, BURLEIGH COUNTY  
NORTH DAKOTA



SCALE: 1" = 100'  
APR. 19, 2013  
DALLIN NGUYEN



**NOTES**

1. THIS SURVEY IS BASED ON THE 1988 SURVEY OF THE UNIVERSITY OF MARY SUBDIVISION.
2. THE BOUNDARIES OF THIS SURVEY ARE AS SHOWN ON THE ATTACHED PLANS AND ARE SUBJECT TO ANY CHANGES MADE BY THE BUREAU OF LAND MANAGEMENT.
3. THE SURVEY IS SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES OF RECORD.
4. THE SURVEY IS SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES OF RECORD.
5. THE SURVEY IS SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES OF RECORD.
6. THE SURVEY IS SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES OF RECORD.

# UNIVERSITY OF MARY SUBDIVISION

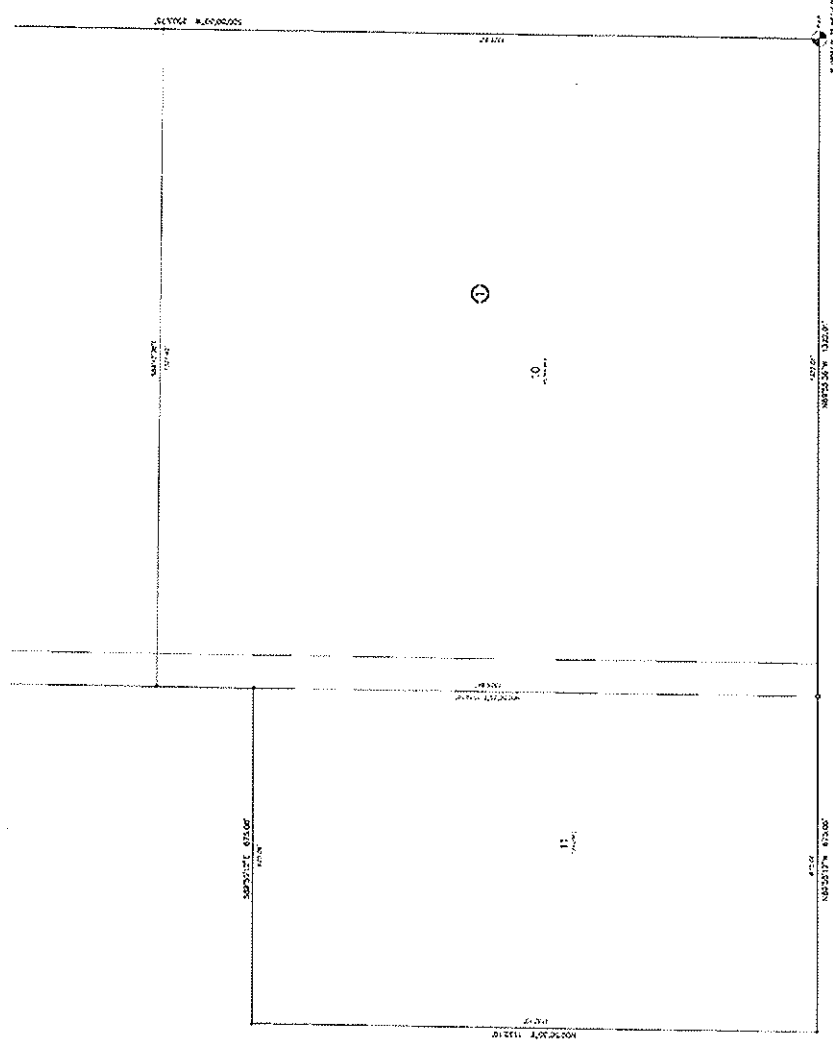
LOTS 13 AND 14 OF THE SE 1/4 OF SECTION 34 AND PART OF LOTS 4, 5, 6 AND 7 OF ROCKSTAD SUBDIVISION OF THE NW 1/4 OF SECTION 35, T. 138 N., R. 80 W. AND PART OF LOT 1 OF THE NE 1/4 OF SECTION 3 AND LOT 3 AND PART OF 4 AND THE S 1/2 OF THE NW 1/4 OF SECTION 2, T. 137 N., R. 80 W.

BISMARCK, BURLEIGH COUNTY  
NORTH DAKOTA



SCALE: 1"=100'  
APRIL 18, 2013  
DRAWN: KCSO 1088

- NOTES**
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
  2. ALL CORNERS ARE TO BE BENCHMARKED.
  3. ALL DIMENSIONS ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD.
  4. ALL DIMENSIONS ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD.
  5. ALL DIMENSIONS ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD.
  6. ALL DIMENSIONS ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD.



SALESMAN, HAGLER & COMPANY P.C.  
1000 BROADWAY, SUITE 1000  
BISMARCK, ND 58102  
TEL: 701.223.1111



# UNIVERSITY OF MARY SUBDIVISION

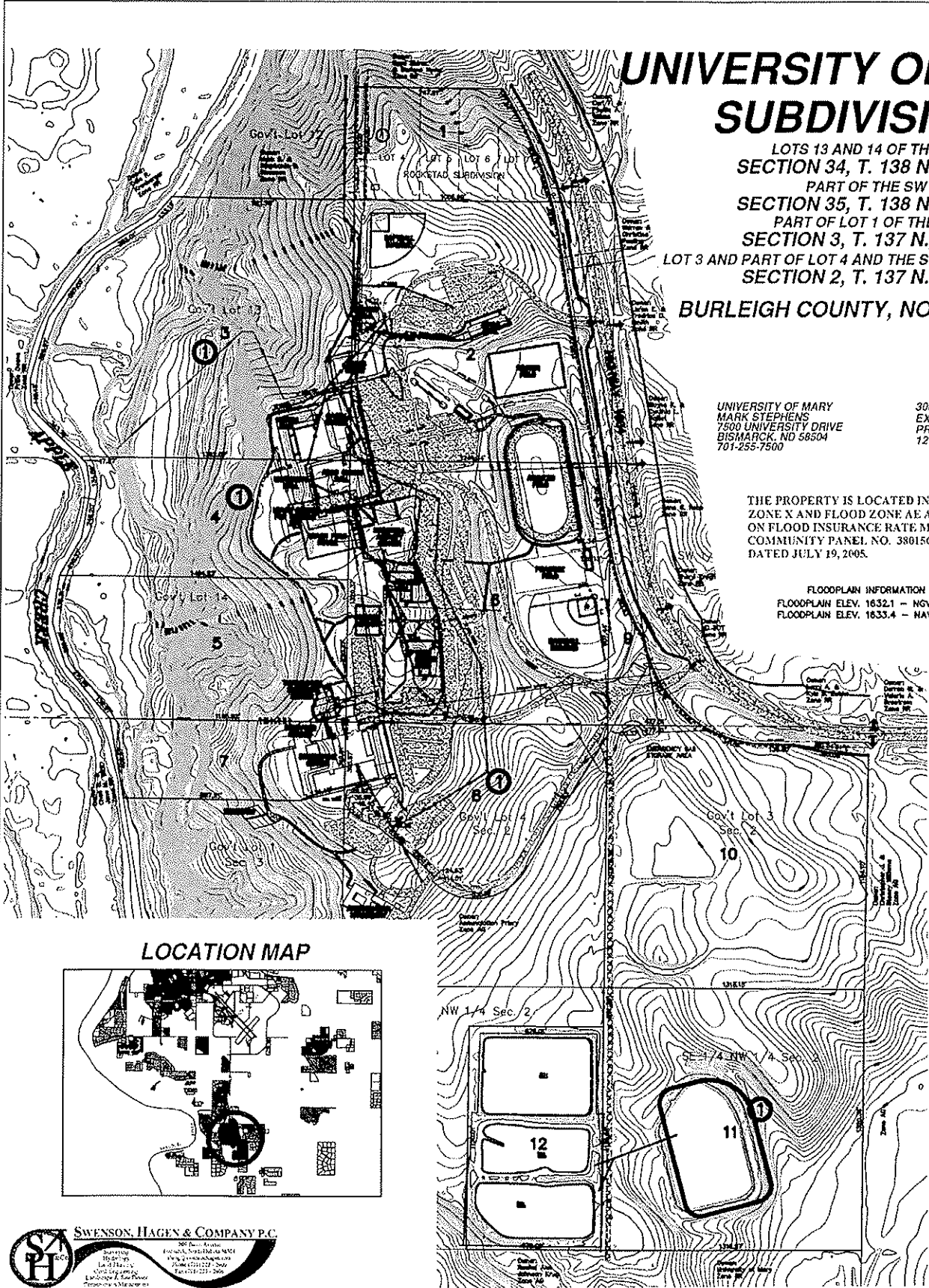
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SECTION 34, T. 138 N., R. 80 W.  
PART OF THE SW 1/4  
SECTION 35, T. 138 N., R. 80 W.  
PART OF LOT 1 OF THE NE 1/4  
SECTION 3, T. 137 N., R. 80 W.  
LOT 3 AND PART OF LOT 4 AND THE SOUTH 1/2 OF THE NW1/4  
SECTION 2, T. 137 N., R. 80 W.  
**BURLEIGH COUNTY, NORTH DAKOTA**

UNIVERSITY OF MARY  
MARK STEPHENS  
7500 UNIVERSITY DRIVE  
BISMARCK, ND 58504  
701-255-7500

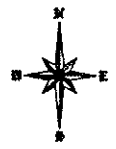
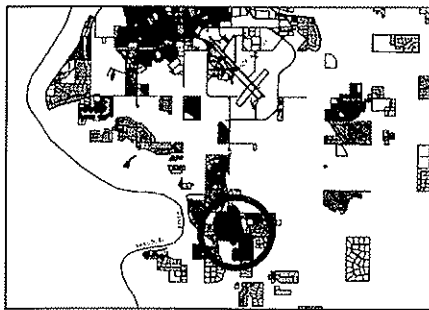
308 ACRES  
EXISTING ZONING - RR  
PROPOSED ZONING - RR  
12 LOTS

THE PROPERTY IS LOCATED IN FLOOD  
ZONE X AND FLOOD ZONE AE AS STATED  
ON FLOOD INSURANCE RATE MAP  
COMMUNITY PANEL NO. 38015C0960C  
DATED JULY 19, 2005.

FLOODPLAIN INFORMATION  
FLOODPLAIN ELEV. 1632.1 - NGVD 29  
FLOODPLAIN ELEV. 1633.4 - NAVD 88

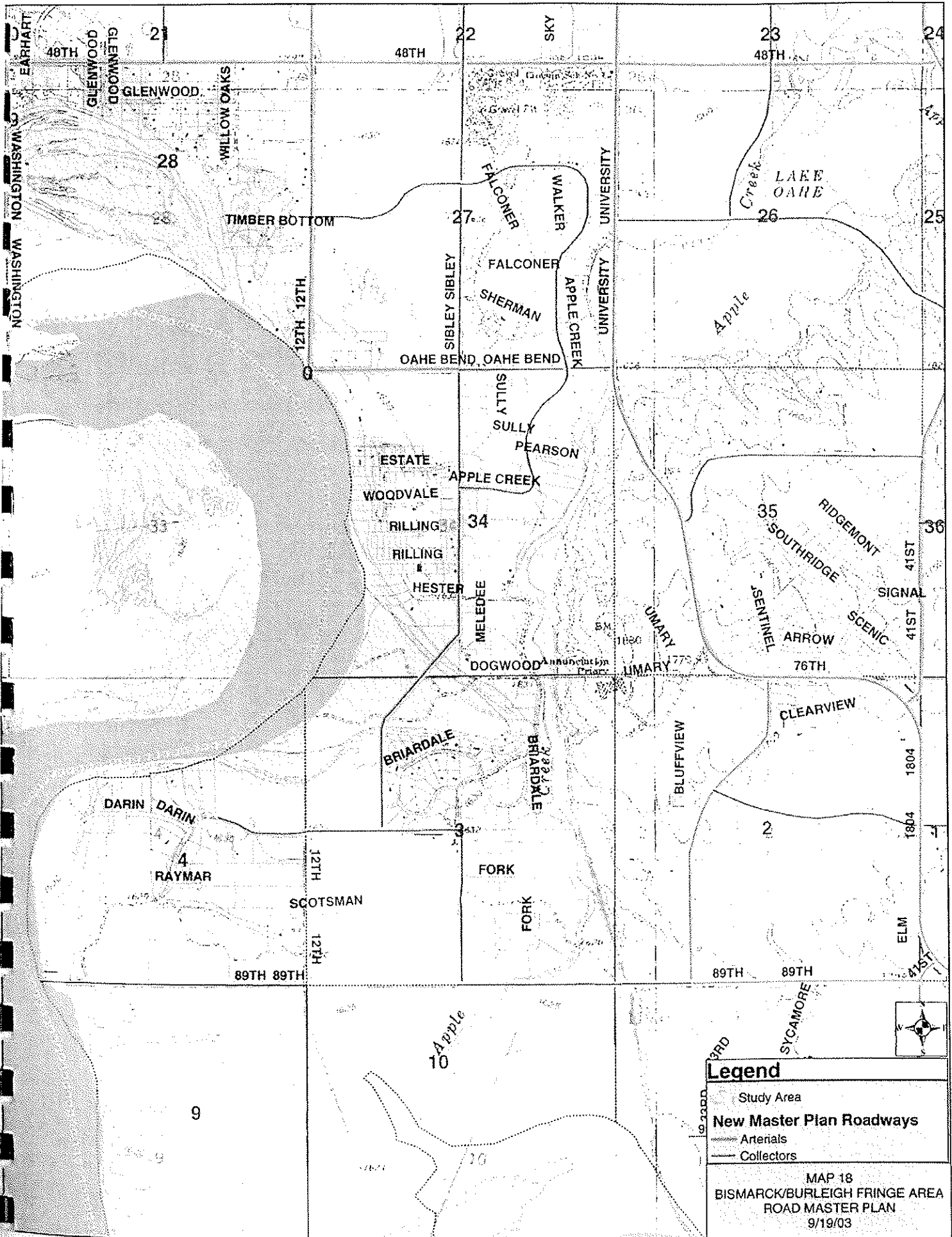


**LOCATION MAP**



SCALE - 1"=200'  
JANUARY 28, 2013

**SWENSON, HAGEN & COMPANY P.C.**  
Surveyors  
1000 1st Ave. S.  
Bismarck, ND 58501  
701-255-7500  
www.swhagen.com  
Floodplain Elevation: NGVD 29  
Floodplain Elevation: NAVD 88



**Legend**

- Study Area
- New Master Plan Roadways**
  - Arterials
  - Collectors

MAP 18  
 BISMARCK/BURLEIGH FRINGE AREA  
 ROAD MASTER PLAN  
 9/19/03





# Burleigh County Water Resource District

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

April 10, 2013

John Warford, Mayor  
City of Bismarck  
P.O. Box 5503  
Bismarck, ND, 58506-5503

**RE: CER-1-981(099), PCN 19992, RIVERWOOD DRIVE AND MILLS AVENUE**

Dear Mayor Warford:

On behalf of the Burleigh County Water Resource District (BCWRD) and Burleigh County Commission we want to take this opportunity to formally go on record in support of the Riverwood Drive and Mills Avenue project. The 2011 Missouri River flood resulted in an increased awareness of the flood risks in our community and the need to protect our constituents from future ice jam and open water flooding on the Missouri River.

The City's coordination of this project with other flood control efforts and related projects being evaluated by the BCWRD and Burleigh County Highway Department is greatly appreciated. Throughout the process there has been open communications and information sharing relative to flood elevations, resident's comments and general data required for the planning efforts for both the City and County. The result is a design for the Riverwood Drive and Mills Avenue project that best serves all parties.

Providing a reasonably defensible level of flood protection is a common objective, therefore we thank the City for its efforts. As there are additional items remaining to be completed, we look forward to continuing the cooperative efforts toward project implementation. If there are any items that we can be of assistance with, please let us know.

Sincerely

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

A handwritten signature in black ink, appearing to read "Jerry Woodcox".

Jerry Woodcox, Chairman  
Burleigh County Commission

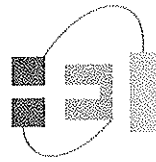
c: Bill Wocken, Bismarck City Administrator  
Mel Bullinger, PE, Bismarck City Engineer  
Jeff Heintz, Director of Service Operations  
Scott Schneider, PE Apex Engineering Group

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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

13



## Meeting Summary

To: Terry Fleck, Chairman  
Burleigh County WRD

From: Craig Odenbach, P.E.

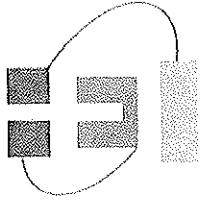
Date: April 11, 2013

Subject: Fox Island Riverside Residents Meeting

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Representatives of Houston Engineering, along with Gordon Weixel of the Burleigh County Water Resource District met with representatives of the Fox Island Homeowners Association and landowners who own residences or property along the Missouri River where a levee would be constructed under the alternative currently being considered. The landowners along the river had been provided copies of cross sections that identified the proposed location of the levee in relation to their residence. Michael reviewed those cross sections with the residents and solicited their feedback. The discussion points that resulted are described below.

- It may be prudent to construct a floodwall in the area of the Larsen residence due to the levee's proximity to their home. This would need to be lengthened from what was currently shown. There is an issue with the Lincoln Oakes Nursery irrigation line that will need to be evaluated.
- There may also be a need to remove and replace the deck on the Duane Ternes residence as part of project construction due to the proximity. Duane is trying to determine what repairs and improvements he should make and which should be left for later. The relocation of newly planted trees is also a consideration.
- The landowners along the river would like to review the general language of a potential easement document they would be asked to sign prior to the vote.
- The landowners along the river would like Houston Engineering to mark the location of the floodway line which typically constitutes the outside toe of the proposed levee on their lots. There may be value in additional survey data collection at the same time.
- There is one lot owned by out of state interests who would like to see their lot remain in a native and pristine condition. There are currently some opposed to the project, but are open to discussion to resolve their concerns. The need to negotiate with those landowners and to possibly reduce their assessment based on the fact that no homes have been or will be constructed on the property was discussed. The possibility of using eminent domain to construct the levee across their property was discussed, but Michael noted that there was little likelihood of the Water Resource District exercising that authority. It is possible a mutually acceptable compromise could be reached.
- There was considerable discussion about the potential for the Burleigh County Highway Department constructing a grade raise that would effectively provide flood control protection to a majority of the residents potentially with no assessment to the residents. It was clear from the discussion that the residents need to know the intentions of the Burleigh County Highway Department in the event the project fails before they can cast an informed vote.
- The fact that the State Water Commission only provides conditional approval before a vote for assessment drain projects and not flood control projects was also discussed along with the possibility of approaching the State Water Commission and requesting either a change in policy or an exception to that policy.



Houston Engineering Inc.

Fargo	701 237 5065	701 237 5101
Bismarck	701 223 0200	701 324 0300
Maple Grove	701 493 4822	701 493 8572
Minot	701 852 7951	701 854 5655
Thief River Falls	218 681 2951	218 681 2997

Name

Representing

Phone

Email

Craig Odonbach	NET	323-0200	codent@kelbowna
DuWayne Temes	Home	220-8335	-
BRIAN BELLA	HOME	202-8532	bbjella@craytek.com
Joe Heringer	Home 2430 Larson Rd	426-3573	jeheringer@gmail.com
Everitt Heringer	2505 Larson Rd	220-4852	everitt@heringer.com
Howard Mallory	Fox Island HOA	222-4247	howard@bismarcktitle.com
Julie Krenz	Home	224-9038	juliekrenz@bis.mid.nor
Paul Gowig	3456 Gallatin	224-9038	Pgowig@nd.gov
Diane Larson	2525 Larson Rd	400-7218	dklarson@nd.gov
GREG LARSON	2525 LARSON RD.	400-7217	glarson@century21
BOB WEXEL	BCWRD	258-5390	morrison.com
DON ROLOFF	FOX ISLAND HOME OWNERS	471-8861	qweixel@nd.gov
DONAVON WAGNER	" "	400-5858	vwagner@bis.mid.nor
			DWAGNER@WAGNER
			FINANCIALSERVICES
			COM

**PERMANENT EASEMENT**  
(Dike or Levee for Flood Control)

**KNOW ALL MEN BY THESE PRESENTS** that **(Insert Landowner Name Here)**, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE BURLEIGH COUNTY WATER RESOURCE DISTRICT**, its successors and assigns, hereinafter referred to as "Grantee", a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing and maintaining an earthen dike or levee for flood control for the purposes of protecting property from the waters of the Missouri River. The property is required for a portion of the dike or levee to be constructed along the Missouri River on Fox Island. Said tract being more particularly described as follows:

(Insert Legal Description Here)

The said property is pictorially represented as Parcel ? on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above described tract of land and do perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with the said earthen dike and customary appurtenances, or with the material for laying, maintaining, operating or repairing the same, in, over, or upon the above described premises, and Grantor expressly warrants and states that no buildings, trees or other obstacles of any kind shall be placed or located upon the tract.

Grantor reserves the right to otherwise utilize the said earthen dike for purposes not inconsistent with this easement and shall be allowed to install and maintain grass cover and otherwise utilize the earthen dike or levee area so long as such improvements do not interfere with or otherwise impair the dike structure. Grantor further has the responsibility to maintain the grass or other vegetation that may be planted or grown upon the dike or levee area. No obstructions (trees, structures, etc.) shall be allowed with said easement.

IN WITNESSES WHEREOF, the Grantor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(Insert Landowner Name Here)

By \_\_\_\_\_  
(Insert Landowner Name Here)

STATE OF NORTH DAKOTA     )  
  ) ss:  
COUNTY OF BURLEIGH         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, a notary public in and for said county and state, personally appeared (Insert Landowner Name Here), described in and who has executed the within and foregoing instrument.

\_\_\_\_\_  
Notary Public

The legal description was prepared by:  
Houston Engineering  
3712 Lockport Street  
Bismarck, ND 58503  
(701) 323-0200

This document prepared by:  
David Bliss (ND #??????)  
Bliss & Stebbins  
400 East Broadway Avenue, Suite 308  
P.O. Box 4126  
Bismarck, ND 58502-4126  
(701) 223-5769

**Exhibit "A"**



## Burleigh County Water Resource District

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

### BY HARD COPY AND ELECTRONIC MAIL

May 3, 2013

Todd Sando, P.E.  
State Engineer  
North Dakota State Water Commission  
900 East Boulevard Ave.  
Bismarck, North Dakota 58505-0850

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

Dear Mr. Sando:

As you know, all four Hogue Island homeowners have agreed to sell their respective residences to the Burleigh County Water Resource District ("District"). Three of the four homeowners - Rodney and Laura Boll, Heather and Brad Magnus, and Jerome Rodgers - have executed a purchase agreement and supporting documents for the District's purchase. I have attached a copy of these documents for your review and information. Rodney and Laura Boll's title work, via the proposal of an owner's title insurance policy, has been completed, and the District has approved its acceptance of the Boll's proposed owner's policy.

Dr. Steven Bernard, the fourth Hogue Island homeowner, has also indicated his intent to sell his home to the District. Dr. Bernard's application to FEMA for flood insurance benefits has yet to be acted upon by FEMA. The parties have calculated and agreed upon Dr. Bernard's net purchase price with or without payment by FEMA of flood insurance benefits paid to Dr. Bernard. Dr. Bernard has agreed to transfer, assign or otherwise convey whatever FEMA flood insurance benefits will be paid to him. Attached please find a copy of a draft of a proposed purchase agreement between the District and Dr. Bernard, subject to further review and approval by FEMA as set forth below.

However, I understand that Dr. Bernard's assignment of his potential FEMA payout is subject to the Federal Assignment of Claims Act of 1940 (FACA), 31 U.S.C. 3727. Our legal counsel is working with FEMA's Washington, D.C. counsel to make sure that the District's purchase of Dr. Bernard's home, and Dr. Bernard's intent to assign his potential FEMA payout to the District,

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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

JA



# Burleigh County Water Resource District

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

Page Two  
Todd Sando  
May 3, 2013

comport with FACA requirements such that the District will be able to receive any FEMA benefits to which Dr. Bernard may be entitled.

This FEMA issue must first be resolved before the District and Dr. Bernard can enter into a purchase agreement for his residence. Meanwhile, the other three Hogue Island homeowners

and the District have entered into respective purchase agreements and, depending on their respective stages of title work, will be ready to close on the District's purchase of their respective properties.

I understand that the State Water Commission may be amenable to the District's purchase of three of the four Hogue Island homes now, and Dr. Bernard's purchase to come upon FEMA approval of Dr. Bernard's assignment of his FEMA interest to the District. Therefore, I respectfully request that the State Water Commission release its share of funds for the purchase of the Boll, Magnus and Rodgers residences, respectively, subject to the completion of and District's approval of all necessary title work for these residences.

Thank you for your consideration. I look forward to hearing from you.

Very truly yours,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

#### Enclosures

- cc: District Board members w/o enclosures (by electronic mail only)  
Doug Schonert, Burleigh County Commission w/o enclosures (by electronic mail only)  
Michael Gunsch, District Engineer w/o enclosures (by electronic mail only)  
John Paczkowski, State Water Commission w/enclosures (by electronic mail only)  
Jeff Klein, State Water Commission w/enclosures (by electronic mail only)  
Lonnie Hoffer, North Dakota Emergency Services w/enclosures (by electronic mail only)  
David R. Bliss, w/enclosures (by hard copy and electronic mail)

---

#### Current Board Members:

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



May 14, 2013

Todd Sando, PE  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505

RE: Burnt Creek Floodway Flood Damage Restoration - Cost Share Request

Dear Mr. Sando:

During the 2011 flood event, the Burnt Creek Floodway sustained damages requiring repairs to ensure the project's continued functionality. Houston Engineering has developed a preliminary plan set for the repairs that area required in three locations: An area of erosion damage requiring reshaping and bank stabilization to restore the flood control levee on the old backwater channel north of Ponderosa and protect public lands owned by the Bismarck Parks and Recreation District (Site 1), a washed out culvert and crossing that keeps the 100 year even from entering the north side of the island (Site 2), and general reshaping of the southern floodway levee impacted by settlement and rutting due to traffic during high water conditions (Site 3). Enclosed is a copy of the plan set for your information and review.

Houston Engineering has prepared an Opinion of Probable Cost for these repairs totaling \$146,340, a copy of which is enclosed. The Burleigh County Water Resource District was able to secure funding assistance from the NRCS for development of the preliminary design, but funding for construction is currently unavailable due to federal budget cuts. Subsequently, we are exploring other funding options to complete these important repairs. The Burnt Creek Floodway provides an important flood control benefit to the rural/rural residential area downstream as well as on Houge Island. In our opinion the damages incurred during the extraordinary flood event of 2011 are above and beyond normal routine maintenance and will hopefully be viewed as eligible for cost share assistance from the ND State Water Commission.

Thank you for considering this request. If you have any questions regarding the project, please contact Michael Gunsch, Houston Engineering, at (701) 323-0200.

Sincerely,

Terry Fleck, Chairman  
Burleigh County Water Resource District

Enclosure

C: Michael Gunsch, HEI

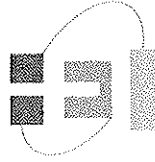
51

Bismarck Office

701.323.0200

701.323.0300

3712 Lockport Street Bismarck ND 58503



HoustonEngineering Inc.

May 6, 2013

Mr. Douglas Hartman  
5804 Desperado Place  
Bismarck, ND 58503

Re: Sunnyview Flood Control Project

Dear Mr. Hartman:

Thank you for responding to the January 15, 2013 letter from the Burleigh County Water Resource District regarding the Sunnyview Flood Control Project. This letter is to affirm our conversation that, based on the information provided in the letter, you are satisfied your concerns have been considered and addressed in the revised project design.

We appreciate your cooperation and comment regarding these changes. You will be sent a notice should the project proceed to a public hearing and vote.

Sincerely,

Michael H. Gunsch, PE  
Senior Project Manager

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

Fargo

701.237.9165

701.237.3101

Minot

701.852.7931

701.858.5055

Maple Grove

701.435.4922

765.493.5572

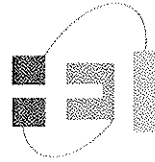
Upper River Falls

218.631.2951

218.581.2987

52

3712 Lockport Street Bismarck ND 58503



HoustonEngineering Inc.

May 6, 2013

Patrick Geiger  
1587 Central Hall Road  
Cloquet, MN 55720

Re: Sunny View Flood Control Project

Again thank you for contacting me regarding the Sunny View Flood Control Project. We also visited with Wayne and Valerie Jundt, a while ago, regarding this project and are providing them a response letter based on our discussions. It is anticipated you will be visiting with them again regarding this project, so we are sharing your letter with them and theirs with you to keep the communications open regarding the project.

Again we understand your concerns related to the potential for increased backwater flooding onto your property. The proposed project design, while conveying more water along the north side of 84<sup>th</sup> Avenue, will not result in increased flood elevation northeast of the 26<sup>th</sup> Street NE and 48<sup>th</sup> Avenue NE intersection. The reason is that these waters will be conveyed through 26<sup>th</sup> Street NE with two 30" CMP's at a lower elevation than the existing culvert. The result offsets any negative impacts to your property as well as reducing flood impacts to those properties located south of 84<sup>th</sup> Avenue and east of 26<sup>th</sup> Street.

While the majority of the channel reconstruction work will occur within the roadway right-of-way, there is a need for the placement of spoil materials on your property, should the project proceed. The extent of this work is shown on the attached plan, profile and cross section drawings. The result of this placement will be the raising the ground, however the drainage pattern and use of the property for cropland will not change. Depending upon when construction takes place, a temporary construction easement would be obtained and crop damages would be paid if losses occur.

You will also be provided a notice of the public hearing on this project to determine if the residents are willing to pay for its implementation. If at any time you wish to discuss this further please let me know.

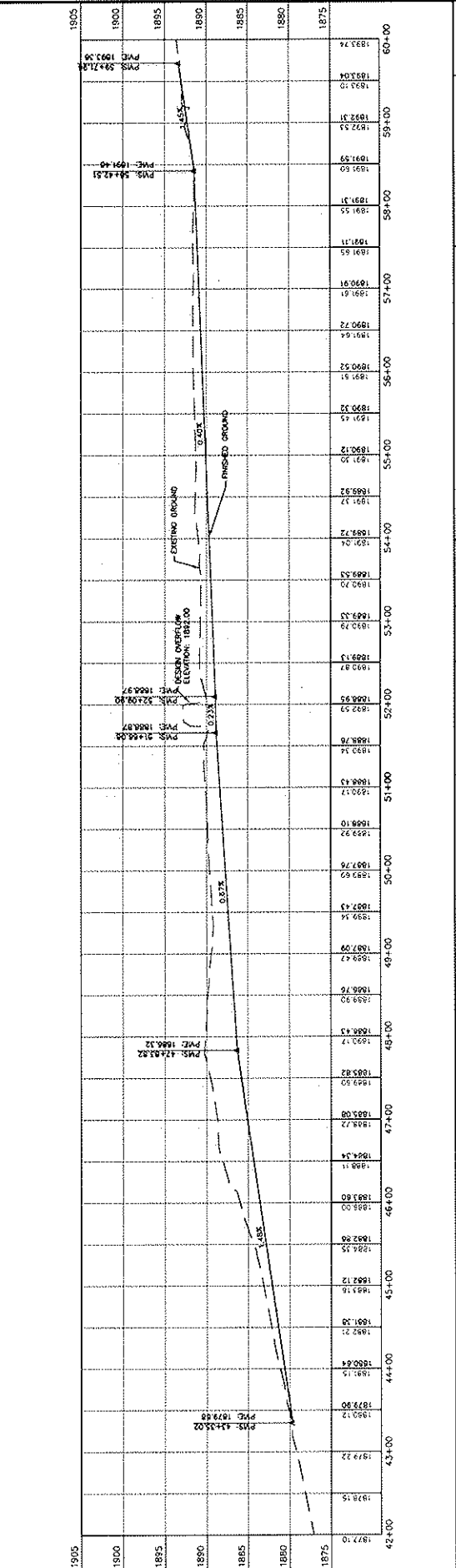
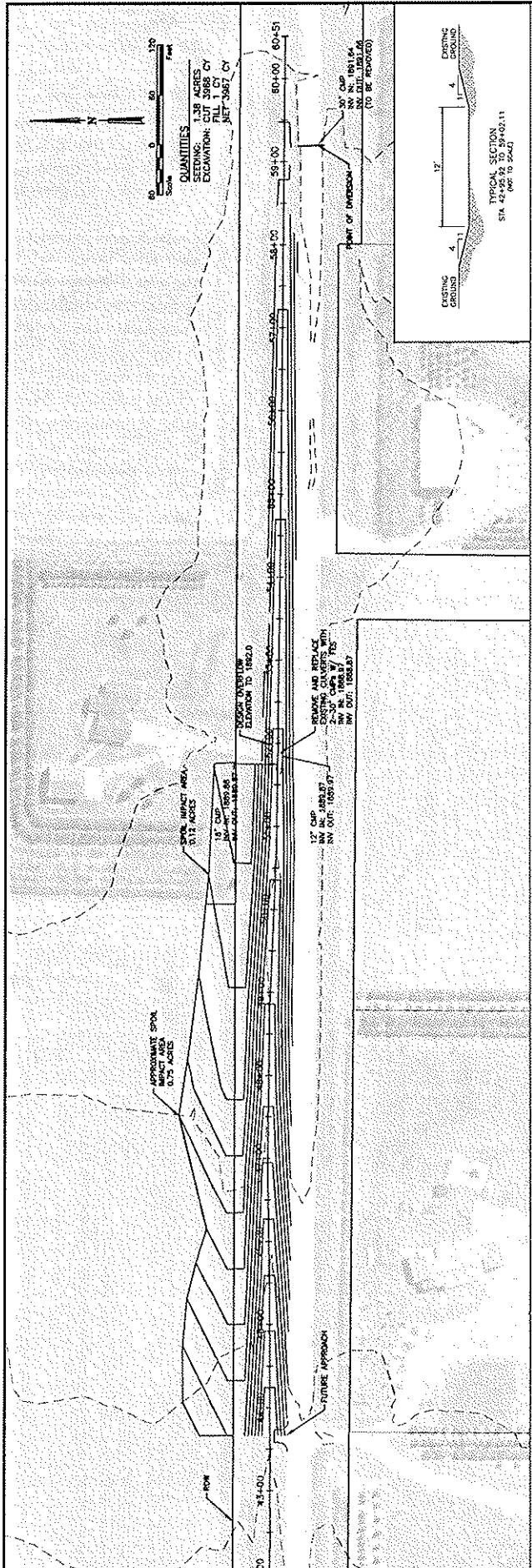
Sincerely,

Michael H. Gunsch, PE  
Senior Project Manager

Enclosure

- c: Terry Fleck, Chairman BCWRD
- David Bliss, Bliss and Stebbins
- Marcus Hall, PE, Burleigh County Engineer
- Ryan Miller, Sunny View Landowners
- Wayne and Valerie Jundt

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No.	Revision	Date	By

Bismarck	Drawn By	Date	11-26-2012
1701 323 0700	NRC		
1701 323 0700	Checked By	Scale	AS SHOWN
1701 323 0700	JMS		

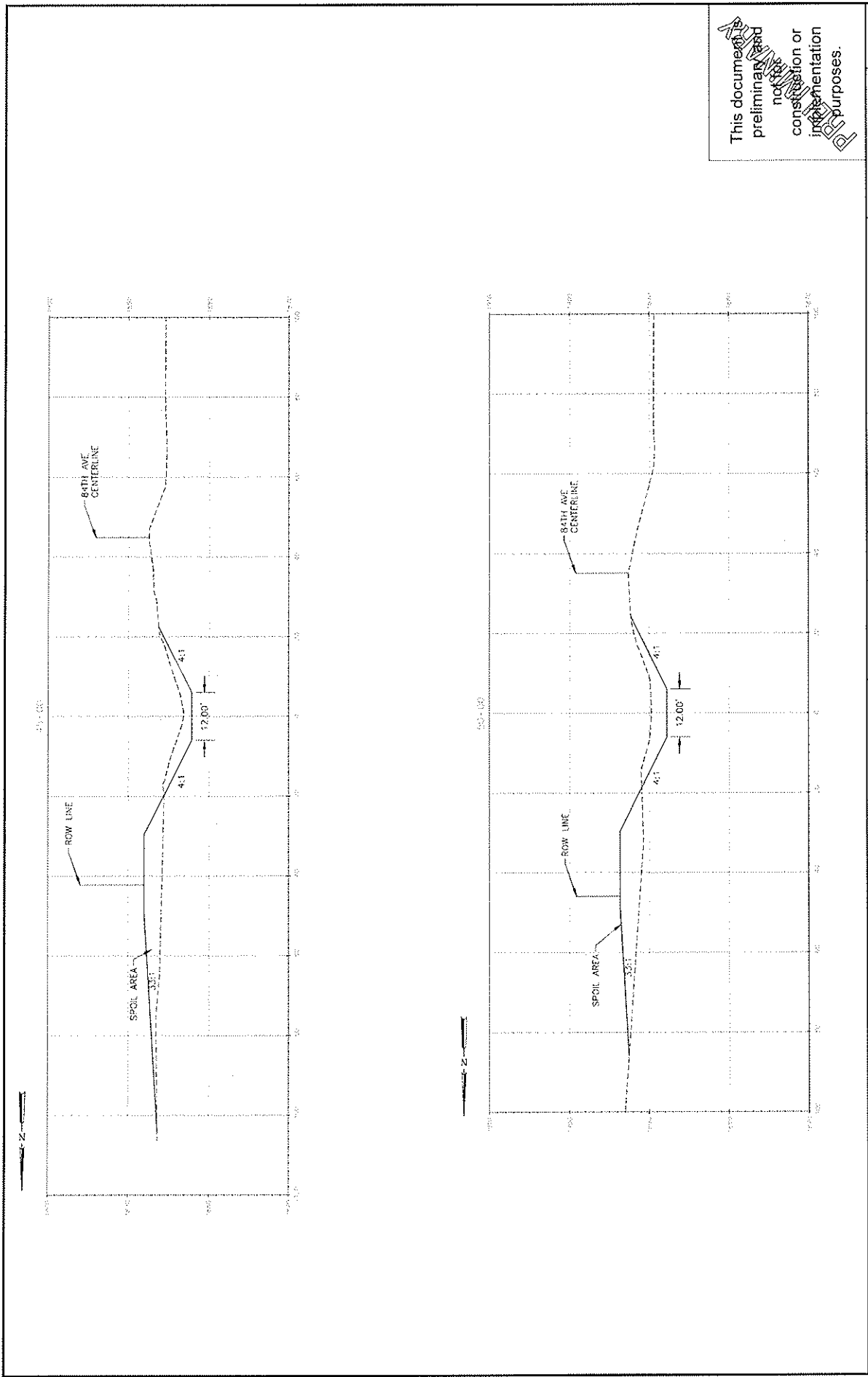
	<b>Houston Engineering Inc</b>
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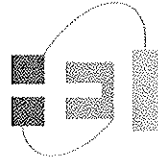
<b>SUNNY-VIEW ACRES FLOOD CONTROL</b>		<b>FIGURE</b>
<b>BURLEIGH COUNTY WATER RESOURCE DISTRICT</b>		<b>PLAN &amp; PROFILE</b>
<b>BURLEIGH COUNTY, NORTH DAKOTA</b>		<b>PROJECT NO. 6025-004</b>
		<b>1 OF 2</b>

50

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



<table border="1"> <tr> <td>No.</td> <td>Revision</td> <td>Date</td> <td>By</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	No.	Revision	Date	By					<p>Houston Engineering Inc.</p>	<table border="1"> <tr> <td>Drawn by</td> <td>MRC</td> <td>Date</td> <td>5-6-13</td> </tr> <tr> <td>Checked by</td> <td>DMG</td> <td>Scale</td> <td>AS SHOWN</td> </tr> </table>	Drawn by	MRC	Date	5-6-13	Checked by	DMG	Scale	AS SHOWN	<p>SUNNYSIDE 84TH AVENUE TYPICAL CROSS SECTIONS BURLEIGH COUNTY, ND</p>	<p>TYPICAL SECTIONS PROJECT NO. 6025-003 SHEET 1 OF 2</p>
No.	Revision	Date	By																	
Drawn by	MRC	Date	5-6-13																	
Checked by	DMG	Scale	AS SHOWN																	



May 6, 2013

Wayne and Valerie Jundt
3202 84th Avenue NE
Bismarck, ND 58501

Re: Sunnyview Flood Control Project

Dear Wayne and Valerie:

Thank you for meeting with me and Kathleen Jones, Manager, regarding the January 15, 2013 letter from the Burleigh County Water Resource District regarding the Sunnyview Flood Control Project. This letter is to affirm our conversation and to document a number of the items we discussed, as well as provide additional information as applicable in response to your questions. During our conversation you noted a number of specific concerns regarding the project development. The following is a summary of your issues and questions as we understand them. If we missed anything, please let me know.

1. FLOODWATER CONCERNS – WHAT ARE THE FLOOD RISKS?

The proposed project as designed will lower floodwaters south of your residence on all frequency events. These lower floodwaters result from the lowering of the approach to you residence six inches from elevation 1892.5 to 1892.0 and installing 2-30" CMP's to replace the existing 12" and 18" CMP's. The benefits are reductions in flood elevations ranging from around 1.8 feet (21.6 inches) on a 2-year 6-hour rainfall (1.6 inches) to 0.8 feet (9.6 inches) on a 100-year rainfall (3.8 inches). Understand these modeled flood events are based on soil conditions within the watershed that are already wet from a rainfall of at least one inch occurring five days preceding the flood event.

2. FLOWS SOUTH THROUGH AND OVER 84TH AVENUE – CHANGE IN FLOWS TO THE WEST?

Currently, under existing conditions, the projected flows to the south, under 84th Avenue, range from 2.6 cfs on a 2-year event to 12.3 cfs on a 100-year event. These flows represent 18.3% to 7.8% of the total projected peak flows respectively on these events. This indicates the majority of the flows entering this area already pass under or over your approach and drain west. The actual peak flows to the west remain nearly unchanged on the 100-year event at less than 0.6%, while on the 2-year event they increase around 33%. Both however are contained within the ROW channel section at lower backwater elevations. The project is anticipated to prevent the flows to the south over the top of 84th Avenue.

3. CHANGES TO THE RESIDENTIAL APPROACH (DRIVEWAY) – BACKWATER IMPACTS?

As noted, your approach would be lowered and new larger culverts installed. Currently your approach is nearly overtopped on a 2-year event, with considerable overtopping and backwaters occurring on the larger flood events. After it has been upgraded it is not projected to overtop until something greater than a 10-year 6-hour rainfall event (2.5 inches). Again this is based on a watershed wide rainfall event that follows recent rainfall.

Handwritten mark resembling the number 36

4. CAPACITY OF THE 84<sup>TH</sup> AVENUE RIGHT-OF-WAY (ROW) DITCH – BACKWATER IMPACTS?

The ROW ditch along the north side of 84<sup>th</sup> Avenue west of your residence is presently very flat in gradient. To better facilitate flows in this area the gradient will be steepened and the conveyance capacity increased. This will require a deepening and widening of the ROW ditch, which will also result in lowering the potential for snow block as the steeper channel will tend to clear sooner during snowmelt runoff events.

5. RESIDENTIAL SEPTIC SYSTEM – STANDING WATER IMPACTS?

You noted that your septic system, located southeast of your residence, has been affected by previous flood events, specifically the 1993 rainfall and 2009 snowmelt events. These events resulted in backwaters into your basement on these two occasions. Based on topography and existing backwater conditions, we understand the concern. The noted reduction in floodwaters from the changes in approach culverts and ROW channel will reduce the risk of these impacts reoccurring. It is our understanding that there is shallow cover over the septic drain tile, which can create issues, and there is currently no backflow preventer or gate on the system. Can or will the project prevent these risks entirely? That is unknown as conditions preceding the event will influence the results. The key point is that the proposed project will notably reduce these risks compared to existing conditions, which is a benefit to your residence. A map illustrating the existing and projected 100-year, 6-hour events is enclosed per your request.

We appreciate your cooperation and comment regarding these changes. If you have additional questions, please give me a call. You will be sent a notice should the project proceed to a public hearing and vote.

Sincerely,



Michael H. Gunsch, PE  
Senior Project Manager

Enclosed (flood extents at residence)

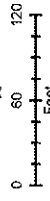
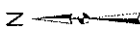
c: Terry Fleck, Chairman BCWRD  
David Bliss, Bliss and Stebbins  
Marcus Hall, PE, Burleigh County Engineer  
Ryan Miller, Sunny View Landowners  
Patrick Geiger





**Legend**

- Approx. Drain Field
- Pre Elev: 1893.70
- Post Elev: 1892.75
- Contours



STORAGE  
PRE & POST

<b>SUNNYSIDE ACRES FLOOD CONTROL</b>			
DATE	DRAWN BY	CHECKED BY	SCALE
5-3-10	GDH	GDH	AS SHOWN
 Hatchon Engineering Inc.			SHEET NO. PROJECT NO.





April 30, 2013

North Dakota Pollutant Discharge Elimination System (NDPDES)  
General Permit for Stormwater Discharges from Construction Activity  
NOTICE OF COVERAGE

Permittee(s)

Owner Contact: Terry Fleck  
Burleigh County Water Resource District  
221 North 5th St.  
PO Box 5518  
Bismarck, ND 58502-5518

Operator Contact: Ryan Holen  
Weisz & Sons Inc.  
PO Box 1756  
Bismarck, ND 58502

Coverage under the 2009 reissued construction general permit (NDR10-0000) is identified as follows:

Permit ID: **NDR105359**      Site Name: **Apple Valley Cooperative Sanitary Lagoon Improvements**

Please remember to update the Stormwater Pollution Prevention (SWPP) plan as appropriate for site conditions. The best management practices (BMPs) and temporary structures must be inspected, maintained and adjusted until the site is stabilized following construction activities. Once the site is stabilized as outlined in the general permit, you may end permit coverage by filing a termination notice. Cities or counties may impose additional requirements and/or specific BMPs for construction affecting their storm drainage system. Please check with the local officials to be sure all local stormwater management considerations are addressed.

Additional Information

The permit conditions, forms and related information may be found on our web site at:

[www.ndhealth.gov/wq/Storm/Construction/ConstructionHome.htm](http://www.ndhealth.gov/wq/Storm/Construction/ConstructionHome.htm)

Should you have any questions on the permit, please contact a stormwater staff person listed below.

Dallas Grossman  
Division of Water Quality  
701.328.5242  
[dgrossma@nd.gov](mailto:dgrossma@nd.gov)

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# North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850  
701-328-2750 • TTY 800-366-6888 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

April 10, 2013

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

Dear Chairman Fleck:

We received your letter dated March 22, 2013 regarding the snagging and clearing of the Missouri River channel below the University of Mary curve.

The State Water Commission cost-share policy does provide assistance for snagging and clearing projects up to 50% of eligible items on watercourses as defined in NDCC 61-01-06. Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the primary channel as well as any sediment that has accumulated in the immediate vicinity and any trees in imminent danger of falling into the channel.

The snagging and clearing of artificial/man-made channels, dredging of watercourses for sediment/silt removal, clearing and grubbing of cattails and other plant vegetation or the removal of any other unwanted materials are not eligible under cost-share policy.

The State Water Commission staff would be willing to attend a meeting to discuss the proposed project. Please contact Melissa Behm at 701-328-4862 with available meeting dates and to book the Water Commission conference room if you so desire.

Sincerely,

Todd Sando, PE  
State Engineer

cc. Michael Gunsch, Houston Engineering  
Wade Bachmeier, Morton County WRD  
Bill Robinson, Lower Heart WRD  
Bill Wocken, City of Bismarck  
Jim Neubauer, City of Mandan  
Jerry Woodcox, Burleigh County Commission  
Bruce Strinden, Morton County Commission  
Ken Royse, Missouri River Joint WRD

TS:MMB/1551

**Snagging and Clearing – Removal of Cottonwood Trees  
Missouri River South of Bismarck  
Heart River Confluence to Tokach Timberhaven  
May 4, 2013**

**Purpose and Need** – To evaluate and remove organic/physical impediments (i.e. cottonwood trees and related debris) to the flow of water within the main channel of the Missouri River from the confluence of the Heart River (River Mile 1311) south to the Tokach Timberhaven area (River Mile 1303). These materials create an undesirable obstruction that significantly increase the risk for ice jams and excessive sediment deposition, both which decrease channel conveyance capacity and increase upstream flood risks in Burleigh and Morton County. These materials also present a significant public hazard to recreational navigation within the river channel. The primary removal area is projected to be located between River Mile 1306 and 1304.

**Project is to have a fast track schedule for completion to occur in the fall of 2013**

COE and Sovereign Lands Applications – **June 2013**

Interagency Meeting – **June 2013**

State Water Commission costs share request - **June meeting** (no date as yet)

OPC needs to be projected early (request 30 days prior to SWC meeting)

Cost share is 50% of eligible construction (engineering is not cost shared)

Design Plans and Specifications to be completed **mid-July**

Bidding to occur in **August 2013**

**September and October Construction** – Low flow period better access (Latest – Mid Nov)

**Other participants and potential funding entities include:**

Burleigh County WRD (Lead Entity)

City of Bismarck

Burleigh County Commission

City of Mandan

Morton County WRD

Lower Heart WRD

Morton County Commission

North Dakota State Water Commission – Will provide technical support where possible

Contact and encourage support from the Congressional Delegation

No Federal funding is to be requested or required

Cost share partners would have to agree to carry the tab – To Be Determined

BCWRD has budgeted funding available to cover the front end costs ~ \$50-100K

Set up Email Contact group for information sharing – Meeting attendees noted below

**Need to determine local cost share distribution methodology**

By river mile the counties are equal

By potential affected properties Burleigh County has more

By ability to pay Burleigh County has more – County Taxable Valuation

GIS Option – Taxable property value within the floodplain?

Aerial extent within the floodplain?

Other wider county values?

**Issues of concern to work through:**

**Sovereign Lands Permit** – State Engineer is in favor of the project (application and timing)

**COE Permit** – Nationwide Permit Option (ask the question)  
Individual Permit (apply in June possibly obtain in August-Sept?)  
Next interagency meeting is mid-June – File COE Application and review

**Agency Issues:**

COE – Interagency Review and Coordination  
ND State Health Department – Section 401 certification (site disposal and testing)  
ND Game and Fish – (Structure in the River)  
USFWS – Endangered species (piping plover/least tern) – Sturgeon should not be an issue?  
Emergent Habitat Program - Committee  
SHPO – Section 106 (in water removal – not an issue)  
NEPA – Possible compliance questions  
No known Tribal issues or concerns  
Others – TBD

- Need to establish agency contacts ASAP to start the discussion

**Critical Issues for Permitting and Construction:**

**Construction methods for removal and disposal**

**Define for permit approval (practicable alternatives review)**

Need to visit directly with contractors – willingness to bid/unit prices/payment methods  
Industrial Builders  
Swengen Construction  
Northern Improvement  
Wanzek Construction  
Others – out of state ...?

**Site Access** – Who owns property, contact information, equipment access, and disposal options

**Construction Specifications**

Means and Methods to comply with potential permit conditions  
Impacts to river bed (water quality) – turbidity etc... removal impacts (scour/deepening)  
Fishery Impacts – Time of year  
Recreational Impacts – Time of year  
Turn/Plover Impacts – Long after nesting and fledging period  
Define limits of removal  
River Mile 1306 to 1304  
Shoreline or bank line impacts – leave trees along the bank (stabilization)  
Sediment movement and disturbance during construction  
Equipment in the river or on the shore (upland)  
No removal of sandbar materials  
Barges, Cranes, Backhoes, Dozers, etc...  
Site restoration – River and Upland - Leveling, seeding, etc...



**May 2, 2013 - Kick off meeting attendees:**

Terry Fleck, Chairman BCWRD (Moderator)  
Craig Odenbach, HEI  
Michael Gunsch, HEI

**State Water Commission**

Todd Sando, ND State Engineer  
Bruce Engelhardt, Director of Engineering  
John Paczkowski, Regulatory Section Chief  
Jerry Heiser, Sovereign Lands Coordinator  
Mellissa Boehm, Cost Share Technician

**City – County Representatives**

Bill Wocken, Bismarck City Administrator  
Jim Neubauer, Mandan City Administrator  
Bruce Strinden, Morton County Commission  
Ron Manchester, Toman Engineering (Lower Heart WRD)  
Ron Sando, Engineer (Morton County WRD)



# Burleigh County Water Resource District

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

April 11, 2013

Mr. Scott Olson, PE  
Vice President/Principal  
Apex Engineering Group  
600 South 2<sup>nd</sup> Street, Suite 145  
Bismarck, ND 58504

RE: Engineering and Technical Assistance for Water Resource and Water Management Projects

Dear Mr. Olson:

Thank you for your recent submittal and response relative to our request for proposals for engineering and technical assistance for water resource and water management projects.

The Burleigh County Water Board reviewed your proposal, and others, this past month. We felt your proposal was well done, very professional, and answered all our questions. You have demonstrated the capability, background and staff experience for many of the types of projects we routinely encounter.

However at our meeting on April 9 the Board decided to maintain our relationship with our incumbent engineering firm (Houston Engineers) as our primary engineer but to place your firm on our preferred listing for work which we believe you may be more suited for than Houston.

As such projects may now come up (those which we may prefer to use you rather than our incumbent engineer) we will be in contact with you for discussion.

Thank you again for your interest and response.

Sincerely,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

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Current Board Members:

Terry Fleck, Chair, Bismarck 255-3559   Ken Royse, Treas., Bismarck 258-1110   Cary Backstrand, Bismarck 223-4319   Kathleen Jones, Bismarck 258-1477   Gordon Weixel, 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

April 11, 2013

Mr. David Lutzky, PE, CFM  
Ulteig Engineers  
1412 Basin Ave.  
Bismarck, ND 58504

RE: Engineering and Technical Assistance for Water Resource and Water Management Projects

Dear Mr. Lutzky:

Thank you for your recent submittal and response relative to our request for proposals for engineering and technical assistance for water resource and water management projects.

The Burleigh County Water Board reviewed your proposal, and others, this past month. We felt your proposal was well done, very professional, and answered all our questions. You have demonstrated the capability, background and staff experience for many of the types of projects we routinely encounter.

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As such projects may now come up (those which we may prefer to use you rather than our incumbent engineer) we will be in contact with you for discussion.

Thank you again for your interest and response.

Sincerely,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

---

Current Board Members:

Terry Fleck, Chair, Bismarck 255-3559    Ken Royso, Treas., Bismarck 258-1110    Cary Backstrand, Bismarck 223-4319    Kathleen Jones, Bismarck 258-1477    Gordon Weixel, Bismarck 258-5390

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## Mona Livdahl

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**From:** Michael Gunsch [mgunsch@houstoneng.com]  
**Sent:** Tuesday, May 07, 2013 8:50 PM  
**To:** 'Mona Livdahl'  
**Cc:** Fleck Terry (tfleck@attitudedr.com)  
**Subject:** FW: Apple Creek Industrial Park Levee  
**Attachments:** Apple Creek Industrial Park - Flood Control Levee Memorandum.pdf

Memo for the booklet, per my discussion with landowners and Cary.

Thanks,

**Michael Gunsch**  
Principal / Project Manager  
Houston Engineering, Inc.  
3712 Lockport St, Bismarck, ND 58503  
O 701.323.0200 | F 701.323.0300  
[www.houstoneng.com](http://www.houstoneng.com)

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**From:** Michael Gunsch  
**Sent:** Tuesday, April 23, 2013 9:21 AM  
**To:** Cary Backstrand  
**Subject:** FW: Apple Creek Industrial Park Levee

Would like to visit with you on this... if you have time let me know, then stop by.  
There are a number of items to consider, and if the BCWRD is to be involved with this project it will take some level of protocol as to how.

Thanks,

**Michael Gunsch**  
Principal / Project Manager  
Houston Engineering, Inc.  
3712 Lockport St, Bismarck, ND 58102  
O 701.323.0200 | F 701.323.0300  
[www.houstoneng.com](http://www.houstoneng.com)

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**From:** Michael Gunsch  
**Sent:** Monday, April 22, 2013 3:47 PM  
**To:** 'mark@unistop.net'  
**Cc:** Cary Backstrand; Fleck Terry (tfleck@attitudedr.com)  
**Subject:** Apple Creek Industrial Park Levee

Mark:

Thank you for the call today regarding the Apple Creek Industrial Park flood control levee. Attached is the memorandum that was prepared some time ago regarding this levee and the limitations and issues related to certification. This should



assist the discussion in the reasons for the de-accreditation of the levee and mapping revisions that are under review by the NDSWC and FEMA.


I will visit with the BCWRD regarding the options the landowners have to pursue a project for reconstruction and certification of this levee system. This will take a bit of time, however their next meeting is May 14<sup>th</sup>. Depending upon how the discussion goes it may be included on the next agenda.

Will stay in touch.

Thanks,

**Michael H. Gunsch, PE**  
Principal / Senior Project Manager  
O 701.323.0200 | F 701.323.0300 | C 701.527.2134

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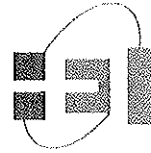
 3712 Lockport St. • Bismarck, ND • 58503  
[mgunsch@houstoneng.com](mailto:mgunsch@houstoneng.com)

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

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# Apple Creek Ind. Park Levee



Houston Engineering Inc.

## Technical Memorandum

3712 Lockport Street Ph. (701) 323-0200  
Bismarck, ND 58503-5535 Fax (701) 323-0300

Date: February 21, 2011

From: Michael H. Gunsch, PE

To: Art and Steve Mariner  
Gailen Narum, Chairman BCWRD

Subject: Flood Control Levee Certification  
[HEI No. 6684-002]

### Introduction:

The Apple Creek Industrial Park Subdivision (ACIP) is protected from Apple Creek flooding by an earthen flood control levee constructed around 1977, see **Figure One** [Apple Creek inundation mapping]. Limited information is available as to how the levee was designed and constructed. Swenson, Hagen & Co. was involved in the platting process for the subdivision and approval for the levee's construction in the floodplain, which was obtained through the North Dakota State Engineer. These actions are documented on the plat and a letter located through a records search. While inquiries were made to the City of Bismarck, Burleigh County and the State Water Commission no other documents, plans or specifications were found. Therefore, it has to be presumed the levee's construction, occurred without a geotechnical investigation or formal engineering design.

The original Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRM's) for Apple Creek were completed by Dames and Moore, in 1979 and then published by FEMA. The next effective FIRM date was September 18, 1985. This mapping included the existence of the ACIP levee as a functional flood protection measure. The current FIRM's for Burleigh County have an effective date of July 2005. However, the flood profiles and mapping on Apple Creek reflect the earlier mapping results. The current FIRM for the ACIP is shown on **Figure Two** [FIRMette].

The North Dakota State Water Commission (NDSWC), through funding provided by the Federal Emergency Management Agency's (FEMA) Risk Map Program, is in the process of remapping the Apple Creek floodplain and floodway. This process includes updating both the hydrology for the Apple Creek Watershed and water surface profiles, along with remapping using the City of Bismarck's and Burleigh County LiDAR topography. The revised Apple Creek FIRM is anticipated to be completed for FEMA review in 2011. Adoption of the updated maps by the Burleigh County Commission and establishment of a new effective date is anticipated to occur sometime in 2012.

Following a lengthy history of levee failures around the United States, FEMA now has a mandated requirement, through a congressional directive, that all flood control levees be certified to comply with the standards outlined in 44 CFR Section 65.10 or they will not be mapped as providing flood protection. **See attached fact sheet regarding levee accreditation.** The program requires that all levees undergo detailed evaluations to insure that they comply with established design criteria prior to certification. Existing levees are in the process of being evaluated and will be de-accredited upon the completion of update FIRM's, unless they have undergone the required review and certification documentation. Without certification any properties located behind these levees will be mapped in the floodplain as if the levee did not exist, based on the Base Flood Elevation (BFE) or 100-year flood event. Subsequently, these property owners may be required to obtain flood insurance by the lenders holding mortgages on the properties. This flood insurance requirement is enforced, again by federal regulation, through the financial institutions that hold the mortgages on the structures within the special flood hazard area.

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### **Existing Conditions:**

The ACIP contains properties that are presently zoned MA or heavy industrial and are located within Burleigh County and within the City of Bismarck's Extraterritorial Area, see **Figure Three** [Burleigh County Plat Map]. While many lots have been developed within this subdivision others have not. The City of Bismarck also owns property protected by the levee. This area is located off the northeast end of Runway #21, and will not be developed. Available topography indicates many of these properties and existing structures will be placed back into the floodplain with the pending de-accreditation of the levee. The proposed FIRM mapping is based on the updated BFE, which is expected to increase following the completion of the ongoing flood insurance study.

Property owners within the ACIP have several available options to address the revised FIRM's, flood protection and flood insurance issues. First, it must be recognized that without documentation of plans, specifications or construction and maintenance records, certification of the existing levee is highly unlikely. After completing a limited review of the levee, based on available LiDAR information and prior site visits, the following facts and concerns have been documented:

- Top elevation and freeboard (3 foot minimum above the BFE is required)
  - The BFE is approximately 1646 (NGVD 88) while the low point in levee is around 1645
  - The levee cannot be certified as it does not meet this standard
- Side slopes and top widths of the levee are inconsistent and not uniform
- Geotechnical Evaluation – No information is available related to slope stability or seepage.
- Seepage and highly saline areas exist along the dike alignment, indicating poor soil conditions
- Internal drainage, high groundwater or other factors have not been determined
- Operational and Maintenance Records – No known records exist and there is no formal authority responsible to oversee maintenance of the levee, its culverts and control gates
- The property on which the levee is located is documented as an easement on the ACIP plat, however ownership is uncertain
- Certification of a levee will not occur without a political subdivision or established authority having control for operation and maintenance purposes

While a detailed site inspection has not been conducted, the worst case scenario would require the complete removal and reconstruction of the levee. The cost for such a project is unknown as it requires a detailed preliminary engineering investigation.

### **Summary and Options:**

As the levee is presently not certifiable, the property owners in this area have the following options:

1. Accept the flood insurance requirements when the FIRM's are reissued. The area behind the levee will be placed back into the floodplain. While the existing levee would physically remain in place and provide some level of flood protection it cannot be used to remove the flood insurance requirement. Its condition will also continue to deteriorate as there is no authority to conduct maintenance or repairs.
2. An individual or group of owners could privately develop and fund a project that would reconstruct the levee to bring it into compliance with current standards for certification. A property owner's association or some other authority would be necessary to provide a means to fund future maintenance and to conduct such work when necessary to maintain certification.

3. Property owners could petition the Burleigh County Water Resource District to develop a flood control project under NDCC 61-16.1. This process for developing such a project is outlined in the information attached to this memorandum. The advantage to this approach is that all benefited property would be assessed its share of the cost to provide flood protection. There is a voting requirement for project development which requires that 50% or more of the beneficiaries not oppose establishing and constructing the project. There is also an opportunity to request cost share assistance from the North Dakota State Water Commission for a portion of the construction costs. The current NDSWC cost share for such urban flood control projects is 65% of construction costs. The long term maintenance of this project would then be under the authority of the Burleigh County Water Resource District.
4. If this subdivision were annexed into the City of Bismarck, the City would have the ability to create a Stormwater Improvement District to facilitate upgrades and future maintenance of the levee. There are a number of secondary or outside factors that likely may prevent annexation from occurring in the foreseeable future. In this instance funding would be provided by an assessment on the properties without a vote as the City has municipal authorities to construct such projects. The City however would not construct the project if a sizable number of property owners opposed the project.

While the flood insurance costs are unknown, the devaluation of property values within the ACIP could be significant. Therefore, action to retain the value of the flood protection measures through certification of the dike, which could require complete reconstruction, appears warranted.

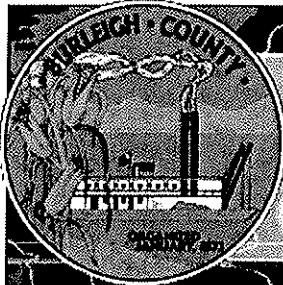
On a related note the City of Bismarck currently has stormwater management and zoning jurisdiction over the ACIP as it is located within their four mile extraterritorial jurisdiction. We understand that they have imposed a moratorium on new construction within the ACIP until a Stormwater Management Plan (SWMP) has been prepared and approved for the entire subdivision. In the short term, there appears to be a means to support individual SWMP's for areas located within the ACIP, rather than a need for a SWMP to address the entire subdivision. These SWMP will need to be addressed on a case by case basis. As a matter of course, the development of a flood control project would include the completion of a SWMP for the full subdivision. This is a required project component to address internal drainage associated with levee design and certification.

### ***Disclosure:***

Houston Engineering is currently retained as engineering consultant for the Burleigh County Water Resource District (BCWRD). Should a petition be filed with the BCWRD under NDCC 61-16.1 and Houston Engineering is retained to completed the preliminary engineering study all communications regarding said project will be directed through the BCWRD to avoid conflicts of interest. All project authority and decisions (e.g., resolutions, schedules, study, design, cost share requests, permit, construction activities, etc...) will be made by the BCWRD. Public input and information will be limited to status updates provided as part of the public hearing and project development process.

As we discussed, the BCWRD is being provided a copy of this memorandum and attachments as a disclosure that Houston Engineering has provided engineering services to you regarding this potential project on which they may be requested to become involved.

Also attached are several photos of the existing levee documenting visual conditions as of 2009.



# Apple Creek Ind Pk

Flood Control Levee

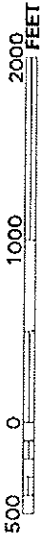
FIGURE ONE







MAP SCALE 1" = 1000'



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0815C

# FIRM

## FLOOD INSURANCE RATE MAP

BURLEIGH COUNTY,  
NORTH DAKOTA AND  
INCORPORATED AREAS

PANEL 815 OF 1125

ISEE MAP INDEX FOR FIRM PANEL LAYOUT:

CONTAINS:	NUMBER	PANEL	SUFFIX
BURLEIGH COUNTY	36017	0815	C
UNINCORPORATED AREAS	36036	0815	C
LINCOLN CITY OF	36039	0815	C
BISMARCK CITY OF	36040	0815	C

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER  
38015C0815C

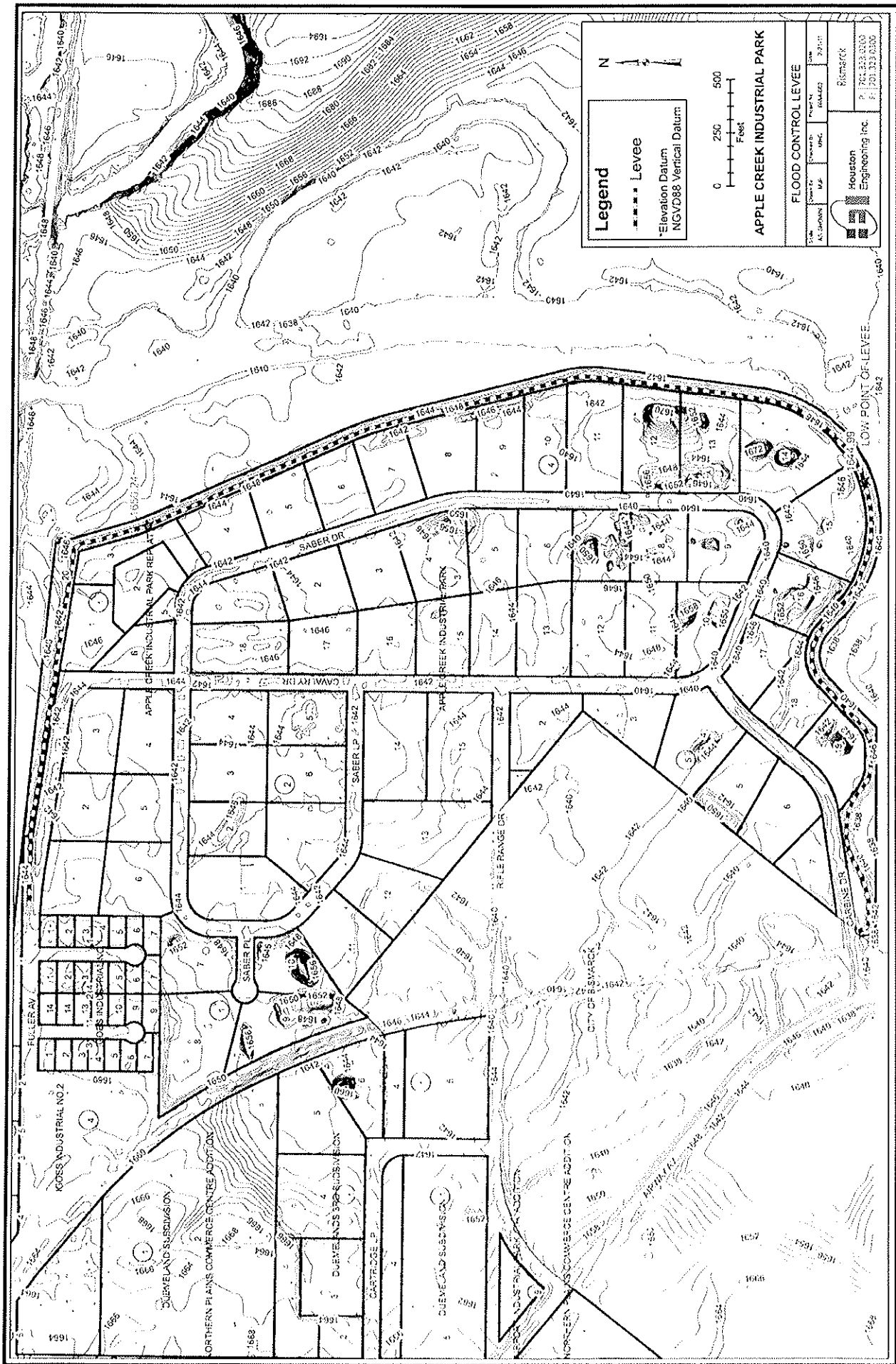
EFFECTIVE DATE:  
JULY 19, 2005

Federal Emergency Management Agency

Figure Two



This is an official copy of a portion of the above referenced flood map. It was extracted using FIRMette - Desktop version 3.0. This map does not reflect changes or amendments which may have been made subsequent to the date of the original map.



**Legend**

- Levee
- \*Elevation Datum  
NGVD88 Vertical Datum

**APPLE CREEK INDUSTRIAL PARK**

**FLOOD CONTROL LEVEE**

DATE	PROJECT NO.	DATE
10/1/00	1000000	10/1/00
10/1/00	1000000	10/1/00

**Houston Engineering Inc.**

17843.333.0330  
1781.323.0330

FIGURE THREE

# Meeting the Criteria for Accrediting Levee Systems on NFIP Flood Maps

## How-to-Guide for Floodplain Managers and Engineers

A levee system is a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices. A levee is a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

As part of the flood mapping process, the Department of Homeland Security, Federal Emergency Management Agency (FEMA) and its State and local mapping partners review levee system data and documentation.

It is the levee owner's or community's responsibility to provide data and documentation to demonstrate that a levee system meets National Flood Insurance Program (NFIP) requirements as described in Title 44, Chapter I, Section 65.10 of the Code of Federal Regulations (44 CFR Section 65.10), which you may view on the FEMA Web site at [www.fema.gov/plan/prevent/fhm/lv\\_fpm.shtml](http://www.fema.gov/plan/prevent/fhm/lv_fpm.shtml).

To be recognized as providing a 1-percent-annual-chance level of flood protection on the modernized NFIP maps, called Digital Flood Insurance Rate Maps (DFIRMs), levee systems must meet *and continue to meet* the minimum

design, operation, and maintenance standards (44 CFR Section 65.10).

To help clarify the responsibilities of community officials, levee owners, or other parties seeking recognition of a levee system identified during a study/mapping project, FEMA issued Procedure Memorandum No. 34 (PM 34), *Interim Guidance for Studies Including Levees*, on August 22, 2005. PM 34 provided clarification of the procedures provided in Appendix H of FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners*.

FEMA issued Revised Procedure Memorandum No. 43, *Guidelines for Identifying Provisionally Accredited Levees*, on March 16, 2007, which allows issuance of preliminary and, in some cases, effective DFIRMs while communities/levee owners compile and submit required data and documentation. FEMA issued Procedure Memorandum No. 45, *Revisions to Accredited Levee and Provisionally Accredited Levee Notations*, in April 2008 to clarify map notes for accredited and provisionally accredited levee systems.

This document provides information regarding the types of data and documentation that must be submitted for levee systems to be accredited on DFIRMs, including a checklist and an index of further resources you may wish to consult.

### COMMUNITIES WITH LEVEE SYSTEMS SHOULD KNOW:

- The community and/or other party seeking recognition or continued recognition of a levee system must provide data and documentation showing that the levee system provides base (1-percent-annual-chance) flood protection for FEMA to credit the levee system with flood protection on a FIRM or DFIRM.
- Communities *must* actively participate in the levee system documentation process.
- Levee systems without sufficient data and documentation will not be credited with providing base flood protection.
- Some levee systems may qualify for the Provisionally Accredited Levee (PAL) designation.
- Guidance regarding the PAL designation and other levee issues is available at:

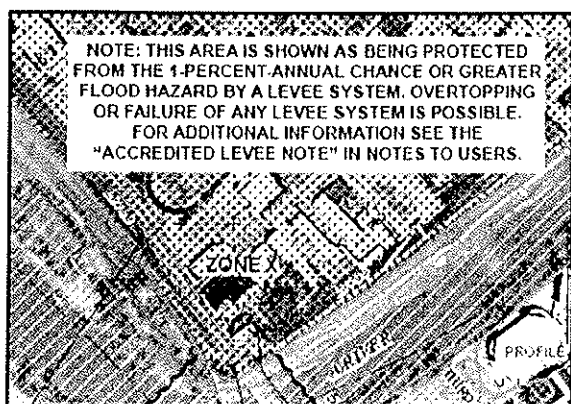
[www.fema.gov/plan/prevent/fhm/lv\\_fpm.shtml](http://www.fema.gov/plan/prevent/fhm/lv_fpm.shtml)





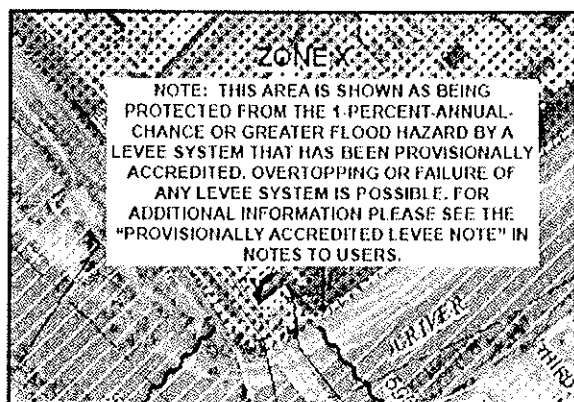
## HOW FEMA WILL MAP LEVEE SYSTEMS

FEMA mapping requirements are designed to provide the people living and working behind levee systems with accurate, up-to-date flood hazard and risk information so that they may make wise decisions to minimize damage and loss of life. FEMA does not evaluate the performance of a levee system—this is the responsibility of the levee owner. FEMA is responsible for establishing levee system evaluation and mapping standards, determining flood insurance risk zones, and reflecting these determinations on DFIRMs.



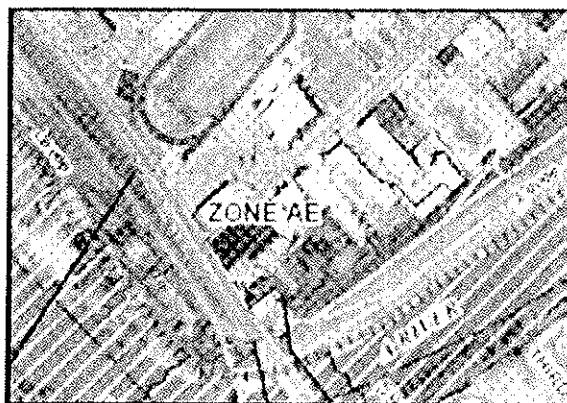
### Accredited Levee System

An accredited levee system is a system that FEMA has determined can be shown on a DFIRM as providing a 1-percent-annual-chance or greater level of flood protection. This determination is based on the submittal of data and documentation required by 44 CFR Section 65.10. The area landward of an accredited levee system is shown as a moderate-risk area, labeled Zone X (shaded), on the DFIRM except for areas of residual flooding, such as ponding areas, which will be shown as high-risk areas, called Special Flood Hazard Areas (SFHAs). Flood insurance is not mandatory in Zone X (shaded) areas, but is mandatory in SFHAs. FEMA strongly encourages flood insurance for all structures in levee-impacted areas.



### Provisionally Accredited Levee (PAL) System

The PAL designation may be used for a levee system that FEMA has previously accredited with providing 1-percent-annual-chance flood protection on an effective FIRM/DFIRM, and for which FEMA is awaiting data and/or documentation that will show the levee system is compliant with 44 CFR Section 65.10. Before FEMA will apply the PAL designation to a levee system, the community or levee owner will need to sign and return an agreement indicating the data and documentation required for compliance with 44 CFR Section 65.10 will be provided within a specified timeframe. The impacted area landward of a PAL system also is shown as a moderate-risk area, labeled Zone X (shaded). Therefore, flood insurance is not mandatory for insurable structures in the levee-impacted area; however, it is strongly encouraged by FEMA as are other protective measures.



### Levee System Not Accredited or De-accredited

If the levee system is not shown as providing 1-percent-annual-chance flood protection on an effective FIRM, the system is considered "not accredited" and the levee-impacted area is mapped as Zone AE or Zone A on a DFIRM, depending on the type of study performed for the area. If the levee system was previously shown as providing 1-percent-annual-chance flood protection on an effective FIRM or DFIRM, but does not meet the PAL requirements or is no longer eligible for the PAL designation, FEMA will de-accredit the levee system and re-map the levee-impacted area as an SFHA, labeled Zone AE or Zone A depending on the type of study performed. Flood insurance will be required for insurable structures with federally backed mortgages in SFHAs.

**Design Criteria\*****Section of the NFIP Regulations: 65.10(b)**

**Description:** For levee systems to be recognized (i.e., accredited) by FEMA, evidence that adequate design and operation and maintenance systems are in place to provide reasonable assurance that protection from the base flood exists must be provided. The following requirements must be met:

**Checklist for Design Criteria:**

<input type="checkbox"/>	<p><b>Freeboard.</b> Minimum freeboard required 3 feet above the Base Flood Elevation (BFE) all along length, and an additional 1 foot within 100 feet of structures (such as bridges) or wherever the flow is restricted. Additional 0.5 foot at the upstream end of a levee. Coastal levees have special freeboard requirements (see Paragraphs 65.10(b)(1)(iii) and (iv)).</p>
<input type="checkbox"/>	<p><b>Closures.</b> All openings must be provided with closure devices that are structural parts of the system during operation and designed according to sound engineering practice.</p>
<input type="checkbox"/>	<p><b>Embankment Protection.</b> Engineering analyses must be submitted that demonstrate that no appreciable erosion of the levee embankment can be expected during the base flood, as a result of either currents or waves, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability.</p>
<input type="checkbox"/>	<p><b>Embankment and Foundation Stability Analyses.</b> Engineering analyses that evaluate levee embankment stability must be submitted. The analyses provided must evaluate expected seepage during loading conditions associated with the base flood and must demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV as defined in the U.S. Army Corps of Engineers (USACE) Engineer Manual 1110-2-1913, <i>Design and Construction of Levees</i>, (Chapter 6, Section II), may be used.</p>
<input type="checkbox"/>	<p><b>Settlement Analyses.</b> Engineering analyses must be submitted that assess the potential and magnitude of future losses of freeboard as a result of levee settlement and demonstrate that freeboard will be maintained. This analysis must address embankment loads, compressibility of embankment soils, compressibility of foundation soils, age of the levee system, and construction compaction methods. In addition, detailed settlement analysis using procedures such as those described in USACE Engineer Manual 1110-1-1904, <i>Soil Mechanics Design - Settlement Analysis</i>, must be submitted.</p>
<input type="checkbox"/>	<p><b>Interior Drainage.</b> An analysis must be submitted that identifies the source(s) of such flooding, the extent of the flooded area, and, if the average depth is greater than 1 foot, the water-surface elevation(s) of the base flood. This analysis must be based on the joint probability of interior and exterior flooding and the capacity of facilities (such as drainage lines and pumps) for evacuating interior floodwaters.</p>

**Operation Plan\* Paragraph 65.10(c)(1) of the NFIP Regulations**

**Description:** For a levee system to be recognized (i.e., accredited), the operational criteria must be as described below. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual, a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or when the manual for a previously recognized system is revised in any manner. All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.

**Checklist for Operation Plan:**

<input type="checkbox"/>	<b>Flood Warning System.</b> Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials that will be used to trigger emergency operation activities; and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.
<input type="checkbox"/>	<b>Plan of Operation.</b> A formal plan of operation including specific actions and assignments of responsibility by individual name or title.
<input type="checkbox"/>	<b>Periodic Operation of Closures.</b> Provisions for periodic operation, at not less than one-year intervals, of the closure structure for testing and training purposes.
<input type="checkbox"/>	<b>Interior Drainage Plan.</b> See below.

**Interior Drainage Plan Paragraph 65.10(c)(2) of the NFIP Regulations**

**Description:** Interior drainage systems associated with levee systems usually include storage areas, gravity outlets, pumping stations, or a combination thereof. These drainage systems will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan.

**Checklist for Interior Drainage Plan:**

<input type="checkbox"/>	<b>Flood Warning System.</b> Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials that will be used to trigger emergency operation activities; and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.
<input type="checkbox"/>	<b>Plan of Operation.</b> A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

<input type="checkbox"/>	<b>Manual Backup.</b> Provision for manual backup for the activation of automatic systems.
<input type="checkbox"/>	<b>Periodic Inspection.</b> Provisions for periodic inspection of interior drainage systems and periodic operation of any mechanized portions for testing and training purposes. No more than 1 year shall elapse between either the inspections or the operations.
<b>Maintenance Plan</b>	<b>Paragraph 65.10(d) of the NFIP Regulations</b>
<b>Description:</b> For levee systems to be recognized as providing protection from the base flood (i.e., accredited by FEMA), the maintenance criteria must be as described herein.	
<b>Checklist for Maintenance Plan:</b>	
<input type="checkbox"/>	Levee systems must be maintained in accordance with an officially adopted maintenance plan, and a copy of this plan must be provided to FEMA by the owner of the levee system when recognition is being sought or when the plan for a previously recognized system is revised in any manner.
<input type="checkbox"/>	All maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance.
<input type="checkbox"/>	This plan must document the formal procedure that ensures that the stability, height, and overall integrity of the levee and its associated structures and systems are maintained. At a minimum, the plan shall specify the maintenance activities to be performed, the frequency of their performance, and the person by name or title responsible for their performance.
<b>Certification</b>	<b>Paragraph 65.10(e) of the NFIP Regulations</b>
<b>Description:</b> Data submitted to support that a given levee system complies with the structural requirements set forth in "Design Criteria" (Paragraphs 65.10(b)(1) through (7) of the regulations) must be certified by a Registered Professional Engineer. Also, certified "as-built" plans of the levee must be submitted. Certifications are subject to the definition given in Section 65.2 of the NFIP regulations. In lieu of these structural requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection from the base flood.	
<b>Checklist for Certification Requirement:</b>	
<input type="checkbox"/>	All data submitted is certified by Professional Engineer or certified by a Federal agency.
<input type="checkbox"/>	Certified as-built levee plans are included in the submittal.

## A NOTE ABOUT FLOOD RISK AND FLOOD INSURANCE

Levee systems are designed to provide a *specific level of protection*. They can be overtopped or fail during larger flood events.

Levee systems also decay over time. They require regular maintenance and periodic upgrades to retain their level of protection. When levees do fail, they often fail catastrophically. The resulting damage, including loss of life, may be much greater than if the levee system had not been built.

For all these reasons, FEMA strongly encourages people in levee-impacted areas to understand their flood risk, know and follow evacuation procedures, and protect their property by purchasing flood insurance protection, by floodproofing, or by taking other protective measures.

## CHECKLIST INFORMATION

The checklist provided in this fact sheet is meant to assist local community officials and levee owners in gathering the data and documentation that will be required for FEMA to show a levee system as providing 1-percent-annual-chance flood protection on the community's DFIRM. Where possible, text from the actual NFIP regulations (44 CFR Section 65.10) was used.

The checklist is set up according to the appropriate paragraph of 44 CFR Section 65.10. For example, Design Criteria can be found in Paragraph 65.10(b):

Design Criteria	Section of the NFIP Regulations: 65.10(b)
	<b>Description:</b> For levee systems to be recognized (i.e., accredited) by FEMA, evidence that adequate design and operation and maintenance systems are in place to provide reasonable assurance that protection from the base flood exists must be provided

For a comprehensive description of each item in this checklist, please see Appendix H of the *Guidelines and Specifications for Flood Hazard Mapping Partners*. Locations of this resource, and other useful resources, are provided below.

## INDEX OF RESOURCES

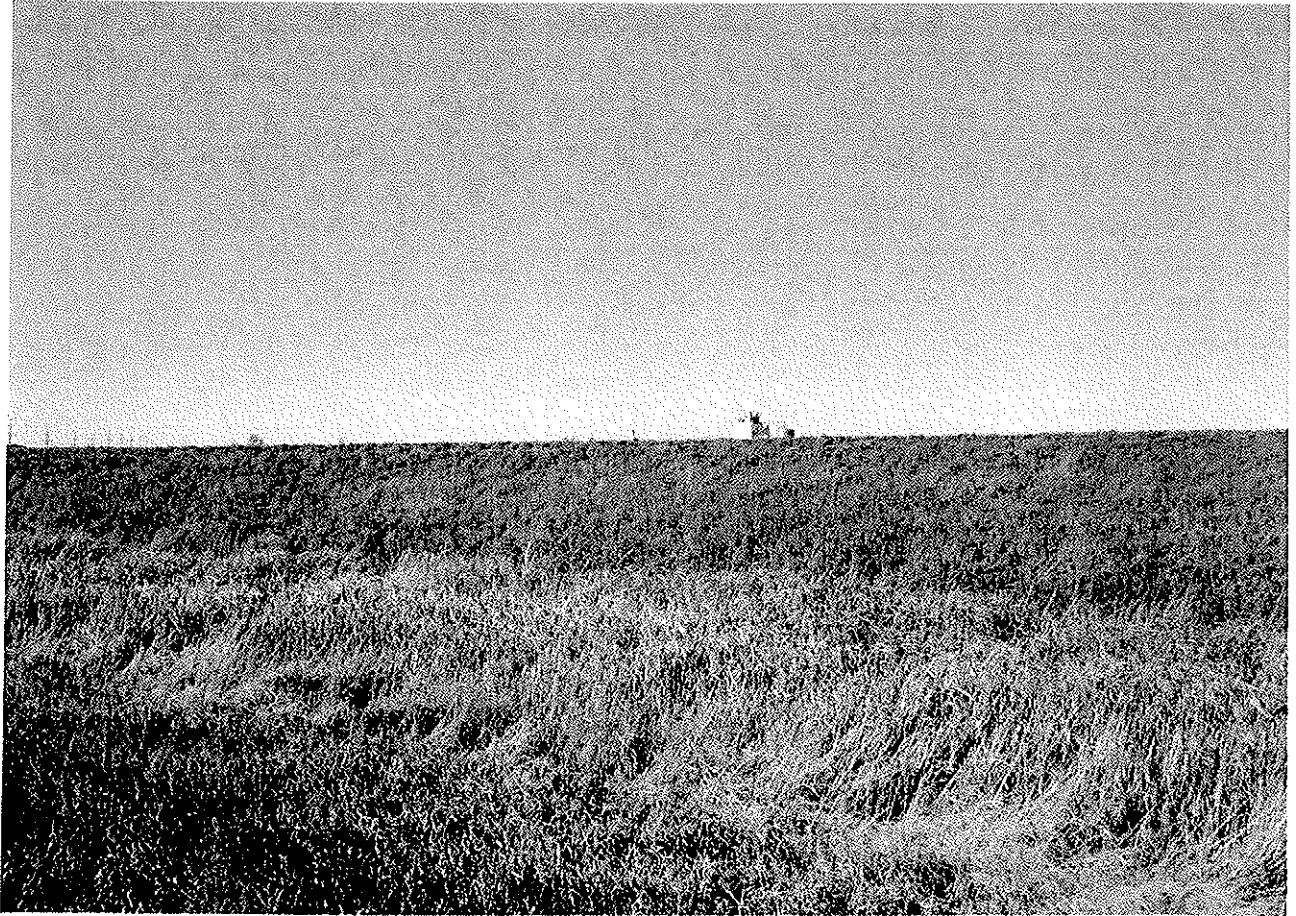
This fact sheet is accessible, along with an assortment of other levee-related resources, through a dedicated portion of the FEMA Web site. The gateway to the FEMA-provided levee information, which is organized by stakeholder group to assist levee owners, community officials, and other stakeholders, is [www.fema.gov/plan/prevent/flm/lv\\_intro.shtm](http://www.fema.gov/plan/prevent/flm/lv_intro.shtm). The FEMA resources referenced in this fact sheet, listed below, are directly accessible through [www.fema.gov/plan/prevent/flm/lv\\_fpm.shtm](http://www.fema.gov/plan/prevent/flm/lv_fpm.shtm).

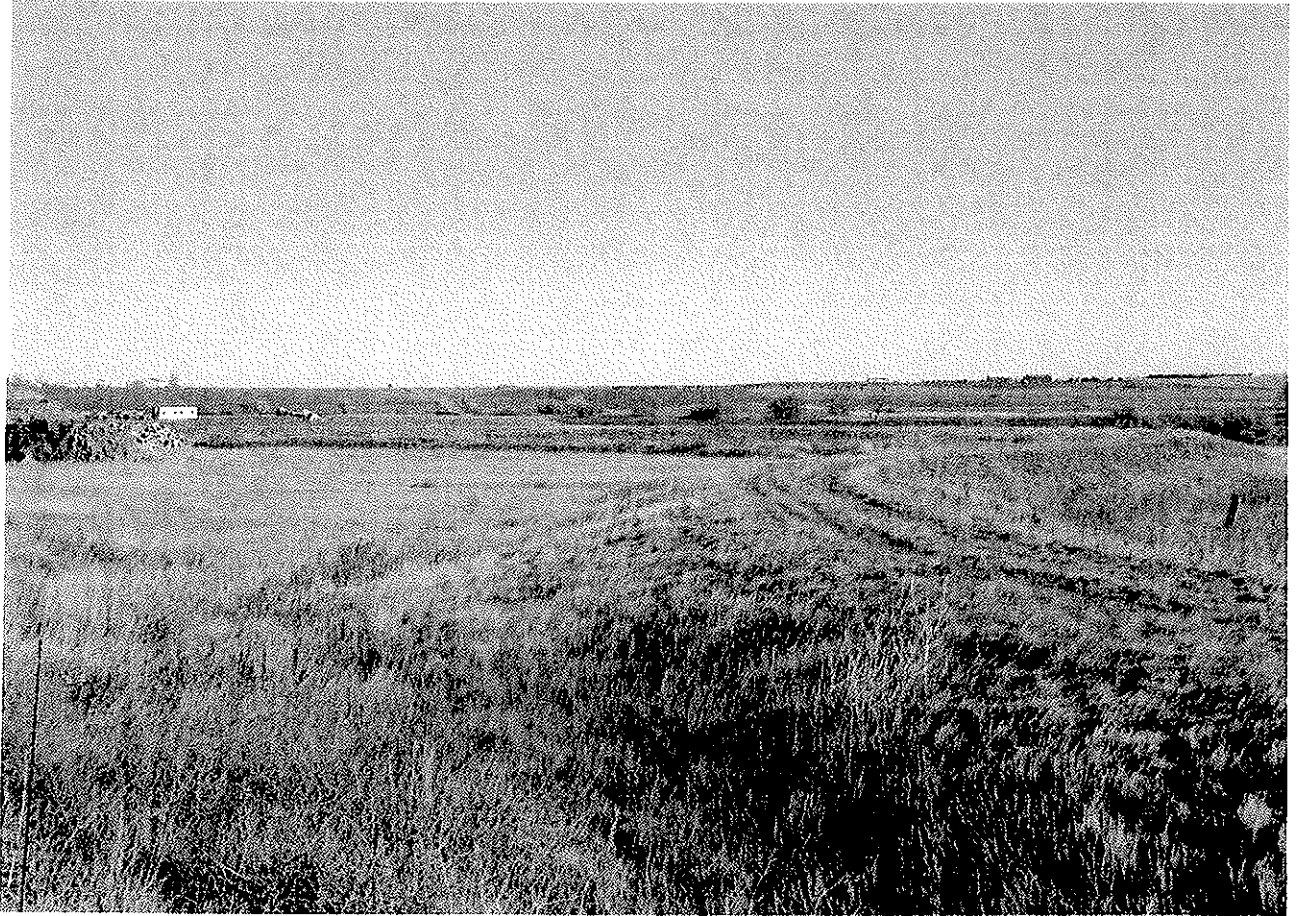
- Procedure Memorandum No. 34, *Interim Guidance for Studies Including Levees*
- Revised Procedure Memorandum No. 43, *Guidelines for Identifying Provisionally Accredited Levees*.
- Procedure Memorandum No. 45, *Revisions to Accredited Levee and Provisionally Accredited Levee Notations*
- Appendix H, "Mapping of Areas Protected by Levee Systems," of *Guidelines and Specifications for Flood Hazard Mapping Partners*.
- Section 65.10, *Mapping of Areas Protected by Levee Systems* of the NFIP regulations.

Flood insurance information can be found at [www.fema.gov/business/nfip](http://www.fema.gov/business/nfip) or on the NFIP's consumer Web site, [www.FloodSmart.gov](http://www.FloodSmart.gov).

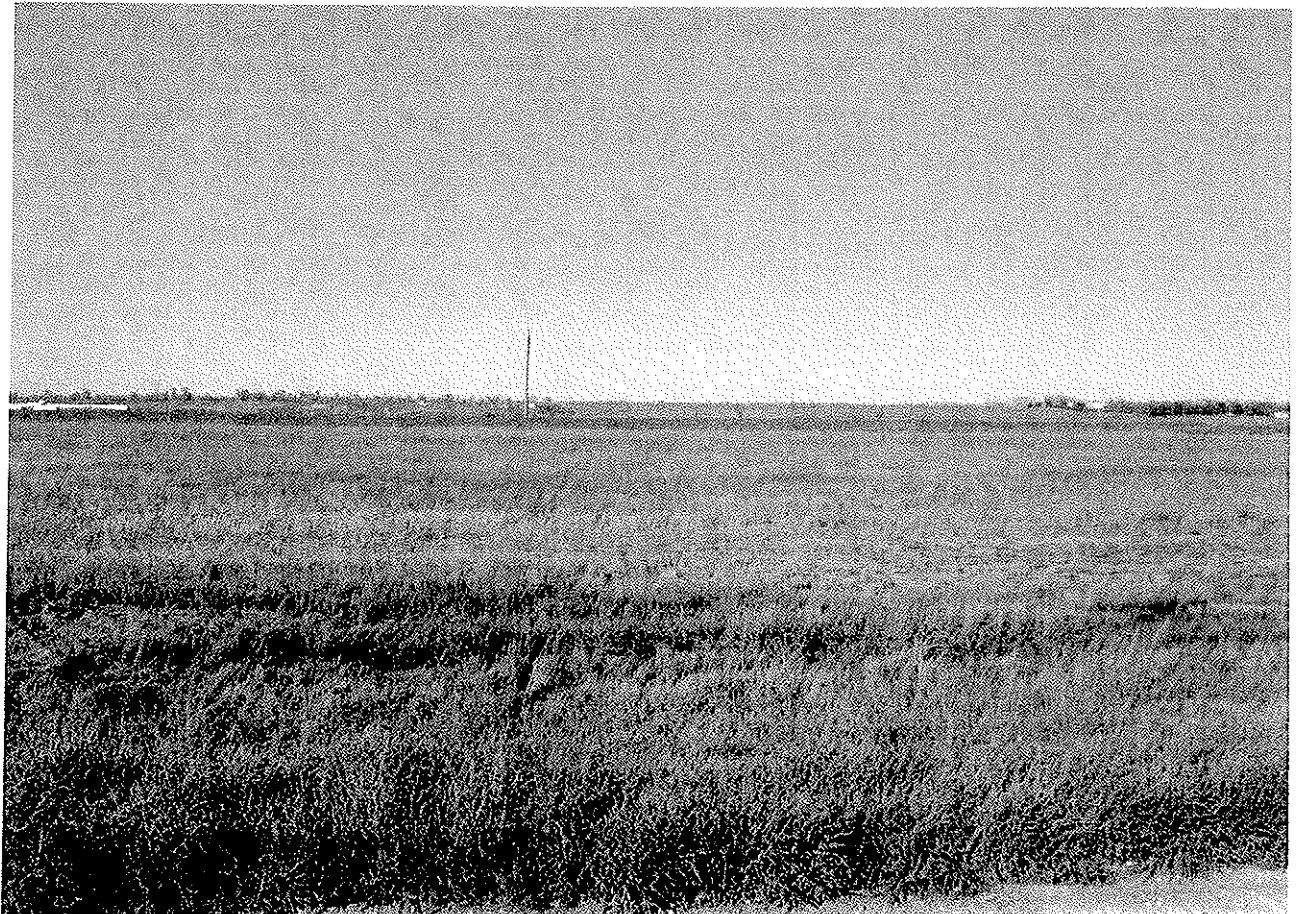
Links to the USACE Web site also are provided on the levee-dedicated pages; the resources discussed in this fact sheet are accessible through the USACE Web page at [www.usace.army.mil/publications/eng-manuals](http://www.usace.army.mil/publications/eng-manuals).











10/18/20



## Mona Livdahl

---

**From:** Michael Gunsch [mgunsch@houstoneng.com]  
**Sent:** Tuesday, May 07, 2013 10:15 AM  
**To:** Fleck Terry (tfleck@attitudedr.com)  
**Cc:** 'Mona Livdahl'; David Bliss (dbliss@blisslaw.com); Cary Backstrand; Daniel Schriock; Marcus Hall (mahall@nd.gov)  
**Subject:** Country Creek Addition - Runnel Road

Terry:

I received a call from Mr. Keith Fleck (220-7328) related to an ongoing drainage and flooding issue to the east of Runnel Road in the County Creek Addition's northeast of Bismarck. Keith noted that his daughter and son-in-law's house has been adversely affected by spring flooding and that the situation is not going away and needs to be resolved. I also visited with Dan Schriock with the County who received a call as well.

There is an extensive history in this location and until measures or actions are taken to alleviate the problems they will continue to return for discussion. I would recommend discussion with the county/twp to consider alternatives for implementation. This potentially to include channelization and culvert modifications.

Mona – Please place this item on the meeting agenda for discussion.

Thanks,

**Michael H. Gunsch, PE**

Principal / Senior Project Manager

O 701.323.0200 | F 701.323.0300 | C 701.527.2134

3712 Lockport St. • Bismarck, ND • 58503

[mgunsch@houstoneng.com](mailto:mgunsch@houstoneng.com)

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

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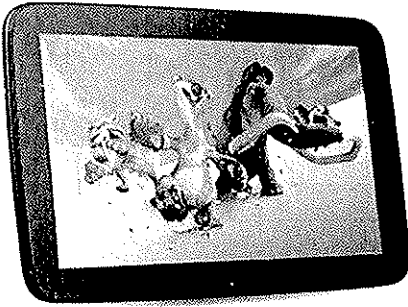
Garrison Diversion  
Board of Directors Paperless Initiative

Options: Tablet or Laptop

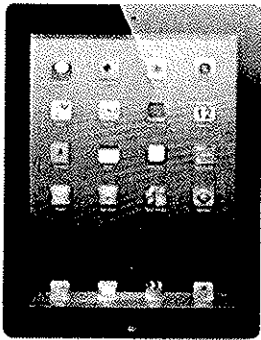
Quantity: 28

Tablet:

Nexus 10 - \$11,172 (tablet only) or \$12,096 (w/keyboard case)  
\$399 each (16GB, wireless, android based, 1.33 lbs)



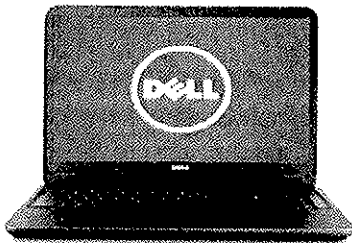
iPad2 - \$11,172 (tablet only) or \$14,532 (w/case & keyboard)  
\$399 each (16GB, wireless, apple based, 1.33 lbs)



} Use or for V.  
on other  
BOARD -  
→ iPad3 contr?  
I-RETINA 4G  
→

Laptop:

Dell Inspiron 15 - \$8,372  
\$299 each (320GB, wireless, Windows8, 4.9 lbs)





# Burleigh County Water Resource District

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

April 25, 2013

Gerald Heiser  
Sovereign Lands Manager  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505

RE: Stacy Tschider Sovereign Lands Application Nos. S-1843 and S-1841  
Missouri River Mile ~1321.5

Dear Mr. Heiser:

The Burleigh County Water Resource District has reviewed the application filed by Stacy Tschider for the construction of a boat dock and excavation of a pit to serve as an intake for a residential irrigation system.

We question the need for such a large pit and are concerned about the impacts to public safety from construction of this pit on public lands. We are also curious as to what the potential ramifications might be of a private boat dock constructed on public lands so far from the actual residence. Its construction should in no way limit the public's right to access and enjoy the public property.

In addition Burleigh County WRD holds a bank stabilization easement in this area for the purpose of access for maintenance on the revetment constructed by the Corps of Engineers under the Section 33 Program. Any work along this bankline that might impact the integrity of the revetment or access thereto requires prior authorization from the BCWRD. In addition, the construction of any structures within the designated easement area requires review and approval by the BCWRD.

Thank you for the opportunity to comment on this application.

Sincerely,

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

Terry Fleck, Chairman  
Burleigh County Water Resource District

C: Michael Gunsch, PE Houston Engineering  
Ray Zeigler, Burleigh County Buildings and Inspections  
Jerry Woodcox, Chairman Burleigh County Commission  
Stacy Tschider, Applicant

---

**Current Board Members:**

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

Permit Number - ND2013-14692

State of North Dakota  
Temporary Water Permit  
SWC Project No. 1400A

In response to an application for a temporary water permit dated Jan 21, 2013 as received in this office Jan 22, 2013, authority is hereby granted to:

Michels Foundations  
817 West Main Street  
Brownsville, WI 53006  
Contact Person: Dan Posthuma

Telephone (920) 583-1599

**A Temporary Water Permit as follows:**

**Source:** Missouri River

**Point of Diversion:** NW1/4 Sec. 27 Twp. 142 Rng. 081

**Nature of Use:** Powerline Construction

**Total Quantity of Water:** 250,000.0 Gallons

**Maximum Withdrawal Rate:** 300.0 gpm

**Period of authorized useage:** Apr 19, 2013 through Dec 31, 2013

**Conditions**

This temporary water permit is granted subject to use from the source by senior appropriators. Permission for access to the source must be obtained from all affected landowners. Failure to comply with any order of the State Engineer may result in forfeiture of this permit. The granting of a temporary water permit does not create a water right.

The Total Quantity of Water listed above is equivalent to 0.77 acre-feet.


The State Engineer may impose restrictions pertaining to a minimum flow in the Missouri River.

This temporary water permit does not authorize the construction of any type of dam or crossing on the Missouri River.

This temporary water permit is issued subject to water use from the source by senior appropriators.

Failure to comply with any order of the State Engineer may result in forfeiture of this temporary water permit. This includes the withdrawal of water that is not authorized.

Dated: Apr 18, 2013

  
\_\_\_\_\_  
Todd Sando, P.E.  
State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505

cc: Burleigh WRD

76

Permit Number - ND2013-14692

**State of North Dakota  
Temporary Water Permit  
SWC Project No. 1400A**

The use of the water authorized by this Temporary Water Permit shall be limited to power line construction activities associated with the Minnkota Center to Grand Forks Project.

Holders of Temporary Water Permits with Industrial Use must complete the Annual Water Use Report for each calendar year that the Temporary Water Permit is authorized. Annual Water Use Reports for Industrial Temporary Water Permits are due in the State Engineer's Office within 30 days of the close of the calendar year or within 30 days of the close of the authorized period of the Temporary Water Permit. Failure to comply with any order of the State Engineer may result in the forfeiture of this permit.

A weatherproof copy of this Temporary Water Permit must be attached the equipment withdrawing water and must be available for inspection by representatives of the State Engineers Office or the State Water Commission. A copy of this Temporary Water Permit must be posted in a conspicuous place at each loading point where water under this permit is provided.

Dated: Apr 18, 2013



\_\_\_\_\_  
Todd Sando, P.E.  
State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505

cc: Burleigh WRD

21

MEMO: April 10, 2013  
TO: North Dakota Water Resource Districts  
FROM: Ken Royse, Chairman  
RE: 2013 Annual Meeting and Executive Briefing for Water Managers

Enclosed are registration materials for the North Dakota Water Resource Districts Association (NDWRD) Annual Summer Meeting and the 2013 Executive Briefing. This year the Executive Briefing is devoted to the Southwest Oil Impacts.

The Summer Meeting and Executive Briefing are scheduled for **Wednesday, July 10 - Friday, July 12**, at the Grand Dakota Lodge in Dickinson. This year's meeting will again be a joint meeting with the Garrison Diversion Conservancy District. All of our meetings and on-site meals will take place at the Grand Dakota Lodge (532 15<sup>th</sup> Street West).

There will be a NDWRD Executive Board meeting on the afternoon of Wednesday, July 10. That evening Southwest Water Authority is hosting a *Southwest Water Social & BBQ* at the Dickinson Elks Lodge, located next door to the hotel.

The Annual Summer Water Resource Districts business meeting for all water managers will be held on the morning of Thursday, July 12, with the *SW Oil Impact: Mixing Oil and Water* tour in the afternoon. The cost for the tour is included in your registration, and is an additional \$20 for spouses or guests. The evening activity is the Pitchfork Fondue and the Medora Musical. The last stop on the tour will be at Medora, so plan accordingly if you need to connect with guests not on the tour! The buses will bring you back to the hotel when the musical is finished.

On Friday, July 13, there will be an Executive Briefing on Southwest Oil Impacts from 8 a.m., to noon. An outline of the meeting schedule and events is enclosed.

We have a block of rooms for the evenings of Tuesday, July 9, Wednesday, July 10, Thursday, July 11 and Friday, July 12. For reservations, call the Grand Dakota Lodge at 701-483-5600 and ask for the North Dakota Water Association room block. Our negotiated room rate is \$125 for single or double occupancy, and the room reservation deadline is **July 1**. *Hotel rooms in the west are at premium occupancy, therefore I'd encourage you to make room reservations as soon as possible for those water managers and guests planning to attend this meeting.*

If you have any questions, call Jean Schafer or Julie Ellingson at 701-223-4615.

# Joint Summer Meetings and Executive Briefing

July 10-12, Ramada Grand Dakota Lodge, Dickinson

## Wednesday, July 10

- 11:30 a.m. – Registration,  
5:00 p.m. *Front Entrance Lobby*
- 9:00 a.m. – Garrison Diversion Conservancy  
5:00 p.m. District Board of Directors  
Meeting, *Freedom Hall*
- 4:00 p.m. – N.D. Water Resource Districts  
6:00 p.m. Association Board Meeting,  
*Roosevelt Room*
- 5:30 p.m. – **Southwest Water Social & BBQ,**  
6:30 p.m. *Dickinson Elks Lodge*

## Thursday, July 11

- 7:00 a.m. Breakfast, *Elkhorn/Mandan Room*
- 7:30 a.m. – Registration open,  
Noon *Front Entrance Lobby*
- 8:00 a.m. – N.D. Water Resource Districts  
11:30 a.m. Association Summer Business  
Meeting, *Roosevelt/Medora Room*
- 11:30 a.m. – Box Lunch Buffet,  
Noon *Elkhorn/Mandan Room*
- 12:15 p.m. – Load for tour,  
*Front Lobby Entrance*
- 12:30 p.m. – *Southwest: Mixing Oil and Water*  
5:30 p.m. Tour
- 5:30 p.m. – **Pitchfork Fondue and Musical at**  
11:00 p.m. **Medora**

## Friday, July 12

- 7:30 a.m. – Breakfast, *Elkhorn/Mandan Room*
- 8:30 a.m. – **Executive Briefing on**  
Noon **Southwest Oil Impacts,**  
*Roosevelt/Medora Room*



# JOINT SUMMER MEETING AND EXECUTIVE BRIEFING

N.D. Water Resource Districts Association  
Garrison Diversion Conservancy District  
July 10-12, 2013  
Grand Dakota Lodge, Dickinson

## ADVANCE REGISTRATION FORM

*Please pre-register by the deadline if you and any guests plan on attending this meeting, tour and/or meals. On-site registrations ARE NOT included in the guarantee counts that we give to the hotel, motorcoach and caterers. While we always make every effort to accommodate all attendees, we cannot guarantee that on-site registrations (including additions for guests to events or meals) will be able to participate in the meals or tour.*

NAME(S): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ORG: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**Registration**                      **\$125.00 per person**              **(\$ 140.00 after July 1)**

<u>#</u>	<u>Cost</u>	<u>Total</u>	
___	\$125.00	_____	Registration includes ALL meals, annual meeting, Executive Briefing, tour and Medora Musical
___		_____	<i>Are any NOT attending the tour on Thursday, July 11</i>

### Additional Guest Tickets:

___	\$12.00	_____	Additional persons for Thursday breakfast (spouses and guests)
___	\$13.00	_____	Additional persons for Thursday luncheon (spouses and guests)
___	\$20.00	_____	Additional persons for Thursday tour (spouses and guests)
___	\$25.00	_____	Additional persons for Thursday Pitchfork Fondue (spouses and guests)
___	\$30.00	_____	Additional persons for Medora Musical (spouses and guests)
___	\$10.00	_____	Additional persons for Friday breakfast (spouses and guests)

\_\_\_ **TOTALS \$** \_\_\_\_\_ Send completed form and check to:

**North Dakota Water Resource Districts Assn**  
**PO Box 2254**  
**Bismarck, ND 58502**

**Room Blocks:** We have a block of rooms for the evenings of Tuesday, July 9 (40 rooms), Wednesday, July 10 (85 rooms), Thursday, July 11 (85 rooms) and Friday, July 12 (30 rooms) if you want to extend your stay. For reservations, call the Grand Dakota Lodge at 701-483-5600 and ask for the *ND Water Association* block. Our room rate is \$125 for single/double occupancy. The room reservation deadline is **Monday, July 1**.

**Cancellation Policy:** There will be no refunds for cancellations received on or after **Monday, July 8**.



◇ May 2, 2013

Mr. Terry Fleck  
Chair  
Water Resource District  
Burleigh County  
221 N. 5th Street  
Bismarck, ND 58501

Dear Mr. Fleck,

**PROJECT NO. NHU-1-981(101)111, PCN 20196  
NORTH WASHINGTON STREET - CALGARY AVE TO 57<sup>TH</sup> AVE NW  
BURLEIGH COUNTY  
BISMARCK, NORTH DAKOTA**

The City of Bismarck, in cooperation with the North Dakota Department of Transportation and Federal Highway Administration, is proposing a roadway improvement on North Washington Street. The project is located between the intersection of Calgary Avenue and 57<sup>th</sup> Avenue North. *Please see the attached project location map.*

The project consists of reconstructing North Washington Street which includes widening to provide additional lanes, pavement, curb and gutter, storm sewer, lighting, sidewalks and landscaping. The project may require permanent and temporary strips of right-of-way (ROW).

This project is tentatively scheduled to be constructed during the 2015 construction season, contingent upon the availability of federal and local funding.

To ensure that all social, economic, and environmental effects are considered in the development of this project, we are soliciting your views and comments on the proposed project pursuant to Section 102(2) (D) (IV) of the National Environmental Policy Act of 1969, as amended. We are particularly interested in any property which your department may own or have an interest in and which would be adjacent to the proposed roadway improvement. We would also appreciate being made aware of any proposed developments your department may be contemplating in the areas under consideration for the proposed roadway facility. Any information that might help us in our studies would be appreciated.

Information or comments relating to environmental or other matters that you might furnish will be used in determining if this project is a "categorical exclusion" or whether an "Environmental Assessment" or a "Draft Environmental Impact Statement" will be prepared.

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It is requested that any comments or information be forwarded to our office on or before June 3, 2013. If no reply is received by this date, it will be assumed that you have no comment on this project.

If further information is desired regarding the proposed roadway improvement, please contact Troy Ripplinger at [troy.riplinger@kljeng.com](mailto:troy.riplinger@kljeng.com) or 701-355-8435 in Bismarck, North Dakota.

KLJ

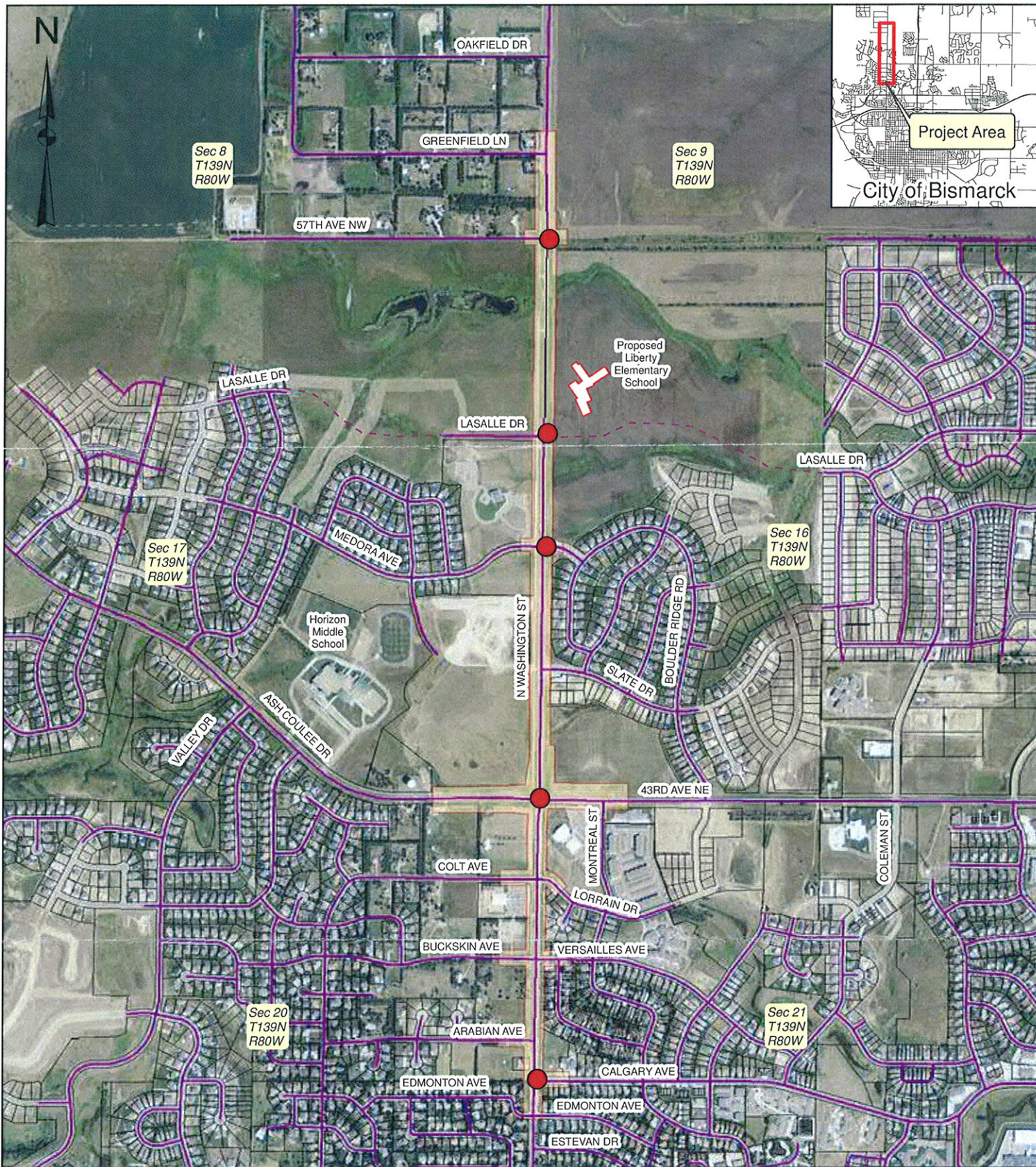
A handwritten signature in blue ink, appearing to read 'Troy Ripplinger'.

Troy Ripplinger, PE  
Project Manager

tr/mm

Enclosure





0 500 1,000 2,000 3,000 Feet

### Location Map

- Study Area
- Study Intersection



North Washington Street  
 Calgary Ave to 57th Avenue NW  
 NHU-1-981(101)111  
 PCN 20196